Document:-
A/CN.4/193 and Add.1-5

Special Missions: Comments by Governments on the draft articles on special missions adopted by the Commission in 1965

Topic:
Special missions

Extract from the Yearbook of the International Law Commission:-
1967 , vol. II

recommends that as part of such documentation the Secretary-General should publish revised editions of the *Handbook of Final Clauses* (ST/LEG/6) and the *Summary of Practice of the Secretary-General as Depositary of Multilateral Conventions* (ST/LEG/7). These documents, which were last published in 1957 and 1959, respectively, furnish summaries of practice which will be of use not only to the Conference on the Law of Treaties but also to future United Nations conferences engaged in drafting multilateral conventions. It would be desirable, if feasible, to publish those documents before the discussion of the law of treaties by the General Assembly at its twenty-second session.

F. Seminar on International Law

61. In pursuance of General Assembly resolutions 2045 (XX) of 8 December 1965 and 2167 (XXI) of 5 December 1966, the United Nations Office at Geneva organized a third session of the seminar on International Law for advanced students of the subject and young government officials responsible in their respective countries for dealing with questions of international law, to take place during the nineteenth session of the Commission. The Seminar, which held eleven meetings between 22 May and 9 June 1967, was attended by twenty-three students, all from different countries. Participants also attended meetings of the Commission during that period. They heard lectures by eight members of the Commission (Mr. Ago, Mr. Bartoš, Mr. Reuter, Mr. Tammes, Mr. Tsuruoka, Mr. Ustor, Mr. Yasseen and Sir Humphrey Waldock), two members of the Secretariat (Mr. G. Wattles and Mr. P. Raton) and Professor Virally of Geneva University. Lectures were given on various subjects, such as the problem of codification and development of international law in general, in the United Nations, in the Commission or in the General Assembly. The codification of the law of treaties and the draft convention prepared by the Commission on that subject were also discussed. Other topics included the question of special missions and recent problems of the law of the sea. Two lectures were devoted to two subjects dealt with by the Sixth Committee of the General Assembly: the question of methods of fact finding and that of International Trade Law and UNCITRAL.

62. The Seminar was held without cost to the United Nations, which undertook no responsibility for the travel or living expenses of the participants. However, the Governments of Denmark, the Federal Republic of Germany, Israel, Norway and Sweden offered scholarships for participants from developing countries. Eight candidates were chosen to be beneficiaries of the scholarships. The Government of Finland also offered a scholarship, but the conditions under which it was to be granted could not be met at the present session.

63. Due consideration was given to remarks made by members of the International Law Commission at preceding sessions and by representatives in the Sixth Committee of the General Assembly, and to parts of General Assembly resolutions 2045 (XX) and 2167 (XXI) calling for the participation of a reasonable number of nationals from developing countries. The scholarships granted by the countries mentioned in the preceding paragraph made it possible this year to further the aim of admitting a larger number of nationals from developing countries. It is hoped that scholarships will also be granted next year.

64. On behalf of the Commission, the Chairman expressed appreciation of the way in which the Seminar was organized, the high level of the debates in the Seminar and the results achieved. The Commission recommended that further Seminars should be held in conjunction with its sessions.

ANNEXES

ANNEX I

Comments [a] by Governments [b] on the draft articles on special missions adopted by the Commission in 1965 [c]

CONTENTS

[a] Originally circulated as documents A/CN.4/188 and A/CN.4/188/Add.1-4; A/CN.4/193 and A/CN.4/193/Add.1-5.

[b] See General Assembly resolution 2045 (XX).

[c] *Yearbook of the International Law Commission, 1965*, vol. II, document A/CN.4/179, chapter III, section B.

1. Australia

Transmitted by a note verbale *of 24 April 1967 from the Permanent Representative to the United Nations*

[*Original: English*]

1. The Australian Government has studied with interest the draft articles on temporary missions drawn up by the International

Law Commission and wishes to express its appreciation of the detailed and careful work of the Commission in drafting these articles.

2. The Australian Government, while agreeing with the desirability of codifying the modern rules of international law on this subject, feels obliged to express its concern at, and opposition to, the apparent intention not only to apply these articles to a wide range of persons, but also to accord to those persons privileges and immunities which could well go beyond the bounds of functional necessity. At this stage the Australian Government wishes to make the following general comments directed to these two points and to several other aspects of the draft.

What constitutes a "special mission"?

3. The draft articles do not provide any substantive definition of what constitutes a temporary "special mission" for the purpose of the articles, nor is any such substantive definition given in the draft introductory article that has been prepared by the Special Rapporteur.[d] The commentaries on the draft articles indicate that the intention is to give the term a very broad interpretation indeed, covering all temporary missions sent by one State to perform specific tasks, irrespective of whether that task is dominantly political or of a purely technical character. The Special Rapporteur in his first report on the subject [e] gave as instances of different kinds of missions that would come under the proposed new régime: political, military, police, transport, water supply, economic, veterinary, humanitarian and labour recruiting.

4. The Australian Government shares the concern that has been expressed by some other Governments at the wide range of persons that appear to come within the scope of the draft articles. In its view there are many kinds of bilateral intercourse of a technical or administrative nature between States in which flexibility of procedure is of considerable importance and it would not be advantageous to apply to such cases the formal régime proposed in the draft articles.

5. In view of its concern on these points, the Australian Government wishes to refer to the following comments on the scope of the draft articles made by the Special Rapporteur in addendum 2 of his third report (A/CN.4/189/Add.2):

> "In the first place, no State is obliged to receive a special mission from another State without its consent. Secondly, in the Commission's draft, the task of a special mission is determined by mutual consent of the sending State and of the receiving State; on receiving a visiting foreign mission, the receiving State is entitled to make it clear that it is not considered as a special mission; and finally, the existence and extent of privileges and immunities can also be determined by mutual consent of the States concerned. It is very difficult to make reservations in the text of the article with regard to certain categories of special mission. For that reason, the Commission left it to States themselves to determine what they would regard as a special mission."

6. While noting these comments, the Australian Government considers that as presently drafted, the draft articles and the commentaries do not adequately reflect the idea that States may themselves determine what they should regard as a special mission.

7. The Australian Government appreciates that it is very difficult to make reservations in the text as to certain types of special missions — e.g. to make a distinction between special missions of a political nature and those of a technical nature. Nevertheless, the Australian Government believes that a further attempt should be made to clarify, and clearly limit, the range of special missions to which the draft articles are to apply.

8. The lines of a practical solution may possibly be found by singling out those cases that are generally agreed as having the attributes of special missions to which the régime laid down in the draft articles should apply, and leaving the application of the draft articles to other cases to be dealt with by mutual agreement between the States concerned. The following are cases that might be considered for inclusion in the first suggested category:

(*a*) Special missions led by Heads of State;
(*b*) Special missions led by Heads of Government;
(*c*) Special missions led by Ministers for Foreign Affairs;
(*d*) Special missions led by other Cabinet Ministers;
(*e*) Diplomatic ceremonial and formal missions;
(*f*) Itinerant envoys.

Privileges and immunities

9. The wide scope of the draft articles also causes the Australian Government particular concern because of the intention to extend to all missions that come within the articles a range of privileges and immunities based on those contained in the Vienna Convention on Diplomatic Relations, which deals of course with permanent diplomatic missions. The Australian Government does not believe that the extension of this wide range of privileges and immunities to all types of special missions would be justified. It considers that the grant of privileges and immunities should be determined by functional necessity; i.e., they should be limited strictly to those required to ensure the efficient discharge of the functions of the special mission and should have regard to the temporary nature of the mission in that connexion. It is also necessary to have regard to the status of the person who is the head of the special mission. Standards of privileges and immunities that would be appropriate in the case of high level missions, whose heads hold high offices of State, should not be made automatically applicable to other cases.

10. The Australian Government appreciates the proposal made by the Special Rapporteur to insert a new paragraph 2 in article 17 reading as follows:

> "2. The facilities, privileges and immunities provided for in Part II of these articles shall be granted to the extent required by these articles, unless the receiving State and the sending State agree otherwise."

The Australian Government considers, however, that this proposal would not allay the anxieties already expressed by some Governments about the extension of a wide range of privileges and immunities to all types of special missions. In the absence of agreement between both parties the receiving State would be obliged to accord the range of privileges and immunities set out in the draft — or not receive the mission at all.

Delegations to international conferences convened by States

11. The Australian Government is of the opinion that the draft articles could usefully cover the situation of representatives to congresses and conferences other than congresses and conferences convened within the framework of an international organization. In this connexion it has noted that the Commission at its fifteenth session decided that, for the time being, the terms of reference of the Special Rapporteur should not cover the question of delegates to congresses and conferences. The Australian Government believes that the time is opportune to take up this matter again and notes with interest the statement of the Special Rapporteur in his third report (A/CN.4/189) that it will be necessary for the Commission to revert to this question, which will be studied jointly by two Special Rapporteurs (the Special Rapporteur on

---

[d] *Yearbook of the International Law Commission, 1966*, vol. II, (document A/CN.4/189/Add.1).

[e] *Yearbook of the International Law Commission, 1964*, vol. II, pp. 83-84, para. 86.

special missions and a Special Rapporteur on relations between States and international organizations).

NATURE OF THE PROVISIONS RELATING TO SPECIAL MISSIONS

12. The Australian Government supports the decision of the Commission at its eighteenth session to ask the Special Rapporteur to base his draft on the view that the provisions of the draft articles could not in principle constitute rules from which parties would be unable to derogate by mutual agreement.

RELATION BETWEEN SPECIAL MISSION AND PERMANENT DIPLOMATIC MISSION

13. In the report of its seventeenth session,[f] the Commission requested views on whether a rule should be included in the final text of the articles on the relation between a special mission and the permanent diplomatic mission, and if so to what effect. The Australian Government considers that there is no need for an express rule on this point. In its view, any question of division of functions is basically for the sending State to determine and further it doubts whether the matter is likely to cause difficulties in practice.

PROVISION PROHIBITING DISCRIMINATION

14. Because of the diverse character of special missions the Australian Government doubts whether it would be practical to include in the final text an article prohibiting discrimination. It will, however, study with interest the proposed article on this matter to be submitted by the Special Rapporteur.

2. Austria

Transmitted by a note verbale *of 2 June 1966 from the Permanent Representative to the United Nations*

[*Original: German*]

In the opinion of the Austrian Government, the draft articles on special missions prepared by the International Law Commission constitute a useful contribution to the progressive development of international law, especially so as the increasingly close relations between States make it desirable to define and delimit the rights of the numerous organs of which States make use in their relations with one another.

However, in the opinion of the Austrian Government, the privileges and immunities of such non-diplomatic officials should be codified in such a way that the rights of these officials do not go beyond what is unavoidably necessary for the functioning of special missions, since, even in the case of diplomats and consuls, the principle holds that they enjoy privileges not in their personal interest, but only to facilitate their work.

Moreover, in the further elaboration of the draft articles, care should be taken that their provisions impair the position of traditional diplomacy as little as possible.

Accordingly, it is essential that the relationship between permanent representative authorities (diplomatic missions and consulates) and special missions should be expressly regulated, so as to avoid overlapping and conflicts in the matter of privileges. This would appear to be especially necessary in dealing with the immunities granted under article 26 *et seq.*

A noticeable feature in the Commission's draft is that, unlike the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, it contains no definitions of the various categories of members of special missions; in addition, it would seem necessary to define the possible tasks and functions of special missions more specifically than has so far been done in the introduction to the draft articles.

The following observations relate to individual articles.

Article 9

Paragraph 1. It would seem desirable to render the provision more precise by showing in what language the alphabetical order is to be determined, especially as no unambiguous conclusions on this point can be drawn from the commentary.

Article 19

Paragraph 1. This paragraph states that the agents of the receiving State may be allowed access to the premises (including grounds) of the special mission both by the head of the special mission and by the head of the permanent diplomatic mission. This suggests the conclusion that, by analogy, the question raised in paragraph (5) of the commentary to article 2 as to the relationship between the permanent diplomatic mission and the special mission should be settled by recognizing the continuing competence of the former.

Article 32

Article 36, paragraph 2 of the Vienna Convention on Diplomatic Relations contains a limitation in time of the customs exemptions granted to members of the administrative and technical staff. The omission of this limitation in the present draft articles would place the administrative and technical staff of a special mission in a substantially more favourable position than the corresponding staff members of a permanent mission.

In article 32, moreover, instead of referring to article 31 as a whole, reference should be made to article 31, paragraph 1 (*b*), since it can hardly be intended to grant to administrative and technical staff the same rights as are granted to diplomats in article 31, paragraph 2, which would be going beyond the corresponding provision in the Vienna Convention on Diplomatic Relations. Accordingly, in article 32 of the draft either the same time-limitation to "articles imported at the time of first installation" should be inserted and, in addition, the reference limited to "article 31, paragraph 1 (*b*)", or the reference to article 31 should be omitted altogether.

Article 35

Paragraph 2. This paragraph should, in the manner already explained in connexion with article 32, and in the light of the wording ultimately adopted for that article, be limited to the privilege set forth in article 31, paragraph 1 (*b*) and to articles imported at the time of first installation, unless this paragraph is omitted altogether.

3. Belgium

Transmitted by a letter of 25 April 1966 from the Permanent Representative to the United Nations

[*Original: French*

The Belgian Government wishes first of all to congratulate the International Law Commission of the United Nations on the considerable amount of work it has done on special missions. The draft convention it has transmitted indubitably signifies an appreciable progress in the efforts to codify and develop international law.

A. GENERAL COMMENTS

1. The Belgian authorities are of the opinion that the privileges and immunities provided for in the draft convention should be granted for strictly functional reasons and restrictively. To treat special missions in the same way as permanent diplomatic

[f] *Yearbook of the International Law Commission, 1965*, vol. II, p. 167, para. (5) of the commentary on article 2.

missions seems excessive. There would therefore seem grounds for considering the possibility of regulating privileges and immunities in the first place by bilateral agreement and of making provision in the present draft only for the strict minimum required for the performance of the special mission's functions.

2. With regard to the scope of the draft convention, Belgium is of the opinion that it should cover the situation of representatives to congresses and conferences, with the sole exception of congresses and conferences convened within the framework of an international organization whose statutes incorporate provisions on this subject (*specialia derogant generalibus*).

3. In the case of so-called high level missions,[g] the question arises whether an attempt to define their limits in an instrument may not lead to serious omissions.

In practice, moreover, the rules to be applied to such missions are always established by agreement and in respect of the particular case. That being so, it may be asked whether the rules of protocol in force in each State do not amply suffice.

4. The draft suffers greatly from the absence of a definitions article, which makes the drafting imprecise and clumsy. The Belgian authorities have no wish to press for any particular wording, but, solely for the purpose of making their comments, they have adopted the following definition as a working hypothesis: "The term 'special mission' shall be deemed to mean a temporary official delegation sent by one State to another State for the performance of a specific task."

Moreover, the classification of the categories of persons likely to be included in a special mission is open to criticism and gives rise to ambiguities which appear throughout the text.

This question of the internal organization of special missions will be taken up again in detail under article 6 of the draft.

B. Comments on the articles

Article 1

Paragraph 1. The words "for the performance of specific tasks" and "temporary" should be deleted because they denote characteristics of a special mission which should be stated in the definitions.

The word "consent" does not seem to correspond with the facts of international life. It connotes tolerance rather than approval, whereas what happens in practice is that a proposal is made which is followed by an invitation.

Paragraph 2. Belgium endorses the Commission's opinion that special missions may be sent between States or Governments which do not recognize each other, but wishes to make it clear that this in no way prejudges subsequent recognition.

Article 2

With regard to paragraph 5 of the commentary on this article, Belgium does not believe that the division of competence between a special mission and a permanent diplomatic mission is likely to give rise to difficulties, at any rate for the receiving State, for it is for the sending State to determine the methods of contact among its various missions and to intervene should there be any overlapping of authority. Moreover, it will frequently be the case that a member of the diplomatic mission will be attached to a special mission; he may even lead it as its *ad hoc* head.

Article 4

Paragraph 2. To make the alternative stated at the end of the first sentence clearer, it would be advisable to add the words "as appropriate", as in article 9, paragraph 2 of the Vienna Convention on Diplomatic Relations.

Article 5

This article is unilateral; the converse situation is also conceivable, i.e., the sending of the same mission by two or more States. Belgium therefore proposes the addition of a new article, which might be drafted as follows:

> "*Article 5* bis. A special mission may be sent by two or more States. In that case, the sending States shall give the receiving State prior notice of the sending of that mission. Any State may refuse to receive such a mission."

Article 6

Paragraph 1. In order to prevent any confusion with diplomatic terminology, the word "delegate" should be substituted for the word "representative". What should be made quite explicit in the definition of a special mission is its official character, i.e., the fact that it is composed of persons designated by a State to negotiate on its behalf. Consequently, it seems excessive to confer on them automatically a representative character, as that term is construed in diplomacy and politics.

The expression "other members" causes many ambiguities in the articles of the present draft. In the Vienna Convention on Diplomatic Relations, the term "members of the mission" is entirely general and means the head of the mission and the members of the staff, the latter being subdivided into members of the diplomatic staff, members of the administrative and technical staff, and members of the service staff.

The introduction into the present project of a new specific concept without giving it a specific name considerably impairs the intelligibility of the text.

Paragraph 2. A similar confusion is caused by the use of the term "diplomatic staff". If these words apply to advisers and experts, as stated in paragraph 5 of the commentary on the article, there is no reason for not saying so explicitly. Besides, it is to be presumed that the "other members" also enjoy diplomatic status.

Article 7

In order to make the article correspond better with the idea expressed in paragraph 2 of the commentary, it would be better to say "unless otherwise agreed" and to delete the word "normally".

Article 8

Paragraph 1. It should be noted that the difficulties caused by the vagueness of the terminology are particularly marked in sub-paragraph (*d*).

As to the substance, it should be specified that there must be prior notification, which would avoid having to resort where necessary to the *non grata* procedure, which is always unpleasant for all parties concerned. The text of this paragraph should therefore read as follows: "The sending State shall notify the receiving State in advance..."

Paragraph 2. In this context, the notifications to be made when the special mission has already commenced its functions would concern only persons subsequently called upon to participate in the special mission's work, which would be more in line with the usual practice.

Article 9

Paragraph 1. Belgium is of the opinion that the choice of the language determining the alphabetical order should be made in accordance with the rules of protocol of the receiving State. The end of the paragraph should therefore read "... in comformity with the protocol in force in the receiving State."

---

[g] See the "Draft provisions concerning so-called high-level special missions, prepared by the Special Rapporteur", *Yearbook of the International Law Commission, 1965*, vol. II, p. 192.

New paragraph. It is considered that it would be useful to lead up to the exception which is stated in the following article; there should accordingly be a new paragraph 3 stipulating that "the present article shall not affect the provisions of article 10 relating to special ceremonial and formal missions".

Article 10

This article is ambiguous. It refers to special missions which meet on a ceremonial occasion; but, taken literally, it seems to refer to special missions of all kinds.

It would be both clearer and simpler to state that "precedence among special ceremonial and formal missions shall be governed by the protocol in force in the receiving State".

In that case, Belgium would not wish this article to be regulated by a detailed text such as proposed in paragraph 4 of the commentary.

Article 11

The usefulness of the first sentence of the article is open to question, as the commencement of privileges and immunities is governed by article 37. Furthermore, the present wording may lead to confusion in connexion with protocol, which is precisely where letters of credence may be required.

Lastly, a diplomatic mission should not be qualified as regular, but as permanent. The article might therefore be drafted as follows:

"Where no other provision is made by the protocol in force in the receiving State for special ceremonial and formal missions, the exercise of the function of a special mission shall not depend upon presentation of the special mission by the permanent diplomatic mission or upon the submission of letters of credence of full powers."

Article 12

Sub-paragraphs (*a*) and (*b*) should be amalgamated and the word "*rappel*" should be used rather than the word "*révocation*", which seems too strong.

Reference should also be made to the comment on article 44, paragraph 2.

Article 13

Paragraph 1. The need for the proviso "in the absence of prior agreement" is not readily apparent; for in any case the procedure contemplated consists of a proposal followed by its approval. It should also be noted that in practice the seat of a special mission is always determined by mutual consent.

Article 15

Belgium is of the opinion that the solution adopted in article 20 of the Vienna Convention on Diplomatic Relations should prevail and that the emblem should be used only on the means of transport of the head of the mission.

Article 16

From the point of view of substance, a fundamental question arises, namely, whether the convention will apply in this case or whether on the contrary this article forms a separate entity.

In other words, is the situation with which it deals regulated solely by the terms of the conditions imposed by the host State or is the host State bound by the fact of its consent to apply the articles of the convention, and in particular those which concern privileges and immunities? In the latter case, to what extent can the conditions imposed by the third State derogate from the provisions of the convention?

From the point of view of drafting, it would be desirable to specify that the consent must be prior and may be withdrawn at any time. The text might therefore be amended to read as follows:

"1. Special missions may not perform their functions on the territory of a third State without its prior consent.

"2. The third State may impose conditions which must be observed by the sending State.

"3. The third State may at any time and without having to explain its decision, withdraw its consent."

GENERAL REMARKS ON THE FIRST SIXTEEN ARTICLES

The Belgian Government is of the opinion that it would be more practical to regroup these articles in accordance with the following arrangement:

First would come the articles on the sending of a mission: article 5 would become article 2; article 5 *bis* would become article 3; article 16 would become article 4.

Then the task of a special mission: article 2 would become article 5.

Next would come the provisions dealing with the composition of the mission: article 6 will thus keep its number; article 3 (Appointment) would become article 7; article 8 (Notification) would retain its number; article 4 (Persons declared *non grata*) would become article 9; article 7 (on official communications) would become article 10.

In the case of two articles relating to precedence, article 9 would become article 11 and article 10 would become article 12. Article 11 (Commencement of the functions of a mission) would become article 13, and article 12 (End of the functions) would become article 14; article 13 (Seat of the special mission) would become article 15; article 14 (Nationality of the members of the special mission) would become article 16.

Lastly, article 15 on the right to use the emblem of the sending State would become article 17.

Article 19

Paragraph 3. The words "by the organs of the receiving State" might be deleted; they do not appear either in article 22 of the Vienna Convention on Diplomatic Relations or in article 31 of the Vienna Convention on Consular Relations. Furthermore, the term used should be "measure of execution".

Article 22

Paragraph 1. I. With regard to wireless communications, the article provides that the special mission shall be entitled to send messages in code or cipher. But article 18 of the Telegraph Regulations annexed to the 1959 Geneva International Telecommunication Convention states:

"The sender of a telegram in secret language must produce the code from which the text or part of the text or the signature of the telegram is compiled if the office of origin or the Administration to which this office belongs asks him for it. This provision should not apply to Government telegrams." [h]

The only way to reconcile the provisions of this paragraph relating to secret messages with the provisions of the international Conventions relating to the telegraph service would be for special missions to transmit such messages as Government telegrams.

However, annex 3 of the Geneva International Telecommunication Convention gives a complete list of the persons authorized to send Government telegrams and it refers only to diplomatic or consular agents.

In short, in the present state of international conventional law, special missions would have to be authorized by their diplomatic or consular posts to hand in Government telegrams bearing the seal or stamp of the authority sending them.

---

[h] International Telecommunication Union, Telegraph Regulations (Geneva Revision, 1958).

If there is no such post the problem remains unsolved. This question might well be raised when the time comes to revise the International Telecommunication Convention.

II. With regard to wireless transmitters, it would be desirable to amend the last sentence of the present paragraph to read as follows:

"However, the special mission may install and use a wireless transmitter or any means of communication to be connected to the public network only with the consent of the receiving State."

There are separate wireless telephone devices which can be linked to the public telephone network: if these devices are not in conformity with those approved by the competent technical services, they may cause disturbance in the network.

Paragraph 2. With regard to the postal service, it should be borne in mind that the Universal Postal Convention [1] does not make provision for any special treatment of diplomatic bags from the point of view of rates. Some postal unions covering a limited area consent to carry such bags post-free, but this is solely because special reciprocal arrangements have been made; all proposals so far submitted for including a provision for their carriage post-free in the Universal Convention have been rejected.

As Belgium does not participate in an arrangement for the post-free carriage of diplomatic bags, this mail is subject to the ordinary postal rates.

Article 23

The Belgian view is that which it upheld in connexion with article 23 of the Vienna Convention on Diplomatic Relations, namely that the head of the mission is exempt from dues and taxes in respect of the premises of the mission only if he has acquired them in his capacity as head of the special mission and with a view to the performance of the functions of the mission. Accordingly, the words "in his capacity as such" should be inserted after "head of the special mission".

Article 24

The Belgian Government is of the opinion that members of missions should be granted only a personal inviolability limited to the performance of their functions.

Article 25

Paragraph 2. It would be as well to introduce, as in article 30 of the Vienna Convention on Diplomatic Relations, a proviso regarding measures of execution on property in cases where immunity from civil and administrative jurisdiction does not apply, and accordingly to begin the paragraph with the words: "Except as provided in article 26, paragraph 4. . ."

Article 31

Paragraph 1. With regard to sub-paragraph (*b*), the word "articles" is too vague and is inadequate. The Belgian Government is prepared to grant exemption from customs duties solely in the case of personal effects and baggage.

Article 33

No reference is made to article 28 concerning social security. The following should therefore be added: "as well as the provisions of article 28 on social security".

GENERAL REMARK: ARTICLES 31, 32, 33, 34

There is no reason to refer in the body of these articles to nationality and permanent residence or, as in article 31, to the family. These situations are regulated in articles 35 and 36 of the draft convention.

Article 35

Paragraph 1. The paragraph refers to articles 24 to 31, including article 29; but it is hard to see how a member of the family can enjoy tax exemption on income attaching to functions with the special mission.

Paragraph 2. This paragraph refers to article 32, which itself refers back to the same articles; the comment on paragraph 1 therefore applies equally to this paragraph.

The drafting of this paragraph does not seem adequate; it would be clearer to word it: "Members of the families of the administrative and technical staff of the special mission who are authorized to accompany it shall enjoy the privileges and immunities referred to in article 32 except when they are nationals of or permanently resident in the receiving State."

An anomaly, which in fact exists in article 37, paragraph 1 of the Vienna Convention on Diplomatic Relations, but was corrected in article 71, paragraph 2 of the Vienna Convention on Consular Relations, should be pointed out. If a member of the mission is a national or permanent resident of the receiving State, he loses his immunities; taking the text literally, the members of his family who are not either nationals or permanent residents would enjoy the immunities.

Article 36

Paragraph 1. The word "*quo*" in the eighth line of the French text should be placed before the words "*de l'immunité*". This drafting error, which appeared in article 38, paragraph 1 of the Vienna Convention on Diplomatic Relations, was in fact corrected in article 71, paragraph 1 of the Vienna Convention on Consular Relations.

Article 37

Paragraph 1. The word "organ" in the seventh line should be replaced by some more neutral word such as "authority".

Paragraph 2. In the fifth line of the French text "*qu'il*" should read "*qui lui*".

Article 39

Paragraph 4. It would be better to say "*soit dans la demande de visa*", as that wording would bring out better the obligation to inform at the time that the visa application is made.

Article 41

At the end, it would be advisable to use a broader and less controversial listing, for example "such body or person as may be agreed".

If the titles of the articles are retained, the word "authority" should be substituted for "organ".

Article 42

The prohibition against practising any professional or commercial activity would be better rendered by the expression "shall not carry on", as in article 57 of the Vienna Convention on Consular Relations of 24 April 1963.

In addition, the article should be supplemented by provisions similar to those in paragraph 2 of the aforesaid article 57.

Article 44

This article deals only with the action to be taken when a special mission ceases to function.

Accordingly, paragraph 2 would be better placed in article 12. In addition, the word "automatically" in that paragraph should be replaced by "*ipso facto*". Lastly, the words "but each of the two States may terminate the special mission" would become superfluous.

[1] United Nations, *Treaty Series*, vol. 364, p. 3.

C. Comments on the other decisions[a], suggestions and observations of the Commission

With regard to the matters raised in paragraphs 46 to 50 of the observations by the International Law Commission,[1] the Belgian Government wishes to submit the following comments:

(1) The Belgian Government agrees with the Commission that no provision on non-discrimination should be included in the draft, as special missions are so diverse.

(2) As to the question whether the draft should contain a provision on the relationship between it and other international agreements, two points should be singled out:

(*a*) If the status of special missions to conferences and congresses convened both by States and by international organizations is eventually covered by this draft convention, the convention should stipulate that it does not prejudice agreements relating to international organizations in so far as they regulate the problems contemplated in the draft;

(*b*) More generally, the Belgian Government has no objection to the inclusion in the draft of an article similar to article 73 of the Vienna Convention on Consular Relations.

(3) The Belgian Government believes that there should be a provision on reciprocity in the application of this draft.

(4) Lastly, it is hard to conceive that a special mission should receive better treatment than the permanent diplomatic mission of the same nationality established in the receiving State. Privileges and immunities should be granted to a special mission only to the extent to which they are applied in favour of the permanent diplomatic mission of the same nationality, unless otherwise mutually agreed between the States concerned.

4. Canada

Transmitted by a letter of 6 March 1967 from the Permanent Representative to the United Nations

[*Original: English*]

The Canadian Government wishes first of all to congratulate the International Law Commission of the United Nations on the work it has done on special missions. The draft convention which it has produced so far indubitably signifies an appreciable progress in efforts to codify and develop international law.

The comments of the Canadian Government follow below. They are divided into two parts: *A*, remarks of a general character; *B*, observations on particular articles of the draft.

A. General remarks

While expressing general agreement with the principles and rules embodied in the present draft articles, the Canadian Government is of the view that the International Law Commission should not go too far in assimilating the status of special missions to that of permanent missions. It is opposed to the undue extension of privileges and immunities which certain of the draft articles now appear to confer. In its view, the grant of such privileges and immunities should be strictly controlled by considerations of functional necessity and should be limited to the minimum required to ensure the efficient discharge of the duties entrusted to special missions. The following comments have consequently been set out in such a way as to emphasize a somewhat conservative approach to the status to be accorded to special missions. Suggestions have been made to that end under the articles which are considered to be too liberal, with the intention that they be brought closer to Canadian views. However, with regard to so-called High-Level Special Missions, it is the view of the Canadian Government that such missions should receive a more generous treatment, in respect of both privileges and immunities, than those of a more routine character.

B. Observations on particular articles in the draft

Article 4

It would perhaps be desirable to establish at least some maximum duration to the period following which persons declared *personae non gratae* should have left the receiving country. It is noted that the separate question of what might happen if such a person were to stay on in the receiving country is not covered by article 4. Perhaps this should be dealt with as well.

Article 17

This article appears to be too vague. There is obviously some onus on the receiving State to assist special missions in finding accommodation, especially where there is no resident mission nearby.

It is the Canadian view that, logically, this article should follow articles 17-21 (which specify some of the facilities intended) and that it should be reworded either by referring to "all other facilities" or by specifying those other facilities.

Article 19

This article appears to go too far in trying to uphold the inviolability of the offices of the special mission. The qualifications contained in article 31 of the Vienna Consular Convention for entry in the event of fire should be added. The relevant provisions of article 31, paragraph 2, of the 1963 Vienna Convention read as follows: "Such consent may, however, be assumed in case of fire or other disaster requiring prompt protective action".

Article 24

A central problem in respect to this article is whether any of the members of a special mission should enjoy personal inviolability, which, in the Vienna context, has come to mean both special protection from *vis injusta* and immunity from *vis justa*, i.e., from arrest and detention in respect of personal acts. It is considered that special protection in the first case is warranted in all cases, i.e., that the international responsibility of the State is involved if it has failed to take reasonable precautions. As far as concerns the second meaning of the term, however, it would be the Canadian inclination that in the draft it should be denied to special missions, since it is equivalent to a virtual immunity from criminal jurisdiction and is thus not a necessary consequence of an immunity which Canada considers should be restricted to cover only official acts by public political agents.

Should it be considered by a majority of the Commission that there should be some safeguard from preventive arrest, although not from detention in execution of a sentence, a compromise formula could probably be based on that which was adopted in the case of consular personnel. It is expressed in article 41 of the Vienna Convention on consular relations as follows:

> "Consular officers shall not be liable to arrest or detention preceding trial, except in case of grave crime and pursuant to a decision by the competent judicial authority. . . Except in the case specified in paragraph 1 of this article, consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect."

Article 25

If one starts from the view that, in principle, no member of a special mission should be assimilated to a diplomatic agent, the

[1] *Yearbook of the International Law Commission, 1965*, vol. II, p. 191.

import of the article seems somewhat excessive. It is questionable whether article 24 would not be sufficient, given that it seems rather unrealistic to ask for the special protection of the receiving State over residences which will usually be in hotel rooms: this appears to go beyond the standard requirement that the receiving State should take reasonable precautions. Moreover, even if it is to be retained in its present form, Canada believes this inviolability of the private accommodation should be subject to the same qualification regarding fire, etc. as is mentioned under our comment on article 19.

Article 26

The Canadian Government is of the opinion that this article goes too far in broadening the scope of immunities enjoyed by the members and staff of special missions. Moreover, the provisions of this article seem to spell out in detail those provided by the first two sentences of article 24. Consideration should therefore be given to combining these aspects of the two articles in a single article.

Article 30

As drafted, this article appears acceptable. However the Canadian Government does not agree with paragraph 2 (*b*) of the commentary, which would confer on locally recruited staff the exemptions from personal services and contributions.

Article 31

This article provides for exemption from customs duties and inspection of not only articles for the official use of the special mission but also of articles for the personal use of the head and members of the special mission, of the members of its diplomatic staff, or of the members of their family who accompany them.

It also provides for exemption from customs duties and inspection of the personal baggage of the head and members of the special mission and of the members of its diplomatic staff, unless there are serious grounds for presuming that it contains articles not covered by the exemptions, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the person concerned, of his authorized representative, or of a representative of the permanent diplomatic mission of the sending State.

It is arguable that such exemption should be removed from this article because it should remain a matter of courtesy and reciprocity.

Article 41

While there is no objection to this article itself, Canada considers that emphasis should be placed in the official commentary, on the need for the prior agreement of the receiving State, at least in principle, to the communication by the special mission with other of its own organs than its Foreign Ministry.

Article 42

This article as drafted is restricted to precluding activities for personal profit and does not cover members of special missions who, on behalf of the sending State, might carry on activities not consonant with the mission's terms of reference. Perhaps it would be desirable to relate such activities, on behalf of the sending State, to the provision of paragraph 1 of article 40.

Article 44

This article perhaps ought to be broadened to cover specifically the routine conclusion of functions due to the fulfilment of the objects of a special mission.

5. Chile

Transmitted by a letter of 27 March 1967 from the Permanent Representative to the United Nations

[*Original: Spanish*]

A. General

1. For the reasons adduced in the International Law Commission it would appear that the draft articles should take the form of a separate convention, independent of the Vienna Conventions on Diplomatic and Consular Relations.

In order to emphasize this independence, specific references to the Vienna Conventions should be avoided. However, unity of form should be preserved through the use of the same terminology and of analogous definitions wherever possible.

2. The Commission was correct in preparing a draft which includes both missions carrying out political tasks and missions of a technical character.

3. The draft must be as flexible as possible. In view of the widely recognized importance of bilateral agreements on special missions, it should not be unduly rigid since this might make it difficult to adapt the provisions to specific circumstances. It should therefore not restrict too greatly the possibility of States entering into new bilateral agreements, even if the special mission in question might, under such agreements, be accorded juridical treatment in some respects less favourable than that provided for in the draft.

Hence the draft should include a minimum of rules of *jus cogens*, States being free to depart from the provisions which do not fall into that category and which would be regarded as residual. These latter would be applicable only in the absence of an express provision agreed to by the parties. The Commission's decision to delete article 40, paragraph 2, of the Rapporteur's preliminary draft [k] is therefore correct.

Consequently, and in order to emphasize all of the foregoing, the draft should include among its final clauses a provision similar to that suggested by Mr. Rosenne at the 819th meeting on 7 July 1965 (art. 16 *bis*, paras. 1 and 2), with the stipulation that it would be applicable to the entire Convention and not just to Part II, on Facilities, Privileges and Immunities. It would thus be made clear that the draft regulates the activities of all special missions whether political or technical, and whatever their level, save as expressly provided to the contrary.

B. The articles

Article 1

(*a*) The value of defining a special mission in terms of its specific task will appear to be doubtful, for two reasons. On the one hand, there are political missions whose tasks are general rather than "specific" and have not been defined in advance but are merely exploratory, and there are missions whose tasks are gradually broadened as negotiations proceed. On the other hand, there are missions which have a specific task which are established permanently in the receiving State and which are therefore not covered by the rules set forth in this draft. For these reasons it would seem preferable to define the special mission solely in terms of the temporary nature of its functions. In other words, the task of a special mission may be more or less specific, general, or even undefined in advance, but in all cases the use of the term presupposes that the mission will remain in the receiving State temporarily;

(*b*) Paragraph 2 should include a provision to the effect that special missions may be sent or received regardless of whether the Governments concerned recognize each other.

[k] *Yearbook of the International Law Commission, 1965*, vol. II, p. 141.

Article 2

It is of the greatest practical importance that a clear distinction should be drawn between the powers of the special mission and those of the permanent mission since this will affect the validity of the special mission's acts. It would not appear to be desirable that the draft should lay down a rigid rule, but there should be some criterion that would serve as a guideline in every case.

As permanent missions frequently co-operate in the discharge of the tasks assigned to special missions, the draft should not, as a general principle, exclude such participation. It could establish a flexible criterion drafted along the following lines: "The competence of the special mission, as distinct from that of the permanent mission, shall be determined by its credentials; if its credentials are silent on this point, the competence of the permanent mission shall not be understood to be excluded."

Article 7

The term "normally" suggests a practice, to which, as such, there may be exceptions, but it can hardly be understood to enunciate a rule of law. This same idea should be expressed as follows: "Save as otherwise provided in its credentials, only the head of the mission shall be. . . ", or: " Save as otherwise determined by the sending State, only the head of the mission. . ."

Article 8

Notification seems to be unnecessary in the case of paragraph 1 (*d*) (e.g., typists, chauffeurs), unless such persons are to enjoy diplomatic privileges and immunities, in which case they should be included among the administrative and technical staff of the mission. This is the criterion reflected in the Vienna Convention on Diplomatic Relations, which requires notification only in the case of persons "entitled to privileges and immunities" (art. 10, para. 1 (*d*)).

Article 9

Paragraph 1. The alphabetical order used in the official diplomatic list of the receiving State cannot be followed, because it would not be applicable to cases in which States do not have diplomatic or consular relations with each other. To give greater precision to the rule laid down in paragraph 1 it should suffice to add the words "in the language of the receiving State" after the words "alphabetical order of the names of the States".

Article 13

Paragraph 1. This provison seems to be self-contradictory, for it would be applied "in the absence of prior agreement", i.e., in the absence of consent, in which case it would be pointless to require again the consent which (to judge by the words "proposed by the receiving State and approved by the sending State") could not be obtained in advance.

It would be more practical to state that "save as agreed to the contrary," (whether or not such agreement is prior) "the special mission shall have its seat at the place in which it is to discharge its task"; this is, in effect, the criterion followed in paragraph 2 for missions whose tasks involve travel to various places. If this criterion should be unacceptable, it could be indicated that, save as agreed to the contrary, the mission should have its seat at the place in which the organ referred to in article 41 of the draft is established.

The considerations set forth in paragraph (4) of the commentary underline the need to include in the draft a more specific provision than paragraph 1 as it stands.

Paragraph 2. To facilitate official contacts between the organ referred to in article 41 and a mission whose tasks involve travel, it would be advisable to add that one of the seats should be considered the principal seat and should be decided upon in the manner indicated in article 13, paragraph 1.

Article 14

Paragraph 1 calls for the following observations:

(*a*) The words "should in principle be of. . .", which are also used in article 8 of the Vienna Convention on Diplomatic Relations, are vague and do not clearly enunciate a rule of law but simply state what is desirable. The same idea could be expressed more accurately as follows:

"*Article 14, paragraph 1.* The head and the members. . . may be of any nationality.

"*Paragraph 2.* However, nationals of the receiving State. . .";
(The rest of the article would remain unchanged.)

(*b*) If the above amendment is not adopted and the present text of paragraph 1 is retained, this provison will be far more rigid than article 8 of the Vienna Convention on Diplomatic Relations, because the latter provides only that the diplomatic staff should in principle be of the nationality of the sending State, whereas the text under consideration extends that provision to administrative and technical staff. On this point the less rigid criterion adopted in the Convention on Diplomatic Relations should be applied;

(*c*) If the amendment to article 36 which is proposed below is accepted, article 14 should be amended to the same effect.

Article 16

In order to clarify beyond all possibility of doubt the point dealt with in paragraph (6) of the commentary, a provision should be added to this article stating that the third State may at any time notify the special mission that it is withdrawing its hospitality, without stating a reason and even if the conditions which it has imposed have not been violated.

Article 19

Paragraph 1. It should be made clear that the head of the permanent mission may authorize the local authorities to enter the premises of the special mission only when those premises are situated in a building normally occupied by the permanent mission. Such authorization should be granted only by the head of the special mission when the premises of his mission are situated in premises other than those occupied by the permanent mission. Otherwise, the special mission would, in effect, be subordinated to the permanent mission.

Paragraph 2. In order that the function of protection and prevention may be adequately discharged, the paragraph should state that the special mission must inform the receiving State what premises it occupies by means of suitable identification. This problem does not arise when the special mission is established in the premises of the permanent mission, but it may arise if the special mission has its offices on certain floors of a hotel or in different places in the same city. In the absence of such notification, the receiving State might be in a position to claim a lesser degree of responsibility for failure to fulfil this duty, on the ground that it was unaware of the actual circumstances.

Article 27

This provision should follow article 36, once the status of all the persons referred to in article 36, paragraph 1, has been clarified.

Article 28

Paragraph 2. It may happen that persons who are nationals of the sending State but who are permanently resident in the receiving State are members of the diplomatic staff of the special mission. In such a case they should be covered by the provisions of paragraph 1 of this article. Paragraph 2 (*a*) should therefore

be amended to read: ". . . to nationals or of the receiving State or aliens domiciled there, unless the latter are members of the diplomatic staff of the mission."

Article 36

We find the principle embodied in this article correct, with one reservation. Newly established States or States which have a small population and lack sufficient technicians or experts may find it imperative to include among the administrative and technical staff of special missions some of their nationals who are resident in the receiving State. In this case, we see no reason to treat them in a manner which would discriminate between them and the other members of the administrative and technical staff of the same mission who are not resident in the receiving State. Therefore, paragraph 1 should be amended to include all members of the administrative and technical staff, wherever they reside.

In return for this extension of privileges and immunities to certain persons who are residents of the receiving State, the receiving State must be given an additional safeguard. For this purpose, it should suffice to add to article 14 a provision requiring the consent of the receiving State to the inclusion among the diplomatic or administrative and technical staff of special missions of nationals of the sending State who are permanently resident in the receiving State.

Article 37

Paragraph 2. The exact moment at which privileges and immunities cease should be determined with the greatest possible exactitude. The phrase "on expiry of a reasonable period", which has simply been copied from article 39, paragraph 2, of the Vienna Convention on Diplomatic Relations, is extremely vague and could give rise to serious problems if the member of the mission remained in the receiving State after his functions had come to an end. In the Vienna Convention of 1961 the problem was solved by the addition in Spanish of the words "*que le haya concedido*" [the corresponding words in the English text are "in which to do so"] after the words "reasonable period". Article 37 of the draft should include this same clarification or another to the same effect, so that the duration of the "reasonable period" may be clearly indicated.

Article 39

Paragraph 4. Any reference to the ways in which the third State may be informed of the transit of the mission should be eliminated, for any omission might be interpreted to exclude channels not expressly mentioned. The relevant passage should read: ". . . only if it has been informed in advance of the transit of the special mission, and has raised no objection to it ".

Article 41

In view of its content, this article should be included in part I (General Rules), immediately following article 11.

We have no observations to make on the remaining articles.

6. Czechoslovakia

Transmitted by a note verbale *of 29 April 1966 from the Permanent Representative to the United Nations*

[*Original: English*]

1. The Government of the Czechoslovak Socialist Republic shares the views expressed by a number of members of the International Law Commission and likewise contained in the report of the Special Rapporteur, namely that the term special missions covers a great number of State organs for international relations which are entrusted with tasks of most diverse character. It also shares the view that the tasks and legal status of special missions (except delegations to international conferences and congresses as well as delegations and representatives of international organizations) should be regulated within the general codification of diplomatic law by one convention. At the same time, however, it is of the opinion that in view of the fundamental difference in the character of the individual special missions it would be necessary to differentiate their legal status according to the functions assumed by them with the agreement of the participating States. (To characterize the individual categories of special missions would be undoubtedly very difficult and moreover they might be outdated by the relatively rapid development.) Proceeding from this fact the Government of the Czechoslovak Socialist Republic is inclined to believe that in the case of special missions of predominantly technical and administrative character privileges and immunities of more limited character emanating from the theory of functional necessity would correspond better to the state of international law and to the needs of States. Therefore, it suggests that it might be purposeful that the Commission when definitively formulating the draft convention should proceed, e.g., from a division of special missions at least into two categories. The first category might include special missions of political character and the second one special missions of predominantly technical and administrative character. The formulation of provisions concerning special missions of political character should proceed from the Vienna Convention on Diplomatic Relations. However, special missions of predominantly technical and administrative character should be granted only such privileges and immunities which are necessary for expeditious and efficient performance of their tasks.

2. The Government of the Czechoslovak Socialist Republic agrees that the status of special missions at the so-called high level [1] should be regulated in harmony with the prevailing customs and usages. In view of the fact that the proposed regulation is almost identical for all the four categories of special missions of this kind, it seems useful to embody the identical provisions contained in draft rules 2-5 in a general rule covering all the four categories and to stipulate exceptions for the individual categories in a special rule whereby the draft would be substantially shorter. The Government of the Czechoslovak Socialist Republic holds that the draft rules will be further elaborated.

The Government of the Czechoslovak Socialist Republic has been following the International Law Commission's activities in the field of the codification and progressive development of international law concerning special missions which is to be embodied in an international convention and appreciates its present results in this field. In view of the fact that the first version of the draft articles is being considered and that the draft is not so far complete the Government of the Czechoslovak Socialist Republic will submit possible further observations and proposals at an appropriate time.

7. Finland

Transmitted by a note verbale *of 2 May 1967 from the Permanent Representative to the United Nations*

[*Original: English*]

The use of special missions is in fact the earliest form of diplomacy the traditions of which go back to a remote past, to a time when there were no permanent missions. In international politics of today the use of special missions is again becoming more frequent as co-operation between States extends to new fields and the scope and activities of international organizations increase. Therefore it is most important that the principles of international law as regards special missions be codified, made more explicit, and completed by such new dispositions as are considered necessary. In the opinion of the Finnish Government, the draft prepared

[1] See foot-note g above.

to this end by the International Law Commission and approved in a preliminary way by the Commission at its sixteenth and seventeenth sessions is essentially to the purpose, and a final text should be drawn up on these lines as soon as possible. The Finnish Government suggest, however, that the following points be considered when giving the draft the finishing touches.

As special missions are increasingly used their character and composition are becoming variable. Prominent delegations negotiating important political matters are paralleled by special missions on an inferior level which may be diplomatic missions or working groups sent out to perform a purely technical task. This category includes delegations to conferences and the representatives of States on the mixed committees and joint commissions frequent in international co-operation of today.

The concept, if it is not to be restricted, should evidently also include single officials who will more or less regularly represent their country at meetings or discussions with organs functioning in their particular line of activity in some neighbour State.

The Commission has brought the dispositions contained in the draft to bear on temporary special missions only. This means that there would still be no general provisions to specify the status and conditions of functioning of such special missions of a permanent character as are not covered by the provisions of the Vienna Convention on Diplomatic Relations; nor would the rules suggested include State representatives on various permanent mixed committees and joint commissions. Furthermore, it is established by the International Law Commission's report on the second part of the Commission's seventeenth session and on its eighteenth session that government delegations to various congresses and conferences would not be within the scope of the draft articles proposed.

The Finnish Government take the view that it is questionable whether the above restrictions, which would leave a considerable group of special missions in a vague position as to international law, are necessary and to the purpose. On the other hand, the restrictions under reference indicate an endeavour, useful in itself, to define the concept of the special mission. For it is evident that, as the use of such missions will increase and their purposes multiply, the concept is no longer neatly outlined. Moreover, one might ask expressly whether all the dispositions contained in the International Law Commission's draft are of a nature to cover all the various categories of special missions. This refers particularly to the facilities, privileges and immunities accorded to the missions and to persons attached to these. The Commission, it is true, suggests that the so-called high-level special missions form a group apart and provides for this group rules that would somewhat differ from those applied to special missions in general, but even so there would hardly be adequate reasons to grant the fairly extensive facilities, privileges and immunities specified in the draft to each of the various single negotiators and delegations making up the "general group" of special missions. The Finnish Government would advocate a further consideration of the Commission's draft with a view to establishing whether special missions on an inferior level, appointed to perform tasks of a mainly technical nature, could be detached, particularly as regards facilities, privileges and immunities, from the rest of the delegations within the concept under reference.

The International Law Commission has not yet taken a definite view of the fact whether it should recommend that the articles concerning special missions be attached as an additional record to the 1961 Vienna Convention on Diplomatic Relations or whether a separate convention in the matter should be aimed at. The Commission, however, has prepared its recommendation to suit the second alternative. Nevertheless, the draft, particularly its part I, contains a great many dispositions which in view of an eventual convention might be considered to go too much in detail or else to be more appropriate in a "code" to serve for the guidance of the States than in an international convention binding them. In a general way, the articles contained in the draft should be cut down and the text condensed as much as possible. Furthermore, it would be useful to make clear and expressly to state in the text which articles, if any, contain items of law compulsory and binding on the States.

In addition to these general considerations, the Finnish Government will comment only on those articles of the draft which seem to require modification and amplification.

Articles 1 to 4 of the draft, which conform to general practice, seem to be to the purpose. Nevertheless, it would certainly be appropriate to insert at the beginning of the draft (as the International Law Commission seems to have intended to do) a special introductory article in which the main concepts are defined. As for article 5, which deals with the sending of the same special mission to more than one State, it would be useful to limit it to concern the simultaneous accrediting of one special mission to several countries; for the fact that the mission has previously functioned in another country is hardly relevant in this connexion. In any case, the last sentence of the article seems superfluous since it is established by article 1 of the draft that the sending of a special mission requires the consent of the receiving State.

It would seem appropriate to complete article 7 of the draft by adding a provision that the head of a special mission may authorize a member of the mission to perform particular acts on behalf of the mission and to issue and receive official communications. In this context, a reference may be made to article 8, paragraph 2 of which states that certain official notifications may be communicated by members of the mission's staff.

Paragraph 2 of article 9 (precedence) could perhaps be made more explicit by adding a statement that it concerns the precedence of the members of one special mission. The need to specify this arises from the fact that the previous paragraph deals with precedence among several special missions which carry out a common task.

Article 14, concerning the nationality of persons attached to special missions, may seem too strict. Under its paragraph 3, the receiving State may reserve the right not to approve as members of a special mission or of its staff nationals of a third State who are not also nationals of the sending State. Both of the Vienna Conventions, it is true, contain a similar provision, which explains its presence in the article under reference.

In part II of the draft (articles 17-44), concerned with facilities, privileges and immunities of the special missions, the system laid down by the above-mentioned Vienna Conventions is fairly closely followed. The leading principle that the functioning of the mission must be ensured is extended to special missions in addition to which some aspects of the theory of representation have been applied. In a general way the Commission's recommendation grants special missions, their members and staff a juridical position equal to that of permanent missions and persons fulfilling analogous functions in these. This means that in certain instances the juridical position of the persons under reference is more efficiently ensured than that of career consuls and consular officials. In view of the character of the special missions, particularly their temporariness and the varying nature of their tasks, it has been felt that the privileges and facilities granted them and their staffs should be more extensive, or more restricted as the case may be, than those enjoyed by permanent missions and persons attached to these. This proposition seems to require further consideration, with due regard to the above-mentioned views of different types of special missions.

As regards article 22 (freedom of communication), opinions have varied as to whether special missions should be entitled to use code or cipher telegrams and to designate persons not attached to the mission as *ad hoc* couriers. The affirmative conclusion suggested in the draft seems judicious. Also, the courier bags should enjoy unconditional inviolability; in this respect, the

principle adopted would be that of the Vienna Convention on Diplomatic Relations, not that of the Convention on Consular Relations.

The juridical position of members of the families of persons attached to special missions is specified in article 35 of the recommendation, partly in accordance with the analogous article (37) of the Vienna Convention on Diplomatic Relations. Members of the families of special mission staff would, however, be entitled to accompany the head of the family to the receiving State only if authorized by the latter to do so. This provision would seem too strict in view of the fact that some special missions will carry on their activities for a considerable period of time.

With regard to the rules proposed for so-called high-level special missions,[m] it is evident that the latter cannot in every respect be placed on a par with other special missions, wherefore particular rules for them are appropriate. Yet the necessity of sub-paragraph (*a*) of rules 2, 3 and 4 seems questionable. The fact mentioned in the sub-paragraph may be ascertained in advance by taking the matter up at the consultations preceding the sending of a high-level special mission. It appears from rules 4 and 5 that when a special mission is led by the Minister for Foreign Affairs or by a Cabinet Minister other than the head of Government he may have his personal suite, the members of which shall be treated as diplomatic staff. An analogous provision is missing from rule 3 which deals with the juridical position of the head of Government.

It would seem that the rules concerning high-level special missions might be a good deal simplified. Rules 2 to 5 could perhaps be condensed into one enumerating exceptions and specifying the category of high-level special mission to which each exception refers. Still, the most convenient way might be to complete the articles of the recommendation concerning special missions by adding particular rules for high-level special missions where needed.

8. Gabon

Transmitted by a letter of 8 March 1967 from the Minister for Foreign Affairs

[*Original: French*]

A. General remarks

Many African States repeatedly have recourse among themselves to special missions of a political character, in particular, to transmit written or verbal messages from the head of the sending State or its Government, as well as to missions of a technical character, which, because of the growing interdependence in technical matters, tend to increase rapidly in number.

The Gabonese Government accordingly has no doubt that the codification of that topic undertaken by the experts on the International Law Commission will be useful, regardless of the kind of international legal instrument which it produces, and even if that instrument in fact is merely a concise guidebook of procedures which the developing States may use.

(1) *Freedom to derogate from the provisions of the proposed instrument.* The practice concerning special missions appears to be difficult to inventory and *a fortiori* difficult to codify; hence, the wisest view, and the one which seems to be accepted, is that provisions of the draft articles on special missions, in principle, should be rules from which States are competent to derogate by agreement between themselves.

This basic principle should be clearly stated at the beginning of the document, it being understood that the future is not being prejudged and that time, experience, and court decisions may in due course modify the present situation.

(2) *The provisions* from which States signing or acceding to the instrument may not derogate would therefore be exceptions, and would be mentioned as such. Such provisions might include, *inter alia*, the articles on:

(*a*) Inviolability of archives and documents of the special mission;

(*b*) Inviolability of the premises of the special mission (unless the head of the permanent diplomatic mission of the sending State grants permission to enter them);

(*c*) Personal inviolability limited to the performance of functions;

(*d*) Freedom of communication.

The provisions covering inviolability of the private accommodation of the head of the special mission and of the other members of the mission properly so-called (to the exclusion, of course, of the administrative, technical and service staff) might be added to that list, although that is not indispensable since inviolability has already been provided for the premises of the mission (which, moreover, are often combined with the private accommodation of the head and members of the mission) and for the persons concerned.

We should also remember that the inviolability of the premises of a foreign mission or of the private accommodation of its members raises the problem of the right of asylum—a problem so delicate and controversial that it was not mentioned in the Vienna Convention.

In that connexion, it might be advisable to stipulate, in any event, that not only "the premises of the special mission" but also "the private accommodation of all its staff" must not be used in any manner incompatible with the functions of the special mission as laid down in these articles or by other rules of general international law or by any special agreements in force between the sending and the receiving State (draft article 40).

(3) On the other hand, freedom to derogate from the rules established by the instrument on special missions, except where expressly otherwise provided, would make it possible to solve, at least provisionally, the most delicate problems raised by the proposed codification.

That applies, in particular, to the question of *the grant of privileges and immunities* (diplomatic) to the heads and members of special missions, which are increasing in number and growing more diverse and very often are only of a technical character. States should not, through codification, become involved in "inflation" in that respect.

The solution adopted by the International Law Commission, namely, to leave it to the States concerned to restrict the grant of certain privileges or immunities (excluding peremptory provisions) to a given mission or missions on the ground that those privileges or immunities are functionally justified in the cases in question, seems all the more necessary in that it is proving impossible, in an international legal instrument, to divide special missions into distinct and well-defined categories according to whether they are, for example, of a political or of a technical character.

The proposed text should also specify, in its preamble, that it is not intended to assimilate "special missions" to "permanent diplomatic missions", particularly in respect of privileges and immunities, the grant of which should be based entirely on functional needs.

(4) The question of *discrimination* raises a similar problem: although the prohibition of discrimination may prove useful, it cannot be laid down as an absolute rule in the case of special missions, having regard to their diversity and their *ad hoc* character which at times may lead the receiving State to apply to one of them treatment adapted to the circumstances.

The only purpose of prohibiting discrimination appears to be to prevent a delegation of one State from being subjected, under

[m] See foot-note *g* above.

protest, to less advantageous treatment than that accorded to similar delegations *as a whole*. There is nothing, however, to prevent two States from agreeing between themselves to apply to a *given* special mission or category of special missions, unilaterally or mutually, less advantageous or more advantageous treatment (and, in the latter case, for specific and valid reasons) than that which similar foreign missions *as a whole* enjoy (provisions such as those of article 47 of the Vienna Convention on Diplomatic Relations).

(5) As to the form which the juridical instrument on special missions should take, it would follow from the solution adopted with respect to the peremptory character of the provisions of the text that it should remain, at least for the time being, independent of the Vienna Convention of 18 April 1961, which is based on a contrary principle and which will probably have different effects in international law.

The solution of an additional protocol to that Convention should therefore be ruled out.

In that connexion, the International Law Commission's careful avoidance of the slightest reference to that Convention in its draft articles seems very well-advised. Such references are found only in the commentaries.

If the Vienna Convention should be referred to in a preamble placed at the beginning of the draft articles, that reference should be aimed primarily at stressing the wide divergence which exists, provisionally at least, between the two documents, so as not to weaken the effect and peremptory nature of the text referred to.

If such a reference was made, it would be even more necessary to add a provision based on article 73 of the Vienna Convention on Consular Relations, explaining that the rules laid down shall not affect other international agreements in force as between States parties to them, including the Convention on the Privileges and Immunities of the United Nations, the Vienna Convention on Diplomatic Relations, and the Vienna Convention on Consular Relations.

(6) On the other hand, in the preparation of the introductory article, which will contain valuable definitions of the expressions used in the document, an effort should be made to follow as closely as possible the terminology of the Vienna Convention of 18 April 1961.

(7) Concerning the *method of adoption* of the instrument on special missions, which will depend on its juridical content, the Gabonese Government wishes simply to indicate that if the instrument should include peremptory rules in respect of privileges and immunities, it would have to be in the form of an international treaty in order to take effect on Gabonese territory, since the accession of the Republic to the proposed instrument would have to be ratified by the head of the executive branch under authority of a law.

(8) The International Law Commission rightly decided that the annexing of special rules concerning *so-called high-level special missions*[n] was not essential. If the other view was adopted, the proposed provisions would have to be exhaustive and would have to deal also with the case of Vice-Presidents, Deputy Prime Ministers and Ministers of State, which would make the text even longer.

At the most, the case of the head of State who leads a national or governmental mission might be mentioned in general terms with an indication that it was, of course, a special case which entailed adjustments in accordance with the protocol in force in the receiving State for the treatment of heads of State considered as such.

(9) It seems that draft articles 1 to 16 (part I) dealing with the organization and functioning of special missions could be further condensed, whereas the articles dealing with facilities, privileges and immunities (part II)—a subject in which precision was essential—could not.

[n] See foot-note g above.

B. Observations concerning particular draft articles

Article 1

It might be useful to specify that the sending or reception of a special mission does not imply recognition by one State of another.

Article 6

The clause providing that in the absence of an express agreement as to size of a special mission, the receiving State may require that the size of the staff be kept within limits considered by it to be reasonable and normal, having regard to the tasks and to the needs of the special mission, seems entirely adequate.

Article 15

Authorization to display the flag and emblem of the sending State on "the means of transport of the mission", and not just on the means of transport of the head of the mission as is provided for permanent diplomatic missions, might lead to abuses.

Article 22

In connexion with freedom of communication, it might be advisable to specify that where the sending State has a permanent diplomatic representative in the receiving State, the official documents of the special mission should whenever possible be sent in that representative's bag. In that case, the use of a supplementary bag belonging to the special mission, for which its head is responsible, should be exceptional.

Article 31

Exemption of members of special missions from customs duties is one of the matters in which some discretion should be left, in one way or another, to the authorities of the receiving State.

9. Greece

Transmitted by letter of 3 April 1967 from the Deputy Permanent Representative to the United Nations

[*Original: French*]

The Greek Government wishes first of all to congratulate the International Law Commission on the valuable work it has done on the draft articles on special missions.

The Greek Government considers it desirable, as a matter of principle, for the question of special missions to be codified. It considers it necessary, however, to make reservations concerning, in particular, the excessive scope of the privileges and immunities granted to special missions and to their members and staff. It is of the opinion that such privileges and immunities should be granted only to the extent strictly necessary for the mission to carry out its task. It must oppose the extension to special missions, as provided in the draft articles of procedures provided for in the Vienna Convention on Diplomatic Relations.

Accordingly, and more specifically, the Greek Government submits the following comments:

1. It is unable to support the wording of articles 19, 22, 24, 25, 26, 29, 31, 33, 34, 35 and 39, which, in various respects, should provide for less extensive privileges and immunities than they now do.

2. Certain terms should be defined quite clearly, particularly such terms as "special mission", "members of a special mission" and "member of the staff of a mission". This is necessary in order that the field of application of the draft articles should be clear. Articles 1, 2 and 6, among others, should be clarified

in this regard. Thus, for example, the rank, purpose and duration of the special mission should be taken into consideration. In view of the strictly functional nature of the privileges and immunities, it is questionable whether a special mission with a limited technical task or a short-term special mission responsible for negotiating and signing a treaty really needs, in order to do its work, the privileges and immunities provided for in many of the draft articles (article 15, 18, 19, 20, 22, 23, 25, 28, 29, 30, 34, 42).

3. There should be special regulations for cases where the State sending a special mission has an embassy in the foreign country (the place of work of the special mission being in or near the town where the embassy is situated). The comments made in paragraph 2 above concerning the articles mentioned there would also be applicable here.

On the whole, therefore, the Greek Government is of the opinion that there will be more chance of sucess in codifying the question of special missions if the articles are not given too wide an application and if the privileges and immunities granted are kept within the limits strictly necessary for the work of the mission.

10. Guatemala

Transmitted by a letter of 16 May 1967 from the Permanent Representative to the United Nations

[*Original: Spanish*]

General comments

According to international practice, formal rules applicable to special missions have been laid down in each specific case, with due regard for their characteristics and the purposes they are designed to achieve. It would be somewhat difficult to draw up a set of rules governing every instance in which a special mission is sent. The International Law ommission itself recognized this difficulty and did not discuss the draft provisions concerning so-called high-level special missions.

We feel that a draft Convention such as that proposed should contain provisions which facilitate the operation of special missions and provide them solely and exclusively with the immunities and privileges strictly necessary for the fulfilment of their functions. In particular, it must be borne in mind that the time available to such special missions is generally limited and that they do not need permanent offices to carry out their responsibilities. They may use the premises of regular diplomatic missions, when they exist, and their members do not need to rent housing or to import furniture and other household effects. They will require a series of privileges which relate not to their personal convenience but rather to their legal status in the receiving State.

The draft articles do not contain a definition of a special mission. In studying a draft for the publication of a new law on diplomatic procedure in the Republic of Guatemala, the Legal Department of the Ministry of Foreign Affairs proposed the following definition of a special mission: "A special mission means the representation of an accredited State in a special and temporary manner". The phrase "for the performance of specific tasks", used in draft article 1 of the text adopted by the Commission, could be added to this proposed definition.

We suggest to the International Law Commission that the draft articles should include a definition of a special mission in the terms proposed above or in other terms which fulfil the same purpose.

Comments on specific articles

Article 1

If it is agreed to include in the Convention a definition of a special mission, mention of "the performance of specific tasks" should be deleted. It is also suggested that the word "acceptance" should be substituted for the word "consent". We offer no comments on article 1, paragraph 2, because we agree that the existence of diplomatic or consular relations is not a prerequisite for the sending and reception of special missions. However, the paragraph might state in addition that the acceptance of a special mission as between States which do not have diplomatic relations or whose diplomatic relations have been broken off does not imply the establishment or re-establishment of diplomatic relations.

Article 5

This article concerns the sending of the same special mission by one State to more than one State. The case may arise in which two or more States send the same special mission to another State. It is therefore suggested that the article should be divided into two paragraphs which make this difference clear and which establish the right of the receiving State to receive a mission appointed by two or more States.

Article 7

We suggest that in paragraph 1 the word "normally" should be deleted.

Article 8

It is suggested that paragraph 1 (*a*) should be worded as follows: "The composition of the special mission and of its staff, prior to its dispatch, and any subsequent changes."

Article 9

It is suggested that the words "in the language of the receiving State" should be added at the end of paragraph 1.

Article 11

We agree with the comments made by the Commission on the principle of non-discrimination but we feel that the text could be improved since it is a little confusing and uses unusual terminology. For example, it calls the permanent diplomatic mission a "regular" diplomatic mission.

Article 16

We suggest that a third paragraph should be added in order to make clear that the third State has the right to withdraw its authorization from missions at any time to enable them to fulfil another task on its own territory, without having to give explanations of its decision.

Article 17

This article as now drafted gives the impression that the expenses of the special mission must be borne by the receiving State. If this is the intention it should be made clear; otherwise, the article should be redrafted.

Article 19

The rights established in article 19, paragraph 3, are more extensive than those established in the Vienna Convention on Diplomatic Relations because the article also includes property as distinct from means of transport, the logical assumption being that such means of transport will not remain permanently on the premises of the mission.

Article 20

This article lays down that the archives and documents of the special mission shall be inviolable at any time and wherever they may be. However, instead of referring to the place where they are, the article should refer to the person or body guarding them or having custody of them, since it implies the existence of someone who can affirm that the archives and documents belong to a special mission.

Article 22

We suggest that in this article account should be taken of the international agreements at present in force. Paragraph 1 should mention the International Telecommunication Convention of Geneva of 1950 and its relevant regulations.[o] The following paragraphs, which concern the official correspondence and the bag of the special mission, should take into account the provisions of the Convention concerning the Universal Postal Union.[p]

Article 39

The obligation of a third State would exist only if such a third State is a party to the Convention. Transit authorization is not sufficient to make this article compulsory for a third State which is not a party to the Convention. Moreover, in allowing a special mission to pass through its territory, a third State which is not a party to the Convention may impose the conditions to which such an authorization is subject.

11. Israel

Transmitted by a note verbale *of 24 April 1966 from the Ministry for Foreign Affairs*

[*Original: English*]

1. In presenting these observations, the Ministry for Foreign Affairs wishes first to pay particular tribute to the outstanding work done by Professor Milan Bartoš, the Special Rapporteur, in drawing up his two Reports and in contributing so much to the Commission's work on the topic of Special Missions.

The Ministry for Foreign Affairs would also like to express its hope that the Commission will succeed in completing this topic before the expiration of the term of office of its present members.

2. The question of the final form in which the draft articles are to be couched will undoubtedly require careful consideration. An international convention on the lines of the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations would be an achievement well worth striving for, yet it is felt that it may eventually prove difficult to achieve the codification of this topic by means of a convention drawn up in a conference of plenipotentiaries. It would therefore appear desirable for the Commission to explore any other possibilities that may suggest themselves.

3. It is hoped that it may be found possible, dealing as they do with a closely related subject, to bring the draft articles even more closely into line with the 1961 Vienna Convention (and, where appropriate, with the 1963 Vienna Convention), both with regard to the language used and the arrangement of articles.

4. With this object in mind, it would be most helpful if an article containing definitions of terms frequently used could be drawn up and embodied in the draft, giving those terms the same meanings as employed in the 1961 Vienna Convention, and, whenever possible, by making use of cross-references to the said Convention.

The definitions would probably include such terms as: special missions, head of special mission, members of special mission, staff (diplomatic, administrative and technical, service, personal), premises, etc.

5. It is believed that the draft articles would gain by being shortened, and that this could be achieved by such cross-references and by combining some articles.

Article 4

6. It is suggested to insert the words "as appropriate", between commas, after the word "shall" appearing in the first line of paragraph 2, so as to make it more adaptable to various situations that may arise, and indeed the expression "as appropriate" is made use of in the corresponding passage in article 9, paragraph 1, of the 1961 Vienna Convention.

Article 6

7. This article distinguishes between "a delegation" and "the staff" (see, for example, paragraph (5) of the Commentary to that article). Paragraph 3 of the article provides for the limiting of the size of the staff, but keeps silent about the size of the delegation. Article 11 of the 1961 Vienna Convention provides for the possibility of limiting the size of "the mission", which in the present article would mean "the delegation", and it would appear that a similar provision would be desirable in the present article. Paragraph 3 would then read:

"In the absence of an express agreement as to the size of a special mission and its staff, the receiving State may require that the size of the special mission and its staff be kept within limits ... etc."

Article 7

8. It would appear that this article could usefully be made to incorporate article 41.

Article 8

9. With regard to the expression "any person" used in paragraph (*c*) it may perhaps be desirable to include an explanation in the Commentary, such as given by the Special Rapporteur in paragraph 14 of the Summary Record of the 762nd meeting of the Commission.[q]

Articles 9 and 10

10. There would seem to be no necessity for applying different criteria in article 9, paragraph 1 and article 10, and it is therefore suggested to combine them as follows:

"Except as otherwise agreed, where two or more special missions meet in order to carry out a common task, or on a ceremonial or formal occasion, precedence among their respective members and staff shall be determined by the alphabetical order of the names of the States concerned."

Article 12

11. It is observed that it may be preferable to group this article together with articles 43 and 44 towards the end of the draft.

Article 13

12. The phrase "in the absence of prior agreement" is used preceding the residual rule, whereas the expression "except as otherwise agreed" is used in article 9, and the expression "unless otherwise agreed" in articles 21 and 26. It is suggested that the same terminology be employed to express the residual rule throughout the draft.

Article 16

13. Although the right of the "third State" concerned to withdraw its consent appears to be implied in the wording of paragraph 1, it may be preferable to accord such an important eventuality a separate paragraph (on the lines of paragraph (8) of the Commentary to that article), which could at the same time provide for an express agreement to the contrary:

"3. Unless otherwise agreed between the third State and the sending States concerned, the third State may at any time, and without being obliged to give any reason, withdraw its hospitality for special missions in its territory and prohibit them from engaging in any activity. In such a case, the sending States shall recall their respective special missions immediately, and the missions themselves shall cease their activities as soon

[o] International Telecommunication Union, Telegraph Regulations (Geneva Revision, 1958).

[p] United Nations, *Treaty Series*, vol. 364, p. 3.

[q] *Yearbook of the International Law Commission, 1964*, vol. I, p. 253.

as they are informed by the third State that hospitality has been withdrawn."

With regard to paragraph 2, it is suggested to use the expression "the sending States", as obviously there must be more than one "sending State".

Article 19

14. It would appear desirable, from a practical point of view, to add to paragraph 1 a provision similar to the last sentence of article 31, paragraph 2, of the 1963 Vienna Convention: "Such consent may, however, be assumed in case of fire or other disaster requiring prompt protective action."

Consideration may, perhaps, be given to drawing a distinction between the case of a special mission residing in a town where the sending State has a permanent mission and that of a special mission in a town where there is no such permanent mission, and allowing the aforesaid proposition only in the former case.

Articles 23 to 32 inclusive

15. These articles, which deal mainly with questions of exemptions and immunities, mention alternately "the staff" of the special missions in some places, and the "diplomatic staff" in others, without this distinction being always really justified, especially in view of the provisions of article 32. It is therefore suggested to use the term "staff" throughout the aforesaid articles and to adjust article 32 accordingly.

Article 39

16. Attention is drawn to the use, in paragraph 1, of the expression "in a foreign State"; and it is suggested that it may perhaps be preferable in the context to say "in another State", in view of the fact that except for a person's "own country" (which expression is also used in that paragraph) every other country is a "foreign State", including the "third State" (likewise mentioned in that paragraph).

In respect of paragraph 4, it is suggested to delete the phrase "either in the visa application or by notification" and to substitute the word "notified" for the word "informed", in the third line of that paragraph.

Article 42

17. It is submitted that the wording of the second paragraph of the Commentary is not very clear.

As to the substance of that article, it is suggested that the Commission may wish to reconsider the proposal to include a provision enabling members of a special mission, in particular instances, to engage in some professional or other activity whilst in the receiving State, e.g., by substituting a comma for the full-stop at the end of that article, and adding thereto: "without the express prior permission of that State".

Articles 43 and 44

18. (*a*) Article 43 speaks of "persons enjoying privileges and immunities" and "members of the families of such persons", instead of referring to "members of the special mission, its staff, families, etc.", which would seem to be more in keeping with the language employed elsewhere in the draft articles;

(*b*) Article 43 requires the receiving State to place at the disposal of the persons mentioned therein means of transport "for themselves and their property". Article 44, however, which deals with a very similar situation, likewise necessitating the withdrawal of the special mission and all that goes with it, speaks of "its property and archives", but makes no effective provision for the removal of such "property and archives" from the territory of the receiving State;

(*c*) Article 44, paragraph 1, provides for the permanent diplomatic mission or a consular post of the sending State to "take possession" of the "property and archives", but there may not exist any such diplomatic mission or consular post of the sending State in the territory of the receiving State;

(*d*) Article 44, paragraph 3 (*b*), would also not meet the case, as there may not be any mission of a third State in the territory of the receiving State prepared to accept the custody of the "property and archives" of the stranded mission of the sending State.

It would, therefore, appear to be necessary to make express provision for the removal of the aforesaid archives from the territory of the receiving State in the cases envisaged in articles 43 and 44.

CHAPTER III, SECTION C, OF THE REPORT

19. (a) *Paragraph 48.* Whilst expressing full appreciation of the work done by the Special Rapporteur in preparing the draft provisions "concerning so-called high-level special missions",[r] it is felt that there is no particular necessity to include this subject in the articles on Special Missions.

(b) *Paragraph 50.* The question of the relationship between the articles on special missions and other international agreements is undoubtedly of great importance, and it is hoped that it will be given further consideration by the Commission in due course.

12. Jamaica

Transmitted by a note verbale *of 3 May 1967 from the* Chargé d'Affaires a.i. *to the United Nations*

[*Original: English*]

Article 2

A rule on the matter of overlapping authority should not be included in the articles. The question as to whether the task of a special mission is to be deemed to be excluded from the competence of the permanent diplomatic mission is one that ought to be left to the particular agreement governing that mission between the sending State and the receiving State.

Article 9

Since the draft articles are to be the basis of an international convention on special missions, the alphabetical order of the names of States should be prescribed for determining the order of precedence of special missions, and for the sake of uniformity the order should be that used by the United Nations.

Article 11

Since any discrimination is contrary to the principles of international law, the inclusion of a rule of this would be unnecessary.

SECTION C[s]

Because missions led by Heads of State, Heads of Government, Ministers of Foreign Affairs and Cabinet Ministers are perforce conducted at the level of highest consideration, any attempt to draft rules of law to govern such missions would be a retrograde step.

13. Japan

Transmitted by a letter of 27 July 1966 from the Deputy Permanent Representative to the United Nations

[*Original: English*]

GENERAL REMARKS

1. There is at present no established international practice with respect to special missions, and the matters concerning

[r] See foot-note g above.

[s] *Ibid.*

them are left to the solution on the "case-by-case" basis. The Government of Japan sees no need, at the present stage, to formulate a set of special rules governing them, but rather considers it more practical to allow the matter to be handled as each particular case arises. (Therefore, even in case codification be attempted, rules should remain as simple as possible.)

2. The following comments on the International Law Commission draft are submitted on the premise that the work of codification concerning the special mission will be carried out more or less on the line of the Commission's draft. They shall not in any way affect the basic position of the Japanese Government as set forth in paragraph 1 above.

3. Provisions concerning the so-called "high-level" special missions also had better be dispensed with for the same reason as that stated in paragraph 1.

COMMENTS ON THE DRAFT OF THE INTERNATIONAL LAW COMMISSION

Definition clause

1. In definition clause it is desirable to specify clearly and precisely the definition of the term "member" and the scope and nature of the term "special missions". It seems imperative, in particular, to define "special missions" clearly so as to confine them to only those which really deserve to enjoy the privileges and immunities envisaged in the present draft articles.

Basic position regarding part I

2. Since the institutional and procedural aspects of the special missions covered in the present part still remain fluid today, it is premature to formulate detailed rules out of them. The codification at the present stage should therefore be carried out in a concise form in which only basic principles are enumerated, so as to allow room for natural development of customary law.

Article 1

3. According to Comment (3) * the International Law Commission seems to consider it possible to send and receive special missions even in the absence of recognition between the two States concerned. However, paragraph 2 of the present article might be construed to mean that at least the existence of recognition is a prerequisite to sending and reception of special missions. It seems necessary, therefore, to add complementary provisions in accord with the tenor of the Comment cited above.

Article 2

4. With reference to the question raised in Comment (5), concerning whether or not a rule on the relationship between special missions and permanent diplomatic missions with regard to their competence should be inserted in the final text of the articles, the Government of Japan is of the opinion that such a problem as concerns the division of authority and functions had better be left to a settlement between the parties concerned in each individual case, and that no such provisions are necessary.

Article 8

5. As regards paragraph 2 which provides for a direct notification from the special mission to the receiving State, the Government of Japan considers it doubtful whether or not such a practice may well be called "a sensible custom", as it is presumed to be in Comment (8).

Article 16

6. The Government of Japan requests clarification as to the following two points for the purpose of interpretation:

(*a*) Is it not that "the third State" as referred to in the present article, once it has accorded its consent to the functions of special missions, has the rights and assumes the obligations of the "receiving State" under the present draft?

(*b*) If the definition of the special mission specified in article 1 of the provisional draft articles of the twelfth session of the International Law Commission is to be adopted, the special missions which are engaged in activities exclusively in the third State may not come under the category of "special missions" as defined. How can this problem be solved?

Basic position regarding part II

7. The Government of Japan accepts, from the standpoint *de lege ferenda*, the basic position of the Commission's draft to accord to special missions, in principle, similar privileges and immunities to those due to permanent diplomatic missions, on the condition that the scope and nature of the special mission be precisely defined as suggested in the present comment on definition clause.

It also admits that it will be necessary to make somewhat detailed provisions in part II, once the fundamental line of thought is taken up, since the part deals with substantial rights and obligations of the States concerned. (This is not the case with part I. The institutional and procedural aspects dealt with in part I would not, even if left to practice alone, seriously affect the interests of the States concerned.)

Relationship to other international agreements

8. It is deemed advisable to adopt the same provisions as contained in article 73 of the Vienna Convention on Consular Relations, which provides:

"1. The provisions of the present Convention shall not affect other international agreements in force as between States parties to them.

"2. Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof."

14. Malawi

Transmitted by a note verbale *of 20 January 1966 from the Permanent Mission to the United Nations*

[*Original: English*]

The Permanent Mission of Malawi has the honour to inform the Secretary-General that the draft provisions on special missions have been studied with interest by the Government of Malawi and appear to be unexceptionable. The Government of Malawi has no comments or suggestions to make but looks forward to receiving news of the Commission's future work regarding this convention.

15. Malta

Transmitted by a note verbale *of 13 May 1966 from the Permanent Representative to the United Nations*

[*Original: English*]

SECTION B OF CHAPTER III: DRAFT ARTICLES ON SPECIAL MISSIONS

Article 2

The question of overlapping authority resulting from the parallel existence of permanent diplomatic missions and special

* " Comment", here and hereafter, signifies comments on each draft article appearing in the report of the International Law Commission on the work of its seventeenth session (A/6009). [Note of the Government].

missions, is of considerable importance and it is felt that a rule on the matter should be included in the final text of the articles. The absence of any such rule could leave open to question the validity of acts performed by the special mission and this is most undesirable. The competence or authority of a mission is a fundamental issue which unless regulated could undermine the essential quality of a mission, namely its authority to function.

As to the nature of the rule that ought to be included in the final text, it is agreed that certain powers are retained by the permanent mission notwithstanding that a special mission is functioning. These functions, however, relate to matters touching the special mission itself: its powers, including their limits and their revocation, certain changes in the composition of the mission, particularly those affecting the head of mission, and the recalling of the special mission. On the other hand, once the sending State has deemed it necessary or expedient to send a special mission, it is to be presumed, in the absence of an express statement to the contrary, that the task of that mission is temporarily excluded from the competence of the permanent diplomatic mission.

Article 11

The question as to whether an appropriate rule should be included to deal with non-discrimination between special missions by the receiving State, appears to be limited in this article to discrimination "in the reception of special missions and the way they are permitted to begin to function even among special missions of the same character"; while the broader question of non-discrimination is referred to in paragraph 49 of the Report (page 38).

It is felt that a special provision in article 11 to deal with non-discrimination is not appropriate since the scope of any such provision would be either too limited or, if extended to cover non-discrimination in general, out of place. On the other hand it is felt that a new article corresponding to article 47 of the Vienna Convention on Diplomatic Relations and article 72 of the Vienna Convention on Consular Relations should be included in the final text. The fact that the nature and tasks of special missions are so diverse should not justify discrimination as between States in the application of the rules contained in the articles.

SECTION C OF CHAPTER III

Regarding paragraph 48 of the Report, it appears that a distinction should be made between the normal special missions and those headed by a distinguished person. The articles as drafted do call for slight modifications when the mission is led by persons holding certain high offices, and these are reflected in the draft provisions prepared by the Special Rapporteur. It is therefore felt that special rules should be drafted and included in the final text.

Paragraph 49 has been commented upon above but there are no comments to offer on paragraph 50 especially if the comments on paragraph 49 are accepted.

DRAFT PROVISIONS CONCERNING SO-CALLED HIGH-LEVEL SPECIAL MISSIONS PREPARED BY THE SPECIAL RAPPORTEUR [t]

It is not understood why paragraph (*c*) of Rule 2, which is extended to a special mission led by a Minister for Foreign Affairs (paragraph (*c*) of Rule 4) or by a Cabinet Minister (paragraph (*a*) of Rule 5) is not also extended to the case of a special mission led by a head of Government.

If it is accepted that a special mission led by any of the distinguished persons mentioned in the draft provisions in question is a high level special mission (and the inclusion of special rules to govern these missions implies such an acceptance), then paragraph (*d*) of Rule 2 should, *mutatis mutandis*, be applied to the other high-level special missions. This is further justified by the rule, which has been proposed in respect of all such missions, that the level of the mission changes as soon as the head of mission leaves the territory of the receiving State.

[t] *Ibid.*

16. Netherlands

Transmitted by a letter of 13 December 1966 from the Deputy Permanent Representative to the United Nations

[*Original: English*]

GENERAL REMARKS

Subjects not covered

1. In its comments of March 1958 on the International Law Commission's 1957 draft for "articles concerning diplomatic intercourse and immunities" the Netherlands Government made some remarks (see p. 124 of the *Yearbook of the International Law Commission, 1958*, vol. II) on *the application of the articles in time of war*, the functioning of *the principle of reciprocity*, the possibility of taking *reprisals* and the administration of *emergency law*. The same remarks are applicable to the draft articles concerning special missions.

Terms and definitions

2. The Netherlands Government has taken note of the Commission's intention (see para. 46 on p. 38 of report A/6009) to give in an introductory article definitions of some of the terms used in the draft. It seems unnecessary to define terms such as "head of the special mission", which speak for themselves, or "members of the administrative and technical staff", which are used in this draft in the same sense in which they are used in the Vienna Convention on Diplomatic Relations of 1961. Some terms, however, are used in senses differing from those in which they are used in the Vienna Convention. This stands to reason, because the difference in types of missions (some special missions may consist of a number of officials of equal rank, while the permanent diplomatic mission is headed by a single official) must inevitably lead to their terminologies differing in some respects. In such cases definitions would indeed seem desirable.

Sometimes a term is used in different senses in the various articles of the draft. There should be greater consistency of terminology.

Examples:

"*Members of the special mission*": the term "members of the mission" in the Vienna Convention (art. 1, para. (*b*)) is used to denote "the head of the mission and the members of the staff". The term is only used in this all-embracing sense in articles 21 and 37 (2) of the present draft. In articles 4 (1), 6 (1) and 18 the term includes the head of mission but not the members of the staff. In other articles the term denotes neither the head of mission nor the members of the staff.

"*(Members of) the staff of the special mission*": as already observed, the members of the staff and the members of the mission are referred to separately almost everywhere in the draft, in contrast with the Vienna Convention (art. 1, para. (*c*)) in which the word "staff" is used to denote all the members of the mission except the head. Once, however, the term is used in the same sense in the draft as it is in the Vienna Convention: article 23 (1). "Staff" is used in a third sense in article 6 (3), where it is used as a synonym for "mission" (cf. paras. 6 and 7 of the Commission's commentary), thus including the head. It is not clear in which sense the term "staff" is used in article 6 (2); paragraph 5 of the Commission's commentary is ambiguous on this point: it states that the special mission, even if it consists of more than one member, "may be accompanied by" a staff,

though it expressly refers to the definition of "staff" in the Vienna Convention.

"*Members of the diplomatic staff*": the staff/mission division is consistently maintained with respect to diplomatic staff, so the latter is always referred to in the articles concerning diplomatic staff as a group *distinct from* the members of the mission (see art. 24 ff.). It is not clear what function and status within the entire special mission the International Law Commission intends to accord *diplomatic* staff. It should be noted that members of the mission (mission in the restricted sense, as used in the draft) can also have diplomatic ranks (compare paras. 3 and 4 of the Commission's commentary on art. 9), but that all the members of the diplomatic staff do not necessarily have diplomatic ranks (see end of para. 5 of the Commission's commentary on art. 6).

"*Premises of the special mission*": the corresponding term in the Vienna Convention (art. 1, para. (*i*)) also covers the official residence of the head of mission. Under article 15 of the present draft the term does not cover the official residence. The fact that this term is used in the restricted sense both in article 19 and in article 40 (2) is acceptable.

"*Private staff*": this term, which does not occur in the Vienna Convention, is used in the present draft in article 34 and article 36 (2). The use of this term is confusing, because it creates the impression that it indicates part of the mission's staff. It should be replaced by the term "private servants", in conformity with article 8, paragraph 1 (*d*).

"*All persons belonging to special missions*": this term, which does not occur in the Vienna Convention, is used in the present draft in article 40 (1).

Scope and legal status of the regulation

3. Although the far-reaching privileges and immunities (codified in the Vienna Convention of 1961) that are extended to permanent diplomatic missions can be explained as being a result of the inclination to respect what history has made conventional, this cannot be said of "*ad hoc* diplomatic missions". This and the fact that such a variety of inter-governmental activities are covered by the term "special mission"* are arguments in favour of the narrowest regulation possible. Where necessary the Government concerned can always make additional arrangements for each of certain special missions separately, or bilaterally, or regionally in the relations between certain States.

Another argument in favour of narrow regulations is the frequency of special missions.

Next, the Netherlands Government would point out the danger inherent in the creation of precedents. If the present arrangement is raised to the level of that in force for permanent diplomatic missions before adequate assurance has been obtained that each of the rules is a *sine qua non* for the independent discharging of duties, the status of government representatives at international conferences and the status of officers of international organizations might be determined too readily by the same regulations.

Finally, the difference in function between special missions from countries with centrally planned economies and from countries with market economies should be borne in mind. Not only is the number of cases in which the study of commercial possibilities or the establishment of commercial relations figure among the duties of government representatives greater in countries with centrally planned economies than in countries with market economies, but views on the duties of governmental commercial missions in countries where all commerce is a state activity differ from those in countries where commerce is left primarily to private enterprises. To grant privileges and immunities to commercial missions acting on behalf of a State would mean favouring these States more than those that usually leave the sending of commercial missions to trade and industry.

4. Against the arguments in favour of limitations is the fact that in some regions, particularly in the newly independent countries, privileges and immunities for government representatives are valued more highly than in countries with long-standing diplomatic traditions. Some newly independent countries look upon such privileges and immunities not only as means of facilitating the discharge of duties but also as symbols of their recently acquired independence.

Moreover, missions to territories lacking stable governmental control might need additional safeguards to enable them to discharge their duties smoothly and without interruption.

Therefore, the Netherlands Government would not wish to narrow down the regulations by leaving out any rule that cannot be applicable to all categories of special mission. Many of the rules drafted by the International Law Commission, although not applicable under all circumstances, may without doubt be of great value in some situations and constitute a contribution towards the progressive development of international law.

It would be much better if restriction could be secured by giving States greater liberty to depart from the drafted rules whenever it is desirable to do so.

The Special Rapporteur's idea (see para. 26 of the Second Report by M. Bartoš) [u] was that it should be apparent from the text of each of the articles from which rules the parties would be free to derogate. There is evidence of the same idea in expressions such as "except as otherwise agreed" in articles 6 (3), 9 (1), 13 (1), 21 and 41, and in the wording of the articles, e.g., "normally" in article 7, "in principle" and "the receiving State may reserve" in article 14; see also the second sentence in article 34.

Therefore the Netherlands Government suggests that the rules that will apply to each mission be made narrower than is proposed by the Commission *(jus cogens)* and that on the other hand more liberty be given than is given in the Commission's draft *(jus dispositivum)*:

To suspend some rules by mutual consent (i.e., "unless otherwise agreed...") or

To supplement the rules by mutual consent by the simple method of declaring additional rules already drawn up incidentally applicable ("at the request of the sending States, and provided the receiving State does not object...").

Apart from this, additional agreements of greater scope may naturally be entered into, but it is not necessary specifically to provide for this in the present draft.

It is this train of thought that has prompted the Netherlands Government's comments on each article. This arrangement is also better suited to the progressive development of this chapter of international law, much of the substance of which has yet to be moulded and refined in accordance with the dictates of practical experience gained by States.

ARTICLES

Articles 1 and 2

5. These articles do not indicate clearly under what circumstances a mission has the status of "special mission". Although the rules governing special missions cannot be meant to apply to every conceivable group of travelling government representatives, articles 1 and 2 create the impression that every mission charged

* Cf. the categories enumerated in paragraphs 79 to 117 of the first report by the Special Rapporteur, *Yearbook of the International Law Commission, 1964*, vol. II, pp. 83-88. [Note of the Government.]

[u] *Yearbook of the International Law Commission, 1965*, vol. II, p. 113.

with a specific duty and accepted by the receiving State (or possibly accepted tacitly only, as is implied in para. 4 (*c*) of the Commission's commentary on art. 1) is a "special mission". This imprecision might result in a receiving State that did not wish to object to the announced visit of some mission being caught unawares by the sending State demanding for the mission the status, including the privileges and immunities, of a special mission after the mission's arrival.

The Netherlands Government believes that a mission should only be a special mission if both sending State and receiving State desire to accord it the status of special mission. Accordingly, the Netherlands Government proposes that article 2 be amended to read:

"The task of a special mission *and its status as such* shall be *determined* by mutual consent... etc."

6. With reference to the question in paragraph 5 of the Commission's commentary on article 2, the Netherlands Government can see no need for any rule delimiting the special mission's and the permanent mission's competencies. In practice it might be a good thing if Governments were at liberty to consult one another through different channels.

Articles 3 and 4

7. The Netherlands Government believes that, in view of the variety of activities that can be included under the term "special mission", the receiving State should be given the opportunity, except if otherwise agreed, to state before a mission's arrival that a certain person is not acceptable as a member of the mission. The present article 3 does not offer this opportunity, and the present article 4, particularly in view of paragraph 2, only makes it possible for a person to be declared *non grata* after he has arrived in the receiving State.

In the opinion of the Netherlands Government the proposed clause need only apply to the members of a mission and not to the members of a mission's staff.

The contingency could be provided for either by wording paragraph 2 of article 4 more broadly or by deleting the paragraph entirely, or by reversing the provision of article 3:

"Except as otherwise agreed, the sending State *must make certain that the agreement of the receiving State has been given for the persons it proposes to designate as head and members of the special mission.*"

Article 5

8. There is no objection to this article, although it is doubtful whether there is any need for it.

Article 6

9. See comments made on the second example under 2 above.

Articles 9 and 10

10. The Netherlands Government believes that the whole matter of precedence had better be left to the protocol in force in the receiving State, as is done in article 10 for ceremonial missions. There is no need for an internationally applicable precedence regulation, except for multilateral conferences that are not convened by a receiving State. In fact, such conferences are outside the scope of the present articles. Therefore it is suggested that articles 9 and 10 be combined, leaving out paragraph 1 of article 9 and making article 10 applicable to all special missions.

Article 11

11. With reference to the question in para. 12 of the Commission's commentary: it is doubtful whether there is any need for a clause on non-discrimination between special missions.

Article 13

12. The Netherlands Government believes that cases in which no prior agreement is sought and reached as to the location of a special mission's seat are less rare in practice than the International Law Commission states in para. 4 of its commentary. It is not at all customary to consult the receiving State in advance on the matter of the location of a special mission's seat, nor for the receiving State to make or await suggestions on the subject, particularly when the special mission has duties primarily of a political nature that can be discharged within a relatively short period (varying from a few hours to a few days), which is very often the case. It is more customary for this kind of special mission to be housed by the permanent mission of the sending State or to find accommodation themselves, in or in the immediate vicinity of the locality of the seat of Government of the receiving State. In such cases the special mission's address is either care of the permanent mission or an address given beforehand by or on behalf of the sending State to the receiving State, whichever the sending State opts for. As a rule the receiving State will raise no objections against the choice of seat, although it is entitled to do so in exceptional cases.

Even in countries where in these days the movement of foreigners in general and of foreign diplomats in particular is still severely restricted, the receiving State need not necessarily interfere in matters concerning the location of the seat, provided a locality is chosen near that of the Government.

The Netherlands Government proposes that article 13, paragraph 1 be amended to read:

"1. In the absence of prior agreement, a special mission shall have its seat at the place *chosen* by the *sending* State, *provided the receiving State does not object*".

Article 15

13. Although in general there need not be any objection to using the flag in the manner laid down in this article, this article does not seem acceptable as a *jus cogens* rule in view of the diversity of the activities included under the term "special mission". The two States concerned should be free in each case to deviate from this article by mutual agreement. Therefore it is suggested that the article open with the words: "*Except as otherwise agreed*".

14. The words "*when used on official business*" should be added to the phrase "and on the means of transport of the mission", in conformity with article 29, paragraph 2, of the 1963 Vienna Convention on Consular Relations. If it appears desirable in a certain contingency to display flag and emblem on vehicles even when the vehicles are not in official use, some agreement can always be reached on the matter.

Article 17

15. The last phrase, "having regard to the nature and task of the special mission" has little or no effect on the general obligations of the receiving State described in the main clause of this article. In point of fact, the receiving State is also obliged "to have regard to the nature and task" of the permanent diplomatic or consular mission under the terms of article 25 of the 1961 Vienna Convention on Diplomatic Relations or under the terms of article 28 of the 1963 Vienna Convention on Consular Relations, even though the aforesaid phrase is not included in these two articles.

The fact that the functions discharged by special missions as distinct from those discharged by permanent diplomatic and consular missions are not necessarily in the interests of both the sending State and the receiving State prompts the placing in the present draft article of a somewhat different obligation on the receiving State with respect to special missions. Although maximum obligations, i.e., to provide full facilities, devolve upon the receiving State as regards permanent missions, the

receiving State need only give a special mission the minimum of aid it requires to enable it to discharge its mission. The States concerned can always come to some agreement for each special case.

The Netherlands Government suggests that article 17 be amended to read:

"The receiving State shall accord to the special mission *such* facilities *as may be necessary* for the performance of its functions."

Article 18

16. When comparing the present article with article 21 of the 1961 Vienna Convention, we see that no mention is made in the present article of aid in the acquisition of land or buildings, an omission of which the Netherlands Government approves. On the other hand, the present article is more categorical: assistance in obtaining accommodation for members of the staff is made obligatory under all circumstances, whereas in the second paragraph of article 21 of the Vienna Convention only "where necessary". The Netherlands Government sees no reason for this extension. The term "special mission" covers so many different situations that no general rule can be laid down to the effect that the receiving State should help any and every kind of special mission. The various diplomatic missions all have comparable functions, all of which are in the interests of both the sending State and the receiving State, but the functions of the special missions vary considerably and occasionally a special mission will fulfil a mission that is only in the interest of the sending State. Therefore it is suggested that paragraph 18 open with the words: "*Where necessary...*".

17. According to paragraph 14 of the commentary, the last phrase in article 18 refers to special missions whose functions necessitate their having office premises or living accommodation in different or changing localities. This point might be made clearer by replacing "if necessary" by: "...and, *if the situation should so require*, ensure that such premises...".

Article 19

18. *Paragraph 1.* It was not without some hesitation that the Netherlands Government concluded that the provision in the first sentence of this paragraph should be accepted. It assumes that the term "premises" does not as a matter of course include the residence of the mission's head or the dwellings occupied by the members of the staff. (Cf. the comment on the fourth example in section 2 of the present document and the end of paragraph 3 of the Commission's commentary.)

Here again the difficulty lies in the great diversity of special missions. Some of them may require a certain degree of inviolability for their office premises to enable them to discharge their duties without let or hindrance; other missions only need the personal inviolability of their members (article 24) and the inviolability of their documents (article 20). The matter is complicated by the fact that, as the Netherlands Government sees it, the minimum of inviolability cannot be determined by rules of *jus dispositivum*, to be settled by the States concerned in each particular case.

Therefore the Netherlands Government approves of the first sentence, but with the specifications and restrictions given in sections 19 and 20 below.

19. By analogy with article 31, paragraph 2 of the 1963 Vienna Convention on Consular Relations the following clause should be added to this paragraph:

"*The consent of the head of the special mission may, however, be assumed in case of fire or other disaster requiring prompt protective action.*"

This addition would seem to be required in view of the frequency with which special missions find accommodation in buildings, such as hotels, where other people live and work.

20. *New paragraph.* Also for the reason given in the preceding section it would seem advisable to have a new paragraph after paragraph 1, viz., the second sentence of article 19, paragraph 1 of the second report by M. Bartoš:

"2. *Paragraph 1 shall apply even if the special mission is accommodated in a hotel or other public building, provided that the premises used by the special mission are identifiable.*"

21. *Paragraph 2.* No comment.

22. *Paragraph 3.* The immunity from search of the mission's means of transport is taken from article 22, paragraph 3 of the Vienna Convention on Diplomatic Relations, but because of its unspecific wording it might also be interpreted so widely in that context as to give far greater immunity than was ever intended. It would be hazardous to give a more detailed description in the draft article of the circumstances under which a means of transport should be "immune from search", since it would foster the placing of a wide interpretation on the corresponding article 22, paragraph 3 of the Vienna Convention. Therefore it is proposed that the word "search" be deleted from paragraph 3 of the draft article. In so far as this word refers to the premises, the furnishings and other objects on the premises such immunity is already given by paragraph 1. In so far as "search" refers to other objects used for the work of the special mission, but located outside the premises (and this is an amplification that goes beyond article 22 of the Vienna Convention), such immunity would seem of no practical importance in view of the immunity of persons (article 24) and of documents (article 20).

Article 22

23. The following introductory clause should be inserted in article 22 and subsequent paragraphs renumbered:

"1. *Unless otherwise agreed, special missions shall have freedom of communication to the extent provided in this article.*"

Article 23

24. It is not clear from the first paragraph why, in addition to the sending State and the head of the special mission, the members of its staff should also be mentioned here; this phrase does not appear in article 23 of the Vienna Convention on Diplomatic Relations. No explanation of this seemingly superfluous addition is given in either the Commission's report or in the reports by M. Bartoš.

25. In the opinion of the Netherlands Government there is virtually no need for the exemption from taxation mentioned in article 23 for any of the special missions in view of their temporary character. This exemption, which to the diplomatic missions is a traditional privilege rather than a necessity, is not required for the due performance of the functions of temporary missions. The granting and registering of the exemption causes the receiving State more trouble than it is worth. Therefore it is suggested that article 23 be deleted.

Article 24

26. This article extends to the members of special missions (and to the members of their diplomatic staffs) the envoy's personal inviolability that has typified diplomatic relations from time immemorial. It is undeniable that personal inviolability is essential if a mission is to perform its functions without let or hindrance, and it should outweigh any interests involving the legal order within the receiving State, at least as regards permanent missions and some special missions. However, these considerations do not apply to all special missions.

Accordingly, the Netherlands Government would join the minority referred to in paragraph 2 of the Commission's commentary and propose that personal inviolability be restricted to acts performed in the fulfilment of the mission's duties. A second paragraph stipulating that "*at the request of the sending State,*

and provided the receiving State does not object, personal inviolability shall be extended to include *all* deeds" might be added to article 24 modified in the manner described.

If this proposal is accepted, a new article should be inserted after article 24 governing, for cases for which extended personal inviolability has not been agreed upon, arrest and detention for deeds falling outside the scope of the performance of functions proper, in the same way as is done in articles 40, 41 and 42 of the 1963 Vienna Convention for consular officers.

Article 25

27. The *first* paragraph of this article should be deleted. The States concerned can enter upon additional agreements to cover any special cases of private residences or accommodation needing protection.

28. The *second* paragraph is superfluous in view of the provisions of articles 20 and 22. Therefore this paragraph can be deleted, too.

Article 26

29. *Paragraphs 1 and 4.* If the proposal put forward in section 26 is accepted, paragraphs 1 and 4 of article 26 will have to be restricted in the same way as article 24 in so far as immunity from criminal jurisdiction is concerned.

30. *Paragraph 2.* Apart from the question whether complete or limited immunity from criminal jurisdiction should be granted, it might be considered to what extent members of special missions should be withdrawn from the civil and administrative jurisdiction of the receiving State. The Netherlands Government believes that the legal order, particularly the legal protection of third persons who come into contact with members of the special mission, demands that the liability under civil law of members of a special mission be affected as little as possible by immunity. The opposing interest, viz. the undisturbed performance of the mission's functions, is hardly affected by civil and administrative jurisdiction. It is unnecessary to allow intrusion upon the legal order of the receiving State to the same extent as is required when ensuring personal immunity from criminal jurisdiction. The Netherlands Government subscribes to the view held by the minority and described in paragraph 2 of the Commission's commentary, and therefore suggests replacing paragraph 2 by a rule analogous to the one in article 43 of the 1963 Vienna Convention on Consular Relations.

Article 28

31. The deletion of article 28 is proposed for the reasons given in section 25 for article 23.

Article 30

32. With reference to paragraphs 2 and 3 of the Commission's commentary the Netherlands Government states that it endorses the view that there is no need to supplement this article as proposed by the Special Rapporteur.

Article 32

33. No comments, except for the necessity of formal adaptation to article 26 if the proposal to change this article is adopted.

If the proposal to change article 26, paragraph 2 is not adopted, article 32 should be amended in such a manner that liability for damage resulting from road accidents falls outside the scope of the immunity.

Article 33

34. Liability for damage resulting from road accidents should be excluded from the immunity.

Article 34

35. For the use of the term "private staff" see comment on the fifth example in section 2.

Article 35

36. This article is worded in such a manner that the permission of the receiving State would seem to be required whenever the head or members of the special mission or its diplomatic staff wish to bring members of their families with them. Even though circumstances are conceivable in which the receiving State would advise against bringing members of families or would even feel obliged to forbid it, it does not seem right to make it a general rule that the bringing of members of one's family shall be subject to the granting of permission. It is proposed that, by and large, matters concerning the presence and the status of members of families be omitted from the rules governing special missions. Only if the sending State desired that special status be accorded to the members of the families would the receiving State's permission be required. Therefore the words: "who are authorized by the receiving State to accompany them" should be deleted from article 35, paragraph 1 instead, the following words should be added, at the end of the clause:

"... in articles 24 to 31, *in so far as these privileges and immunities are granted to them by the receiving State*".

Paragraph 2 should be amended accordingly.

37. If the proposal to amend article 26, paragraph 2 is rejected, article 35 should be amended in such a way that damage resulting from road accidents is not included in the immunity.

Article 36

38. In view of the opinion expressed in paragraph 4 of the Commission's commentary the Netherlands Government believes that article 36 can be dispensed with entirely.

Article 39

39. The last few words of paragraph 4, viz., "and has raised no objection to it", make paragraphs 1, 2 and 3 meaningless. The Netherlands Government is of the opinion that the third State is only entitled to object to the transit of special missions in exceptional cases and after stating its reasons for doing so. There would have to be an objective criterion by which to judge the justifiability of refusals to allow special missions to pass, and that criterion would have to be set down in the present article. Since it is impossible to establish such a criterion, it would be better to dispense with the article altogether.

Article 42

40. Although the Netherlands Government has no objection to this article in its present form, it wishes to endorse the original proposal of the Special Rapporteur that the provision be amplified with the words: "*and they may not do so for the profit of the sending State unless the receiving State has given its prior consent.*" (Cf. commentary on article 37 in the second report by M. Bartoš.) [v]

This amplification will become superfluous if the proposal put forward in section 26 to amend article 24 is adopted by the International Law Commission.

HIGH-LEVEL SPECIAL MISSIONS [w]

41. *Purpose of the regulation.* The proposed rules are an amplification of the articles on special missions; the articles themselves will always be applicable, in so far as the additional rules do not constitute departures therefrom (see Rule 1).

As the Netherlands Government sees it, the scope of the articles governing special missions is restricted to ensure that they will also be applicable to low-level special missions; con-

[v] *Yearbook of the International Law Commission, 1965*, vol. II, p. 140.

[w] See foot-note g above.

sequently, there is indeed a need for a special set of rules for high-level missions.

42. *Heads of State.* The position of a head of State travelling abroad can be disregarded in this regulation, because it has been regulated from time immemorial under the terms of international law. It would therefore seem wrong to lay down special rules for the head of State as head of a special mission, because, as opposed to any other high officer of State, he remains primarily head of State, whether he is is on a state visit (which also comes under the heading "special missions", see article 10) or is on holiday abroad.

It is suggested that Rules 2 and 6 be deleted and that instead it be stipulated that a head of State in charge of a special mission is entitled to his special privileges as head of State.

43. *Ministers.* The differences between the rules proposed by the Special Rapporteur for the Prime Minister (head of Government) (Rule 3), the Minister for Foreign Affairs (Rule 4) and other Cabinet Ministers (Rule 5) are very slight. Assuming that the rules will only be applicable to each of these high officers if the sending State and the receiving State wish to regard a mission headed by one of these officers as a "special mission", the Netherlands Government sees no reason for making these distinctions.

44. *Officers of State not covered.* Attention is drawn to the report of the Sixth Committee of the twentieth session of the General Assembly of the United Nations (A/6090, para. 73), in which it is pointed out that no rules have been proposed with regard to the Vice-President of a State, the Deputy Prime Minister, etc.

17. Pakistan

Transmitted by a letter of 21 February 1967 from the Acting Permanent Representative to the United Nations

[*Original: English*]

INTRODUCTORY ARTICLE

1. It is desirable to have an introductory article containing the definition of the expressions used in several Draft Articles on Special Missions. The Special Rapporteur has submitted the Introductory Article provisionally numbered as Article "0" defining the various expressions used. If the Commission adopts this Article, the text of a number of Articles would be shortened because the repetition of descriptive definitions would be avoided.

Article 7

2. Ordinarily, only the Head of Specialized Missions is authorized by virtue of his functions to act on behalf of the Special Missions whereas paragraph 2 of Article 7 seems to provide for the possibility of authorizing some other person as well. This could be spelt out more precisely by the addition of paragraph 3 to Article 7 in the following terms:

"3. Any member of the Special Mission may be authorized to perform particular acts on behalf of the Mission."

Article 17

3. Since Special Missions should be accorded facilities, privileges and immunities on the basis of the nature of their functions and tasks, it would be advantageous to insert paragraph 2 as under in Article 17 to clarify the position as well as to allay the anxieties expressed by certain Governments in their comments:

"2. The facilities, privileges and immunities provided for in Part II of these Articles, shall be granted to the extent required by these Articles, unless the receiving State and the sending State agree otherwise."

DRAFT PROVISIONS CONCERNING THE SO-CALLED HIGH-LEVEL SPECIAL MISSIONS [x]

4. At its sixteenth session, the International Law Commission decided to ask its Special Rapporteur to submit at its succeeding session an article dealing with the legal status of the so-called high-level Special Missions, in particular, Special Missions led by Heads of State, Heads of Governments, Ministers of Foreign Affairs and Cabinet Ministers. The Rapporteur prepared the draft annexed to the report of the Commission's seventeenth session, submitted to the General Assembly at its twentieth session. It is comprised of six rules which are to be appended to the Articles on Special Missions as exceptions thereto whenever the Special Missions are led by Heads of States, Heads of Governments, Ministers of Foreign Affairs and Cabinet Ministers. Inasmuch as these rules seem to pertain to the question of international status of the Heads of States, etc., it is open to doubt whether there is any particular need to include these rules in the Articles on Special Missions.

5. The Draft Articles on Special Missions as finally adopted by the International Law Commission should form the basis of a separate Convention on Special Missions, which would be originally linked with the two Vienna Conventions on Diplomatic Relations (1961) and Consular Relations (1963) without being made an appendix to either of them.

18. Sweden

Transmitted by a letter of 2 May 1966 from the Minister for Foreign Affairs

[*Original: English*]

The comments of the Swedish Government follow below. They are divided into three parts: (A) remarks of a general character; (B) observations on particular articles of the draft; (C) comments regarding the suggestions, etc. contained in section C of chapter III of the Commission's report.

A. GENERAL REMARKS

1. During the discussion of the Commission's report in the Sixth Committee at the Twentieth session of the General Assembly, the Swedish delegate, in a speech on 8 October 1965, drew attention to the problem of granting immunities and privileges to a great number of people. He pointed out that this problem arises in connexion with special missions, and he continued:

"While the great quantity of these missions makes a codification desirable, it also makes it difficult, for immunities and privileges granted to a few may not meet insurmountable obstacles, but the same immunities and privileges given to many may cause a real problem.

"Now, as Professor Bartoš demonstrated in his first report on the subject, a great many different kinds of special missions would come under the new régime: political, military, police, transport, water-supply, economic, veterinary, humanitarian, labour-recruiting and others. Consequently, a great many persons would be immune from jurisdiction, would enjoy exemption from customs control and duties, etc. This group of persons would be further widened at a later stage, when rules in the same vein were introduced for delegates to conferences convened by Governments or international organizations. Yet, we know that in many countries the public and parliaments complain already of the present extent of immunity and privileges. A wide extension would surely meet some resistance. Of course, to the extent such widening is functionally indispensable, we must try to achieve its acceptance and persuade the opponents it will meet. However, it would

[x] See foot-note g above.

seem highly desirable that the Commission sought some means of reducing the circle of missions which would fall under the special régime or else of limiting the privileges and immunities granted. It is appreciated that there are great difficulties in distinguishing between missions. Diplomatic or non-diplomatic status cannot alone be decisive; a mission consisting of a minister of defense and generals sent to negotiate military cooperation may have as great a functional need to be under the special régime as a diplomatic delegation sent to negotiate a new trade agreement. Yet, it may possibly be said that special missions, which by definition are *temporary*, generally have a somewhat more limited need at least for privileges than do permanent missions. In a great many cases the express agreement to send and receive a special mission may also be a guarantee that the receiving State will in all ways spontaneously facilitate the task of the mission, a guarantee that does not necessarily exist for permanent missions."

The Swedish Government is of the opinion that great care should be taken in order to limit the privileges and immunities as much as possible, both with respect to the extent of the privileges and immunities and with respect to the categories of persons who shall enjoy them. This should be observed especially if it is the intention that a considerable part of the provisions regarding privileges and immunities shall be peremptory.

2. The question to what extent the articles of the draft should be peremptory or *jus cogens* was also discussed by the Swedish delegate on the occasion referred to above. He said in that respect:

"My next point on the draft on special missions derives not from the report of the Commission, but from the second report by Professor Bartoš, from which [y] [in paragraph 26] it appears that States would be free to derogate from such articles only as expressly allow it. The others would be peremptory, *jus cogens*. In the draft articles submitted to us, some are found, indeed which expressly allow States to derogate, e.g., article 3. However, article 15, which provides that a special mission shall have the right to display its flag and emblem on its premises, on the residence of its head of mission, and on its means of transport, contains no clause expressly allowing two States to derogate from it by agreement in the case of some particular mission. Yet, it would be hard to see why they should be precluded from so doing. The same argument could be adduced with respect to several other articles. Indeed, I wonder if it would not be wiser to accept as basic presumption that States are free to derogate from the rules, by express agreement between themselves, unless the contrary appears."

The Swedish Government considers that as the sending of a special mission in each case depends on an agreement between the sending and the receiving States, it would be natural to let the two States decide not only on the sending and task of the mission but also, in the last resort, on the status of the mission. The status needed by a mission may vary according to the task it shall carry out and already from that point of view flexibility should be allowed. Furthermore, supposing that for some reason the receiving State would be willing to accord to a special mission only a very limited amount of privileges and supposing that the sending State in that case would prefer to accept such very limited privileges for its mission rather than not sending the mission at all, why should the States not be permitted to derogate from the régime laid down in the instrument which in due time may result from the draft? In other words, the ambition to provide through peremptory rules, an effective status for special missions may result in no mission being sent at all. It seems that the sending and the receiving States could be trusted to regulate freely if they so wish, the status and conditions of work to be accorded to the mission. The purpose of the draft regulation should rather be to provide subsidiary rules which could be applied whenever the sending and receiving States have omitted to settle the matter by agreement.

[y] *Yearbook of the International Law Commission, 1965*, vol. II, p. 113.

B. Observations on particular articles

Article 1

In its commentary to article 1, the Commission says:

"The question whether special missions can be used between States or Governments which do not recognize each other was also raised. The Commission considered that, even in those cases, special missions could be helpful in improving relations between States, but it did not consider it necessary to add a clause to that effect to article 1." [z]

The Commission's view that special missions can be helpful in improving relations between States or Governments which do not recognize each other is certainly correct. Special missions are sometimes used to remove obstacles to recognition. It is, however, obvious that special missions can be used for these purposes only if it is clear that the mere sending of a special mission does not imply recognition. If it could be successfully argued that a State by sending to or receiving from a State or Government a special mission had recognized that State or Government, a special mission would no longer be a useful instrument for *preparing the way* to recognition. It might be useful further to investigate this problem and, if it is found warranted, include in article 1 a clause stating that sending or receiving a special mission does not in itself imply recognition.

The Commission also states:

"In the case of insurrection or civil war, however, any such movements which have been recognized as belligerents and have become subjects of international law have the capacity to send and receive special missions. The same concept will be found in the Vienna Convention on Diplomatic Relations (article 3, paragraph 1 (*a*))." [aa]

First, if also belligerents have the capacity to send and receive special missions, the term "States" in the text of article 1 is hardly adequate. Secondly, the meaning of the reference to article 3 of the Vienna Convention on Diplomatic Relations is not apparent. Thirdly, supposing that States A and B are both parties to the future instrument on special missions, supposing further that there is an insurrection in State A, that State B recognizes the insurgents as belligerents, and that State A protests against that recognition as an intervention in its internal affairs, supposing finally that State B sends a special mission to the insurgents, would State A be obliged to consider the mission as a special mission under the instrument? If so, is State A to be considered as a third State in relation to the special mission? How would in that case article 16 be applied? If the insurgents were defeated and the mission captured by State A on its territory what is the mission's status? The questions could be multiplied; it therefore seems that, if insurgents recognized as belligerents are to be covered by article 1, the matter should be further explored and that more precise provisions thereon should be drafted. The short reference in the commentary is not sufficient to clarify and settle the question.

Article 3

Should the principle be accepted that all the rules concerning the status of the special mission would be applicable unless the parties agree otherwise, the phrase "except as otherwise

[z] *Yearbook of the International Law Commission, 1965*, vol. II, p. 166.

[aa] *Ibid.*, p. 165.

agreed" in this and corresponding phrases in some other articles would have to be replaced by a more general provision.

The second phrase of the article seems to be superfluous.

Article 5

The article seems to be superfluous as article 1, paragraph 1, sufficiently covers the case. If State A wants to send a special mission to State B whose relations with State C are difficult, State A would certainly in some way or other consult the authorities in State B before sending the mission on to State C. A special rule to that effect is unnecessary and could in any case be easily evaded, e.g., if State A so wishes, it could postpone telling State B about its intention to send the mission to State C until the mission has accomplished its task in State B.

Article 7

The phrase "normally" is a descriptive term and hardly appropriate here. The text should be rephrased. How, would depend upon whether or not the principle of the subsidiary character of the rules is accepted or not.

Article 14

The term "should in principle" is too vague. Paragraph 1 of the article could well be omitted.

If the articles of the draft are given only a subsidiary character, paragraph 3 could also be omitted.

Article 21

Should the principle of the subsidiary character of the articles be accepted the phrase "unless otherwise agreed" can be omitted.

If, on the other hand, the articles are in principle to constitute *jus cogens* the text should at least be reworded along these lines: "In the absence of an agreement on the matter between the sending and the receiving State, the receiving State shall, subject to its laws, etc., ensure, etc.". As now phrased the text seems to assume that the parties might agree not to accord such freedom of movement to the mission as is necessary for the performance of its functions.

Article 31

In view of the fact that there is a special article (article 35) dealing with the families should not, in paragraph 1 (*b*), the words "or of the members of their family who accompany them" be omitted? Cf. commentary (2) (*a*) to article 32. There also seems to be a discrepancy between the expression "who accompany them" in article 31, paragraph 1, and the expression "who are authorized by the receiving State to accompany them" in article 35 paragraph 1.

Article 36

The commentary should be revised. As it now stands, it is confusing, in particular because the phrase "This idea is set forth in art. 14 etc." is not exact. As appears from paragraph (3) only part of the idea was incorporated in article 14.

C. Comments on "Other decisions, suggestions and observations by the Commission"

1. The Commission would like to know the opinion of Governments on the question whether "special rules of law should or should not be drafted for so-called 'high-level' special missions, whose heads hold high office in their States".[bb] In the opinion of the Swedish Government such special rules should not be included in the draft on special missions. If the head of a "high level" mission is entitled to a special status, that would not be because he is the head of a special mission but because of his position as Head of State, Head of Government, Member of Government, etc. The rules envisaged therefore do not really pertain to the matter of special missions but to the question of the international status of Heads of State, etc.

2. The Swedish Government agrees with the stand taken by the Commission that a provision on non-discrimination would be out of place with respect to special missions.

3. The question whether the draft "should contain a provision on the relationship between the articles on special missions and other international agreements" is closely connected with the problem whether the articles should have a subsidiary dispositive character or whether some of them should be *jus cogens*. Whatever course the Commission decides to follow in this respect the character of the articles should be clearly defined in the draft.

[bb] See foot-note g above.

19. Ukrainian Soviet Socialist Republic

Transmitted by a note verbale *of 7 July 1966 from the Permanent Mission to the United Nations*

[*Original: Russian*]

The Government of the Ukrainian SSR recognizes the value and usefulness of the draft articles on special missions drawn up by the International Law Commission and regards them as an important step forward in the codification and progressive development of the principles and rules of international law.

As regards the specific content and wording of the individual articles, the competent organs of the Ukrainian SSR consider that the following changes and additions should be made:

1. *Article 1.* Replace paragraph 2 by the following:

"Neither diplomatic and consular relations nor recognition is necessary for the sending and reception of special missions."

2. *Article 5.* Delete.

3. *Article 6.* Delete paragraph 3.

Other comments and additions may be submitted after further consideration of the draft articles on special missions.

20. Union of Soviet Socialist Republics

Transmitted by a note verbale *of 3 June 1966 from the Permanent Mission to the United Nations*

[*Original: Russian*]

1. In view of modern international practice, article 1, paragraph 2, of the draft should be worded as follows:

"Neither diplomatic and consular relations nor recognition is necessary for the sending and reception of special missions."

2. In view of the tasks which are usually given to special missions, it is unnecessary to include in the draft provisions relating to the possibility of sending the same special mission to more than one State (article 5) and to the size of the staff of a special mission (article 6, paragraph 3). These provisions should therefore be deleted from the draft.

21. United Kingdom of Great Britain and Northern Ireland

Transmitted by a letter of 26 May 1966 from the Deputy Permanent Representative to the United Nations

[*Original: English*]

1. The United Kingdom Government have studied with interest the set of 44 draft articles proposed by the International Law Commission as the basis for an international agreement on the status, functions and privileges of Special Missions and wish to express their great appreciation of the care and attention

which the Commission has devoted to the examination of this topic.

2. While expressing their general agreement with the principles and rules embodied in the draft articles, and with the desirability of codifying international law and practice on this aspect of diplomacy, the United Kingdom Government feel bound to record their opposition to the undue extension of privileges and immunities which certain articles appear to confer. In their view the grant of such privileges and immunities should be strictly controlled by considerations of functional necessity and should be limited to the minimum required to ensure the efficient discharge of the duties entrusted to Special Missions. The draft articles follow closely the corresponding provisions of the Vienna Convention on Diplomatic Relations and it is the view of the United Kingdom Government that such extensive privileges in the case of Special Missions cannot be justified on functional grounds.

3. The United Kingdom Government consider that it would be highly desirable to include a "definitions" article on the lines of Article 1 of the Vienna Convention on Diplomatic Relations, in which certain of the terms used in the draft Articles should be precisely defined. In their view it is of particular importance to define the term "Special Mission" with precision so that the scope of the draft articles may be made clear. The terms "head and members of the Special Mission", "members of its staff", "permanently resident in the receiving State" and "premises of the Special Mission", in particular, are among those used in the draft articles which should be precisely defined. It seems, for example, unclear whether "members [of the Special Mission]" as used in article 6 (1) does or does not include some or all of the staffs referred to in article 6 (2). A definition of the term "premises of the Special Mission" should exclude living accommodation of all staff.

4. The United Kingdom Government wishes to offer in addition the following comments on certain of the draft articles individually:

Article 1

In paragraph 1 the word "express" should be inserted before "consent" in order to eliminate reliance upon alleged tacit or informal consent as a basis for invoking the special treatment provided for in the draft articles.

In paragraph 2 (*d*) of the commentary the question of permanent specialised missions is discussed. It is made clear that the Special Missions to be covered by the draft articles are temporary in character. Although permanent specialised missions may in some cases be staffed by members of the staff of the diplomatic Missions of the country concerned and occupy "premises of the mission" in a manner bringing them within the scope of the Vienna Convention on Diplomatic Relations, there will be other cases to which that Convention will not be applicable since the purposes of the permanent specialised mission will not be "purposes of the mission". In some cases a permanent mission is accredited to an international organisation and its status is regulated by an international agreement governing the privileges and immunities of the organisation. The United Kingdom Government believe that permanent missions which do not fall into either of these categories should be brought within the scope of the present draft articles. It appears desirable to regulate their status by international agreement and there seems no reason to do this by a separate code of rules. It is further suggested that the application of the rules laid down in these draft articles to permanent specialised missions might be made subject in each case to the express consent of the receiving State.

With regard to paragraph 7 of the commentary, the United Kingdom Government suggest that a provision should be added to the article to make clear that where members of the regular permanent diplomatic mission act also in connexion with a special mission, their position as members of the permanent mission should determine their status.

Article 2

It appears desirable to limit in some way the purposes for which a special mission qualifying for the treatment contemplated in the draft articles may be constituted—otherwise there is a danger that the provisions of an eventual Convention could be invoked in any case of a visit to one State by a person or group of persons from another on official or quasi-official business, whatever its nature. There may be cases in which the receiving State wishes to permit a mission to come without necessarily according it the full privileges and immunities laid down in the draft articles but as the articles are at present drafted this might be very difficult.

With reference to paragraph 5 of the commentary, the United Kingdom Government see no need for a rule of the exclusion of the tasks or functions of a Special Mission from the competence of the permanent diplomatic mission. The matter seems to be entirely one between the sending State and its two missions and the receiving State should be entitled to presume that either the permanent or the special mission (within the scope of its task) has authority to perform any acts which it purports to perform. If difficulties are likely to arise, they can be dealt with by an *ad hoc* arrangement on the subject.

Article 11

The United Kingdom Government considers with reference to paragraph 12 of the commentary on this article, that it would not be necessary or appropriate to add to this article a reference to the principle of non-discrimination. They support fully the views of the Commission on this question.

Article 17

This article suggests that, for instance, the sending State may have all expenses of its Special Mission defrayed by the receiving State, which is not the case, unless by virtue of a special agreement. Some clarification appears to be desirable.

Article 19

The United Kingdom Government observes that this article accords the property of Special Missions a wider protection than is given to diplomatic missions by the Vienna Convention in that property not on the premises of the mission other than means of transport is covered by the article. The United Kingdom Government doubts whether this distinction is justifiable on functional grounds.

Article 22

It should be made clear that the word "free" as used in paragraph 1, has the sense of "unrestricted".

The United Kingdom Government considers that the bag facilities of Special Missions should be restricted to the minimum and that where the sending State has a permanent diplomatic mission in the receiving State official documents etc. for the use of the Special Mission should be imported in the bag of the permanent mission. In this way the onus of ensuring that improper use is not made of the bag would rest with the Head of the permanent mission who, unlike the Head of the Special Mission, has a continuing duty to the receiving State in this respect. There appears to be nothing contrary to this in paragraph 4 of Article 27 of the Vienna Convention.

Article 23

The expression "taxes in respect of the premises of the Special Mission" in paragraph 1 does not clearly cover capital gains tax on the disposal of the premises. The United Kingdom authorities would not seek to tax a gain accruing to the sending State under these circumstances and they accordingly suggest the addition of the words "including taxes on capital gains

arising on disposal" after the words "premises of the special mission".

Articles 24, 25, 26

The scale of immunity and inviolability prescribed in these articles, based on the corresponding provisions of the Vienna Convention on Diplomatic Relations, appears excessive, and inappropriate to the character and functions of Special Missions. While noting the Commission's basic hypothesis that Special Missions should be equated, so far as practicable, with permanent missions, the United Kingdom Government would prefer a restriction of immunity and inviolability to official documents and official acts.

Article 26

There seems to be room for doubt whether the expression "professional or commercial activity" in paragraph 2 (*c*) is wide enough to cover, for instance, disputes about the ownership of, or liability for calls, etc., on shares in a company registered in the receiving State. The expression has in the case of the Vienna Convention on Diplomatic Relations given rise to difficulty and its scope should be made more clear.

The commentary on this article implies that the phrase "unless otherwise agreed" in paragraph 2 does not contemplate the possibility of excluding all immunity from civil and administrative jurisdiction but only of limiting immunity to official acts. This should be made clear in the text.

Article 29

The article as it stands does not fully carry out the intention of the Commission expressed in paragraph 2 of the commentary, to accord a narrower scale of exemption than is accorded to permanent missions by Article 34 of the Vienna Convention on Diplomatic Relations. Omission of the exceptions has had in some respects the contrary effect—for example, relief appears due from taxes normally included in the price of goods or services.

Moreover, unlike Article 34 of the Vienna Convention on which it is said to be based, the article might be construed as exempting from stamp duty cheques, receipts, etc., given by the head, members and diplomatic staff of a special mission in the course of their duties. It will not be construed in the United Kingdom as having any effect in relation to duties chargeable under the Stamp Act 1891, as amended, on cheques and other instruments issued by the head, members or diplomatic staff of a special mission.

In the matter of income tax, because of the exclusion under Article 36 of United Kingdom Citizens and permanent residents in the United Kingdom from any exemption from United Kingdom tax under this Article, it is only in exceptional cases that United Kingdom law would impose any liability to income tax. In such exceptional cases, the expression "income attaching to their functions with the special mission" is too wide. There is no objection to the exemption of emoluments or fees paid by the sending State or, so long as the mission is for the governmental purposes of the sending State, of emoluments or fees paid by other sources in the sending State. Article 42, however, does not appear to exclude the possibility of members of a special mission deriving income from the sale of goods in the receiving State, or the provision of services, or any other activity of a profit-making nature, if the activity attaches to their functions with the mission. A mission sent to promote the export trade of the sending State or to organise a fair or exhibition on behalf of the sending State might claim that the sale of large quantities of goods was within its functions. Income derived from such activities should not be exempt from tax in the receiving State.

Article 31

The United Kingdom Government would be reluctant to extend full diplomatic Customs privilege to members of special missions: it appears that they would not be alone in disallowing relief from customs duty on articles for the personal use of members of a special mission and they consider that the personal relief provision in the article should be made optional. This would conform more closely with international usage.

Paragraph 2 of the commentary is difficult to understand: it appears to be at variance with the terms of the article.

Article 32

According to paragraph 2 (*b*) of the commentary, the Commission did not intend the grant of "first installation" Customs privilege to administrative and technical staffs but the article as it stands confers on these staffs full diplomatic Customs privilege, contrary to intention.

Since nationals of, and permanent residents in, the receiving State are excluded from privileges and immunities by article 36, the repetition of the exclusion in this article seems unnecessary and, as it is not repeated in articles 28, 29 and 30, confusing.

Article 33

The formulation of the Commission is preferred to the suggestions of the Rapporteur that service staffs of special missions should be accorded a level of immunity higher than that given in the case of permanent diplomatic missions.

Article 34

The United Kingdom Government oppose the exemption of private servants from income tax on their emoluments.

A private servant who is not himself permanently resident in the United Kingdom would be liable to United Kingdom tax on his emoluments for his services in the United Kingdom if he were in the United Kingdom for six months or more in any one income tax year. In such circumstances it is unlikely that the private servant would be liable to taxation on his emoluments in the sending State: if the receiving State were required to exempt him, he would be free of all taxation. By contrast, the staff of the special mission will normally be taxed by the sending State. If, exceptionally, the sending State should tax the private servant's emoluments, he would qualify for double taxation relief in the United Kingdom.

Article 35

The comment on article 31 above applies equally to families. The provision which appears to accord full diplomatic Customs privilege to families of administrative and technical staff is presumably an error consequent upon that apparently existing in article 32, to which attention has already been drawn.

Article 38

If the possibility of profit-making special missions is to remain (see comment on article 29) the United Kingdom Government would prefer not to give exemption from estate duty to the personnel of such a mission.

Article 39

As drafted this article obliges the third State to grant immunities where it permits transit. The United Kingdom Government would prefer that third States should instead be entitled to permit transit without also granting immunities to a Special Mission.

Article 44

It is desirable to provide a time limit to the continuing inviolability of the premises of the special mission. The addition of a reference to "a reasonable period" would seem to be sufficient.

SECTION C

Paragraph 49. It is agreed that there would be no point in including non-discrimination provisions in draft articles of this character.

Paragraph 50. The United Kingdom Government believe that there would be advantage in adding to the draft articles a provision dealing with their relationship to other international agreements.

22. United States of America

Transmitted by a note verbale *of 13 March 1967 from the Permanent Representative to the United Nations*

[*Original: English*]

The United States Government has studied the draft articles on special missions with great interest and wishes to express its appreciation of the thorough study which the International Law Commission has made of this subject. The concern which the United States Government has about certain aspects of the draft articles as they now appear springs from the difficulties inherent in dealing with a subject that covers such a varied sphere of activities.

GENERAL REMARKS

The United States Government believes that a set of definitions is a useful addition to these articles. Most of the definitions proposed by the Special Rapporteur are from the 1961 Vienna Convention on Diplomatic Relations or the 1963 Vienna Convention on Consular Relations. The definition of "special mission" is new. It is of paramount importance since it necessarily determines the scope of the draft articles.

The United States considers that the abstract nature of the definition of "special mission" presents serious problems. The only limitations expressed in the definition are that the mission be "temporary", between States, and "for the performance of a specific task". The definition can be considered to include almost any official mission in a foreign State except a permanent diplomatic or consular establishment. As a result, any visit of a representative of one State to another on any kind of official business can be, for the purposes of the proposed convention, a special mission which throws into operation the complicated machinery of the draft articles.

The United States considers that a convention so framed would not accord with modern developments in the conduct of foreign relations. The system proposed would look back toward nineteenth century practice rather than to the conduct of foreign relations in the present half of the twentieth century and to the framing of a convention which should lay a basis for the conduct of foreign affairs in the twenty-first century.

The technological explosion of the past twenty years in the fields of communication and transportation has altered the world in many aspects, and the field of diplomacy has not remained untouched. The most striking development has been in the very area which is the subject of this convention. The carrying on of intercourse between States through meetings of specialists in all fields and at all levels has become a customary feature of international life. It is a most promising development from every aspect. This is an increasingly complicated world and the solution of problems on the international level requires increasingly higher levels of competence, training and experience in a broad spectrum of endeavour, and thus a continuing growth in the employment of experts.

Meetings of an expert character are generally marked by an absence of special arrangements, of concern with protocol, of fanfare and formality. The aims of the meetings are to clear away misconceptions or misunderstandings through face-to-face explanations, to work out joint areas of interest through joint discussions and to seek common goals through common endeavours. These aims have been achieved in innumerable meetings of experts and specialists in the past twenty years, and achieved without any special arrangements for privileges and immunities, for inviolability, for pouches, for servants and for deciding who sits at the head of the table.

It appears from the records of the International Law Commission that a good part of the Commission's work in this field has been devoted to modifying and adapting the provisions of the Vienna Diplomatic and Consular Conventions to Special Missions. The approach has been that there need be no basic difference made between permanent and special missions except to take into account the indefinite duration of the latter. The United States suggests that special missions, as they have developed since World War II, have substantially different work patterns, objectives, and procedures than permanent missions. Requirements developed for permanent missions could be a hindrance rather than a help to the efficient and productive conduct of foreign relations. Such requirements should be modified to take into account experiences of States with the operation of special missions and, in particular, the reasons which have led States to increasingly greater reliance upon special missions for the conduct of foreign affairs.

First and foremost is the need for expert knowledge. A glance at the current topics which are the subject of international agreements, beginning with aerospace disturbances, agricultural commodities, air services, air transport, atmospheric sampling, atomic energy, is an immediate illustration of the enormous requirements for technical knowledge which the modern practice of foreign relations calls for. For foreign relations now includes all sorts of efforts in which individual States co-operate to combat disease, to predict the weather, to increase food production, to harness hydroelectric powers, to turn salt water into fresh water. As a result, there is a constant and continuing exchange of specialist missions between co-operating States. The arrangements for these exchanges of experts and for their meetings are generally informal in character, and certainly have little in common with the elaborate procedures and requirements laid down in the draft convention.

The improvement in long-distance communication, especially by telephone, and the blanketing of the entire world with speedy and efficient air-transport systems, have changed special missions between States from elaborate expeditions into routine visits. The trend is more and more to sending the man dealing with an international problem in one State on a quick trip to talk to the man dealing with that problem in the other. The United States believes that this development is a valuable contribution to the conduct of foreign relations. Again it notes that arrangements for missions of this nature are usually informal in character and that this method of diplomacy has flourished in the absence of any special arrangements for privileges and immunities.

Present-day experience does not demonstrate the need to make extraordinary arrangements for the ordinary flow of official visitors between one State and another. Experience does demonstrate, however, that there is a growing concern with and a mounting opposition to further extensions of privileges and immunities in most States in which there are sizable diplomatic communities. It would seem extremely likely that a convention extending privileges and immunities to another substantial class of individuals would not be warmly received. If such a convention were to come into general acceptance, its probable effects will be to undermine the valuable developments in the use of special missions discussed above. States will become less receptive to unqualified acceptance of official visits when every such visit must be treated as that of an envoy extraordinary.

The United States recognizes that there are special missions which should be treated specially. Missions which are sent for ceremonial or formal occasions are of a different nature than expert or technical missions, and this difference should be recognized.

The level of the mission should also be taken into account. When the mission is headed by an official of ministerial rank or when the mission is received by an official of ministerial rank, this would evidence that the mission is conducting its activities on a plane which demands special recognition. Finally, there are missions which, even though not headed by an official of ministerial rank, are dealing with matters of such gravity and importance to the States concerned, or which involve unusual considerations, that special protection should be afforded them. In such cases, however, the full range of privileges and immunities afforded by draft articles should become applicable only if the sending State requests the application specifically and the receiving State agrees.

In its remarks on Provisional Article 0, the United States submits language to describe missions which should be treated specially. For such missions, the United States would support, in general, the privileges and immunities proposed in the draft articles.

REMARKS ON SPECIFIC ARTICLES

The following remarks are not intended to be exhaustive, and do not suggest all the drafting changes necessary to satisfy the concerns expressed in the *General remarks* section.

Provisional Article 0

(*a*) The United States proposes the following definition of "special mission" for the purposes of the draft articles:

A special mission is one:

(1) Which is established by agreement between the sending State and the receiving State for a limited period to perform specifically designated tasks, and is headed or received by an official who holds the rank of Cabinet Minister or its equivalent, or a higher rank; or

(2) Which is specifically agreed by the sending State and the receiving State to be a special mission within the meaning of this Convention.

(*g*) It is not the practice of the United States to designate as plenipotentiary every official whom it sends to another State to represent it by performing a specific task. If the intention is to exclude from the coverage of the draft articles experts such as those discussed in the *General remarks* above, it is suggested this end is better achieved by a revision of the definition of special mission. The United States doubts that such designation is general practice in most sending States.

(*r*) This definition appears unduly broad. It is suggested that the word "exclusively" be inserted between the words "used" and "for" in the second line of Provisional Article 0 appearing at page 33 of A/CN.4/189/Add.1. Such amendment would make the definition, except for the final clause, correspond to Article 1 (*j*) of the Vienna Convention on Consular Relations. In the view of the United States, the final clause should be narrowed by excluding from the definition the residence or accommodation of persons other than the head of the special mission.

Article 2

In answer to the question posed in paragraph 5 of the Commentary, the United States Government believes that a hard-and-fast rule concerning exclusion from the competence of permanent missions of the tasks entrusted to special missions would not be useful, but that a sending State should be free to specify such exclusive competence in those instances it deems such an arrangement necessary.

Article 3

The United States agrees that the prior consent of the receiving State to the composition of a special mission should not be required. However, it is important and desirable that the sending State give advance notice of composition to the receiving State. This may be accomplished by adding the following to the end of the second sentence of Article 3: "but prior notice of the composition of the mission shall be given to it".

Article 5

This Article does not appear to be necessary.

Article 7

Paragraph 2 implies that the sending State does not have full liberty to change the head of the special mission. It would appear desirable to provide merely that a member of the mission may be authorized by the sending State to replace the head of the special mission. In addition, a sentence should be added at the end of paragraph 2 as follows: "The receiving State shall be notified of a change of head of mission."

Article 11

In regard to the question posed in paragraph 12 of the Commentary, the United States Government believes a rule of nondiscrimination in regard to the mode of reception of special missions of the same character is unnecessary and, on balance, undesirable.

Article 13

The fact that a special mission is of a temporary character runs counter to its having a seat. Moreover, this Article is without effect in so far as the remainder of the text is concerned. It is suggested that the Article be deleted.

Article 16

The United States Government is not sure whether the third State assumes the obligations of a receiving State by expressly consenting to permit a special mission to carry on functions in its territory. At all events, it should be provided that a third State's express consent may be conditioned in advance and withdrawn at any time.

Article 17

This Article would be more balanced if it provided:

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

Article 19

The inviolability of premises raises special questions because, unless the special mission is housed in a permanent diplomatic mission, it will ordinarily be occupying hotel rooms or office space. Hotel rooms present special difficulties because of the danger of fire or similar catastrophe. The safety of other guests cannot be imperilled by the refusal of a mission to allow entry to firemen or police seeking to deal with an emergency. The same considerations apply, though with lesser force, to an office building. The suggestion that an emergency be handled by negotiations between the Foreign Office and the special mission is unrealistic.

The United States considers that a final sentence should be added to paragraph 1 of Article 19 to have it correspond to Article 31, paragraph 2 of the Vienna Convention on Consular Relations. The sentence would read: "The consent of the head of the special mission may, however, be assumed in case of fire or other disaster requiring prompt protective action."

The exclusion from legal process of furnishings, automobiles, and the like used by special missions raises questions if the

property is rented or leased. There does not appear to be any overriding need why normal legal processes should not apply to such property so long as equivalent property is available for use.

Real estate also presents difficulties. If a hotel is being sold under a court order, how would it be possible to exclude the premises of the special mission in the hotel? This type of extraordinary exemption could make it more difficult for the special mission to acquire property for use on a short-term basis.

Article 29

The coverage of the final clause (beginning "and in respect") in this article is unclear. The clause should either be changed or eliminated.

Article 31

The United States Government believes that fiscal and customs privileges granted to special missions should normally be limited to those necessary to enable them to perform the "specific tasks" for which they are sent. It does not favour setting up personal privileges for members of special missions. It is concerned lest the burdens imposed on the receiving State under this and related articles persuade many of the States whose revenues come largely from customs duties that they cannot afford to receive special missions. Such a development would mark a serious step backwards in the conduct of foreign relations.

Article 32

The privileges and immunities provided hereunder are broader than required by the nature of the services rendered. This observation applies with even greater force to paragraph 2 of Article 35, which extends such privileges to members of the families of those covered by Article 32. Given the temporary character of special missions, the question arises whether privileges and immunities of the families of members of permanent missions have any necessary application to families of members of special missions.

Article 39

The scope and effect of this article require further consideration, particularly in light of vehicular accidents which may occur *en route*.

23. Upper Volta

Transmitted by a letter of 23 February 1966 from the Secretary of State for Foreign Affairs

[*Original: French*]

The Government of the Republic of the Upper Volta wishes first of all to thank the International Law Commission for kindly associating it with the Commission's work on special missions by inviting it to submit its comments on:

(*a*) The draft articles in section B of chapter III of the Commission's report; and

(*b*) Section C of chapter III of that report.

The draft articles on special missions, like the other decisions, suggestions and observations by the International Law Commission mentioned in section C, are of definite value and should be taken into consideration by States, for today, when relations between States are complex and regularly maintained at several levels, the special mission, because of its dynamic function, at any level, is seen to be the instrument of active diplomacy.

The Government of the Republic of the Upper Volta accordingly welcomes the opportunity of expressing its views and submitting its comments on the rules of law and other provisions with which special missions are required to comply. The Government of the Republic of the Upper Volta has the honour to submit the following comments to the International Law Commission:

(*a*) The first point on which the Government of the Upper Volta would like to state its view is mentioned in paragraph (5) of the commentary on article 2. The problem here concerns the parallel existence of permanent and special missions and their respective areas of competence, and, in this context, the question of the validity of acts performed by special missions is raised.

Special missions differ by nature from permanent missions, as is made clear, incidentally, in article 1 and its commentary:

(i) In the first place, States send special missions for specific tasks; their tasks are not of a general nature like those of a permanent mission;

(ii) Special missions are of a temporary nature.

We mention these few facts concerning the nature of special missions in order to stress the difference, which we consider to be fundamental, between them and permanent missions; it is these individual features of special missions that determine the position of the Upper Volta Government with regard to the respective areas of competence of special missions and permanent missions. The Government of the Upper Volta therefore considers that since a special mission is established for a specific task and since it is temporary, it should be able to act independently of the permanent mission and the tasks entrusted to it by the States concerned ought to be regarded as being outside the competence of the permanent diplomatic mission.

(*b*) Article 11:

The problem raised in paragraph (12) of the commentary on article 11—that of the discrimination to which some special missions may be subjected in practice in comparison with others—is of great importance at the present time.

Such discrimination is contrary to the sovereign equality of States and to the principles which should guide States in their daily relations with each other; the differences in treatment in the reception of special missions and the way in which they are permitted to begin to function may prejudice the chances of success of the mission itself which should be able to develop in an atmosphere of calm and confidence.

The Government of the Upper Volta considers that a provision on non-discrimination should be included in this article.

(*c*) Article 12, paragraph (4) of the commentary:

The Government of the Upper Volta would like to support the proposal, mentioned in the commentary on this article, which was submitted in 1960 by the Commission's Special Rapporteur, Mr. Sandström.[cc]

It is desirable to consider that when negotiations between the special mission and the local authorities are interrupted the mission loses its purpose, and that consequently the interruption of negotiations marks the end of the functions of a special mission.

(*d*) Article 13:

The Upper Volta considers that the compromise suggested by the Commission, namely that the sending State should have a part in choosing the seat of the special mission, might impair the sovereign authority of the receiving State over its own territory. The Government of the Upper Volta is of the opinion that the receiving State is competent to choose the seat of the mission, without the participation of the sending State, provided that the locality chosen by the receiving State is suitable in the light of all the circumstances which might affect the special mission's efficient functioning.

(*e*) On the question whether special rules of law should or should not be drafted for so-called " high-level" special missions,

[cc] *Yearbook of the International Law Commission, 1960*, vol. II, p. 115, art. 4.

whose heads hold high office in their States,[dd] the Government of Upper Volta submits the following comments:

It is true that in practice no distinction is made, with respect to legal status, between special missions led by a high official of the sending State and other special missions. The draft provisions concerning these so-called high-level special missions, which have been submitted to Governments for their comments, are therefore likely to draw the attention of Governments to this state of affairs in relations between States.

In rule 2, paragraph (*f*), concerning the end of the functions of a special mission which is led by a head of State, the interruption of the negotiations which are the purpose of the special mission should also be considered as bringing the mission's functions to an end. The views expressed in paragraph (*i*) of rule 12 relating to the freedom of movement of a head of State also apply in this case. For reasons of security, it is necessary that there should be an agreement between the sending State and the receiving State limiting the freedom of movement of the head of State.

In practice, however, the situation is often different. Many heads of State, for personal reasons, like to have great freedom of movement in order to be in touch with the mass of the people. Others even like to refuse all protection in certain situations. These are cases which bring up the problem of the security of special missions led by a head of State. The Government of the Upper Volta would like to see specific provisions on this subject included in the draft.

24. Yugoslavia

Transmitted by a letter of 9 April 1966 from the Legal Adviser of the Ministry for Foreign Affairs

[*Original: French*]

A. General observations

The Government of the Socialist Federal Republic of Yugoslavia considers that the rules on special missions should be embodied in a separate international convention in the same manner as the Vienna Convention on Diplomatic Relations, 1961, and the Vienna Convention on Consular Relations, 1963.

The convention should be adopted at a special meeting of State plenipotentiaries which might be held at the time of a session of the General Assembly of the United Nations. The convention could thus be adopted either before or after the session.

B. Specific observations

1. The Government of the Socialist Federal Republic of Yugoslavia considers that the preamble to the convention should give a definition of a special mission and emphasize the differences between special missions and permanent diplomatic missions.

2. The Government of the Socialist Federal Republic of Yugoslavia agrees with the International Law Commission's proposal that an article defining the terms used in the Convention should be inserted as article 1 of the future convention.

3. In the opinion of the Government of the Socialist Federal Republic of Yugoslavia, it should be stated, in article 2 of the convention, as an addition to the text already adopted, that a special mission cannot accomplish the task entrusted to it nor can it exceed its powers except by prior agreement with the receiving State. This would avoid any overlapping of the competence of special missions with that of permanent diplomatic missions.

The Government of the Socialist Federal Republic of Yugoslavia considers that some wording should be added to the commentary on that article, stating that the task of a special mission should not be specified in those cases where the special mission's field of activity is known and this should be considered as a definition of its task. An example of that would be the sending and receiving of experts in hydro-technology who are sent and received when two neighbouring countries are threatened by floods in areas liable to flooding.

4. In the opinion of the Government of the Socialist Federal Republic of Yugoslavia, consideration should be given to the possibility of adding to article 4 a provision stating that the receiving State may not declare a person *persona non grata* if that State, by prior agreement with the sending State, had already signified its acceptance of that person as head of the mission, assuming that States agree, at the level of ministers for foreign affairs, to send and receive missions and that, between the agreement and the appointment of the special mission, no change of ministers took place.

5. The Government of the Socialist Federal Republic of Yugoslavia considers that, in view of the fact that there is some inconsistency between the provisions of article 7 and the commentary on that article, the words "and a member of his diplomatic staff" should be inserted after the word "mission" at the beginning of article 7, paragraph 2.

6. In the opinion of the Government of the Socialist Federal Republic of Yugoslavia, the commentary on article 8 should be made consistent with the provisions of that article. Whereas article 8, paragraph 1, sub-paragraph (*d*), provides for the receiving State to be notified of the members of the mission, the private servants of the head or of a member of the mission or of a member of the mission's staff who are recruited from among the nationals of that State or from among aliens domiciled in its territory, it is stated in paragraph (7) of the commentary that such recruitment is in practice limited to auxiliary staff without diplomatic rank. Since some States allow the recruitment of staff with diplomatic rank, the Government of the Socialist Federal Republic of Yugoslavia considers that the following should be inserted in paragraph (7) of the commentary: "In some countries such recruitment is in practice limited to auxiliary staff without diplomatic rank".

7. As regards precedence and the alphabetical order to be applied under draft article 9, the Government of the Socialist Federal Republic of Yugoslavia considers that the alphabetical order to be adopted should be the one in use in the receiving State, or, in the absence thereof, the method used by the United Nations.

8. In the opinion of the Government of the Socialist Federal Republic of Yugoslavia, consideration should be given to the possibility of guaranteeing, in article 22, the immunity of couriers *ad hoc* during their return journey also, if it immediately follows the delivery of the bag to the special mission.

9. The Government of the Socialist Federal Republic of Yugoslavia considers as justified the proposal for the inclusion of a provision forbidding discrimination, as in article 47 of the Vienna Convention on Diplomatic Relations and article 72 of the Vienna Convention on Consular Relations.

10. The Government of the Socialist Federal Republic of Yugoslavia also considers that there should be special provisions applicable to special missions led by heads of State or heads of Government but not to those led by Ministers for Foreign Affairs and Cabinet Ministers.[ee] The Yugoslav Government takes the view, however, that such provisions should be included in the body of the convention and not in an annex and should therefore be drafted more concisely.

[dd] See foot-note g above.

[ee] *Ibid.*