



CONTENTS

	Page
Agenda item 87:	
Draft Convention on Special Missions (<i>continued</i>)	217

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 and
Corr.1, A/C.6/L.747)**

Article 51 (Settlement of disputes) (continued)
(A/C.6/L.766, A/C.6/L.769 and Add.1)

1. The CHAIRMAN reminded the Committee that at the 1145th meeting it had rejected a motion by the Australian representative that priority should be given in the voting to the Swiss amendment (A/C.6/L.766). He invited those delegations wishing to do so to explain their votes before the vote was taken on the sub-amendment (A/C.6/L.769 and Add.1).

2. Mr. ROSENSTOCK (United States of America) said that his delegation continued to think that the optional protocol system was generally obsolete and that in the present case it was merely a palliative which could not ensure that law and justice prevailed between States in connexion with the settlement of disputes; rather, by appearing to meet the need, it would deceive some into thinking no more was necessary to replace the rule of the strong by the rule of law. His delegation would vote against the sub-amendment on the grounds that the machinery it proposed did not seem sufficiently effective, and in order to have the opportunity of voting on the preferable formula submitted by Switzerland.

3. His delegation wished to express its increasing concern at the use to which the rules of procedure were being put, and in particular at the technique of describing a proposal as a sub-amendment, solely in order to have it voted on before the amendment it was supposed to modify, when in fact it had nothing in common with that amendment. His delegation shared the views of the Australian representative (1145th meeting) in that respect and, while hoping that any future use of the rules of procedure would be consistent with their spirit and letter, it counted on the Chairman to ensure, as was his duty, that their provisions were interpreted correctly and fairly.

4. Mr. GARCIA ORTIZ (Ecuador) said that in Latin America the principle of the peaceful settlement of disputes

had been laid down as early as 1826 at the Congress of Panama. His delegation had therefore welcomed the two proposals which had been submitted on the subject of the disputes to which the future Convention could give rise. It preferred the sub-amendment, however, on the grounds that the machinery it proposed seemed more in keeping with the existing state of international law than the system contemplated in the Swiss amendment; the latter was really an ideal, which it could only be hoped would be realized at the earliest possible opportunity. Moreover, some delegations had expressed reluctance at the insertion in the draft Convention of a provision stipulating the compulsory jurisdiction of the International Court of Justice in the event of a dispute, apparently because of the Court's present Rules of Procedure and structure. His delegation would therefore vote for the more practical and realistic solution proposed in the sub-amendment.

5. Mr. DABIRI (Iran) regretted that he could not support the Swiss delegation's initiative, although he appreciated its merits. Iran's attitude concerning the compulsory jurisdiction of the International Court of Justice had been explained at the United Nations Conference on the Law of Treaties. He would vote for the sub-amendment, which offered a happy solution in keeping with the existing state of international law.

6. Mr. MUTUALE (Democratic Republic of the Congo) said that the 1961 and 1963 Vienna Conventions on Diplomatic and Consular Relations, on which the draft Convention was based, contained no compulsory provision regarding the settlement of disputes which could arise out of their application or interpretation. He saw no reason why States should adopt a different solution in the present case. He was therefore unable to support the Swiss proposal and would vote for the sub-amendment.

7. Mr. ALVAREZ TABIO (Cuba) said that he fully understood the reasons which had prompted the Swiss delegation to submit its amendment, but he could not accept a compulsory rule which could not be adapted to each individual case. Nor could he accept the sub-amendment, and he would abstain if it was put to the vote.

8. Miss DAHLERUP (Denmark) said that she would prefer the solution proposed in the Swiss amendment. Since the sub-amendment had to be voted on first, she would be forced to abstain from voting on it, whereas if the procedure had been different she could have voted in favour of it.

9. Mr. SOLHEIM (Norway) said that his Government's position had been explained at the United Nations Conference on the Law of Treaties. Since Norway approved of the compulsory jurisdiction of the International Court of

Justice, he would vote in favour of the Swiss amendment if it was put to the vote. He deplored the procedure which had been followed, since it prevented many delegations from pronouncing in favour of the solution proposed by Switzerland. If the Swiss amendment had been voted on first and had then been rejected, he could have voted in favour of an optional protocol.

10. Mr. ESPEJO (Philippines) said that in his view the International Court of Justice was perfectly competent to rule on the problems covered by the new article 51 proposed by Switzerland and that the solution the article envisaged met the needs of the modern world. His delegation, which had supported a similar proposal at the United Nations Conference on the Law of Treaties, would vote against the twelve-Power sub-amendment.

11. Mr. KOSTOV (Bulgaria) said that some delegations, in order to justify the theory of the compulsory jurisdiction of the International Court of Justice, had invoked the obligation to settle disputes by peaceful means as laid down in the Charter. No one questioned that obligation, but States were nevertheless free to choose the most appropriate means of settlement. That freedom of choice was important, and he would therefore vote against the Swiss proposal and in favour of the sub-amendment.

12. Mr. BREWER (Liberia) said that Liberia had accepted the compulsory jurisdiction of the International Court of Justice and would vote in favour of the Swiss proposal, because it offered the best means of settling any disputes arising out of the future Convention. However, as he was unwilling to oppose the wishes of those who would prefer an optional protocol, he would vote in favour of the sub-amendment if necessary.

13. Mr. SOFIANOPOULOS (Greece) said he would have voted in favour of the Swiss proposal had it been voted on first. He would abstain from voting on the sub-amendment.

14. Mr. DELEAU (France) said he would vote in favour of the Swiss proposal; its flexibility could satisfy the needs of States in each individual case and would permit recourse to arbitration or conciliation. He was surprised at the unusual procedure followed, which had prevented some States from expressing their views on the substance of the matter. However, in a spirit of compromise, his delegation would vote in favour of the solution proposed in the sub-amendment.

15. Mr. EL-ATTRASH (Syri.) said that no delegation doubted the intrinsic value of the Swiss proposal nor the good intentions which had prompted it. The reason why his delegation opposed the inclusion of the proposed provisions in the draft Convention was that it seemed inappropriate at the present stage to provide for the compulsory acceptance of the jurisdiction of the International Court of Justice for the settlement of disputes concerning its application or interpretation. The problem had been discussed at length at Vienna, and it seemed pointless to reopen a question affecting the sensibilities of many States which regarded it as an infringement of their national sovereignty to be bound in advance. Article 33 of the Charter established the principle of the free choice of peaceful means for the settlement of disputes. It was possible to respect the

International Court of Justice and believe in the ability and integrity of the judges comprising it without leaving matters to the Court unconditionally. His delegation hoped that the sub-amendment it had co-sponsored would be accepted by the majority in a spirit of compromise and also because the solution it proposed had been adopted in the past in identical situations.

16. Mr. FREER (Costa Rica) said that his country was one of the main advocates of the establishment, within the Central American Common Market, of a court of justice having compulsory jurisdiction for all disputes which might arise between its member States concerning the application of the juridical instruments of Central American economic integration. His delegation must therefore give its firm support to the proposal to introduce into the actual text of the draft Convention on Special Missions an article vesting compulsory jurisdiction in the International Court of Justice for the settlement of all disputes concerning the interpretation or application of that Convention. It felt that the text of the future Convention constituted a perfectly suitable means of initiating a process by which the principle of the Court's compulsory jurisdiction would be extended—a principle particularly favourable to small States such as Costa Rica. It would therefore vote for the new article 51 proposed by Switzerland. It would have preferred the Committee to vote on that text first, to give delegations the opportunity, should it fail to be adopted, of voting for the solution offered by the sub-amendment. Since the Committee had decided to vote on the latter text first, his delegation would unfortunately be obliged to vote against it in order to signify its preference for the inclusion of the principle of compulsory jurisdiction of the International Court of Justice in the actual text of the Convention.

17. Mr. EL HUSSEIN (Sudan) said that his delegation was one of the sponsors of the sub-amendment. He would like first of all to thank the Swiss delegation for its initiative; his country was a signatory of the Statute of the International Court of Justice and it therefore agreed entirely with the principle, inherent in the Swiss proposal, that disputes should be settled by peaceful means. However, should that proposal be adopted, many countries would be prevented from acceding to the future Convention, since less than half the members of the United Nations had accepted the compulsory jurisdiction of the International Court of Justice. Moreover, the Sixth Committee was attempting to codify international law relating to special missions, and it would clearly be difficult to incorporate a provision on the compulsory settlement of disputes in the instrument which the Committee was in the process of drafting, since no rule of customary law was involved. That was why, in a spirit of compromise, some delegations, his own included, had submitted their sub-amendment for annexing to the future Convention an optional protocol similar to those attached to the Vienna Conventions on Diplomatic and Consular Relations.

18. Mr. MANNER (Finland) said he had already expressed his support (1144th meeting) for the new article proposed by Switzerland, and his delegation still preferred it to the solution of attaching an optional protocol to the future Convention. Since the Committee had decided to vote on the sub-amendment first, his delegation would abstain from voting on that text, which it regarded as a makeshift solution.

19. Mr. LIANG (China) said that his delegation supported the new article proposed by Switzerland and would abide by the principle it had upheld in its previous intervention (1144th meeting). It would therefore vote against the optional protocol. However, he reserved his country's position on that protocol in the event of its being adopted.

20. Mr. ADJIBADE (Dahomey) said that his delegation could not support the new article 51 proposed by Switzerland, for several reasons: first, Dahomey could not undertake in advance to accept the compulsory jurisdiction of the International Court of Justice, since it did not know the type or scope of the disputes which might arise from the application of the future Convention; secondly, Dahomey was a small State with limited means and substantial resources were required to bring a dispute before the International Court of Justice; finally, Dahomey had at its disposal various means of recourse at the regional level within the framework of the Organization of African Unity, to which it would prefer to resort rather than to the International Court of Justice. His delegation would therefore vote for the optional protocol proposed in the sub-amendment, but its vote should not be construed as meaning that Dahomey wished to evade the jurisdiction of the International Court of Justice or to see that body reduced to the status of a mere figurehead. His delegation would therefore abstain from voting on the new article 51 proposed by Switzerland.

21. Mr. PERSSON (Sweden) expressed his regret that the Committee was unable to vote first on the Swiss amendment. His delegation preferred it and would abstain from the vote on the sub-amendment.

22. Mr. SPACIL (Czechoslovakia) said that whenever the question of the settlement of potential disputes arose in connexion with the conclusion of an international convention, Czechoslovakia, while respecting the competence of the International Court of Justice, followed the principle of rejecting its compulsory jurisdiction. In keeping with that principle and in the conviction that States should retain their freedom of choice with regard to the mode of settlement of their disputes, his delegation would vote against the Swiss amendment. It would vote in favour of the sub-amendment, but without prejudging the Czechoslovak position on the optional protocol itself.

23. Mr. Krishna RAO (India) objected to the criticisms made against the procedure followed, which was in fact perfectly regular and strictly in keeping with the rules of procedure. However, in a spirit of co-operation, the sponsors of the sub-amendment wished to propose that the meeting should be suspended for consultations with a view to finding a means of removing the difficulties created for some delegations by the voting order adopted.

24. The CHAIRMAN pointed out that, at the 1145th meeting, the Australian motion that the Committee should vote on the Swiss amendment first had been rejected. However, he was prepared to grant the request for adjournment, in order to facilitate the Committee's work.

The meeting was suspended at noon and resumed at 12.30 p.m.

25. Mr. Krishna RAO (India) announced that most of the sponsors of the sub-amendment had agreed that the Committee should vote on the Swiss amendment first. He wished to make it clear that that decision was not due to any pressure but was dictated by the wish to enable the advocates of the solution proposed by Switzerland to vote for it. He emphasized that the attitude adopted on that occasion could not be regarded as constituting a precedent.

26. Mr. MOSCARDO DE SOUZA (Brazil) said that his delegation was a sponsor of the sub-amendment and he deplored the attitude of those who had given in to certain Powers which wished to exercise a kind of veto on the Committee's decisions. The decision adopted by the Committee at its 1145th meeting seemed to him to be perfectly justified.

27. Mr. POLLARD (Guyana) said he had reservations with regard to the propriety of the procedure. No State should be entitled to veto the Committee's decisions.

28. Mr. CHAILA (Zambia) said that he, too, had reservations of principle with regard to the procedure being proposed. He was afraid that a dangerous precedent might be created, especially since most of the criticisms which appeared to have prompted the change had been made by one major Power.

29. The CHAIRMAN invited the Committee to vote, under rule 124 of the rules of procedure of the General Assembly, on the Indian representative's proposal that the Committee should reverse the decision it had taken at the 1145th meeting and vote on the Swiss amendment before the sub-amendment.

The result of the vote was 48 votes in favour and 19 against, with 26 abstentions.

The Indian proposal was adopted, having obtained the required two-thirds majority.

30. Mr. ROMPANI (Uruguay) explained that he had voted against the Indian proposal because, although the Swiss amendment appeared preferable to the method proposed in the sub-amendment, he thought that only exceptional circumstances could justify a Committee's reversing a decision it had reached in a regular manner.

31. Mr. OGUNDERE (Nigeria) said he had voted for the Indian proposal because it was reasonable that delegations should be given the opportunity to express their preferences. In addition, subject to the rules of procedure, the Committee should be able to choose whatever procedure it considered most appropriate for deciding on any matter. However, in the circumstances, it would have been preferable for the Committee to vote on the two proposals at the same time, indicatively in the case of the Swiss amendment and formally in the case of the sub-amendment.

32. Mr. DADZIE (Ghana) pointed out that the Indian proposal had not been made as a result of any pressure brought to bear on the sponsors of the sub-amendment, but because in a laudable spirit of co-operation and compromise the sponsors had considered it the best means of facilitating the work of the Committee. In his view, the procedure was

in strict conformity with the rules of procedure, and he protested against the unjustified criticisms made.

33. Mr. POLLARD (Guyana) said he had been unable to support the Indian proposal, because he saw no reason why the Committee should reverse the decision it had taken at the 1145th meeting. However, in principle, he was in favour of putting the Swiss proposal to the vote first.

At the request of the representative of Panama, the vote on the Swiss amendment was taken by roll-call.

Syria, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Australia, Austria, Barbados, Belgium, Canada, China, Colombia, Costa Rica, Denmark, Finland, France, Greece, Guyana, Iceland, Ireland, Israel, Italy, Ivory Coast, Japan, Liberia, Mexico, Netherlands, New Zealand, Norway, Pakistan, Philippines, Portugal, Senegal, Sweden.

Against: Syria, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela, Yemen, Yugoslavia, Zambia, Afghanistan, Algeria, Argentina, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Czechoslovakia, Ethiopia, Ghana, Guatemala, Haiti, Hungary, India, Indonesia, Iran, Iraq, Kenya, Kuwait, Lebanon, Libya, Madagascar, Mali, Mauritania, Mongolia, Morocco, Nepal, Niger, Nigeria, Panama, Poland, Romania, Saudi Arabia, Sierra Leone, South Africa, Southern Yemen, Sudan.

Abstaining: Togo, Trinidad and Tobago, Uganda, Chile, Cyprus, Dahomey, Ecuador, Jamaica, Peru, Rwanda, Spain.

The Swiss amendment (A/C.6/L.766) was rejected by 53 votes to 33, with 11 abstentions.

At the request of the representative of Zambia, the vote on the sub-amendment was taken by roll-call.

Honduras, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Lebanon, Liberia, Libya, Madagascar, Mali, Mauritania, Mexico, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Philippines, Portugal, Romania, Rwanda, Saudi Arabia, Sierra Leone, South Africa, Southern Yemen, Spain, Sudan, Sweden, Syria, Togo, Trinidad and Tobago, Tunisia, Uganda, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Venezuela, Yemen, Yugoslavia, Zambia, Afghanistan, Algeria, Argentina, Australia, Austria, Barbados, Belgium, Brazil, Bulgaria, Burma, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Congo (Democratic Republic of), Costa Rica, Cyprus, Czechoslovakia, Dahomey, Denmark, Ecuador, Ethiopia, Finland, France, Ghana, Guatemala, Guyana, Haiti.

Against: None.

Abstaining: Pakistan, Panama, Peru, Poland, Senegal, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, Byelorussian Soviet Socialist Republic, Congo (Brazzaville), Cuba, Greece.

The sub-amendment (A/C.6/L.769 and Add.1) was approved by 84 votes to none, with 13 abstentions.

The meeting rose at 1.15 p.m.