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CONTENTS

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.747, A/C.6/L.751/Add.5 and 6, A/C.6/L.773, A/C.6/L.775-777)

Final clauses (continued)

1. Mr. MANNER (Finland), speaking in explanation of his vote at the preceding meeting, said that, in view of the general aims and principles which should govern the progressive development of international law and in view of the nature of the Convention on Special Missions, agreement concerning accession to the Convention would have been highly desirable. His delegation wished to stress its view that in questions of that kind the principles of universality and equal treatment should apply with regard to all States. It had therefore hoped that the Drafting Committee could agree on a single formula acceptable to all members of the Sixth Committee; however, since no such agreement had been reached in the Drafting Committee, his delegation would have preferred to postpone the question until a formula acceptable to all could be found. In the circumstances, his delegation had abstained in the votes on all the proposals contained in the report of the Drafting Committee on the final clauses (A/C.6/L.773).

2. Mr. MARTINEZ MORCILLO (Spain) said that his delegation had always upheld the principle that multilateral treaties aimed at encouraging the progressive development of international law and its codification in accordance with Article 13 of the Charter of the United Nations should be open to as many States as possible. Since the draft set of final clauses submitted by France, the United Kingdom and the United States reflected the Vienna Conventions on Diplomatic and Consular Relations, his delegation had voted for that draft, in order to make the instruments which gave positive legal force to modern diplomatic law as uniform as possible.

3. Mr. GONZALEZ GALVEZ (Mexico) said that his delegation had based its final choice on the fact that the formula just adopted by the Sixth Committee for the final clauses had been adopted by the two existing international instruments in that field. As the Uruguayan representative and the Expert Consultant had pointed out, the Convention was the third in a series of four international instruments establishing very similar rules and principles relating to the same general subject. Mexico remained firmly convinced, however, that not only treaties on such matters as disarmament or the regulation of questions concerning outer space but all treaties which dealt with the codification and progressive development of international law, or the object and purpose of which were of interest to the international community as a whole, should be open to participation by all States, as was recognized by the first preambular paragraph of the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties (see A/7592, explanatory memorandum, para. 5).

4. During the debate, some delegations had maintained that the admission of a "political entity" to membership in the United Nations or to participation in a treaty implied recognition of that entity as a State by Member States or by States parties to that treaty. In his view, however, that argument was not very clear and had no foundation in United Nations or League of Nations practice. He cited the opinion expressed on that question by the Secretary-General of the United Nations in 1950.[1] As to the question how the accession of a "political entity" to a treaty would affect the question of recognition, it was particularly important to note the position taken by the United States when the German Democratic Republic had signed the Moscow Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water.[2]

5. Mr. KUTB (Southern Yemen) said that his delegation was firmly convinced of the importance of the principle that multilateral treaties which dealt with the codification and progressive development of international law, or the object and purpose of which were of interest to the international community as a whole, should be open to universal participation. Such participation was an essential goal, because it could have a decisive effect on the

1 See *Official Records of the Security Council, Fifth Year, Supplement for 1 January through 31 May 1950*, document S/1466.

2 The view of the Government of the United States, expressed in notes dated 16 August 1963 and 24 January 1964 addressed to the Government of the USSR, was that its non-recognition of the German Democratic Republic precluded its acceptance of notice of signature on behalf of that Republic, although it noted the expression of East German intention with respect to the Treaty (see Department of State, United States of America, *Treaties in Force, January 1, 1969* (Department of State publication 8432) (Washington, D.C., U.S. Government Printing Office), p. 319.

development of contractual relations between States. His delegation had therefore voted for the draft final clauses submitted by the Soviet Union, which fully respected the principle of universality. It had also supported the draft submitted by Ghana and India, whose objectives were laudable and which offered a compromise formula. It had abstained in the vote on the draft submitted by France, the United Kingdom and the United States, whose only virtue was that it followed the precedents of the Vienna Conventions on Diplomatic and Consular Relations.

6. Mr. MOLINA (Venezuela) said that, although his delegation had always defended the principle of universality in regard to treaties, it had never lost sight of the fact that that principle ought to be applied not merely as an ideal divorced from the political realities surrounding it but rather in the context of those realities. Since the codification of international law could succeed only if it embraced the greatest possible number of States, or even all States, careful thought must be given to the means of attaining that objective. It would be pointless to try to achieve universality without considering such hotly debated questions of theory and practice as the legal designation of certain entities and their true role in the international community. For that reason, during the voting at the 1152nd meeting his delegation had taken into consideration the Secretary-General's statement on the manner in which he would exercise his functions as depositary of the international instruments concluded under United Nations auspices, the fact that it was necessary and useful for the Secretary-General to be the depositary of the Convention on Special Missions, the character of the Convention itself, the balanced nature of the Vienna formula and its unquestionable contribution to the implementation of the principle of universality, and the political realities involved. After carefully weighing those arguments, it had no reason to change its previous stand and it had therefore voted for the draft final clauses which included the Vienna formula and against the other drafts.

7. Mr. MIRAS (Turkey) said that his delegation had voted for the draft final clauses submitted by France, the United Kingdom and the United States, because they incorporated the Vienna formula on participation, the one used in the Conventions on Diplomatic and Consular Relations and also in the Convention on the Law of Treaties. Since the Convention on Special Missions was intended to supplement the first two Conventions and since the Vienna formula remained valid, there was no reason to abandon it.

8. Mr. ALVAREZ TABIO (Cuba) said he had voted for the draft final clauses submitted by the Soviet Union, which unreservedly supported the principle of universality; however, since that draft had not been adopted, it had voted for the Ghanaian and Indian draft, which, although not entirely satisfactory, represented a laudable effort to depart from the tradition established by the Vienna Conventions on Diplomatic and Consular Relations.

9. Mr. HYERA (United Republic of Tanzania) recalled his statement during the debate (1150th meeting) to the effect that his delegation would vote against the draft final clauses submitted by France, the United Kingdom and the United States; in the event, however, it had decided to abstain. Its abstention should not be interpreted as indicating a negative attitude towards the principle of universality, since his delegation had expressed its support for that principle by voting for the Soviet Union draft. It had abstained only because those provisions of the three-Power draft which did not deal with the problem of participation were, in its opinion, of a subsidiary nature and it had no fundamental objection to them.

10. Mr. SECARIN (Romania) observed that, in accordance with the position it had expressed during the debate (1150th meeting), his delegation had voted for the draft final clauses submitted by the Soviet Union and the draft submitted by Ghana and India. As to the draft submitted by France, the United Kingdom and the United States, his delegation had voted against articles A and C because of the shortcomings of the Vienna formula which it had already criticized during the debate. However, in view of the other provisions of the draft, to which it had no objection, it had abstained in the vote on the draft as a whole. The position of his delegation on the question of universal participation in multilateral treaties which dealt with the codification and progressive development of international law, or the object and purpose of which were of interest to the international community as a whole, remained unchanged; it was still convinced that universal participation, which would enable such important countries as the People's Republic of China, the German Democratic Republic, the Democratic Republic of Viet-Nam and the Democratic People's Republic of Korea to participate in multilateral contractual relations, would contribute much to the strengthening of peace and security in the world.

Titles of articles

11. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, recalled that in 1968 the Drafting Committee had decided to defer the question of the final retention of the titles of articles and parts of the draft, and the question of their wording (see A/7375, para. 11). In connexion with its consideration of article 50, the Sixth Committee had decided (1147th meeting), on the Drafting Committee's recommendation, not to divide the Convention into parts. The Drafting Committee was now submitting a report on the titles of articles (A/C.6/L.775).

12. The Drafting Committee had advocated the retention of the titles of articles in order to help those who would have to refer to the Convention. It recommended that the Sixth Committee should adopt the titles proposed by the International Law Commission, except in the case of articles 3, 7, 18, 37, 46 and 48, which the drafting Committee had amended for the following reasons: in the International Law Commission's draft, article 3 was entitled "Field of activity of a special mission"; since the Sixth Committee had replaced the expression "field of activity" in the main body of the article by the word "functions", the Drafting Committee had made the same change in the title of that article. Article 7 of the draft was entitled "Non-existence of diplomatic or consular relations and non-recognition"; in view of the fact that the Sixth Committee had deleted paragraph 2 of that article, which related to non-recognition, the Drafting Committee had deleted that term from the title of the article. The title of article 18 in the International Law Commission's draft was:

"Activities of special missions on the territory of a third State"; in fact, that article dealt with meetings which special missions from two or more States might hold on the territory of a third State. The Drafting Committee had therefore amended the title to read: "Meeting of special missions on the territory of a third State". Article 36 of the draft was entitled: "Administrative and technical staff" and article 37: "Members of the service staff"; in the interests of brevity and uniformity, the Drafting Committee had deleted the words "Members of" from the title of article 37. The title of article 46 of the draft read: "Right to leave the territory of the receiving State"; in fact, the article related to the facilities which that State must grant to enable persons enjoying privileges and immunities to leave its territory, and to the necessary facilities for removing the archives of the special mission. The Drafting Committee had therefore amended the title of that article to read: "Facilities to leave the territory of the receiving State and to remove the archives of the special mission". Article 48 of the draft was entitled: "Obligation to respect the laws and regulations of the receiving State"; however, since only paragraph 1 of that article related to that obligation, and paragraph 2 dealt with the use of the premises of the special mission, the Drafting Committee, guided by the observations of the representative of Uruguay, had reworded the title of the article to read: "Respect for the laws and regulations of the receiving State and use of the premises of the special mission". Those were the only changes which the Drafting Committee had made to the titles of the articles of the draft Convention on Special Missions, as submitted by the International Law Commission.

13. Mr. DADZIE (Ghana) asked whether the titles were to be considered as an integral part of the articles and consequently open to interpretation. In his view, titles were only necessary in so far as they helped the International Law Commission and its Special Rapporteurs in compiling the texts. However, they should eventually be deleted from the final version of instruments or, if retained, should be considered merely as marginal annotations which were not part of the instrument itself and consequently were not open to interpretation.

14. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, observed that the Drafting Committee had carefully studied the question of the retention of the titles of the articles and had eventually decided to follow the example set recently by the Vienna Convention on the Law of Treaties, in which the titles of the articles had been retained. Titles were useful in facilitating ease of reference and access to the provisions of the instrument under study. With regard to the Convention on Special Missions, it had been stressed in particular that it would mainly be used by officials without legal experience. The Drafting Committee had not formulated an opinion on the question raised by the representative of Ghana. However, speaking as the representative of Iraq, he felt that by their nature titles were designed not to add anything to articles but merely to summarize their contents. It was hard to imagine that a lawyer who was interpreting an article would ignore its contents and refer only to its title, which should accurately reflect the substance.

15. Mr. DADZIE (Ghana) said he was not entirely satisfied by the explanation given by the Chairman of the Drafting Committee. What he had in fact asked was whether the titles of articles should be considered as a part of the articles themselves; the possibility could not be excluded of a conflict between the title of an article and its contents, which should always prevail.

16. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, speaking as the representative of Iraq, reiterated his view that a title should reflect the substance of the article; if it reflected more, it was an inaccurate title. He personally would not hesitate, in the event of a conflict between the title of an article and its contents, to give precedence to the latter.

17. Mr. CHAMMAS (Lebanon) said that the comment made by the representative of Ghana was very much to the point, although he shared the opinion expressed by the representative of Iraq. Since the Sixth Committee had adopted the articles without titles and had taken no decision on the question of titles, he suggested that, if the titles were going to create problems, they should be deleted.

18. Mr. ENGO (Cameroon) said that the representative of Ghana had been right to call attention to a problem which might arise. Nevertheless, he did not favour the suggestion that the titles of articles should be deleted, for they would greatly facilitate reference to the Convention. He agreed that in the event of a conflict between the contents of an article and its title the former should prevail. Since the representative of Ghana had obtained the explanation he had requested, namely that it was the contents of the article which should prevail, he appealed to the representative of Lebanon not to press his suggestion.

19. The CHAIRMAN read out paragraph 34 of the report of the International Law Commission on the work of its nineteenth session (A/6709/Rev.1 and Corr.1), for the purpose of clarifying the issue.

20. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, recalled that although the Sixth Committee had not examined the titles of all the articles, observations had nevertheless been made with regard to certain specific articles. It had been understood that the titles used in the International Law Commission's draft would be retained unless the Sixth Committee amended them. In accordance with a decision it had taken at the previous session, the Drafting Committee had examined the titles of the articles with a view to ensuring that they corresponded with the contents of each article, basing itself on the observations which had been made. Consequently, the contents of the articles and their titles had now in general been aligned, and if certain delegations still noted discrepancies, they could bring them to the attention of the Drafting Committee, which would make the necessary changes. The International Law Commission and the Drafting Committee had felt that the titles of the articles should be retained; by taking the same decision, the Sixth Committee would merely be following the current practice of international conferences, since in both the Convention on Consular Relations and the Convention on the Law of Treaties, the articles had titles. He therefore felt that the Sixth Committee should be recommended to retain the titles of the articles.

21. Mr. FRANCIS (Jamaica) said that the representative of Ghana had raised a relevant point, but the Chairman of the Drafting Committee had dispelled any possible misunderstandings. In his view, in considering the Convention, the number of articles it contained should be taken into account. As the Chairman of the Drafting Committee had pointed out, the Convention would often be used by officials without legal experience, whose task would be eased if each of the fifty articles of the future Convention had a title. Consequently, a decision to delete the titles of the articles should not be taken without due reflection. In his delegation's view, the titles should not form part of the operative text of the Convention and consequently should not be open to interpretation. He supported the proposal of the Drafting Committee.

22. Mr. MUTUALE (Democratic Republic of the Congo) felt that the question of the titles of articles should not give rise to a lengthy debate. However, the question raised by the representative of Ghana was relevant; unless it was specified that the titles were intended merely as a guide to the contents of the articles, there was a danger that they might be used in interpretations of substance, which was inadmissible. His delegation was in favour of retaining the titles, which could assist administrations in their reference work, particularly in the developing countries, but felt it should be emphasized that they had been included purely for the sake of convenience.

23. Mr. SPACIL (Czechoslovakia) said that he agreed with the Chairman of the Drafting Committee that the titles should be regarded merely as indicating the content of the articles. The real question therefore was whether they truly reflected the content of the articles; his delegation thought that they did and therefore supported the recommendation of the Drafting Committee.

24. Mr. TRAORE (Ivory Coast) considered that the Czechoslovak representative had stated the problem correctly. The titles should accurately reflect the content of the articles, so as to ensure that their scope was better defined and that no differences of interpretation could be caused by a discrepancy between the headings and the wording of the articles.

25. Mr. DADZIE (Ghana) said that he had been convinced by the various representatives who had spoken on the subject of the titles that they did not form part of the operative text but served merely as landmarks to assist in reading the text.

26. Mr. ROBERTSON (Canada) said that any doubts which might have been entertained on that score should have been dispelled by the previous speakers. The discussions in the Sixth Committee formed part of the preparatory work for the Convention under consideration, and it was clear from those discussions that the titles were intended merely to serve as an indication and that they met a practical requirement; that should make it possible to solve any problem which might arise in that connexion in the future.

27. Mr. CHAMMAS (Lebanon) said that he was glad that it had proved possible to reach agreement on that matter. He shared the Jamaican representative's view that the titles should not be considered to form part of the operative text of the Convention and he therefore accepted them, subject to that reservation.

28. The CHAIRMAN said that, if there was no objection, he would take it that the Sixth Committee adopted the titles of the articles as proposed by the Drafting Committee.

The titles of the articles were adopted.

Final clauses

29. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, introducing the text of the final clauses adopted by the Drafting Committee (A/C.6/L.751/Add.5), said that the Drafting Committee had made only a few changes in the draft text of the final clauses approved by the Sixth Committee at the 1152nd meeting. All those changes were based on the final provisions of the Vienna Convention on the Law of Treaties.

30. The Drafting Committee had added the words "or of the International Atomic Energy Agency" after the words "or of any of the specialized agencies" in article A. As a consequence, it had deleted, in articles C, E and F, the word "four" before the words "categories mentioned in article A", since it could be considered that, with the addition of the words "or of the International Atomic Energy Agency", article A now referred to five and not four categories.

31. In order to adhere to the terminology employed in the Vienna Convention on the Law of Treaties, the Drafting Committee had also replaced, in the French text, the expression *"sera ratifiée"* by *"sera soumise à ratification"* in article B, and the words *"font également foi"* by *"sont également authentiques"* in article F.

32. The CHAIRMAN said that, if there was no objection, he would take it that the Sixth Committee adopted the final clauses of the Convention as adopted by the Drafting Committee.

The final clauses were adopted.

Preamble

33. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, introducing the text of the preamble adopted by the Drafting Committee (A/C.6/L.751/Add.6), said that the Drafting Committee's text was modelled on that prepared by the International Law Commission (see A/6709/Rev.1 and Corr.1, chapter II, p. 24), which in turn had been based on the preamble of the Vienna Convention on Diplomatic Relations. In addition, the title selected for the Convention by the Drafting Committee was "Convention on Special Missions".

34. Mr. MOLINA (Venezuela) said that the preambular paragraph concerning the purpose of privileges and immunities in the International Law Commission's text of the Convention on Special Missions and the corresponding preambular paragraphs of the two Vienna Conventions began with three different words in the Spanish versions;

the term *"convencidos"*, used in the Commission's text, did not have the same value as the words *"reconociendo"* and *"conscientes"*, used in the Vienna Conventions. It would be useful to know if different terms had been adopted deliberately by the Drafting Committee or if there was simply a problem of translation.

35. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that the Drafting Committee had not intended to introduce any difference between the preamble of the Vienna Conventions and the present preamble; the Secretariat might be left to find a satisfactory translation of the word "realizing".

36. Mr. TORRES BERNARDEZ (Secretary of the Committee) said that it was merely a question of translation, since the English and French versions of the three preambles each employed the same words, namely "realizing" and *"convaincus"*; he suggested to the Committee that the Spanish text should be brought into line.

37. Mr. CHAILA (Zambia) recalled that his delegation had pointed out (1128th meeting) that the definition of special missions should provide for the possibility of joint special missions, namely, missions sent by two or more States to another State. Therefore, while accepting the preamble in principle, he proposed that the Drafting Committee should consider adding the words "or States" after the words "the State" in the seventh paragraph.

38. The CHAIRMAN said that, if there was no objection, he would take it that the Committee adopted the preamble as worded by the Drafting Committee.

The preamble was adopted.

Settlement of civil claims

39. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that at its 1137th meeting the Sixth Committee had referred to the Drafting Committee the text of a draft resolution on the settlement of civil claims. That text replaced article 42 drawn up by the International Law Commission and was modelled on resolution II adopted on 14 April 1961 by the United Nations Conference on Diplomatic Intercourse and Immunities.[3]

40. He introduced the text of the draft resolution concerning the settlement of civil claims adopted by the Drafting Committee (A/C.6/L.777). The Drafting Committee had made in the text of the draft resolution referred to it two changes affecting the text in all the official languages. The first consisted in the addition to the preamble of the draft resolution of a third paragraph similar to that contained in the preamble of resolution II of the Conference on Diplomatic Intercourse and Immunities. The second change related to the fourth preambular paragraph of the draft resolution. The Drafting Committee had observed that, in numerous national laws, the claim of diplomatic immunity by the defendant did not affect the plaintiff's right to institute proceedings, but nullified any practical effect of such proceedings. It had therefore decided to replace the words "remedies to which they are entitled by law" by the words "benefit of a judicial settlement". It had also deleted the word "diplomatic" before the word "immunity". The reason was that actual diplomatic immunity was not involved in the present case.

41. The Committee had also made some drafting changes to bring the texts in the five official languages into line with one another. It had found in particular that in the French and Spanish versions, the first preambular paragraph might convey the impression that the Convention granted complete immunity of jurisdiction to all the members of special missions. That impression was created by the unsatisfactory translation of the expression "provides for" which appeared in the English text of that paragraph. The Drafting Committee had therefore amended the French and Spanish texts of that paragraph accordingly. It had also had to alter the Spanish text of the operative part of the draft resolution.

42. Mr. SHAW (Australia) said that the change made in the preamble of the draft resolution concerning the settlement of civil claims might be open to interpretations which would restrict its scope, since, especially in view of the change in wording and of the terms of article 41, it could be argued that the expression "judicial settlement" did not include execution of a judgement. Unless that doubt could be dispelled, his delegation would therefore think it preferable to revert to the expression "remedies to which they are entitled by law" used in the corresponding resolution annexed to the Vienna Convention on Diplomatic Relations.

43. Mr. YASSEEN (Iraq) explained that the Drafting Committee had preferred to use the expression "judicial settlement" because, in practice, the fact that a defendant invoked immunity from jurisdiction did not prevent the plaintiff from instituting proceedings against him but frequently resulted in its nonsuit; in other words it specifically deprived him of the "benefit of a judicial settlement".

44. Since the problem of whether or not the notion of "judicial settlement" included enforcement measures had not been studied separately by the Drafting Committee, its Chairman could not state that Committee's position on that subject.

45. Mr. SHAW (Australia) said that he had understood that the expression "remedies to which they are entitled by law", used in the resolution annexed to the Vienna Convention, included measures for the enforcement of the judicial decision. As the question had not been raised in connexion with the change made in the present draft resolution, he hoped that the Drafting Committee would consider it so that it might be able to dispel his delegation's misgivings on the matter.

46. Mr. YASSEEN (Iraq) assured the representative of Australia that the Drafting Committee had considered the alteration in question not as a substantive amendment but as a mere improvement in terminology.

47. Mr. LIANG (China) also felt that the expression "judicial settlement" was insufficiently precise and that it

3 See *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, vol. II (United Nations publication, Sales No.: 62.X.I), p. 90.

would be preferable to replace it by some other wording; the uncertainty about the precise scope of the term was all the more serious in the present instance since it was necessary to ensure that claims of immunity did not have the effect of depriving persons in the receiving State of the benefit of such a settlement.

48. He thought that the expression "judicial settlement" was used in English only in contrast to various other means of peaceful settlement of international disputes. Basically, the expression implied the judicial process and any reference to it would have the consequence, when immunity was invoked, of requiring the interruption of any judicial process that had begun. It would perhaps be preferable to use the expression "judicial process" in English.

49. Mr. ROSENSTOCK (United States of America) shared the apprehensions expressed by the representatives of Australia and China. During the Drafting Committee's discussions he had indicated that he did not think the two expressions in question were equally appropriate. However, in deciding to use the expression "judicial settlement", the Drafting Committee had not wished to restrict the scope of the resolution; on the contrary, it had clearly intended the expression to refer to the entire judicial process, including measures to enforce the decision. His delegation could see no objection to amending the expression, since its use in English could give rise to confusion, though his delegation would be prepared to vote for the text in its present form, since it agreed with the interpretation of the Drafting Committee that the phrase covered the entire judicial process.

50. Mr. YASSEEN (Iraq) said that, in his opinion, the expression "judicial settlement" meant the settlement which could be arrived at if immunity from jurisdiction was not claimed.

51. Mr. POTOLOT (Central African Republic) emphasized that, for a judicial settlement to be possible, there must be a dispute between two parties, one of which would obtain satisfaction as a result; that implied that the decision must be carried out.

52. Mr. VALLET (Mauritius) felt that the difficulty arose from the fact that the word "settlement" did not really correspond to the French word *"règlement"*; he suggested that the term "settlement" should be replaced by the term "remedy", which he considered more precise.

53. Mr. DADZIE (Ghana) pointed out that the terms of the operative part of the draft resolution could provide a solution to the problem. The operative part recommended that, when immunity was not waived, the sending State "should use its best endeavours to bring about a just settlement of the claims". There were thus two possibilities: in the first case, the immunity from jurisdiction of the member of a special mission was waived and he was sued. However, if immunity was claimed, there could be no proceedings and the expression "just settlement" meant *a contrario,* a settlement whose conditions could not be established by a court of law. Therefore, the expression "judicial settlement" was acceptable to his delegation.

54. Mr. OGUNDERE (Nigeria) thought that the Sixth Committee should concentrate on the substance of the problem. As indicated in the first paragraph of the preamble of the draft resolution, the Convention provided for immunity from jurisdiction. A diplomat could waive his immunity or the sending State could do it for him, but in any case, the latter must secure an honourable settlement of the dispute. Any measures to enforce the decision came within a separate sphere of competence and were not at issue.

55. Mr. CHAMMAS (Lebanon) thought that it was difficult to determine the scope of the words "judicial settlement". Did the substitution of that term for the expression "remedies to which they are entitled by law" mean that a substantive change was involved? That was the issue to be decided. The Committee was not concerned as to whether or not judicial settlement covered measures for executing the judgement. Paragraph 4 of article 41 of the draft prepared by the International Law Commission stated that waiver of immunity in respect of the execution of the judgement necessitated a separate waiver. The steps envisaged in article 41 were therefore not affected by the fourth preambular paragraph of the draft resolution. The change made by the Drafting Committee was therefore a drafting amendment and did not concern the substance. It would thus be sufficient if the report by the Rapporteur took note of the question raised by the representative of Australia and of the reply given by the Chairman of the Drafting Committee.

56. Mr. YASSEEN (Iraq) said that the draft resolution constituted an indivisible whole. A reading of the operative part would dispel any uncertainties. The fourth preambular paragraph showed that a claim of immunity could, in certain cases, have the effect of depriving persons in the receiving State of the benefit of a judicial settlement, and the operative part provides that in such cases the sending State should use its best endeavours to bring about a just settlement of the claims. If the sending State waived its immunity, there was then no reason why the persons concerned in the receiving State should not obtain satisfaction. The Committee should therefore accept the Drafting Committee's proposal.

57. Mr. ROBERTSON (Canada) said he would like to be able to subscribe to the interpretation offered by the representatives of Ghana and Iraq; however, he wished to state his views on the draft resolution. It replaced article 42 prepared by the International Law Commission, but was drafted in a different manner and did not use the wording of article 42. He had been in favour of article 42 and was now perplexed over the text proposed by the Drafting Committee.

58. Mr. SHAW (Australia) said that he was satisfied with the explanations given by the Chairman of the Drafting Committee and also by the representatives of Ghana and the United States, who had made it clear that the change made by the Drafting Committee did not affect the substance of the draft resolution and that the phrase "judicial settlement" included execution of judgement. As that doubt had been dispelled, he could accept the amendment, in view of the fact that the draft resolution only formulated a recommendation.

59. The CHAIRMAN said that, if there was no objection, he would take it that the Committee adopted the draft

resolution concerning the settlement of civil claims, as worded by the Drafting Committee.

The draft resolution concerning the settlement of civil claims (A/C.6/L.777) was adopted.

Optional Protocol

60. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, introduced the text of the Optional Protocol concerning the Compulsory Settlement of Disputes adopted by the Drafting Committee (A/C.6/L.776). He said that the text of the Optional Protocol reproduced, *mutatis mutandis*, the text of the Protocol on the same subject which had been adopted by the United Nations Conference on Diplomatic Intercourse and Immunities. The Spanish and French versions of that Protocol and, consequently, of the draft protocol referred to the Drafting Committee by the Sixth Committee at its 1146th meeting (A/C.6/L.769 and Add.1), did not uniformly correspond to the texts in the other languages. The Drafting Committee had therefore made the corrections necessary to ensure that the Spanish and French texts adopted by the Sixth Committee agreed with the versions in the other languages.

61. In article IV, the Drafting Committee had inserted the following text in the space which had been left blank: "until 31 December 1970 at the United Nations Headquarters in New York". The text was repeated in article A of the final clauses.

62. As in the final clauses, the Drafting Committee had replaced the expression *"fait également foi"* by *"sont également authentiques"* in the French version of article IX.

63. Mr. GASTLI (Tunisia) approved the draft of the Optional Protocol but wished to make a few remarks about its form. He thought that article I should be divided into two paragraphs and that the first paragraph should read: "Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice". It might, furthermore, be advisable to indicate there that the Convention on Special Missions was being referred to, since the full title was not used anywhere in the body of the Protocol. Paragraph 2 would then become the corollary of paragraph 1, thus obviating the need for the word "accordingly". Paragraph 2 would then read: "They may be brought before the Court by a written application made by any party to the dispute being a party to the present Protocol".

64. There were two points to make with regard to article II. The first concerned the term "arbitral tribunal" which in his opinion meant that the parties could have recourse only to a collegiate body. He thought that the parties should be able to bring the dispute before a single arbiter, and therefore suggested that the phrase "to an arbitral tribunal" should be replaced by "to an arbitral procedure". His second remark concerned the words "by a written application", which seemed superfluous, since they already appeared in what he had proposed should be paragraph 2 in article I.

65. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that the sense of the word "Convention" as used in article I had been clearly stated in the preamble to the draft of the Optional Protocol. With regard to the suggestion that article I should be divided into two paragraphs, he believed that that alteration would be a stylistic one on which the Sixth Committee should decide. The use of the words "by written application" in article II stemmed from the desire of the Drafting Committee to reproduce exactly the terms employed in the Statute of the International Court of Justice. Finally, he thought that an arbitral tribunal could be composed of a single judge.

66. Mr. GASTLI (Tunisia) did not think that it would be redundant to repeat the full title of the Convention in article I. His suggestion to divide article I into two paragraphs had been made for the sake of clarity alone. On the other hand, he was not convinced by what the Chairman of the Drafting Committee had said about the term "arbitral tribunal". In the view of his delegation, an arbitral tribunal was a collegiate body. Lastly, if the term *"par voie de requête"* in the French text was enshrined in the Statute of the International Court of Justice, he wondered why the integral phrase had not been used in article I. He would like the Sixth Committee to consider his suggestions, which were intended to make the Convention easier to understand and apply, but they were not formal proposals.

67. The CHAIRMAN suggested that, since the Drafting Committee would be revising the text, the remarks of the Tunisian representative should be submitted to it for consideration where appropriate.

68. If there was no objection, he would take it that the text of the draft Optional Protocol, as framed by the Drafting Committee, was adopted.

The draft Optional Protocol was adopted.

AGENDA ITEM 94

Declaration and resolutions adopted by the United Nations Conference on the Law of Treaties:

(a) Declaration on Universal Participation in the Vienna Convention on the Law of Treaties;

(c) Resolution relating to article 66 of the Vienna Convention on the Law of Treaties and the annex thereto

69. Mr. GONZALEZ GALVEZ (Mexico) suggested that the consideration of sub-paragraph *(a)* of the item, relating to the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties, should be deferred to the next session of the General Assembly. He made that suggestion because he thought that it would be unwise to take a hasty decision on the declaration. It would be advisable to see first how such a very important Convention was received, in other words to know how many countries would ratify it.

70. After an exchange of views between Mr. MOLINA (Venezuela) and Mr. GONZALEZ GALVEZ (Mexico), the CHAIRMAN said that, if there were no objections, he would consider that the suggestion of the representative of Mexico that consideration of the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties be deferred to the next session of the General Assembly was adopted.

It was so decided.

The meeting rose at 6.55 p.m.