

Document:-  
**A/CN.4/SR.919**

**Summary record of the 919th meeting**

Topic:  
**Special missions**

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concerned could conclude bilateral or multilateral agreements concerning social security.

66. Mr. ALBÓNICO asked whether article 28 referred only to social security legislation or to all labour legislation including laws about contracts and benefits.

67. Mr. BARTOŠ, Special Rapporteur, said that the States that ratified the convention on special missions would be members of the International Labour Organisation and, as such, would be bound to extend the benefits of the social security system to any person working in their territory. The conventions concluded under the auspices of the International Labour Organisation formed what might be termed a body of international legislation, and the Commission had provided in its draft articles on the law of treaties that States could not derogate from general international law.

68. Mr. ALBÓNICO said that he was not satisfied with the Special Rapporteur's reply; article 28 should apply to all the labour legislation of the receiving State.

69. Mr. BARTOŠ, Special Rapporteur, pointed out that the International Labour Office did not confine itself to the study of labour legislation; about a third of its activities were devoted to social security problems.

70. Mr. AGO emphasized that article 28 referred exclusively to social security legislation; labour legislation was not mentioned. Paragraph 1 provided for exemption from social security provisions and paragraph 2 provided for an exception to that exemption, in other words, for the application of the social security system of the receiving State to certain members of special missions.

71. Mr. BARTOŠ, Special Rapporteur, said that the purpose of the Chilean Government's proposal was to exempt all members of the special mission, even if they were nationals of the receiving State, from social security provisions.

72. The CHAIRMAN, speaking as a member of the Commission, said that the corresponding provisions in the Vienna Conventions were clearly confined to social security legislation; they contained no special provisions concerning labour legislation in general.

73. Mr. CASTAÑEDA said he thought that Mr. Albónico's observation was calculated to bring out more clearly the obligation on special missions to respect certain rules of labour legislation.

74. Mr. JIMÉNEZ de ARÉCHAGA said that it was probably unnecessary to extend the scope of article 28 so as to include labour legislation in general because of the provision in article 40, paragraph 1, concerning the obligation to respect the laws and regulations of the receiving State.

75. Mr. ALBÓNICO said that he did not wish to press his point, but wished the Commission to realize that a national of the receiving State or a person permanently resident there, if employed in a special mission, must respect the labour legislation of the country. He could not

be treated on a different footing from persons employed elsewhere.

76. Mr. AGO said he considered that the provisions of article 28 met all the points raised by members of the Commission. When the special mission employed a national of the receiving State, the question of the labour legislation to be applied must be settled on the basis of the rules of private international law. Normally, such labour relationships were governed by local law. On the other hand, the laws of the sending State would apply in the case of labour relationships established in that State between the sending State and its nationals. But, even in the case of relationships governed by foreign law, the question of compliance with local social security laws might arise, as it could be considered a matter of public order. That was why provision had had to be made in article 28 for exemption.

77. Mr. BARTOŠ, Special Rapporteur, said that the Chilean Government had proposed amending paragraph 2(a) to open with the words "... to nationals of the receiving State or aliens domiciled there".\* The Commission had preferred the wording "or permanent residents", for the Vienna Conference on Diplomatic Relations had drawn a distinction between domicile, which could be temporary, and permanent residence.

78. For the end of paragraph 2(a) the Chilean Government had proposed the wording "unless the latter are members of the diplomatic staff of the mission", but he preferred the wording of the Vienna Convention, which had been used in article 28, as it seemed less restrictive.

79. Mr. ALBÓNICO said he considered that paragraph 2 should also apply to nationals of the sending State resident in the receiving State.

80. Mr. TAMMES said that article 28 was acceptable.

81. The CHAIRMAN suggested that article 28 be referred to the Drafting Committee.

*It was so agreed.*<sup>6</sup>

The meeting rose at 1 p.m.

\* Literal translation. The English translation of the Chilean Government's proposal in document A/CN.4/193/Add.1 already uses the expression "permanent residents" adopted at the Vienna Conference (see para. 54 above).

<sup>6</sup> For resumption of discussion, see 933rd meeting, paras. 57-62.

## 919th MEETING

*Monday, 12 June 1967, at 3 p.m.*

*Chairman:* Sir Humphrey WALDOCK

*Present:* Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

**Special Missions**

(A/CN.4/193 and Addenda; A/CN.4/194 and Addenda)

*(continued)*

[Item 1 of the agenda]

**ARTICLE 29 (Exemption from dues and taxes) [33]**

1. *Article 29* [33]  
*Exemption from dues and taxes*

The head and members of the special mission and the members of its diplomatic staff shall be exempt from all dues and taxes, national, regional or municipal, in the receiving State on all income attaching to their functions with the special mission and in respect of all acts performed for the purposes of the special mission.

2. The CHAIRMAN invited the Commission to consider article 29, the Special Rapporteur's proposals for which were contained in paragraph 10 of the section dealing with that article in his fourth report (A/CN.4/194/Add.2) and in his additional comments in document A/CN.4/194/Add.4.
3. Mr. BARTOŠ, Special Rapporteur, said that article 29 accorded special missions only strictly limited immunity. The basic purpose of the article was to grant members of the special mission and members of its diplomatic staff exemption only from dues and taxes on income attaching to their functions with the special mission, and not from dues and taxes on private income having its source in the receiving State or from taxes on capital levied on investments in commercial undertakings in the receiving State.
4. Few objections had been made to the article. The Government of Israel had submitted a comment concerning the extension of the exemption to the entire staff. The Commission could take a decision on that comment when it came to consider article 32.
5. The United Kingdom Government asked that the article should go into more detail, for as it stood, it might be construed as exempting from stamp duty cheques, receipts, etc., given by the head, members and diplomatic staff of a special mission in the course of their duties, which was contrary to the Stamp Act. It had certainly not been his intention to give such scope to the exemption provided for in article 29 and in that way to facilitate a kind of tax fraud. Similarly, with respect to the United Kingdom Government's comment on a mission sent to promote the export trade of the sending State, he had never contemplated exempting persons who derived profits from activities of that kind. The wording of article 29 should therefore be amended to allay the United Kingdom's fears on those various points. What the article was directed to was official acts performed by the special mission, certificates issued by it, certain receipts, etc., but not any activity of the kind mentioned by the United Kingdom Government.
6. The United States Government recommended the amendment or deletion of the final phrase, "and in respect of all acts performed for the purposes of the special mission", while the Greek Government asked

that the privileges and immunities generally of the special mission should be restricted. Neither had suggested extending the immunity provided in article 29 or including the list of exceptions provided for in article 34 of the Vienna Convention on Diplomatic Relations. After due reflection, he was agreeable to deleting the final phrase, for the article was concerned not with personal exemptions for members of the mission but with the exemption of the special mission. Its deletion would represent a further restriction on that exemption, which was already very limited.

7. Mr. KEARNEY said that by agreeing to drop the concluding phrase "and in respect of all acts performed for the purposes of the special mission", the Special Rapporteur had disposed of one of the problems raised by article 29. In connexion with such taxes as those on meals and beverages, the question would arise whether they fell under the heading of official entertainment and should therefore be tax-free. If the final phrase were not dropped, there would undoubtedly be difficulties, because protocol officials would wish to be liberal with respect to the tax exemption of members of special missions, while Treasury officials would instinctively take a restrictive attitude.

8. With regard to the remainder of the article, he had doubts as to the workability of the general formula it embodied. In his opinion, the Commission should consider whether it would not be better to adopt a text on the lines of article 34 of the 1961 Vienna Convention on Diplomatic Relations.

9. Mr. CASTRÉN said he agreed with the United Kingdom Government's comment that the exemption given to the members and diplomatic staff of the special mission was too wide and that it should apply only to "emoluments or fees paid by the sending State or, so long as the mission is for the governmental purposes of the sending State, to emoluments or fees paid by other sources in the sending State" (A/CN.4/188/Add.1). Another possibility would be to adopt the wording used in the Vienna Convention on Diplomatic Relations, but he had not yet formed a definite opinion on that point.

10. He also agreed with the United Kingdom Government that the commentary was not clear. The second sentence in paragraph (2) could either be deleted, or replaced by the following text: "Since the starting point is different, it is no longer necessary to list, as in article 34 of the said Vienna Convention, the cases where there is no exemption from dues and taxes".

11. Mr. NAGENDRA SINGH said that the Commission had not intended in article 29 to give any wider tax exemption than that granted to permanent missions by article 34 of the 1961 Vienna Convention. Unfortunately, it was possible to put a very broad interpretation on article 29 as it stood, a possibility to which the United Kingdom had drawn attention in its comments.

12. It should be specified that special missions were obliged to pay the dues and taxes mentioned in article 34, paragraphs (a) and (f), of the 1961 Vienna Convention, since otherwise it might be open to doubt whether, in fact, special missions were obliged to pay sales taxes

on furniture purchased by them and registration dues in respect of premises occupied by them.

13. Lastly, if the final phrase of the article were deleted, there was no need to retain the word "dues"; if it was only income tax that was intended, the words "dues and taxes" should be replaced by the word "taxes".

14. Mr. REUTER said he too thought that the exemption granted was too wide. To restrict it, it could be specified that the exemption applied to income attaching "directly" to the functions of the special mission and to all acts which were "principally" acts of the special mission. That was one method.

15. The second method was that usually adopted by the United Kingdom, namely, the enumerative method. A list of immunities would be drawn up, mentioning some of the most typical dues and taxes from which the special mission was exempt, and the words "and other similar taxes" would be added, so that any cases not mentioned could be settled by analogy.

16. Mr. JIMÉNEZ de ARÉCHAGA said that the attempt to adopt in article 29 a general formula intended to be more restrictive than article 34 of the 1961 Vienna Convention had not had the expected result, as was clearly shown by the comments of the United Kingdom and United States Governments. In particular, the expression "all income attaching to their functions" was at the same time both unduly restrictive and unduly broad. It was unduly restrictive because it exempted only the income, leaving outside the exemption taxes and dues levied on sums other than income; and it was unduly broad because, as pointed out by the United Kingdom Government, there could be cases in which income was taxable.

17. Deletion of the final phrase might have the effect of enlarging the effect of the exemption, thereby intensifying the discrepancy between the draft articles and the 1961 Vienna Convention.

18. The Commission should simply revert to the formula already endorsed by two conferences of States; that formula was to be found in article 34 of the 1961 Vienna Convention and article 49 of the 1963 Vienna Convention.

19. Mr. BARTOŠ, Special Rapporteur, said he did not share the opinion of Mr. Jiménez de Aréchaga, for there were two entirely different problems involved: permanent diplomatic agents and consular officers had their legal domicile in the receiving State, whereas members of special missions were only there temporarily. Moreover, members of special missions were not permitted to engage in financial activities in the territory of the receiving State and could not enjoy any immunity except exemption from dues and taxes on the salaries and wages which they received from the sending State.

20. Instead of stating in principle, like the two Vienna Conventions, that members of the mission were exempt from all dues and taxes with the exception of those listed in the text, article 29 laid down the rule that the only exemption enjoyed by members of the special mission was exemption from dues and taxes on income attaching to their functions. To ensure good international

relations, the sole purpose of a special mission should be to carry out its task; it could therefore be granted only the exemption provided for in article 29.

21. It was in order to prevent the activities objected to by the United Kingdom Government from being included among acts performed for purposes of the special mission and in order to take into account the comment of the United States Government that the text of the final phrase was not clear, that he had suggested deleting the words: "and in respect of all acts performed for the purposes of the special mission". No exemption would therefore be granted in respect of such acts, except by way of agreement—financial agreement, double taxation agreement, and so on. In practice, it sometimes happened that the receiving State asked for a joint mission to visit its territory, and paid all its expenses but that was an exceptional case.

22. What the Commission had to do was not to draw an analogy between the Vienna Conventions and article 29, but starting from the situation governed by the Vienna Convention, to reach a reasonable solution appropriate for special missions.

23. The CHAIRMAN, speaking as a member of the Commission, said that he agreed with Mr. Jiménez de Aréchaga. The United Kingdom Government was correct in pointing out that, by dropping the list of exceptions appearing in article 34, sub-paragraphs (a) to (f), of the 1961 Vienna Convention, the Commission had undoubtedly made article 29 of the draft on special missions broader than that article.

24. Nor could the problem be solved by merely dropping the concluding phrase. The expression "attaching to their functions" would remain and it constituted the main source of difficulty. If that general expression were maintained, there was a risk that article 29 might be construed as giving exemption from taxation which exceeded the exemptions laid down in article 34 of the Vienna Convention.

25. In the circumstances, he was in favour of adopting a text on the lines of article 34 of the 1961 Vienna Convention. The members of a special mission were in a position which was not very different from that of members of the permanent diplomatic mission of the sending State, since they were in the receiving State not because they so wished but in order to perform their functions. Of course, inasmuch as special missions had a temporary character, the field of operation of the article on tax exemption would be limited, but since their position was essentially the same as that of permanent missions, there was no need to look for a different phraseology.

26. Mr. JIMÉNEZ de ARÉCHAGA said that the position of special missions undoubtedly justified giving their members fewer privileges with respect to dues and taxes than members of permanent missions, and such had undoubtedly been the purpose of the Commission in article 29. Because of the extreme complexity of tax matters, however, the Commission had not achieved that purpose and the deletion of the concluding phrase would make the article even wider. The fact that article 29

contained none of the exceptions specified in paragraphs (a) to (f) of article 34 of the 1961 Vienna Convention could be invoked as an argument to claim for members of special missions exemption from indirect taxes and other dues, taxes and charges specified in those paragraphs.

27. At its seventeenth session, the Commission had discussed the question of the "possible inclusion of an article on the lines of article 34 of the Vienna Convention on Diplomatic Relations". The Special Rapporteur had then indicated that he "was undecided whether exceptions should be made in favour of members of special missions or whether a provision like article 23 of his draft would be better". He had gone on to say that "There was a material difference between article 23, to paragraph 3 of which the Commission had made reservations, and article 34 of the Vienna Convention on Diplomatic Relations, which related only to the diplomatic agent. As special missions stayed only temporarily in the territory of the receiving State, the same considerations did not apply".<sup>1</sup>

28. In response to the Special Rapporteur's request for the views of members of the Commission, Mr. Tunkin had stated that "a special mission, one dealing with frontier problems, for example, might stay in a country for as long as a year, and the question could then arise whether its members were liable to taxation in the receiving State. It might be wiser to insert a provision covering the point on the basis of article 34 of the Vienna Convention on Diplomatic Relations".<sup>2</sup> The Special Rapporteur had accepted that suggestion.<sup>3</sup>

29. The history of article 29 thus showed that it had been prepared simply in order to deal with a case where a special mission remained for a long period in the receiving State and could be assimilated to a permanent mission for purposes of taxation. It would therefore be fully justifiable simply to adopt the text of article 34 of the 1961 Vienna Convention.

30. Mr. NAGENDRA SINGH said that he could accept a text similar to article 34 of the 1961 Vienna Convention instead of the present text of article 29.

31. The proposed wording of article 29 did not cover the exceptions envisaged in paragraphs (a), (e) and (f) of article 34 of the 1961 Vienna Convention, but should be construed as covering those specified in paragraphs (b), (c) and (d) of that article, since, in order to define the income subject to exemption, article 29 used the expression "income attaching to their functions".

32. In view of that situation, the adoption of article 29 as it stood, with the deletion of the concluding phrase, could be interpreted as giving members of a special mission a greater measure of tax exemption than members of a permanent mission.

33. Mr. USHAKOV said that, even though the beneficiary of the exemption under article 34 of the Vienna Convention on Diplomatic Relations and article 29 of

the draft was the diplomatic agent or members of the special mission, it was to the mission itself that the immunity was granted. Consequently, the words "and in respect of all acts performed for the purposes of the special mission" were perfectly appropriate. However, as the Special Rapporteur had pointed out, the wording of the article was not particularly felicitous. Instead of saying that the members of the special mission "shall be exempt from all dues and taxes, national, regional or municipal... on all income attaching to their functions...", it would perhaps be better to keep to the solution adopted in the Vienna Convention and to provide for exemption from all dues and taxes other than those listed. In that case, paragraphs (a), (b), (e) and (f) of article 34 of the Vienna Convention could be incorporated in the draft and paragraphs (c) and (d), which did not really concern special missions, could be omitted.

34. Perhaps the Special Rapporteur could adopt for article 29 the wording used in article 34 of the Vienna Convention on Diplomatic Relations.

35. Mr. BARTOŠ, Special Rapporteur, said that article 29 granted fewer privileges to members of special missions than article 34 of the Vienna Convention gave to diplomatic agents since, while article 34 of the Vienna Convention provided for a general exemption from all dues and taxes on income, including income received by the diplomatic agent originating in the sending State, article 29, with the amendment he had proposed, limited the exemption strictly to income attaching to functions with the special mission. The wording used in article 29 had already been adopted by the Commission at first reading. If the Commission now wished to alter the exemption provided for in article 29, it would have to find some other formula than that used in article 34 of the Vienna Convention, since the exceptions contained in paragraphs (a) to (f) of that article were relevant only in relation to the very broad exemption provided for in the first paragraph. The problem, then, was not the wording of the article but the concept of the system defined in it.

36. Mr. CASTAÑEDA said that, in mixed economy countries, where public authorities and private undertakings worked closely together for the development of foreign trade, it was sometimes very difficult to distinguish between the objectives of the country as a whole and those of the private sector, and between the means which both employed. Say, for example, a country of that kind sent to another country, to negotiate a trade agreement, a special mission headed by the minister of foreign trade and composed partly of permanent officials and partly of representatives of the private sector, if the latter conducted some commercial business in connexion with the negotiations, that business could produce profits which, in the terms of the article, would be literally "income attaching to their functions with the special mission" and, as such, exempt from all taxation to which they would normally be subject in the receiving State.

37. He shared the Special Rapporteur's view regarding the general concept of the article; it was obvious that a rule which limited tax exemption to income attaching to functions with the special mission was more restrictive

<sup>1</sup> *Yearbook of the International Law Commission, 1965*, vol. I, 808th meeting, para. 33.

<sup>2</sup> *Ibid.* para. 34.

<sup>3</sup> *Ibid.* para. 35.

than the rule embodied in article 34 of the Vienna Convention, even with its exceptions.

38. However, there was nothing to prevent the two ideas being combined. The final phrase could be deleted, as the Special Rapporteur had proposed, and a sentence added reproducing the exceptions listed in article 34 of the Vienna Convention.

39. Mr. USHAKOV said he was afraid that the article would be inadequate if the exemption from dues and taxes was limited to "income" attaching to functions with the special mission. In his opinion, the article should apply not only to income but also to expenditure, in other words, to purchases. It might therefore be better to retain the final phrase, "in respect of all acts performed for the purposes of the special mission", which had the advantage of covering purchases as well as sales.

40. Mr. USTOR said that he understood the Special Rapporteur's desire to grant members of special missions fewer taxation privileges than members of a permanent mission, on the ground that they would stay in the receiving State for only a short period. But special missions sometimes stayed for a long time and any restriction of tax exemption would not be in keeping with the articles previously adopted by the Commission, in which special missions had been equated with permanent missions in respect of privileges.

41. The United Kingdom Government's comments were not intended to restrict the taxation privileges of members of special missions; the purpose of those comments had been to point out that article 29 as it stood could have the effect of giving special missions greater privileges than permanent missions. The implication was that the United Kingdom Government wished to place both types of missions on an equal footing as far as tax exemption was concerned.

42. If the Commission wished to limit tax exemption exclusively to salaries and emoluments, the text of article 29 should be amended so as to make that position clear. However, he himself would not favour a text which left outside the scope of tax exemption such items as sales tax and petrol tax, exemption from which was necessary for the performance of the functions of the special mission.

43. What he did favour was placing special missions on an equal footing with permanent missions with regard to taxation.

44. Mr. AGO said that the Commission had two alternatives. Either it could place members of special missions on exactly the same footing as members of permanent missions in respect of taxation, and reproduce article 34 of the Vienna Convention almost *in toto*, but some held that that would be going rather too far.

45. Or it could adopt the course intended by the Special Rapporteur and give the members of special missions fewer privileges than diplomatic missions. That intention had, apparently, been misunderstood by some; perhaps the term "income" gave rise to confusion. What the Special Rapporteur had in fact meant to do was to exempt from taxes the salaries and emoluments received by

members of the special mission in respect of their functions with the special mission, and nothing more. If that was the Commission's opinion, it would be better to say so clearly and use some such wording as, for example: "Members of the special mission shall be exempt from all dues and taxes, national, regional or municipal, on salaries and other emoluments received in respect of the functions which they perform in the special mission".

46. In short, the Commission should either follow the Vienna model or adopt as simple a formula as possible and avoid the use of equivocal terms liable to bring up questions relating to the purchase or sale of goods, for questions of that kind had nothing to do with article 29. Article 29 was concerned only with the tax exemption granted to members of the special mission.

47. Mr. USHAKOV said that, like article 34 of the Vienna Convention, article 29 provided for tax exemptions to meet the needs of the special mission as such, even though, according to the text of the articles, the exemptions were granted to the members of the mission. The two articles should be compared with article 23 of the Vienna Convention and article 23 of the draft respectively, which granted tax exemption to the mission itself, but only in respect of the premises which it occupied. The wording proposed by Mr. Ago, which would limit the exemption to the salaries of members of the special mission, would not be sufficient.

48. Mr. AGO said that the Commission should maintain the distinction between exemptions granted to different subjects which were the special mission, that was to say the sending State, in respect of the premises, and the members of the special mission in respect of what they received in their personal capacity. In his view, article 29, as at present worded, applied to the members of the special mission and not to the special mission itself.

49. Mr. RAMANGASOAVINA said he agreed with Mr. Ago's remarks when he had spoken the first time. If the Commission reverted to the formula contained in article 34 of the Vienna Convention, with its list of exceptions, it would be indicating to members of special missions several possibilities of personal gain, whereas they ought to devote themselves wholly to the work of the special mission. Article 29 should be read in conjunction with article 42 which prohibited members of special missions from practising for personal profit any professional or commercial activity in the receiving State.

50. If it were amended on the lines proposed by Mr. Ago, article 29 would be simple and clear and would avoid comparisons which could only complicate the situation.

51. Mr. BARTOŠ, Special Rapporteur, suggested that he should submit two formulations to the Drafting Committee: one on the lines of that proposed by Mr. Ago, that was to say, very close to the one the Commission had adopted by a majority at first reading, and the other reflecting the wishes of those members of the Commission who were in favour of reproducing the provisions of article 34 of the Vienna Convention.

52. Personally, he was against the latter solution, which he felt was not in line with the purposes of a special

mission, but he would submit a text on a trial basis so that the Drafting Committee could compare the two.

53. The CHAIRMAN said that the alternatives were to restrict the exemption granted in article 29 to salaries and emoluments, in which case the text would need careful drafting because the word "income" in English was wider than salaries and emoluments, or to adopt an article on the lines of the Vienna Convention on Diplomatic Relations under which certain articles purchased for the purpose of a special mission's functions would be exempt from taxation. If the first alternative were adopted, articles for the official use of the mission would, as Mr. Ushakov had pointed out, be liable to tax.

54. Perhaps the article should be referred to the Drafting Committee without the Commission taking any decision of principle.

55. Mr. AGO said he would accept either of the alternatives mentioned by the Chairman, but must point out that, if the Commission based its text on article 34 of the Vienna Convention, it would be giving members of special missions more privileges than if it kept to the text proposed by the Special Rapporteur. Moreover, he was not sure that a formulation based on article 34 of the Vienna Convention would meet all Mr. Ushakov's objections, since although the privileges granted would then be broader, they would still be granted to persons and not to the special mission itself. Neither of the two solutions considered met that point; if it was to be met fully, another article would be needed.

56. If the Commission chose the more restrictive system, the one which limited exemption to the salaries received by members of the special mission in respect of their functions in the special mission, there would no longer be any reason for drawing a distinction in the article between members of the special mission and its diplomatic staff on the one hand, and its administrative and technical staff and its service staff on the other. By the terms of paragraphs 2 and 3 of article 37 of the Vienna Convention, members of the administrative and technical staff enjoyed the same tax exemptions as the diplomatic agent, and members of the service staff enjoyed exemption from dues and taxes on the emoluments they received by reason of their employment. Only if the Commission chose a more liberal system, based on article 34 of the Vienna Convention, would it have to make a distinction between representatives of the State and the members of the diplomatic staff on the one hand, and the administrative and technical staff and service staff on the other; the latter would then be entitled only to exemption from taxes on their salaries or wages.

57. Mr. BARTOŠ, Special Rapporteur, said that, to meet Mr. Ushakov's wishes, he would draft a new paragraph for incorporation in article 23, stating that acts performed by the special mission would be exempt from all taxes and dues. Such a provision would, however, need to be accompanied by a proviso like "In the absence of any objection on the part of the receiving State", since a convention on special missions could not require States to grant indeterminate fiscal privileges.

58. It must be remembered that purchase and sale were two aspects of the same operation; in most States buyer and seller were jointly responsible for payment of the duty or tax on the operation.

59. Mr. REUTER said he was afraid that the Commission was going from one extreme to another. It should not be forgotten that the stay of members of the special mission in the receiving State was not voluntary. If they were exempt only from taxes on their salaries, they would be in exactly the same position as international officials, who normally did not pay taxes on their salaries but did pay taxes on their private income. That would be absurd in the case of members of a special mission. In many countries any person became subject to tax on the whole of his income after a stay of seven months; that meant that, if a special mission lasted more than seven months in one country, under the proposed rule its members would become liable to tax on their private income, which had nothing to do with the performance of their functions in the special mission, whereas the opposite should be the case. Trying to be too precise created a great many problems.

60. The CHAIRMAN observed that exemptions on articles for personal use would no doubt be obtained through the permanent mission.

61. He suggested that article 29 be referred to the Drafting Committee.

*It was so agreed.*<sup>4</sup>

ARTICLE 30 (Exemption from personal services and contributions) [34]

62. *Article 30* [34]  
*Exemption from personal services and contributions*

The receiving State shall exempt the head and members of the special mission and the members of its diplomatic staff from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

63. The CHAIRMAN invited the Commission to consider article 30, the Special Rapporteur's proposals for which were contained in paragraph 9 of the section dealing with that article in his fourth report (A/CN.4/194/Add.2) and in his additional comments in document A/CN.4/194/Add.4.

64. Mr. BARTOŠ, Special Rapporteur, said that, in drafting article 30, he had started from the ideas underlying article 35 of the Vienna Convention on Diplomatic Relations. However, he had considered that exemption from personal services and contributions ought to be accorded not only to the head and members of the special mission but to the entire staff of the mission, including locally recruited staff, regardless of nationality or domicile. Otherwise, the regular functioning of the special mission could not be ensured. The Commission had considered that the legal rules corresponding to those needs of the special mission would involve an excessive derogation from the sovereign rights of the receiving State, but it

<sup>4</sup> For resumption of discussion, see 933rd meeting, paras. 63-74.

had decided to mention in the commentary the arguments which had been put forward.

65. The United Kingdom Government thought that there was no need to include in the article a clause relating to nationals of, and permanent residents in, the receiving State, as there was a general provision relating to those categories of persons in article 36 of the draft.

66. With reference to paragraphs (2) and (3) of the commentary, the Netherlands Government stated that there was no need to supplement the article.

67. The Canadian Government accepted the text of the article but did not approve of paragraph 2(b) of the commentary.

68. The Greek Government wished the immunities and privileges provided in the article to be limited, particularly in the case of technical or short-term special missions.

69. To meet the points made by Governments in their comments, he was prepared to specify in the commentary that, in the case of members of the staff who were nationals or permanent residents of the receiving State, exemption from personal services would depend on the decision of the receiving State.

70. Mr. USTOR said that article 30 was acceptable: it rightly did not go beyond the limits of article 35 in the Vienna Convention on Diplomatic Relations. However, as it codified an existing international practice it should start with the words "The head and members of the special mission and the members of its diplomatic staff shall be exempt...". The decision did not lie with the receiving State, as was the case in article 31. He hoped that the Drafting Committee would consider the modification he had suggested.

71. Mr. AGO said he did not agree that the proposed text should be altered, or that it was necessary to mention specifically the exception for nationals of, and permanent residents in, the receiving State. On the other hand, the impression should not be given that that exception would be established automatically by article 36, which dealt exclusively with immunity from jurisdiction and inviolability, for it might then be thought that the members of the special mission who were nationals of the receiving State would enjoy the immunity provided under article 30.

72. Mr. RAMANGASOAVINA said it should be specified in article 30 that members of the staff who were nationals of, or permanent residents in, the receiving State were not exempt from personal services. In a country suffering from deforestation and erosion, for instance, if the government required all the people to help with a reforestation programme, it would be difficult to exempt certain citizens from that obligation merely because they were employed in the service of a foreign country.

73. The Special Rapporteur said in his commentary that those services could be used as a powerful weapon by the receiving State to harass the special mission. Naturally, States should execute the provisions of treaties with at least a minimum of good faith, but whatever international instruments might say, States could always, if they

wished, hamper the work of a mission. It had been argued that special missions were generally of short duration, but in fact they sometimes lasted two or three years.

74. Mr. NAGENDRA SINGH said that it would be neither normal nor reasonable to require the receiving State to exempt nationals and permanent residents from personal services, as the Special Rapporteur had suggested. That point apart, article 30 was satisfactory.

75. Mr. BARTOŠ, Special Rapporteur, replying to Mr. Ustor, said that the State granted exemption from personal services because it was the State which imposed those services *ex officio*. In the case of members of the staff who were nationals of, or permanent residents in, the receiving State, great care would admittedly have to be exercised with regard to exemption from personal services. As a jurist, however, he believed it was preferable to apply the principle that everyone was of good faith until the contrary was proved.

76. Except for the first question raised by Mr. Ustor for the attention of the Drafting Committee, and subject to the Committee's decision to replace the phrase "The head and members of the special mission and the members of its diplomatic staff" by "The representatives and the members of the diplomatic staff", he thought there was no need to alter the proposed text.

77. The CHAIRMAN said that article 30 had not provoked any objection but the commentary would need to be cautiously worded as far as nationals of the receiving State were concerned. Their position and that of permanent residents in the receiving State might be considered when the Commission discussed article 36 and could either be regulated by a proviso of the kind found at the beginning of paragraph 1 of that article, or left to the good faith of the States concerned.

78. He suggested that article 30 be referred to the Drafting Committee.

*It was so agreed.*<sup>5</sup>

#### ARTICLE 31 (Exemption from customs duties and inspection) [35]

79. *Article 31* [35]  
*Exemption from customs duties and inspection*

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(a) Articles for the official use of the special mission;

(b) Articles for the personal use of the head and members of the special mission, of the members of its diplomatic staff, or of the members of their family who accompany them.

2. The personal baggage of the head and members of the special mission and of the members of its diplomatic staff shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be

<sup>5</sup> For resumption of discussion, see 933rd meeting, paras. 75-77.

conducted only in the presence of the person concerned, of his authorized representative, or of a representative of the permanent diplomatic mission of the sending State.

80. The CHAIRMAN invited the Commission to consider article 31, the Special Rapporteur's proposals for which were contained in paragraph 12 of the section dealing with that article in his fourth report (A/CN.4/194/Add.2) and in his additional comments in document A/CN.4/194/Add.4.

81. Mr. BARTOŠ, Special Rapporteur, said that he had based article 31 on article 36 of the Vienna Convention on Diplomatic Relations, although he had not copied the text exactly. For instance, in sub-paragraph (b), the phrase "including articles intended for his establishment" had been omitted, because the question of establishment did not arise for members of a special mission. Similarly, the words "members of his family forming part of his household" had been replaced by "members of their family who accompany them". Exemption from inspection of the personal baggage of members of special missions was subject to the same conditions as that granted to diplomatic agents.

82. The Belgian Government thought the word "articles" in sub-paragraph (b) was too vague and should be replaced by "personal effects"; that point could be left to the Drafting Committee. The Belgian Government also proposed the deletion of the words "or of the members of their family who accompany them".

83. The Swedish Government observed that there was a discrepancy between the expression "who accompany them" in article 31 and the words "who are authorized by the receiving State to accompany them" in article 35, paragraph 1. With regard to the latter expression, he would point out that, although the receiving State could limit the number of the members of the family accompanying a member of a special mission, an authorization from that State would not always be necessary.

84. The Austrian Government said that there was some inconsistency between the wording of articles 31 and 32 of the draft with regard to exemption of administrative and technical staff from customs duties. The United Kingdom Government expressed an almost identical opinion.

85. The Canadian Government considered that the exemption referred to in the article should be removed, because it should remain a matter of courtesy and reciprocity.

86. The Government of Gabon considered that exemption of members of special missions from customs duties was one of the matters in which some discretion should be left to the authorities of the receiving State.

87. The United States Government had expressed reservations concerning the scope of exemption from customs duties and inspection. Its comments raised a matter of principle which the Commission should settle before making any amendment to article 31.

88. Lastly, the Greek Government considered that the privileges and immunities provided in the article should not be so extensive.

89. The comments of Governments related to the substance of the article, and the Commission should consider them carefully.

The meeting rose at 5.50 p.m.

## 920th MEETING

*Tuesday, 13 June 1967, at 10 a.m.*

*Chairman:* Sir Humphrey WALDOCK

*Present:* Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

### Special Missions

(A/CN.4/193 and Addenda; A/CN.4/194 and Addenda)

*(continued)*

[Item 1 of the agenda]

ARTICLE 31 (Exemption from customs duties and inspection) [35] *(continued)*<sup>1</sup>

1. The CHAIRMAN invited the Commission to continue its consideration of article 31, which had been introduced by the Special Rapporteur at the previous meeting.

2. Mr. CASTRÉN said that he was inclined to accept the existing text of article 31. Nevertheless, there was good reason for the comments by the Governments of Belgium and Sweden, both of which proposed that in paragraph 1(b) the words "or of the members of their family who accompany them" should be deleted, since the matter was dealt with in article 35, paragraph 1. The Special Rapporteur had first said, in paragraphs 6 and 9 of his comments (A/CN.4/194/Add.2), that he accepted that suggestion, but had then said in paragraph 12(2) that it would be enough to mention the comments by those Governments in the commentary to the article. He (Mr. Castrén) could not agree; his view was that the sentence should be dropped, as it duplicated the provisions of article 35.

3. Mr. JIMÉNEZ de ARÉCHAGA said that while the provisions of paragraph 1(a) had not elicited any comment, those of paragraph 1(b) had given rise to objections by all the Governments that had submitted comments on the article. The privilege of importing articles for personal use without paying customs duties or taxes was, in the case of permanent diplomatic missions, one of those which created most difficulty. If that privilege were extended to special missions, the draft articles were unlikely to receive general support.

<sup>1</sup> See 919th meeting, para. 79.