



CONTENTS

	Page
Agenda item 87:	
Draft Convention on Special Missions (<i>continued</i>)	117

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, A/C.6/L.747)**

1. After an exchange of views in which Mr. Krishna RAO (India), Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, Mr. NJENGA (Kenya), Mr. ROSENSTOCK (United States of America), Mr. HYERA (United Republic of Tanzania), Mr. ANDRIAMISEZA (Madagascar), Mr. GARCIA ORTIZ (Ecuador), Mr. SHRESTHA (Nepal), Mr. CHAILA (Zambia), Mr. ROBERTSON (Canada) and Mr. DADZIE (Ghana) took part, the CHAIRMAN said that at the next meeting the Chairman of the Drafting Committee would present the text of article 1, sub-paragraph (a), adopted by the Drafting Committee (A/C.6/L.751), containing a definition of the term "special mission", and the Committee could then decide when it would examine the proposal. Thus delegations could take advantage of the explanations given by the Chairman of the Drafting Committee and place all the various aspects of the question before their Governments, with a view to receiving appropriate instructions.

Article 32 (Exemption from social security legislation)

2. The CHAIRMAN said that, since the amendment to article 32 submitted by Sweden (A/C.6/L.724) had been withdrawn, if there were no objections he would consider that the Sixth Committee approved article 32 as worded in the International Law Commission's draft and wished to refer it to the Drafting Committee.

It was so decided.

*Article 33 (Exemption from dues and taxes)
(A/C.6/L.685, A/C.6/L.710)*

3. Mr. VRANKEN (Belgium) presented his delegation's amendment (A/C.6/L.685), which would replace the present wording of article 33 by the text of the former article 29 concerning exemption from dues and taxes as given in the report of the International Law Commission on the work of its seventeenth session.¹ The Belgian delegation

felt that it would be difficult if not impossible to establish detailed rules in favour of missions of a temporary nature in a sphere as complex as tax law. In addition to being simple, the former article 29 had the advantage of being in keeping with the practice followed at present by States which restricted the tax exemptions granted to temporary diplomatic agents to their emoluments and the expenses necessary for the exercise of their functions. It was quite astonishing that the International Law Commission had felt it desirable to reject the text of article 29—concerning which, incidentally, only four Governments had made observations—and to sponsor and submit as the present article 33 the text of article 34 of the Vienna Convention on Diplomatic Relations, without any substantial change. Moreover, the International Law Commission had to recognize that according to certain Governments and its Special Rapporteur himself, the rules concerning tax exemption laid down in article 33 were a good deal more liberal than those in the former article 29; and the Belgian delegation would very much like to know why the International Law Commission had changed its mind so radically. It would like to point out that in taxation matters positive, simple wording was preferable to an unduly detailed text, which might give rise to different interpretations. The wording of article 33 of the draft did no doubt cater for the needs of a permanent diplomatic mission, which would be capable of taking all the necessary measures to obtain the tax exemptions to which it was entitled, but his delegation did not think it was equally appropriate in the case of special missions, which, because of the temporary nature of their functions, were rarely in a position to comply with the many formalities required for that purpose.

4. Mr. BARTOS (Expert Consultant) said that in 1967 most of the members of the International Law Commission had been of the opinion that members of special missions should be given treatment in taxation matters identical with that enjoyed by the members of permanent missions. Although he himself had thought it desirable to restrict tax exemption for members of the diplomatic staff of special missions to the salaries and emoluments they received for their services, the International Law Commission had been anxious to lessen as far as possible the difficulties which members of special missions might encounter in the exercise of their functions, and particularly to protect them from the possibility of legal procedure for non-payment of taxes and had therefore decided on the present wording of article 33.

5. Mr. VRANKEN (Belgium) said that the explanations given by Mr. Bartos tended to strengthen the position of the Belgian delegation. It would therefore maintain its amendment, and if it were rejected, it would vote against article 33 of the draft.

¹ See *Official Records of the General Assembly, Twentieth Session, Supplement No. 9*, chapter III.

6. Mr. SHAW (Australia) said first of all that the former article 29, which the Belgian delegation was proposing to substitute for the present article 33, mentioned "the head and members of the special mission and the members of its diplomatic staff", and since those three categories were included in the expression "members of the special mission" according to the definition given in article 1, it would be well in the proposed text to replace the enumeration of the three categories by that expression.

7. It would also be desirable, as far as the English wording of the proposed version was concerned, to use the English text of the old article 29 as given in the International Law Commission's report on the work of its seventeenth session.

8. In that connexion, he would like to point out that the spirit of article 40, which would restrict the privileges and immunities granted to members of special missions who were nationals of or permanently resident in the receiving State, hardly seemed compatible with the provisions laid down in it, since they appeared to extend the tax exemption laid down in article 33 to the members of special missions covered by article 40. Hence, in accordance with the amendment to article 40 submitted by the United Kingdom (A/C.6/L.702), it would be desirable to insert in the article the word "only" before "immunity from jurisdiction" and to delete the "only" after "inviolability."

9. Apart from that, the Australian delegation on the whole favoured the Belgian amendment.

10. Mr. MOSER (Observer for Switzerland) pointed out that the Swiss taxation system was based on the notion of domicile, which was defined in civil law. Article 33 of the draft articles on special missions reproduced without any substantial change the provisions of article 34 of the Vienna Convention on Diplomatic Relations; that was important, since the members of permanent diplomatic missions were regarded as having taken up their domicile in Switzerland, whereas that was not true of the members of special missions, whose presence in the territory of the receiving State was necessarily impermanent. Article 33 seemed juridically unnecessary, but the Swiss delegation would not oppose maintaining it, since it did not embody any provision to which Switzerland could not subscribe.

11. Mrs. D'HAUSSY (France) said that her delegation withdrew the amendment which it had submitted to article 33 (A/C.6/L.710), in the hope that an agreement would shortly be reached on the definition of the term "special mission". She nevertheless proposed that the words "with respect to immovable property" in sub-paragraph (f) of the article should be deleted, since the taxes, etc. referred to there should surely be able to be levied on all the property of the special mission.

12. Mr. MARTINEZ CARO (Spain) asked for clarification of the scope of the amendment. It seemed to him that the duties referred to in article 33 (f) could only be levied on immovable property and not on movable property.

13. Mrs. D'HAUSSY (France) replied that in the opinion of the experts on the matter it would be preferable in article 33 (f) to use the more general wording adopted for

article 49 of the 1963 Vienna Convention on Consular Relations.²

14. The CHAIRMAN put the Belgian amendment to the vote.

The Belgian amendment (A/C.6/L.685) was rejected by 60 votes to 8, with 21 abstentions.

15. The CHAIRMAN put to the vote the French oral amendment to delete from article 33 (f) the words "with respect to immovable property".

The French oral amendment was approved by 24 votes to 23, with 39 abstentions.

16. The CHAIRMAN put to the vote article 33 of the International Law Commission's draft, as a whole, as modified by the French oral amendment.

By 80 votes to 1, with 8 abstentions, article 33, as modified by the French oral amendment, was approved and referred to the Drafting Committee.

17. Mr. ROBERTSON (Canada) said that he had abstained in the vote because of the words "regional or municipal". In Canada, some taxes were levied by the provinces and it was not always possible to persuade the provincial authorities to agree to certain exemptions, even when they were provided for in international instruments. His delegation had accordingly preferred not to approve obligations which it was not sure of being able to fulfil.

18. Mr. VRANKEN (Belgium) said he was surprised that the French oral amendment should have been approved after the rejection of the Belgian amendment, since the text now approved was more rigorous than that proposed by Belgium. It was for that reason that he had voted against the French amendment.

19. Mr. SILVEIRA (Venezuela) explained that he had voted against the Belgian amendment because the proposed text departed completely from the basic meaning of the article drafted by the International Law Commission and unduly restricted its scope.

20. He had likewise voted against the French oral amendment because of the juridical argument put forward by the Spanish representative. He still failed to grasp the purpose of the French amendment, for it broadened the scope of article 33, since it no longer related exclusively to immovable property.

21. Mr. DADZIE (Ghana) said that his delegation had been unable to support the French oral amendment because the change proposed had the effect of making sub-paragraph (f) conflict with the opening words of the article. The International Law Commission had sought in sub-paragraph (f) to deal with the particular case of immovable property; since there was no longer any reference to such property in the sub-paragraph, it no longer served any purpose and the reference to article 24 was now mean-

² See *United Nations Conference on Consular Relations, Office Records*, vol. II (United Nations publication, Sales No.: 64.X.1), p. 175.

ingless. His delegation therefore considered that article 33 should be re-examined with a view to improving the wording or omitting any reference to article 24.

22. The CHAIRMAN pointed out that drafting questions were matters for the Drafting Committee.

23. Mr. BERNAL (Panama) said that his delegation had voted for the French oral amendment because it made it possible to avoid the difficulties which would inevitably arise if sub-paragraph (f) were not applicable also to instruments concerning movable property.

24. Mr. OGUNDERE (Nigeria) said that his delegation had voted against the French oral amendment, which had the effect of widening the field of application of the exceptions to the rule stated in article 33, since the result would be that special missions would be required, for example, to pay duty on their motor vehicles. He would like the Expert Consultant to indicate the consequences of the amendment.

25. Mr. MUNIM (Pakistan) said his delegation had voted against the French oral amendment because its adoption would compel special missions to pay taxes on transferring their movable property if the laws of the receiving State so required. The delegations which had voted for the amendment had perhaps not paid sufficient attention to that point.

26. Mr. ROSENSTOCK (United States of America), referring to rule 124 of the rules of procedure of the General Assembly, said that a distinction must be made between explanations of vote and the reconsideration of proposals.

27. Mr. UOMOTO (Japan) said that his delegation had abstained in the vote on the Belgian amendment and had voted for the French oral amendment following the French delegation's withdrawal of its original amendment (A/C.6/L.710).

28. Mr. BARTOS (Expert Consultant), in reply to the Nigerian representative, explained that the International Law Commission had wanted to use for draft article 33 the text of article 34 of the Vienna Convention on Diplomatic Relations and it was for that reason that in sub-paragraph (f) it had provided for exception to exemption only with respect to immovable property. Since movable property, too, could give rise to the levying of registration and court fees, mortgage dues and stamp duty, the new text of article 33, sub-paragraph (f), was perfectly consistent with legal logic.

Article 34 (Exemption from personal services)

29. Mr. BADEN-SEMPER (Trinidad and Tobago) said that his delegation intended to submit a drafting amendment to article 34: to delete the words "The receiving State shall exempt" and to insert the words "shall be exempt" between "the members of its diplomatic staff" and "from all personal services". Putting the text of article 34 into the passive would not only bring it into line with articles 32 and 33 but would also avoid difficulties of interpretation. However, he would like to learn the views of the Expert Consultant before formally submitting the amendment.

The meeting rose at 1.20 p.m.