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

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

Welcome to the representative of Equatorial Guinea

1. The CHAIRMAN welcomed the representative of Equatorial Guinea to the Sixth Committee.

2. Mr. TENA (Spain) said that the delegation of Spain joined in the Chairman's welcome to the representative of Equatorial Guinea with great pleasure and hope, first, as Spaniards, because his presence in the Committee bore witness to the fact that Spain had fulfilled its obligations under the Charter of the United Nations, and then as jurists because Spain, by accompanying Equatorial Guinea on the path to independence, had shown its faith in the rule of law and specifically in the application of the principle of decolonization. Personally, as one who had been privileged to be a member of the commission appointed by his Government to witness the decolonizing and electoral process in which the people of Equatorial Guinea had shown maturity and calmness, he was sincerely pleased to welcome Mr. Ibongo, who would surely make an important contribution to the Committee's work.

3. Mr. ENGO (Cameroon) said that the struggle for national independence, which stemmed from the desire of people everywhere to determine their own destiny, was a divine right reinforced by the legal norms of the present age. The Federal Republic of Cameroon rejoiced that Equatorial Guinea had attained nationhood and welcomed it to the family of nations which was now engaged in the process of establishing the dignity of the human person in Africa. That effort called for inspired leadership to ensure that the natural resources of Africa were exploited for the benefit of its inhabitants. As a nation which had tasted freedom after a period of subjugation, the Federal Republic of Cameroon extended to the people of Equatorial Guinea best wishes for its progress and success. The fraternal relations between the two peoples had long been established by common experiences

and ethnic and cultural bonds. His delegation also wished to congratulate Spain on joining the club of progressive nations which had accorded independence to their colonies, and hoped that Portugal and the Republic of South Africa would follow its example and that the United Kingdom would hasten the attainment of justice and freedom in Southern Rhodesia.

4. Mr. ALCIVAR (Ecuador), as a Spanish American, welcomed the representative of Equatorial Guinea, whose presence signified that Spain had once again fulfilled its duty of decolonization, and whose people, like his own, had been formed by Spanish culture.

5. Mr. OGUNDERE (Nigeria) said he was particularly proud to welcome the representative of Equatorial Guinea to the Committee, since the Nigerian people and the people of Equatorial Guinea, united in brotherly affection, had co-operated in many fields in the past and were now co-operating as independent nations. He congratulated Spain on joining in the process of decolonization, and hoped that before the end of the decade all Africa would be truly free.

6. Mr. IBONGO (Equatorial Guinea) said that it was a source of great honour for his people, which had just attained independence and national sovereignty, to be able to participate as a full member in the work of the Sixth Committee which, dealing essentially with friendly relations among States and with the codification of the rules of international law, sought common values calculated to lessen the disparity of the rules governing relations among the States of the world. His delegation would not be a stranger to the Committee's work, for the tradition of hospitality and the search for a compromise in settling disputes could be regarded as the history of Africa. The African tradition offered examples of conciliation, mediation, arbitration and fact-finding, formulas of positive international law which had been embodied in treaty obligations. His delegation appreciated the welcome extended by the representatives of fraternal African countries with which his people had old ties of friendship. It was also an honour for his delegation to affirm its debt to the legal heritage of Spain, as established by the great spiritual presence of Spain in the sixteenth and seventeenth centuries; indeed, the struggle of his people for independence had been based precisely on the principles of Vitoria and other Spanish jurists, who had maintained that international law should govern relations between States. His country, which shared the Spanish legal heritage with the countries across the Atlantic Ocean, might serve as a bridge between Spanish America and Africa. The corner-stone of his Government's participation in the Committee would be its acceptance of the legal principles governing relations between nations, for those principles in its view should be

superior to any other force. As the maxim said, when law ended, force began.

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.707/Rev.1, A/C.6/L.709,
A/C.6/L.729, A/C.6/L.730, A/C.6/L.731)

Article 29 (Personal inviolability) and article 31 (Immunity from jurisdiction) (continued)

7. Mr. OSIPENKO (Ukrainian Soviet Socialist Republic) said that, for the reasons stated by the majority of those who had spoken earlier, his delegation could not vote for any of the amendments, and would vote for the text prepared by the International Law Commission.

8. The CHAIRMAN invited the Committee to vote on the various proposals before it.

The French amendment to article 29 (A/C.6/L.707/Rev.1) was rejected by 52 votes to 16, with 20 abstentions.

Article 29 was approved by 72 votes to 3, with 10 abstentions.

The Netherlands sub-amendment (A/C.6/L.730) to the French amendment to article 31 (A/C.6/L.709) was rejected by 38 votes to 19, with 27 abstentions.

The French amendment to article 31 (A/C.6/L.709) was rejected by 47 votes to 18, with 22 abstentions.

The Netherlands sub-amendment (A/C.6/L.731) to the Chilean amendment to article 31 (A/C.6/L.729) was rejected by 34 votes to 26, with 27 abstentions.

9. Mr. EL REEDY (United Arab Republic) requested a separate vote on the two parts of the Chilean amendment to article 31.

The first part of the Chilean amendment to article 31 (A/C.6/L.729) was rejected by 33 votes to 31, with 25 abstentions.

The second part of the Chilean amendment to article 31 (A/C.6/L.729) was approved by 30 votes to 28, with 29 abstentions.

10. Mr. PRANDLER (Hungary) said that there appeared to be a contradiction in the voting on the Chilean amendment. The Chilean amendment to paragraph 4 referred to "the limits specified in paragraph 2 of this article"; since the Committee had rejected the Chilean amendment to paragraph 2, the Chilean amendment to paragraph 4 could not stand.

11. Mr. ENGO (Cameroon) said he wished it to be recorded that his delegation had been instructed to vote against the Chilean amendment. Owing to a misunderstanding, he had been unable to follow those instructions.

12. Mr. OSTROVSKY (Union of Soviet Socialist Republics) pointed out that the votes cast on the two parts of the Chilean amendment added up to different totals. If a mistake had been made in the counting, a new vote should be taken on the second part of the Chilean amendment.

13. The CHAIRMAN assured the USSR representative that the votes had been correctly counted. There was therefore no reason for the Committee to reconsider the decision it had taken.

14. Mr. OGUNDERE (Nigeria) said that, since the vote had led to confusion, the Committee should discuss how it should proceed. If the second part of the Chilean amendment was sent to the Drafting Committee, the latter would be unable to reconcile it with the International Law Commission's text and would be obliged to refer it back to the Committee. He too thought that a new vote should be taken on the second part of the Chilean amendment.

15. Mr. REIS (United States of America), supported by Mr. MOLINA LANDAETA (Venezuela) and Mr. BONNEFOY (Chile), proposed, under rule 124 of the rules of procedure of the General Assembly, that the Committee should vote on whether or not it wished to reconsider its decision on the Chilean amendment as a whole.

16. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that, since there had been no mistake in the counting, there was no reason to take a new vote on the Chilean amendment. The reference in the second part of the Chilean amendment to paragraph 2 of article 31 would now apply to paragraph 2 of the International Law Commission's text and not to the new paragraph 2 proposed in the first part of the Chilean amendment. Paragraph 4 of the Commission's text contained a similar reference, but the Chilean wording was briefer and, in his delegation's view, preferable. The Chilean version of paragraph 4 was therefore quite consistent with the Commission's text, and there was no reason for the Committee to contemplate reconsidering its decision. He proposed that the meeting should be suspended for ten minutes, so that delegations could collate the two texts.

17. The CHAIRMAN said that it would not be possible to suspend the meeting, because, under rule 124 of the rules of procedure, after two speakers had opposed the United States motion, it should be put immediately to the vote.

18. Mr. MYSLIL (Czechoslovakia) appealed to the United States representative not to insist on his proposal. A new vote would only serve to confuse the issue further. Since the votes had been correctly counted, the Committee should abide by the decision it had taken. A difference of opinion regarding the substance of the Chilean amendment could not justify its reconsideration.

19. The CHAIRMAN put the United States motion for reconsideration of the Chilean amendment to the vote.

The result of the vote was 46 in favour and 22 against, with 18 abstentions.

The motion was adopted, having obtained the required two-thirds majority.

20. Mr. LUGOE (United Republic of Tanzania) said he had abstained in the vote because it was not permissible, under rule 124 of the rules of procedure of the General Assembly, for the Committee to decide

in one vote to reconsider the two separate decisions it had taken on the Chilean amendment.

21. Mr. STAVROPOULOS (Legal Counsel) said that the procedure followed by the Committee was quite correct. Rule 124 of the rules of procedure applied to a proposal "adopted or rejected". For the purposes of reconsideration under rule 124, the Chilean amendment constituted a single proposal which had been in part adopted and in part rejected.

22. In reply to a question by the Chairman, Mr. EL REEDY (United Arab Republic) said he would withdraw his request for a separate vote on each part of the Chilean amendment.

23. The CHAIRMAN invited the Committee to vote, in accordance with the decision just taken, on the Chilean amendment to article 31 (A/C.6/L.729).

At the request of the Venezuelan representative, the vote was taken by roll-call.

China, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Colombia, Denmark, Ghana, Greece, Iceland, Ireland, Israel, Japan, Mexico, Netherlands, New Zealand, Norway, South Africa, Spain, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Canada, Ceylon, Chile.

Against: Congo (Democratic Republic of), Cuba, Czechoslovakia, Dahomey, Ecuador, Equatorial Guinea, Ethiopia, Guatemala, Guyana, Hungary, India, Indonesia, Iraq, Kenya, Kuwait, Liberia, Libya, Madagascar, Mongolia, Morocco, Niger, Nigeria, Panama, Paraguay, Peru, Philippines, Poland, Romania, Saudi Arabia, Sierra Leone, Singapore, Sudan, Syria, Togo, Trinidad and Tobago, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Venezuela, Yugoslavia, Zambia, Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Cameroon.

Abstaining: China, Cyprus, Finland, France, Gabon, Haiti, Iran, Pakistan, Portugal, Rwanda, Thailand, Tunisia, Uganda, United Arab Republic, Barbados, Burma, Chad.

The Chilean amendment to article 31 (A/C.6/L.729) was rejected by 45 votes to 28, with 17 abstentions.

24. The CHAIRMAN put to the vote article 31 as drafted by the International Law Commission.

The article was approved by 68 votes to 5, with 16 abstentions.

25. Mr. PAVICEVIC (Yugoslavia) said that his delegation favoured the International Law Commission's texts of articles 29 and 31 and had therefore been unable to support any of the amendments to them. Indeed, during the discussion, Yugoslavia had made it clear that its State practice dictated support of the basic structure of the Convention proposed by the Commission.

26. Mr. EL REEDY (United Arab Republic) said that his delegation had welcomed the Chilean amendment to article 31, which took a discriminating

approach to the question of immunity from civil and administrative jurisdiction. It had, however, entertained some doubts concerning immunity in respect of execution because, as was stated in article 41, paragraph 4, waiver of immunity from civil and administrative jurisdiction did not necessarily imply waiver of immunity in respect of execution. That was why his delegation had requested a separate vote on the two paragraphs of the Chilean amendment and, in the first vote on that amendment, had voted in favour of the amendment to paragraph 2 and abstained in the vote on the amendment to paragraph 4 of article 31. When the Committee had decided to reconsider the vote, his delegation, in order to be helpful, had refrained from insisting on a separate vote on each paragraph. In view of its doubts concerning the amendment to paragraph 4, however, it had abstained on the Chilean amendment as a whole.

27. Mr. ESPEJO (Philippines) said that his delegation had voted against the French amendment to article 29 because it would have relegated special missions, despite their representative character, to the category of consular missions. Moreover, the final clauses of the last two paragraphs of that amendment would have tended to raise serious problems of interpretation and application. The Philippines had therefore voted in favour of the International Law Commission's text of article 29.

28. The Chilean and French amendments to article 31 were slightly more restrictive than the Commission's text. Bearing in mind, therefore, the Chinese representative's suggestion (1070th meeting) that it was easier to negotiate reductions than increases, the Philippines had also voted in favour of the Commission's text of that article.

29. Mr. MOLINA LANDAETA (Venezuela) said that his delegation had intended to abstain in the vote on the Chilean amendment, and indeed in the first vote it had abstained on the Chilean amendment to paragraph 2. Following the procedural difficulty, however, and despite the explanations of the Chairman and the USSR representative, his delegation had doubted whether the best course was to accept the Committee's decision in the matter. It had therefore changed its mind and voted against the Chilean amendment, which, despite its merits, did not contain exactly the principles which Venezuela supported.

30. Mr. QUERALTO (Uruguay) said that his delegation had voted in the same way as the Venezuelan delegation, and for exactly the same reason.

31. Mr. VALLARTA (Mexico) said that his delegation had been perfectly satisfied with the International Law Commission's text of the draft Convention. As, however, it considered that the task of a codifying conference was to ensure that a convention was acceptable to as many delegations as possible, it had voted in favour of the compromise solution contained in the Chilean amendment, and wished to congratulate the Chilean delegation on its initiative.

32. Mr. KOSTOV (Bulgaria) said that his delegation had voted for the International Law Commission's

text of article 29, since it was convinced that there should be no restrictions on the personal inviolability of the representatives and diplomatic staff of special missions. It had therefore been obliged to vote against the French amendment to that article. Receiving States should not be given the right to interfere with the physical freedom of persons acting for another State. Each exception to the principle of inviolability would contribute to depriving the principle of its meaning. The effect of the French amendment would be to disturb the essential balance between the interests of the receiving and sending States. The amendment was therefore unacceptable.

33. Bulgaria had voted against the amendments to article 31, because it was satisfied with the Commission's text. By proposing to limit immunity from criminal, civil and administrative jurisdiction to acts performed in the exercise of official functions, the French amendment introduced restrictions which did not correspond to the representative character of special missions. It also raised the question who was to define the limit between private and official acts. The Chilean amendment, although more flexible, contained the same defect concerning immunity from civil and administrative jurisdiction. It was therefore unacceptable to his delegation, which could not accept any approach to the problem which did not take account of the real needs of special missions. Since the purpose of the Netherlands sub-amendments was to weaken the French and Chilean amendments, they too were unacceptable to his delegation.

34. Mr. RATTANSEY (United Republic of Tanzania) said that his delegation had voted in favour of the International Law Commission's text of article 29 because, in order to perform their functions efficiently, the members of special missions should enjoy complete freedom from arrest and detention. As had been said, special missions would be composed of responsible persons who would be unlikely to commit criminal acts.

35. Tanzania had voted in favour of the Chilean amendment to article 31 because, given the temporary stay of a special mission in a receiving State, the effects of that amendment would not impede the members of the mission in the performance of their functions.

36. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that for the reasons it had given during the discussion on the articles (see 1071st meeting), his delegation had supported the International Law Commission's texts and voted against the amendments thereto.

37. His delegation was convinced that the proposal that the Committee should reconsider one of its decisions in accordance with rule 124 of the rules of procedure had been motivated by dissatisfaction with the result of the vote. There was no justification for such a manoeuvre. There were certain standards of conduct which all delegations should observe. Any decision taken by the Committee must be respected.

38. In suggesting that the votes might have been incorrectly counted, the Soviet delegation had in no way intended to criticize the Secretariat, whose work

it greatly appreciated. It had genuinely thought that an error might have been made.

39. Mr. REIS (United States of America) said that his delegation, and he as a human being, regarded with disgust the remarks just made concerning the supposed motivation of his delegation in making its proposal under rule 124 of the rules of procedure. The conduct of his delegation provided no basis for the suggestion that it was trying to impede the Committee's work.

40. Mr. DELEAU (France) said that in the first vote on the Chilean amendment France had voted in favour of the amendment to paragraph 2 of article 31 because, in a spirit of compromise, it had been willing to accept a formula more liberal than its own. It had abstained in the vote on the amendment to paragraph 4 because the idea concerning inviolability of person and accommodation contained therein did not correspond with its own ideas on the subject. For the same reason that had led it to abstain in the vote on paragraph 4, France had abstained in the vote on the Chilean amendment as a whole.

41. Mr. CHAMMAS (Lebanon) said that he had been absent when the roll-call vote had been taken. He wished it to be placed on record that if he had been present he would have voted in favour of the Chilean amendment as a whole.

42. Mr. KIBRET (Ethiopia) said that his delegation had voted against the French and Chilean amendments to the articles under discussion; it had, however, voted in favour of the Netherlands sub-amendments. The French amendments raised difficult problems of interpretation and application and would have an adverse effect on the importance of the roles of special missions. The members of special missions should enjoy the same degree of personal inviolability and immunity from jurisdiction as members of permanent diplomatic missions.

43. Ethiopia did not consider that personal inviolability and immunity from jurisdiction should be limited to official acts; it had therefore voted against the Chilean amendment. His delegation had voted in favour of the Netherlands sub-amendments, in the hope that they would find expression in the International Law Commission's draft text. The automobile had become an instrument of mischief, and the inclusion of the Netherlands provision in the text would not have restricted the freedom of members of special missions.

44. Ethiopia would have welcomed a mention of further cases falling under the exceptions in paragraph 2 of article 31. The Czechoslovak representative had referred to the question of maintenance (see 1071st meeting, para. 13); a mention of other examples might have gone far towards limiting jurisdiction in civil cases, and by the method of specific characterization certain acts deemed to fall outside the performance of official duties could be taken care of.

Organization of the work of the Committee (A/7185/Rev.1; A/C.6/387; A/C.6/L.728 and Add.1 and 2)

45. The CHAIRMAN said that, in accordance with the plan for the organization of its work during

the current session of the General Assembly (see A/C.6/387), the Committee had decided to conclude its consideration of agenda item 85 (Draft convention on Special Missions) on 14 November 1969 and to resume consideration of agenda item 86 (Report of the Special Committee on the Question of Defining Aggression) on 15 November. The Committee had also decided to hold five meetings in reserve for unforeseen contingencies.

46. So far, the Committee had considered and passed to the Drafting Committee articles 2 to 29 of the draft articles on special missions. The Drafting Committee had already adopted and submitted to the Committee texts for articles 2 to 5, 7 and 9 to 17 (see A/C.6/L.728 and Add.1 and 2). The Committee had not yet examined those texts.

47. In his opinion, it was necessary, unless an exceptional situation arose, to abide by the Committee's decision concerning its order of work. In view of that decision, of the fact that the Committee had examined only two of the six agenda items allocated to it, and of the limited number of meetings available to the Committee to complete its work, he intended to suspend consideration of agenda item 85 (Draft Convention on Special Missions) and, at the next meeting, to invite the Committee to start examining parts I to IV of the report of the Special Committee on the Question of Defining Aggression.

48. The Sixth Committee would thus be unable during the current session to continue considering those draft articles on special missions which had not yet been submitted to the Drafting Committee. By making use of the meetings held in reserve for unforeseen contingencies, however, the Committee could, later on in the session, consider the texts which the Drafting Committee had already adopted or was about to adopt. The Committee would then be in a position to discuss and take a decision on any draft resolution it might wish to submit to the General Assembly with a view to recommending the most appropriate procedure to be followed in continuing and completing consideration of the item at the twenty-fourth session of the General Assembly.

49. Mr. STAVROPOULOS (Legal Counsel), referring to the Chairman's statement, said that rule 124 of the rules of procedure of the General Assembly applied only to reconsideration at the same, not a later, session. It seemed, however, that there might be disadvantages if the Sixth Committee were able, at its next session, to amend without restriction those articles which had been adopted at its current session. Such great freedom of amendment might lead to the re-opening of many questions that had already been dealt with and unnecessarily prolong the work or even prejudice the unity of the text. The Committee might, therefore, wish to consider imposing some limit on the consideration, at its next session, of amendments to articles it had already adopted. No such provision had been suggested the previous year, when it had been decided that the draft Convention should be dealt with by the Sixth Committee, because it had not been expected that the work would last for more than one session of the Assembly. The United Nations Conference on the Law of Treaties, for which two sessions had been planned from the outset, had,

however, adopted a rule of procedure (rule 33),^{1/} which required a two-thirds majority for reconsideration, even if requested at the second session.

50. Further reflection and negotiation between the sessions might of course lead to the conclusion that changes should be made to the articles adopted at the current session. In that case, a decision could be taken by the Committee as a whole, or by a majority of more than two thirds of its members, to reconsider such articles. Obviously, at the next session the Drafting Committee would have to co-ordinate and review the wording of all texts adopted, a process that might lead to changes being made to the texts decided upon during the current session; a special exception could no doubt be made to provide for that aspect of the Drafting Committee's work. If such an exception were made, the requirement of a two-thirds majority for the reconsideration of articles at the next session would not constitute a real obstacle to improving the text; it would merely prevent loss of time in considering amendments which would probably be rejected either by the Sixth Committee or by the General Assembly.

51. The problem of reconsideration had arisen before in the General Assembly, particularly in the Third Committee, which had often drafted conventions. It seemed, however, that although the Third Committee had never taken formal steps to prevent it, no articles had in fact ever been reconsidered at later sessions. As the Sixth Committee was the Legal Committee of the Assembly, there might be advantage in attaining results similar to those of the Third Committee by slightly more formal means. As the Sixth Committee could not, of its own authority, add to or alter the rules of procedure of the General Assembly, the best means by which it could attain that result was by submitting, in its report on the item, a recommendation for approval by the General Assembly. He suggested, therefore, that, in its report on the draft Convention on Special Missions, the Committee should submit for approval a recommendation that, without prejudice to the Committee's right to consider any changes proposed by the Drafting Committee when it co-ordinated and reviewed the wording of the whole text, when the draft Convention was considered by a Main Committee at the twenty-fourth session of the General Assembly, articles already adopted or rejected by the Sixth Committee should not be reconsidered unless the Committee so decided by a two-thirds majority of the members present and voting.

52. The Committee might also wish to state in its report that amendments which had been submitted to it but were not yet disposed of would remain before the Committee and would be issued as documents of the next session, unless delegations informed the Secretariat before the opening of the twenty-fourth session that the amendments had been withdrawn. He suggested further that, if the item were referred to the Sixth Committee at the next session, for the sake of continuity the Drafting Committee should remain as currently constituted. Finally, he assumed that the Sixth Committee would wish to extend an invitation to Switzerland to attend the next session on special missions.

^{1/} See A/CONF.39/2.

53. Mr. KIBRET (Ethiopia), speaking on behalf of the group of non-aligned countries, said that they attached importance to the earliest possible adoption of a convention on special missions. In their opinion, an effort should still be made to complete at least a first reading of the draft articles at the current session. Indeed, the group would have preferred that consideration of the item be continued for a further week, with night meetings if necessary. The Committee could then consider the other items allocated to it. In view of the Chairman's statement, however, the non-aligned countries were prepared to agree that consideration of the draft Convention on Special Missions should be suspended. The possibility of

returning to that item if the Committee saved time on another item and had not used its reserve meetings for any other purpose should be borne in mind. In the meantime, the Drafting Committee should be authorized to continue with its work.

54. The CHAIRMAN reminded members that, at its 1028th meeting, the Committee had decided to recommend to the General Assembly that the session of the Special Committee on the Question of Defining Aggression proposed by the Special Committee in chapter V of its report (A/7185/Rev.1) should not take place in 1968.

The meeting rose at 6.15 p.m.