

Document:-
A/CN.4/L.89

New alternative proposal submitted by the Special Rapporteur

Topic:
Special missions

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15. With regard to diplomatic privileges and immunities, the Special Rapporteur proposes to exclude special missions from the application of article 19 (Accommodation), article 21 (Exemption of mission premises from tax), article 24 (Free movement), and article 26 which provides that fees and charges levied by a mission in the course of its official duties shall be exempt from all dues and taxes.

16. The normal international practice, however, is to confer on diplomats in special missions exactly the same privileges and immunities as are granted to diplomats on permanent missions. The Havana Convention of 1928 on diplomatic officers provides with respect to "extraordinary diplomatic officers", defined in article 2 thereof as "those entrusted with a special mission", that they "enjoy the same prerogatives and immunities as ordinary ones" (art. 9).

17. It seems not to be the intention of the Special Rapporteur to propose any modification of this well-established rule. However, the above-quoted articles are excluded by the Special Rapporteur on the ground that they would not be applicable to special missions, at least in the great majority of cases. Here again, the fact that those provisions might be inapplicable in many cases, or even in the majority of cases, does not mean that they ought to be omitted from the draft, since to do so would prevent their application in the cases in which they might have a bearing on the performance of a special mission. Their omission might well be interpreted as signifying that the privileges relating to free-

dom of movement or tax exemption, for instance, could never apply to any special mission.

18. In the light of the considerations outlined above, it may safely be concluded that all the provisions of the 1958 draft are relevant to special missions and should be made applicable to them, with the proviso that article 3 of the 1958 draft (Functions of a diplomatic mission) should be interpreted as applying only within the scope of the specific task assigned to the special mission.

19. The only additional provision which seems to be required in the case of special missions is one concerning termination of the mission on fulfilment of the entrusted assignment. The relevant provision has been drafted as a sub-paragraph, on the lines of article 25 paragraph 3 of the Havana Convention of 1928 on diplomatic officers, to be inserted in article 41 of the 1958 draft (Modes of termination).

20. The draft submitted in document A/CN.4/L.87 attempts, for the reasons which have been indicated, to give expression, in a more condensed form, to the various ideas and suggestions contained in the Special Rapporteur's report, particularly his suggestions as to the form of the draft. The present proposal is intended to constitute an addendum to the 1958 draft, corresponding to the suggestion made by the Special Rapporteur in paragraph 51 of his report, where he indicates that the provisions on *ad hoc* diplomacy adopted by the Commission might appropriately form an integral part of the draft convention on diplomatic intercourse and immunities.

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[20 June 1960]

PRIVILEGES AND IMMUNITIES GRANTED TO SPECIAL MISSIONS

ARTICLE 1

Definition

The expression "special mission" means a mission sent by one State to another to carry out a special diplomatic task, and is also applied to a mission by an itinerant envoy who carries out special diplomatic tasks for the sending State in several other States.

ARTICLE 2

Privileges and immunities granted to special missions

The provisions of sections II, III and IV shall apply also to any special mission which a State has agreed to receive from another State.

Comments

Insert the substance of paragraphs 6, 7 and 8 of the Special Rapporteur's report (A/CN.4/129) and add:

(a) With regard to the provisions of section I of the 1958 draft, it is admitted that cases may occur where some of these articles would be applicable to special

missions. In general, however, these articles are intended to apply to permanent missions, by reason of the special features of such missions, including their permanence, their function of maintaining diplomatic relations between countries and the presence in a capital of several missions of the same character. Special missions, on the other hand, may vary considerably in composition and character and would require a different set of rules. The States concerned have encountered no difficulty in settling among themselves such general questions as have arisen on this point. In the circumstances, there would seem to be no need for separate rules on this subject. Wherever similar situations arise, States can proceed along the lines of the solutions to these questions contained in the 1958 draft.

(b) In the opinion of the Commission, an examination article by article of sections II, III and IV of the draft, which deal mainly directly or indirectly with diplomatic privileges and immunities, shows that there is no reason to exclude the application of any of these articles to special missions, although the provisions of some, such as articles 19, 21, 24 and 26, would apply to such missions only in special circumstances.