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Special Missions - Working Paper prepared by the Secretariat

Topic:
Special missions

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SPECIAL MISSIONS

[Agenda item 5]

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Working paper prepared by the Secretariat

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Introduction

1. By resolution 1687 (XVI), adopted on 18 December 1961, the General Assembly requested the International Law Commission "to study further the subject of special missions and to report thereon to the General Assembly". The Commission accordingly decided, at its 669th meeting held on 27 June 1962, to place the question of special missions on the agenda of its next session. It was also agreed that the Secretariat should prepare a study, which it was understood would be simply a survey of the question, for the assistance of the Commission.

2. The following study consists of three parts: (i) a preliminary survey of the topic and of previous attempts to determine the law relating to diplomatic relations between States in so far as these attempts have referred to special missions; (ii) a history of the consideration of the topic by United Nations bodies, including the International Law Commission and; (iii) a short summary of a few of the main questions which the Commission might wish to decide as the basis for further work.

I. Preliminary survey of the topic and of previous attempts to determine the law relating to diplomatic relations between States in so far as these have referred to special missions

3. The custom of sending a special envoy on mission from one State to another, in order to mark the dignity or importance of a particular occasion, is probably the oldest of all means by which diplomatic relations may be conducted.¹ It was only with the emergence of national States on a modern pattern that permanently accredited diplomatic missions, entrusted with a full range of powers, came to take the place of temporary ambassadors sent specially from one sovereign to another. However, although the legal rules which were evolved to determine diplomatic relations between States were therefore based largely on the conduct of permanent missions, so that special missions came to seem merely a particular variant of the other, the sending of special

missions was never discontinued. During the eighteenth and nineteenth centuries such missions were frequently dispatched in order to provide suitable State representation at major ceremonial occasions, such as coronations or royal weddings, or for the purposes of important political negotiations, particularly those held at international congresses. The present century, in particular since 1945, has seen a marked increase in the number and importance of special missions due to a combination of factors, the most significant of which would appear to be the availability of rapid transport by air; the enlargement of the scope of diplomatic activities to include subjects requiring special technical knowledge; and, on some occasions, a return to the conduct of diplomatic negotiations on major issues through confidential envoys sent directly between heads of States.² Although there has been an increase in the activities of permanent missions over the same period, the additional personnel required have for the most part been found by enlarging the diplomatic corps of the country concerned. In the case of special missions, however, it has remained frequent to entrust the mission to someone from outside the normal diplomatic ranks. It is not, therefore, surprising that although for reasons of convenience Governments have in most instances agreed to receive such missions, the procedure under which they have been sent and received has often been informal, and their precise status has often left unspecified or been the object of only implicit agreement between the two States concerned.

4. In the treatises of writers, there are to be found relatively few rules or international law relating specifically to special missions, as distinct from permanent missions. The principles of international law relating to diplomatic intercourse have been based largely on the operation of permanently accredited missions. The majority of legal writers, whilst noting the existence of special missions and the occasions on which they have been sent, have not singled out for particular discussion, for example, the manner of accreditation or the enjoy-

¹ On the history of diplomacy see Krause, *Die Entwicklung der ständigen Diplomatie*, Leipzig (1885) and generally Potemkin, *Histoire de la Diplomatie* (3 vols.), trans. from Russian, Paris (no date).

² This practice has been particularly followed by the United States, as evidenced by the appointment by the President of the United States of "executive agents", as opposed to normal diplomatic representatives. See Wriston, "The Special Envoy", *Foreign Affairs*, January 1960, p. 219; Waters, "The Ad Hoc Diplomat: A Legal and Historical Analysis", *Wayne Law Review*, 1959-60, p. 380; and Wriston, *Executive Agents in American Foreign Relations*, Baltimore (1929).

ment of diplomatic privileges and immunities.³ Moreover, although there is a considerable literature relating to the earlier practice of States in the conduct of diplomatic relations, relatively little is available regarding the detailed aspects of the dispatch of special missions in recent years. Satow's *Guide to Diplomatic Practice*,⁴ whilst stating that ceremonial missions and their suites enjoy diplomatic immunities and privileges, points out that those sent to perform other more specialized functions must possess the quality of State representatives if they are to enjoy diplomatic privileges and immunities as of right.

5. The two collections of national legislation relating to diplomatic envoys, namely Feller and Hudson, *Diplomatic and Consular Laws and Regulation*,⁵ and the United Nations, *Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities*,⁶ also contain little that relates specifically to special missions. The first work deals principally with the official organization of the diplomatic and consular activities of the States concerned. It would appear that the majority of the approximately seventy States covered have not provided expressly in their national legislation for the sending of special missions; where provision has been made, this has usually been no more than the mention of the power of the Executive to make the appointment and a statement that the head of the special mission need not form of the normal diplomatic corps, or that its members hold only temporary rank. The following article from the legislation of Peru may be regarded as exemplifying many of these provisions:

"The Executive Power may accredit ambassadors or ministers plenipotentiary for acts of international courtesy, for special diplomatic negotiations with foreign governments or for international congresses, but these appointments do not give the persons chosen the right to enter the diplomatic career service."⁷

³ Hackworth, who deals with the topic at some length, is an exception. He states:

"In addition to diplomatic representatives appointed for general purposes, governments frequently designate envoys for particular purposes, such as the conduct of special negotiations and attendance at coronations, inaugurations, or other State ceremonies to which special importance is attached. In some instances the ranking diplomatic officer accredited to the country in which the ceremony is to take place is given a special designation for the occasion, and in other instances another person is designated. The designations, like the occasions giving rise to them, are always of a temporary character." (*Digest of International Law*, vol. IV, p. 412.)

"Special envoys with diplomatic rank have been accredited in various ways. In some instances they have been the bearers of autographed letters of credence addressed to the heads of foreign states . . . In [other] instances it has been necessary to telegraph the letters of credence of special envoys . . . In some instances the Department of State has merely telegraphed to the Foreign Minister of the country to which the special envoy was accredited in regard to his designation . . ." (*ibid.*, pp. 413-414).

See also *op. cit.*, at pp. 649-651.

⁴ Satow, *Guide to Diplomatic Practice*, fourth edition, London (1956); see esp. at pp. 43; 82-83; 207-210; and 274

⁵ Two vols., Washington (1931). The introductory notes contain a useful summary of the history of the diplomatic service of each country.

⁶ United Nations Legislative Series, vol. VII *Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities* (1958), ST/LEG/SER. B/7, United Nations publication, Sales No. 58. V. 3.

⁷ Article 45, Chapter XII of the Law No. 6602, of 30 March 1929. Feller and Hudson, *op. cit.*, at pp. 987-988. It may be

Similarly in the United Nations volume, the majority of States do not appear to have made express provision for special missions in the regulation of diplomatic privileges and immunities. In several cases where express legislation exists, however, it provides for customs privileges to be granted even though the persons comprising the special mission are not permanently accredited to the State concerned.⁸

6. In the previous attempts to codify or restate the law relating to diplomatic intercourse between States, it would appear that the majority of rules have usually been considered equally applicable to both special and permanent missions, although certain modifications based on the temporary nature of special missions, or on the limited task entrusted to them, have also been recognized. The Regulation of Vienna (1815), refers directly to special missions only in article 3, which states:

"Diplomatic envoys in extraordinary missions shall not by this fact be entitled to any superiority in rank."

Although concerned only with the classification of diplomatic agents, the Regulation has continued to be of importance and the provisions of article 3 have continued to be applied. Genet, however, notes certain cases in which special missions have been accorded precedence and comments as follows:

"In general, a person charged with a special mission has no diplomatic rank as such by virtue of the

noted that the States of Latin America form the majority of States making express provision for the sending of special missions.

⁸ The material furnished by Belgium and Israel for inclusion in the volume in the *United Nations Legislative Series* is of interest in this regard.

Belgium: Instruction du Ministère des Finances Concernant les Immunités Diplomatiques, 1955 (Administration des Douanes et Accises) Titre II, Chapitre V, Section 1.

"A. Heads of diplomatic missions

"The following are distinguished:

"44 On the one hand, persons (ceremonial or etiquette envoys and ambassadors extraordinary of a non-political character) appointed to represent the Head of State abroad on certain ceremonial occasions, e.g. weddings, coronations, jubilee celebrations or funerals.

"This category also includes persons sent by a State as its diplomatic representatives on a special mission, for the purpose of conducting negotiations, or attending a conference or congress.

"This instruction will not go into further detail concerning the status of these persons; the special and temporary nature of their mission does not, for customs purposes, require more than courtesy treatment similar to that granted to members of Governments (ministers) for their luggage." *Ibid.*, at p. 36.

Israel: Survey of the Law and Practice of Israel in the Matter of Diplomatic and Consular Intercourse and Immunities, Annexed to the Note of 2 October 1956 received from the Permanent Mission of Israel to the United Nations.

"5 In the short period of Israel's independent existence there is perhaps little practice which is of major significance to the international law of diplomatic intercourse. The most important feature is the appearance, frequently on the basis of reciprocity, of special missions (variously styled) during the early period of the existence of the State. Before certain foreign Powers had extended to Israel *de jure* or full recognition, and occasionally even before they had extended *de facto* recognition, special missions had been established (not always on the basis of full reciprocity), occasionally being accredited to the Head of the State and occasionally to the Foreign Minister."

Ibid., at pp. 176-177.

special mission, although he has diplomatic status.

"Any accredited agent therefore has precedence of them in principle; in practice, however, and as a special favour, as it were, they are usually given precedence and special respect is paid to envoys in this category. 'They do not take precedence, they receive it'. *Inter se* they are classed in accordance with their actual title; among people of the same title, it is the order in which their credentials were handed over that gives them their rank."⁹

7. In the Regulation, however, as in subsequent attempts to codify or restate the law made by private or unofficial bodies, little is said which relates specifically to special missions. Bluntschli's draft code¹⁰ states merely:

"227. When the mission has a special object, as in the case of ceremonial missions, it is completed upon the accomplishment of that object."

without otherwise distinguishing such missions from others. Fiore's draft code of 1890¹¹ specified that diplomatic agents include "persons entrusted with special missions" (article 435) and that only the head of a permanent mission may place the arms and flag of his State over his official residence (article 459). Pessoa's draft code (1911)¹² goes somewhat further in providing that:

"It is the right of every State to determine the class of its ministers, to give a temporary or permanent character to the mission, and to determine its personnel" (chapter II, article 113).

and that:

"The diplomatic agent charged with a special mission should show full powers in order to negotiate or conclude a treaty" (chapter II, article 116).

As regards the conclusion of a special mission he states:

"A diplomatic mission is ended:

"...
"(b) by the termination of the negotiation, if the mission is special, or when the impossibility of concluding it becomes manifest; . . ." (chapter II, article 149).

Lord Phillimore's draft code¹³, placed before the International Law Association in 1926, makes the division between permanent and special missions of more central importance:

"2. A diplomatic agent may be accredited either for a particular purpose or generally for conveying or receiving communications on any matters which may arise between the two States. His stay in the

State to which he is accredited may be temporary only, being limited to the time necessary for discharging a particular purpose or particular purposes; or he may be resident minister."

He further provides that although a State may decline to receive a permanent mission, it is bound to receive a temporary one (article 3). The codification put forward by Strupp at the same session of the International Law Association¹⁴ also distinguishes "envoys appointed for a special purpose" (article 1 (d)) from others, and specifies that:

"Special envoys, together with the official personnel accompanying them, enjoy the same prerogatives as permanently appointed diplomats." (article XX)¹⁵

8. The Institute of International Law, which considered the question of diplomatic immunities both in 1895 and 1929, made no provision on either occasion specifically relating to special missions.

9. The Havana Convention on Diplomatic Officers¹⁶ concluded at the Sixth International Conference of American States in 1928, makes a clear distinction between envoys sent on ordinary and on extraordinary missions. Articles 2 and 3 state:

"Diplomatic envoys are classed as ordinary or extraordinary. Those who permanently represent the Government of one State before that of another are ordinary. Those entrusted with a special mission or those who are accredited to represent the Government in international conferences and congresses or other international bodies are extraordinary.

"Except as concerns precedence and etiquette, diplomatic officers, whatever their category, have the same rights, prerogatives and immunities. Etiquette depends upon diplomatic usages in general as well as upon the laws and regulations of the country to which the officers are accredited."

Section V, article 25, of the Convention provides also that:

"The mission of the diplomatic officer ends:

"...
"3. By the solution of the matter, if the mission had been created for a particular question; . . ."

10. The Harvard Draft Convention on Diplomatic Privileges and Immunities of 1932 contains a broad definition of a "mission" as "a person or group of persons publicly sent by one state to another state to perform diplomatic functions" (article 1 (b)). The commentary states:

"The term 'mission' is used to denote the diplomatic group whatever be the permanency of its tenure or its official rank (embassy, legation, special mission) . . . The term is broad enough to include special missions of a political or ceremonial character which are

⁹ Genet, *Traité de Diplomatie et de Droit Diplomatique*, 3 vols., Paris (1931), vol. 1, pp. 86-87.

¹⁰ Bluntschli, *Le droit international codifié*, Paris 1870 (trans. Lardy). The pertinent sections are reproduced in the *Harvard Research in International Law*, 1932, pp. 144 et seq.

¹¹ Fiore, *International Law Codified and Its Legal Organization of the Society of States* (trans. Borcherd), New York, 1918. *Harvard Research in International Law*, 1932, pp. 153 et seq.

¹² Pessoa, *Projecto de Codigo de Direito Internacional Publico*, Rio de Janeiro, (1911). Translation in *Harvard Research in International Law*, 1932, pp. 164 et seq.

¹³ Lord Phillimore, "Proposed Codification of the Law Regarding the Representation of States", *International Law Association, Report of the Thirty-Fourth Conference*, Vienna, 1926, pp. 399 et seq.

¹⁴ Strupp, "Réforme et codification du droit international. *Projet d'une convention sur l'immunité en droit international*", *ibid.*, pp. 426 et seq.

¹⁵ The substance of this article was also contained in the draft code prepared by the Japanese Branch of the International Law Association in 1926. *Ibid.*, pp. 380 et seq.

¹⁶ The Convention is reproduced in United Nations Legislative Series, vol. VII, *op. cit.*, p. 419. The Convention has been ratified by the following States: Brazil, Columbia, Costa Rica, Cuba, Chile, Ecuador, El Salvador, Haiti, Mexico, Nicaragua, Panama, Peru, Dominican Republic, Uruguay, Venezuela. Chile and Peru ratified subject to reservations.

accredited to the government of the receiving state. Members of special missions probably enjoy the same privileges and immunities as do those of permanent mission."¹⁷

As authority for the latter proposition the comment refers to article 3 of the Regulation of Vienna, quoted above, and to the Havana Convention on Diplomatic Officers.

11. Whilst the various instruments and studies referred to above do not purport to reflect the actual practice of States in every particular, it is probable that they represent the position adopted by the majority of States in respect to special missions. Four broad principles at least appear to be generally recognized: (i) that, subject to consent, special missions may be sent; (ii) that such missions, being composed of State representatives, are entitled to diplomatic privileges and immunities; (iii) that they receive no precedence *ex proprio vigore* over permanent missions; and (iv) that the mission is terminated when its object is achieved.

II. Consideration of the question of special missions by the International Law Commission and other United Nations bodies

A. Developments before 1960

12. The history of the consideration by United Nations bodies of the topic of special missions is closely linked with that given to diplomatic relations in general. In 1952, the General Assembly requested the International Law Commission to undertake the codification of "diplomatic intercourse and immunities".¹⁸ Accordingly, at its sixth session in 1954, the Commission appointed Mr. A.E.F. Sandström Special Rapporteur for the subject (A/2693, chapter V, paragraph 73). Owing to lack of time the Commission was unable to consider the matter further until 1957. In that year, at its ninth session, the Commission adopted a provisional set of draft articles relating to diplomatic intercourse and immunities, with a commentary, which was sent to Member States for their observations. At its tenth session in 1958 the Commission made a number of changes in the earlier draft in the light of the replies it had received. The 1958 draft (A/3859, chapter III), was then forwarded to the General Assembly with a proposal that it should be recommended for adoption as a Convention to Member States. This draft was accordingly considered by the United Nations Conference on Diplomatic Intercourse and Immunities, held at Vienna from 2 March to 14 April 1961, and formed the basis of the Vienna Convention on Diplomatic Relations adopted there.¹⁹

13. The 1958 draft dealt only with permanent diplomatic missions. At its tenth session in 1958 the International Law Commission accordingly suggested (*ibid.*, paragraph 51), that a study should be made by the

Rapporteur of the other forms of diplomatic relations which

"might be placed under the heading of 'ad hoc diplomacy' covering itinerant envoys, diplomatic conferences and special missions sent to a State for limited purposes."

B. Twelfth session of the International Law Commission, 1960

14. When the Commission again took up *ad hoc* diplomacy at its twelfth session in 1960, its decisions related principally to the scope of the topic,²⁰ and to the extent to which its 1958 draft on permanent missions could be made applicable to special missions. As to the scope of the topic, the Commission decided first of all not to deal with the privileges and immunities of delegates to congresses and conferences.²¹ It was explained in the Commission's report (A/4425, paragraphs 32 and 33 that the question of diplomatic conferences was linked to that of relations between States and international organizations (which the Commission had been invited to consider by General Assembly resolution 1289 (XIII) of 5 December 1958), and that the link made it difficult to undertake the subject of diplomatic conferences in isolation.

15. The Commission also decided not to distinguish between itinerant envoys and special missions.²² The report explained that an itinerant envoy was a special mission vis-à-vis each of the States visited, and that there was no need for rules differing from those applicable to such missions (*ibid.*, paragraph 34).

16. As to the extent to which the 1958 draft could be made applicable to special missions, there were at the outset three different positions. One was that taken in the report of the Special Rapporteur, who stated (A/CN.4/129, paragraphs 7 and 8):

"7. Broadly speaking, it seems natural that rules relating to special features of a permanent mission which do not obtain in respect of special missions should not apply, whereas rules inspired by considerations of the similar nature and aims of the functions in question should be applied.

"8. Applying this criterion, the dividing line between the applicable and non-applicable provisions of the 1958 draft will fall between Section I, which contains, for the most part, articles having in view the special conditions of permanent missions, and Sections II, III and IV, which refer directly or indirectly to the privileges and immunities based essentially on the requirements of the diplomatic function. Sections V [on non-discrimination] and VI [on settlement of disputes] refer to the draft agreement as such, and ought, therefore, to have general application."

17. On the other hand, Mr. Jiménez de Aréchaga submitted a memorandum (A/CN.4/L.88) concluding that

"... all the provisions of the 1958 draft are relevant to special missions and should be made appli-

¹⁷ *Harvard Research in International Law* (1932) at p. 42.

¹⁸ General Assembly resolution 685 (VII) of 5 December 1952.

¹⁹ For the text of the Convention, see United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, vol. II (A/CONF. 20/1/Add 1), United Nations publication, Sales No. 62. X. 1, p. 82.

²⁰ *Yearbook of the International Law Commission, 1960*, vol. I, 565th, 567th, 569th, 576th and 579th meetings.

²¹ *Ibid.*, 565th meeting, paragraph 25.

²² *Ibid.*, paragraph 26.

cable to them, with the proviso that article 3 (Functions of a diplomatic mission) should be interpreted as applying only within the scope of the specific task assigned to the special mission.

"The only additional provision which seems to be required in the case of special missions is one concerning termination of the mission on fulfilment of the entrusted assignment . . ."

18. The third position was that taken by Sir Gerald Fitzmaurice, who considered that all of the provisions of the 1958 draft could be applied to special missions "*mutatis mutandis*, . . . in so far as they may be applicable to the given case."²³

19. After a discussion, the Commission decided to consider *seriatim* the twenty five articles of the 1958 draft which in the Special Rapporteur's opinion were not applicable to *ad hoc* diplomacy.²⁴ It was later proposed that the Commission should abandon this method of work and adopt the *mutatis mutandis* formula suggested by Sir Gerald Fitzmaurice, but this proposal was rejected by 13 votes to 6, with 1 abstention.²⁵ Some members emphasized the need for separate treatment of special missions on the ground of their difference from permanent missions. They also expressed the view that the *mutatis mutandis* formula would not sufficiently clearly maintain the distinction between *ad hoc* and ordinary diplomatic relations, and would only tend to provoke disputes about interpretation.²⁶

20. The Commission examined one by one all of the articles in Section I of the 1958 draft, and ultimately decided that the only three — article 8 on persons declared *persona non grata*, article 9 on notification of arrival and departure, and article 18 on use of the flag and emblem²⁷ — could apply as they stood to special missions. In connexion with a number of other articles it was remarked that the principle underlying the article applied equally to special missions, but as the detailed formulation of the article was in terms of permanent missions, it could not be applied without change to *ad hoc* diplomacy.

21. It may be useful to give a brief summary of the Commission's article-by-article discussion of Section I of the 1958 draft, with, where appropriate, remarks to relate the discussion to the text of the Vienna Convention of 1961.

22. *Article 1 (definitions)*. The Special Rapporteur said that article 1 could apply to special missions, provided that a definition of them was added to it. Some members expressed the view that special missions should be dealt with in a separate part of the draft, but the Commission decided without objection that article 1 was applicable.²⁸ This view was apparently reconsidered in the Drafting Committee, however, as the article was no applied to special missions in the text ultimately adopted by the Commission (A/4425, chapter III, paragraph 38).

23. *Article 2 (establishment of diplomatic relations and missions)*. The Commission agreed that this article, being drafted in terms of permanent missions, could not apply as it stood to special missions; that decision did not however, imply that the mutual consent of the States concerned was not necessary for the sending of a special mission.²⁹

24. *Article 3 (functions of a diplomatic mission)*. It was the general view that a special mission could perform any of the functions included in the scope of article 3 if such functions were entrusted to it by the sending State and agreed to by the receiving State. However, since a special mission had a special function rather than the whole range of functions covered by article 3, that article, as it stood, did not apply.³⁰ The views expressed by members were referred to the Drafting Committee, but in the text ultimately adopted it is stated only that a special mission is "an official mission of State representatives sent by one State to another in order to carry out out a special task".

25. *Article 4 (appointment of the head of the mission: agrément)*. The Special Rapporteur observed that in State practice the composition of a special mission might be the subject of some informal discussion prior to the sending of the mission, but there did not appear to be anything resembling a formal *agrément*. It was agreed that the procedure of acceptance by the receiving State was not always the same as the regular procedure for obtaining an *agrément*, but that the consent of the receiving State was always necessary and that it could be withheld.³¹

26. *Article 5 (appointment to more than one State)*. It was concluded that there was no need to make this article applicable to special missions; however, any State would be entitled to refuse to receive a special mission at any given time, and thus could object if it were unwilling that a mission should be accredited to other States.³²

27. *Article 6 (appointment of the staff of the mission)*.³³ It was agreed that this article did not apply to special missions. It was, however, necessary for the sending State to communicate in advance to the receiving State the names of the prospective members of the special mission, and the receiving State would be entitled, under the article dealing with *personae non gratae*, to declare any of them unacceptable.³⁴ These rules would apply equally to military, naval and air attachés, who were specifically mentioned in article 6.

28. *Article 7 (appointment of nationals of the receiving State)*.³⁵ The majority of the Commission considered that article 7 need not apply to special missions; it was agreed, however, that the receiving State would be entitled not to accept one of its nationals as a member of such a mission.³⁶

²³ *Ibid.*, paragraph 51.

³⁰ *Ibid.*, 567th meeting, paragraph 13.

³¹ *Ibid.*, paragraph 29.

³² *Ibid.*, paragraphs 42-43.

³³ Corresponding to article 7 of the Vienna Convention.

³⁴ *Yearbook of the International Law Commission, 1960*, vol. I, 567th meeting, paragraph 60.

³⁵ Corresponding to article 8 of the Vienna Convention, which also covers nationals of third States.

³⁶ *Yearbook of the International Law Commission, 1960*, vol. I, 567th meeting, paragraphs 64-66.

²³ *Ibid.*, paragraph 16.

²⁴ *Ibid.*, paragraph 31.

²⁵ *Ibid.*, paragraph 80.

²⁶ *Ibid.*, 565th meeting, paragraph 35, 38; 567th meeting, paragraphs 23, 26.

²⁷ These articles correspond to articles 9, 10 and 20 of the Vienna Convention.

²⁸ *Yearbook of the International Law Commission, 1960*, vol. I, 565th meeting, paragraph 39.

29. *Articles 8 (persons declared persona non grata) and 9 (notification of arrival and departure).*³⁷ As observed above, these articles were considered applicable, as they stood, to special missions. The articles were somewhat elaborated at the Vienna Conference; in particular, more detailed provisions on members of families and private servants were added to the second of the two articles, and those categories are not often involved in special missions.

30. *Article 10 (size of staff).*³⁸ The majority of the Commission found it unnecessary to apply this provision to special missions; the principle of consent underlying the acceptance of the special mission would cover all practical considerations relating to its size.³⁹

31. *Article 11 (offices away from the seat of the mission).*⁴⁰ This article was considered to deal with a question affecting specifically permanent missions, and hence not to be applicable to special missions.⁴¹

32. *Article 12 (commencement of the functions of the head of the mission).*⁴² The Special Rapporteur's view was that though this article and the following one did not, as they stood, apply to special missions, articles 12 and 13 should be mentioned as provisions which could, on occasion, serve for them; the date of commencement, though less important than in the case of permanent missions, might occasionally be of consequence.⁴³ Accordingly, the Special Rapporteur proposed a provision stating that "Articles 12 and 13 shall apply where appropriate in the circumstances"⁴⁴ The Commission decided, however, by 6 votes to 1, with 5 abstentions, to omit the provision.⁴⁵

33. *Article 13 (classes of heads of mission).*⁴⁶ It was observed in the Commission that heads of special missions were frequently very high officials, and were also often drawn from outside the diplomatic service. As has been said above, the Special Rapporteur proposed that article 13 should apply to special missions "where appropriate in the circumstances", but this proposal was rejected by the Commission.

34. *Article 14 (classes of heads of mission).*⁴⁷ The Special Rapporteur stated that this article, which requires the agreement of the States concerned on the class to which their heads of mission belong, concerned only permanent missions, since it dealt with the question of reciprocity. After a discussion in which several members agreed that the class of the head of a special mission was subject to the agreement of the receiving State, the majority concluded that the article should not be made applicable.⁴⁸

35. *Article 15 (precedence).*⁴⁹ The Special Rapporteur said that the article was not applicable to special missions as it stood, but that its provisions might serve some purpose whenever, for example, a number of special missions were sent simultaneously by several countries on a ceremonial occasion; he therefore proposed that the article should be dealt with in the same manner as articles 12 and 13. The Commission agreed to this proposal.⁵⁰ No reference to article 15, however, was included in the text ultimately adopted by the Commission.

36. *Article 16 (mode of reception).*⁵¹ The Commission concluded that, though the article as it stood, requiring a uniform procedure for reception of heads of mission of each class, was not applicable to special missions, its intention should be taken into account in the general formula to be embodied in the clauses concerning special missions.⁵² The text ultimately adopted by the Commission made no reference to article 16, though that text was intended to be subject to article 44⁵³ on non-discrimination.

37. *Article 17 (chargé d'affaires ad interim).*⁵⁴ The consensus of the Commission was that the article was inapplicable to special missions, and that, as regards the replacement of the head of a special mission, the official ranking immediately below him could not — if he did not have full powers — be automatically presumed to take over the conduct of the affairs of the mission.⁵⁵

38. *Article 18 (use of flag and emblem).*⁵⁶ As has been noted above, the Commission concluded that this article applied to special missions.

39. The Commission referred to its Drafting Committee the question of the applicability of Sections II (*diplomatic privileges and immunities*), III (*conduct of the mission and of its members towards the receiving State*) and IV (*the end of the function of a diplomatic agent*) of the 1958 draft. After an article-by-article examination, it was found that there was no occasion to exclude the application of any of those articles to special missions, even though it would be only in exceptional circumstances that some of them could apply.

40. At the close of the discussion of *ad hoc* diplomacy, two members expressed dissatisfaction with the work of the Commission on the subject.⁵⁷ They regretted that the Commission had not had time to examine the whole subject in detail, which was what was necessary for practical purposes since the general principles were not at issue.

41. The Commission adopted the following three draft articles (A/4425, chapter III, part II):

³⁷ Corresponding to articles 9 and 10 of the Vienna Convention.

³⁸ Corresponding to article 11 of the Vienna Convention.

³⁹ *Yearbook of the International Law Commission, 1960*, vol. I, 567th meeting, paragraph 77.

⁴⁰ Corresponding to article 12 of the Vienna Convention.

⁴¹ *Yearbook of the International Law Commission, 1960*, vol. I, 569th meeting, paragraph 3.

⁴² Corresponding to article 13 of the Vienna Convention.

⁴³ *Yearbook of the International Law Commission, 1960*, vol. I, 569th meeting, paragraph 4-6.

⁴⁴ *Ibid.*, 577th meeting, paragraph 1.

⁴⁵ *Ibid.*, paragraph 9.

⁴⁶ Corresponding to article 14 of the Vienna Convention.

⁴⁷ Corresponding to article 15 of the Vienna Convention.

⁴⁸ *Yearbook of the International Law Commission, 1960*, vol. I, 569th meeting, paragraph 31.

⁴⁹ Corresponding to article 16 of the Vienna Convention; article 17 of the Convention requires the chief of mission to give notification of the order of precedence of the diplomatic staff of the mission.

⁵⁰ *Yearbook of the International Law Commission, 1960*, vol. I, 569th meeting, paragraph 36.

⁵¹ Corresponding to article 18 of the Vienna Convention.

⁵² *Yearbook of the International Law Commission, 1960*, vol. I, 569th meeting, paragraph 45.

⁵³ Corresponding to article 47 of the Vienna Convention.

⁵⁴ Corresponding to article 19 of the Vienna Convention.

⁵⁵ *Yearbook of the International Law Commission, 1960*, vol. I, 569th meeting, paragraph 56.

⁵⁶ Corresponding to article 20 of the Vienna Convention.

⁵⁷ *Yearbook of the International Law Commission, 1960*, vol. I, 577th meeting, paragraphs 13 and 14

ARTICLE 1

Definitions

1. The expression "special mission" means an official mission of State representatives sent by one State to another in order to carry out a special task. It also applies to an itinerant envoy who carries out special tasks in the States to which he proceeds.

2. The expression "1958 draft" denotes the Draft Articles on Diplomatic Intercourse and Immunities prepared by the International Law Commission in 1958.

ARTICLE 2

Applicability of section I of the 1958 draft

Of the provisions of section I of the 1958 draft, only articles 8, 9 and 18 apply to special missions.

ARTICLE 3

Applicability of sections II, III and IV of the 1958 draft

1. The provisions of sections II, III and IV apply to special missions also.

2. In addition to the modes of termination referred to in article 41 of the 1958 draft, the functions of a special mission will come to end when the tasks entrusted to it have been carried out.

C. Developments since 1960

42. In its report to the General Assembly (*ibid.*, chapter III, paragraph 36), the Commission suggested that the three draft articles should be referred to the forthcoming United Nations Conference on Diplomatic Intercourse and Immunities, in order that they might be embodied in any convention the Conference adopted. The Commission stated that, owing to shortage of time, it had been unable to give the matter prolonged study and that the three articles formed only a preliminary survey for the consideration of Governments attending the Vienna Conference.

43. By resolution 1504 (XV) of 12 December 1960, the General Assembly decided, on the recommendation of the Sixth Committee, that the draft articles should be referred to the Vienna Conference so that they might be considered along with the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission in 1958.

44. The Vienna Conference decided, at the second plenary meeting⁵⁸ held on 3 March 1961, to refer the question of special missions to the Committee of the Whole. At the 23rd meeting, held on 21 March 1961, the Committee of the Whole set up a Sub-Committee⁵⁹ to study the subject of special missions. In its report⁶⁰ to the Committee of the Whole the Sub-Committee stressed the importance of the subject referred to it. The Committee noted, however, the statement of the International Law Commission that the three draft articles constituted only a preliminary survey, and also

⁵⁸ United Nations Conference on Diplomatic Intercourse and Immunities (Vienna 2 March - 14 April 1961), Official Records, vol. I (A/CONF.20/14), United Nations publication Sales No. 61. X. 2, summary record of the second plenary meeting, paragraph 12.

⁵⁹ *Ibid.*, summary record of the 23rd meeting of the Committee of the Whole, paragraph 70. The Sub-Committee was composed of the representatives of Ecuador, Iraq, Italy, Japan, Senegal, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia.

⁶⁰ *Ibid.*, vol. II (A/CONF.20/14/ADD.1), United Nations publication Sales No. 62.X.1, doc. A/CONF.20/C.1/L.315.

stressed that the articles had not, owing to lack of time, been submitted to Governments beforehand for their comments. The Sub-Committee further noted that the draft articles did little more than indicate which of the rules on permanent missions applied to special missions and which did not. The Sub-Committee considered that, whilst the basic rules might be the same, it could not be assumed that this would be so in every case or in all respects. The Sub-Committee therefore concluded that, although the draft articles provided an adequate basis for discussions, they were unsuitable for inclusion in a final convention without extensive and time-consuming study, which could only properly take place after a complete set of rules on permanent missions had been approved. In view of the short time available to the Sub-Committee in which to carry out such a study, of for its results to be considered by the Committee of the Whole and by the Conference itself, the Sub-Committee determined that it should recommend to the Committee of the Whole that the Conference should refer the question of special missions back to the General Assembly; it was suggested that the Assembly should recommend to the International Law Commission the task of further study of the topic in the light of the Convention to be established by the Conference. After the Sub-Committee's recommendation had been adopted by the Committee of the Whole⁶¹ the Conference, at its fourth plenary meeting on 10 April 1961, accordingly adopted a resolution⁶² recommending to the General Assembly of the United Nations that it refer the question back to the International Law Commission.

45. At its 1018th plenary meeting, held on 27 September 1961, the General Assembly referred the "Question of Special Missions" to the Sixth Committee, which discussed it at its 731st meeting held on 15 December 1961. In its report to the General Assembly⁶³ the Sixth Committee approved the recommendation of the Vienna Conference and added that certain representatives had expressed the hope that the International Law Commission would take up the question as soon as possible. At its 1081st meeting held on 18 December 1961, the General Assembly acting on the recommendation of the Sixth Committee adopted resolution 1687 (XVI) which is set out in full below.

*"Question of Special Missions"**"The General Assembly,*

Recalling the resolution 1504 (XV) of 12 December 1960, whereby it referred to the United Nations Conference on Diplomatic Intercourse and Immunities the draft articles on special missions contained in chapter III of the report of the International Law Commission covering the work of the twelfth session,

Noting the resolution on special missions adopted by the United Nations Conference on Diplomatic Intercourse and Immunities at the fourth plenary meeting held on 10 April 1961, recommending that the subject be referred again to the International Law Commission,

Requests the International Law Commission, as soon as it considers it advisable, to study further the subject of special missions and to report thereon to the General Assembly."

⁶¹ *Ibid.*, vol. I, summary record of its 39th meeting on 4 April 1961, paragraph 60.

⁶² *Ibid.*, vol. II, doc. A/CONF.20/10/ADD.1, resolution I.

⁶³ *Official Records of the General Assembly, Sixteenth Session, Annexes*, vol. III, agenda item 71, doc. A/5043, paragraphs 9 and 10.

46. The Commission accordingly decided at its 669th meeting on 27 June 1962 to place the question of special missions on the agenda of its next session.

III. Questions to be decided in connexion with further work

47. It may be inferred from the reference by the General Assembly of the topic of special missions back to the International Law Commission that the whole question could be examined afresh, and that in its re-examination the Commission need not regard itself as bound by the decisions taken in 1960. If this is the case, it may be helpful to set out a few of the main questions which should be decided as a basis for further work.

48. *The scope of the topic.* As has been pointed out above (paragraph 14), the Commission in 1960 decided not to deal with the privileges and immunities of delegates to congresses and conferences. This decision was taken because of the link existing between the question of diplomatic conferences and that of relations between States and international organizations. The latter question is on the provisional agenda of the Commission's fifteenth session, and the Special Rapporteur on that topic will presumably deal with diplomatic conferences convened by international organizations. In international practice, however, not all conferences are convened by such organizations, and some are still called by the Governments of individual States. The Commission may wish to consider whether to take up the question of conferences convened by States, and, in the event of an affirmative decision, to decide how that question may best be dealt with.

49. On the one hand, it may be considered that the problems of all conferences, no matter how they are convened, are closely analogous, and that it would be simplest that they should all be dealt with together by a single Special Rapporteur. On the other hand, if

conferences are convened by international organizations, they are generally covered by special or general agreements on privileges and immunities between the organization concerned and the host country, whilst if they are convened otherwise, there is usually no such agreement; this consideration might lead to the conclusion that it would be preferable to treat the latter kind of conference as part of the topic of special missions.

50. In 1960 the Commission also decided to cover itinerant envoys in its draft, on the ground that the mission of an itinerant envoy constituted a special mission vis-à-vis each of the States visited. The Commission may wish to consider whether to reaffirm this decision.

51. *The form of the draft.* The Vienna Convention on Diplomatic Relations will inevitably form an important part of the basis for the work on special missions. The question arises, however, whether the draft on special missions should be an independent, self-contained instrument, repeating any provisions of the Convention which are held to be applicable to special missions; or whether it should take the form of a protocol subsidiary to the Convention, which would refer to whatever of the latter's provisions are applicable and would contain specific provisions on special missions only to the minimum extent necessary. The answer to this question depends mainly on how far special missions are different in nature from the permanent missions dealt with in the Convention. It may be recalled in this connexion that in 1960 the Commission took the view that, of the eighteen articles in Section I of its 1958 draft, only three could apply as drafted to special missions, whereas all the other twenty-seven articles could apply to special missions, though some only in exceptional circumstances. The changes in the 1958 draft made by the Vienna Conference of 1961 do not seem to have essentially altered the problem of application to special missions, but the problem should obviously now be reconsidered.