



CONTENTS

	Page
Agenda item 87: Draft Convention on Special Missions (<i>continued</i>)	125

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)**

Article 1 (Use of terms) (continued) (A/C.6/L.751)

1. Mr. Krishna RAO (India), speaking on behalf of the non-aligned group of countries, said that the text of article 1, sub-paragraph (*a*) (A/C.6/L.751), was acceptable in substance. While the delegations of the group had no objection to the French text, which had formed the basis for the text in other languages, they felt that the English version was not quite clear and should be referred back to the Drafting Committee for stylistic improvement.

2. Mr. MARTINEZ CARO (Spain) said that in the Spanish version the word "*último*" should be deleted as being grammatically unnecessary.

3. The CHAIRMAN said that the questions raised by the representatives of India and Spain would be duly dealt with by the Drafting Committee.

Article 35 (Exemption from customs duties and inspection) (continued) (A/C.6/L.701, A/C.6/L.711, A/C.6/L.752, A/C.6/L.753)

4. Mr. MARTINEZ CARO (Spain) said that the present wording of article 35, paragraph 1 (*b*), was too restrictive if, as the Expert Consultant had said, it was to be interpreted as meaning that exemption would be granted only to those members of the family who actually travelled with the State representatives and diplomatic staff. Some special missions had a duration of several months, and it was unreasonable that members of the family not travelling at the same time as the State representatives or diplomatic staff should not be granted exemption. The omission of any mention of members of the family in paragraph 2 made it likewise too restrictive. His delegation was therefore in favour of deleting the phrase "or of the members of their family who accompany them" in paragraph 1 (*b*), as the United Kingdom had proposed (A/C.6/L.701); in that way, all the privileges provided in article 35 would be extended to members of the family under the general rule stated in

article 39. He agreed with the representative of Finland that all matters relating to the members of the family should be dealt with in article 39.

5. The Expert Consultant's explanation that the reservation contained in the first part of paragraph 1 of the article was subject to the general principles of exemption was in keeping with his delegation's view and with the orthodox position in international law. In practice, however, international law was incorporated into domestic law in different ways in different States. For example, in Spain an international convention like the one at present under consideration, when adopted by the legislature and ratified by the Head of State, had the same force as other laws, and hence derogations might be made under subsequent laws. It was therefore perhaps dangerous to include the word "laws" in paragraph 1; it might be better to retain the term "regulations" alone as better reflecting the theory propounded by the Expert Consultant.

6. He agreed with the view expressed by the Norwegian representative that the Ghanaian amendment (A/C.6/L.752) was unnecessary, since the question of consent was already dealt with in article 1, sub-paragraph (*a*), and article 2.

7. Mr. VRANKEN (Belgium) said that his delegation had decided to withdraw its amendment to article 35 (A/C.6/L.686), having concluded from paragraph (3) of the Commission's commentary on the article that the term "articles for the personal use" meant only personal effects and baggage, which was what it would mean in Belgian legislation.

8. After hearing the explanation of the Expert Consultant, he wondered why the proviso that members of the family should accompany the members of the special mission if they were to enjoy the privileges and immunities had not been stated in article 39 also. His delegation would therefore vote in favour of the United Kingdom amendment and would revert to the question when article 39 was discussed.

9. His delegation had certain misgivings regarding the wording of the first part of the French amendment (A/C.6/L.711), in particular regarding the use of the term "administrative", which might raise problems for those countries having legal systems based on the French model.

10. Mr. SOFIANOPOULOS (Greece) said that, in his delegation's view, the inclusion of the term "or of the members of their family who accompany them" in article 35, paragraph 1 (*b*), was not rendered unnecessary by the provisions of article 39. The real purpose of article 39 was to deny privileges and immunities, including the customs

exemption provided by article 35, to members of the family of State representatives and diplomatic staff in the special mission if they were nationals of or permanently resident in the receiving State. That could be perhaps more clearly expressed if article 39 was drafted in negative rather than positive terms, and his delegation reserved the right to submit an amendment to that effect at the appropriate time.

11. In the light of the Expert Consultant's explanation, the substitution of the expression "members of their family who accompany them" for the corresponding expression in article 36 of the Vienna Convention on Diplomatic Relations "members of his family forming part of his household", seemed an unjustified extension of the privileges and immunities accorded to permanent diplomatic missions. Moreover, if the Commission's text of article 35 was adopted as it stood, the term "members of their family" should be defined, so as to avoid the misunderstandings which would otherwise arise.

12. In his delegation's view, the wisest course would be to adopt a version of article 35, paragraph 1 (b), based on the corresponding provision of the Vienna Convention, adding the expression "who accompany them" which, as explained by the Expert Consultant, was essential.

13. Mr. SHAW (Australia) said that his delegation would support the United Kingdom amendment. According to the Expert Consultant, the Commission had intended the term "accompany" to include the concept of assistance, and his delegation did not consider that that idea was adequately conveyed by the present wording. The appropriate place to deal with all matters relating to members of the family was in article 39, and the reference to them in article 35, paragraph 1 (b), would give rise to difficulties of interpretation.

14. His delegation had intended to support the Belgian amendment (A/C.6/L.686), because it would have made the text clearer and avoided any misunderstanding, especially since the term "personal baggage" was employed in paragraph 2 of the article. Favourable comments had been made on the Belgian amendment by a number of delegations; his delegation would therefore like to submit the same amendment on its own behalf.

15. Mr. ENGO (Cameroon) said that a distinction should be made between the case where a member of a special mission decided on his own initiative to take with him one or more members of his family and that where his Government gave permission or made arrangements for a member of a special mission to be accompanied by one or more members of his family for the purpose of assisting him. The delegation of Cameroon felt it should be clearly stated that privileges and immunities should be granted only to such members of the family as were authorized by the State to accompany members of the special mission. If the provision contained in paragraph 1 (b) was to be regarded as *lex specialis*, as explained by the Expert Consultant, it might be open to abuse. That situation could be remedied either by adopting the United Kingdom amendment or by adopting the amendment submitted by his own delegation (A/C.6/L.753), whereby members of the family would only be granted customs exemption when due

authorization had been given by the sending and the receiving State.

16. Mr. ZAVOROTKO (Ukrainian Soviet Socialist Republic) said that the task of the Sixth Committee was complicated by the fact that there were no unified customs regulations and, in particular, no generally accepted rules governing the treatment of special missions. But it must make the customs exemptions accorded to special missions a feature of international law rather than a matter of courtesy. In its formulation of article 35, the International Law Commission had successfully protected the interests of both the receiving and the sending State and had taken into consideration existing practice and new developments in *ad hoc* diplomacy.

17. A decision on the definition of the term "special mission" would help considerably to solve a number of problems which arose in connexion with article 35. Without such a definition, it was difficult to understand the French amendment, and particularly the new wording proposed for paragraph 1 (a). To determine the category and purpose of articles, it would be necessary to ascertain the official functions of each member of the special mission. In addition, the French amendment would reduce the range of articles which the special mission could bring into the country with a view to discharging its hospitality obligations. His delegation therefore preferred the wording of paragraph 1 (a) as proposed by the International Law Commission.

18. His delegation had at first favoured the United Kingdom amendment, in the interests of clarity and conciseness. However, the arguments of the Expert Consultant had convinced it that the position of the International Law Commission was the correct one. In view of the difficulty of reaching agreement on the meaning of the term "family", the Commission had rightly specified that the article applied to the members of the family who actually accompanied the members of special missions.

19. The Ghanaian amendment was no doubt designed to protect the interests of the receiving State by specifying that it had to consent to the granting of exemption. But the replacement of the word "shall" by the word "may" introduced an element of vagueness and uncertainty. Furthermore, it would not be possible for the receiving State to give prior consent to exemption from duties for all personal articles to be brought into the country by the members of a special mission. Such a requirement would unnecessarily complicate the task of the special mission from the very outset and might be regarded as an oblique indication of reluctance on the part of the State concerned to receive the special mission. The phrase "within the limits of such laws and regulations as it may adopt" in the text prepared by the International Law Commission gave the receiving State full latitude to refuse the exemption. The interests of the receiving State were also protected by the provision in paragraph 2 to the effect that the personal baggage of the representatives of the sending State in the special mission and of the members of its diplomatic staff could be inspected if there were serious grounds for presuming that it contained articles not covered by the exemptions. It was therefore to be hoped that the representative of Ghana would not insist that a vote be taken on his amendment.

20. The same arguments also applied by and large to the amendment of the Cameroonian delegation, which did, however, stipulate the need for mutual consent only in the case of articles for personal use. The adoption of either amendment would in fact leave the question of the granting of customs exemption to special missions unresolved.

21. His delegation could not support the amendment just submitted by the Australian delegation.

22. Mr. DABIRI (Iran) said that his delegation had originally considered the United Kingdom amendment useful, but in the light of the explanations given by the Expert Consultant, it doubted whether the amendment was necessary. Nevertheless, if a vote were taken it would not oppose the proposal. The French amendment was not acceptable, since it would limit the scope of article 35. The Iranian delegation appreciated the efforts made by the delegations of Ghana and the Cameroon but preferred the text proposed by the International Law Commission, and would vote for it.

23. Mr. JAHODA (Czechoslovakia) supported the International Law Commission's text, which would afford members of special missions the conditions necessary for the performance of their duties. Customs exemptions should be granted *ex jure* and were not a matter of courtesy and reciprocity.

24. The amendments submitted would unnecessarily complicate the text. His delegation could not support the United Kingdom amendment; it agreed with the Expert Consultant that exemption for families accompanying the members of special missions might be useful and necessary in certain cases.

25. The French delegation's amendment to paragraph 1 (a) was too restrictive and used a different wording from that of the other draft articles and might create difficulties of interpretation. Its amendment to paragraph 1 (b) was restrictive and would cause difficulties for persons participating in long-term missions, which would become increasingly frequent in the future.

26. The amendments of Ghana and Cameroon raised the same problem as had been discussed in connexion with article 30. The conditions in which a special mission operated were always agreed between the parties concerned, and paragraph 2 (c) of article 50 permitted States to agree among themselves to reduce the extent of the privileges granted to missions.

27. Mr. MIRAS (Turkey) said that the privileges and immunities granted to special missions should be limited to those necessary for the performance of their task. By granting special missions almost the same customs exemptions as those enjoyed by permanent missions, article 35 went far beyond the necessary minimum. The limitations to the exemptions granted in article 36 of the Vienna Convention on Diplomatic Relations did not go far enough, in view of the temporary nature of special missions which did not have the same requirements as permanent missions. Customs exemptions granted to special missions were purely a matter of international courtesy and were not established in any rule of international law. Article 35

should therefore provide the minimum exemptions necessary and leave the others to the courtesy of the receiving State. There were no examples of a special mission having been handicapped because it did not enjoy the same customs exemptions as permanent missions.

28. His delegation therefore supported the French amendment. In the amendment to paragraph 1 (a), the word "administrative" could perhaps be omitted or replaced by the word "normal". The courtesy of the receiving State would no doubt be extended to the families of members of special missions and would also cover exceptional cases. He would vote for the French amendment, if it was put to a vote.

29. Mr. MIRCEA (Romania) favoured the retention of the clear and well-balanced text proposed by the International Law Commission. It would extend to special missions the privileges they needed for their task, while taking into account their special and temporary nature, because of which certain changes had been made in the corresponding provision of the Vienna Convention on Diplomatic Relations. The interests of the receiving State were well protected by the reference to the limits of the laws and regulations it might adopt. The inclusion in article 35 of a provision concerning mutual consent was unjustified and might create difficulties of interpretation. Such consent was the very basis for the sending of a special mission, and provisions on that subject had already been adopted in articles 2 and 3. Customs officials would act in accordance with the laws and regulations of the receiving State, thus ensuring that all special missions received the same treatment.

30. The phrase "articles for the official use of the special mission" was consistent with the aim of article 35, which was to provide facilities for the performance of the task of the special mission. The wording "articles for the administrative functioning of the special mission" would not cover all the needs of the special mission. Such missions often exchanged gifts, which were not for "administrative" use.

31. Mr. MOSER (Observer for Switzerland) supported the French amendment to paragraph 1 (b). In view of the temporary nature of special missions, the members of such missions should be given customs exemption on articles for their personal use only at the time of their arrival in the receiving State. However, because of his special duties, often involving hospitality and the presentation of gifts, the head of the special mission should be granted such exemption for the entire duration of the mission.

32. Even after the explanations given by the Expert Consultant, he still supported the United Kingdom amendment. The question of the privileges and immunities of the members of the family had to be considered from an over-all viewpoint, in the context of article 39.

33. He could not endorse the amendments submitted by Ghana and the Cameroon. Article 50 already provided for the possibility of extending or reducing the privileges and immunities granted to special missions. The inclusion of a reference to mutual consent in article 35 might be interpreted *a contrario* to mean that in the case of privileges and immunities embodied in other articles any future modification by mutual consent would not be possible.

34. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that his delegation could not support the United Kingdom amendment. Article 35 did not refer to all family members but only to those who accompanied the member of the special mission.

35. The French amendment was very far-reaching. The amendment to paragraph 1 (*b*) would grant members of special missions the privileges granted to consular employees in article 49, paragraph 2, of the Vienna Convention on Consular Relations; but representatives of States could not be equated with consular employees. With regard to the amendment to paragraph 1 (*a*), the concept of official use was the one generally used in similar international instruments, including the Vienna Conventions. The concept of administrative functioning was restrictive and difficult to define. His delegation preferred the original text proposed by the International Law Commission.

36. The amendments of Ghana and the Cameroon were unacceptable, because if they were accepted the receiving State would not be obliged to grant the privileges and immunities specified in the Convention; it would be able to refuse them in certain cases.

37. The Soviet Union delegation had certain misgivings about the Australian amendment and preferred the expression "articles for the personal use . . .", which was the one usually employed.

38. It would vote for the text of article 35 as proposed by the International Law Commission.

39. Mr. SANTISO GALVEZ (Guatemala) expressed a preference for the text proposed by the International Law Commission, which with certain exceptions followed the corresponding provisions of the Vienna Convention on Diplomatic Relations.

40. The Ghanaian amendment would undermine the peremptory character of the rule embodied in article 35; the draft Convention established general rules, which could not be made conditional upon prior mutual consent. His delegation was also unable to support the Cameroonian amendment, for similar reasons.

41. His delegation could not agree with the Australian proposal, because the words "personal effects and baggage" were narrower in meaning than the expression "articles for the personal use". Paragraph 1 (*b*) should cover not only all articles of personal use which members of special missions brought with them on arrival but also any such articles, including vehicles, which they imported subsequently. His delegation interpreted the words "articles for the personal use" as including consumer goods.

42. The United Kingdom amendment would introduce a restriction which might result in the harassment of an official who was accompanied on a special mission by his wife. The Guatemalan delegation would therefore be unable to accept it. It would of course be a great help in the interpretation of articles 35 and 39 if the term "family" was defined in the future Convention itself, but unfortunately that was impossible. In his own country it would be taken to include all dependent children, whether minors or not.

43. The French amendment was also unacceptable, again because it was too restrictive. His delegation preferred the words "official use" to the narrower expression "administrative functioning", which could be construed as limiting the provision to what was regarded as the administrative sphere in the context of the definition given in article 1, sub-paragraph (*i*). Moreover, the use of the words "at the time of arrival" would have the undesirable effect of excluding baggage and articles reaching the receiving State after the arrival of the official himself. Guatemala favoured the adoption of article 35 as it stood.

44. Mr. GARCIA ORTIZ (Ecuador) said that he regarded article 35 as establishing a general rule for customs exemption and article 39 as setting up an exception for a particular category of persons. The problem was to reconcile the two provisions which did not use identical wording as far as members of the family were concerned. That might lead to difficulties. A possible solution would be to add a reference to accompanying members of the family to article 39, rather than delete it from article 35, as proposed by the United Kingdom. The United Kingdom amendment also prompted him to think that the Uruguayan representative had had some justification in saying that he preferred the solution adopted in the Vienna Convention on Diplomatic Relations. However, the International Law Commission's commentary on that point and the discussion on article 35 in the Sixth Committee had convinced his delegation that the use of the Vienna Convention wording would raise complications in the case of special missions. It would be better to leave article 35 as drafted by the Commission. The United Kingdom amendment would establish a somewhat excessive restriction on the privileges of special missions. Any question of restricting privileges or immunities was a matter for bilateral agreement between those countries which wished to do so, and a provision was available in article 50 for the purpose. It would be wrong to impose a restriction in a general rule such as article 35 enunciated. His delegation therefore opposed the United Kingdom amendment. For the same reasons, it was unable to support the French proposal, both sub-paragraphs of which would introduce limitations by comparison with the International Law Commission's text.

45. His delegation was also unable to accept the Ghanaian and Cameroonian amendments, because if either of them was adopted the notion of mutual consent would have to be incorporated in all the analogous provisions of the draft Convention. That could lead to an undue proliferation of bilateral agreements, which was not the wish of either the Committee or the International Law Commission. His delegation favoured the text of article 35 as drafted by the Commission.

46. Mr. SILVEIRA (Venezuela) said that the discussion had concentrated on three main points: members of the family, articles for personal use as opposed to personal effects, and mutual consent. As far as the first point was concerned, in view of the terms of article 39 his delegation saw some merit in the United Kingdom amendment. On the second point, it sympathized with the reasons which had prompted the Australian delegation to resubmit the proposal withdrawn by Belgium, but thought that the notion of personal use adopted by the International Law Commission was more appropriate to the circumstances of special

missions. As to the question of mutual consent, it was difficult to express succinctly the possible consequences of introducing it into article 35. On balance, Venezuela preferred to leave the Commission's text as it stood; it was both clear and precise.

47. Mr. ROMPANI (Uruguay) said that his delegation favoured the adoption of article 35 as drafted by the International Law Commission. The main problems brought out in the discussion had been the position of members of the family and the degree of flexibility which the future Convention should embody. It would be more appropriate for the Committee to consider those issues when it discussed articles 39 and 50 respectively.

48. Mr. LAING (China) said that his delegation wished to draw the Committee's attention to the fact that it was State practice rather than the principles of international law which governed the question of customs exemption for diplomatic missions. The United Nations had published a digest of State practice,¹ which had formed the basis for the entire structure of the Vienna Convention on Diplomatic Relations. That Convention expressed in legislative form the policy of the international community of granting permanent missions customs exemptions in order to help them discharge their duties adequately. The International Law Commission had taken the view that the same policy was applicable to special missions. Since the United Kingdom, French, Ghanaian and Cameroonian amendments conflicted with that policy, his delegation was unable to accept them. He disagreed with the United Kingdom contention that the question of members of the family was fully covered by article 39.

49. It would be inappropriate for article 35 to contain the notion of mutual consent which the Ghanaian and Cameroonian amendments would introduce. The Committee should consider the opening words of article 35; in that connexion, the publication he had cited showed that States had issued detailed regulations on customs privileges for permanent missions, and they could do the same for special missions. His delegation would vote in favour of article 35 as drafted by the International Law Commission.

50. Mr. ALLOTT (United Kingdom) said that the United Kingdom's view of article 35 was that to adopt it as it stood would be to disregard the fact that special missions were temporary institutions and should not have continuing customs privileges. The Australian proposal brought that element out very clearly and the United Kingdom therefore commended it to the Committee.

51. Mr. VANDERPUYE (Ghana) said he was surprised at the Committee's reaction to his amendment. He hoped the Committee would reflect further on it in the context of

article 50, paragraph 2 (c). Ghana continued to regard its proposal as justified and would not withdraw it.

52. Mr. DELEAU (France) said that his delegation looked forward to a satisfactory decision by the Committee concerning the definition of the term "special mission". It therefore withdrew its amendment (A/C.6/L.711).

53. Mr. BARTOS (Expert Consultant), commenting on the view that a conflict might exist between articles 35 and 39, said that in his opinion they differed legally: article 35 dealt with customs exemption and was therefore *ratione materiae*, whereas article 39 dealt with the status of certain persons and was therefore *ratione personae*. No conflict existed between a general rule and a special rule, provided both were enunciated in the same text. Where that was the case, the provision in the special rule did not affect the validity of the general rule.

54. The CHAIRMAN invited the Committee to vote in turn on the Ghanaian, United Kingdom and Cameroonian amendments to article 35, and on the Australian proposal. He reminded the Committee that the Australian delegation had reintroduced the amendment originally submitted by Belgium and subsequently withdrawn.

The amendment proposed by Ghana (A/C.6/L.752) was rejected by 54 votes to 1, with 25 abstentions.

The amendment submitted by the United Kingdom (A/C.6/L.701) was rejected by 43 votes to 25, with 14 abstentions.

The Cameroonian amendment (A/C.6/L.753) was rejected by 38 votes to 10, with 34 abstentions.

The Australian proposal reintroducing the amendment circulated in document A/C.6/L.686 was rejected by 46 votes to 18, with 18 abstentions.

55. The CHAIRMAN invited the Committee to vote on the text of draft article 35 as proposed by the International Law Commission.

Article 35, as proposed by the International Law Commission, was approved by 64 votes to none, with 18 abstentions.

*Article 39 (Members of the family)
(A/C.6/L.687, A/C.6/L.714)*

56. Mr. GASTLI (Tunisia) proposed that a new paragraph 3 should be added to article 39 as proposed by the International Law Commission, to read as follows: "For the purposes of the present Convention, the phrase 'members of the family' as used in this article shall mean the spouses and issue of the members of the special mission."

The meeting rose at 6.20 p.m.

¹ *Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities* (United Nations publication, Sales No.: 58.V.3).