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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 50 (*Non-discrimination*) (*continued*) (A/C.6/L.767)**

1. The CHAIRMAN called on the Sixth Committee to continue its consideration of article 50 of the International Law Commission's draft and the compromise text contained in the relevant working paper introduced by Italy at the 1140th meeting (A/C.6/L.767).

2. Mr. SANTISO GALVEZ (Guatemala) said that, after having opposed the motion for closure of the debate on article 50 the day before, he would now like, since that motion had been rejected, to give his views on the text of the working paper introduced by Italy and on the important amendment to sub-paragraph (b) of paragraph 2 of that text proposed orally by the Iraqi representative.

3. His delegation was surprised that those delegations which had opposed sub-paragraph (c) of paragraph 2 of article 50 of the International Law Commission's draft now accepted the text introduced by the Italian representative, since the latter merely reproduced the substance of the provisions contained in sub-paragraphs (b) and (c) of paragraph 2 of draft article 50, with an additional reservation. The merging of those provisions in no way altered their scope, and his own delegation, for the same reasons as those given by other delegations, could accept the proposed compromise text only if the Iraqi oral amendment, which would add the words "with a view to either increasing or reducing them" after the words "special missions" in paragraph 2 (b), was approved.

4. Mr. DERMIZAKY (Bolivia) said that his delegation regarded the draft Convention, in the form in which it had been drawn up by the International Law Commission, as being sufficiently flexible to satisfy most countries and had therefore supported the provisions which it contained and had opposed the changes of substance proposed. His delegation did not consider paragraph 2 (c) of article 50 to be at variance with the spirit or the letter of the draft Convention as a whole, since that provision, in the same

way as article 41 of the Vienna Convention on the Law of Treaties, was simply based on the principle, generally accepted in international law, whereby two States could agree upon reciprocal restrictions in the application of a convention or treaty without necessarily going beyond the framework of the instrument. It would nevertheless vote for the text given in the working paper introduced by the Italian representative, since it was very close in substance to the original text of the article. Since paragraph 2 (b) of the text of the working paper involved modifications rather than restrictions, the Iraqi oral amendment did not appear to be at all necessary.

5. Mr. SOFIANOPOULOS (Greece) indicated that he had no difficulty in accepting the amendment proposed by the Iraqi representative and said that the phrase "although such a modification has not been agreed with other States" might be construed as meaning that two States could not modify the extent of facilities, privileges and immunities enjoyed by their special missions unless they had already agreed on such a modification with other States. He therefore proposed the deletion of that phrase in both paragraph 2 (b) of the text introduced by the Italian representative and paragraph 2 (c) of the International Law Commission's text. Moreover, he considered that the expression "the object and purpose of the present articles" was unclear and that it lent itself to various interpretations or even misunderstandings which might jeopardize friendly relations between States. Apart from the fact that it could be maintained that, in principle, any modification of the extent of the privileges and immunities provided for in the Convention was incompatible with the object and purpose of the Convention, it might be asked what would happen if such a modification, agreed between two States, was regarded by other States as incompatible with the object and purpose of the Convention. Since no sanction was laid down in the Convention itself, the question arose whether, in such a case, one of the two States might hold the modification to be invalid in order to escape its commitments and whether a third State, party to the future Convention, would have to request the International Court of Justice to nullify such a modification or whether, on the other hand, it could make use of the modification to claim an advantage.

6. However that might be, his delegation saw no reason why the interested States should not be given the possibility of specifying, under a bilateral agreement, the extent of the privileges and immunities which their special missions would enjoy in certain particular cases. In that respect, it should be stressed that, so far as possible, the provisions of an international convention should not lend themselves to divergent interpretations and that the clarity and simplicity of the text were the best guarantees of its acceptance by the largest possible number of States. Since

the last phrase of paragraph 2 (*b*) of the text in the working paper introduced by Italy might also give rise to difficulties, it was his delegation's view that, in the interest of clarity and for practical considerations, the second part of sub-paragraph (*b*), beginning with the words "although such a modification . . .", should be deleted.

7. Mr. KIRCHSCHLAEGGER (Austria) said that his delegation supported the International Law Commission's wording of article 50, although it considered that the provisions contained in the sub-paragraphs of paragraph 2 of that article were all self-evident. In view of the risk of misunderstanding which the deletion of one of the those sub-paragraphs would entail, the compromise formula in the working paper introduced by the Italian representative was welcome. However, the Sixth Committee's attention should be drawn to the fact that only paragraph 1 of article 50 and, with certain reservations, paragraph 2 (*a*) had a real bearing on non-discrimination, since the rest of the article, i.e. paragraph 2 (*b*) of the compromise text and paragraph 2 (*b*) and (*c*) of the International Law Commission's text, related exclusively to the relations between the future Convention on Special Missions and other international agreements. It sufficed, in that respect, to refer to article 72 of the Vienna Convention on Consular Relations and to recall that paragraph 1 of article 41 of the Convention on the Law of Treaties, on which the compromise text was based, had not been discussed at Vienna from the standpoint of non-discrimination. Consequently, he suggested that the Drafting Committee should consider whether article 50 should be split up into two articles, one dealing with non-discrimination and the other with the relations between the future Convention and other international agreements, or whether it would be better to keep article 50 in its present form, changing only the title to bring it into line with the contents.

8. Mr. POTOLOT (Central African Republic) said that he was afraid that the idea introduced in sub-paragraph (*c*) of paragraph 2 of article 50 was incompatible with the spirit of the draft Convention, inasmuch as that provision would make it possible to derogate, under bilateral agreements, from the system of facilities, privileges and immunities provided for by the Convention; that was why his delegation had requested a separate vote on that sub-paragraph. However, it supported the compromise text introduced by Italy, since it afforded various guarantees which were lacking in the International Law Commission's draft. Finally, his delegation considered that the Iraqi oral amendment, without changing the substance of the text, added a degree of precision that was needed in view of the somewhat vague nature of the word "modification"

9. Mr. NALL (Israel) said that both article 50 of the International Law Commission's draft and the proposed compromise text would inevitably lead to serious difficulties, owing to their inherent inconsistency. Paragraph 1 of both texts related to non-discrimination between States, whereas the reference should be to non-discrimination between special missions. In fact, article 47 of the 1961 Vienna Convention and article 72 of the 1963 Vienna Convention, from which article 50 of the draft was derived, were based on the principle of reciprocity and the permanent nature of diplomatic missions and the uniformity of their activities, whereas special missions were of an *ad*

*hoc* temporary nature and carried out an extremely wide range of tasks. Consequently, paragraph 1 of article 50 should proclaim that there would be no discrimination among the various special missions sent by States to another State in order to accomplish a specific task of common interest to the sending States and the receiving State.

10. Moreover, the case provided for in article 50, paragraph 2 (*a*), was unlikely to arise in practice, since special missions were sent by one State to another only from time to time and for a specific purpose. If the receiving State's right specified in that paragraph was based on the idea of retaliation, it was devoid of all moral justification and certainly should not be included in the Convention. In any event, when the sending State sought the consent of the receiving State to the dispatch of a special mission, it could always stipulate that the receiving State must observe the provisions of the Convention; violation might lead to the withdrawal of the special mission, placing the receiving State in a difficult position.

11. His observations also applied to the proposed compromise text, which did not differ substantially from the wording proposed by the International Law Commission except for the clause beginning with the words "provided it is not incompatible . . .". His delegation did not, however, object to that text.

12. Mr. BARTOS (Expert Consultant) said that the text introduced by the Italian representative brought in a completely new idea, which had not been discussed by the International Law Commission, namely, that agreements modifying the extent of facilities, privileges and immunities accorded to special missions must not be incompatible with the object and purpose of the Convention, a stipulation aimed at safeguarding the provisions of the Convention by restricting the freedom of States. It was difficult to determine just what the object and purpose of the future Convention was. In his view, it was to enable special missions to exercise their functions in complete independence, but even that minimum goal was not clearly defined. The Commission had included sub-paragraph (*c*) of paragraph 2 in its draft at the insistence of certain States which had maintained that the rule on the facilities, privileges and immunities of special missions belonged not to *jus cogens* but to *jus dispositivum* and that the extent of such facilities, privileges and immunities was a matter for the States concerned to settle between themselves. Furthermore, the Commission had drawn up its draft articles before the Convention on the Law of Treaties had come into existence, and that was why the two texts differed. The Sixth Committee should make the future Convention on Special Missions consistent with the Convention on the Law of Treaties. The proposal introduced by the Italian representative constituted a justifiable effort to express the ideas contained in article 41 of the Convention on the Law of Treaties.

13. The Iraqi representative's oral amendment, in his view, served to remove all uncertainty from the interpretation of the future Convention, since paragraph 2 (*b*) of the text introduced by Italy was a synthesis of paragraphs 2 (*b*) and 2 (*c*) of the text adopted by the International Law Commission, dealing with the two ideas of expanding and restricting the facilities, privileges and immunities of special missions. Nevertheless, he did not consider it absolutely

necessary to state the idea of that oral amendment explicitly in the text introduced by Italy, which already contained it implicitly. It would suffice to make that idea clear in the summary records of the Sixth Committee.

14. Mr. YASSEEN (Iraq) said that the Expert Consultant had expressed his thoughts exactly. The purpose of his oral amendment had been to clarify the meaning of the term "modification"; he felt that since the amendment related only to the wording, it need not be put to the vote and it would be enough if the Sixth Committee referred the matter to the Drafting Committee.

15. Mr. CAPOTORTI (Italy) agreed that the Iraqi oral amendment could be referred to the Drafting Committee. The suggestion made by the Tunisian representative of the 1140th meeting with regard to paragraph 2(b) of the proposal introduced by Italy might be handled in the same way.

16. The CHAIRMAN invited the Committee to vote on the new text of article 50 introduced by Italy in its working paper, on the understanding that the Iraqi, Uruguayan, Guatemalan, Tunisian, Greek and Austrian representatives' comments on the wording of that article would be considered by the Drafting Committee.

*The new text of article 50 contained in the working paper introduced by Italy (A/C.6/L.767) was approved and referred to the Drafting Committee, by 81 votes to 1, with 9 abstentions.*

17. Mr. ROSENSTOCK (United States of America), speaking in explanation of his vote, said that his delegation did not consider article 50 absolutely essential. It would have voted for the International Law Commission's text even though it thought that paragraph 2(c) of that text was unnecessary. However, the combining of paragraphs 2(b) and 2(c) in the text just approved did not seem likely to add to the clarity of the draft; his delegation had therefore abstained from voting. It believed that the rules enunciated in the draft Convention belonged to *jus dispositivum* and that the only essential rule was to ensure the functioning of the special missions; for that reason article 50 did not, in its view, facilitate an understanding of the problem.

18. Mr. ROMPANI (Uruguay) said that his delegation had voted against the text just approved, because that text had failed to take account of his earlier comments.

19. Mr. PERSSON (Sweden) said that his delegation had voted for the text introduced by the Italian representative, on the understanding that States remained free to specify as they saw fit the status of the special missions they sent to one another. He felt obliged to make that clarification, because there had been no vote on the Iraqi oral amendment, the substance of which his delegation supported.

*The meeting rose at 12.10 p.m.*