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

*Tribute to the memory of Mr. Mongi Slim, President of the General Assembly at its sixteenth session*

*On the proposal of the Chairman, the members of the Sixth Committee observed a minute's silence in tribute to the memory of Mr. Mongi Slim.*

1. Mr. TRAORE (Ivory Coast), speaking on behalf of the African delegations, Mr. DELEAU (France), speaking on behalf of the group of Western European and other countries, Mr. SANTISO GALVEZ (Guatemala), speaking on behalf of the Latin American delegations, Mr. USTOR (Hungary), speaking on behalf of the socialist delegations, Mr. EL MOULDI (Algeria), Mr. YASSEEN (Iraq), speaking on behalf of the Arab delegations, and Mr. ALLOTT (United Kingdom), paid tributes to the memory of Mr. Mongi Slim, the Tunisian Secretary of State for Justice and a former President of the General Assembly, and asked the Tunisian delegation to convey their condolences to the Government and people of Tunisia.

2. Mr. GASTLI (Tunisia) thanked the members of the Committee for their expressions of sympathy, which he would convey to the Tunisian Government and people.

**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)**

3. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that, in pursuance of the decision taken by the Sixth Committee at its 1039th meeting, the Drafting Committee would start work the following week on the draft preamble and the final clauses of the Convention.

*Article 42 (Settlement of civil claims) (continued)*  
(A/C.6/L.759, A/C.6/L.763)

4. Mr. BADEN-SEMPER (Trinidad and Tobago) thought it would be illogical for the Convention to grant immunity

and then insist that it was the duty of the sending State to waive it. His delegation and a number of other delegations therefore intended to submit a draft resolution, modelled on resolution II of the United Nations Conference on Diplomatic Intercourse and Immunities,<sup>1</sup> which would reflect the substance of draft article 42.

5. The CHAIRMAN said that the discussion of article 42 would be resumed later when the text of the draft resolution had been circulated.

*Article 40 (Nationals of the receiving State and persons permanently resident in the receiving State) (continued)*  
(A/C.6/L.702, A/C.6/L.715, A/C.6/L.762)

6. The CHAIRMAN recalled that it had been decided at the 1132nd meeting to refer the amendments of the United Kingdom (A/C.6/L.702) and France (A/C.6/L.715) to the Drafting Committee; he invited the Sixth Committee to vote on the two parts of the amendment to paragraph 1 of article 40 submitted by the delegation of Argentina (A/C.6/L.762).

*The first part of the Argentine amendment was rejected by 47 votes to 14, with 25 abstentions.*

*The second part of the Argentine amendment was rejected by 56 votes to 8, with 24 abstentions.*

*Article 40, as drafted by the International Law Commission, was approved by 87 votes to 1, with 3 abstentions.*

7. Mr. DERMIZAKY (Bolivia) said he had voted for article 40 on the understanding that it was dependent upon article 10, whose second paragraph specified that nationals of the receiving State might not be appointed to a special mission except with the consent of that State, which might be withdrawn at any time. The Constitution of Bolivia contained an article to the same effect as article 10 of the draft Convention.

8. His delegation had abstained in the vote on the first part of the Argentine amendment, because it believed in the uniform codification of international law; the amendment went further than the provisions of the Vienna Convention on Diplomatic Relations. The Bolivian delegation had voted for the second part of the amendment, because it believed that all acts performed by members of special missions in the exercise of their functions should be regarded as official acts, so that the word "official" in article 40 was superfluous.

<sup>1</sup> See *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, vol. II (United Nations publication, Sales No.: 62.X.1), p. 90.

9. Mr. SILVEIRA (Venezuela) explained that he had voted against article 40, because Venezuela did not grant privileges or immunities to Venezuelan nationals serving in special missions or permanent diplomatic missions. That policy reflected the principle of the equality of all citizens before the law, as embodied in the Venezuelan Constitution.

10. Mr. SANTISO GALVEZ (Guatemala) said he had voted for the first part of the Argentine amendment, because his delegation considered that administrative and technical staff should be covered by the provisions of article 40, paragraph 1. The explanation given by the Expert Consultant had convinced his delegation that the word "official" was not superfluous; not all acts performed by members of special missions in the exercise of their functions could be considered as official acts. His delegation had therefore abstained in the vote on the second part of the Argentine amendment.

11. Mr. AL-ALBAN (Kuwait) said that his delegation had supported the first part of the Argentine amendment on the grounds that administrative and technical staff often performed important duties in a special mission and should be covered by the provisions of article 40, paragraph 1. It had voted for the second part of the Argentine amendment, because the retention of the word "official" could leave the text open to conflicting interpretations.

12. Mr. DEBERGH (Belgium) said that he had voted against the first part of the Argentine amendment, because it would grant certain members of special missions privileges not enjoyed by their counterparts in diplomatic or consular missions. He had voted against the second part of the amendment, because in his view the word "official" was not as redundant as it had been claimed to be.

13. Mr. SHAW (Australia) said that his delegation had voted in favour of approving article 40, on the basis that the United Kingdom and French amendments had been referred to the Drafting Committee as raising only questions of drafting, and that in substance article 40 as drafted by the International Law Commission meant the same as it would mean if the wording proposed by either of those amendments were adopted. The precise wording of article 40 would have to be decided later, after the Drafting Committee had reported on the amendments.

*Article 43 (Transit through the territory of a third State)*  
(A/C.6/L.703, A/C.6/L.716)

14. Mr. DELEAU (France) said that, in view of the adoption by the Committee of a satisfactory definition of the term "special mission", his delegation was withdrawing its amendment (A/C.6/L.716).

15. Mr. ALLOTT (United Kingdom), introducing the amendment in document A/C.6/L.703, said the idea behind the modifications to paragraph 1 was that it might not be reasonable to oblige third States to accord immunities to members of special missions in transit through their territory at all times and in all circumstances. For instance, it might be questioned whether such an obligation should exist in cases where members of a special mission were proceeding to the receiving State by an indirect route or

were stopping in a third State for a holiday. It was true that the corresponding provision in the Vienna Convention on Diplomatic Relations did not specify that diplomatic agents should travel directly in taking up or returning to their posts; in practice, however, the application of that provision was giving rise to certain difficulties. His delegation regarded the provision of the Vienna Convention as implying the kind of qualification now proposed by his delegation for the Convention on Special Missions.

16. With regard to paragraph 4, the sending of special missions was based on the mutual consent of the sending and receiving States. The transit State, however, was in a different position; it had no say in the creation of the special mission and no control over the mission's composition or terms of reference. Accordingly, it was perhaps not enough for the third State simply to acquiesce in the transit; it should give positive consent both to the transit and to the application of the article.

17. His delegation's approach to the text of article 43 was not restrictive. It did not wish to reduce the privileges and immunities which could be granted under its provisions. It simply wished to provoke a discussion of the issues involved, since the existing wording of the article imposed serious obligations on the transit State and should be carefully considered. The United Kingdom delegation would be content if the Committee decided to refer the first part of the amendment to the Drafting Committee and the second part also, if that turned out also to be a matter of drafting.

18. Mr. BARTOS (Expert Consultant), commenting on the first point raised by the United Kingdom representative, said it would be difficult to stipulate that a special mission should travel direct from the sending State to its destination. It might need to take a less direct route. It might also wish to stay in a city located in a third State before going on to the receiving State. To impose a condition regarding the timing and routing of its return journey would be equally difficult. Diplomatic activities presupposed a degree of liberality. For instance, there was the situation where a special mission might have to seek information in another country on its way to or from the receiving State; the existing text would not preclude that, whereas the presence of the word "directly" would. It would therefore be inadvisable to add it.

19. With regard to the United Kingdom's second point, the International Law Commission had thought it would be too rigorous to subordinate the operation of article 43 to the requirement of express consent. It had therefore worded paragraph 4 less stringently, taking the view that advance notice was a sufficient safeguard for the transit State. Two difficulties could arise if express consent was stipulated: the special mission might be refused permission to use the transit State's territory, or it might be permitted to do so but without the necessary privileges and immunities. The Commission's intention had been that the special mission should have those benefits in the transit State; if they were left to the latter's discretion, special missions might frequently be obliged to change their plans and travel by a less convenient air or sea route. The second part of the United Kingdom amendment was therefore inconsistent with the spirit of the Commission's text.

20. Mr. MOSER (Observer for Switzerland) agreed with the United Kingdom representative that the Committee should reflect carefully on article 43. With regard to the addition of the word "directly", Switzerland's view would depend somewhat on whether the condition of express consent was introduced. If it was, a legal obligation that the mission should proceed or return directly would be less necessary, because the transit State, in giving its consent, could always ask that the special mission should pass straight through its territory if it thought it advisable. Switzerland on the whole favoured the introduction of the requirement of express consent, not only for the reasons advanced by the United Kingdom representative but also to exclude the possibility of misunderstandings. If the operation of article 43 was to be dependent on mere notice, disagreement might arise as to how much time should elapse between the giving of notice and the raising of an objection by the transit State. The sending State might have good reason to require a speedy decision. On the other hand, to stipulate express consent would make the article rather rigid and would be out of harmony with present practice. But it had to be remembered that a transit State's existing obligations were not as strict as they would be under the Convention. Since the number of persons involved in a special mission was sometimes greater than those of a permanent mission, article 43 would place a greater burden on transit States than the corresponding provision (article 40) of the Vienna Convention on Diplomatic Relations.

21. To take paragraph 4 as meaning that if the transit State raised an objection it would thereby deny the special mission passage would be too strict an interpretation. He preferred the wider view that an objection would bar only the privileges and immunities. He agreed with the Expert Consultant that the United Kingdom's approach to the paragraph was not in keeping with the intentions of the International Law Commission. But there was a further point: since the Committee had introduced the notion of consent into the definition of a special mission, it could be held that if the receiving State was required to give its consent in order for a group of persons to be recognized as a special mission, a third State should be required to do likewise. That might make it necessary to give effect to the change proposed by the United Kingdom in the second part of its amendment.

22. Articles 18 and 43 were worded quite differently with respect to the position of the third State. In article 18, the obligations towards the special mission resulted from the third State's consent to its activities. In article 43, they arose from an absence of objection or from circumstances of *force majeure*. The situations envisaged by the two articles were therefore quite different and justified the different formulations.

23. He drew attention to article 28, paragraph 3, which the Committee had introduced into the International Law Commission's draft at the twenty-third session.<sup>2</sup> He thought that the condition stipulated in that paragraph should also apply to special missions in transit.

<sup>2</sup> For a summary of the Sixth Committee's work on article 28 at the twenty-third session of the General Assembly, see *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 85, document A/7375, paras. 212-220.

24. Finally, he referred the Committee to paragraph (2) of the Commission's commentary on article 39 of its earlier set of draft articles on special missions.<sup>3</sup> That article had been the predecessor of the present article 43, but the Commission's comments on the latter did not include the paragraph he had mentioned. Nevertheless, the Committee having adopted article 40, the view the paragraph expressed was again valid.

25. Mr. ENGO (Cameroon) said that, while he agreed with the United Kingdom representative that article 43 should be considered with the utmost care, the United Kingdom amendment was unacceptable to his delegation. The first part would raise considerable difficulties in the light of the practical realities of modern travel. It was not always easy to decide which of a number of alternate routes should be regarded as "direct". Moreover, a State might find it advisable to avoid sending a special mission through a country with which it did not maintain diplomatic relations or where a state of belligerency prevailed. Purely personal considerations, such as climate, might also be a decisive factor in determining an itinerary. For the purposes of the draft Convention, it should be sufficient to rely on the good faith of all concerned to ensure that the travel arrangements for special missions were reasonable.

26. The second part of the United Kingdom amendment would make the procedure of sending special missions too cumbersome and involve a whole new series of negotiations and communications. In modern diplomacy, speed was often of vital importance. His delegation preferred the less rigid text prepared by the Commission, which provided for due notification to any third State through which a special mission would pass. The requirement of express consent would also raise difficulties where the sending State did not maintain diplomatic relations with the third State, and in the case of an emergency landing in a third State, it could mean that a special mission might not be accorded the respect due to it. It should also be borne in mind that the situation provided for in article 43 was quite different from that dealt with in article 18, and the two should not be confused.

27. Mr. ROSENSTOCK (United States of America) said that his delegation had assumed that the travel referred to in article 43 meant travel by the most direct route. It would therefore have no difficulty in voting in favour of the first part of the United Kingdom amendment, since it clarified a point which was already implicit. It would be unreasonable to expect that a diplomat travelling on official business who made a detour to a third country for purely personal reasons should enjoy full diplomatic privileges and immunities in that third country, nor did his delegation agree that the inclusion of the word "direct" would cause confusion. An analogy might be drawn with the United States Government's policy of reimbursement for travel expenses incurred in the line of official duty. If a Government representative decided to take a vacation *en route*, the cost of the detour must be paid for out of his own pocket. Article 43 was not intended to cover situations where members of a special mission interrupted their itinerary for the purpose of official consultations, because that situation was already expressly covered by another article.

<sup>3</sup> See *Yearbook of the International Law Commission, 1965*, vol. II (United Nations publication, Sales No.: 66.V.2), p. 189.

28. Since the Commission's text of article 43, paragraph 4, already provided that the third State must be informed in advance of the transit of the special mission and must give its tacit consent, he did not feel that the requirement of express consent would raise insuperable difficulties. It would be merely an added precaution designed to ensure that the third State was duly informed of the relevant facts when it was required to extend privileges and immunities to members of a special mission and could clearly be said fully to comprehend the nature of its acts. His delegation did not believe that the United Kingdom amendment entailed a change of substance; it merely served to strengthen and clarify the Commission's text. His delegation was therefore ready to vote in favour of it. Alternatively, the amendment might be referred to the Drafting Committee, with a view to ascertaining whether or not it was necessary.

29. Since the Drafting Committee had already decided that the word "accompany" in article 35 also covered the situation of persons travelling to join a member of a special mission, his delegation felt that the words "or travelling separately to join him or to return to their country", at the end of article 43, paragraph 1, were unnecessary, since that concept was already implicit in the term "accompanying". The suggestion did not involve any change of substance, and he would raise the question in the Drafting Committee.

30. Mr. KOLESNIK (Union of Soviet Socialist Republics) welcomed the withdrawal of the French amendment, which

would help to expedite the Committee's work. With regard to the United Kingdom amendment, he fully agreed with the Expert Consultant that it was not in keeping with the spirit and purposes of the draft Convention. It would create unnecessary difficulties and complications.

31. The concept of what constituted "direct" travel was relative, and, where a number of alternative routes were possible, the insertion of the word "directly" in article 43, paragraph 1, might give rise to arbitrary interpretation.

32. With regard to the second part of the United Kingdom amendment, it seemed unnecessary to lay down the condition that a State Party to the Convention should have expressly consented to the application of the provisions of article 43, since that would naturally be assumed. There was also the risk that, if the United Kingdom amendment was adopted, paragraph 4 might be interpreted as meaning that a third State could arbitrarily decide whether or not to allow a particular special mission transit through its territory. It was clear from paragraph (2) of the International Law Commission's commentary on article 43 that under the terms of the article as at present worded a third State would not be obliged to give its consent to the transit of special missions through its territory, so that there would be no question of imposition. His delegation would vote in favour of the Commission's text of article 43 as it stood.

*The meeting rose at 1 p.m.*