United Nations
GENERAL ASSEMBLY
TWENTY-THIRD SESSION
Official Records

SIXTH COMMITTEE, 1062nd MEETING

Tuesday, 5 November 1968, at 3.40 p.m.

NEW YORK

CONTENTS

Chairman: Mr. K. Krishna RAO (India).

AGENDA ITEM 85

Draft Convention on Special Missions (continued) (A/6709/Rev.1 and Corr.1, A/7156 and Add.1 and 2; A/C.6/L.646, A/C.6/L.691, A/C.6/L.695, A/C.6/L.720)

1. The CHAIRMAN suggested that the Committee take up articles 22 and 23, and then revert to article 21.

It was so decided.

Article 22 (General facilities)

2. Mr. MULIMBA (Zambia), introducing the Ghanaian Zambian joint amendment (A/C.6/L.720), which replaced the amendments submitted separately by Ghana (A/C.6/L.695) and Zambia (A/C.6/L.691), said that the new amendment would bring out more clearly the International Law Commission's intention, as reflected in the statement in paragraph (3) of its commentary on article 22, that the receiving State could not be required to provide a special mission with facilities which were not in keeping with the characteristics of the mission. The addition of the word "reasonable" now proposed would make it quite clear that, in determining the facilities required, account should be taken of the circumstances and conditions prevailing in the receiving State. The new amendment also provided that those reasonable facilities should be obtained by agreement between the sending State and the receiving State. In some circumstances, it might be possible to agree in advance, when consent was obtained to the sending of the mission, on the facilities that would be required; in other circumstances, the previous agreement might have to be altered because of changes occurring during the intervening period in the receiving State.

3. Mr. DADZIE (Ghana) said his delegation felt that the new text more adequately remedied the ambiguity of the International Law Commission's text. The latter might give rise to the question whether the receiving State was obliged, for example, to pay all the expenses of the special mission and the cost of accommodation and secretarial services. The joint amendment (A/C.6/L.720) stipulated that facilities should be accorded to the special mission subject to agreement between the receiving and sending States, so that the receiving State would have a clear idea of the obligations it was undertaking and an opportunity to grant or refuse the required facilities as it saw fit. Without the insertion of the word "reasonable" before the word "facilities", the phrase "having regard to the nature and task of the special mission" would be meaningless. The adoption of the joint amendment would lighten the burden of the receiving State in fulfilling the requirements of article 21.

4. Mr. BEN MESSOUDA (Tunisia) said that the joint amendment would in every case require negotiations concerning privileges and immunities in addition to the negotiations concerning the sending of a special mission provided for in part I. The Convention would thus not be an instrument setting forth the common rule of law governing special missions but a model set of rules. Article 28 of the Vienna Convention on Consular Relations stated that the receiving State should "accord full facilities for the performance of the functions of the consular post", without any reference to reasonableness or agreement. The new amendment would thus be more restrictive than the corresponding provision for consular posts. He therefore regretted that his delegation would be unable to support the amendment.

5. Mr. NAINA MARIKAR (Ceylon) said that the International Law Commission's text of article 22 accorded with his Government's view that a special mission should be given only such facilities as were necessary for the proper performance of its functions. The criterion of strict necessity was of first importance and should be more widely applied in part II of the draft articles. His delegation had considerable sympathy with the joint amendment, which sought to define more clearly the rights of the sending and receiving States with respect to the granting of facilities. He questioned, however, the necessity of inserting the word "reasonable" before the word "facilities", since the idea of reasonableness was fundamental to all parts of the draft articles.

6. Mr. DELEAU (France) said that the question of facilities dealt with in article 22 could be considered independently of the general question of privileges and immunities, which was the subject of the subsequent articles. The joint amendment provided a more flexible formula than the International Law Commission's text and his delegation would support it.

7. Mr. MOLINA LANDAETA (Venezuela) said that the International Law Commission's text of article 22 was very clear and raised no difficulties of interpretation. The mention of prior agreement in the joint amendment was redundant, because the draft articles as a whole were founded on the principle of prior agreement, which was already set forth in articles 2 and 50. The

mention of agreement in article 22 might imply that such agreement was not necessary in respect of any article where it was not specifically referred to. The insertion of the word "reasonable" before "facilities" did not add anything of value to the text. His delegation preferred the Commission's text of the article and could therefore not support the joint amendment.

8. Mr. LUGOE (United Republic of Tanzania) said that his delegation had considerable reservations about the International Law Commission's text of article 22, which was open to very broad interpretation. It was not always possible for a receiving State to provide all the facilities needed by a special mission, and the joint amendment, by introducing the concept of agreement, made it clear that account should be taken of existing circumstances in the receiving State. His delegation did not interpret the new text as meaning that such agreement would have to be formal or previous. The word "reasonable" was not a new term in legal instruments. As was stated in paragraph (3) of the Commission's commentary on article 22, special missions sometimes asked for facilities over and above what was necessary for the performance of their functions, and the Ghanaian/Zambian text would provide a useful safeguard. His delegation would therefore support the amendment.

9. Mr. OGUNDERE (Nigeria) thought that the two elements introduced by the joint amendment were unfortunate. The reference to agreement could give rise to misinterpretation. The draft articles prepared by the International Law Commission constituted a legal unity, and any disruption of that unity would jeopardize the chances of formulating the common rules of law governing special missions. The question of agreement and consent had already been dealt with in part I of the draft articles and should not be arbitrarily introduced into part II, which covered a different area. The terms of the Commission's text of article 22 were precise and required no qualification. The insertion of the word "reasonable" would introduce a subjective element which would throw the draft out of balance. If the amendment were put to the vote, his delegation would vote against it.

10. Mr. YASSEEN (Iraq) regretted that he could not support the joint amendment. The obligation to grant a special mission the facilities necessary for the performance of its functions should not be dependent on private agreement between States. Article 22 was based on article 25 of the Vienna Convention on Diplomatic Relations, and the proposed reference to agreement would jeopardize the principle underlying it. The amendment would reduce the scope of the Convention and deprive special missions of something they needed and were entitled to. The arguments advanced by the Ghanaian representative in favour of the amendment were not convincing; the term "facilities" had been used without qualification in other legal instruments, including the Vienna Convention on Diplomatic Relations. Although special missions should not be allowed to ask for unreasonable facilities, an express stipulation to that effect was unnecessary.

11. Mr. SHARDYKO (Byelorussian Soviet Socialist Republic) said that the norms established in the articles in part I, which the Committee had already approved, were of vital significance because they were designed to expand and consolidate international relationships and to strengthen the international legal order. The articles in part II were equally important, because they dealt with the conditions in which special missions were to conduct their activities. Members had frequently referred to the important part played by special missions in international relations and to the fact that the effectiveness of those missions depended on the conditions provided by receiving States.

12. As drafted by the International Law Commission, article 22 defended the rights of both sending and receiving States and ensured the flexibility of the Convention. His delegation could therefore accept that text which, incidentally, was the result of many years' work by the eminent members of the Commission, whose opinions should be respected. Another reason for supporting the Commission's text was that, being based on article 25 of the Vienna Convention on Diplomatic Relations, it took account of existing practice. The Commission had obviously been inspired by the desire to promote the progressive development of international law and its codification.

13. The arguments against the Commission's text were unconvincing; in many cases they ignored existing practice and the fundamental aim of the progressive development and codification of international law. If adopted, article 22 would become a progressive norm of international law and guarantee the flexibility of the régime governing relations between sending and receiving States.

14. Study of the Ghanaian/Zambian joint amendment brought into relief the advantages of the Commission's text. The amendment introduced new elements into the article: the sending and receiving States must now agree on the granting of facilities. Article 22 could not be considered in isolation from article 2, of which it was a continuation and development. It could be concluded that if the receiving State had agreed to receive a special mission it had also agreed to the activities of the mission and there was, therefore, no need to require special agreement concerning the granting of facilities. If a State agreed to receive a special mission, it would obviously have to grant all the facilities necessary to enable the mission to function normally, not the "reasonable facilities" stated in the amendment. For those reasons, his delegation was unable to support the amendment.

15. Mr. CASTRÉN (Finland) said that his delegation was unable to support the joint amendment. Its adoption would place special missions at the mercy of receiving States, because the content of any agreements on facilities would depend on the extent of facilities the receiving State was prepared to grant. In that case, article 22 might just as well be deleted and the question of facilities left to possible agreements. The Finnish delegation would vote in favour of the International Law Commission's text.

16. Mr. BAYONA ORTIZ (Colombia) said that the last sentence of paragraph (3) of the International Law Commission's commentary on article 22 enabled Colombia to accept the existing text of the article.

Some special missions would require, for the successful performance of their functions, the facilities afforded to permanent diplomatic missions; others would not. The receiving State would not, under article 22, be required to provide facilities out of keeping with the characteristics of the special mission. His delegation would therefore support the Commission's text rather than the joint amendment.

17. Mr. SPERDUTI (Italy) appreciated the reasons which had prompted the Ghanaian and Zambian delegations to submit their amendment. The wording of article 22 would oblige the receiving State to assess the characteristics of a special mission, and such an assessment would be subjective. Unfortunately, any decision concerning the reasonableness of the facilities to be granted would also be subjective. It did not appear, therefore, that the sponsors of the amendment had found the best way of solving the difficulty. Similarly, the first words of that amendment implied that the agreement would be reached before the departure of the special mission. What would happen, however, if a special mission discovered, after its arrival, that it required certain additional facilities in order to perform its task? Would a new agreement be necessary? On the whole, the amendment tended to complicate matters and would not, therefore, receive the support of the Italian delegation.

18. Sir Kenneth BAILEY (Australia) said the discussion showed that there was much to be said for and against the Ghanaian/Zambian joint amendment. His first impression was that the amendment really proposed little more than a drafting change, because it made explicit certain elements which were implied in the International Law Commission's text, as the commentary on it showed. The sponsors' intention might become clearer if their text were amended to read: "The receiving State shall accord to the special mission such facilities as it agrees are reasonably required for the performance of the functions of the special mission, having regard to the nature and task of the special mission." It did not seem that anything in the nature of a prior or formal agreement was required.

19. As the Colombian representative had indicated, article 22 should be considered in relation to the contents of paragraph (3) of the Commission's commentary, particularly the last sentence. There remained, however, a very real difficulty in deciding what the nature and task of the special mission did require. The receiving State had to accept the fact that, because of its nature and task, the special mission did require certain facilities. That seemed to be all that the joint amendment set out to make clear.

20. Having understood the amendment in that sense, the Australian delegation could support it. The amendment only made clear what the Commission itself had shown to be a point of difficulty in practice.

21. Mr. MAIGA (Mali) said he was unable to endorse the joint amendment, which tended to limit the scope of the proposed Convention. It would be difficult to determine what were reasonable facilities, and in any case special missions should, like permanent diplomatic missions, be able to enjoy all the facilities they required for the performance of their tasks. The adoption of the amendment would result in the Convention becoming a body of rules applicable in different ways by different States.

22. Mr. DUPLESSY (Haiti) said that difficulties would arise if each State were to decide individually what facilities to grant to special missions. Moreover, it should be borne in mind that article 22 was only an introduction to the other articles relating to facilities. If the principle in article 22 were respected only after agreement between the sending and receiving States, there would be no need for articles 23, 24 and 25. His delegation was therefore unable to support the joint amentment and would vote in favour of the International Law Commission's text.

23. Mrs. KELLY DE GUIBOURG (Argentina) requested that, if the joint amendment were put to the vote, a separate vote be taken on the word "reasonable".

24. Mr. KASEMSRI (Thailand) said that the aim of the joint amendment appeared to be to achieve a balance between the interests of the sending State and the receiving State, and to give the receiving State a role in determining what facilities might reasonably be required. Article 22 of the International Law Commission's draft, however, purported to state a general principle, which was qualified by the following articles; it was therefore unnecessary to insert qualifications in article 22 itself, and his delegation accordingly could not support the amendment.

25. Mr. MULIMBA (Zambia) said it could not be assumed that all requests by sending States for facilities would be reasonable. A request for helicopters might be reasonable in the United States of America but unreasonable in Zambia. Facilities that would be reasonable for a special mission led by a Minister might not be reasonable for a mission led by a person not holding ministerial rank. Often the implementation of development schemes depended on fulfilling the requests of the donors for facilities, privileges and immunities which cumulatively might cost the recipient country more than the benefits it received. Nevertheless, his delegation would not press for a vote on the joint amendment, but wished to place on record its understanding that the word "facilities" in article 22 meant reasonable facilities. It also endorsed the Australian representative's explanation of the joint amendment, which perhaps better expressed the qualification which the sponsors had wanted to introduce into article 22.

26. Mr. DADZIE (Ghana) was satisfied that it was understood that sending States, in their own interests, should give prior notice to receiving States of the facilities required for special missions. It had often been stressed that the Committee was not obliged to adopt the same rules for special missions as had been adopted for permanent diplomatic missions. The mere fact of permanence created a situation in which it was easier for the receiving State to grant the facilities required. Many special missions were of very short duration, and if the receiving State was not told beforehand what was likely to be required, the task of special missions might be frustrated by lack of provision of the necessary facilities. Small countries could not provide everything that might

be required without notice, and his delegation would therefore vote for the International Law Commission's text of article 22, with the qualification that such notice should be given.

27. His delegation could not accept the argument that the Commission's text, being authoritative, was not subject to criticism. If that were so, there would be no point in the Committee's considering the text at all. The Commission itself would surely prefer to have the Committee subject its drafts to the strictest scrutiny, so that the texts finally adopted would do credit to its preparatory work.

28. The discussion indicated that many delegations agreed with the ideas of the sponsors of the joint amendment but preferred not to spell out those ideas in article 22. His delegation therefore would not press the amendment, and accepted the Commission's text of article 22 on the understanding that the word "facilities" in that article meant reasonable facilities, having regard to the nature and task of the special mission, and that, wherever possible, notice should be given to the receiving State of the facilities to be provided.

29. Mr. SEYDOU (Niger) said that the qualifying word "reasonable" in the joint amendment would have applied to facilities required from all receiving States, irrespective of their state of development, and some receiving States might have argued that no facilities were "reasonable". The amendment thus would have been more restrictive than the International Law Commission's text, which imposed an obligation on every receiving State to provide facilities. His delegation favoured the Commission's text of article 22.

30. Mr. REIS (United States of America) said that the submission of the joint amendment had been a service to the Committee, because its discussion had shown that the simple, direct words of article 22 concealed a variety of problems which in specific cases would require the application of judgement and wisdom. He wished to state for the record his delegation's view that the reference to facilities in article 22 meant reasonable facilities. It might be reasonable to ask facilities of country A which it would be scandalous to ask of country B.

31. He agreed with the Ghanaian representative that, with all due respect for the International Law Commission and its excellent work, the Commission was not empowered, entitled or competent to produce texts necessarily suited for adoption by States without change. The Commission was authoritative, and its texts deserving of attention, but the decision-making body was the Committee.

32. Mr. LUGOE (United Republic of Tanzania) said that his delegation had some difficulties with the word "facilities" in article 22, since it might impose on small receiving States obligations that they could not fulfil, and it would therefore have preferred the joint amendment. He wished to place on record his delegation's understanding that the word "facilities" in article 22 meant only such facilities as the receiving State was able to supply.

Article 22 was approved and referred to the Drafting Committee.

Article 23 (Accommodation of the special mission and its members)

33. The CHAIRMAN suggested that, as there were no amendments to article 23, it should be approved and referred to the Drafting Committee.

It was so decided.

The meeting rose at 5.25 p.m.

Litho in U.N. 77601—May 1969—2,150