



CONTENTS

Page

Agenda item 87:

Draft Convention on Special Missions (*continued*) 147

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 39 (Members of the family) (continued)
(A/C.6/L.755, A/C.6/L.756, A/C.6/L.758, A/C.6/L.760)

1. Mr. ZAVOROTKO (Ukrainian Soviet Socialist Republic) said that the family, as the primary unit of society, was a highly complex concept. When the Vienna Convention on Diplomatic Relations was drafted, it had been found impossible to produce a generally acceptable definition of the term, and his delegation felt that to produce a definition in connexion with the present item was neither possible nor necessary.

2. The Guatemalan-Tunisian joint amendment to article 39 (A/C.6/L.760) defined the family as an entity based on blood relationship and did not take account of other elements, such as custom and tradition. The condition of economic dependency would be difficult to establish in each case. Moreover, the family was a closely knit, intimate social cell bound together by factors which were not always externally apparent. In his own country, for example, parents might still be close to their children while economically independent of them by reason of pensions. It seemed unfair to discriminate against members of the family who were economically self-supporting.

3. His delegation believed that the International Law Commission had been right in not attempting any definition of the term "family" for the purposes of the present draft Convention. Any definition which did not embrace all connotations might be quoted out of context and prove an embarrassment rather than an advantage.

4. His delegation could not support the amendment of Greece (A/C.6/L.758), or the first part of the Colombian amendment (A/C.6/L.755); their adoption would mean that if a member of a special mission fell ill while in the receiving State and needed a member of his family to come and take him home, the family member would not enjoy the same privileges and immunities as those who originally accompanied him. The number of family members who would accompany a member of a special mission would, in

any case, be restricted by such factors as currency regulations.

5. The French amendment (A/C.6/L.756) was unnecessary, because it was covered by general provisions already adopted by the Committee. His delegation would vote against all the amendments submitted and would support the Commission's text of article 39 as it stood.

6. Mr. ROMPANI (Uruguay) said that, in his delegation's view, the provisions of the 1961 Vienna Convention on Diplomatic Relations relating to the families of the members of permanent missions should be applied *mutatis mutandis* in the case of special missions also. Although a permanent diplomatic mission had continuity as an institution, the term of office of its individual members was limited. Consequently, the same problems arose in respect of the families of its members as in the case of special missions.

7. As the Tunisian representative had pointed out, the number of members of the family accompanying a member of a permanent diplomatic mission was automatically limited by such factors as allowances. For practical reasons, therefore, it seemed unlikely that a member of the special mission would wish to take with him an excessive number of relatives. Moreover, in view of the latitude allowed by article 50, it seemed unnecessary to add further specifications to the provisions of article 39, and his delegation could therefore not support any of the amendments submitted. He welcomed the withdrawal of the original French amendment (A/C.6/L.714), first because, as had been made clear in the debate on article 35, it might be desirable for members of a special mission to be accompanied by members of their families not forming part of their households, and secondly because the amendment would have established an unacceptable and discriminatory system of official invitations, and the question of consent was already dealt with in other articles.

8. The restrictive definition of the phrase "members of the family" contained in the original Tunisian amendment (A/C.6/L.754) did not correspond to the concept of the family as understood in his own country's legal system. His delegation could not accept the second sentence of the Tunisian amendment, nor could it have accepted the numerical limitation contained in the second part of the Colombian amendment (A/C.6/L.755).

9. Any definition was inevitably imperfect, and common sense and good faith were essential for the proper implementation of any international convention. The reason for allowing members of the family to accompany members of a mission, whether permanent or temporary, was not the material support they could give, but rather the moral

support. The underlying justification for such a provision was the universally recognized importance of the family as an institution and as a social, economic, spiritual and moral unity.

10. Mr. ANDRIAMISEZA (Madagascar) agreed with the Expert Consultant that it was desirable to try to arrive at some general understanding of the scope of the term "family". In his own country, the concept of the extended family prevailed, and under Malagasy law adopted relatives had equal status with blood relatives and any person of full age could adopt any one else. The term "family" was interpreted differently in different countries, and the amendments to article 39, although laudable in intent, would impose restrictions that seemed somewhat arbitrary.

11. The Greek amendment would deny privileges and immunities to members of the family who did not arrive in the receiving State at the same time as the member of the special mission, and his delegation could not support it. Nor could it support the French amendment. It had been opposed to the original Guatemalan amendment (A/C.6/L.757), which lacked precision and would not cover all cases. However, it had been in favour of the original Tunisian amendment (A/C.6/L.754), which had sufficient flexibility and might be regarded as a satisfactory compromise. His delegation now had some difficulty in accepting the Guatemalan-Tunisian amendment (A/C.6/L.760), because of the reference to economic dependence. That term was inadequately defined, and it would have to be determined in each case how much the member of the special mission contributed to the upkeep of the persons in question, who might well have other sources of income. In any case, there was no justification for according special treatment on grounds of dependency to relatives who would not normally accompany a member of a special mission, and the use of the term "child" in the first sentence of the text seemed inappropriate, since it was normally employed in reference to minors.

12. Mr. MOE (Barbados) said that some limitation should be placed on the number of members of the family to whom privileges and immunities would be granted under the provisions of article 39. However, the remaining part of the amendment of Colombia and the amendment of Greece were too restrictive. The Barbadian delegation interpreted the proviso that the family members concerned should "accompany" the member of the special mission to mean that they should enter the receiving State at the same time as he did. Nor should the matter be left to be agreed with the receiving State, as envisaged in the French amendment, under which the number of family members to whom privileges and immunities were granted could vary according to the circumstances of each case. The part of its amendment which had been withdrawn by the Colombian delegation would have been preferable, because it would have established a definite limit of four family members in all cases.

13. Although his delegation preferred the original Tunisian amendment, it considered that the new joint amendment of Guatemala and Tunisia represented the best approach to the question and clarified the concept of "members of the family". It was not clear, however, if the receiving State would determine whether or not family members were

economically dependent upon the member of the special mission. Subject to that reservation concerning the idea of economic dependence, his delegation would support the joint amendment.

14. Mr. CASTRÉN (Finland) said that his delegation could not support some of the amendments submitted. The most acceptable were the amendment of Colombia, as broadly interpreted by its sponsor, and that of Greece.

15. The Expert Consultant had explained (1126th meeting) that article 39, paragraph 1, should refer only to articles 29 to 34 and not to articles 29 to 35; he had also implied (1127th meeting) that there was no conflict between article 39 and article 35. But the question was whether the exception in article 39 concerning family members who were nationals of or permanently resident in the receiving State also applied to the rule in article 35, paragraph 1 (*b*). Presumably it did not, since the latter was a special rule; the general rule was contained in article 39, paragraph 1. He also wondered whether the provisions in article 39, paragraph 1, meant that family members would enjoy the privilege mentioned in article 35, paragraph 2, provided they were not nationals of or permanent resident in the receiving State. He assumed that would be the case.

16. Mrs. DIKLIĆ-TRAJKOVIĆ (Yugoslavia) thought that the present differences of opinion would not be resolved simply by drafting a definition of the term "members of the family". However, despite the difficulty of evolving a universally acceptable wording, such a definition would be included in article 1. In any case, the legal status of family members depended not on the way in which they were defined but on their legal relationship vis-à-vis the member of the special mission. It would perhaps be possible for the Drafting Committee to work out a definition on the basis of the Greek and Colombian amendments.

17. Those remarks would determine her delegation's position with regard to the various amendments submitted. It would vote in favour of the text of article 39 proposed by the International Law Commission.

18. Mr. CHAILA (Zambia) said that the definition proposed by the delegations of Guatemala and Tunisia was not acceptable to his delegation, because it would not correspond to the concept of the extended family, as it existed in Zambia. The International Law Commission had been right not to attempt a definition of the family; that should be left to municipal law.

19. His delegation could not support the amendments submitted by Colombia and Greece, because they did not make it clear whether the family members had to enter the country at the same time as the member of the special mission. It would vote for the text proposed by the International Law Commission.

20. Mr. DELEAU (France) said that his delegation's amendment was in no way intended to minimize the importance of the family as a social unit. The receiving State would naturally agree to granting privileges and immunities to the wives and close relatives of members of special missions. The amendment was simply intended to cover the case of more distant relations or of persons whose

presence was not connected with the purpose of the special mission. For instance, a gainfully employed son or son-in-law of a person participating in a special mission might wish to take advantage of that person's journey abroad and travel with him for the purpose of making business contacts in the country concerned. Privileges and immunities should not be accorded in such a case, since their sole purpose was to help the person participating in the special mission to perform his duties.

21. Mr. BARTOS (Expert Consultant) explained, in reply to points raised during the discussion, that the International Law Commission had not felt it necessary to include in the text of the Convention provisions concerning the categories of persons mentioned by the representative of Liberia at the 1130th meeting.

22. In reply to the points raised by the representative of Finland, he explained that, in general, family members who were nationals of or permanently resident in the receiving State would be excluded from the privileges and immunities granted under the Convention. Article 39 stated the general rule in that regard. The receiving State could decide, of its own volition, to exempt such persons from customs formalities. In article 35, however, it was not the accompanying family members who were granted such dispensation but the members of the special mission themselves, even in respect of articles belonging to members of their families. Alternatively, family members who were nationals of or permanently resident in the receiving State could be granted certain privileges by the provisions of a convention. Thus, in order to promote the ideal of family unity, article 46 of the Convention, which was based on article 44 of the Vienna Convention on Diplomatic Relations, granted the right to leave the territory of the receiving State to all family members, irrespective of their nationality and even in the case of armed conflict.

23. Mr. ARBELAEZ (Colombia) explained once again that, in his delegation's proposal to amend paragraph 1, the words "accompanying the former or the latter" were to be construed as including members of the family who did not arrive simultaneously with the member of the special mission. Other delegations had indicated their support for that interpretation and it had been suggested that if the proposal was accepted, the Drafting Committee should spell the point out in the text of the article. He agreed that the proposal as it stood raised a drafting problem. Its content was clear, however, and he asked the Committee to vote on it in the light of his explanation.

24. Mr. VALLARTA (Mexico) said that his delegation understood the Colombian representative's statement to mean that the Committee should vote on the substance of the proposal.

25. Mr. HYERA (United Republic of Tanzania) said that his delegation found no general difficulty with the International Law Commission's text, but it was prepared to accept any amendments which might improve it and make easier the application of the future Convention. It would therefore vote in favour of the Colombian proposal with respect to paragraph 1 of the article, on the understanding that the Drafting Committee would give effect to the Colombian representative's explanation if the proposal was

approved. It could not accept any of the other amendments, because none of them met the criteria he had mentioned. In the case of the joint Guatemalan and Tunisian amendment, the notion of family which it would introduce fell short of the African concept of what constituted the family. Much as his delegation would welcome a satisfactory definition of the family, it could not accept one which was based on blood relationship alone. The French amendment would have the effect of denying members of the family something which should be theirs by right. That right should be explicitly stated in the draft Convention, as the International Law Commission had sought to provide. To accept the French amendment would amount to removing article 39 from the future Convention altogether.

Mr. Engo (Cameroon), Vice-Chairman, took the Chair.

26. Miss DAHLERUP (Denmark) said that her delegation would support the French amendment, which aimed at a proper balance between the interests of the sending and receiving States. It would also vote in favour of the Greek and Colombian amendments, in the latter case on the basis of the explanation given by the Colombian representative. With regard to the joint Guatemalan and Tunisian proposal, her delegation preferred the International Law Commission's text; while she found the attempt to define the family commendable, she feared that the rule which the proposal would introduce was too specific.

27. Mr. NJENGA (Kenya) shared the view that the concept of the family differed so much from one part of the world to another that a generally acceptable definition was impossible. It should be left to the receiving State to take the sending State's ideas into consideration. Moreover, the vital principle of reciprocity should be respected. His delegation would therefore oppose the French and Greek proposals and the joint Guatemalan and Tunisian amendment. Nor could it accept the Colombian proposal as clarified by its sponsor; although the idea it contained was not harmful, the acceptance of the proposal might result in difficulties of interpretation. Kenya would therefore support article 39 as it stood, since the International Law Commission's wording represented the most serviceable formulation of the rule.

Mr. Alcívar (Ecuador) resumed the Chair.

28. Mr. SILVEIRA (Venezuela) declared himself fully in sympathy with the views expressed by the Uruguayan representative. His delegation would vote in favour of article 39 as it stood and against all the amendments except the Colombian proposal. In accepting the latter, it would rely on the explanation given by the Colombian representative. His delegation understood the term "members of the families" as denoting those members living under the same roof, as in the 1928 Havana Convention regarding Diplomatic Officers,¹ or forming part of the household, as in the Vienna Conventions on Diplomatic and Consular Relations.

29. Mr. SANTISO GALVEZ (Guatemala) said that his delegation found the French amendment unacceptable,

¹ League of Nations, *Treaty Series*, vol. CLV (1934-1935), No. 3581.

because it made the operation of article 39 subject to the consent of the receiving State. The International Law Commission had been divided on the matter; some members had favoured the requirement of consent and others had opposed it. The purpose of the joint Guatemalan and Tunisian amendment was to facilitate the acceptance of the text proposed by the International Law Commission, which did not provide for consent. It was not its aim to define the family as an institution—a subject on which he fully endorsed the views of the Uruguayan representative—but to establish the meaning of the expression “members of the families” in the context of article 39. The Committee’s task was to produce a Convention which would be workable, and he regarded the joint Guatemalan and Tunisian proposal as a step in that direction. His delegation would support the Colombian amendment, in view of the explanation given by its sponsor, and also the Greek amendment, the substance of which was identical. But article 39 was acceptable to his delegation as it stood and Guatemala would vote in favour of it, regardless of the fate of the amendments.

30. Mr. ROSENSTOCK (United States of America) said that, although the Committee had reached a state where it was considering only a few basic notions which had some support, it was being asked to deal with a large number of amendments, some of which duplicated each other except for fine shades of meaning. He therefore proposed that all the amendments to article 39 should be referred to the Drafting Committee for review and consolidation. That procedure should speed up the Committee’s work and advance the preparation of the Convention.

31. The CHAIRMAN said that all the amendments raised points of substance, and hence they could not be referred to the Drafting Committee until the Sixth Committee had ruled on them. The Committee had already spent three meetings discussing article 39 and would lose time if it had to reconsider amendments after they had been reviewed by the Drafting Committee. He was therefore unable to agree to the United States proposal.

32. Mr. TARASOV (Union of Soviet Socialist Republics), Mr. DADZIE (Ghana) and Mr. MOSCARDO DE SOUZA (Brazil) supported the Chairman’s decision.

33. Mr. ROSENSTOCK (United States of America) said that he did not believe the ruling of the Chair was proper, but that in defence to the Chairman he would not challenge it. He pointed out that the Committee was clearly free to refer any question it wanted to the Drafting Committee.

34. The CHAIRMAN said it had been suggested that the Committee should vote only on the substance of the Colombian proposal. He asked whether the Committee wished to adopt that course.

It was so agreed.

35. The CHAIRMAN invited the Committee to vote in turn on the French amendment, the substance of the Colombian proposal to amend paragraph 1, the Greek amendment and the joint Guatemalan and Tunisian amendment.

The amendment proposed by France (A/C.6/L.756) was rejected by 52 votes to 22, with 11 abstentions.

The substance of the Colombian proposal to amend paragraph 1 (A/C.6/L.755, as amended) was approved by 44 votes to 11, with 26 abstentions.

The amendment proposed by Greece (A/C.6/L.758) was approved by 39 votes to 16, with 31 abstentions.

The Guatemalan and Tunisian amendment (A/C.6/L.760) was rejected by 47 votes to 5, with 37 abstentions.

36. The CHAIRMAN invited the Committee to vote on the text of article 39, as proposed by the International Law Commission, with the modifications introduced as the result of the Committee’s approval of the substance of the Colombian proposal to amend paragraph 1 and its approval of the Greek amendment.

Article 39 as proposed by the International Law Commission, with the modifications approved by the Sixth Committee, was approved by 78 votes to none, with 10 abstentions.

37. Mr. ENGO (Cameroon), explaining his delegation’s vote, said that it had been unable to support the joint Guatemalan and Tunisian amendment, because the definition of the family it would have introduced did not respond to the criteria of the society of which his country formed a part. Cameroon had voted in favour of the article as proposed by the International Law Commission, on the grounds that article 11, paragraph 1(c), provided an adequate safeguard for receiving States with regard to members of the family of members of special missions.

38. Mr. DADZIE (Ghana) said that his delegation had been unable to support any of the amendments, because none of them represented an improvement on the International Law Commission’s text. The Colombian delegation had proposed an amendment and had subsequently explained what it meant. The explanation had sounded reasonable, but there had been no need for the proposal in the first place, since its effect was implied in the Commission’s wording. Furthermore, since the explanation might not be available to those who had to apply the Convention in the future, the rule as amended by the proposal could be interpreted differently. The proposal was therefore dangerous and his delegation had abstained from supporting it.

The meeting rose at 1.5 p.m.