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Summary record of the 930th meeting

Topic:
Special missions

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and the *Anglo-Iranian Oil Co.* case.¹⁶ Failure to deal with the matter would leave a gap in the codification of the law of treaties with respect to such points as the extent to which the revocation of a stipulation could deprive a third State of most-favoured-nation treatment, the extent to which the renunciation of benefits arising from the operation of the clause would deprive private persons of benefits derived from international arrangements and the type of benefits which were attracted by the clause. Those were precise technical legal problems and lay within the sphere of the law of treaties, and particularly of the rules of interpretation which were part of the Commission's draft.

80. Mr. KEARNEY suggested that the Commission's difficulties in drawing up its programme for the following session might be minimized by introducing the system of a five-year plan for the consideration of topics, to be revised annually in the light of developments. If the consideration of topics already on the Commission's agenda could be fitted into a general plan with greater precision, it would be easier for the Commission to assess the possibility of undertaking additional work. Where new topics were concerned, he considered that the question of international rivers was in urgent need of, and ripe for, codification, in the sense that a considerable amount of background knowledge was now available.

81. The CHAIRMAN, speaking as a member of the Commission, said that, in drawing up a plan for its work, the Commission must take into account the amount of work it could do in ten weeks as well as the need to avoid dissipating its energies in too many directions. The Commission could not obtain useful results and maintain its position as a codifying body unless it completed the study of the topics it undertook to consider. Generally speaking if a major topic was under active consideration, the best procedure was to treat that topic as the main item, and to hold one or two more limited topics in reserve for consideration during periods when the main topic could not be dealt with.¹⁷

The meeting rose at 1 p.m.

¹⁶ *I.C.J. Reports*, 1952, p. 93.

¹⁷ For resumption of the discussion of this agenda item, see 938th meeting, paras. 74-88.

930th MEETING

Wednesday, 28 June 1967, at 10 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Ramangasoavina, Mr. Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Special Missions

(A/CN.4/193 and Addenda; A/CN.4/194 and Addenda)

(resumed from the previous meeting)

[Item 1 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE ON SECOND READING

1. The CHAIRMAN invited the Commission to consider the articles adopted by the Drafting Committee on second reading, which would be introduced by Mr. Ustor, as Acting Chairman of the Drafting Committee. He pointed out that there was no quorum, so that the Commission would have to accept the articles provisionally, to enable the Special Rapporteur to prepare his commentaries.

ARTICLE 1 (Sending of special missions) [2 and 7]¹

2. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 1:

"1. A State may, for the performance of a specific task, send a [temporary] special mission to another State with the consent of the latter.

"2. The existence of diplomatic or consular relations is not necessary for the sending or reception of special missions.

"3. A State may send a special mission to a State, or receive one from a State, which it does not recognize."

3. The text remained practically unchanged, except that the word "temporary" had been placed in square brackets, to show that it might be deleted from the paragraph if the temporary nature of special missions was mentioned in the article containing definitions.

4. Mr. BARTOŠ, Special Rapporteur, said he was not in favour of deleting the word "temporary". There were specialized diplomatic missions which had a particular task, such as the recruitment of labour, but they were permanent and were not special missions in the sense of the draft articles.

5. It was not at all certain that a definition of a special mission would be given in the definitions article; indeed no convention contained a definition of the institution that was its subject. Consequently, the characteristics of a special mission should be stated in the substantive articles, and the essential characteristic of such a mission was that it was temporary.

6. Mr. USTOR said he agreed that the word "temporary" was very important in the context of the draft, but its inclusion in paragraph 1 of article 1 and its omission from all the subsequent articles might imply that that paragraph referred to a kind of mission different from those mentioned elsewhere in the draft.

7. The CHAIRMAN observed that a final decision on the question would have to be deferred until the Commission came to consider the article containing definitions.

¹ For earlier discussion, see 926th meeting, paras. 2-22.

8. Mr. TABIBI said that he endorsed that procedure, but he also supported the Special Rapporteur's view that the qualification should appear somewhere in the draft, since there were a number of cases of permanent special diplomatic missions.

9. Mr. CASTRÉN suggested that in paragraph 1 the words "and temporary" should be inserted between the words "specific" and "task".

10. Mr. RAMANGASOAVINA said he took the same view as Mr. Ustor. Under the provisions of article 12, the functions of a special mission ended with the "expiry of the duration assigned for the special mission", a formula which left no doubt about its temporary character.

11. Mr. YASSEEN said that if a special mission was not to be defined in the definitions article, the qualifying word "temporary" should be retained in paragraph 1 of article 1.

12. Mr. BARTOŠ, Special Rapporteur, referring to the suggestion made by Mr. Castrén, pointed out that the task of a special mission was not always temporary. He proposed that in paragraph 1, the word "temporarily" should be inserted after the words "special mission".

13. The CHAIRMAN said that the question was now one of drafting only. The title of the draft, "Special Missions", was broad enough to cover all special missions, so that the draft must specify both the special nature of the tasks and the temporary nature of the missions to which it related.

14. Speaking as a member of the Commission, he suggested that it would be more consistent with the rest of the text to refer to "a special mission" in the singular in paragraph 2.

15. Mr. USHAKOV, supported by Mr. YASSEEN and Mr. EUSTATHIADES, urged that paragraph 3 should be more clearly drafted.

16. The CHAIRMAN suggested that the exact wording of the French text should be reviewed and that the article should be approved in principle.

*It was so agreed.*²

ARTICLE 2 (Field of activity of a special mission) [3]³

17. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed that the text of article 2 should remain unchanged. It read:

"The field of activity of a special mission shall be specified by the consent of the sending State and of the receiving State".

18. The CHAIRMAN, speaking as a member of the Commission, said that the word "consent" might well be replaced by "agreement".

² For resumption of discussion, see 931st meeting, paras. 86-100, when it was decided that paragraphs 2 and 3 should become a separate article numbered 1 *bis*. Articles 1 and 1 *bis* were adopted at that meeting (paras. 97 and 100).

³ For earlier discussion, see 926th meeting, paras. 23-49.

19. Mr. YASSEEN said he thought the Commission should specify in the text of article 2 that the consent must be mutual.

20. Mr. BARTOŠ, Special Rapporteur, agreed with that view, for to have legal effect, the consent must emanate from both parties.

21. Mr. KEARNEY said he did not think that the term "mutual consent" was as satisfactory as "agreement".

22. The CHAIRMAN, speaking as a member of the Commission, observed that the argument in favour of using the term "mutual consent" was to indicate that consent might be tacit and more informal than agreement. Nevertheless, the term "agreement" had been used to cover tacit consent in the draft on the law of treaties.

23. Mr. RAMANGASOAVINA supported the suggestion made by Mr. Yasseen and the Special Rapporteur.

24. Mr. BARTOŠ, Special Rapporteur, said he preferred the word "consent" to the word "agreement", for consent could be tacit or could be implied by a *de facto* situation, without any express manifestation of will.

25. The CHAIRMAN noted that the consensus of the Commission was that the word "mutual" should be inserted before the word "consent". He suggested that in the English text the phrase should read "by the mutual consent of the sending and the receiving State" and that the article should be approved as amended.

*It was so agreed.*⁴

ARTICLE 3 (Appointment of the members of the special mission) [8]⁵

26. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 3:

"Subject to the provisions of articles..., the sending State may freely appoint the members of the special mission after having informed the receiving State of [the number and] the identity of the persons it intends to appoint."

27. That article also remained unchanged, except that the words "the number and" had been placed in square brackets, since the Commission would have to decide whether it intended to delete paragraph 3 of article 6, in which case those words should be retained in article 3.

28. Mr. BARTOŠ, Special Rapporteur, said that the words "the number and" had been added to article 3 at the request of Mr. Ushakov, who thought that the receiving State should be informed of the number of members of the special mission in order to be able to raise objections if it considered that number excessive. If the Commission decided to retain those words in article 3, then paragraph 3 of article 6 would become superfluous. His own suggestion was that the Commission should retain the words provisionally and reconsider the

⁴ For resumption of discussion and adoption of article 2, see 931st meeting, paras. 101-105.

⁵ For earlier discussion, see 926th meeting, paras. 50-66.

question when it examined article 6, paragraph 3. If it finally decided to delete that paragraph, the reason should be given in the commentary.

29. Mr. USHAKOV explained that he had wished to take into account the situation that would arise if a special mission arrived in the territory of the receiving State and that State informed it that it considered the mission too large. The special mission would then be unable to carry out its task, and the sending State might consider itself insulted. In order to avoid that danger he had suggested that the number of persons forming the special mission should be mentioned in article 3, but that amendment might perhaps not be sufficient, and he therefore proposed that an article 3 *bis* be added to the draft which would read: "The size of the special mission shall be determined by the mutual agreement of the sending and receiving States".

30. Mr. BARTOŠ, Special Rapporteur, said he was willing to accept the amendment proposed by Mr. Ushakov, and consequently to delete article 6, paragraph 3.

31. Mr. USHAKOV said that he himself regarded the reference to the number of persons in article 3 as sufficient. His idea in proposing the new text was to take into account the views of those members of the Commission who wished for a more explicit provision.

32. Mr. YASSEEN observed that the substance of article 3 was not in dispute, and he wondered whether the solution might not be to redraft article 6, paragraph 3 to read: "The size of the special mission shall be determined by agreement between the sending and receiving States".

33. Mr. JIMÉNEZ de ARÉCHAGA said that the draft under discussion, as well as both the Vienna Conventions, was based on the principle of reciprocity. In view of that basic understanding, which might be said to apply even more to the draft on special missions than to the Vienna Conventions, there was no need to include references to the mutual consent of the sending and receiving States at every step. Moreover, the determination of the size of special missions seldom took place on the basis of previous consent, and the insertion of such a provision would be contrary to existing practice.

34. Mr. RAMANGASOAVINA said that the text proposed by Mr. Ushakov might be added at the end of paragraph 1 of article 6. The words in square brackets in article 3 could then be deleted, and the words "the identity of the persons it intends to appoint" could be replaced by the words "the membership of the special mission".

35. Mr. EUSTATHIADES said that, in his view, the essential point was that article 3 should lay down the rule of the free choice of the sending State as to the number and identity of the persons making up the special mission. In fact, the size of the special mission could easily be seen from the list of the names of its members, so that the reference to the number of persons in article 3 appeared unnecessary. Moreover, if the Commission wished to retain the reservation in article 6, paragraph 3, it was clear that that provision should immediately follow article 3.

36. Mr. BARTOŠ, Special Rapporteur, said that the Drafting Committee had concluded that it was for the Commission to decide whether it wished to retain the words "the number and" in article 3, or whether article 6, paragraph 3 should be retained.

37. In addition, the Commission had before it a new amendment submitted by Mr. Ushakov; if that amendment was approved, it would be referred to the Drafting Committee.

38. He himself favoured the retention of the words "the number and" in article 3 and the deletion of paragraph 3 of article 6. The reason why those words had been put in square brackets was that the Drafting Committee had not wished to prejudge the Commission's decision.

39. The CHAIRMAN, speaking as a member of the Commission, pointed out that Mr. Ushakov's new suggestion ran counter to the trend of earlier discussions on the article. The Commission had shown a desire not to place undue restriction on the sovereignty of the sending State, but that would be the result if the provision called for agreement between the sending State and the receiving State. Perhaps the difficulty could be mitigated to some extent if the last phrase was altered to read: "after having informed the receiving State of its size and the persons it intends to appoint".

40. Mr. YASSEEN thought that the French text should read "*de l'effectif de la mission et de l'identité des personnes...*".

41. Mr. USHAKOV pointed out that Mr. Ago was opposed to the use of the word "*effectif*", although it was used in both the Vienna Conventions.

42. THE CHAIRMAN suggested that, as opinion was divided on the retention of article 6, paragraph 3, the Commission should provisionally approve article 3 as it stood and request the Drafting Committee to consider the minor changes suggested during the debate.

*It was so agreed.*⁶

ARTICLE 4 (Persons declared *non grata* or not acceptable) [12]⁷.

43. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 4:

"1. The receiving State may, at any time and without having to explain its decision, notify the sending State that [any representative or any member of the diplomatic staff of the special mission] 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

⁶ For resumption of discussion and adoption of article 3, see 931st meeting, paras. 106-117.

⁷ For earlier discussion, see 926th meeting, paras. 67 and 68.

paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the special mission.”

44. No change had been made in the article, but he proposed that the phrase “any representative or any member of the diplomatic staff of the special mission” should be amended to read “any representative of the sending State in the special mission or any member of its diplomatic staff,” which was the wording the Commission had agreed on for article 14.⁸

45. The CHAIRMAN suggested that article 4, as amended, should be approved.

*It was so agreed.*⁹

ARTICLE 5 (Sending of the same special mission to two or more States) [4]

ARTICLE 5 *bis* (Sending of a joint special mission by two or more States) [5]

ARTICLE 5 *ter* (Sending of special missions by two or more States in order to deal with a question of common interest) [6]

46. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following texts for articles 5, 5 *bis* and 5 *ter*.¹⁰

Article 5 [4]

“Sending of the same special mission to two or more States”

“A State may send the same special mission to two or more States after having consulted all of them beforehand. Any of those States may refuse to receive the special mission.”

Article 5 bis [5]

“Sending of a joint special mission by two or more States”

“Two or more States may send a joint special mission to another State unless that State, which shall be consulted beforehand, objects thereto.”

Article 5 ter [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 in order to deal, with the agreement of all of them, with a question of common interest.”

47. Those three articles remained unchanged.

48. The CHAIRMAN, speaking as a member of the Commission, observed that it was perhaps not quite clear from the second sentence of article 5 whether refusal by one State to receive the special mission would affect that State only.

49. Mr. BARTOŠ, Special Rapporteur, said he thought it was correct to say that any State could refuse to receive

the special mission; those which did not refuse would still be able to receive the special mission—a situation which, incidentally, was mentioned in the commentary.

50. The CHAIRMAN suggested that the Commission should approve articles 5, 5 *bis* and 5 *ter*.

*It was so agreed.*¹¹

ARTICLE 6 (Composition of the special mission)[9]¹²

51. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 6:

“1. A special mission consists 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. Members of a permanent diplomatic mission accredited to the receiving State may be included in the composition of the special mission while retaining their functions in the permanent diplomatic mission.

“[3. In the absence of an express agreement on the question, the receiving State may require that the size of a special mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and to the tasks and the needs of the special mission.]”

52. The article remained unchanged, except that the first word of paragraph 1 had been altered from “The” to “A” in the English text only.

53. The CHAIRMAN suggested that article 6 should be approved.

*It was so agreed.*¹³

ARTICLE 7 (Authority to act on behalf of the special mission) [14]¹⁴

54. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 7:

“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 directly or through the permanent diplomatic mission.

“2. A member of the special mission may be authorized by the sending State, by the head of the special mission or, if there is none, by the representative referred to in paragraph 1 above, either to substitute for the head of the special mission or for the aforesaid

¹¹ For adoption of these articles, see 931st meeting, paras. 121, 122 and 123 respectively.

¹² For earlier discussion, see 926th meeting, paras. 74-98.

¹³ For resumption of discussion, see 931st meeting, paras. 124-139.

¹⁴ For earlier discussion, see 927th meeting, paras. 1-14.

⁸ See 929th meeting, para. 49.

⁹ For adoption of article 4, see 931st meeting, paras. 118 and 119.

¹⁰ For earlier discussion of articles 5, 5 *bis* and 5 *ter*, see 926th meeting, paras. 69-73.

representative, or to perform particular acts on behalf of the mission.”

55. The article remained unchanged, except that the words “either directly or through the permanent diplomatic mission” had been added at the end of paragraph 1.

56. Personally, he rather doubted whether the words “a member” should be used at the beginning of paragraph 2, since, in his opinion, only a representative of the sending State could be authorized to substitute for the head of the mission.

57. Mr. BARTOŠ, Special Rapporteur, said that, on the contrary, paragraph 2 in his view covered all the members of the special mission, including administrative, technical and other staff. The case contemplated could arise when the head of the mission and his deputies were absent, or when it was necessary to perform some particular act which a head of mission or other person of high rank did not wish to perform. The sending State had full latitude in that respect.

58. The CHAIRMAN suggested that the Commission should approve article 7.

*It was so agreed.*¹⁵

ARTICLE 8 (Notification) [11]¹⁶

59. Mr. USTOR Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 8:

“1. The Ministry of Foreign Affairs of the receiving State, or such other organ as may have been agreed on, shall be notified of:

“(a) The composition of the special mission and any subsequent changes;

“(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 residing in the receiving State as members of the mission or as persons in private service;

“(e) The designation of the head of the special mission or, if there is none, of the representative referred to in paragraph 1 of article 7, and of any substitute for them;

“(f) The address and the location of the premises occupied by the special mission.

“2. Whenever possible, notification of arrival and final departure must be given in advance.”

60. The article remained unchanged except for the addition of a new sub-paragraph (f) in paragraph 1.

61. Mr. BARTOŠ, Special Rapporteur, referring to the differences of opinion among governments and members of the Commission on that point, said that the words “detailed description of the premises” and “identification

of the premises” had been suggested, but the Drafting Committee had finally adopted the phrase “the address and the location of the premises”.

62. Mr. USHAKOV said he thought that the Drafting Committee should reconsider the use of the word “location”, which was not entirely satisfactory.

63. Mr. KEARNEY said that the English text had been left deliberately vague so that the provision could be applied to the many different circumstances that could arise. Perhaps the word “the” before “premises” might be replaced by the word “any”, in order to cover, for instance, the case of the residence of members of the mission, if such premises were to be granted inviolability under the convention.

64. Mr. EUSTATHIADES said that the Commission should either delete the word “location”, which in his opinion added nothing to “address” or, if a description was wanted, replace it by the term “description”. In the latter case, he proposed that the wording should be “the address and description of the premises”.

65. The CHAIRMAN, speaking as a member of the Commission, observed that “address” and “location” in fact had the same meaning.

66. Mr. YASSEEN thought that it would be sufficient to say “the address of the premises”.

67. Mr. BARTOŠ, Special Rapporteur, pointed out that the premises might be in a large sixty-storey building, in which case the address alone would be insufficient.

68. Mr. YASSEEN proposed the words “the detailed address of the premises”.

69. The CHAIRMAN and Mr. USTOR suggested that the words “as may have been agreed on” in the introductory part of paragraph 1 should be replaced by “as may be agreed”, in order to conform with article 41 of the Vienna Convention on Diplomatic Relations.

70. Mr. EUSTATHIADES inquired whether article 8 should not also include temporary departures of members of the special mission.

71. Mr. BARTOŠ, Special Rapporteur, said that in practice such departures were frequent and seldom raised any problems. He had in fact referred to the matter in his first draft, but on reflection he thought it better not to make the obligation to notify too burdensome.

72. The CHAIRMAN, speaking as a member of the Commission, said that, since members of permanent missions were not obliged under the Vienna Conventions to notify the receiving State of their temporary departure, it was hardly necessary to introduce such a provision for temporary missions.

73. Mr. BARTOŠ, Special Rapporteur, added that as a general rule visas were granted to members of special missions; moreover, in the few countries where visas were still required, they were valid for several entries and exits. In any case the members of those missions were not asked to give an account of their comings and goings.

¹⁵ For resumption of discussion and adoption of article 7, see 932nd meeting, paras. 22-24.

¹⁶ For earlier discussion, see 927th meeting, paras. 15-33.

74. The CHAIRMAN suggested that article 8 should be approved, subject to minor drafting amendments.

*It was so agreed.*¹⁷

ARTICLE 9 (Rules concerning precedence) [16]¹⁸

75. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 9:

"1. Where two or more special missions meet on the territory of the receiving 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 receiving State.

"2. Precedence between the members of the same special mission shall be notified to the appropriate organs of the receiving State.

"3. 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."

76. The Drafting Committee had not made any changes in the text referred to it by the Commission. Paragraph 3 dealt with the question of precedence among special ceremonial and formal missions; in consequence of its inclusion in article 9, the former article 10 had been deleted.

77. Speaking as a member of the Commission, he proposed that in paragraph 2 the word "organs" should be replaced by the word "organ".

78. Mr. BARTOŠ, Special Rapporteur, accepted that amendment.

79. Mr. AGO observed that the article did not state any rule of precedence for the nevertheless very important case in which special missions met on the territory of a third State that was not participating in the negotiations. That gap should be filled.

80. Mr. BARTOŠ, Special Rapporteur, said that the draft established a balance between the sending and the receiving State. The case of special missions which met on the territory of a third State was dealt with in a separate article, article 16, which authorized the third State to impose conditions, and to assume the rights and obligations of a receiving State only to the extent that it so indicated. He would prefer not to change the system and to leave the third State its freedom of action.

81. Mr. AGO agreed that article 16 laid down a wise rule on the privileges and immunities to be granted to special missions in that case. Nevertheless, the great latitude left to the third State was less justified where precedence was concerned; it would be strange if the third State could impose whatever rule of precedence it wished on the special missions. He therefore proposed that the first phrase of paragraph 1 be amended to read: "Where two or more special missions meet on the territory of

the receiving State or of a third State" and that the words "the receiving State" be replaced throughout the article by the words "the State on whose territory the special missions meet".

82. Mr. USHAKOV said he was not sure that the amendment proposed by Mr. Ago was acceptable, for questions of precedence between special missions in the case under consideration depended on the States that were negotiating rather than on the third State.

83. Mr. YASSEEN thought that the question of the precedence of special missions meeting on the territory of a third State had two aspects. In the case of activities or ceremonies in which the receiving State took part, it would be normal for the protocol of that State to apply, but where activities were confined to the special missions, there would be no reason to impose on them an order of precedence dictated by the protocol of the third State, for example, French alphabetical order for special missions of Arab States meeting in Geneva.

84. The CHAIRMAN explained that there would be no question of imposing any rule on the States concerned; it was always open to them to agree on the rules of protocol they found convenient. The intention was simply to lay down a rule that would apply in the absence of agreement between the interested parties. For the purposes of such a rule, it was convenient to refer to a neutral order of precedence, namely, that of the third State which acted as host.

85. Mr. KEARNEY said that if the special missions were accompanied by protocol officers, those officers would certainly be able to solve any problems of precedence that might arise. If there were no protocol officers, it was unlikely that questions of precedence would be raised.

86. Mr. AGO pointed out that in the example given by Mr. Yasseen, the special missions would use the same language, so that the order of precedence should be fairly easy to determine; but that was an exceptional case. If the special missions did not use the same language, it would be rendering them a service to suggest the alphabetical order used in the protocol of the receiving State.

87. Mr. YASSEEN said there was much in what Mr. Ago said.

88. Mr. BARTOŠ, Special Rapporteur, said he wished to stress that article 9 laid down a residuary rule, from which the States concerned could always depart by special agreement.

89. Mr. YASSEEN thought that in the French text of paragraph 3, the expression "*manifestation protocolaire*" was not very felicitous.

90. After a brief discussion, Mr. AGO proposed that in the French text of paragraph 3 the following wording should be used: "...*qui se rencontrent pour une cérémonie ou pour une occasion solennelle*...".

91. The CHAIRMAN said that, if there were no further comments, he would assume that the Commission agreed in principle to approve article 9, with Mr. Ago's

¹⁷ For resumption of discussion and adoption of article 8, see 932nd meeting, paras. 25-61. See also paragraph 103 below.

¹⁸ For earlier discussion, see 927th meeting, paras. 34-43.

amendment inserting a reference to the case in which a third State acted as host, and his rewording of the French text of paragraph 3.

*It was so agreed.*¹⁹

ARTICLE 11 (Commencement of the functions of a special mission) [13]²⁰

92. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 11:

“1. The functions of a special mission shall commence as soon as the mission enters into official contact with the Ministry of Foreign Affairs of the receiving State or with another organ of the receiving State as may have been agreed on.

“2. The commencement of the functions of a special mission shall not depend upon presentation by the permanent diplomatic mission of the sending State or upon the submission of letters of credence or full powers.”

93. In accordance with a suggestion made during the 927th meeting, the words “or with another appropriate organ designated by the receiving State” at the end of paragraph 1 had been replaced by the words “or with another organ of the receiving State as may have been agreed on”.

94. Speaking as a member of the Commission, he proposed that those words be amended to read: “or with such other organ of the receiving State as may be agreed”. That change would bring the article into line with the wording already approved for article 8 and also with that used in article 10 of the Vienna Convention on Diplomatic Relations.

95. Mr. AGO supported Mr. Ustor’s proposal. The French text should read: “*ou avec tel autre organe dont il aura été convenu*”.

96. Mr. EUSTATHIADES proposed that the word “other” be deleted. Under some constitutions a ministry was not regarded as an “organ”; only a minister could be so regarded. That question did not arise in connexion with article 10 of the Vienna Convention, the wording of which was: “The Ministry of Foreign Affairs of the receiving State, or such other ministry as may be agreed”.

97. Mr. USHAKOV supported that proposal.

98. Mr. USTOR said that the Drafting Committee had unanimously adopted the term “organ” in article 8. The use of that term was intended to cover organs of the receiving State other than ministries. It was advisable to use the same wording in article 11 as in article 8.

99. Mr. AGO said that the Drafting Committee had considered various expressions such as “authority”, “department” and “body”, but had finally chosen the term “organ”, which had become part of legal language.

100. Mr. BARTOŠ, Special Rapporteur, observed that the proposal by Mr. Eustathiades to delete the word “other” would not alter the meaning of the sentence in any way, but would have the merit of preventing any dispute of a theoretical or constitutional nature.

101. The CHAIRMAN said that, in English usage, it would be quite proper to refer to the Ministry of Foreign Affairs or “such other organ of the receiving State”: that Ministry was certainly an organ of the receiving State.

102. If there were no further comments, he would assume that the Commission agreed to approve article 11 with the amendment proposed by Mr. Ustor, but without the word “other”, in order to take into account the objection raised by Mr. Eustathiades; the concluding words of paragraph 1 would then read “or with such organ of the receiving State as may be agreed”.

*It was so agreed.*²¹

ARTICLE 8 (Notification) [11] (*resumed*)

103. The CHAIRMAN said that, as a result of the change made in article 11, it was necessary to delete the word “other” from paragraph 1 of article 8.²² If there were no objections, he would assume the Commission agreed to make that change.

It was so agreed.

DRAFT ARTICLES PROPOSED BY THE
DRAFTING COMMITTEE ON FIRST READING
(*resumed from the previous meeting*)

ARTICLE 16 (Activities of special missions in the territory of a third State) [18]²³

104. Mr. BARTOŠ, Special Rapporteur, said that he and Mr. Ushakov were thinking of submitting to the Drafting Committee a new provision, to be added to article 16, in order to supplement paragraph 3 of that article and make it clear that the sending States had certain obligations towards the third State concerning information and notification. Even if the third State did not assume all the rights and obligations of a receiving State, it should be informed of certain facts.

105. Mr. USHAKOV said that all the articles would have to be reviewed at a later stage to determine what were the rights and obligations of a receiving State that could devolve on the third State under the terms of article 16. For example, could the third State declare a person *non grata*?

106. The CHAIRMAN noted that Mr. Bartoš and Mr. Ushakov might later propose an addition to paragraph 3 of article 16. Meanwhile, he invited the Commission to consider that article, for which the Drafting Committee proposed the following text:

²¹ For resumption of discussion and adoption of article 11, see 932nd meeting, paras. 66-70.

²² See paragraph 59 above.

²³ For earlier discussion, see 908th meeting, paras. 38-76, and 909th meeting, paras. 3-26.

¹⁹ For resumption of discussion and adoption of article 9, see 932nd meeting, paras. 62-65.

²⁰ For earlier discussion, see 927th meeting, paras. 45-55.

"1. Special missions from two or more States may meet on 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 in question may impose 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 only to the extent that it so indicates."

107. Mr. USHAKOV questioned whether it was accurate to use the term "sending States" for States whose special missions met on the territory of a third State.

108. The CHAIRMAN, speaking as a member of the Commission, proposed the deletion of the words "in question" in paragraph 2.

109. Mr. EUSTATHIADES supported that proposal; in paragraph 3, the expression used was simply "the third State". The words "in question" were therefore superfluous.

110. Mr. BARTOŠ, Special Rapporteur, accepted that proposal.

111. Mr. AGO said that he also accepted that change.

112. The CHAIRMAN said that, if there were no objection, he would assume that the Commission agreed to approve article 16 in principle, with the deletion of the words "in question".

*It was so agreed.*²⁴

ARTICLE 17 (General facilities) [22]²⁵

113. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 17:

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

114. The Drafting Committee had made only one change: it had replaced the words "full facilities" by "the facilities required".

115. The CHAIRMAN said that, if there were no comments, he would assume that the Commission agreed to approve article 17 in principle.

*It was so agreed.*²⁶

ARTICLE 18 (Accommodation of the special mission and its members) [23]²⁷

116. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed that article 18 be redrafted to read:

²⁴ For resumption of discussion and adoption of article 16, see 933rd meeting, paras. 87-89.

²⁵ For earlier discussion, see 912th meeting, paras. 45-74, and 913th meeting, paras. 1-40.

²⁶ For adoption of article 17, see 936th meeting, para. 9.

²⁷ For earlier discussion, see 913th meeting, paras. 41-78.

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

117. A number of changes had been made in the original text. The Drafting Committee had introduced the words "if it so requests" and had replaced the words "appropriate premises" by "the necessary premises". It had also deleted the concluding words of the original text: "and, if necessary, ensure that such premises and accommodation are at their disposal".

118. Mr. CASTRÉN asked if any substantive amendment to the article had been made by deleting the words "and staff" after the words "for its members".

119. Mr. BARTOŠ, Special Rapporteur, replied that in the new terminology adopted by the Drafting Committee the expression "members of the special mission" included the representatives and the staff of the mission. That terminology was based on the Vienna Convention on Diplomatic Relations. Hence it would only be necessary to mention the staff if a particular category was meant, for example, the diplomatic staff.

120. The CHAIRMAN proposed two drafting changes to bring the English text into line with the French: first, a comma should be introduced after "the special mission" and another comma after "if it so requests"; secondly, the words "in obtaining the necessary premises and suitable accommodation" should be replaced by "in procuring the necessary premises and in obtaining suitable accommodation".

121. If there were no objection, he would assume that the Commission agreed to approve article 18 in principle, with those drafting changes.

*It was so agreed.*²⁸

The meeting rose at 1 p.m.

²⁸ For adoption of article 18, see 936th meeting, para. 10.

931st MEETING

Friday, 30 June 1967, at 10.5 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Ramangasoavina, Mr. Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Special Missions

(A/CN.4/193 and Addenda; A/CN.4/194 and Addenda)

(continued)

[Item 1 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

1. The CHAIRMAN invited the Commission to consider articles proposed by the Drafting Committee on