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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, A/C.6/L.719, A/C.6/L.683, A/C.6/L.693)

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

1. Mr. DARWIN (United Kingdom) regretted that a substantial body of opinion among the delegations had not favoured the solution put forward in the United Kingdom amendment (A/C.6/L.697); he thanked those who had supported it. The division of special missions into two types would make for the solution of the problems arising out of the great diversity of special missions, which differed widely in function and composition. It was true that some delegations were in favour of the present wording of article 21, but a significant number thought that the scale of privileges and immunities as established by the International Law Commission was inappropriately high. Further discussion would make it clear whether or not it was possible to agree on a scale applicable to all special missions.

2. The United Kingdom delegation had decided not to request that its amendment be put to the vote. But it continued to believe that the underlying concept could provide a solution to certain problems which would arise when other articles of the draft Convention were examined. Hence it would find it necessary from time to time to recall the merits of its scheme and to have recourse to the concept either in connexion with individual articles or more generally. It sincerely hoped that a text could be produced which would command general support.

3. Mr. HAMBYE (Belgium) said that in view of the trend emerging from the debate, his delegation would not request that its amendment (A/C.6/L.682) to delete article 21 of the draft be put to the vote. The

amendment had had a certain amount of support, but many representatives appeared to think that while certain things could be taken for granted, it was nevertheless better to express them. The Belgian delegation had also taken into account the fact that there had been some misgivings lest the proposed deletion should give encouragement to wrong interpretations as to the intentions of the Sixth Committee.

4. The CHAIRMAN said that, since the United Kingdom amendment (A/C.6/L.697) and the Belgian amendment (A/C.6/L.682) had been withdrawn, the Committee had before it only the French amendment (A/C.6/L.692) and the sub-amendment thereto proposed by Ghana (A/C.6/L.719). The sub-amendment would be put to the vote first. He recalled also that a separate vote had been requested on paragraph 3 of the French amendment.

5. Mr. MYSLIL (Czechoslovakia) proposed that each of the three paragraphs of the French amendment be put to the vote separately.

6. Mr. OSTROVSKY (Union of Soviet Socialist Republics) wondered whether, if the Ghanaian sub-amendment to add to the first sentence of paragraph 2 as proposed by France the words "and the privileges and immunities accorded to them normally by custom" was approved, a similar modification would not be called for in the second sentence of the paragraph.

7. Mr. DADZIE (Ghana) agreed that such a modification would be called for; the second sentence of paragraph 2 in the French amendment, which referred to the privileges and immunities accorded by special agreement, should also mention those accorded by custom.

8. Mr. QUERALTO (Uruguay) thought it would be helpful if the author of the sub-amendment could indicate precisely what changes he had in mind before the text in question was put to the vote and possibly transmitted to the Drafting Committee.

9. Mr. YASSEEN (Iraq) said that article 21 made reference to international law and hence to all sources of international law; he wondered why "custom" should be singled out from the other sources, as was proposed in the Ghanaian sub-amendment.

10. Mr. DADZIE (Ghana) explained that the purpose of the addition proposed by his delegation was to take the practice of States into account. While there was no doubt as to the status accorded by international law to Heads of State, the status of Heads of Government was not so clear; but it was much higher than paragraph 2 as proposed by France tended to accord it. In any event, his delegation would be pleased if the Drafting Committee succeeded in improving the

wording of article 21 to indicate clearly that the system of privileges and immunities of the Head of the Government, the Foreign Minister and other persons of comparable rank was more favourable than that granted to diplomatic personnel.

11. The CHAIRMAN pointed out that the examination of the draft Convention on Special Missions had been undertaken by the Sixth Committee on the basis of the principles laid down in the preamble to the 1961 Convention on Diplomatic Relations, particularly in the final paragraph. Consequently, it must be assumed that, in the absence of any other stipulation, the rules of customary international law would continue to apply.

12. Mr. HAMBYE (Belgium) said that his delegation would vote in favour of the French amendment, on the understanding that what was stated in the text in regard to the "Head of the sending State" would apply also to those accompanying the said Head of State.

13. The CHAIRMAN invited the Committee to vote on the three paragraphs of the French amendment (A/C.6/L.692) in turn and on the Ghanaian sub-amendment (A/C.6/L.719).

Paragraph 1 of the French amendment to article 21 was approved by 34 votes to 22, with 28 abstentions.

The Ghanaian sub-amendment to the French amendment was rejected by 21 votes to 18, with 46 abstentions.

Paragraph 2 of the French amendment was rejected by 41 votes to 30, with 16 abstentions.

Paragraph 3 of the French amendment was rejected by 33 votes to 16, with 35 abstentions.

14. Sir Kenneth BAILEY (Australia) hoped it would be possible, in accordance with the rules of procedure, for the Committee to vote on the whole of the amendment proposed by France. The Australian delegation would not approve the substitution of paragraph 1 of that amendment for paragraph 1 of article 21 of the International Law Commission's draft.

15. Mr. REIS (United States of America) said that without wishing to deny any delegation the right to call for a separate vote, he would have liked to see the unity of the French amendment preserved, since its provisions formed a whole. He hoped that at a convenient opportunity the question might be considered whether it was desirable to take a separate vote where the effect was to tear an organism apart.

16. Mr. MYSLIL (Czechoslovakia) considered that, since the voting on the French amendment had left only paragraph 1 intact, the paragraph must be regarded as having been substituted for paragraph 1 of article 21 of the draft. Actually, it only changed the paragraph in question in the sense that it deleted the phrase "in addition to what is granted by these articles". Paragraph 2 of article 21 of the draft had not been affected by the Committee's vote.

17. The CHAIRMAN said that the Drafting Committee would no doubt consider whether it was appropriate in paragraph 2 of article 21 to omit the phrase deleted by the French amendment.

18. Mr. OSTROVSKY (Union of Soviet Socialist Republics) saw no reason why the Committee should not vote on paragraph 2 of article 21.

19. Mr. RWAGASORE (Rwanda) pointed out that the aim of the French amendment had not been to change the components of article 21 of the draft but to replace the article entirely. Since the Committee had taken a separate vote on paragraphs 1, 2 and 3 of that amendment, it should now vote on the amendment as a whole.

20. Mr. PRANDLER (Hungary) recalled that several delegations had been anxious that the attitude of the Committee on the question underlying article 21 should be expressed unambiguously. It would therefore be desirable to vote either on the French amendment as a whole or on paragraph 2 of article 21 of the draft; the latter course might actually be preferable. In that way, the Committee would considerably simplify the task of the Drafting Committee.

21. The CHAIRMAN invited the Committee to vote on paragraph 2 of article 21 of the International Law Commission's draft.

Paragraph 2 of article 21 was approved by 76 votes to 2, with 10 abstentions.

22. The CHAIRMAN said that, in view of the vital importance of article 21, it might be well to invite the Drafting Committee to submit, not later than Monday, 11 November 1968, for examination by the Committee, the text it produced in the light of the modification approved. The approval in principle just given by the Committee to paragraph 2 of article 21 of the draft should not prevent the Drafting Committee from enjoying a certain latitude in regard to the examination of the article as a whole.

23. Mr. CASTREN (Finland), speaking in explanation of vote, said that his delegation had voted for paragraph 2 of the French amendment and the Ghanaian sub-amendment, which would have imparted a useful degree of precision to the provisions of article 21. It had also voted for the text of paragraph 2 as drafted by the International Law Commission, which it regarded as acceptable, but it wished to reserve its position with respect to the French amendments to the articles which followed article 21.

24. Mr. LIANG (China) said that he had abstained from the vote on paragraph 1 of the French amendment for the reasons he had stated at the 1059th meeting; while he approved of the principle underlying that text, he considered that a convention on special missions should not contain provisions concerning Heads of State. He had voted against paragraphs 2 and 3 of the French amendment because he found their substantive content unacceptable. Lastly, he had abstained from the vote on paragraph 2 of article 21 of the draft because he believed that provisions concerning the status of Heads of Government, Ministers for Foreign Affairs and other persons of high rank had no place in a convention on special missions.

25. Mr. BAYONA ORTIZ (Colombia) explained that he had abstained from all four votes because he feared that their only effect would be to aggravate the confusion regarding article 21 and also because,

as he had stated at the 1059th meeting, in view of the fundamental importance of that provision, every effort should be made to reach a consensus regarding it. As that consensus was not possible for the time being, his delegation had abstained in the hope that the Drafting Committee would submit a text which could win broad support.

26. Mr. OMBERE (Kenya) said that he had voted for paragraph 2 of article 21 of the draft on the understanding that the Drafting Committee, to which the two paragraphs of that article had been referred, would undertake to clarify the expression "other persons of high rank", which might give rise to confusion and which could be replaced, for example, by an expression such as "persons of comparable rank".

27. Mr. MULIMBA (Zambia) said that he had abstained from the vote on paragraph 2 of article 21 of the draft because he doubted that international law governed the status of "other persons of high rank", referred to in the text. He nevertheless hoped that the Drafting Committee would take up that point.

28. Mr. ENGO (Cameroon) said he had voted for paragraph 1 of the French amendment because he considered that the French text as a whole, as amended by the Ghanaian sub-amendment, would have dealt satisfactorily with the question his delegation had raised at the 1059th meeting, namely, the need to guarantee a minimum standard for the privileges and immunities of special missions, without prejudice to any advantages applicable to certain persons of high rank. However, as the Ghanaian sub-amendment had been rejected, he had been unable to support paragraph 2 of the French amendment because of its limited nature, and he had therefore voted for paragraph 2 of the International Law Commission's draft; lastly, he had been unable to support paragraph 3 of the French amendment because of the results of the preceding votes.

29. He shared the concern expressed by the Australian representative regarding the procedure followed; the French amendment, which was an indivisible whole, had been intended to replace the entire text of article 21 of the Commission's draft. As only paragraph 1 of the French amendment had been adopted, he wondered what would be done with it and what text would be sent to the Drafting Committee.

30. The CHAIRMAN pointed out that only texts approved by the Sixth Committee were referred to the Drafting Committee.

31. Mr. PRESBURGER (Yugoslavia) said he found the procedure followed satisfactory, but wished to draw the Drafting Committee's attention to the fact that the deletion of the phrase "in addition to what is granted by these articles", contained in the two paragraphs of article 21 of the draft, would not constitute a simple drafting amendment but would involve a question of principle.

32. Mr. ANOLIN (Philippines) said that the amendments submitted by Belgium, France and the United Kingdom and the Ghanaian sub-amendment to the

French amendment had only strengthened his delegation's conviction that article 21 as drafted by the International Law Commission was adequate. It was the representative nature of special missions that was the levelling factor, whatever the rank of the persons leading them. His delegation agreed with the Commission that the rank of the head or members of a special mission did not give the mission any special status. Moreover, the Commission's text in no way affected the standing of those persons, since when they were members of special missions they retained any exceptional facilities, privileges and amenities conferred on them by international law on account of their rank. His delegation had also had no difficulty in accepting the phrase "other persons of high rank", which it found sufficiently flexible to cover government officials occupying important posts, whatever their title might be. In any case, that matter could be taken up by the States concerned in negotiations for the sending and reception of a special mission. In the light of those considerations, his delegation had voted for paragraph 2 of article 21 of the draft.

33. Mr. ESPINO (Panama) said that his delegation, which had voted for paragraph 1 of the French amendment, could not help but feel some concern regarding the practical application of that provision. Panama frequently found itself in the position of a third State whose territory was crossed by special missions and which had to grant those missions the privileges and immunities to which they were entitled. While any State could confer on its Head whatever status it deemed appropriate, no State could demand that others recognize that status. Consequently, the grant of privileges and immunities was based on the theory of extra-territoriality, according to some authorities, or on the mutual interest of States, according to others. It was therefore reasonable to doubt the existence of privileges and immunities recognized by international law. His delegation considered that the proposed formula was not very realistic and that the application of paragraph 1 might give rise to difficulties.

34. His delegation had voted for paragraph 2 of article 21 of the International Law Commission's draft. It had been unable to support the remainder of the French amendment, because it did not take account of the need of countries such as his own, which, in order to promote rapid economic, political and social development, had to send numerous special missions abroad whose members often included persons of high rank who should be able to enjoy privileges and immunities without need for a special agreement between the sending State and the receiving State.

35. Mr. BIGOMBE (Uganda) said that the French amendment was an indivisible whole; he agreed with the representative of Rwanda that the purpose of the amendment was to replace the text prepared by the International Law Commission. He had voted for paragraph 1 of the French amendment in the belief that the whole of that amendment would be put to the vote; otherwise he would have voted for the International Law Commission's text. He therefore

asked if it would not be possible to put the French amendment as a whole to the vote.

36. The CHAIRMAN said he believed it would be better to rely for the time being on the Drafting Committee, which would endeavour to clarify the matter, it being understood that the Committee would shortly be considering the text which would be prepared for article 21.

37. Mr. DADZIE (Ghana) said he had voted for paragraph 1 of the French amendment, which very aptly expressed his delegation's position regarding the status of the Head of the sending State. That status was very clearly defined by international law, and it would be highly inappropriate for the privileges and immunities of the Head of the sending State who happened to be the head of a special mission to be governed by the future Convention on special missions. In view of the obvious differences between the status of the Head of State on the one hand, and that of the Head of the Government, the Minister for Foreign Affairs and Ministers of comparable rank, on the other, his delegation had found no difficulty in voting against paragraphs 2 and 3 of the French amendment. For the same reason, he fully approved of the procedure that had been followed.

38. Mr. JACOVIDES (Cyprus) said his delegation had refrained from taking part in the debate on article 21 because it had felt some doubt as to whether the French, Belgian and United Kingdom amendments satisfied the requirements of the situation and could provide the basis for the necessary consensus. In the matter of granting privileges and immunities to special missions, the objective, as his delegation understood it, was to balance the interests of the sending and receiving States; that objective could be achieved only by means of a compromise, which should involve accepting in principle the International Law Commission's approach subject to appropriate limitations in the other articles of part II of the draft and careful definition of the terms given in article 1.

39. Mr. DARWIN (United Kingdom) said that he had voted for the first two paragraphs of the French amendment because they seemed preferable to the corresponding paragraphs in the International Law Commission's text; he had, however, abstained in the vote on paragraph 3 of the amendment because he questioned the appropriateness of according to all special missions the privileges and immunities set out in the articles which followed article 21. Lastly, he had voted for paragraph 2 of the Commission's text inasmuch as it was not affected by the amendment—not put to the vote—which his delegation had submitted. His delegation reserved its position, however, as to how far, if at all, privileges and immunities had to be accorded under international law to persons other than Ministers for Foreign Affairs; the Committee would have to complete its consideration of the succeeding articles before one could determine the extent to which the subsequent provisions by their terms were applicable to the other persons of high rank named, and the expression "in addition to what is granted by these articles" must be understood as subject to that point.

Article 24 (Exemption of the premises of the special mission from taxation)

40. The CHAIRMAN noted that article 24 of the International Law Commission's draft was the subject of amendments proposed by Belgium (A/C.6/L.683) and France (A/C.6/L.693).

41. Mr. HAMBYE (Belgium) observed that his delegation's amendment (A/C.6/L.683), which would replace the words "on behalf of the mission" in article 24, paragraph 1, by the words "on behalf of the sending State", was intended merely to improve the wording of the text. His delegation felt that it would be more in keeping with legal realities to say that the members of the special mission were acting on behalf of the sending State. The amendment could be referred to the Drafting Committee without being first put to the vote.

42. The CHAIRMAN said that that course would be followed, since the amendment did in fact involve only a question of drafting.

43. Mr. DELEAU (France) said that article 24, which granted special missions extensive tax exemptions in respect of the premises which they occupied, was very largely based on article 23 of the Vienna Convention on Diplomatic Relations. It was obvious, however, that the needs of special missions could not be compared to those of permanent diplomatic missions, which had to be exempt from all taxation lest a heavy burden should be imposed on the accrediting State. To give temporary special missions the benefit of tax exemption in respect of the premises which they occupied seemed a priori to be quite unjustified, quite apart from the fact that such an exemption could give rise to abuses; after obtaining exemption from transfer taxes in respect of the purchase of premises intended for a short-term special mission, the sending State might be tempted to retain the premises afterwards for other purposes. It was only in very rare cases that the sending State would find it necessary to acquire ownership of premises intended for temporary special missions, and it should be noted that article 23 of the draft Convention did not explicitly grant those missions the right of acquisition. Furthermore, it was by no means certain that tax exemptions could be determined in the case of premises which had perhaps been occupied for no more than a few days, and, if they could, the task of calculating them would be administratively burdensome for the receiving State. The rule laid down in article 24 should therefore be made more flexible by providing that it would be applicable "to the extent compatible with the nature and duration of the functions performed by the special mission". That was the purpose of the French amendment (A/C.6/L.693).

44. Mr. ROBERTSON (Canada) said that his remarks also related to article 25 of the draft Convention, concerning which he would have something further to say at a later stage.

45. It was his delegation's view that articles 24 and 25, although based in part on the Vienna Conventions on Diplomatic and Consular Relations, did not merely

embody *lex lata* but contained elements of the progressive development of international law as well.

46. Since the Committee had decided, at least for the time being, not to adopt the two-tier system of privileges and immunities as suggested by the United Kingdom in its amendment to article 21 (A/C.6/L.697), his delegation regretted that it would not be able to support either article 24 or article 25 of the International Law Commission's draft. It did not consider it practical for receiving States to try to extend to all special missions the tax exemptions and other immunities provided for in the two articles. As far as article 24 was concerned, his delegation would have been prepared, if the two-tier system of privileges and immunities had been adopted, to extend to high-level special missions the exemptions provided for under that system, even though it felt that serious practical difficulties might arise in cases where premises were occupied only partially or for a short period. The French amendment (A/C.6/L.693), which took those considerations into account, had the important merit of imparting a measure of flexibility to the Commission's text and of meeting the criterion of functionality underlying the approach that many States were taking to the general question of special missions.

47. His delegation also supported the Belgian amendment (A/C.6/L.683), which would alter the wording of article 24 so as to reflect more accurately the nature of the relationship between the special mission, the receiving State and the State from which the mission had come.

48. Mr. MYSLIL (Czechoslovakia) observed that, by stipulating that the tax exemption provided for in article 24 would be granted to the extent compatible with the nature of the special mission, the French amendment (A/C.6/L.693) in effect invoked the theory of functionality. Since the entire draft was based on that theory, there arose the technical question of whether a reference should be made to it in each article. In the view of his delegation, it would be preferable not to adopt that procedure but rather to emphasize, in the preamble to the draft Convention, the functional nature of the criterion which was being applied. He saw no need to mention the duration of the functions performed by the special mission, since article 44 was very specific on that point. Under the circumstances, he would find it difficult to give favourable consideration to the French amendment.

49. Mr. SPERDUTI (Italy) said, in support of the French amendment (A/C.6/L.693), that it would be very difficult, after the departure of a special mission, to revoke the tax exemptions granted for the premises it had temporarily occupied. He was in favour of the amendment, which would introduce a desirable element of precision into a text of a general nature.

50. Sir Kenneth BAILEY (Australia) agreed with the observations of the Canadian delegation. The specifically temporary nature of special missions made it very unlikely that they would have to pay taxes or dues in the receiving State. Functional necessity should be the criterion and there was no need for a general text on tax exemption. His delegation associated itself with the comments transmitted by the Netherlands

to the Secretary-General,^{1/} which made the point that the proposed exemption was not essential for the performance of the functions of temporary missions. The sending State and the receiving State, moreover, could always come to an agreement on tax exemption if it proved necessary for a special mission to acquire premises.

51. He would support the French amendment (A/C.6/L.693) if there was a large majority in favour of the present text of article 24. The English translation of the amendment possibly did not express the idea as well as it might.

52. Mr. DABIRI (Iran) said that he was in favour of the French amendment (A/C.6/L.693).

53. Mr. MOTZFELDT (Norway) considered that it would have been preferable simply to delete article 24, which seemed to him very hard to apply. He would nevertheless support the French amendment (A/C.6/L.693).

54. Mr. VALLARTA (Mexico) said that he was entirely satisfied with the present wording of article 24. Although the French amendment (A/C.6/L.693) introduced a subjective element which was likely to raise certain problems, he would not oppose it. He considered that it was time, article 21 having been adopted, to agree on a common position which could win the widest possible degree of support.

55. Mr. BAYONA ORTIZ (Colombia) thought that article 24 should be referred to the Drafting Committee so that it could devote all possible care to finding a suitable wording. His delegation would support the French amendment (A/C.6/L.693), because it was in sympathy with the reasons for it.

56. Mr. DARWIN (United Kingdom) said that the rules stated in article 24 departed without any justification from States' practice. Since special missions generally stayed for a short time in the receiving State, great difficulties would inevitably arise if they had to be given the proposed tax exemption. His delegation, therefore, could not support article 24.

57. Mr. OSTROVSKY (Union of Soviet Socialist Republics) regretted that he could not support the French amendment (A/C.6/L.693), which in effect was equivalent to the deletion of article 24. If the amendment was adopted, article 24 would be devoid of substance, because the reservations it would then contain could have the effect of depriving special missions of the right to tax exemption in respect of the premises they occupied.

58. The phrase "to the extent compatible with the nature and duration of the functions" was hard to interpret and said nothing about the time from which special missions would enjoy tax exemption. Under the terms of article 44, the privileges and immunities of a special mission lasted as long as its functions. It seemed very difficult to reconcile that rule with the text proposed by the French delegation. Those difficulties of interpretation and application would not arise if the principles of international law stated

^{1/} See Official Records of the General Assembly, Twenty-second Session, Supplement No. 9, annex I, p. 46.

in the Vienna Conventions of 1961 and 1963 were adhered to.

59. The CHAIRMAN invited the members of the Committee to vote on the French amendment (A/C.6/L.693) and on article 24 of the draft Convention.

The French amendment was approved by 32 votes to 25, with 25 abstentions.

Article 24, as amended, was approved by 41 votes to 14, with 28 abstentions, and referred to the Drafting Committee.

Organization of the work of the Committee

60. The CHAIRMAN proposed that the deadline for the submission of amendments to articles 28 to 31 should be extended to 1 p.m. on Thursday, 7 November 1968 and that the deadline for the submission of amendments to articles 32 to 41 should be 1 p.m. on Friday, 8 November 1968.

It was so decided.

Twentieth anniversary of the first election of members of the International Law Commission (concluded)

61. The CHAIRMAN said that the Legal Counsel had a statement to make to the Committee.

62. Mr. STAVROPOULOUS (Legal Counsel) said that at the 1061st meeting the representative of

Venezuela had asked the Secretariat to issue as official documents the statements made at the 1060th meeting by the Chairman of the Sixth Committee, the Chairman of the International Law Commission and the Legal Counsel on the occasion of the twentieth anniversary of the first election of the members of the International Law Commission.

63. In that connexion, he wished to draw the attention of the Committee to paragraph (b) of the annex to General Assembly resolution 2292 (XXII) on publications and documentation of the United Nations, which he read out. The cost of issuing the three statements in English, French and Spanish would amount to approximately \$2,000. He would therefore suggest that the statements should appear in the UN Monthly Chronicle, because, apart from the fact that no additional expense would be entailed, that would have the advantage of preserving them in a more durable form than the ordinary documents of the Committee.

64. Mr. MOLINA LANDAETA (Venezuela) thanked the Legal Counsel for the information he had just given and considered that his suggestion was a good one. He hoped, however, that a special effort had been made to bring out the ideas expressed in the statements in the summary record.

The meeting rose at 1.20 p.m.