United Nations
GENERAL ASSEMBLY
TWENTY-THIRD SESSION
Official Records

SIXTH COMMITTEE, 1066th MEETING

Thursday, 7 November 1968, at 4.20 p.m.

NEW YORK

CONTENTS

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

In the absence of the Chairman, Mr. Gobbi (Argentina), Vice-Chairman, took the Chair.

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, A/C.6/L.722)

Article 25 (Inviolability of the premises) (continued)

1. Mr. BAYONA ORTIZ (Colombia) said that his delegation could accept the International Law Commission's text of article 25. In view of the fact that, as had been stressed, international relations were governed by the principle of good faith, it was difficult to believe that the last sentence of paragraph 1 could pave the way for abuse of the principle of inviolability. The Commission would certainly not have included in its text a provision which could lead to such abuse. The Colombian delegation could not, therefore, accept the amendment submitted by the Ukrainian delegation (A/C.6/L.690). As it supported the Commission's text, it could not support the amendment submitted by the French delegation (A/C.6/L.694) or the United Kingdom/Australian amendment (A/C.6/L.722).

2. Mr. DAVIS (Liberia) said that unless all countries, large and small, represented on the Committee, thoroughly examined any rule which was to become law before approving it, they might be faced with unexpected and unpleasant consequences. The smaller nations should not, without first ensuring that their interests would thereby be safeguarded, apply the yardstick by which the bigger nations measured and solved their problems. His delegation, although it held the International Law Commission in esteem, was unable to share its views on the inclusion of the last sentence of paragraph 1 in the draft Convention. The provision in that sentence would undoubtedly open up avenues of insecurity for special missions and lead to disastrous results. Liberia therefore supported the Ukrainian amendment (A/C.6/L.690). It seemed, too, that the latter part of the second sentence of paragraph 1 would enable a permanent diplomatic mission to interfere with the functions of a special mission. Sending States were always aware that they had a permanent diplomatic mission in the receiving State; there was no sense, therefore, in allowing the permanent diplomatic mission to have anything to do with the special mission unless the sending State so wished.

3. The implication of the United Kingdom and Australian amendment (A/C.6/L.722) was that if a sending State maintained a permanent diplomatic mission in a State there was no reason to send a special mission; his delegation could therefore not support it.

4. The question of the seat of the special mission had been adequately covered in article 17. As the adoption of the first proposal in the French amendment (A/C.6/L.694) would imply an indirect amendment of article 17 (Seat of the special mission), for which it had already voted, his delegation could not accept it. Paragraph 3 was essential to the performance of a special mission's functions and should not be deleted. Otherwise the sending of special missions would be rendered nugatory.

5. Mr. PRESBURGER (Yugoslavia) said that his delegation was anxious that the principle of inviolability should be expressed as lucidly as possible in the draft Convention. Generally speaking, the wording used by the International Law Commission was satisfactory, but any improvements suggested by the Drafting Committee should be taken into consideration. Yugoslavia attached importance to the retention of paragraph 3, the purpose of which was to enable special missions to perform their functions efficiently. The very practical effects of the provisions of paragraph 3 were already apparent in Yugoslav practice. The paragraph should therefore be retained, with such improvements as the Drafting Committee might consider necessary.

6. Mr. SPERDUTI (Italy) thought that the French amendment to paragraph 1 (see A/C.6/L.694) was not strictly necessary, but was not superfluous; it was very useful, in that it specified the conditions in which the premises of a special mission would be inviolable.

7. The phrase which the Ukrainian delegation wished to delete (A/C.6/L.690) expressed a very reasonable concept. As many speakers had pointed out, the absence of a similar concept in the Vienna Convention on Diplomatic Relations could not be interpreted as authorizing the receiving State to refrain from taking urgent action in the case of a fire or other disaster in the premises of a permanent diplomatic mission. That opinion was based on the general principles of international law, particularly on the notion of force majeure. The Italian delegation supported the International Law Commission's decision to include that provision in the draft in spite of the opposition of several members of the Commission on the grounds that it might lead to abuses. The wording of the pro-

vision was not calculated to lead to abuse, given the principle of good faith. The Drafting Committee could, if necessary, be requested to try to produce a text more acceptable to a greater number of delegations.

8. It was doubtful whether the Australian and United Kingdom delegations had suggested in their amendment (A/C.6/L.722) the best way of dealing with the question of concern to them. There were practical difficulties in deciding whether a special mission was justified in having its premises elsewhere than in the building occupied by the permanent diplomatic mission of the sending State. That was a matter in which his delegation would act with prudence; it hoped that subsequent speakers in the debate would provide information which would lead to a sounder approach.

9. The French proposal to delete paragraph 3 (see A/C.6/L.694) should be studied carefully, for it raised many problems. Two hypotheses should be considered: first, that the special mission's premises, furniture, property and means of transport were the property of the sending State, and secondly, that the premises, property and means of transport belonged to private undertakings or persons in the receiving State and were only rented by the special mission. In the first case the general rules of international law concerning the immunity of a sovereign State from the domestic jurisdiction of another State were sufficient to safeguard the legitimate interests of the sending State and its mission in the matters covered by the provisions of paragraph 3. In the second case, however, the real beneficiaries of the immunities envisaged in paragraph 3 would be the private owners of premises and property rented by the special mission, and it was obviously unjust that private persons or undertakings should be immune from search, requisition, attachment or execution. For those reasons, his delegation was of the opinion that paragraph 3 could usefully be deleted.

10. Mrs. KELLY DE GUIBOURG (Argentina) said that the Ukrainian amendment (A/C.6/L.690) was too radical. A formula should be found which would afford equal protection in law for the public safety of the receiving State and for the inviolability of the premises of the special mission of the sending State. Her delegation suggested, therefore, that the last sentence of paragraph 1 be replaced by the following: "Such consent may be assumed in case of fire or other disaster that seriously endangers public safety, and only in the event that it has not been possible to obtain the express consent of the head of the special mission or, where appropriate, of the head of the permanent mission." That was not a formal amendment, but merely a suggestion for consideration by the Drafting Committee, should the Sixth Committee decide to retain the last sentence of paragraph 1. If it were asked what would happen if the head of the special mission refused his consent, the only answer was that the heads of both permanent and special missions would presumably be reasonable persons who would not object to the authorities of the receiving State entering the premises in case of fire or other disaster.

11. Presumably the text of the French amendment to paragraph 1 (see A/C.6/L.694) contained an implicit reference to paragraph 1 (f) of article 11. If that was so, her delegation could accept the amendment. That, too, was a matter which should be referred to the Drafting Committee.

12. Mr. TENA (Spain), supported by Mr. MOLINA LANDAETA (Venezuela), urged the Argentine representative to submit her suggestion as a formal amendment, and suggested that the Committee permit her to do so, although the time-limit for the submission of amendments to article 25 had expired.

13. Mrs. KELLY DE GUIBOURG (Argentina) agreed to submit her suggestion as a formal amendment.

14. Mr. OSTROVSKY (Union of Soviet Socialist Republics) and Sir Kenneth BAILEY (Australia) supported the Spanish representative's suggestion.

15. Mr. MULIMBA (Zambia) also supported the Spanish suggestion, and said that his delegation had a suggestion to make concerning the wording of the last sentence of paragraph 1, which it hoped the Argentine delegation would consider incorporating in its amendment.

16. The CHAIRMAN said that, as there were no objections, he would take it that the Committee agreed to the submission of the Argentine amendment.[1/]

17. Mr. REIS (United States of America) regretted the statements made at the 1065th meeting by the USSR representative concerning certain incidents of which his delegation and Government had had no previous knowledge. That effort to polarize opinion in the Committee on cold war lines was not very helpful.

18. His delegation was grateful to the Argentine delegation for its efforts to improve the text, and glad that there was a consensus in the Committee that the Argentine suggestion should be circulated in the form of an amendment. He was pleased that the USSR delegation had indicated its support for that decision and hoped that, in view of the wide response to the Argentine suggestion, the Ukrainian amendment (A/C.6/L.690) would not be pressed to the vote.

19. His delegation was not happy about putting aside progress on article 25, because the Committee must get on with its work if it was to meet the time-limit of 14 November 1968, and it therefore hoped that, after discussion of the Argentine proposal, the Committee would proceed to vote on article 25 in an orderly fashion.

20. Mr. MULIMBA (Zambia) said that his delegation fully accepted the application of the principle of inviolability to the premises of special missions, including both working premises and sleeping quarters, because it considered that one of the important functional immunities required for the performance of the tasks of a special mission.

21. His delegation supported the French amendment to paragraph 1 (see A/C.6/L.694), which he understood to cover all the premises referred to in article 11, paragraph 1 (f), and article 17, paragraph 3, namely, the premises and localities previously notified to the receiving State. As the English version of the French amendment did not make that clear, he

1/ The amendment was subsequently circulated under the symbol A/C.6/L.723.

suggested to the Drafting Committee that the English version of the French amendment should read: "The premises of the special mission officially notified to the receiving State shall be inviolable."

22. His delegation could not support the French amendment to delete paragraph 3 (see A/C.6/L.694). While it appreciated the practical difficulties involved in implementing paragraph 3 when special missions were housed in hotels and apartments, it thought that the paragraph served a useful purpose and was worth keeping in the text.

23. As the arguments for and against the Ukrainian amendment (A/C.6/L.690) were equally convincing, his delegation considered that the last sentence of paragraph 1 should be retained. The argument that the provision might lead to abuses could be applied to every other provision in the draft, even the most innocent. Surely no State ratifying the Convention would resort to starting fires on the premises of special missions as a method of terminating them. Genuine fears had been expressed that the word "disaster" could be used as a pretext for violating the principle of inviolability. Those fears were not without foundation, and the Drafting Committee should try to find a more acceptable expression. His delegation suggested the following wording: "or where, in order to effectuate prompt protective action to protect the mission or its premises, the consent of the head or representative of the mission cannot be readily obtained".

24. His delegation had had difficulty in supporting the original United Kingdom amendment (A/C.6/L.721) for the reasons stated by the Romanian and Ecuadorian representatives (1064th meeting). The Australian/United Kingdom joint amendment (A/C.6/L.722) had taken care of some of his delegation's objections, but was on the whole superfluous. Whether or not there was sufficient room in the premises of the permanent diplomatic mission to house a special mission was a decision that, under article 11, was rightly left to the discretion of the sending State. When there was no room in the permanent diplomatic mission, the sending State should inform the receiving State as to where the special mission would be housed, and the receiving State should then apply the principle of inviolability to the special mission's premises. His delegation hoped that the sponsors would not press their amendment to the vote.

25. Mr. KOSTOV (Bulgaria) said that the principle of inviolability was an indispensable part of diplomatic activity. Inviolability of the premises of a diplomatic mission, whether permanent or temporary, was vital for the proper performance of the mission's function. That was especially true in the case of special missions, which often performed more important and delicate tasks than permanent diplomatic missions.

26. The last sentence of paragraph 1 of article 25 weakened the article, and his Government was opposed to its inclusion, just as it had been opposed to the inclusion of a similar clause in the Vienna Convention on Consular Relations. All the bilateral consular agreements concluded by his Government were based on a much wider concept of the inviolability of consular premises than was embodied in the Vienna Convention. However, the derogation in question, which was already undesirable in the case of consular relations, was much more so in the case of special missions. The exception contained in the last sentence of paragraph 1 would undermine the principle of inviolability. The term "disaster" was open to various interpretations. The case of fire was exceptional and it should always be possible, with modern methods of communication, to contact the special mission and obtain its consent to enter its premises. The special mission would undoubtedly be concerned to preserve its archives and property, so that it would be in its own interests to co-operate with the fire authorities.

27. It had been argued that a departure from the principle of inviolability was justified by the fact that special missions very often occupied rooms in a hotel. However, permanent missions often had their premises in hotels before finding permanent premises, and even the latter sometimes consisted of a floor or apartment in a building occupied by others. It seemed unreasonable, therefore, to make a distinction between permanent missions and special missions on such grounds.

28. Some delegations had said that the good faith of States would prevent abuse of the right to enter in urgent cases. However, the purpose of the Convention was to protect the interests of States when good faith did not exist. In order to promote friendly co-operation among States, any possibility of intrusion on the premises of special missions should be ruled out. His delegation therefore supported the Ukrainian amendment to delete the last sentence of paragraph 1 (A/C.6/L.690). It could not support the French amendment (A/C.6/L.694), which would further weaken the already weak formulation of the principle of inviolability in the International Law Commission's text. He reserved the right to comment at a later stage on the Australian/United Kingdom amendment (A/C.6/L.722).

29. Mr. OWADA (Japan) said that article 25 involved two elements: first, the principle of inviolability arising out of the function of special missions, and secondly, the burden placed on the administrative authorities of the receiving State. The French amendment (A/C.6/L.694) seemed to cover the functional needs of special missions under normal conditions. It would make it clear, in paragraph 1 of the article, that, in order to respect the inviolability of the premises of the mission, the receiving State must have all the information listed in article 11. He agreed with the French delegation's observation (1064th meeting) that the scope of paragraph 3 of article 25 was wider than the corresponding provision in the Vienna Convention on Diplomatic Relations and that, in so far as the premises of the mission themselves and the property within the premises were concerned, the principle stated in paragraph 3 was already covered by the general principle of the inviolability of the mission's premises, stated in paragraph 1.

30. His delegation could not support the Ukrainian proposal (A/C.6/L.690) that the last sentence of paragraph 1 be deleted. The good faith of both the sending State and the receiving State must be assumed. The sentence in question dealt with an exceptional and rare case and had been included to safeguard

the public safety and the lives of the people of the receiving State. Practical considerations weighed heavily in favour of its retention. The article might otherwise be interpreted as implying that even in the event of a fire involving serious damage and loss of life the receiving State was obliged to refrain from taking action. There was a precedent for its inclusion in the Vienna Convention on Consular Relations. The Argentine proposal, which was designed to dispel misgivings about its possible abuse, merited serious consideration by the Drafting Committee.

31. Since a number of technical special missions might be in the capital of a receiving State at the same time, placing a heavy burden on the administrative authorities of the receiving State, his delegation sympathized with the motive which had prompted the United Kingdom amendment (A/C.6/L.721). It was clear that the extent of the inviolability extended to a mission should depend on the nature and functions of the special mission. Some missions would need to have their own premises and to work independently of the permanent diplomatic missions. His delegation felt that the correct approach to the matter would have been to apply the test as to whether or not the receiving State accepted any particular ad hoc mission as a "special mission" within the meaning of the Convention, and that once it was admitted on that basis, all the privileges and immunities, including those under the present articles, should follow. However, the Australian/United Kingdom amendment (A/C.6/L.722) went a long way towards achieving a balance between the interests of the sending and the receiving States from a slightly different angle, namely, without touching on the scope of the term "special missions". Therefore, his delegation was prepared to support that proposal, and hoped that a consensus of opinion would be sought on the basis thereof.

32. Mr. KESTLER FARNES (Guatemala) said that in principle his delegation found the International Law Commission's text of article 25 acceptable and considered that all three elements contained in it were essential. His delegation could therefore not support the French amendment (A/C.6/L.694). The deletion of paragraph 3 was undesirable, and the proposed change in paragraph 1 was unnecessary and might lead to serious difficulties in practice. A special mission required and should receive protection as soon as it entered the territory of the receiving State, even before it had gone through the formality of obtaining official recognition.

33. His delegation could not support the Australian/United Kingdom amendment (A/C.6/L.722), because it believed that special missions were most effective in cases where the sending State did not maintain a permanent mission in the receiving State. Small countries were sometimes unable to have permanent missions in a large number of countries, and in any case their permanent missions were often not in a position to provide accommodation for special missions. The joint amendment was an improvement on the earlier United Kingdom text (A/C.6/L.721), but, since it apparently left the decision as to what was "reasonably practicable" to the discretion of the receiving State, it would be preferable to maintain a clear distinction between permanent missions and special missions.

34. The last sentence of paragraph 1 of article 25 raised a very complex problem of a practical nature. He appreciated the United States argument (1064th meeting) that in densely populated cities the risk of fire called for comprehensive precautionary measures and entailed very serious consequences. Sending States would surely agree that the interests and lives of third parties should be protected. The purpose of the institution of special missions was to promote better understanding among States, and the sending of a special mission was itself a sign that a spirit of co-operation existed. The Ukrainian amendment (A/C.6/L.690) would delete the controversial sentence, but if the Committee wished to contribute to the development of international law, it should take such practical eventualities into account. It had been argued that if the sentence was omitted, the receiving State could still take appropriate action when circumstances so required. The national legislation of most States made it permissible to enter private premises for the purpose of preventing loss of life or serious damage to property. However, the invocation of that right with regard to the premises of representatives of foreign Governments was a very controversial question.

35. His delegation agreed with the basic idea contained in the compromise text submitted by the Argentine representative, although it did not find the wording fully acceptable. The concept of public security and public order was a very broad one and was difficult to define in specific cases. The wording of the Argentine text should be further clarified to make it quite clear that protective action should be taken by the authorities of the receiving State only when strictly necessary to prevent serious damage to the persons or property of third parties. The Argentine amendment as it stood might be taken as implying that the existence of a fire was sufficient justification for entry upon the mission's premises without the consent of its head.

36. Mr. OSTROVSKY (Union of Soviet Socialist Republics), speaking in exercise of his right of reply, said he had assumed that the cases of violation of diplomatic privileges and immunities to which he had referred at the 1065th meeting were already known to the United States representative. He would willingly acquaint the latter with his delegation's files on the subject, in the hope that the situation might be improved.

37. He wished to make it clear that his delegation's endorsement of the submission of the Argentine text as a formal amendment did not imply any change in his delegation's position on the substantial issue involved and in no way conflicted with its support for the deletion of the last sentence of paragraph 1 of the article. His delegation had merely expressed the view that the Committee was at liberty to waive its self-imposed rules when that would contribute to the progress of its work.

The meeting rose at 6.15 p.m.

Litho in U.N. 77601—June 1969—2,150