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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)**

*Article 36 (Administrative and technical staff)
(A/C.6/L.712, A/C.6/L.726)*

1. The CHAIRMAN drew the Committee's attention to the two amendments to article 36, submitted by France (A/C.6/L.712) and the United Kingdom (A/C.6/L.726).

2. Mrs. D'HAUSSY (France) said her delegation would withdraw its amendment to article 36 (A/C.6/L.712), since a satisfactory definition of the term "special mission" had been adopted at the 1128th meeting.

3. Mr. ALLOTT (United Kingdom) withdrew the amendment submitted by his delegation (A/C.6/L.726), for the same reason.

4. The CHAIRMAN said that if there were no objections he would consider that the Committee approved article 36 as worded in the draft of the International Law Commission.

Article 36 was approved and referred to the Drafting Committee.

Article 37 (Members of the service staff) (A/C.6/L.713)

5. The CHAIRMAN drew the Committee's attention to the amendment to article 37 submitted by France (A/C.6/L.713).

6. Mrs. D'HAUSSY (France) withdrew that amendment, for the reason she had given with respect to her delegation's amendment to article 36.

7. The CHAIRMAN said that if there were no objections he would consider that the Committee approved article 37 as worded in the draft of the International Law Commission.

Article 37 was approved and referred to the Drafting Committee.

Article 38 (Private staff) (A/C.6/L.727)

8. The CHAIRMAN drew the Committee's attention to the amendment to article 38 submitted by the United Kingdom (A/C.6/L.727).

9. Mr. ALLOTT (United Kingdom) explained that his delegation had submitted its amendment because it considered that there was little justification for granting privileges and immunities to private staff of diplomats and even less for granting them to private staff of the members of special missions. However, since the amendment was not meeting with a great deal of support, his delegation had decided to withdraw it.

10. Mr. OGUNDERE (Nigeria) asked the Expert Consultant what connexion there was between article 38 and article 40, paragraph 2.

11. Mr. BARTOS (Expert Consultant) said that, while the last sentence of article 38 and the last sentence of article 40, paragraph 2, laid down the same rule, they differed in their application. Article 38 applied to private staff of the members of the special mission, whereas article 40, paragraph 2, applied to members of the special mission other than representatives of the sending State in the special mission and the members of its diplomatic staff, as well as private staff who were nationals of the receiving State or permanently resident in that State.

12. Mr. SANTISO GALVEZ (Guatemala) thanked the Expert Consultant for his explanation, which had dispelled any doubts his delegation might have felt with regard to article 38. Had no exception been specified in article 40 in respect of nationals of the receiving State, it would have been difficult if not impossible for Guatemala to ratify the future Convention, which would have been contrary to its constitution. As article 38 was limited by the provisions of article 40, his delegation felt inclined to support it.

13. Mr. ROMPANI (Uruguay) asked the Expert Consultant whether his delegation was right in assuming that article 38 applied solely to private staff as defined in sub-paragraph (k) of article 1 of the draft Convention, and not the categories of persons referred to in sub-paragraphs (i) and (j) of that article.

14. Mr. BARTOS (Expert Consultant) said that the Uruguayan representative's assumption was correct. Private staff had no connexion with the public functions of the special mission; their connexion was solely with the person of the members of such a mission.

15. The CHAIRMAN said that if there were no objections he would consider that the Committee approved article 38,

as worded in the draft of the International Law Commission.

Article 38 was approved and referred to the Drafting Committee.

Article 39 (Members of the family) (A/C.6/L.687, A/C.6/L.714, A/C.6/L.754-757)

16. The CHAIRMAN drew the Committee's attention to four amendments to article 39, submitted by Belgium (A/C.6/L.687), France (A/C.6/L.714), Tunisia (A/C.6/L.754) and Colombia (A/C.6/L.755).

17. Mr. VRANKEN (Belgium) withdrew his delegation's amendment (A/C.6/L.687). He thought, however, that it should be specified in article 39, paragraph 1, that only members of the families of representatives of the sending State in the special mission and of members of its diplomatic staff accompanying those representatives and members of its diplomatic staff could enjoy the privileges and immunities laid down, since it was obvious that members of the family who remained in the sending State could not enjoy those benefits. The Colombian amendment should essentially meet his delegation's concern on that point.

18. Mrs. D'HAUSSY (France), submitting her delegation's amendment (A/C.6/L.714), said that in proposing the addition of the words "forming part of their households" in paragraph 1 after the words "members of its diplomatic staff", her delegation had wished to use the terms of article 37 of the Vienna Convention on Diplomatic Relations, since, without that clarification, the term "family" might be interpreted too broadly. With regard to the part of the amendment proposing the addition in paragraph 1 of the words "if they have received an official invitation or with the express agreement of the receiving State" after the word "enjoy", she pointed out that, in view of the temporary nature of special missions, the members of such missions would only in exceptional cases be accompanied by their families, whose presence was rarely as necessary as in the case of permanent diplomatic missions. It was therefore logical to make the granting to members of the family of the privileges and immunities provided in the Convention conditional on the agreement of the receiving State. Her delegation would withdraw the parts of its amendment proposing the deletion of article 39, paragraph 2, and would propose instead that the same amendment should be made in paragraph 2 of the draft prepared by the International Law Commission as in paragraph 1, i.e. the expression "forming part of their households" should be added and the words "if they have received an official invitation or with the express agreement of the receiving State" should be added after the word "enjoy". Her delegation was making that proposal because it considered that, with the definition of the term "special mission" adopted at the 1128th meeting, it should be possible to grant privileges and immunities to members of the families of administrative and technical staff of special missions in certain cases.

19. Mr. GASTLI (Tunisia), introducing his delegation's amendment (A/C.6/L.754), said it was the lengthy discussion to which article 35 had given rise that had prompted

his delegation to submit an amendment to article 39. Like the International Law Commission, the Sixth Committee had been faced by the difficulty of defining the term "members of the family". The Commission had finally decided not to define that expression, in view of the different legal, and even sociological and religious concepts of the term "family". His delegation had no desire to succeed where the International Law Commission had failed. It did not intend to provide a legal definition of the family, but it would like to make the universal application of the future Convention easier by reducing the differences in interpretation to which article 39 might give rise. His delegation, in submitting its amendment, had in mind the essentially temporary character of special missions and the practical consequences of that special character. Representatives of the sending State in the special mission generally went to the receiving State without their families, and if they did take some of the members of their family with them, they were usually their spouses and issue, in the widest sense of those terms. His delegation's proposal might seem restrictive to some delegations and for that reason the second sentence of the amendment stated that other members of the family might enjoy privileges and immunities in so far as the receiving State so authorized.

20. In submitting its amendment, his delegation had sought above all to eliminate as far as possible any possibility of quibbling, a matter of concern frequently referred to by the Expert Consultant.

21. Mr. ARBELAEZ (Colombia), introducing his delegation's amendment (A/C.6/L.755), said that, according to the definition which had been adopted at the 1128th meeting, a special mission was a mission of a temporary nature sent for the purpose of dealing with a specific task with the consent of the receiving State. That definition, which included all the essential elements, should be the starting-point for defining the privileges and immunities to be granted to the members of the families of members of special missions. The temporary character of a special mission was a fundamental feature and the privileges and immunities to be granted must be considered with that in mind. When the Sixth Committee had considered article 35, paragraph 1(b), the Expert Consultant had stressed (1126th meeting) the words "who accompany them" when speaking of members of the families of representatives of the sending State and of members of its diplomatic staff. Article 40 was based on the same principle and article 39 should also be based on it. The Colombian amendment, therefore, would first of all insert the words "accompanying the former or the latter" after the words "its diplomatic staff".

22. Secondly, it would add a new paragraph 3 to article 39 limiting the number of family members accompanying each member of a special mission. Obviously, like any quantitative limitation, it was arbitrary, but it had its reasons. From the legal and technical point of view, the degree of relationship might be taken as a criterion. But determination of the degree of relationship might give rise to difficulties on account of the proof of family relationship which might be required. Hence, bearing in mind that legislative systems varied greatly with regard to the concept of the family, the Colombian amendment stipulated an average number, namely four, without specifying whether

they should be children, spouses, parents or collateral kinsmen, the idea being that such a number was reasonable in view of the temporary character of a special mission.

23. Mr. DADZIE (Ghana), referring first to the amendment submitted by France, saw no objection to inserting the words "forming part of their households" in paragraph 1 of article 39; on the other hand, the proposal to insert in the same paragraph the words "if they have received an official invitation or with the express agreement of the receiving State" was bound in his opinion to raise numerous difficulties, first because it would mean determining which was the authority in the receiving State competent to issue the invitation in question, and secondly because a member of a special mission should not, in practice, have to wait for the express consent of the receiving State in order to have certain members of his family accompany him.

24. With regard to the amendment submitted by Colombia, the Ghanaian delegation could not endorse the insertion of the words "accompanying the former or the latter" since, if interpreted strictly, they might exclude members of the family of a member of a special mission who only joined him after he had entered the receiving State. Moreover, it did not seem desirable to limit *a priori* the number of accompanying family members; that could be settled by negotiation between the receiving and sending States.

25. The Ghanaian delegation supported unreservedly the observations made by the representative of Tunisia. Incidentally, it had been considered preferable not to define the term "members of the family" in the Vienna Conventions on Diplomatic Relations and Consular Relations. In order to avoid arguments and waste of time, the Sixth Committee should likewise not attempt to define that concept; it would be better to allow the receiving State full freedom to take a decision on the matter if the occasion should arise.

26. Mr. BARTOS (Expert Consultant) pointed out that article 39 raised a number of questions, including whether the members of special missions had the right to be accompanied by members of their families. For reasons of convenience or security, some States were not willing to allow members of special missions to be accompanied by their families. The International Law Commission, on the other hand, had considered that as a general rule such a privilege should be granted to members of special missions but that it could be waived by mutual agreement between the receiving State and the sending State. It should be noted in that connexion that the rules of diplomatic courtesy and the interests of a State with regard to internal security were often at variance on that point.

27. The definition of the term "family" was an extremely delicate question; the International Law Commission had therefore decided that States should be allowed complete discretion in the matter.

28. He pointed out that at the time when the International Law Commission had embarked on the question of special missions, the visa system had been very widespread throughout the world, whereas it had now almost entirely

disappeared. Consequently, the Commission had not considered it necessary to include in article 39 a restrictive provision similar to the second part of the amendment submitted by France. The desire which a receiving State might have to limit the entry of nationals of a sending State into its territory for reasons of security was of course legitimate, but the interests of members of special missions should also be taken into account; the Commission had, moreover, borne in mind that the receiving State could, in case of need, resort to the procedure of declaring an individual *persona non grata*, though that was a relatively serious measure and care should be taken not to abuse it.

29. All in all, the Commission had seen fit not to include a provision limiting the number of family members who could accompany a member of a special mission, in view of the diversity of legal definitions of that concept and the risk of arbitrary action involved in such a provision.

30. Mr. SANTISO GALVEZ (Guatemala), pointing out that the Guatemalan member of the International Law Commission had urged the need for a definition of the term "family" for the purposes of the application of the Convention under consideration, said, with reference to the French amendment, that the Commission, in its commentary on article 35, had set out the very valid reasons why it had not retained the phrase "forming part of his household". Although he was in favour of the second part of the French amendment, he was afraid that the need for an express agreement between the sending State and the receiving State, or for an official invitation from the latter to the former, might give rise to difficulties and hence impede the task of the special mission. For those reasons, the Guatemalan delegation could not support the French amendment. Nor could it support the Colombian amendment, for the reasons given by the representative of Ghana.

31. The first part of the Tunisian amendment seemed useful as an attempt to limit the number of family members; the concept of "spouses and issue" was, however, perhaps too restrictive. Furthermore, the second sentence of the amendment amounted, in fact, to requiring an agreement between the sending State and the receiving State. It might be preferable to restrict the concept of the family rather than to introduce such a condition. He therefore proposed that a paragraph 3 worded as follows should be added to article 39 (see A/C.6/L.757):

"For the purposes of the application of this Convention, the term 'members of the family' which appears in this article shall mean spouses, parents who are economically dependent upon the child, minor children and unmarried daughters who have reached majority, unless they are economically independent."

32. Mr. ROBERTSON (Canada) said that the statements which had been made in connexion with article 39 reflected concern for practical rather than political considerations. It appeared from the various amendments before the Sixth Committee that there were two ways of approaching the problem. The first part of the French amendment and the first sentence of the Tunisian amendment sought to define the scope of the term "family" but did not appear to be completely satisfactory in that respect, as many speakers had pointed out. The second part of the French amend-

ment and the second sentence of the Tunisian amendment introduced the idea of an agreement to be obtained from the receiving State. The Canadian delegation doubted whether the Sixth Committee could reach agreement on a definition of the family which could give satisfaction to all delegations and hence favoured the second method, which seemed more practical and more flexible.

33. Mr. ENGO (Cameroon) recognized the need to specify the conditions needed if a special mission and its individual members were to carry out their task efficiently. He was not opposed in principle to allowing representatives of the sending State in a special mission to be accompanied by members of their family, but he was concerned about the problems that might be caused by the arrival in the receiving State of a large number of members of the families of the persons concerned without any prior notification.

34. At the present stage, it was perhaps undesirable to attempt to define the phrase "members of the family", because the fact that the concept of the family differed according to the legal system made such a definition very difficult. On the other hand, it was impossible to limit to four the number of persons accompanying each member of the special mission without disuniting the family.

35. His delegation would be glad to support a definition of the word "family" if it could be defined in a satisfactory manner, but the definition proposed, for example, in the Tunisian amendment was only partially satisfactory. There were two possible situations: either the Government of the sending State was willing that a member of the special mission should be accompanied by his family, or that member decided, without his Government's knowledge, to bring one or more members of his family with him. If, for instance, as many as twelve arrived, it might create difficulties for the receiving State. It would therefore be preferable to request the prior consent of the receiving State—that would, incidentally, enable the latter to refuse to accept any member of a family who might be *persona non grata*.

36. With regard to the French amendment, he was against the idea of an official invitation; on the other hand, the words "with the express agreement of the receiving State" caused him no difficulty. He was opposed to the insertion of the words "forming part of their households".

37. With regard to the Colombian amendment, he found some difficulty in accepting the proposed insertion in paragraph 1 of the article, and was totally opposed to the idea of restricting to four the number of family members accompanying each member of the special mission.

38. Mr. KOLESNIK (Union of Soviet Socialist Republics) noted that the various amendments tended to restrict the privileges and immunities that had to be granted. The French proposal to insert the words "forming part of their households" was in no way justified. The International Law Commission had indicated that, in its opinion, members of special missions should be able to take with them members of their families not living with them permanently. The restriction contained in the French amendment did not take account of the situation in which members of special

missions sometimes found themselves, nor of the fact that they must be able to perform their work in a suitable manner. The insertion of the words "if they have received an official invitation or with the express agreement of the receiving State", raised even greater difficulties, for such a procedure would surely be difficult to apply in practice.

39. Nor, for practical reasons, could his delegation support the Tunisian amendment. In view of the diversity of national legislation and the fact that there was no standard concept of what constituted a family, it was impossible to arrive at a specific definition that would not be arbitrary.

40. He could not vote for the Colombian amendment, for the addition of the words "accompanying the former or the latter" to the words "its diplomatic staff" would be a restriction raising practical difficulties. For example, the members of a family might not arrive in the receiving State at the same time as the member of the special mission. Moreover, he did not understand why the Colombian delegation had restricted to four the maximum number of family members accompanying each member of a special mission.

41. If the various amendments were examined from the point of view of common sense, it was clear that, far from simplifying the situation, they caused complications. They were all restrictive in scope and would therefore not help members of special missions to carry out their task. Consequently, his delegation would vote against all the amendments that had been submitted.

42. Mr. OGUNDERE (Nigeria) said that the members of the Sixth Committee were presumably acting in good faith in their attempt to formulate draft articles on special missions, and he hoped that common sense would prevail. Paragraph (2) of the International Law Commission's commentary on article 8 showed that the stress was placed on the consent of the receiving State. That article should also be examined in the context of article 11, paragraph 2, and article 12. Assuming that the sending State and the receiving State held consultations on the composition of special missions, it was logical to assume that the number of family members accompanying members of a special mission would also be subject to negotiation and that the prior notification sent to the receiving State would list their names. He agreed with the representatives of Ghana, Tunisia, Canada and the USSR that it was not so much a political matter as a matter of common sense that could be confidently left to chiefs of protocol who dealt with such matters.

43. He would vote against the part of the French amendment which proposed the addition of the words "forming part of their households" in paragraph 1. In principle, he supported the idea of an express agreement of the receiving State, as contained in the second part of the amendment, even though it was already implicit in articles 8, 11 and 12.

44. With regard to the Colombian amendment, he shared the doubts expressed by some delegations and did not understand why the figure four had been chosen. Consequently, he would not support the amendment. As to the Tunisian amendment, he did not think it necessary to limit

the members of the family to spouses and issue, and he was afraid that the restriction contained in the second sentence would cause more problems than it would solve.

45. Mr. DELEAU (France) repeated that his delegation had proposed the insertion of the words "forming part of their households" because they were used in the two Vienna Conventions and it did not think that a different concept of the family should be used for special missions. With regard to the second part of the French amendment, the official invitation proposed was placed on the same footing as the express agreement of the receiving State. In

short, the intention was to ensure that special missions should not give rise to an unjustified influx, but at the same time should not preclude the arrival of certain members of the family. However, in view of the comments that had been made by some delegations, he withdrew the amendments contained in document A/C.6/L.714 and proposed that the words "with the agreement of the receiving State" be added after the word "shall" in paragraphs 1 and 2 of article 39 (see A/C.6/L.756).

The meeting rose at 6.10 p.m.