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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.682, A/C.6/L.692, A/C.6/L.697)

Article 21 (Status of the Head of State and persons of high rank) (continued)

1. Miss DAHLERUP (Denmark) said that the problem of identifying missions as special missions was of great concern to her Government because all Danish civil servants were considered as representing the Government. Similar rules applied in neighbouring States with which her Government collaborated very closely, and it might therefore be inferred that missions in which civil servants took part had a representative character. The draft Convention prepared by the International Law Commission seemed to apply to a wide range of technical delegations, such as missions from government agencies sent to deal with purely technical problems, which in her delegation's opinion should not enjoy the extensive immunities and privileges set out in the draft Convention. Such delegations needed protection only in respect of their functions and there was no need for such missions to be recognized as special missions.

2. Her delegation feared that there would be an undesirable tendency to increase the number of special missions once the Convention was adopted. The problem would be solved by the adoption of the United Kingdom amendment (A/C.6/L.697). The French proposal (A/C.6/L.692) went some way towards a solution, but the United Kingdom amendment provided a better one, since the extensive privileges and immunities set out in part II would be given to high-level special missions such as most delegations had in mind when they used the term, while standard missions, which were the more numerous, would be governed by practical and less far-ranging rules. The valuable work done by the Commission would then be used for missions led by Heads of State or Government and cabinet Ministers, and States would be inclined to apply the new rules proposed by the United Kingdom in its amendment A/C.6/L.698 and Corr.1 to other, standard missions which otherwise they might be unwilling to recognize as special missions. In her delegation's view, therefore, the adoption of the United Kingdom amendment (A/C.6/L.697) would facilitate the ratification of the Convention by a great many countries and would make it applicable to a large number of missions.

3. Sir Kenneth BAILEY (Australia) said that the critical position of the present draft articles had been clearly demonstrated by the debate of the previous day (1055th and 1056th meetings), which had shown that the members of the Committee held widely divergent views. The Expert Consultant had made it clear at the 1056th meeting that the task of the International Law Commission in preparing the draft articles had been basically one de lege ferenda, the major decisions being political rather than juridical in character. State practice in regard to special missions was in no sense uniform, and the Commission was to be congratulated on its success in reducing so complex a subject to a short, clear and consistent system.

4. The provisions of part II of the draft articles constituted a simple and uniform system inherently applicable to all special missions, though susceptible of variation by ad hoc agreement between the sending and receiving States. Logically, since article 50 provided that the provisions might always be modified by agreement between the sending and receiving States, the specific content of the privileges and immunities established by the articles might seem relatively unimportant. In practice, however, for the great majority of medium-sized and small States, including Australia, the text would bind every State which became a party to the Convention, unless its partner in the proposed sending and receiving of a special mission agreed to some variation. Failing such agreement, the disagreeable alternative would be to refuse to accept the special mission. One result of the enormous increase in international contacts since the Second World War had been an increasing demand on all Governments to extend privileges and immunities to an ever-increasing number of representatives of foreign Governments and international organizations. That was not always a popular process, since as had been said it necessarily represented financial concessions and a derogation from the principle of equality before the law.

5. On the basis of such considerations, the Government of Australia, in its comments on the draft articles adopted by the Commission in 1965, had expressed concern at the proposal to extend to all missions that came within the scope of the articles a range of privileges and immunities based on those contained in the Vienna Convention on Diplomatic Relations. The Australian Government had stated that

it considered such a step unjustified, on the ground that the granting of privileges or immunities should be limited strictly to those required to ensure the efficient discharge of the functions of the special mission, having regard to its temporary nature. Moreover, immunities that would be appropriate in the case of high-level missions should not be made automatically applicable to other cases.[1] Despite the difficulties of classification referred to by the Expert Consultant at the 1056th meeting, the Australian Government did not believe that there should be only one scale of privileges and immunities applicable to all special missions, and still less that if there was to be only one scale it should be the scale established for diplomatic personnel by the Vienna Convention.

6. Australia had both sent and received many visiting missions, for a wide variety of purposes, which could have qualified as special missions within the meaning of the draft articles. For the most part, they had been sent and received on the footing of ordinary official visits, raising no questions of formal privileges and immunities, even where they were headed by responsible and even quite senior officials, where their purpose was technical, e.g., trade promotion, the purchasing of defence equipment, or the negotiation of a loan.

7. Assuming that any convention must adopt and apply one or more scales of privileges and immunities, rather than merely leave the subject to ad hoc agreement in each case, there were at least three recognized and established scales available for consideration, namely those contained respectively in the Vienna Convention on Diplomatic Relations, the Convention on the Privileges and Immunities of the Specialized Agencies, and the Vienna Convention on Consular Relations. Of the three, the first recognized the broadest and the third the narrowest range of privileges and immunities. The Committee could either take the highest category and let it be scaled down by ad hoc agreement as the parties so desired, which was the solution adopted by the Commission; or it could take the lowest category and let it be so scaled up, which was broadly the solution proposed by the French delegation, to be achieved by amendments to individual articles in part II of the Commission's text; or else it could take the middle category and let it be scaled either up or down, as proposed by the United Kingdom delegation.

8. The Australian Government was unable to accept the Commission's idea, but could support either the French or the United Kingdom proposals. His delegation could not make a final choice between them until all the French amendments had been circulated. In fact, effective steps could not be taken towards a text which was likely to secure general support until the Committee's opinion on the competing principles involved in establishing a text for part II as a whole was known.

9. The United Kingdom amendments (A/C.6/L.697, A/C.6/L.698 and Corr.1) proposed a two-tier scale of privileges and immunities which would introduce into the Commission's text important elements of flexibility and of compromise. Although the United Kingdom proposal for applying the test of high-level political leadership as the criterion for the application of the scale of privileges and immunities contained in the Vienna Convention on Diplomatic Relations had very logically been criticized on the ground that it did not supply any objective test of the function to be performed by the special mission, such a system might prove satisfactory in practice. The question arose, however, whether the scale of diplomatic privileges and immunities of the Vienna Convention was appropriate. The common experience of States showed that a mission to which high-level political leadership was assigned was likely also to involve functions and persons where diplomatic privileges and immunities alone would be appropriate. The development of law had more often been based on practice and experience than on pure theory and logic.

10. Mr. PASZKOWSKI (Poland) said that after hearing the arguments advanced in favour of the deletion or amendment of article 21, his delegation still considered that it was unnecessary to make radical changes in the International Law Commission's text of the article as proposed by the United Kingdom (A/C.6/L.697) and France (A/C.6/L.692). Article 21 should not be viewed in isolation; the consent of the receiving State mentioned in article 2 would apply not only to the sending of the special missions but to all related questions such as the status and privileges and immunities to be accorded to the missions. Article 50 further provided that States might agree to modify the scale of privileges and immunities set forth in the Convention. Such an interpretation would not substantially diminish the importance of the standard provisions on privileges and immunities contained in the Convention, which would be applicable to most special missions of a representative character. The parties concerned could agree otherwise when they deemed it necessary in view of the particular circumstances of a special mission. Moreover, there were several articles whose application would not depend on the will of the parties.

11. The purpose of the Commission's text of article 21 was to stipulate that the high-ranking persons mentioned in it did not lose their special status under international law on becoming members of a special mission. From the draft articles as a whole, it was quite clear that the essential point was that a special mission should enjoy the privileges and the immunities required for the performance of its function, whatever the status of its head might be. In the view of the Polish delegation, the Commission's draft, including its provisions on privileges and immunities, was the basis upon which the Sixth Committee should try to find solutions acceptable to the largest possible number of States.

12. Mr. MOE (Barbados) said that a guideline for the approach to the question of privileges and immunities was to be found in article 22 of the draft Convention. The United Kingdom amendment (A/C.6/L.697) departed from that guideline; the scale of privileges and immunities granted should depend on the nature and functions of the special mission rather than on the status of the persons composing it.

13. The words "in addition to what is granted by these articles" in article 21, paragraph 1, which the French amendment (A/C.6/L.692) would delete, were necessary as referring to the basic position

[1] See Official Records of the General Assembly, Twenty-second Session, Supplement No.9, annex I, pp. 28 and 29.

adopted by those who had drafted the Convention with respect to privileges and immunities. The phrase "Ministers of comparable rank" in paragraph 2 of the French amendment was more limiting than the words "other persons of high rank" in the International Law Commission's text, and its adoption would mean that persons of high rank who were not Ministers would be unable to enjoy the facilities, privileges and immunities accorded to diplomatic agents. His delegation would be reluctant to agree to that. It would also be unable to agree that, as appeared from paragraph 2 of the French amendment, Heads of Government should be equated with diplomatic agents. Until it had learned the contents of the other amendments being circulated by the French delegation, Barbados was not prepared to accept the third paragraph of the French amendment.

14. His delegation felt that article 21 should be maintained and favoured the text prepared by the Commission.

15. Mr. SPERDUTI (Italy) thought that article 21 of the draft Convention, particularly paragraph 2, would be improved if paragraphs 1 and 2 of the French amendment (A/C.6/L.692) were adopted. Paragraph 2 of that amendment was particularly valuable because it clarified the phrase "other persons of high rank" in the original text and provided for the use of ad hoc agreements where necessary. Furthermore, by referring to diplomatic status, it filled the gap in international law with respect to the privileges and immunities of high-ranking persons other than Heads of State or Government and Foreign Ministers. His delegation would therefore vote in favour of paragraphs 1 and 2 of the French amendment and hoped that the submission of that amendment would lead the Belgian delegation to reconsider its position with respect to article 21. It might be useful, however, if the words "Ministers of comparable rank" in the French amendment were replaced by the words "other Ministers of the Government of the sending State", as in the United Kingdom amendment (A/C.6/L.697).

16. With regard to the general structure of part II of the draft, the Committee would have to choose one of three different systems: that proposed by the International Law Commission; that advocated by the United Kingdom in documents A/C.6/L.697 and A/C.6/L.698 and Corr.1; and that advocated by the French representative when introducing the proposals contained in document A/C.6/L.692. No one would quarrel with the premise, stated in paragraph (2) of the general considerations at the head of part II of the draft,[2] that a special mission was entitled to the facilities, privileges and immunities necessary for the performance of the particular task entrusted to it. It was the conclusion that the Commission—in paragraph (4) of the general considerations—had drawn from that premise, namely that "there were grounds for granting special missions, subject to some restrictions, privileges and immunities similar to those accorded to permanent diplomatic missions", that gave rise to difficulty. Privileges and immunities were accorded to permanent diplomatic missions not only because of the functions of those missions but also as a result of tradition and ancient usage.

17. If the Commission had approached the question from the point of view of the mission's functions, it should have taken as its basis the Vienna Convention on Consular Relations or the Convention on the Privileges and Immunities of the Specialized Agencies, rather than the Vienna Convention on Diplomatic Relations. It would be unsatisfactory, for instance, for the provisions of article 31 of the draft, which were based on article 31 of the Convention on Diplomatic Relations, to be applied to all special missions.

18. It was true, of course, that a convention codifying the rules applicable to special missions could not consist of a series of chapters regulating the privileges and immunities to be granted to each of the many categories of special mission. The Commission's proposal did seem excessive, however, and a better balanced solution might be achieved if the United Kingdom proposal for article 21, supplemented by paragraphs 1 and 2 of the French proposal, were adopted.

19. Cases in which a special mission, though entrusted with an unimportant task, was headed by a Minister were rare and did not justify special attention by the Committee.

20. In conclusion, although his delegation recognized the value of the system advocated by the French representative when introducing document A/C.6/L.692, it felt certain misgivings concerning the many modifications to and deletions from the Commission's text that that system called for, for it was impossible to judge how far those modifications would be accepted by the Sixth Committee.

21. Mr. OGUNDERE (Nigeria) appreciated the concern to avoid the undesirable proliferation of privileges and immunities not essential to the tasks of special missions. At the same time, the practice of States in the matter, as mentioned by the observer for Switzerland and the Expert Consultant at the 1056th meeting, should not be undermined.

22. The International Law Commission's idea was that hierarchies should not be created for special missions, which were extremely varied. At the same time, it recognized that a sending State might attach such importance to the object of a special mission that it insisted that the mission be led by the Head of State or Government, or the Foreign Minister. Such persons would, under article 21 and in accordance with the realities of international relations, enjoy the facilities, privileges and immunities accorded by international law in addition to what was granted by the articles of the Convention. That provision accorded with the principle of the sovereign equality of States, to which the Charter of the United Nations attached such importance. For those reasons, the Nigerian delegation could not support the Belgian amendment (A/C.6/L.682).

23. The amendments of both France (A/C.6/L.692) and the United Kingdom (A/C.6/L.697) attempted to introduce a hierarchy of special missions and thus their philosophy was diametrically opposed to that of the Commission's draft. The Nigerian delegation was unable, therefore, to support those amendments. Incidentally, under the provisions of articles 2, 6, 8 and article 50, paragraph 2 (c), of the Commission's

2/ Ibid., chapter II, p. 15.

draft, the autonomy of both the receiving and the sending State would be preserved.

24. While the terminology of the United Kingdom amendment was generally acceptable, that of the French amendment was not entirely satisfactory. The deletion of the words "in addition to what is granted by these articles" did not, for instance, improve the text of article 21, paragraph 1. Similarly, it was contrary to international practice for a Head of Government or a Minister for Foreign Affairs, who were responsible for appointing diplomatic agents, to be accorded only the same facilities, privileges and immunities as were accorded to such agents. The phrase "Ministers of comparable rank" was not as flexible as the phrase "other persons of high rank" in paragraph 2 of article 21 of the Commission's draft. In his country, there were persons of high rank, such as natural rulers, who enjoyed traditional honours not accorded to Ministers, and as such persons might lead special missions, Nigeria preferred the Commission's text.

25. On the whole, his delegation agreed with the scheme of the Commission's draft and could not support amendments which would involve re-structuring the entire draft.

26. Mr. JAFRI (Pakistan) said his delegation considered that article 21 must be retained as being an important provision and indeed inseparably linked with the other articles on facilities, privileges and immunities. Moreover, even if the article was deleted, a special mission could still be led by a Head of State or Government, or other persons of high rank.

27. Although the United Kingdom amendment (A/C.6/L.697) to some extent met his delegation's views, it would tend to make the special mission a hierarchy, some persons enjoying facilities and privileges different from those of others belonging to the same special mission. His delegation considered that the extent of the facilities, privileges and immunities to be granted to members of special missions should be determined strictly by considerations of functional necessity and should not exceed the minimum required to ensure the efficient performance of the tasks assigned to such missions.

28. The French amendment (A/C.6/L.692), which was couched in logical and clear terms, likewise met some of his delegation's views. If, therefore, there was not a consensus in the Committee to support article 21 as formulated by the International Law Commission, his delegation would have no difficulty in supporting the French amendment.

29. Mr. SONAVANE (India) unequivocally supported the International Law Commission's decision to include article 21 in the draft Convention. Heads of State and also, to some extent, Heads of Government and Foreign Ministers enjoyed a special position, in international law and practice, when on an official visit to a foreign State, and since such persons often were heads or members of special missions, it was necessary to stipulate in the Convention that they retained the special position under international law due to their rank, and could not be treated simply as representatives of the sending State on a special mission. The Belgian amendment (A/C.6/L.682) for the deletion of article 21 would create an unnecessary doubt on that question in the Convention.

30. His delegation was opposed to the United Kingdom amendment (A/C.6/L.697). While there was every justification for stating that the Head of State or Government should enjoy the status accorded to him under international law in addition to the privileges accorded to representatives by the draft Convention, there was no justification for distinguishing between special missions led by persons of high rank and special missions not so led. There was no reason why an agreement between a sending and receiving State should be specifically required for the granting of the privileges and immunities set out in part II of the draft Convention to representatives and members of the diplomatic staff of a special mission led by a member of parliament, while similar privileges were automatically granted to members of the diplomatic staff of a special mission led by a cabinet Minister. The introduction of such categories of special missions would encourage proposals for establishing other categories of special missions, such as military, scientific and cultural special missions. If States wished, in their own practice, to restrict the privileges and immunities accorded under part II to a particular category of special missions, they were free to do so under article 50.

31. The French amendment (A/C.6/L.692) did not establish various categories of special missions for the purposes of privileges and immunities, but it appeared to be based on the view that only the Head of State, when visiting a foreign State on an official visit, enjoyed a special position under international law, and that the Head of the Government, the Minister for Foreign Affairs, and other Ministers of comparable rank, when they were members of special missions, would enjoy the privileges and immunities accorded to diplomatic agents by the Vienna Convention on Diplomatic Relations. His delegation had no quarrel with the ideas underlying the French amendment, but felt that it was unnecessary to refer in article 21 to the privileges and immunities accorded to diplomatic agents by the Vienna Convention on Diplomatic Relations as applying to the persons listed in paragraph 2, and to the privileges and immunities defined in part II as applying to persons referred to in paragraph 3, since as the Commission had explained in the general considerations at the head of part II,[3] the articles in part II were all based on similar articles of the Vienna Convention on Diplomatic Relations and departed from that Convention only on particular points for which a different solution was required by the nature and functions of special missions. His delegation therefore saw no reason for the distinction made in paragraphs 2 and 3 of the French amendment.

32. Article 21 as prepared by the Commission was on the whole quite satisfactory, and his delegation would support its retention. The words "other persons of high rank" in paragraph 2 were slightly ambiguous, and should perhaps be replaced by the expression "Ministers of comparable rank", used in paragraph 2 of the French amendment.

The meeting rose at 1.5 p.m.

3/ Ibid.

Litho in U.N. 77601—June 1969—2,150