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**Chairman:** Mr. Gonzalo ALCÍVAR (Ecuador).

**AGENDA ITEM 87**

**Draft Convention on Special Missions (*continued*) (A/6709/  
Rev.1 and Corr.1, A/7375; A/C.6/L.745, A/C.6/L.747)**

1. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that unfortunately the Drafting Committee had not yet been successful in reaching a decision on the definition of the term "special mission". Some delegations needed a little more time to obtain their Governments' instructions on the subject. He nevertheless hoped that the Drafting Committee would conclude its work on the article on the use of terms at its next meeting.

*Article 30 (Inviolability of the private accommodation)*  
(continued) (A/C.6/L.708, A/C.6/L.749)

2. Mr. KUTB (Southern Yemen) said there was no need to make any changes in the text of either of the paragraphs of article 30 as drafted by the International Law Commission. His delegation shared the view expressed by the Commission in paragraph (3) of its commentary on the article, and it therefore sympathized with the arguments put forward by the French representative (1122nd meeting); but it could not agree to the deletion of the article, because that would seriously impair the privileges and immunities which the Committee wished to see firmly established in the future Convention. His delegation opposed the Lebanese and United States amendment (A/C.6/L.749) on the ground that the notification it called for was unnecessary and contrary to the spirit of good faith which should prevail in relations between the sending and receiving States. He hoped that the desire for co-operation which had prompted the withdrawal of the Ghanaian amendment (A/C.6/L.750) would also result in the withdrawal of the two amendments still before the Committee.

3. Mr. MIRCEA (Romania) said that his delegation could not support the French proposal (A/C.6/L.708), although it appreciated the reasons which had prompted it. The French delegation's arguments were outweighed by important legal considerations. Article 30 had a special function of strengthening the inviolability of special missions. An analogous provision existed in nearly all similar conventions and there was no reason to exclude it from the text under discussion. Special missions were a temporary institution

and therefore in greater need of protection. The article imposed no excessive burdens on receiving States; special measures would be necessary only in particular circumstances. In addition, article 30 was an essential part of the general structure of the draft Convention and had to be seen in the light of the provision in article 48, paragraph 2: the obligation imposed by that paragraph on the sending State should be balanced by a reciprocal obligation on the part of the receiving State. He hoped that the French amendment would be withdrawn. His delegation also opposed the Lebanese and United States amendment, because it was open to varying interpretations and might conflict with other provisions of the draft Convention. Romania favoured the adoption of article 30 as drafted by the International Law Commission.

4. Mr. TARASOV (Union of Soviet Socialist Republics) said that it was unnecessary for him to make a statement on article 30, since other delegations had expressed the views which the Soviet delegation held on the subject.

5. Mr. VALLARTA (Mexico) said that special missions gave rise to great difficulties because they varied widely in importance, from the high-level political mission to the low-level technical mission. The International Law Commission had nevertheless provided for that contingency in article 50. The formula embodied in that article meant that the future Convention would not be an inflexible set of rules. The Commission's approach had been that the Convention should provide the highest possible degree of inviolability while giving States discretion to restrict it. The French approach, on the other hand, was to restrict inviolability and rely on article 50 if it was desired to extend it. The difficulty with that approach was that special arrangements would be necessary whenever it was decided to extend inviolability, whereas the Commission's formula would merely require a simple agreement not to apply certain provisions of the Convention. His delegation considered that, in view of their functions, special missions must have the inviolability conferred by the two paragraphs of article 30. It preferred the Commission's approach to the subject and was therefore unable to accept the French proposal. The Lebanese and United States amendment would provide practical advantages for the receiving State and impose an obligation on the sending State if it wished to enjoy the benefits of article 30. But the virtues of the latter amendment were insufficient to justify a change in the International Law Commission's text. Acceptance of the amendment would mean that absence of notification could be used by the receiving State as a pretext for not acting if the immunity of the special mission was violated. Immunity should not be conditional upon notification.

6. Mr. DUPLESSY (Haiti) said that his delegation continued to hold the view it had expressed at the twenty-third

session that a special mission needed adequate privileges if it was to fulfil its task properly. The inviolability conferred by article 30 was an essential part of those privileges, and his delegation was therefore unable to accept the French proposal. The Lebanese and United States amendment was prompted by the fact that article 30 associated inviolability with protection, which might be difficult to ensure unless changes in private accommodation were notified. However, the inviolability of the private accommodation as such did not entail any special protection; States already had a natural duty to protect all persons within their territory. There was in fact no connexion between the legal notions of inviolability of private accommodation and protection, unless the inviolability of the private accommodation of diplomats was regarded as a departure from the general rule that officers of the law were entitled to enter private accommodation for the purpose of combatting crime, in other words, of protecting society as a whole. The only obligation incumbent upon the receiving State in respect of the inviolability of the private accommodation of the members of a special mission was to inform its police and judicial authorities of the existence of the accommodation and to take suitable steps if the inviolability was infringed. If the private accommodation of a member of a special mission was violated, he need do no more than prove his capacity to the authorities in question. In practice, therefore, notification of the private accommodation was pointless and would only complicate the administrative tasks of the receiving State. Moreover, special missions were granted privileges and immunities to facilitate their work; those privileges and immunities derived from their status and should not, in the case of private accommodation, be made conditional upon notification. His delegation therefore opposed the Lebanese and United States amendment and would support the International Law Commission's text of article 30.

7. Mr. SANTISO GALVEZ (Guatemala) said that his delegation reaffirmed the views it had expressed at the twenty-third session when article 30 had been discussed in the Committee in the context of articles 29 and 31 (1069th meeting). Those views had been shared by many other delegations and coincided with the opinions of the International Law Commission. Article 30 should be retained, because special missions frequently had to carry out their work on unofficial premises. His delegation saw merit in the Lebanese and United States amendment, which would introduce a logical element into the article: if the receiving State was to be under an obligation, it must know the location of the place where that obligation had to be discharged. However, immunity should not be suspended because the private accommodation had not been notified. He therefore considered that article 30 should be left as it was. So far as the Lebanese and United States amendment was concerned, he wished to introduce a sub-amendment to the effect that the words "duly notified" in the principal amendment should be followed by words to the following effect: "or, failing that, if the representatives of the sending State in the special mission and the members of its diplomatic staff identify themselves as such to any authority of the receiving State". That wording reflected a customary practice and should be sufficient to ensure the immediate application of the provisions of article 30. He nevertheless hoped that the Lebanese and United States

amendment would be withdrawn and article 30 adopted as it stood.

8. Mr. GABOU (Congo, Brazzaville) said that his delegation was convinced that only extensive protection of the private accommodation of the representatives of the sending State in the special mission and of the members of the diplomatic staff could guarantee the necessary freedom for the proper performance of the mission's task. Such accommodation could not be inviolable unless the property and papers kept there were immune from search. There was a logical link between the two paragraphs of article 30. His delegation would support the retention of the Commission's text and would oppose the amendment of France and that of Lebanon and the United States.

9. The deletion of article 30, as proposed by France, would restrict the inviolability accorded to special missions and would create an anachronistic situation inconsistent with the trends of modern diplomacy. The Lebanese-United States amendment, which sought a *via media*, would create an equally obsolete situation. He welcomed the withdrawal of the Ghanaian amendment which would have made the grant of inviolability dependent upon circumstances.

10. Mr. MUNIM (Pakistan) said that his delegation was generally in favour of retaining article 30 as it stood, because the inviolability and protection for which it provided were necessary for the proper performance of the duties of special missions. However, he had misgivings about the unqualified use of the term "property" in paragraph 2. It was open to question whether all property of State representatives and special missions should be immune from seizure at all times; a situation might exceptionally arise where such property was used for purposes detrimental to the vital interests of the receiving State. The Committee should perhaps consider qualifying the term "property" with a view to avoiding any possible abuse.

11. Mr. NJENGA (Kenya) said that, in his delegation's view, the provisions of article 30 were vital for the effective performance of the functions of the special mission. The temporary nature of a special mission did not constitute grounds for allowing the agents of the receiving State to enter and search the private accommodation of the mission's members in their absence. Article 26 did not, as some delegations had argued, render article 30, paragraph 2, superfluous, because article 26 related only to the archives and documents of the special mission, not to the private papers of its members. Moreover, the deletion of article 30 would create an unacceptable situation, since it would remove the obligation on the receiving State to protect the private accommodation of members of special missions where necessary. He did not agree that article 30 would conflict with article 25, because, in some cases the private accommodation of the members of the special mission was also its premises. It was illogical to refuse protection to the premises of a special mission under article 25 on the grounds that they were also private accommodation. On the other hand, if protection was extended to private accommodation when the mission's premises were located there, it was clearly possible to guarantee the inviolability and protection of private accommodation in all cases. He would therefore vote against the French amendment.

12. He was not unaware of the difficulties involved in the implementation of article 30, and the Lebanese-United States amendment would resolve some of the practical problems. The amendment should not be regarded as making inviolability and protection conditional upon notification; the provisions of article 44 in any case rendered such an interpretation untenable. While his delegation did not consider the amendment strictly necessary, it would not oppose it if it was put to the vote. The Guatemalan oral sub-amendment tended to clarify the Lebanese-United States amendment, and his delegation would likewise not oppose it. Nevertheless, it would prefer the retention of the Commission's text as it stood.

13. Mr. EL HUSSEIN (Sudan) said he could see no justification for the deletion of article 30. It reproduced almost word for word the provisions of article 30 of the Vienna Convention on Diplomatic Relations, and, in his delegation's view, the functional theory regarding the performance of the duties of permanent diplomatic missions was equally applicable to special missions, whose functions and duties were to a large extent analogous to those of permanent diplomatic missions.

14. The provisions of article 30 were neither excessive nor impracticable. As the Expert Consultant had rightly pointed out (1122nd meeting), members of special missions were often obliged to do much of their work in their private accommodation and to keep their private and official papers there. It was only natural that the receiving State should grant inviolability and protection in order to enable members of special missions freely and effectively to discharge the functions which the receiving State had implicitly recognized by consenting to receive the special mission. In such a situation inviolability was a minimum diplomatic courtesy that could be offered by the receiving State. The protection required by article 30 would not create additional burdens for the receiving State, since such protection was a normal duty of a State with regard to any person within its territory.

15. With regard to the Lebanese-United States amendment, he shared the view expressed by the Iraqi representative (1122nd meeting) that notification should not be made a formal condition for the granting of inviolability and protection. The Guatemalan oral sub-amendment was also unacceptable to his delegation, because the proposed identification could be made only when a member of a special mission was physically present in his accommodation. The sub-amendment would not cover cases where agents of the receiving State sought to enter the private accommodation of a member of a special mission in his absence.

16. Accordingly, his delegation would not support the amendment of France or that of Lebanon and the United States or the Guatemalan sub-amendment and would vote for the retention of article 30 as drafted by the Commission.

17. Mr. ROMPANI (Uruguay) said that, viewed in the context of the draft Convention as a whole, article 30 was absolutely necessary and was a logical consequence of other provisions of the draft. For example, since article 7 stated that the existence of diplomatic or consular relations was

not necessary for the sending or reception of a special mission, the private accommodation of the members of the special mission should receive the same treatment as would be accorded to permanent missions if they existed. On the other hand, the existence of a permanent mission did not justify withholding the inviolability and protection provided under article 30. Moreover, the notification required under article 11 was obviously not intended solely for the purpose of policing the movements of the members of the special mission. Under article 17, paragraph 3, a special mission might have more than one seat, and that provision would be meaningless unless there was a corresponding provision for the protection of those seats.

18. Article 30 also followed logically from articles 25, 27 and 28. The immunity accorded to "property used in the operation of the special mission" under article 25, paragraph 3, should be borne in mind in any consideration of the question of the private accommodation of members of the special mission. Articles 26 and 28 provided for the inviolability of the archives and documents of the special mission and freedom of communication on the part of the special mission at all times and in all places, which logically included the private accommodation of its members.

19. It was illogical to extend personal inviolability to members of the special mission, as in article 29, and to extend the privileges and immunities specified in articles 29 to 35 to the members of their families, as in article 39, without providing inviolability and protection for their private accommodation. Moreover, article 44 would be meaningless without the protection afforded by article 30.

20. He could not agree with the view that article 30 should be deleted because of the practical difficulties involved in its implementation. It was not the fault of the special mission if it had to install itself in a hotel. Under article 23, it was the duty of the receiving State to assist the special mission, if it so requested, in procuring the necessary premises and obtaining suitable accommodation for its members. Furthermore, even permanent diplomatic and consular missions were not infrequently accommodated in hotels. In fact, the central location of hotels often made it easier to protect them than to protect private houses. From his own experience, he did not consider the practical difficulties insurmountable.

21. If the Lebanese-United States amendment would make the Commission's text of article 30 more widely acceptable, his delegation would not oppose it. It did, however, introduce a subjective element that was not found in article 11; it seemed unnecessary to state that the receiving State should be "duly notified", since it could hardly be unduly notified. However, both that amendment and the Guatemalan sub-amendment dealt with circumstances that were necessarily unpredictable, and he would prefer the retention of article 30 as it stood.

22. Mr. MUTUALE (Democratic Republic of the Congo) said that article 30 was a necessary corollary of article 29; the personal inviolability of members of special missions was inseparable from the inviolability of their private accommodation, where they both lived and worked. His delegation could not support the French amendment, because the deletion of article 30 would mean that the

members of such missions enjoyed inviolability everywhere except in their private accommodation.

23. The Lebanon-United States amendment was unnecessary and might have the result of freeing the receiving State from the obligation to protect the private accommodation. Yet that obligation was absolute and unconditional; it had to be fulfilled in good faith, regardless of practical circumstances. The Convention imposed obligations on both parties, since article 11 specified that the sending State was obliged to give certain notifications.

24. Mr. BERNAL (Panama) said that his delegation favoured the existing wording of article 30 and could not support the French amendment. The Lebanon-United States amendment would undermine the sound principle embodied in that article, as well as the draft Convention as a whole. The aims of that amendment were no doubt to meet the requirements of municipal law and to check the abuses sometimes resulting from activities extraneous to the task of the special mission. The former aim could be achieved by applying the norms and principles of international law and the latter by applying the measures adopted by the receiving State on the basis of the provisions to cover such cases contained in both municipal and international law. The Guatemalan sub-amendment would not solve the problem; the idea of identification was already implicit in the existing wording of article 30, since that article did not require prior notification of the private accommodation. For those reasons, his delegation would vote for the text submitted by the International Law Commission.

25. Mr. ROSENSTOCK (United States of America) said that his delegation did not wish to withdraw the amendment which it had submitted jointly with the delegation of Lebanon. He had not been able to consult his co-sponsor on the subject of the Guatemalan sub-amendment and would prefer a vote to be taken on it.

26. Mr. EL MOULDI (Algeria) thought that article 30 should be retained in its existing form. It would be illogical to guarantee the personal inviolability of members of special missions and not to guarantee the inviolability of their private accommodation, where confidential papers concerning the mission were often kept. There was no need for the addition proposed in the Lebanon-United States amendment, since the point was covered in article 11.

27. Mr. CHAMMAS (Lebanon) emphasized that the intention of the sponsors of the Lebanon-United States amendment was constructive. The amendment was designed to remedy an oversight in article 11, which made no provision for notification of changes of residence or private accommodation. In order to assume knowledge on the part of the receiving State of the location of the private accommodation, the words "including any subsequent changes therein" should have been added to paragraph 1 (*f*) of article 11. The sponsors had no intention of suspending the exercise of immunity or making it conditional. They simply wished to reduce the likelihood of diplomatic incidents occurring as a result of the invasion of the private accommodation of a member of a special mission which had not been notified to the receiving State, during the absence of its occupant.

28. The CHAIRMAN announced that the representative of Guatemala had withdrawn his sub-amendment to the Lebanon-United States amendment, and he invited those delegations wishing to do so to explain their vote before the vote.

29. Mr. MAURTUA (Peru) said that the Lebanon-United States amendment stated a requirement which was an accepted feature of all bilateral relations. Notification of the location of the residence or private accommodation of members of a special mission—or of any other mission—was an essential prerequisite for the granting of immunity by the receiving State. That State had to know what would be the starting-point for its juridical relationship with the sending State. Notification assumed particular importance in certain cases—for instance, when asylum was granted. In codifying the norms governing special missions, it was important to bear in mind the existing law and practices followed in that regard, which had already proved their worth.

30. Mr. OGUNDERE (Nigeria) said that the Lebanon-United States amendment was in fact an amendment to article 11, paragraph 1 (*f*), which had already been adopted by the Committee; it introduced a precondition to the process of notification and, by placing the word "duly" before the word "notified", implied that notification might be void or inoperative if it were not made in due form. His delegation would vote against that amendment.

31. Mr. SIDDIQ (Afghanistan) thought that the text drafted by the International Law Commission would fully meet the needs of members of special missions and should be retained. His delegation could therefore not support the French amendment. It considered that the Lebanon-United States amendment was unnecessary, its substance being covered by article 11, paragraph 1 (*f*), but would not vote against it.

32. Mr. KOSTOV (Bulgaria) explained that his delegation would vote for the text prepared by the International Law Commission, because it believed that absolute inviolability of the private accommodation, papers and correspondence of members of special missions was essential for the performance of their task. The practical difficulties to which some delegations had referred would constitute the exception rather than the rule, and greater difficulties would be created by the lack of such a provision, which would undermine the effectiveness of special missions. By their nature, special missions required special protection.

33. A distinction should be drawn between the provisions of article 30 and the guarantees to ensure their application. The need to provide such guarantees could not justify limitation of the scope of the article, as proposed in the Lebanon-United States amendment.

34. The Bulgarian delegation would therefore vote against the French amendment and the Lebanon-United States amendment.

35. Mr. DELEAU (France) said that if his delegation's amendment was rejected and it was decided to retain article 30, the Lebanon-United States amendment would improve the text, particularly if a satisfactory definition of the term

“special mission” were adopted. It would encourage members of special missions to fulfil their obligation under article 11 to notify the location of their private accommodation, in order to enjoy inviolability and protection. If its amendment was rejected, therefore, the French delegation would vote in favour of the Lebanon-United States amendment.

36. Even if the text were amended along the lines proposed by Lebanon and the United States, his delegation would be unable to support article 30, as it did not yet know what would be the definition of the term “special mission”. It would vote against paragraph 1, of the article, which granted immunities that were excessive and sometimes unnecessary; if, however, the improvement proposed by Lebanon and the United States were adopted, it would simply abstain in the vote on that paragraph. It would abstain in the vote on paragraph 2, which was a partial duplication of other articles and conferred a protection which might not be desirable.

37. In view of the discussions currently taking place and in the hope that they would shortly produce results, the French delegation would limit the expression of its objections to an abstention in the vote on article 30 as a whole.

38. Mr. KABBAJ (Morocco) said that the text drafted by the International Law Commission would meet the needs of special missions and ensure the successful performance of their tasks. His delegation was therefore unable to support the French amendment. The Lebanon-United States amend-

ment was not necessary, in view of the provisions of article 11, paragraph 1 (f).

39. The CHAIRMAN invited the Committee to vote on the French amendment, proposing the deletion of article 30.

*The French amendment (A/C.6/L.708) to article 30 was rejected by 73 votes to 12, with 7 abstentions.*

40. The CHAIRMAN recalled that at the 1123rd meeting the representative of Belgium had requested a separate vote on the two paragraphs of the draft article.

*The Lebanon-United States amendment (A/C.6/L.749) to paragraph 1 of article 30 was rejected by 56 votes to 21, with 14 abstentions.*

*Paragraph 1 of article 30 as proposed by the International Law Commission was approved by 75 votes to 6, with 10 abstentions.*

*Paragraph 2 of article 30 as proposed by the International Law Commission was approved by 80 votes to none, with 9 abstentions.*

*Article 30 as proposed by the International Law Commission, as a whole, was approved by 76 votes to none, with 13 abstentions.*

*The meeting rose at 6.5 p.m.*