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DRAFT CONVENTION ON SPECIAL MISSIONS\*

Report of the Secretary-General

Addendum

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\* Item 85 of the provisional agenda.

CANADA

Transmitted by a letter of 19 August 1968 from the Permanent Representative to the United Nations

/Original: English/

1. The comments set forth below are intended to complement and to be considered in conjunction with the earlier comments submitted by Canada in a letter of 6 March 1967 from the Permanent Representative to the United Nations.<sup>1/</sup>
2. The International Law Commission's 1967 draft on Special Missions is generally agreeable to Canada, who was also in general agreement with the 1965 draft. However, Canada continues to be of the view, expressed in our general remarks on the 1965 draft articles, that certain of the articles are too liberal and go too far in assimilating the status of Special Missions to that of Permanent Missions. It is not the intention of our delegation at this point to repeat the remarks expressed in 1967 since they are readily available in the report on the 19th session of the International Law Commission, but we would like the general remarks made in 1967 by the Canadian Government to be still considered in the discussion, as well as its observations on the provisions which, in the 1967 draft, became articles 12 /article 4 of the 1965 draft/; 15 /article 41 of the 1965 draft/; 22 /article 17 of the 1965 draft/; 29 /article 24 of the 1965 draft/; 30 /article 25 of the 1965 draft/; 31 /article 26 of the 1965 draft/; 35 /article 31 of the 1965 draft/ and 49 /article 42 of the 1965 draft/.

New observations on particular articles of the 1967 draft

Article 1

3. This article should include a definition of the "functions" of a special mission. This word is frequently used in the draft articles and its definition would help greatly to give more reality to the concept of special missions. The functions of a special mission are in fact very similar to those of a diplomatic

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<sup>1/</sup> Reproduced in annex I to the report of the International Law Commission on the work of its nineteenth session (Official Records of the General Assembly, Twenty-second Session, Supplement No. 9 (A/6709/Rev.1)).

or consular mission, except for their limitation in time and scope. Consequently, the functions of representation, negotiation, information, co-operation already mentioned in the Vienna diplomatic and consular conventions could be considered in the elaboration of a definition.

#### Article 7

4. It would be useful to add a third paragraph to the commentary under article 7, somewhat along these lines:

(3) The sending or receiving of a Special Mission, in the conditions of paragraph 2 of article 7 shall not constitute an act of recognition of the receiving or sending State.

#### Article 16

5. The reference in paragraph 1 of this article to "alphabetical order" is not suitable to countries where there is more than one official language, such as Canada, or where there is no alphabet. It would therefore appear preferable for the rule in paragraph 2, that questions of precedence be governed by the protocol of the receiving State, to be made a rule of general application.

#### Article 24

6. This article appears unduly to extend exemption accorded to special missions. Moreover its application would present serious practical difficulties where Special Missions occupy a building (e.g. a hotel) only partially or for a short duration.

#### Article 25

7. The first sentence of paragraph 1 of this article is much too general and requires from the receiving State some divining. The sentence could be improved by adding "provided that a suitable identification of such premises, other than those established in a permanent missions, has been given to the receiving State."

#### Article 33

8. It is suggested that the words "from other than official functions and" be inserted after the words "dues and taxes on private income" of paragraph (d).

DENMARK

Transmitted by a letter of 24 July 1968 from the Acting  
Permanent Representative to the United Nations

[Original: English]

GENERAL OBSERVATIONS

1. The draft articles on special missions are based in large part on the Vienna Convention on Diplomatic Relations and propose to accord to members of special missions, their staffs and members of their families a very wide measure of the facilities, privileges and immunities which are accorded to persons covered by the Vienna Convention. In this respect the draft articles appear to some extent to disregard the fact that as regards their functions and otherwise, special missions are substantially different from permanent diplomatic missions.
2. Uniform treatment is necessary and well established in customary international law as far as the official functions of special and permanent missions are concerned. Any additional facilities, privileges and immunities require special grounds, notably as regards activities outside official functions. The wide measure of extraterritoriality accorded in respect of activities outside their official functions to members of permanent diplomatic missions, their staffs and members of their families is reasonable in view of the fact that they normally stay in the receiving State for long periods, which render it necessary for them to make legal and other private transactions in that State so that in practice they are governed to a large extent by the judicial system under which they live. Members of special missions, on the other hand, change the place of their daily lives only for short periods and seldom take the members of their families with them.
3. Against this background, the Danish Government is of the opinion that it will be less than reasonable to base the draft convention on the assumption that the Vienna Convention should serve as a model for provisions governing the status of members, etc., of special missions. Furthermore, circumstances can vary so much in practice that it may be difficult, or even impossible, to implement such rules in respect of special missions.
4. The Danish Government finds it desirable, therefore, that detailed consideration should be given to the question whether it will be necessary and reasonable in the various fields to accord facilities, privileges and immunities to members, etc., of special missions on the lines laid down in the Vienna

Convention. Such facilities, privileges and immunities should not go beyond what is strictly necessary to enable special missions to carry out the special tasks assigned to them. It is felt, incidentally, that formal requirements of various kinds should not be introduced if they could prevent or impair present tendencies towards informal but speedy and effective contacts between States.

#### OBSERVATIONS ON INDIVIDUAL ARTICLES

##### Article 1

5. The definition of the "special mission" given in article 1 (a) would appear to cover any delegation which may be said to represent the sending State, including delegations of a purely technical nature sent by technical government agencies, scientific institutes, etc., however low the head and the members of such delegations may rank in the civil service hierarchy of the sending State. In the view of the Danish Government the coverage of the draft convention should be limited so as to exclude purely technical delegations.

##### Article 2

6. The words "or to deal on specified questions" should presumably be added after "task", in view of the definition given in article 1 (a).

##### Article 11

7. The very detailed rules proposed in this article may be reasonable in view of the wide range of facilities, privileges and immunities which is foreseen for special missions. If this range is narrowed down in the course of the continued work on the draft articles, consideration should also be given to the question of making the provisions of article 11 less detailed.

##### Articles 29-39

8. Reference is made to the introductory general observations as to the justifiability of according to special missions the wide range of facilities, privileges and immunities proposed in the draft articles.

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Article 31

9. The proposed wide range of immunity from the civil and administrative jurisdiction as well as from the criminal jurisdiction of the receiving State would appear to be reasonable only in respect of members of a Government being members of a special mission and in respect of delegations headed by a member of a Government or other persons holding similar rank. The provisions of article 31 will therefore be acceptable to the Danish Government if the coverage of the Draft Convention is limited to exclude purely technical delegations. Failing this, a provision should be added to the effect that purely technical special missions should be accorded immunity from criminal as well as civil and administrative jurisdiction only in respect of their official functions.
10. With particular reference to the exception to immunity from civil and administrative jurisdiction provided for in article 31, 2(d) in actions for "damages arising out of an accident caused by a vehicle used outside the official functions of the person in question", it is felt that this limitation of immunity from civil and administrative jurisdiction should apply whether the vehicle was used outside or in the course of the person's official functions.

Article 35

11. The Danish Government cannot accept the provision of article 35, 1(b) allowing exemption from customs duties and taxes for articles for the personal use of representatives of the sending State in the special mission of the members of their families. Special missions are presumed to function only temporarily in the receiving State, and the needs of the persons concerned with respect to exemption from customs duties and taxes will therefore normally have been covered through the normal rules on the exemption of travellers from customs duties. However, it is not considered practical to establish a special administrative procedure for the exemption of such persons from customs duties and taxes.

Article 36

12. The Danish Government cannot accept the provision exempting the administrative and technical staff of special missions from customs duties and taxes in respect of articles imported at the time of their first entry into the receiving State. The normal rules on the exemption of travellers from customs duties should be applied also to such staff.

Article 39

13. This rule should at least be confined to cases where such members of families have received official invitations from the receiving State to take part in the special mission. The Danish Government cannot accept the exemption from customs duties and taxes in respect of articles imported for the personal use of members of the families of the administrative and technical staff of special missions (Cf. the observations made in respect of article 35).

Article 43

14. The provisions of paragraph 1 appear to go unnecessarily far, especially in that they also cover family members travelling separately. Seeing, however, that the third State shall be bound to comply with these obligations only if it has been informed in advance of the transit of those persons as members of the special mission, the Danish Government will accept the provision. If paragraph 4 should be deleted in the course of the further work on the draft articles, the Danish Government would find it desirable to limit the categories of persons covered by this article.

CONCLUDING OBSERVATIONS

15. In the discussions to be held in the Sixth Committee at the twenty-third session of the General Assembly, the Danish Government may wish to submit additional views and observations, both with regard to the draft articles generally and to individual provisions in it.

FRANCE

Transmitted by a letter of 26 August 1968 from the  
Permanent Representative to the United Nations

[Original: French]

1. The Government of the French Republic has studied very carefully the draft articles on special missions prepared by the International Law Commission of the United Nations. It wishes to pay a tribute to the work done in that connexion, and to state that it favours in principle the definition and codification of the law applicable to special missions. Ad Hoc diplomacy has acquired such importance in international relations that it seems desirable for it to be regulated by a set of legal rules that are as precise as possible. By helping to rectify the obvious omissions in a field characterized by great uncertainty, the work undertaken will contribute to the progressive development of international law.
2. As the Government of the French Republic has already pointed out in the Sixth Committee, the objective to be attained in the sector under consideration is clear and limited. Special missions should be enabled to carry out their task with maximum efficiency by obtaining from the host State the facilities required for that purpose. However, the difficulties involved cannot be ignored.
3. In that connexion, the French Government does not believe that a transposition of diplomatic law, as expressed in the Vienna Convention of 18 April 1961, will provide a satisfactory solution. The main elements on which diplomatic privileges and immunities are based do not exist in the case of special missions.
4. Diplomatic missions are characterized by their stability and the responsibility of the head of the mission accredited to the Chief of the host State for the conduct of his staff. The nature and geographical location of their activities are clearly defined. Special missions, on the other hand, are constituted on an ad hoc basis; they are unstable and the location of their activities is often uncertain. In the case of special missions, it is difficult to define the notion of "official activity" precisely. Furthermore, the increasing number of such missions could pose serious practical problems for the services responsible for administering the privileges and immunities granted to them.

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5. The International Law Commission has endeavoured to take these difficulties into account in the draft articles, but the Government of the French Republic does not consider the proposed solutions satisfactory in every respect, in so far as they constitute an unduly strict transposition of the rules applicable to diplomatic missions. In its view, three aims should be borne in mind in establishing the principles relating to special missions:

- to give such missions the status necessary for the effective performance of their task, on the understanding that the criterion of functional need is essential for the determination of privileges and immunities;
- to take account of the specific character of special missions in determining that status;
- to make it easier for national administrations to administer the privileges and immunities granted to such missions.

6. In the light of these considerations, the Government of the French Republic wishes to make the following preliminary comments on certain draft articles:

Article 1, paragraph (a) and articles 2, 8 and 11

7. The definition of a special mission given in article 1 of the draft is very broad and can in fact cover all temporary missions sent by one State to another to perform a particular task, irrespective of whether that task is essentially diplomatic or purely technical in character.

8. In view of the diversity of such missions, it might seem desirable to classify them in several categories, each having a specific status. In any case, it would be helpful to limit the definition of a special mission by trying to define the nature of the tasks to be entrusted to the latter.

9. Furthermore, the receiving State, which is called upon to grant the special mission privileges and immunities in its territory, should be able to ascertain whether the mission is really representative in character. The evaluation of the mission's character should not be a matter for the sending State alone; the receiving State should also be in a position to verify it. If, after examining the information provided by the sending State, the receiving State contested the representative character of the mission, it would not automatically follow that the latter would be refused admission, but at least its members would not be granted the proposed privileges and immunities.

10. The receiving State's consent to admit a special mission, which is provided for in article 2, should therefore be explicit and formal, following the submission through the diplomatic channel of a request specifying the purpose of the mission, which should be necessarily and directly linked to governmental activities.

11. In addition, at the practical level, the Government of the French Republic considers that the information given to the receiving State on the size and composition of the mission should be as complete as possible: in addition to listing the members of the mission it should state their civil status and their rank both within and outside the mission. Furthermore, prior notice of the arrival and departure of members of the mission should be given in all cases, including cases of temporary departure.

12. It would be useful if article 1, paragraph (a) and articles 2, 8 and 11 were amplified along these lines.

#### Article 12

13. This provision seems to place persons who can claim "diplomatic" status in a different category from the other representatives of the sending State in the special mission. Such a distinction does not seem justified in so far as, by definition, the persons concerned are not accredited in the receiving State.

#### Article 13

14. This article, which relates to the commencement of the functions of a special mission, should be made more explicit. In particular, provision should be made for an interval between notification and the commencement of the mission's functions.

#### Articles 16 and 19

15. The Government of the French Republic has serious misgivings regarding the need for rules concerning precedence among special missions, in view of the diversity of such missions and their temporary and specific character. If such rules should prove to be necessary, it would reserve its right to make proposals on that point (article 16).

16. Similarly, it considers that the use of the emblem of the sending State, particularly on the means of transport used by special missions, should be limited as much as possible (article 19).

Articles 17, 24 and 25

17. As the French representative pointed out in 1967 during the debate in the Sixth Committee, it is very difficult to attribute - as is done in draft article 17 - the status of "seat", a concept which postulates permanence, to the place where the special mission's principal activity is situated, possibly quite episodically. The possible plurality of seats, provided for in article 17, paragraph 3, may be criticized with even greater justification. In any case, it seems impossible to deduce from this concept the juridical effects provided for in the draft, particularly in articles 24 and 25.

18. Cases in which the nature or duration of the special mission would justify the exemptions from taxation provided for in article 24 will be very rare, and this provision may lead to abuse in so far as it would allow the sending State to request privileges which did not correspond to the mission's needs, such as exemption from transfer taxes on the acquisition of premises for use by a short-term mission. Furthermore, this article would be difficult to implement in practice.

19. Similarly, it seems inadmissible that the inviolability of the premises should be as broad as provided for in article 25. It should in any case be limited to one building or, if really necessary, to a number of clearly defined premises.

Article 25, paragraph (3) seems excessive in view of the essentially temporary character of the mission.

Article 26

20. The archives and documents of the special mission must be identifiable if their inviolability is to be recognized.

Article 27

21. The freedom of movement provided for in this article should be ensured without prejudice to the requirements of national security and any serious considerations relating to public policy.

Article 28

22. It seems that special missions should not be allowed to use means of telecommunication and the diplomatic bag, as provided for in this article, unless

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the sending State has no diplomatic representation in the receiving State. In any case, it would seem desirable to base paragraph 3 of this article on article 35 of the Vienna Convention on Consular Relations rather than on article 27 of the Vienna Convention on Diplomatic Relations.

#### Article 29

23. The Government of the French Republic feels it would be going too far to provide for the granting to members of special missions representing the sending State total personal inviolability similar to that granted to diplomatic agents. The special situation of special missions would justify only a more limited protection; the persons concerned could be deprived of their freedom by order of the judicial authorities when they have committed offences of a certain degree of gravity or in application of a definitive sentence - possibly also in cases involving serious offences or flagrante delicto.

#### Article 30

24. It is difficult to agree that the private accommodation of the members of the mission should be covered by the inviolability provided for in this article. Owing to the temporary character of special missions, their members are usually accommodated in hotel rooms or private buildings and it would seem neither essential nor reasonable to require that such accommodation should be inviolable.

#### Article 31

25. The immunity from jurisdiction of the members of the special mission representing the sending State, which according to draft article 31 would have the same scope as that granted to diplomatic agents, should, by reason of the essentially temporary character of special missions, be limited - in civil and administrative as well as criminal matters - to acts relating to the performance of official functions.

#### Articles 33, 37 and 38

26. The French Government considers that the fiscal immunities to be granted to the members of the mission according to the draft are not justified. It would

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suffice for the persons concerned to be exempt from taxes on their salaries and emoluments in the receiving State, a principle which could be embodied in a single provision.

#### Article 35

27. Draft article 35, concerning customs privileges, also reproduces the provisions of the Vienna Convention on Diplomatic Relations. Here again, the temporary character of special missions necessitates the adoption of different, more restrictive solutions, since the needs of such missions and their members in this sphere are clearly not as extensive as those of embassies and diplomatic agents called upon to reside in the accrediting State.

#### Article 36

28. The Government of the French Republic considers it debatable whether privileges and immunities should be granted to members of the administrative and technical staff of special missions. In any case, such privileges and immunities should not be as extensive as provided in the draft. In particular, it is inadmissible that immunity from jurisdiction should apply to acts other than those performed in the course of the staff member's duties.

#### Article 37

29. No immunity from jurisdiction seems justified in the case of members of the service staff.

#### Article 39

30. This article grants very extensive immunities and privileges to members of the families of persons belonging to the mission, without stipulating that their relationship to those persons should be the same as that required under the Vienna Convention on Diplomatic Relations. With regard to the status of the families of its members, a special mission, whose duration is necessarily limited, cannot reasonably be considered as a permanent diplomatic representation, whose chief and members remain in the territory of the accrediting State for a long time, and normally reside there with their families. Consequently, the Government of the French Republic considers that the article under consideration is superfluous.

At most, the members of the families of the staff of special missions should be received with the usual courtesies.

#### Article 40

31. This article, paragraph 1 of which contains a drafting error which appears in the Vienna Convention on Diplomatic Relations and was corrected in the 1963 Convention on Consular Relations, should be reviewed in the light of the comments made on articles 29 and 31.

#### Article 43

32. This article, which relates to the privileges and immunities of members of special missions in transit through the territory of a third State, should be reviewed in the light of the status to be granted to the persons concerned in the receiving State. Furthermore, transit through the territory of a third State should take place via the most reasonably direct route.

#### Article 44

33. The privileges and immunities should be granted from the moment of entry into the territory of the receiving State, provided that the beneficiaries arrive during the period agreed upon by the sending and receiving States for the duration of the mission. If the proposed rule is accepted, special problems could arise in the case of permanent residents. In addition, the notion of a "reasonable period" referred to in the article in connexion with the subsistence of privileges and immunities may give rise to difficulties of interpretation. Provision could perhaps be made for a maximum time-limit, which would apply in all cases save that of armed conflict.

#### Article 48

34. In so far as they are recognized to be inviolable, the mission's premises should be used exclusively for the purposes of the mission.

#### Article 50

35. The Government of the French Republic is not convinced that the principle of non-discrimination set out in this article is wholly legitimate. The granting of different regimes to special missions is justified by the differences which

necessarily exist between them according to their purpose; this seems to be recognized in draft article 22.

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36. The foregoing considerations, which are not exhaustive, lead the Government of the French Republic to conclude that the draft articles submitted to the Sixth Committee should be amended so as to adapt them to the specific needs of ad hoc diplomacy which differ from those of diplomatic and consular relations.

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MADAGASCAR

Transmitted by a note verbale of 16 July 1968 from the  
Permanent Mission to the United Nations

[Original: French]

1. The definition of special missions seems to be too broad. It allows a quasi-diplomatic character to be conferred on questionable grounds on a large number of missions which are merely technical in nature and in no way represent the sending States.
2. The privileges and immunities granted to special missions also seem too extensive. They may give the impression of being granted in the personal interest of the members of the missions rather than with a view to facilitating the performance of their functions, which is quite contrary to the principles regulating privileges and immunities in international law.

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