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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.745 and Corr.1, A/C.6/L.747, A/C.6/L.751/Add.1)

1. The CHAIRMAN invited the Sixth Committee to consider the texts of articles 30 and 32 to 39 adopted by the Drafting Committee.

Article 30 (Inviolability of the private accommodation) (A/C.6/L.751/Add.1)

2. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that the Drafting Committee had made no changes in article 30. It wished to point out, however, that the article gave the private accommodation of the members of the special mission to which it referred the same inviolability and protection as the premises of the mission. Consequently, in order to appreciate the full scope of article 30, it was necessary to refer to article 25, which dealt with the inviolability and protection of the premises of the special mission.

3. The CHAIRMAN said that, if there was no objection, he would take it that the Committee adopted article 30 as worded by the Drafting Committee.

Article 30 was adopted.

Article 32 (Exemption from social security legislation) (A/C.6/L.751/Add.1)

4. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that in the English version of the article, in paragraph 1, the Drafting Committee had placed the words "with respect to services rendered for the sending State" between commas.

5. The CHAIRMAN said that, if there were no objections, he would take it that the Committee adopted article 32 as worded by the Drafting Committee.

Article 32 was adopted.

Article 33 (Exemption from dues and taxes) (A/C.6/L.751/Add.1)

6. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that the Drafting Committee had made no changes in article 33. He had noted that some delegations had suggested the deletion of the proviso "subject to the provisions of article 24" in sub-paragraph *(f)*, on the grounds that, since the Sixth Committee had deleted the words "with respect to immovable property" in sub-paragraph *(f)* of the International Law Commission's text, it was logical to delete also the reference to article 24, which concerned exemption from taxes on immovable property. The Drafting Committee had noted, however, that the effect of deleting the expression "with respect to immovable property" had not been to remove immovable property from the purview of sub-paragraph *(f)* but to add movable property to it. The proviso "subject to the provisions of article 24" would therefore take effect with respect to the registration, court or record fees, mortgage dues and stamp duty chargeable on immovable property.

7. The CHAIRMAN said that, in the absence of objections, he would take it that the Committee adopted article 33 as worded by the Drafting Committee.

Article 33 was adopted.

Article 34 (Exemption from personal services) (A/C.6/L.751/Add.1)

8. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that the Drafting Committee had made no changes in article 34.

9. The CHAIRMAN said that, if there were no objections, he would take it that the Committee adopted article 34 as worded by the Drafting Committee.

Article 34 was adopted.

Article 35 (Exemption from customs duties and inspection) (A/C.6/L.751/Add.1)

10. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that the Drafting Committee had deleted the words "or of the members of their family who accompany them" at the end of paragraph 1, sub-paragraph *(b)*. That was because the privileges and immunities of members of the family were dealt with in article 39, which referred to several articles, including article 35. For reasons of method, the Drafting Committee had thought it preferable to delete the wording relating to members of the family in article 35. Moreover, in the International Law Commission's text, that

wording had subordinated the grant of the immunity in question to a single condition, namely that the members of the family should accompany the member of the special mission. That condition appeared in article 39, which added the further condition that the members of the family should not be nationals of or permanently resident in the receiving State. The retention of the wording in question in article 35 would therefore have introduced a discrepancy between one of the provisions of article 35 and the general rule laid down in article 39.

11. The CHAIRMAN said that, if there was no objection, he would take it that the Committee adopted article 35 as worded by the Drafting Committee.

Article 35 was adopted.

Article 36 (Administrative and technical staff); article 37 (Members of the service staff); article 38 (Private staff) (A/C.6/L.751/Add.1)

12. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that the Drafting Committee had made no changes in articles 36, 37 and 38.

13. The CHAIRMAN said that, in the absence of objections, he would take it that the Committee adopted articles 36, 37 and 38 as worded by the Drafting Committee.

Articles 36, 37 and 38 were adopted.

Article 39 (Members of the family) (A/C.6/L.751/Add.1)

14. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, reminded the Committee that it had approved (1131st meeting) the substance of an amendment submitted by Colombia (A/C.6/L.755, as amended) and the text of an amendment submitted by Greece (A/C.6/L.758). The purpose of the first had been to add the expression "accompanying the former or the latter" after the words "its diplomatic staff" in paragraph 1 and that of the second to add the expression "who accompany it" after the words "of the special mission" in paragraph 2. The Drafting Committee had decided that both expressions might leave some doubt as to the words to which they referred; the second, in particular, seemed to refer to the words "the special mission", which was obviously incorrect. The Drafting Committee had therefore preferred to use the expression "such members of the special mission" in both paragraphs of article 39. Its use was based on article 1, sub-paragraph *(f)*, of the International Law Commission's text; in paragraph 1 of article 39 it denoted the representatives of the sending State in the special mission and the members of its diplomatic staff, and in paragraph 2 the administrative and technical staff of the mission. The Drafting Committee's aim had been to make a technical improvement to article 39 which, without complicating it, would enable it to be interpreted in the light of the provisions of the Convention itself.

15. He also said that some delegations had suggested the addition of the words "or join" after the words "if they accompany" in both paragraphs of article 39. The Drafting Committee had considered that such an insertion would be unnecessary, since the verb "to accompany" covered not only the case where the member of the family entered the receiving State with the member of the special mission but also the case where the former joined the latter subsequently; in both cases the member of the family would be staying in the receiving State at the same time as the member of the special mission.

16. Mr. DADZIE (Ghana) said he still thought that the expression "if they accompany" was somewhat ambiguous. He would have preferred it to be clarified by the addition of the words "or join". However, he would accept the text adopted by the Drafting Committee, so as not to delay the Committee's work.

17. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said he wished to make it clear that the Drafting Committee had considered the matter carefully and, like the Ghanaian representative, had found that the wording of article 39 could give rise to doubts. It had nevertheless decided that it would be sufficient to instruct its Chairman to state that in the Drafting Committee's view the expression "if they accompany" covered both cases.

18. The CHAIRMAN said that, if there were no objections, he would take it that the Committee adopted article 39 as worded by the Drafting Committee.

Article 39 was adopted.

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

19. The CHAIRMAN said that the Committee had before it a sub-amendment (A/C.6/L.769) to the new article 51 proposed by Switzerland in document A/C.6/L.766. He announced that Syria had become a co-sponsor of the sub-amendment (see A/C.6/L.769/Add.1).

20. Mr. Krishna RAO (India), introducing the sub-amendment on behalf of the sponsors, explained that the text retained all the elements found in the text proposed by Switzerland but sought to incorporate them in an optional protocol similar to the ones that had been annexed to the Vienna Conventions on Diplomatic and Consular Relations.

21. Mr. BIGOMBE (Uganda) recalled that when his country became a Member of the United Nations it had accepted the compulsory jurisdiction of the International Court of Justice. His delegation would thus have been able to accept the Swiss proposal, if it had not entailed the risk of reducing the number of States that would be prepared to sign the future Convention on Special Missions. That was why his delegation had joined with other delegations in submitting the sub-amendment.

22. Mr. VIALL (South Africa) said that, in his opinion, the argument advanced by the Ugandan representative was of capital importance; experience showed that the international community as a whole was not yet ready to accept the principle of the compulsory settlement of disputes. Consequently, if the Swiss proposal was adopted, some States would refuse to be parties to the Convention, even if they accepted the rest of its provisions. It would be regrettable for the Sixth Committee to have wasted its efforts and produced an instrument that was unacceptable

to a very large number of States. Moreover, it would always be possible, when the international community was ready to accept the idea of the compulsory settlement of disputes, to amend the future Convention on Special Missions accordingly. His delegation would vote in favour of the sub-amendment and against the new article proposed by Switzerland.

23. Mr. ROBERTSON (Canada) noted that the debate on the new article proposed by Switzerland had focused mainly on paragraph 1 of the text. He would like to draw the Committee's attention to the two other paragraphs. The proposed new article envisaged three methods for the settlement of disputes, namely conciliation, arbitration and recourse to the International Court of Justice, the last to be resorted to only where arbitration and conciliation procedures had failed. As far as his delegation was concerned, that solution was preferable to no solution at all or to a solution that would allow one party to impose its will on the other. His delegation would therefore support the new article proposed by Switzerland. If it was rejected, Canada would vote in favour of the solution proposed in the sub-amendment, but it would vote against the sub-amendment if it was put to the vote first.

24. Mr. OGUNDERE (Nigeria) said he had become a sponsor of the sub-amendment because he considered that the proposal it contained constituted a compromise formula that had proved satisfactory in the past and should do so in the future. Nigeria was a Party, on the basis of reciprocity, to the Statute of the International Court of Justice, whose importance it fully appreciated. His delegation nevertheless felt that in the present circumstances an optional protocol was the best possible means of resolving the question of the settlement of disputes, inasmuch as such an instrument, while providing for the same settlement procedures as the Swiss amendment, did not have a mandatory character and was therefore likely to receive the support of a greater number of delegations.

25. Mr. SECARIN (Romania) said that his delegation had examined the Swiss amendment in the light of the fundamental principle of international law concerning the peaceful settlement of disputes, as laid down in Article 2, paragraph 3, of the Charter and elaborated by the Special Committee on the Principles of International Law concerning Friendly Relations and Co-operation among States at its 1966 session.[1] In his delegation's view, that elaboration of the principle gave States the right to choose the means for the peaceful settlement of their disputes and specified that the choice should be made having regard to the circumstances and nature of each dispute. It believed that the latter condition was essential to the effectiveness of the procedure chosen. The question therefore arose whether it was advisable, even before a convention entered into force and its application had given rise to disputes, to lay down provisions for settling them. His delegation did not think that the question could be resolved until the International Law Commission, in accordance with the method used in the codification and progressive development of international law, had made a thorough study of existing precedents and international practice in that area and, if necessary, of the comments of Governments on the matter.

26. A sovereign State entered into an international commitment only with full knowledge of the facts. That presupposed the full exercise of its sovereignty, its free consent to be bound by the treaty—which ruled out any interpretation to the effect that the participation of States in multilateral conventions implied any limitation of their sovereignty. His delegation could therefore not approve the inclusion in the future Convention on Special Missions of a procedure which it was not sure would be appropriate to the circumstances and the nature of the disputes to which the application of the Convention might give rise. It could therefore not accept the Swiss amendment, and it supported the sub-amendment, which, in its opinion, had two advantages: it provided a way of avoiding the difficulties that would arise for States if article 51 proposed by Switzerland was adopted, while allowing them to exercise their sovereign prerogative of accepting or rejecting the system proposed.

27. Mr. BINDSCHEDLER (Observer for Switzerland) said that the words "sub-amendment to article 51 proposed by Switzerland" were ill-chosen; the text in question was not a sub-amendment but a proposal that was completely different from that made by Switzerland. Consequently, the two proposals should be put to the vote separately, beginning with that of Switzerland, which, since it provided for a mandatory procedure, was the furthest removed from the text of the International Law Commission.

28. Mr. USTOR (Hungary) said that the statements in favour of the Swiss amendment, in particular paragraph 1, came from States which for the most part were bound by Article 36 of the Statute of the International Court of Justice. The adoption of the Swiss amendment would therefore not really entail an additional obligation for those States. The States which had accepted the Court's jurisdiction were, however, few in number. Moreover, most of the conventions concluded under United Nations auspices did not contain clauses providing for the compulsory jurisdiction of the International Court of Justice in the event of disputes. Some speakers had argued that, if the proposed article 51 was adopted, States could always make a reservation in respect of that article, excluding the compulsory jurisdiction of the Court for the settlement of disputes arising out of the interpretation or application of the Convention. But his delegation believed that the great majority of States would prefer not to have provisions such as those of the proposed article 51 included in the Convention, so that it would be more practical and more realistic to regulate the matter by means of the optional protocol proposed in the sub-amendment.

29. Mr. NJENGA (Kenya) expressed his appreciation to the Observer for Switzerland for having raised the important question of the settlement of disputes and stressed that the disagreement on the subject in the Committee related only to the choice of appropriate methods.

30. On achieving independence, Kenya had accepted the compulsory jurisdiction of the International Court of Justice with far fewer reservations than some States that were now pronouncing themselves in favour of the compulsory settlement of disputes. Kenya had also accepted the Optional Protocols concerning the Compulsory Settlement of Disputes annexed to the Vienna Conventions of 1961

[1] See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230, para. 248.

and 1963 on Diplomatic and Consular Relations. His delegation was nevertheless opposed to paragraph 1 of article 51 proposed by Switzerland, because it did not believe that all disputes lent themselves to judicial settlement. Although paragraphs 2 and 3 of the article allowed States to derogate, as necessary, by bilateral agreement, from the obligation in paragraph 1, it should nevertheless be pointed out that in the absence of such agreement the words "lie within the compulsory jurisdiction . . ." laid down a general obligation that would be binding on States. Such an obligation could not fail to arouse the concern of a large number of States and, consequently, stand in the way of the widest possible acceptance of the Convention on Special Missions.

31. Mr. JACOVIDES (Cyprus) expressed his gratification, for the reasons he had given the previous day (1144th meeting), at the submission of the sub-amendment, which in his view offered a compromise formula that would make the Convention more generally acceptable, since it comprised in substance practically the same elements as the Swiss proposal, yet would not compel States to enter into an obligation.

32. Mr. YASSEEN (Iraq) said he fully appreciated Switzerland's excellent reasons for submitting its amendment. However, he thought that the settlement of disputes was not an integral part of the question of special missions but rather a general problem of international law. To attempt to solve it within the framework of a draft convention on special missions would immeasurably complicate the Sixth Committee's task.

33. Although, at present, he did not intend to give his views on the substance of the question, he thought that the sub-amendment provided a practical and acceptable solution. As he had said on several occasions, the normative development of international law should not be made dependent on its institutional development. To compel States to take a decision on the compulsory jurisdiction of the International Court of Justice in connexion with the adoption of the draft Convention on Special Missions might cause them to change their minds about the Convention. The sub-amendment, on the other hand, provided a practical solution in so far as it allowed States to weigh the draft Convention on Special Missions in an entirely objective way, without their decision being influenced by the inclusion of provisions like those of the proposed article 51. Nor should it be forgotten that a procedure similar to that proposed in the sub-amendment had been followed in the case of the Vienna Conventions on Diplomatic and Consular Relations. His delegation supported the sub-amendment on the grounds that it would be wise not to depart from that precedent.

34. Mr. KABBAJ (Morocco) congratulated Switzerland on its initiative, which had led to an interesting exchange of views on the important question of the settlement of disputes. At the Vienna Conferences, his delegation had listened to the various arguments on the subject and had stated its views. While agreeing that the International Court of Justice could certainly be an effective instrument for settling disputes, it did not think that either the juridical order today or the present structure and recent decisions of the Court would encourage States to accept its jurisdiction unconditionally. In present circumstances, therefore, the only practical solution to the problem was to adopt the optional protocol method, as proposed in the sub-amendment.

35. Mr. EL-ARABY (United Arab Republic) said he had studied carefully the new article 51 proposed by Switzerland, and was aware of the importance of the peaceful settlement of international disputes by judicial means and the need for it. His country welcomed resort to the International Court of Justice and had, in fact, accepted the compulsory jurisdiction of the Court in regard to the administration of the Suez Canal. However, the question of the settlement of disputes had been thoroughly studied in 1966 in the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, and the Special Committee had decided that the correct interpretation of Article 33, paragraph 1, of the Charter should not limit the parties' freedom to choose the most suitable means.[2] Moreover, since most international conventions did not contain a clause providing for the compulsory jurisdiction of the Court for the settlement of disputes to which they might give rise, he would support the optional protocol and would not vote in favour of the Swiss amendment.

36. Mr. NALL (Israel) said that, for the reasons his delegation had given at the 1961 United Nations Conference on Diplomatic Intercourse and Immunities,[3] he would vote in favour of the Swiss amendment.

37. Mr. SANTISO GALVEZ (Guatemala) said he did not think there were any disputes that should not be settled by peaceful means, and therefore attached great importance to the International Court of Justice and its procedures. He hoped the day would come when all States, without exception, would accept the compulsory jurisdiction of the Court. The fact that his delegation would not support the Swiss proposal and was co-sponsoring the sub-amendment should therefore not be interpreted as meaning that Guatemala in any way underestimated the importance of the International Court of Justice.

38. The CHAIRMAN declared the debate on the proposed new article 51 and the sub-amendment thereto closed. Unless the Committee decided otherwise, the sub-amendment would be put to the vote first.

39. Mr. SHAW (Australia) proposed that a vote should first be taken on the Swiss amendment, which had been introduced first and was furthest removed from the International Law Commission's text. He also pointed out that if the sub-amendment was put to the vote first and was approved, the substance of the Swiss proposal would never be put to the vote. One of the fundamental rights of every participant in a deliberative body was to submit proposals and to expect it to take a decision on them. Switzerland had been specially invited to take part in the Committee's debates because of its great experience of special missions.

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2 *Ibid.*

3 See *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, vol. I (United Nations publication, Sales No.: 61.X.2), 38th meeting of the Committee of the Whole, para. 2.

It would be a lack of courtesy towards the Swiss delegation to treat its proposal so casually as not to put it to the vote.

40. Apart from that, he did not think that the proposal to introduce an optional protocol constituted a sub-amendment to the Swiss proposal. There were three alternatives open in the framing of the Convention: first, to make no reference to the settlement of disputes to which the future Convention might give rise; secondly, to establish the machinery for the compulsory settlement of such disputes; and thirdly, to annex to the Convention an optional protocol concerning the settlement of disputes. None of those three alternatives could be regarded as an amendment of any of the others. Each was truly alternative to both the others. That view was supported by rule 131 of the rules of procedure of the General Assembly, which provided that a motion was considered an amendment to a proposal if it merely added to, deleted from or revised part of that proposal. The purpose of the sub-amendment was not to do that, but was to replace by a protocol the whole of the text of the article proposed by Switzerland. Accordingly, it was not an amendment to the Swiss proposal.

41. He appealed to members of the Committee not to treat the procedural questions that had arisen as a trivial matter. The purpose of the rules of procedure was to protect the rights of all members, whether or not they were in a majority. The Committee should be jealous of the rights of minorities, even if the Committee agreed with the substance of the solution proposed in the joint text. Further, the adoption of his delegation's procedural motion would facilitate future harmony in the Committee.

42. Mr. Krishna RAO (India) said he was surprised to note that the Australian representative was expecting the Swiss proposal to be rejected as a matter of course.

43. He would not speak against the Australian motion, but would accept whatever the Chairman decided with respect to it.

At the request of the United States representative, the vote on the Australian motion was taken by roll-call.

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

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

Against: Spain, Sudan, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yemen, Zambia, Algeria, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Congo (Brazzaville), Cuba, Czechoslovakia, Ghana, Guatemala, Hungary, India, Indonesia, Iraq, Kuwait, Libya, Mali, Mongolia, Morocco, Nicaragua, Nigeria, Poland, Romania, Saudi Arabia, Sierra Leone.

Abstaining: Togo, Uganda, United Republic of Tanzania, Yugoslavia, Afghanistan, Argentina, Barbados, Bolivia, Cameroon, Central African Republic, Chad, Democratic Republic of the Congo, Cyprus, Dahomey, Dominican Republic, Ecuador, Ethiopia, Haiti, Iran, Kenya, Madagascar, Nepal, Niger, Peru, Rwanda, South Africa.

The Australian motion was rejected by 34 votes to 31, with 26 abstentions.

The meeting rose at 1.10 p.m.