



Tonga

SPECIAL MISSIONS' PRIVILEGES AND IMMUNITIES ACT

1988 Revised Edition



SPECIAL MISSIONS' PRIVILEGES AND IMMUNITIES ACT

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SPECIAL MISSIONS' PRIVILEGES AND IMMUNITIES ACT

Act 5 of 1977

AN ACT TO GIVE EFFECT TO THE CONVENTION ON SPECIAL MISSIONS

Commencement [31st May, 1978]

1 Short title.

This Act may be cited as the Special Missions' Privileges and Immunities Act.

2 Interpretation.

(1) In this Act, unless the context otherwise requires —

“**Convention**” means the Convention on Special Missions signed in 1969, a copy of the English text of which is set out in the Schedule to this Act;

“**Minister**” means Minister for Foreign Affairs;

“**State**” means a foreign state or any Commonwealth country. (2) All expressions used in this Act and defined in Article 1 of the Convention have the same meanings as those given to them in the Convention.

3 Privileges and immunities.

- (1) Subject to the provisions of subsection (6) of this section, the provisions of Articles 1, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 41 and 43 of the Convention shall have the force of law in Tonga.
- (2) Without prejudice to the provisions of the last preceding subsection, the Minister, with the concurrence of the Minister of Finance, may from time to time determine, either generally or in any case or class of case, fiscal privileges which shall be accorded to any special mission or persons connected with any special mission, notwithstanding that the determination may extend treatment more favourable than that required by the provisions of the Convention, and may in like manner determine the terms and conditions on which the privileges may be enjoyed.
- (3) For the purpose of giving effect to any custom or agreement by which Tonga and any other State extend to each other treatment more favourable than is required by the provisions of the Convention, the Minister may from time to time, by order, declare that a special mission of that State and persons connected with that special mission shall be accorded such immunity from jurisdiction and inviolability as are specified in the order:

Provided that nothing in this subsection shall apply with respect to persons to whom section 4 of this Act applies.
- (4) In subsections (2) and (3) of this section, the expression “treatment more favourable” includes the according of privileges or immunities, as the case may be, to persons who under the Convention may enjoy privileges and immunities only to the extent admitted by the receiving State.
- (5) Where, by or under this Act, immunity from jurisdiction is accorded to persons who are not diplomatic agents or persons enjoying immunity under Article 39 of the Convention, the immunity accorded to those first-mentioned persons may be waived in the manner and subject to the conditions specified in Article 41 of the Convention and the waiver shall have the same consequences as a waiver under that Article.
- (6) For the purposes of the provisions of the Articles referred to in subsection (1) of this section —
 - (a) a reference in those provisions to the receiving State shall be construed as a reference to Tonga;
 - (b) a reference in those provisions to a national of the receiving State shall be construed as a reference to a Tongan citizen;
 - (c) the reference in paragraph 1 of Article 25 to agents of the receiving State shall be construed as including a reference to any police officer or any person exercising a power of entry to premises;
 - (d) the reference in Article 41 to waiver by the sending State shall be construed as including a waiver by the head of the special mission

of the sending State or by a person for the time being performing the functions of the head of special mission;

- (e) Articles 34, 35 and 42 shall be construed as granting the privileges or immunities that those Articles require to be granted;
- (f) the reference in paragraph 1 of Article 35 to such laws and regulations as the receiving State may adopt shall be construed as including a reference to any law in force in Tonga relating to the quarantine, or the prohibition or restriction of the importation into or the exportation from Tonga of the animals, plants or goods:

Provided that any immunity from jurisdiction that a person may possess or enjoy by virtue of subsection (1) of this section shall not be prejudiced;

- (g) the reference in Article 38 to the extent to which privileges and immunities are admitted by the receiving State, and the reference in paragraph 1 of Article 40 to any additional privileges and immunities that may be granted by the receiving State, shall, so far as they relate to privileges, be construed as references to such determinations as may be made by the Minister pursuant to subsection (2) of this section, and so far as they relate to immunities, be construed as references to such immunities as may be conferred by an order under subsection (3) of this section.
- (h) the reference in paragraph 2 of Article 40 to the extent to which privileges and immunities are admitted by the receiving State shall, so far as it relates to privileges be construed as reference to such determinations as may be made by the Minister pursuant to subsection (2) of this section, and so far as it relates to immunities, be construed, in relation to persons to whom section 4 of this Act applied, as a reference to immunities conferred by that section, and, in relation to other persons to whom that paragraph applies, as a reference to such immunities as may be conferred by an order under subsection (3) of this section.

4 Tonga residents and citizens.

The members of the administrative and technical staff and members of the service staff, of a special mission who are Tongan citizens or are permanently resident in Tonga shall be accorded immunity from jurisdiction, and inviolability, only in respect of official acts performed in the exercise of their functions.

5 Withdrawal of diplomatic privileges and immunities.

Where the Minister is satisfied that the privileges and immunities accorded in relation to a special mission of Tonga in any State, or to any person connected with that special mission, are less than those conferred by or under this Act in relation to the special mission of that State, or to persons connected with that special mission, he may, by order, withdraw, modify, or restrict in relation to that special mission or to persons connected with that special mission, such of the privileges and immunities so conferred to such extent as appears to him to be proper.

6 Reciprocal treatment.

Nothing in this Act shall be construed as precluding the Minister from declining to accord privileges or immunities to, or from withdrawing, modifying, or restricting privileges or immunities in relation to, nationals or representatives of any State, or the Government thereof, on the ground that that State, or the Government thereof, is failing to accord corresponding privileges or immunities to Tonga.

7 Refunds of payments.

The Minister of Finance may direct that such refunds or payments be made from any public fund or account or from General Revenue as may in his opinion be necessary to give effect to any fiscal privileges accorded pursuant to section 3 of this Act or to any exemption granted by or under this Act.

8 Certificate of Minister.

If in any proceedings any question arises whether or not any person is or was at any time or in respect of any period accorded any privilege or immunity under or by virtue of this Act, a certificate issued by the Minister stating any fact relevant to that question shall be conclusive evidence of that fact.

9 Saving.

This Act shall not affect any legal proceedings begun before the commencement of this Act.

10 Regulations.

The Minister may make regulations for such matters as are contemplated by or necessary for giving full effect to this Act and for the due administration thereof.

SCHEDULE**CONVENTION ON SPECIAL MISSIONS****THE STATES PARTIES TO THE PRESENT CONVENTION**

Recalling that special treatment has always been accorded to special missions.

Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security and the development of friendly relations and co-operation among States.

Recalling that the importance of the question of special missions was recognized during the United Nations Conference on Diplomatic Intercourse and Immunities and in resolution I adopted by the Conference on 10 April, 1961.

Considering that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic Relations, which was opened for signature on 18 April, 1961.

Considering that the United Nations Conference on Consular Relations adopted the Vienna Convention on Consular Relations, which was opened for signature on 24 April, 1963.

Believing that an international convention on special missions would complement those two Conventions and would contribute to the development of friendly relations among nations, whatever their constitutional and social systems.

Realising that the purpose of privileges and immunities relating to special missions is not to benefit individuals but to ensure the efficient performance of the functions of special missions as missions representing the State.

Affirming that the rules of customary international law continue to govern questions not regulated by the provisions of the present Convention.

Have Agreed as follows: —

ARTICLE 1
Use of terms

For the purposes of the present Convention —

- (a) a “**special mission**” is a temporary mission, representing the State, which is sent by one State to another State with the consent of the latter for the purpose of dealing with it on specific questions or of

performing in relation to it a specific task;

- (b) a “**permanent diplomatic mission**” is a diplomatic mission within the meaning of the Vienna Convention on Diplomatic Relations;
- (c) a “**consular post**” is any consulate-general, consulate, vice-consulate or consular agency;
- (d) the “**head of a special mission**” is the person charged by the sending State with the duty of acting in that capacity;
- (e) a “**representative of the sending State in the special mission**” is any person on whom the sending State has conferred that capacity;
- (f) the “**members of a special mission**” are the head of the special mission, the representatives of the sending State in the special mission and the members of the staff of the special mission;
- (g) the “**members of the staff of the special mission**” are the members of the diplomatic staff, the administrative and technical staff and the service staff of the special mission;
- (h) the “**members of the diplomatic staff**” are the members of the staff of the special mission who have diplomatic status for the purposes of the special mission;
- (i) the “**members of the administrative and technical staff**” are the members of the staff of the special mission employed in the administrative and technical service of the special mission;
- (j) the “**members of the service staff**” are the members of the staff of the special mission employed by it as household workers or for similar tasks;
- (k) the “**private staff**” are persons employed exclusively in the private service of the members of the special mission.

ARTICLE 2

Sending of a Special Mission

A State may send a special mission to another State with the consent of the latter, previously obtained through the diplomatic or another agreed or mutually acceptable channel.

ARTICLE 3

Functions of a Special Mission

The functions of a special mission shall be determined by the mutual consent of the sending and the receiving State.

ARTICLE 4

Sending of the same Special Mission to two or more States

A State which wishes to send the same special mission to two or more States shall so inform each receiving State when seeking the consent of that State.

ARTICLE 5

Sending of a Joint Special Mission by two or more States

Two or more States which wish to send a joint special mission to another State shall so inform the receiving State when seeking the consent of that State.

ARTICLE 6

Sending of Special Missions by two or more States in order to deal with a question of common interest

Two or more States may each send a special mission at the same time to another State, with the consent of that State obtained in accordance with Article 2, in order to deal together, with the agreement of all of these States, with a question of common interest to all of them.

ARTICLE 7

Non-existence of diplomatic or consular relations

The existence of diplomatic or consular relations is not necessary for the sending or reception of a special mission.

ARTICLE 8

Appointment of the members of the Special Mission

Subject to the provisions of Articles 10, 11 and 12, the sending State may freely appoint the members of the special mission after having given to the receiving State all necessary information concerning the size and composition of the special mission, and in particular the names and designations of the persons it intends to appoint. The receiving State may decline to accept a special mission of a size that is not considered by it to be reasonable, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission. It may also, without giving reasons, decline to accept any person as a member of the special mission.

ARTICLE 9

Composition of the Special Mission

1. A special mission shall consist of one or more representatives of the sending State from among whom the sending State may appoint a head. It may also include diplomatic staff, administrative and technical staff and service staff.
2. When members of a permanent diplomatic mission or of a consular post in the receiving State are included in a special mission, they shall retain their privileges and immunities as members of their permanent diplomatic mission or consular post in addition to the privileges and immunities accorded by the present Convention.

ARTICLE 10

Nationality of the members of the Special Mission

1. The representatives of the sending State in the special mission and the members of its diplomatic staff should in principle be of the nationality of the sending State.
2. Nationals of the receiving State may not be appointed to a special mission except with the consent of that State, which may be withdrawn at any time.
3. The receiving State may reserve the right provided for in paragraph 2 of this article with regard to nationals of a third State who are not also nationals of the sending State.

ARTICLE 11

Notifications

1. The Ministry of Foreign Affairs of the receiving State, or such other organ of that State as may be agreed,, shall be notified of —
 - (a) the composition of the special mission and any subsequent changes therein;
 - (b) the arrival and: final departure of members of the mission and the termination of their functions with the mission;
 - (c) the arrival and final departure of any person accompanying a member of the mission;
 - (d) the engagement and discharge of persons resident in the receiving State as members of the mission or as private staff;
 - (e) the appointment of the head of the special mission or, if there is none, of the representative referred to in paragraph 1 of Article 14, and of any substitute for them;
 - (f) the location of the premises occupied by the special mission and of the private accommodation enjoying inviolability under Articles 30,

- 36 and 39, as well as any other information that may be necessary to identify such premises and accommodation.
2. Unless it is impossible, notification of arrival and final departure must be given in advance.

ARTICLE 12

Persons declared non grata or not acceptable

1. The receiving State may, at any time and without having to explain its decision, notify the sending State that any representative of the sending State in the special mission or any member of its diplomatic staff is persona non grata or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared non grata or not acceptable before arriving in the territory of the receiving State.
2. If the sending State refuses, or fails within a reasonable period, to carry out its obligations under paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the special mission.

ARTICLE 13

Commencement of the functions of a special mission

1. The functions of a special mission shall commence as soon as the mission enters into official contact with the Ministry of Foreign Affairs or with such other organ of the receiving State as may be agreed.
2. The commencement of the functions of a special mission shall not depend upon presentation of the mission by the permanent diplomatic mission of the sending State or upon the submission of letters of credence or full powers.

ARTICLE 14

Authority to act on behalf of the special mission

1. The head of the special mission or, if the sending State has not appointed a head, one of the representatives of the sending State designated by the latter is authorized to act on behalf of the special mission and to address communications to the receiving State. The receiving State shall address communications concerning the special mission to the head of the mission, or, if there is none, to the representative referred to above, either direct or through the permanent diplomatic mission.

2. However, a member of the special mission may be authorised by the sending State, by the head of the special mission or, if there is none, by the representative referred to in paragraph 1 of this article, either to substitute for the head of the special mission or for the aforesaid representative or to perform particular acts on behalf of the mission.

ARTICLE 15

Organ of the receiving State with which official business is conducted

All official business with the receiving State entrusted to the special mission by the sending State shall be conducted with or through the Ministry of Foreign Affairs or with such other organ of the receiving State as may be agreed.

ARTICLE 16

Rules concerning precedence

1. Where two or more special missions meet in the territory of the receiving State or of a third State, precedence among the missions shall be determined, in the absence of a special agreement, according to the alphabetical order of the names of the States used by the protocol of the State in whose territory the missions are meeting.
2. Precedence among two or more special missions which meet on a ceremonial or formal occasion shall be governed by the protocol in force in the receiving State.
3. Precedence among the members of the same special mission shall be that which is notified to the receiving State or to the third State in whose territory two or more special missions are meeting.

ARTICLE 17

Seat of the special mission

1. A special mission shall have its seat in the locality agreed by the States concerned.
2. In the absence of agreement, the special mission shall have its seat in the locality where the Ministry of Foreign Affairs of the receiving State is situated.
3. If the special mission performs its functions in different localities, the States concerned may agree that it shall have more than one seat from among which they may choose one as the principal seat.

ARTICLE 18

Meeting of special missions in the territory of a third State

1. Special missions from two or more States may meet in the territory of a third State only after obtaining the express consent of that State, which retains the right to withdraw it.
2. In giving its consent, the third State may lay down conditions which shall be observed by the sending States.
3. The third State shall assume in respect of the sending States the rights and obligations of a receiving State to the extent that it indicates in giving its consent.

ARTICLE 19

Right of the special mission to use the flag and emblem of the sending State

1. A special mission shall have the right to use the flag and emblem of the sending State on the premises occupied by the mission, and on its means of transport when used on official business.
2. In the exercise of the right accorded by this article, regard shall be had to the laws, regulations and usages of the receiving State.

ARTICLE 20

End of the functions of a special mission

1. The functions of a special mission shall come to an end, inter alia, upon —
 - (a) the agreement of the States concerned;
 - (b) the completion of the task of the special mission;
 - (c) the expiry of the duration assigned for the special mission, unless it is expressly extended;
 - (d) notification by the sending State that it is terminating or recalling the special mission;
 - (e) notification by the receiving State that it considers the special mission terminated.
2. The severance of diplomatic or consular relations between the sending State and the receiving State shall not of itself have the effect of terminating special missions existing at the time of such severance.

ARTICLE 21

Status of the Head of State and persons of high rank

1. The Head of the sending State, when he leads a special mission, shall enjoy in the receiving State or in a third State the facilities, privileges and immunities accorded by international law to Heads of State on an official visit.
2. The Head of the Government, the Minister for Foreign Affairs and other persons of high rank, when they take part in a special mission of the sending State, shall enjoy in the receiving State or in a third State, in addition to what is granted by the present Convention, the facilities, privileges and immunities accorded by international law.

ARTICLE 22 **General facilities**

The receiving State shall accord to the special mission facilities required for the performance of its functions, having regard to the nature and task of the special mission.

ARTICLE 23 **Premises and accommodation**

The receiving State shall assist the special mission, if it so requests, in procuring the necessary premises and obtaining suitable accommodation for its members.

ARTICLE 24 **Exemption of the premises of the special mission from taxation**

1. To the extent compatible with the nature and duration of the functions performed by the special mission, the sending State and the members of the special mission acting on behalf of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises occupied by the special mission, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or with a member of the special mission.

ARTICLE 25 **Inviolability of the premises**

1. The premises where the special mission is established in accordance with the present Convention shall be inviolable. The agents of the receiving State may not enter the said premises, except with the consent of the head

of the special mission or, if appropriate, of the head of the permanent diplomatic mission of the sending State accredited to the receiving State. Such consent may be assumed in case of fire or other disaster that seriously endangers public safety, and only in the event that it has not been possible to obtain the express consent of the head of the special mission or, where appropriate, of the head of the permanent mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the special mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or, impairment of its dignity.
3. The premises of the special mission, their furnishings, other property used in the operation of the special mission and its means of transport shall be immune from search, requisition, attachment or execution.

ARTICLE 26

Inviolability of archives and documents

The archives and documents of the special mission shall be inviolable at all times and wherever they may be. They should, when necessary, bear visible external marks of identification.

ARTICLE 27

Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the special mission such freedom of movement and travel in its territory as is necessary for the performance of the functions of the special mission.

ARTICLE 28

Freedom of communication

1. The receiving State shall permit and protect free communication on the part of the special mission for all official purposes. In communicating with the Government of the sending State, its diplomatic missions, its consular posts and its other special missions or with sections of the same mission, wherever situated, the special mission may employ all appropriate means, including couriers and messages in code or cipher. However, the special mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the special mission shall be inviolable. Official correspondence means all correspondence relating to the special mission and its functions.
3. Where practicable, the special mission shall use the means of communication, including the bag and the courier, of the permanent diplomatic mission of the sending State.
4. The bag of the special mission shall not be opened or detained.
5. The packages constituting the bag of the special mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the special mission.
6. The courier of the special mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.
7. The sending State or the special mission may designate couriers ad hoc of the special mission. In such cases the provisions of paragraph 6 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier ad hoc has delivered to the consignee the special mission's bag in his charge.
8. The bag of the special mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorised port of entry. The captain shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the special mission. By arrangement with the appropriate authorities, the special mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

ARTICLE 29 **Personal inviolability**

The persons of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall be inviolable. They shall not be liable to any form of arrest or detention. The receiving State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity.

ARTICLE 30 **Inviolability of the private accommodation**

1. The private accommodation of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall enjoy the same inviolability and protection as the premises of the special mission.
2. Their papers, their correspondence and, except as provided in paragraph 4 of Article 31, their property shall likewise enjoy inviolability.

ARTICLE 31

Immunity from jurisdiction

1. The representatives of the sending State in the special mission and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the receiving State.
2. They shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State, except in the case of —
 - (a) a real action relating to private immovable property situated in the territory of the receiving State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;
 - (b) an action relating to succession in which the person concerned is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
 - (c) an action relating to any professional or commercial activity exercised by the person concerned in the receiving State outside his official functions;
 - (d) an action for damages arising out of an accident caused by a vehicle used outside the official functions of the person concerned.
3. The representatives of the sending State in the special mission and the members of its diplomatic staff are not obliged to give evidence as witnesses.
4. No measures of execution may be taken in respect of a representative of the sending State in the special mission or a member of its diplomatic staff except in the cases coming under subparagraph (a), (b), (c) and (d) of paragraph 2 of this article and provided that the measures concerned can be taken without infringing the inviolability of his person or his accommodation.
5. The immunity from jurisdiction of the representatives of the sending State in the special mission and of the members of its diplomatic staff does not exempt them from the jurisdiction of the sending State.

ARTICLE 32

Exemption from social security legislation

1. Subject to the provisions of paragraph 3 of this article, representatives of the sending State in the special mission and members of its diplomatic staff shall, in respect of services rendered for the sending State, be exempt from social security provisions which may be in force in the receiving State.
2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of a representative of the sending State in the special mission or of a member of its diplomatic staff, on condition —
 - (a) that such employed persons are not nationals of or permanently resident in the receiving State; and
 - (b) that they are covered by the social security provisions which may be in force in the sending State or a third State.
3. Representatives of the sending State in the special mission and members of its diplomatic staff who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.
4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State where such participation is permitted by that State.
5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

ARTICLE 33

Exemption from dues and taxes

The representatives of the sending State in the special mission and the members of its diplomatic staff shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except —

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues and taxes on private immovable property situated in the territory of the receiving State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;
- (c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of Article 44;

- (d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duty, subject to the provisions of Article 24.

ARTICLE 34

Exemption from personal services

The receiving States shall exempt the representatives of the sending State in 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.

ARTICLE 35

Exemption from customs duties and inspection

1. Within the limits of such laws and regulations as it may adopt, the receiving State shall 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 representatives of the sending State in the special mission and the members of its diplomatic staff.
2. The personal baggage of the representatives of the sending State in 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. In such cases, inspection shall be conducted only in the presence of the person concerned or of his authorized representative.

ARTICLE 36

Administrative and technical staff

Members of the administrative and technical staff of the special mission shall enjoy the privilege and immunities specified in Articles 29 to 34, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 2 of Article 31 shall not extend to acts performed outside

the course of their duties. They shall also enjoy the privileges mentioned in paragraph 1 of Article 35 in respect of articles imported at the time to their first entry into the territory of the receiving State.

ARTICLE 37

Service staff

Members of the service staff of the special mission shall enjoy immunity• from the jurisdiction of the receiving State in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment, and exemption from social security legislation as provided in Article 32.

ARTICLE 38

Private staff

Private staff of the members of the special mission shall be exempt from dues and taxes on the emoluments they receive by reason of their employment. In all other respects, they may enjoy privileges and immunities only to the extent permitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the special mission.

ARTICLE 39

Members of the family

1. Members of the families of representatives of the sending State in the special mission and of members of its diplomatic staff shall, if they accompany such members of the special mission, enjoy the privileges and immunities specified in Articles 29 to 35 provided that they are not nationals of or permanently resident in the receiving State.
2. Members of the families of members of the administrative and technical staff of the special mission shall, if they accompany such members of the special mission, enjoy the privileges and immunities specified in Article 36 provided that they are not nationals of or permanently resident in the receiving State.

ARTICLE 40

Nationals of the receiving State and persons permanently resident in the receiving State

1. Except in so far as additional privileges and immunities may be granted by the receiving State, the representatives of the sending State in the

special mission and the members of its diplomatic staff who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of their functions.

2. Other members of the special mission and private staff who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent granted to them by that State. However, the receiving state must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the special mission.

ARTICLE 41

Waiver of immunity

1. The sending State may waive the immunity from jurisdiction of its representatives in the special mission, of the members of its diplomatic staff, and of other persons enjoying immunity under Articles 36 to 40.
2. Waiver must always be express.
3. The initiation of proceedings by any of the persons referred to in paragraph 1 of this article shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.
4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.

ARTICLE 42

Transit through the territory of a third State

1. If a representative of the sending State in the special mission or a member of its diplomatic staff passes through or is in the territory of a third State while proceeding to take up his functions or returning to the sending State, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the person referred to in this paragraph, whether travelling with him or travelling separately to join him or to return to their country.
2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the transit of members of the administrative

and technical or service staff of the special mission, or of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. Subject to the provisions of paragraph 4 of this article, they shall accord to the couriers and bags of the special mission in transit the same inviolability and protection as the receiving State is bound to accord under the present Convention.
4. The third State shall be bound to comply with its obligations in respect of the persons mentioned in paragraphs 1, 2 and 3 of this article only if it has been informed in advance, either in the visa application or by notification, of the transit of those persons as members of the special mission, members of their families or couriers, and has raised no objection to it.
5. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to the official communications and the bags of the special mission, when the use of the territory of the third State is due to force majeure.

ARTICLE 43

Duration of privileges and immunities

1. Every member of the special mission shall enjoy the privileges and immunities to which he is entitled from the moment he enters the territory of the receiving State for the purpose of performing his functions in the special mission or, if he is already in its territory, from the moment when his appointment is notified to the Ministry of Foreign Affairs or such other organ of the receiving State as may be agreed.
2. When the functions of a member of the special mission have come to an end, his privileges and immunities shall normally cease at the moment when he leaves the territory of the receiving State, or on the expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, in respect of acts performed by such a member in the exercise of his functions, immunity shall continue to subsist.
3. In the event of the death of a member of the special mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory of the receiving State.

ARTICLE 44

Property of a member of the special mission or of a member of his family in the event of death

1. In the event of the death of a member of the special mission or of a member of his family accompanying him, if the deceased was not a national of or permanently resident in the receiving State, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death.
2. Estate, succession and inheritance duties shall not be levied on movable property which is in the receiving State solely because of the presence there of the deceased as a member of the special mission or of the family of a member of the mission.

ARTICLE 45

Facilities to leave the territory of the receiving State and to remove the Archives of the special mission

1. The receiving State must, even in case of armed conflict, grant facilities to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons, irrespective of their nationality, to leave at the earliest possible moment. In particular it must, in case of need, place at their disposal the necessary means of transport for themselves and their property.
2. The receiving State must grant the sending State facilities for removing the archives of the special mission from the territory of the receiving State.

ARTICLE 46

Consequences of the cessation of the functions of the special mission

1. When the functions of a special mission come to an end, the receiving State must respect and protect the premises of the special mission so long as they are assigned to it, as well as the property and archives of the special mission. The sending State must withdraw the property and archives within a reasonable period of time.
2. In case of the absence or severance of diplomatic or consular relations between the sending State and the receiving State and if the functions of the special mission have come to an end, the sending State may, even if there is an armed conflict, entrust the custody of the property and archives of the special mission to a third State acceptable to the receiving State.

ARTICLE 47

Respect for the laws and regulations of the receiving State and use of the premises of the special mission

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying those privileges and immunities under the present Convention to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.
2. The premises of the special mission must not be used in any manner incompatible with the functions of the special mission as envisaged in the present Convention, in other rules of general international law or in any special agreements in force between the sending and the receiving State.

ARTICLE 48

Professional or commercial activity

The representatives of the sending State in the special mission and the members of its diplomatic staff shall not practice for personal profit any professional or commercial activity in the receiving State.

ARTICLE 49

Non-discrimination

1. In the application of the provisions of the present Convention, no discrimination shall be made as between States.
2. However, discrimination shall not be regarded as taking place —
 - (a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its special mission in the sending State;
 - (b) where States modify among themselves, by custom or agreement, the extent of facilities, privileges and immunities for their special missions, although such a modification has not been agreed with other States, provided that it is not incompatible with the object and purpose of the present convention and does not affect the enjoyment of the rights or the performance of the obligations of third States.

ARTICLE 50

Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialised agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of

Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, until 31st December, 1970 at United Nations Headquarters in New York.

ARTICLE 51

Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE 52

Accession

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in Article 50. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE 53

Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

ARTICLE 54

Notifications by the depositary

The Secretary-General of the United Nations shall inform all States belonging to any of the categories mentioned in Article 50-- —

- (a) of signatures to the present Convention and of the deposit of instruments of ratification or accession in accordance with Articles 50, 51 and 52;
- (b) of the date on which the present Convention will enter into force in accordance with Article 53.

ARTICLE 55

Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the categories mentioned in Article 50.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed the present Convention, opened for signature at New York on 16th December, 1969.

(signatures hereto are omitted)