Document:-
A/CN.4/SR.763

Summary record of the 763rd meeting

Topic:
Special missions

Extract from the Yearbook of the International Law Commission:-
1964, **vol. I**

96. He agreed with the Chairman's comments on sub-paragraph (*c*) and would go further in suggesting that it should be omitted altogether, as it did not come within the scope of any of the three reasons he had enumerated. The point could be covered in the commentary.

97. Mr. AMADO said that the could not agree that there should be a reference to the interruption of a mission in an article entitled " End of the function of the special mission ". " Interruption " and " suspension " were not necessarily synonymous with " end ". The special mission might merely be pausing for reflection. It would therefore be necessary either to adopt Mr. Lachs's suggestion or to draft a separate article concerning the interruption of suspension of a special mission's functions.

98. The CHAIRMAN, speaking as a member of the Commission, said that cases of suspension and interruption could hardly be regulated otherwise than by a provision stating that the end of the mission's function took place by agreement between the States concerned. There might be cases where both States intended that the suspension of the mission's work should entail the end of the mission, but there might be others where both States agreed that the mission should remain where it was in order to be in a position to resume its work.

99. Mr. YASSEEN said that, in his view, there were three decisive factors — the duration of the mission, its assignment and the will of the parties. The first factor was referred to in sub-paragraph (*a*) and the second in sub-paragraph (*b*); sub-paragraphs (*d*) and (*e*) were therefore unnecessary.

100. The will of the parties — the third factor — could be referred to in a single sub-paragraph, which would naturally give preference to the host State, because, being in a privileged position by reason of its territorial jurisdiction, it was entitled to terminate all special missions. The sub-paragraph might say that a special mission came to an end upon notification by the host State that it regarded the mission as having terminated, or by virtue of an expression of will by either State.

101. Mr. CASTRÉN supported the speakers who had suggested the deletion of sub-paragraphs (*b*), (*d*) and (*e*), for the reasons given by them.

102. Mr. ROSENNE said that he was in general agreement with the article and could support the suggestions for its simplification. On what was perhaps a drafting point he asked whether it was the function or the special mission itself that came to an end.

103. Mr. BARTOŠ, Special Rapporteur, said that he was prepared to incorporate the substance of sub-paragraphs (*d*) and (*e*) in sub-paragraph (*b*).

104. With regard to sub-paragraph (*c*), he illustrated the case by referring to what happened when there was a change of Government. If the new Government of the host State had not yet decided whether the mission should continue or be interrupted and if the Government of the sending State was equally doubtful, was the mission to be regarded as still in existence, even during that period of indecision? It might be preferable to draft a separate paragraph stating that the functions of the special mission could be interrupted or suspended by the will of the two parties or of either of them; such a provision would show that the situation he had described could occur and should not be confused with the cessation of a special mission's functions.

105. Referring to Mr. Yasseen's suggestion, he said that notification of the recall of a mission and a notification by the receiving State that it regarded the mission as having terminated were two different things both in politics and in law; they represented two different kinds of diplomatic *démarche* one of which was more serious than the other. The Vienna Convention on Diplomatic Relations provided for notification of the termination of the functions of a diplomatic agent.

106. The CHAIRMAN, speaking as a member of the Commission, said that he agreed with the Special Rapporteur's view that a notification terminating a special mission from a foreign country was an extremely serious step.

107. Mr. de LUNA said that he fully shared the Special Rapporteur's views.

108. The CHAIRMAN suggested that article 11 should be referred to the Drafting Committee.

It was so agreed.

Appointment of a Member of the Drafting Committee

Mr. Obed Pessou was appointed a member of the Drafting Committee in replacement of Mr. Reuter, who had had to leave before the end of the session.

The meeting rose at 1 p.m.

763rd MEETING

Friday, 10 July 1964, at 10 a.m.

Chairman: Mr. Herbert W. BRIGGS

Later: Mr. Roberto AGO

Special Missions

(A/CN.4/166)

(continued)

[Item 4 of the agenda]

DRAFT ARTICLES ON SPECIAL MISSIONS

ARTICLE 12 (Seat of the special mission)

1. The CHAIRMAN invited the Commission to take up article 12 in the Special Rapporteur's report (A/CN.4/166).

2. Mr. BARTOŠ, Special Rapporteur, said that he had changed paragraph 3 of article 12 to read:

"... it may have its principal seat either at the place where the Ministry of Foreign Affairs of the receiving State is situated or at a place of its own choice".

3. He said that, so far as the seat was concerned, special missions differed from regular permanent missions in a number of respects. Permanent missions, being accredited to the Government of the host country, were located in the capital or at the seat of Government; any exceptions to that arrangement were the subject of mutual agreement between the sending State and the host State, as was laid down in the Vienna Convention on Diplomatic Relations. By reason of the nature of their work, special missions were, however, sometimes established at a place other than the seat of Government. Frequently, their work necessitated constant movement from place to place of the detachment of travelling groups. Paragraph 3 explained where the main seat of the mission was to be located in such circumstances.

4. He offered alternative wording in paragraph 2, but the express or tacit consent of the host State was required in any case.

5. The question whether *ad hoc* missions were free to choose the place where they would establish their seat and whether they had the right to set up their offices wherever they wished in the receiving State should probably be answered in the negative. Some States were not prepared to permit it for practical reasons, and other States did not wish special missions to establish themselves in certain parts of their territory. Besides, the idea that a mission should have a fixed place of residence had been accepted by the United Nations and was referred to in that Organization's Headquarters Agreement.[1] It was a separate matter from that of the freedom of movement of members of the mission in the receiving State, which formed part of their privileges and immunities.

6. It was desirable that missions should have a residence where they could receive communications from the receiving State. For a long time it had been held that, if the special mission had no headquarters of its own, its residence should be deemed to be at the embassy of the sending State; but the modern view was that the mission should have its own headquarters, partly to avoid confusion between its business and that of the permanent mission and partly for reasons of a predominantly political nature.

7. Mr. CASTRÉN proposed that, in order to make paragraph 1 less rigid, the words "for the duration of its function" — which seemed superfluous — should be replaced by some such words as "except as otherwise agreed"; secondly, the article could be simplified if the substance of paragraphs 2 and 3 were incorporated in paragraph 1, so that the article would read:

"Except as otherwise agreed, a special mission shall either have its seat at the place designated by the receiving State or shall be ambulatory, according to the nature of its assignment. Members of the special mission may reside elsewhere than at its seat, if the receiving State does not object."

8. Mr. TABIBI said that after studing the commentary and hearing the Special Rapporteur's introduction, he had come to the conclusion that article 12 should be based on the principle of mutual consent, as was article 12 in the Vienna Convention on Diplomatic Relations, and that it should be framed in flexible terms because practice varied and many different kinds of arrangement were possible. Special consideration should also be given to chose cases where at certain seasons of the year the seat of Government was transferred to another place while Government offices might still remain in the capital.

9. Mr. BARTOŠ, Special Rapporteur, said that he had followed article 12 of the Vienna Convention on Diplomatic Relations, which made no reference to mutual consent.

10. Mr. de LUNA referred to article 9, considered at the previous meeting, and said that he would prefer a more detailed rule on which chanceries could rely without hesitation to the shortened formula suggested by the Special Rapporteur.

11. He, too, thought that article 12 should be simplified, though the Special Rapporteur's main ideas should be retained. He did not, however, support the new second sentence proposed by Mr. Castrén. Either the article dealt with the freedom of movement of the members of the special mission in the territory of the receiving State, in which case the rules concerning privileges and immunities applied; or else it was concerned with the accommodation of members of the mission, which was dealt with in article 17.

12. The CHAIRMAN, speaking as a member of the Commission, considered that the text should be simplified, although the substance was acceptable. Also the contradiction between paragraphs 1 and 2 should be removed, as the content of the latter could not apply to ambulatory special missions.

13. Mr. TUNKIN said that he did not entirely agree with the explanations given by the Special Rapporteur.

14. His view was that there was always an agreement between the two States and the existence of such an agreement was implicit in article 12 of the Vienna Convention. The sending State announced that it wished to open an office of the mission in a place in the territory of the receiving State, and that State either gave or witheld its consent. What suprised him in paragraph 1

[1] Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed at Lake Success on 26 June 1947, United Nations *Treaty Series*, Vol. II; also reproduced in United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (United Nations publication, Sales No. 60.V.2).

of the Special Rapporteur's draft was the word "designated" which seemed to him to lower the dignity of the sending State and to infringe the principle of the sovereign equality of States. He thought that the article should contain a reference to an agreement of some kind.

15. Mr. BARTOŠ, Special Rapporteur, said that the provision should not be understood as obliging the mission to establish itself at a particular place, but rather as making it possible to choose a place from which the special mission could carry on its activities. Embassies and legations had to be at the seat of Government, but offices could be opened elsewhere if the sending State so decided and the receiving State agreed. That was why he proposed the rule that the special mission's principal seat should be at the place "designated" by the receiving State. There were practical and political reasons for such a rule; in the first place, the receiving State should know to what address it could send communications for the mission, and, secondly, that State was responsible for facilitating accommodation and supplies for the special mission and for its protection. The phrase could perhaps be altered to read "... the place proposed by the receiving State and agreed to by the sending State", but the sending State could not be left free to make its own choice.

16. He had noticed that another tendency was to concentrate special missions at the seat of Government. There were advantages in such an arrangement, since it facilitated communications between the mission and the authorities; but there were also disadvantages, since it complicated travel in the territory of the receiving State. In most cases, the receiving State either set up a special department locally to keep in touch with the mission of it appointed a plenipotentiary or a liaison officer.

17. In reply to Mr. de Luna, he said that it might be possible to remove paragraph 2 from its present position and to insert it in article 17 or in article 20. The essential point was that the special mission should be able to carry on its work: if its members were scattered over the territory of the host State, it would be very difficult to reassemble them. Accordingly, the Commission would have to decide whether the question should be considered from the point of view of the independent functioning of the mission, in which case it should be dealt with in article 12, or from the point of view of its freedom of movement, which was a matter of privileges and immunities.

18. Referring to Mr. Tabibi's remarks, he said that the question of summer residences had been discussed at the Vienna Conference of 1961 and it had been made clear that it was the members of the staff that moved, not the offices. The embassies at New Delhi, for instance, were not closed during the summer, and communications were addressed to them in that city.

19. Mr. YASSEEN said that, in general, the question dealt with in article 12 did not raise many problems; nevertheless, it had to be considered and rules had to be made to deal with it, for border line cases might occur and give rise to difficulties. The issue concerned the mission's office, since the place where members of the mission resided should be dealt with in the articles on privileges and immunities; and the question of the place where the mission's offices were to be established could be decided only by mutual consent. The host State could not oblige the sending State to establish its mission in a particular place. Basically, therefore there had to be tacit or express agreement. Which State would have the last word in case of dispute? Clearly, it was the host State, for it was sovereign in its own territory. Even so, it was undesirable that the articles should be too categorical; many difficulties would be overcome if "designated" were replaced by "proposed". In any case, the sending State was free to accept or not to accept the proposal, since it was open to it to decide not to send the special mission.

20. Mr. TABIBI said that, notwithstanding the view put forward by the Special Rapporteur, he still maintained that article 12 in the Vienna Convention on Diplomatic Relations implied that there had to be mutual consent between the two States, and all the difficulties that might arise over the seat of a special mission would be resolved if that principle were incorporated in the article. He did not share Mr. Yasseen's view that the final word lay with the receiving State, and considered that both sides had an equal say. He agreed with Mr. de Luna that the accommodation aspect should be dealt with under the section concerned with facilities, privileges and immunities.

21. The CHAIRMAN observed that the only issue that needed decision was whether or not the principle of mutual consent should be set forth in the article.

22. Mr. ROSENNE said that once agreement had been reached between two States to send and receive a special mission it was essential that the mission be allowed to establish its office where it could function effectively; at the same time, the last word must remain with the host State. In fact what was needed was a rule of the kind included in article 12, subparagraph (*e*), of the Agreement between Israel and the Federal Republic of Germany, of 10 September 1952, which read:

> "The Israel Mission shall be entitled to establish offices in the Federal Republic of Germany as may appear necessary for the effective performance of its activities, provided, however, that the places where such offices shall be located shall be agreed between the Israel Mission and the appropriate authorities of the Government of the Federal Republic of Germany." [2]

23. Mr. YASSEEN said that though a firm believer in the equality of States, he still thought that the host State should have the last word. The host State had many obligations, especially of a political nature, and was internationally responsible for the safety of the

[2] United Nations *Treaty Series*, Vol. 162, 1953, page 224.

mission. A further reason why the receiving State should have the final say was that it was better acquainted with the territory and with the circumstances which had led to the arrival and presence of the special mission. Such a rule would not in any way infringe the sovereignty of the sending State, for it was free to decide not to send the mission.

24. Mr. PESSOU agreed with Mr. Yasseen's remarks. It was hardly necessary to press the matter further, for the essential criterion was that of international courtesy. If a State sent a special mission, it did so in a particular kind of atmosphere. The receiving State was, of course, responsible for the safety of the mission, but no case had ever arisen in which the special mission had refused to establish itself at the place of residence allotted to it, which was usually the seat of Government.

25. Mr. BARTOŠ, Special Rapporteur, said that perhaps the article could be redrafted in more flexible language. It would first lay down the rule of mutual agreement and then would go on to say that, in the absence of agreement, it was for the host State (which had not yet become the receiving State) to propose the place where the mission would have its seat.

26. The question of the headquarters of itinerant missions was a particularly difficult one. Unless some other mutual agreement had been made, its headquarters would be either at the place where the Ministry of Foreign Affairs had its seat or in some other place to which the receiving State did not object.

27. In reply to Mr. Pessou, he said that there had been cases in which hostilities had almost broken out because the sending State has considered itself slighted when the receiving State had not allowed a special mission to establish itself in a particular place. There had also been cases where, in connexion with a territorial dispute, the host State had regarded it as provocative behaviour on the part of the sending State to insist that the special mission establish itself in the disputed territory. The question of prohibited and security zones also had to be borne in mind.

28. With reference to Mr. Tabibi's remarks, he said that the United States did not have two embassies in Pakistan, but two embassy buildings.

29. Mr. ROSENNE said that presumably the actual place in which an ambulatory mission found itself would come within the general rule laid down in article 12. It would be difficult to assume, for example, that a frontier demarcation mission had a theoretical seat in a Government office situated in the capital of the country concerned.

30. The CHAIRMAN suggested that article 12 be referred to the Drafting Committee with the request that the article should be redrafted in more concise and more flexible language.

It was so agreed.

ARTICLE 13 (Nationality of the head and members of the special mission)

31. Mr. BARTOŠ, Special Rapporteur, said that article 13 was based on article 8 of the Vienna Convention on Diplomatic Relations, 1961. The reference to stateless persons in paragraph 3 was taken from an amendment that had been submitted to the Conference on Consular Relations of 1963, but had not been adopted. The question was whether the head of a special mission, its members and staff should in all cases or should in principle possess the nationality of the sending State. In that respect, paragraph 1 of his article 13 was based on the terms of article 8 of the 1961 Vienna Convention.

32. In the case of paragraph 2 he had followed article 8, paragraph 2, of the Vienna Convention, subject to the omission of the words " which may be withdrawn at any time ".

33. As explained in paragraph (5) of his commentary, he had intentionally refrained from drafting a provision concerning the double nationality of the chief, members of staff of a special mission. Whereas sending States might like to appoint to special missions persons who, though nationals of the sending State, had been born in the receiving State and still possessed that State's nationality, the authorities of the host State were generally unwilling to accept persons with double nationality. The problem did not arise in countries which recognized dual nationality, but other States were very sensitive on that point.

34. Mr. CASTRÉN said that paragraph 2, and especially paragraph 3, of article 13 diverged a great deal from the corresponding provisions of the Vienna Convention on Diplomatic Relations (article 8) and the Vienna Convention on Consular Relations (article 22). The Special Rapporteur, though aware of the differences, had not explained clearly why he had chosen a different system. In his own opinion, the changes were not justified, and he accordingly proposed that those paragraphs should be redrafted more nearly in line with the corresponding rules in the Vienna Conventions.

35. Mr. ROSENNE associated himself with the views expressed by Mr. Castrén. He was uncertain whether there was any need for paragraph 3, which added nothing to the rules laid down earlier in the draft concerning the composition of special missions. Moreover, it diverged considerably from the relevant provisions of the two Vienna Conventions, and he was particularly perturbed at the introduction into diplomatic law at such a juncture of the reference to stateless persons in the manner proposed by the Special Rapporteur.

36. Mr. VERDROSS said that paragraph 3 diverged a great deal from the formula accepted at Vienna. He did not think it would be justifiable, in the case of special missions, to draft provisions going further than the provisions of the Vienna Conventions, the more so since it was stated in another article that the receiving State could always declare a person not acceptable even before he arrived.

37. The CHAIRMAN, speaking as a member of the Commission, agreed with Mr. Castrén and considered

that article 13 should be brought more closely into line with article 8 of the Vienna Convention on Diplomatic Relations.

Mr. Ago resumed the Chair.

38. Mr. YASSEEN, referring to the proviso in article 8, paragraph 2, of the Convention on Diplomatic Relations, which the Special Rapporteur had not reproduced, said that one possible reason for the omission might have been the temporary nature of special missions, though that did not prevent the receiving State from declaring some particular person *persona non grata* at any time.

39. On the other hand, he did not understand why the Special Rapporteur had not followed, in paragraph 3 of his own draft, paragraph 3 of article 8 of the Convention on Diplomatic Relations, which contained a reservation concerning nationals of a third State who were not also nationals of the sending State. The inference was that the Special Rapporteur had wished to leave the receiving State more freedom to decline to accept certain persons in the case of special missions than in that of permanent diplomatic missions, whereas logic required the converse.

40. Mr. BARTOŠ, Special Rapporteur, observed that his draft of paragraph 2 used the words "with the prior consent", and the expression used in the Vienna Convention was "with the consent"; consequently there was no difference in substance.

41. With regard to the omission of the words "which may be withdrawn at any time", he said that in the case of a special mission, which might perhaps last only a few days, it would be hard and unreasonable if the receiving State gave the consent and then withdrew it.

42. As far as paragraph 3 was concerned, he thought his draft was less strict than the Vienna Convention. Whereas article 8, paragraph 3, of the Convention contained the words "the receiving State may reserve the same right...", his text used the words "a State may refuse to recognize...", which meant that prior consent did not need to be obtained. The case of stateless persons had to be covered, for it often gave rise to difficulties; such persons would have to be classified with nationals of third States, for otherwise they would be accorded a privileged status.

43. Mr. VERDROSS said that he had not been convinced by the Special Rapporteur's interpretation of paragraph 3. He still thought that the case was already covered by the general rule under which a person could be declared not acceptable or *non grata* and that the paragraph was not necessary.

44. Mr. CASTRÉN thought that the system adopted at Vienna was less strict than the one that the Special Rapporteur had stated in paragraph 3. He personally preferred the former.

45. Mr. YASSEEN asked the Special Rapporteur whether, in his view, if a member of a special mission had dual nationality, the nationality of the sending State and that of a third State, the receiving State could refuse to recognize him as a member of the special mission. There might be some doubt about that under article 13, paragraph 3, of the draft, whereas under article 8, paragraph 3 of the Convention on Diplomatic Relations, a State could not, on the sole ground of his nationality, decline to accept such a person as a member of the permanent mission.

46. Mr. BARTOŠ, Special Rapporteur, replied in the affirmative. In the case described by Mr. Yasseen, the person was regarded, under the characterization theory which was still in force in nationality matters, as a national of the country to which he belonged by reason of the territorial conception of the receiving State. As was stated in paragraph (5) of the commentary, the receiving State had the right to decide what nationality was to be attributed to such persons.

47. Mr. YASSEEN said that the inference then was that paragraph 3 of draft article 13 was stricter than paragraph 3 of article 8 of the Vienna Convention.

48. Mr. BARTOŠ, Special Rapporteur, said that that was so with regard to stateless persons, who posed more difficulties than was justified by the services they rendered through their knowledge of languages and conditions in the receiving State.

49. Mr. CASTRÉN said that when a provision of an international convention laid down an express rule, no theory could change the substance of such a rule.

50. The CHAIRMAN said that the Commission should try not to stray from the subject. After all, there was an article enabling the receiving State to decline to accept any person on the ground that he was not acceptable or *persona non grata.*

51. He suggested that article 13 be referred to the Drafting Committee, which would examine it in connexion with article 8 of the Convention on Diplomatic Relations.

It was so agreed.

ARTICLE 14 (Intercouse and activities of special missions in the territory of a third State)

52. Mr. BARTOŠ, Special Rapporteur, said that article 14 dealt with the case, peculiar to special missions, where they met and carried on their activities in the territory of a third State. He had taken the view that the prior consent of the third State would be required for any such meeting and that such consent should be requested through the diplomatic channel.

53. The second question was whether the State giving hospitality to special missions could lay down certain

conditions for their activities. In his opinion sending States were sovereign, but they had a duty to respect the sovereignty of the State in whose territory the missions met.

54. The third question was whether the host State which had given its consent could subsequently withdraw it and so terminate the activities of the special missions which had come to its territory. He had not dealt with the very different case in which the third State acted as mediator or lent its good offices. Nor had he dealt with the case in which several regular missions accredited to the same State entered into contact to perform some special assignment, in which case they would be acting as true special missions. Those in favour of the principle of revocability set out in paragraph 3 would consider *a fortiori* that the third State could require regular missions to cease acting in that way.

55. Mr. ROSENNE said that article 14 was a valuable one and it was important to regularize the status of special missions which carried out their functions in a third State. Indeed, he would have thought that the content of paragraph 1 should be transferred to the beginning of the draft or at least that some adequate cross-reference should be made to article 14 earlier in the draft.

56. The general rules on the composition and reception of special missions would apply to the category under discussion, at least in principle. The detailed provision contained in the second sentence of paragraph 1 could be omitted, particularly as it might complicate matters where a joint request was made by two States to the third State.

57. The rule stated in paragraph 2 was correct, but he thought that the word " strictly " should be omitted, such a qualification being unnecessary in the context.

58. It seemed to him that paragraph 3 went too far in allowing the third State to withdraw its hospitality at any time and without any limitation.

59. Mr. de LUNA said that he approved of the three principles in article 14 : the requirement of the third State's consent, that State's power to impose conditions and the revocability of the consent. He supported Mr. Rosenne's suggestion, however, that the requirement to request consent through the diplomatic channel be dropped. He was not opposed to that provision, but he did not think it was wholly necessary.

60. Mr. LACHS said that the Special Rapporteur had been wise in proposing article 14, which dealt with a matter of growing importance. Referring to the second sentence in paragraph 1, he said that there could be other ways than that referred to for obtaining the consent of the receiving State, and he would therefore favour a more flexible formula.

61. The words " but does not itself take any part in such activities " should be omitted from paragraph 2 because such a statement was either self-evident or might be inconsistent with practice if the third State were asked to act in some capacity, for example if its good offices were required or if it was asked to act as conciliator.

62. He shared the doubts expressed by Mr. Rosenne about paragraph 3, for although the parties were in fact at the mercy of the host State the possibility of its withdrawing hospitality should not be sanctioned *de jure*. At the same time, however, the sovereign rights of that State should not be infringed : some more cautious provision was needed.

63. Mr. TUNKIN said that the Special Rapporteur had singled out the most important aspects of a very complex question and had drafted a text which was on the whole satisfactory.

64. The first sentence in paragraph 1 was correct ; there might, however, be cases in which to require prior consent would be hard or even impossible. For example, a Foreign Minister returning from an official journey might happen to be in Switzerland and might wish to discuss certain matters with the permanent diplomatic missions of certain States there ; that would be in some sort a special mission. The rule stated in paragraph 1 was probably not flexible enough to cover such cases, which were very frequent in practice.

65. The substance of paragraph 2 was acceptable, but the terms in which it was couched were rather too strong.

66. The rule stated in paragraph 3 gave too much power to the State in whose territory special missions met. The situation was rather different from that involving the activities of permanent diplomatic missions, in which the State of residence could declare a member of such a mission *persona non grata*. Several heads of State, for instance, might have met on Swiss territory, naturally with Switzerland's prior consent. But could the Swiss Government put an end to such a meeting without even giving a reason ? If the Commission considered that the host State should have the right to withdraw its hospitality, it should at least draft a provision requiring that good reason be given for the exercise of that right.

67. Article 14 should be drafted in simpler and more realistic terms.

68. The CHAIRMAN, speaking as a member of the Commission, suggested that the whole article should be simplified by omitting whatever provision was too rigid. Paragraph 1 might consist of the first sentence only, with the word " prior " deleted. In that form the sentence would indicate clearly enough that the consent would normally continue for the duration of the mission, but might in certain cases be withdrawn. As a consequence, paragraph 3 might be deleted.

69. Paragraph 2 was not entirely essential. If the Commission wished to keep the idea that the third State could impose conditions it would perhaps be enough to add a phrase to that effect to paragraph 1. But even that was not really necessary since, if the third State's consent was required, obviously it could attach certain conditions to it.

70. From the point of view of drafting it might be useful to make clear what was meant by " third State ", for the purposes of the article; the wording of paragraph 2 might be employed to explain that the third State in that case was a State which did not itself take any part in the activities of special missions meeting in its territory.

71. Mr. BARTOŠ, Special Rapporteur, referring to Mr. Tunkin's remarks, said that the article was not intended to deal with contact by an official personality when visiting or passing through a country; that point might be explained in the commentary.

72. He could accept the Chairman's suggestion that the word " prior " be deleted in paragraph 1.

73. The phrase " but does not itself take any part in such activities " might be omitted from paragraph 2 if the commentary explained that the third State in question was not a State acting as an intermediary or lending its good offices. He agreed with Mr. Rosenne that the word " strictly " was not essential in paragraph 2.

74. On the question whether, in the circumstances contemplated by article 14, the host State could impose conditions he did not think that the right to do so was implied in the concept of consent.

75. The principle of revocability set out in paragraph 3 was something very different from the power to declare a person *non grata*; no fault might be imputable to any person, and yet the mission as such might be regarded as undesirable because its activities harmed or might jeopardize the interests of the host State, especially in case of armed conflict or international tension.

76. With regard to the case mentioned by Mr. Tunkin of a conference held on the territory of a third State, he said he had not in his draft dealt with matters pertaining to conferences. If he had done so, he would have stipulated that in such cases the host State could not withdraw its consent once it had been given.

77. The Commission should take a decision on the principle embodied in paragraph 3; the choice lay between two different concepts, one placing the accent on the sovereignty of the host State, the other on the sovereignty of the negotiating States.

78. Mr. BRIGGS noted with satisfaction that the Special Rapporteur had agreed to the deletion from paragraph 1 of the word " prior " and also did not oppose the deletion of paragraph 3. In that manner, the provision would simply state the requirement of consent, with the implication that it would be a continuing consent unless withdrawn.

79. He had no objection to the use of the term " third State ".

80. The CHAIRMAN said that there would be no objection to the use of that term provided that its meaning was clear.

81. Mr. CASTRÉN said that he supported the Chairman's suggestion; the essence lay in the first sentence. If it was understood that the third State could impose certain conditions when giving its consent, paragraph 2 was not necessary. Paragraph 3 might be dropped if the word " prior " was deleted in paragraph 1. If the intention was to indicate that the third State might withdraw its consent, a provision to that effect might be — but did not need to be — added in paragraph 1.

82. The CHAIRMAN noted that the members agreed that the word " prior " should be deleted in paragraph 1 and that paragraph 3 should be dropped, on the understanding that the requisite explanations would be given in the commentary. He suggested that article 14 be referred to the Drafting Committee.

It was so agreed.

ARTICLE 15 (Right of special missions to use the flag and armorial bearings of the sending State).

83. Mr. BARTOŠ, Special Rapporteur, explained that paragraph 1 of his draft article 15 reproduced the rule contained in article 20 of the Vienna Convention on Diplomatic Relations.

84. However, experience had shown that that rule, as applied to special missions, should be broader. For that reason, in paragraph 2, he proposed that the national emblem might be used on all the buildings in which the different sections of the mission were accommodated and on all the vehicles which the mission used. He believed that the Commission should propose a rule to that effect.

85. In paragraph 3, he had gone still further. He had observed that often the host State considered that the presence of the national emblem of the sending State made it easier to protect the special mission and to avoid errors due to ignorance. The rule proposed in paragraph 3 was especially to be recommended for frontier areas.

86. The CHAIRMAN said that, in preparing the draft convention on diplomatic relations, the Commission had considered that the national flag could be flown not only at the seat of the embassy but also at all other premises used by embassy services. For that reason, the expression used in article 20 of the Vienna Convention of 1961 " the premises of the mission ", was broader than that proposed by the Special Rapporteur in article 15, paragraph 1: " the building in which its seat is situated ". He suggested that paragraph 1 should use the expression " the premises of the mission ". He also suggested that in paragraph 1 the words " the means of transport used by the head of the mission " should be replaced by the words " the means of transport of the mission ". If those two changes were made in paragraph 1, paragraph 2 could be deleted.

87. Mr. BARTOŠ, Special Rapporteur, accepted the suggestion, provided that the words " the premises of the mission and its sections " were used, since it was important to emphasize that the mission might comprise a number of sections or teams.

88. Mr. AMADO said he had some doubt regarding the expression " the means of transport " ; the rule was perfectly applicable in the case of automobiles, but how would it be applied if the members of the special mission travelled by rail ?

89. Mr. ROSENNE noted that paragraph 3 appeared to represent an innovation in so far as it would permit the receiving State actually to require that the national flag of the sending State be flown on the means of transport in question. The explanations and examples given by the Special Rapporteur in connexion with that paragraph prompted him to ask whether the responsibility of the receiving State would be affected in any way by the fact that it made use of its right under paragraph 3 or had failed to do so. In particular, if the receiving State were to abstain from requiring the national flag of the sending State to be flown, would the responsibility of the receiving State be in any way aggravated in case of mishap ?

90. Mr. BARTOŠ, Special Rapporteur, replying to Mr. Amado's question, explained that he had had in mind all the means of transport used exclusively by the mission, but not public means of transport. Accordingly, the national emblem would be displayed on a special train but not on an ordinary train used by a member of the mission ; the same would apply to a boat or any other means of transport. It should be specified, however, that the means of transport in question were not as a rule owned by the special mission ; on the contrary, the most common practice was for the host State to undertake to place means of transport at the disposal of the mission. The situation was therefore quite different from that of a permanent mission, which had its own vehicles.

91. Replying to Mr. Rosenne's question he said that in his view the responsibility of the sending State would be engaged if it refused to comply with the request of the receiving State but that the responsibility of the receiving State could not be aggravated by its failure to make such a request.

92. Mr. de LUNA considered that paragraph 1 should be modelled closely on article 20 of the Vienna Convention of 1961. He even doubted whether the Commission should make any reference to the different sections of the special mission. In any case, there was no reason to grant to special missions any greater latitude than was granted to permanent missions in respect of the use of the national flag. Consequently paragraph 2 could be deleted.

93. Paragraph 3 expressed a logical thought, and he believed that the Commision could go even further. For the safety of the special mission the host State should be able to require that the national emblem be displayed not only on the mission's vehicles but also on all the premises occupied by the mission.

94. Mr. CASTRÉN approved the substance of article 15. With regard to its wording, it would be preferable to use the term " receiving State " throughout, as had been done in the English text, rather than " host State " (" *Etat hôte* ") in paragraph 2 and " *Etat territorial* " in paragraph 3.

95. Mr. LACHS said that he agreed in principle with the ideas contained in article 15 but, like Mr. de Luna, he thought it would be desirable to follow the pattern of article 20 of the 1961 Vienna Convention on Diplomatic Relations.

96. In connexion with the means of transport and the point raised by Mr. Amado, he recalled a case where a diplomatic agent had used a " CD " plate on his bicycle and had been informed by the authorities of the receiving State that they objected to such a plate being used on that type of vehicle.

97. Turning to the more serious problem of paragraph 3, he said that it had raised doubts in his mind. It would in any case be necessary to explain in the commentary the reasons on which its provision was based.

98. Mr. AMADO hoped that article 15 would be modelled closely on article 20 of the Vienna Convention of 1961 and would not further extend the use of the national flag. Local usage could always be followed. He added that he would accept the majority view.

99. Mr. RUDA suggested that the provisions in article 15 should follow rather than precede those in article 16 (General facilities). In the Vienna Convention on Consular Relations, 1963, the article on facilities for the works of the consular post (article 28) preceded the article on the use of the national flag and coat-of-arms (article 29). Those two articles were the first articles of chapter II dealing with " Facilities, privileges and immunities relating to consular posts, career consular officers and other members of a consular post ". Chapter I of the same Convention dealt with " Consular relations in general ". Perhaps the Commission might wish to adopt for special missions a similar division into chapters.

100. He agreed with Mr. de Luna and the Chairman that the terminology of article 20 of the Vienna Convention of 1961 should be employed in the provision under discussion, which should, however, cover all the vehicles used by the mission and not only the means of transport of the head of the mission.

101. He had had considerable doubts with regard to paragraph 3 but had arrived at the conclusion that it should be deleted. There was no corresponding provision in the 1961 Vienna Convention and he saw no valid reason to establish for special missions a rule which did not exist in respect of permanent missions.

102. The CHAIRMAN said that the members of the Commission appeared to agree that paragraphs 1 and 2 should be combined in a text which would be closer to article 20 of the Vienna Convention.

103. Speaking as a member of the Commission, he agreed with the Special Rapporteur that it would be a mistake to limit the use of the flag strictly to the means of transport of the head of the special mission alone. A special mission often consisted of a number of persons of very high rank, such as the head of a Government and the Foreign Minister ; it would be odd if in such a case the Foreign Minister should not have the right to display his country's flag.

104. The expression " the means of transport of the mission " would certainly not imply that the vehicles had to be owned by the mission; it would refer to means of transport used by the mission alone, to the exclusion of means of transport used in common with others. That might be explained in the commentary.

105. With regard to paragraph 3, he believe that it should be possible for the receiving State to advise the special mission to display its flag on all its vehicles but that it would be somewhat excessive to empower the receiving State to require the special mission to do so; the mission might prefer at times not to display its flag; if it failed to do so, despite the advice of the receiving State, it would be acting at its own risk.

106. The question of the place of the article would be settled later; the corresponding article was a part of the section on facilities, privileges and immunities in the Vienna Convention on Consular Relations, but not in the Vienna Convention on Diplomatic Relations.

107. Mr. BARTOŠ, Special Rapporteur, accepted the Chairman's suggestions. The rules which he had included in paragraph 2 and 3 were based on practice. The rule contained in paragraph 3 in particular, was not an innovation; all that could be said was that what it described was not the universal practice.

108. The argument advanced by Mr. Ruda was not valid, for although the members of a diplomatic mission other than the head of the mission were not entitled to display the flag, they were entitled to use the " CD " plate on their vehicles.

109. If the Commission decided to delete paragraph 3 it could recommend in a commentary that the receiving State should express the wish that members of the special mission should display their State's flag on their vehicles. Practical considerations, rather than prestige, were involved; he had in mind particularly the case of technical missions working in the field. It was unlikely that difficulties would arise in practice in the case of a head of Government or a minister.

110. Mr. de LUNA pointed out that the " CD " plate did not identify the specific State and therefore did not have the same value as the flag. From the point of view of safety, it could on occasions — though no doubt they were rare — be more dangerous to display the flag than not to display it.

111. The CHAIRMAN suggested that article 15 should be referred to the Drafting Committee.

It was so agreed.

The meeting rose at 1.5 p.m.

764th MEETING

Monday, 13 July 1964, at 3 p.m.

Chairman: Mr. Roberto AGO

Law of Treaties

(resumed from the 760th meeting)

[Item 3 of the agenda]

ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

ARTICLE 67 (General provision) [concerning the modification of treaties]

1. The CHAIRMAN invited the Commission to consider the following text proposed by the Drafting Committee for article 67:

> " A treaty may be amended by agreement between the parties. The rules laid down in part I apply to such agreement except in so far as the treaty or the established rules of an international organization may otherwise provide."

2. Mr. PAREDES thought that in the Spanish text the word *no* was unnecessary as the negative was already implied in the word *salvo*.

3. Mr. de LUNA said that usage differed in the various parts of the Spanish-speaking world. The word *salvo* denoted an exception rather than a negative. As had been agreed, the Spanish-speaking members of the Commission would confer about the Spanish text of the articles.

4. The CHAIRMAN, speaking as a member of the Commission, said that the phrase " the rules laid down in part I apply to such agreement " seemed to imply that the agreement would have to be in written form.

5. Sir Humphrey WALDOCK, Special Rapporteur, observed that the Chairman was largely right: the principal sections of part I dealt with the more formal types of treaty.

6. Mr. TUNKIN considered that the second sentence could be deleted without loss, for it added nothing.

7. Sir Humphrey WALDOCK, Special Rapporteur, said that the provision contained in the second sentence was intended to safeguard special clauses concerning revision.

8. Mr. BRIGGS considered that the second sentence of article 67 should be retained, and if the words " as referred to or defined in part I " were inserted before the word " except " it would be clear that the article did not cover oral or informal agreements.