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Agenda item 85:

Draft Convention on Special Missions (*con-
tinued*) 1

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.690, A/C.6/L.694, A/C.6/
L.721)

Article 25 (*Inviolability of the premises*) (*continued*)

1. The CHAIRMAN said that most of the statements concerning article 25 made at the 1064th meeting by various delegations had covered very much the same ground, and he hoped that the remaining speakers on the list would speak for not longer than five minutes, or even, if possible, not longer than three.

2. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that he must disagree with that suggestion. If it was adopted, the time allowed for speaking might be so reduced that in the end delegations would not be able to say anything. But the subject was so important that it was essential for every delegation to have the opportunity to advance its views, after mature reflection, on the specific amendments to article 25 that were before the Committee.

3. The CHAIRMAN said that he had never intended to restrict the sovereign right of delegations to make their views known. He had merely asked them if they would themselves limit the length of their statements, and it was only in that sense that his appeal to speakers should be understood.

4. Mr. RATTANSEY (United Republic of Tanzania) said that it was desirable to arrive at a draft convention that could win the support of a majority of Member States. The importance of the subject now being discussed might oblige representatives to speak far longer than the time-limit they would wish to set themselves.

5. Referring to the amendment submitted by the Ukrainian delegation (A/C.6/L.690), he said that article 25 concerned the principle of the inviolability of the premises of a special mission. He saw no reason to doubt the good faith of a special mission which arrived in the territory of the receiving State with its consent, after that State had been informed of its size and of the persons who composed it. He could not believe that in case of fire or other disaster

the head of the special mission or his representative would not co-operate with the authorities of the receiving State and would not seek the assistance of those authorities to prevent the destruction of the property or documents of the mission. Moreover, he pointed out that to attempt to apply to the special mission the treatment given to consular missions would be to overlook the fact that a special mission could not be classed with a consular mission, which, it should be noted, could be represented by a foreigner. For the purposes of protection, a special mission should be given the same standing as permanent diplomatic missions. His delegation was therefore in favour of deleting the last sentence of paragraph 1 of article 25 and would support the Ukrainian amendment.

6. His delegation could not, however, support the United Kingdom amendment (A/C.6/L.721), which would have the effect of depriving the special mission of the privilege of the inviolability of its premises if its seat was situated in the locality where the permanent diplomatic mission was established. The special mission was not to be confused with the permanent diplomatic mission, and should enjoy, in its own right, treatment in accordance with the provisions of the draft Convention as a whole.

7. As to the French amendment (A/C.6/L.694), his delegation considered that paragraph 1 (f) of article 11 covered the problem in question, and would vote accordingly when the amendment was put to the vote.

8. Sir Kenneth BAILEY (Australia) fully supported the principle of the inviolability of the premises of the special mission, which was justified on grounds of functional necessity. Australia had found that in practice the building housing its permanent diplomatic mission was often too small to be able to accommodate its special missions, which had to be established in other premises, such as hotels or residential buildings. Australia's position was therefore dictated by practical considerations and was close to that of Canada and the Netherlands. However, although it accepted article 25 in principle, it had some difficulty with paragraph 3. That paragraph went beyond the 1961 Vienna Convention on Diplomatic Relations by making immune from all forms of execution not only the premises of the special mission but all other property "used in the operation of the special mission", whether on its premises or not, and apparently including movables which the special mission had merely rented or hired from local residents. That seemed an excessive privilege, and it might be better to do without it and delete paragraph 3, as proposed in the French amendment (A/C.6/L.694). The Australian delegation would therefore vote for that amendment, which would also make paragraph 1 more precise.

9. On the other hand, he was in favour of keeping the last sentence of paragraph 1 of article 25, which the Ukrainian amendment (A/C.6/L.690) would delete. He believed that the International Law Commission had acted wisely in including that provision, which was unfortunately absent from the 1961 Vienna Convention.

10. It would be difficult to accept the United Kingdom amendment (A/C.6/L.721), since it would have the effect of depriving the special mission of all protection if it was not established in the same premises as the permanent diplomatic mission. He would therefore like to make the rule laid down in the United Kingdom amendment more flexible by adding a provision to take account of the difficulty the sending State might have in establishing the special mission in the same premises as its permanent diplomatic mission, which would read as follows: "and it is reasonably practicable for the permanent diplomatic mission to make provision within its own premises for the special mission". His delegation would support the United Kingdom amendment if it was so modified.

11. Mr. CASTREN (Finland) said that his delegation would not oppose the French amendment to paragraph 1 of article 25 (A/C.6/L.694), but wondered if it was really necessary to be so specific, given that article 11 of the draft Convention provided in paragraph 1 (f) that the sending State should notify the receiving State of "the site of the premises occupied by the special mission and any information that may be necessary to identify them". The Drafting Committee might be left to decide what should be done with the amendment.

12. His delegation supported the retention of the last sentence in paragraph 1, for practical reasons.

13. It could not support the United Kingdom amendment (A/C.6/L.721), because, as other delegations had rightly pointed out, it was often very difficult to establish the special mission in the premises of the permanent diplomatic mission.

14. He considered that paragraph 3 of article 25 was essential to safeguard the functioning of the special mission and therefore could not support the part of the French amendment deleting that paragraph. He would vote for article 25 as drafted by the International Law Commission.

15. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that he had no objections of substance to that part of the French amendment (A/C.6/L.694) relating to paragraph 1 of article 25, but that the wording proposed raised certain problems. Article 25 must remain consistent with the other articles dealing with the premises of special missions, such as articles 11 and 23. The difficulty arose mainly from the use of the expression "officially established", which raised the question of how it could be determined which were the premises where the special mission was officially established when it used different premises as accommodation and as offices. The wording proposed by France for the first sentence of paragraph 1 of article 25 merely stated an idea already expressed in other provisions of the International Law Commission's draft, quite apart from the fact

that its application would give rise to difficulties in practice.

16. The deletion of paragraph 3 of article 25, as proposed in the second part of the French amendment, conflicted with the very principle of "inviolability of the premises", since that expression was generally understood to mean not only the physical inviolability of the premises as such, but also a series of other immunities relating to the furnishings and other property in the premises, which were specified in paragraph 3. Since the Committee had already approved articles 21 and 22 of the draft, providing that the receiving State should accord to the special mission the facilities required for the performance of its functions—which were sometimes, as already pointed out in connexion with other articles, more important than those of the permanent diplomatic missions—there could be no question of depriving special missions of that series of immunities, which formed part of a whole, and without which the special missions would not be able to carry out their task. In that connexion, he mentioned certain cases of violation of diplomatic privileges and immunities which had taken place in the United States. In view of the considerations he had put forward concerning paragraph 3, the Soviet delegation would not support the French amendment.

17. With reference to the Ukrainian amendment (A/C.6/L.690) proposing the deletion of the last sentence of article 25, paragraph 1, he acknowledged that the question involved was a relatively complex one, and he reviewed the arguments put forward by those who were in favour of retaining that sentence. The United States representative had based his argument (1064th meeting) on the need to protect human life; that concern was understandable but, as the Tanzanian representative had said, one might well ask why a special mission would refuse, against its own interests, to accept help in case of fire or other disaster. It had also been said that special missions were often accommodated in hotels, which might have to be rapidly evacuated. He noted in that connexion that when a mission was accommodated in a hotel there was almost always an agreement permitting persons other than members of the special mission to have access to its premises. If such access was authorized in normal circumstances, it would be all the more so in the case of disaster.

18. Finally, the representatives of the Netherlands and the United States had expressed concern (*ibid.*) that the deletion of the sentence under consideration might involve the risk that States would be encouraged to set fire to the premises deliberately. It must, of course, be acknowledged—without implying suspicion of any particular Government—that the possibility of fire being set deliberately could not be ruled out, but he thought that if the sentence was retained the result would simply be to make that possibility more likely. In his view, the principle of the inviolability of premises should be affirmed as clearly as possible, on the understanding that in case of disaster the special mission could be expected, in its own interest, to co-operate with the authorities of the receiving State. His delegation therefore supported the Ukrainian amendment.

19. In conclusion, his delegation would not vote in favour of the United Kingdom amendment (A/C.6/L.721), since the reservation for which it provided was contrary to the principle of the inviolability of premises. If that amendment was adopted, respect for that principle would no longer be ensured and article 25 would contradict article 22 and the other provisions of the draft which imposed on the receiving State the obligation to accord certain privileges and immunities to special missions.

20. Mr. SHARDYKO (Byelorussian Soviet Socialist Republic) thought that the last sentence of article 25, paragraph 1, provided for an exception which unduly limited the scope of the principle of the inviolability of the premises of the special mission. In practice, the assumption which it would establish might open the door to numerous violations of the principle. In any case, the disasters contemplated in the provision under discussion were fortuitous events which there was no reason to mention in the draft Convention, as a number of delegations had stressed during the debate. The text of article 25 would be greatly strengthened if the sentence was deleted, and misunderstanding and conflict would be prevented. It would be natural to expect that, when members of special missions realized that they themselves were unable to take the necessary protective action, they would ask for assistance, and it should be assumed that they would do so. It was that assumption which should be reflected in the text and not an assumption which would automatically give the receiving State the right to enter the premises of the mission.

21. For those reasons, his delegation approved of the Ukrainian amendment (A/C.6/L.690) calling for the deletion of the last sentence of paragraph 1. On the other hand, it could not support the amendments submitted by France (A/C.6/L.694) and the United Kingdom (A/C.6/L.721), for they would have the effect of limiting the scope of the immunity provided for in that paragraph. In particular, he could not agree to the deletion of article 25, paragraph 3, as proposed by the French delegation, because it would deny certain important immunities to special missions and would thus make it more difficult for them to fulfil their functions.

22. Mr. MOLINA LANDAETA (Venezuela) said his delegation was unwilling to believe that some of the views expressed during the debate on article 25 were based on the belief that the inviolability of the premises of special missions was a concession which the receiving State could suspend at will. No special mission could accomplish its task if its right to the protection of its interests was not respected. At the 1064th meeting, the Expert Consultant had made it clear that security measures for the benefit of special missions were more theoretical than practical but that in any case they should be expressly indicated in international instruments. The work of codification which was now being carried out could not disregard what had been established by the Vienna Conventions. If the formulation of the rule of the inviolability of premises failed to recognize one of the fundamental prerequisites for the functioning of special missions of a representative character, the immunities set forth in articles 26, 29, 30 and 31 of the draft might likewise be called into question. If that course was

followed, it would in the end mean relying entirely on customary international law and allowing the disadvantage of the small countries in relation to the larger ones to become more marked.

23. His delegation had reached a number of conclusions. First, article 25 of the draft, like the corresponding provisions of the Vienna Conventions of 1961 and 1963, was intended simply to affirm a very important rule of customary international law. Secondly, that article was indispensable and had been worded in such a way as to establish reasonable obligations for the receiving State without impairing the flexibility and balance of the draft as a whole. Thirdly, in the light of the practical consequences of the principle set forth in paragraph 1 of that article, the assumption of consent established in the last sentence of that provision was entirely justified, but it would continually give rise to uncertainty unless it was applied exclusively to cases in which the disaster was of such a nature as to endanger lives and property and therefore to require prompt protective action. Fourthly, it was essential to establish exactly what was meant by "the premises of the special mission". Fifthly, it would be preferable to abide by the present wording of article 25, with such modifications of form as might be indicated by the considerations just stated; his delegation would not be able to support any amendment narrowing the application of article 25 or introducing considerations that would alter the meaning which the authors of the text had intended it to have. Finally, the Committee should try to reach a compromise on the last sentence of paragraph 1, which, without being deleted, should certainly be amended.

24. Mr. KASEMSRI (Thailand) said that his delegation could not support the Ukrainian amendment (A/C.6/L.690) calling for the deletion of the last sentence of article 25, paragraph 1, although it fully appreciated the concern which had been expressed that the application of the exception to the principle of the inviolability of premises provided for in that paragraph might give rise to abuses. It should be borne in mind that the protective action in question was not only that which might be taken for the benefit of the mission whose consent was assumed but also that which had a broader scope and concerned persons other than members of missions. The authorities of the receiving State had the duty to ensure the safety and well-being of the public. In that connexion, there should be no restrictions on the discharge of the obligations of States other than those established by international law. The premises of special missions, as also the private accommodation of their members—the inviolability of which was established in article 30 of the draft—were often located in buildings accommodating private individuals whose safety, in case of disaster, might well depend on measures to which the mission's consent must be assumed.

25. Article 25, paragraph 2, was in conformity with the rules of international law concerning the responsibility of States, but the principle which it established was obviously qualified by the provision in paragraph 1. With regard to paragraph 3, his delegation thought that the words "other property" should be understood to refer only to such property as was located in the premises of the mission and was used by it for the performance of its tasks.

26. Mr. PRANDLER (Hungary) said that, in his delegation's view, the principle of inviolability should apply to premises irrespective of their nature and, in particular, to hotel rooms or apartments. It must also be borne in mind that superintendents, caretakers and *concièrges* could not enter the premises without the consent of the special mission occupying them.

27. Reviewing the various amendments to article 25, he said that his delegation could not support the United Kingdom amendment (A/C.6/L.721), since many States, unlike the great Powers, were not in a position to make some of the premises of their permanent diplomatic missions available for use by their special missions. The sub-amendment suggested by the Australian representative might represent some improvement over the United Kingdom proposal, but it still failed to take account of the interests of the sending State. Furthermore, the expression "reasonably practicable" in that sub-amendment was too vague and introduced an element of judgement without indicating who was to judge the practicability in question. The French amendment to paragraph 1 (A/C.6/L.694) was unnecessary, since, as the Finnish representative had pointed out, the information transmitted in accordance with article 11, paragraph 1 (f), was sufficient to determine what the official premises of the special missions were. The deletion of article 25, paragraph 3, also proposed by France, would have the effect of depriving special missions of immunities needed for the performance of their functions. His delegation could not, therefore, support either of the French proposals.

28. On the other hand, it would support the Ukrainian proposal (A/C.6/L.690) to delete the last sentence of paragraph 1, since it believed that the status of special missions resembled that of permanent diplomatic missions more than that of consular posts. The sentence in question had been proposed in the International Law Commission at a late date by Mr. Kearney and had been adopted in the Commission by only 6 votes to 5, with 4 abstentions.^{1/} At that time, Mr. Ago had stated that most of the members of the Drafting Committee had been of the opinion that, in practice, consent was in fact assumed in cases of *force majeure*, and an express provision to that effect was therefore unnecessary and might indeed be rather dangerous.^{2/} The arguments advanced in favour of retaining that sentence were not without some validity, but precautions should be taken against the abuses that might arise from the reservation expressed in it. In any event, if a disaster occurred, it was always possible to communicate with a person authorized to give the necessary consent.

29. Mr. MUTUALE (Democratic Republic of the Congo) said that all the arguments advanced against the last sentence of article 25, paragraph 1, had one element in common, namely, distrust of the receiving State. The delegations which had advanced those arguments wanted the inviolability of premises to be affirmed as an absolute principle. If there was one principle that must be respected by any jurist called

upon to interpret a formula embodying a rule of international law, however, it was certainly the principle of good faith; otherwise challenges might be raised against any legal formula whatever, even the United Nations Charter, which was the foundation of contemporary international law. It seemed to his delegation that the difficulties raised by the last sentence of paragraph 1 related to interpretation more than to legal principles and had been exaggerated because the principle of good faith had been forgotten. Furthermore, no delegation had claimed that it was unlawful for the authorities of the receiving State to enter the premises of the special mission in order to take protective action; the delegations opposing the International Law Commission's text had been more concerned about such abuses by the receiving State as might arise from the interpretation of the last sentence of paragraph 1.

30. The best solution, in his delegation's view, would be to refer the last sentence of article 25, paragraph 1, to the Drafting Committee and request it to revise the text in the light of the new elements of interpretation that had been raised in the debate.

31. His delegation considered the first part of the French amendment (A/C.6/L.694) unnecessary, in view of the existence of article 11, paragraph 1 (f). Similarly, it did not favour deleting paragraph 3 of article 25, as proposed in the second part of the French amendment, since it believed that the immunities provided for in that paragraph constituted the essential minimum required by the special mission in order to perform its task.

32. Mr. JAFRI (Pakistan), referring to the Ukrainian amendment (A/C.6/L.690), said that the question under discussion was that of the inviolability of the premises of special missions, i.e., missions of a temporary nature intended to perform a specific task. Those characteristics made it quite possible that the special mission would have to be lodged in a hotel or an apartment building; consequently, any fire or other disaster which might occur for reasons beyond human control in the premises of the special mission might endanger the nationals and property of the receiving State, and in such circumstances consent of the head of the mission to the entry of the authorities to those premises ought to be assumed. Pakistan therefore could not support the Ukrainian amendment.

33. His delegation was prepared to support the first part of the French amendment (A/C.6/L.694), concerning the first sentence of article 25, paragraph 1, since it believed that the proposed wording was clearer and tighter than the text of the International Law Commission. However, it did not favour the deletion of paragraph 3, proposed by France in the second part of the amendment, although it recognized that the paragraph was somewhat redundant in stating, perhaps in too much detail, the inviolability of the furnishings and other property of the special mission. In any case, it favoured retaining the present text, since, first, the Convention now being formulated by the Committee was to be a source of reference and, secondly, if special missions did not enjoy immunities for their means of transport, they would be hampered in discharging their functions. He stressed his delegation's belief that facilities, privileges and immunities should

^{1/} See *Yearbook of the International Law Commission*, 1967, vol. I (United Nations publication, Sales No.: E.68.V.1), 936th meeting, paras. 11-17.

^{2/} *Ibid.*, para. 16.

be granted to a special mission in the receiving State only in the light of the requirements of its functions and should not go beyond the minimum required for the efficient performance of its task.

34. Lastly, the United Kingdom amendment (A/C.6/L.721) was acceptable in so far as it related to the premises of a special mission which were adjacent to those of the permanent diplomatic mission of the sending State. It was not clear, however, what would happen in a situation in which the special mission's premises were in the same locality as those of the permanent diplomatic mission, which the special

mission would use for various purposes, but still at some distance from them. Since the United Kingdom proposal did not seem to cover such cases, its adoption might in practice obstruct the efficient performance of the special mission's task, and his delegation therefore could not support the amendment.

35. The CHAIRMAN announced that the United Kingdom representative had agreed to incorporate the Australian sub-amendment into his delegation's amendment (A/C.6/L.721). The new joint text would be distributed at the following meeting.

The meeting rose at 1 p.m.

