

Document:-
A/CN.4/SR.723

Summary record of the 723rd meeting

Topic:
<multiple topics>

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

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

Mr. AMADO, Mr. TABIBI, Mr. PESSOU, Mr. PAL, Mr. ROSENNE and Mr. de LUNA supported the proposal.

Mr. Yasseen was unanimously elected Rapporteur.

Adoption of the Agenda

The provisional agenda (A/CN.4/164) was adopted.

17. Mr. LIANG, Secretary to the Commission, expressed the hope that the Commission would take up item 2 at an early stage, so as to give the Secretariat time to make the necessary arrangements if it were decided to prolong the session beyond the proposed date of closure.

18. The CHAIRMAN said that the item would be taken up as early as possible.

19. Mr. BRIGGS said he hoped that in future the Commission's yearbooks would be published more promptly. Neither the printed version of the two volumes for the fourteenth session nor the final mimeographed text of the summary records of the fifteenth session had yet reached him.

20. Mr. ROSENNE suggested that the drafting committee should be made responsible for preparing the texts of draft articles in all three working languages, not only in English and French as in the past.

21. Mr. de LUNA said he supported that suggestion, particularly because representatives in the Sixth Committee of the General Assembly had had occasion to point out imperfections in the Spanish text of the draft articles on the law of treaties.

22. The CHAIRMAN said that suggestion would be borne in mind, but he hoped the Commission would not take a hasty decision, lest responsibility for the Spanish text might prevent the drafting committee from completing what was already an onerous task.

23. Mr. LIANG, Secretary to the Commission, informed the Commission that Mr. Lachs would not be arriving until the following week and Mr. Liu not until 25 May.

The meeting rose at 3.45 p.m.

723rd MEETING

Wednesday, 13 May 1964, at 10 a.m.

Chairman: Mr. Roberto AGO

Filling of casual vacancies in the Commission (Article 11 of the Statute) (A/CN.4/168 and Add.1)

[Item 1 of the agenda]

1. The CHAIRMAN announced that, at a private meeting, the Commission had elected Mr. Paul Reuter of France and Mr. José María Ruda of Argentina to

fill the casual vacancies caused by the resignations of Mr. André Gros and Mr. Luis Padilla Nervo on their election to the International Court of Justice.

Special Missions

(A/CN.4/166)

[Item 4 of the agenda]

2. The CHAIRMAN invited the Commission to consider item 4 of the agenda and called on the Special Rapporteur for special missions to introduce his report (A/CN.4/166).

3. Mr. BARTOŠ, Special Rapporteur, said he had thought it necessary to preface his draft articles with a fairly long introduction, because the question was a new one which had not been clearly settled either in the literature or in case-law; even the concept of *ad hoc* diplomacy had been a subject of controversy.

4. As to the object of the report, the question was whether the concept of *ad hoc* diplomacy should be treated entirely by analogy with that of resident, permanent diplomacy. It was hardly possible to proceed from the premise that resident diplomacy was normal diplomacy and that *ad hoc* diplomacy was exceptional, for history showed that up till the Treaties of Westphalia, and even as recently as the Congress of Vienna, resident diplomacy had been the exception. The existing rules on resident diplomacy could not be automatically applied to *ad hoc* diplomacy, for a distinction in kind should be drawn between two forms, *ad hoc* diplomacy having become more important in consequence of more frequent use.

5. He would hesitate to say whether the concept of *ad hoc* diplomacy should include visits by heads of State and ministers for foreign affairs, specialized permanent missions working alongside regular diplomatic missions, government delegations to institutional commissions set up under international agreements, whose status was established beforehand, and certain classes of diplomats representing their governments in international organizations, who in fact constituted a new class of resident diplomat. Before he could define special missions, he thought it necessary to ascertain the views of the Commissions as to whether they included only missions of a strictly political nature or technical missions as well. He himself was firmly convinced that the distinction should be based not on the mission's purpose, but on its nature; in other words, on whether or not it represented a State vis-à-vis other subjects of public international law.

6. Another preliminary question was whether the rules governing special missions should also cover the legal status of delegations and delegates to international conferences and congresses. In his opinion, the position of delegations and delegates to conferences convened by States and not by international organizations was in every respect assimilable to, and even almost identical with, that of special missions. He suggested, however, that that preliminary question should not be discussed until the main question, and Mr. El-Erian's report on

relations between States and inter-governmental organizations, had been considered.

7. The most difficult question was whether to draft only an additional protocol to the Vienna Convention on Diplomatic Relations, or a separate, independent instrument on special missions. In his opinion, a mere reference to the rules governing resident diplomatic missions would not be sufficient in many cases, which called for special rules for special missions. It therefore seemed necessary to draft a set of special rules and it might be asked whether, in doing so, it would be better to try to maintain historical continuity with the formerly existing rules relating to special missions, or, on the contrary, since the nature of special missions had changed, to draw up new rules combining codification in the strict sense with progressive development. In the end he had abandoned the idea of trying to maintain historical continuity with the rules which had existed before the Congress of Vienna, and had studied the practice which had grown up during the Second World War and after 1945.

8. Another question was whether there were any normative rules of positive public international law relating to special missions. The Commission had hesitated between three different approaches. First, the limited application to *ad hoc* missions of the rules relating to permanent missions proposed by Mr. Sandström;¹ in his view, that approach was unrealistic, for there were too many differences between ordinary missions and *ad hoc* missions. Secondly, the integration theory, advocated by Mr. Jiménez de Aréchaga, that all provisions of diplomatic law concerning permanent missions applied also to special missions, though additional provisions were required to take the special nature of those missions into account.² Although he did not entirely accept that theory, he found it more attractive than the first. The third approach was that of Sir Gerald Fitzmaurice who had urged that the rules relating to permanent diplomacy, in so far as they were applicable to particular cases, should be applied, *mutatis mutandis*, to *ad hoc* diplomacy.³ That approach, based on the rule of reason assisted by the case method, was sound enough; but the difficulties of interpreting the rule of reason had deterred him from adopting it.

9. With regard to the content of the concept of special missions, he believed that such missions should have the following characteristics: they should be appointed by a State to perform a special task with respect to another State; they should not be regarded as permanent, and their duration should depend on the completion of a specific, temporary task; that task should consist in representing a State as the lawful holder of sovereignty vis-à-vis another State.

10. Certain kinds of mission with ceremonial or courtesy functions, should also be classed as special missions. The functions of *ad hoc* diplomacy could be very diverse; he had listed sixteen groups. He was reluctant,

however, to include secret emissaries, members of the suite of heads of State, political agents not possessing diplomatic status (a problem which had arisen, for instance, during the Evian negotiations, since the Algerian Provisional Government had been recognized only by some States, and not by France which was negotiating with it) and private agents.

11. His own conclusion was that special missions were a separate class, distinct from regular missions; as they had become more frequent, they had gained in importance and the topic deserved study with a view to codification of the rules on special missions.

12. The CHAIRMAN suggested that in the general discussion the Commission should deal with the various aspects of the subject in turn. He therefore asked the Special Rapporteur what order it would be best to follow.

13. Mr. BARTOŠ, Special Rapporteur, said that in his opinion the concept of *ad hoc* diplomacy should be studied first, but without attempting a precise definition at that stage. The first question which arose was whether the study should be confined to special missions of a political character or should also cover missions of a technical character if they represented a State. The second question to be considered should be that of delegations to international conferences and congresses.

14. The CHAIRMAN invited the members of the Commission to state their views on the first question raised by the Special Rapporteur.

15. Mr. VERDROSS, after complimenting the Special Rapporteur on the quality of his work, said that he accepted his distinction between the old *ad hoc* diplomacy, which had been mainly ceremonial, and modern *ad hoc* diplomacy, which was concerned with concrete and practical problems. He also accepted his distinction between specialized, resident diplomatic missions, which were permanent, and *ad hoc* diplomatic missions, which were only temporary.

16. As to the first of the Special Rapporteur's questions — whether the Commission should confine its study to special missions of a political character — he agreed with him that such a restriction was not justified so far as genuine official diplomacy was concerned; special missions of a technical character were employed, like political missions, in official relations between States.

17. Mr. YASSEEN said that on the first question he fully agreed with the Special Rapporteur — whose report deserved every praise — that it would be neither right nor practical to limit special missions to missions of a political character. It was a direct result of the development of modern diplomacy that, in continually widening its field, it had come to regulate matters formerly outside the scope of international regulation. Hence it would be neither right nor practical to exclude technical missions, provided, of course, that they were official and represented the State.

18. However, he did not see why special missions should not include visits by ministers for foreign affairs

¹ *Yearbook of the International Law Commission, 1960, Vol. II, p. 108, para. 7.*

² *Ibid.*, pp. 115-117.

³ *Op. cit.* Vol. I, p. 259, para. 16.

and heads of State, which, though they might not have any specific programme, did nevertheless have a certain diplomatic purpose and performed a certain function in international relations. Recognition of certain kinds of special mission as *ad hoc* diplomacy did not mean adopting identical rules for all special missions.

19. Mr. de LUNA said that he did not draw any real distinction between special missions of a political character and special missions of a technical character. Power was a very broad notion and economic policy was an expression of power. As Mr. Yasseen had said, in view of the development of modern diplomacy it would be wrong to make such a distinction. Moreover, it would be difficult in practice to draw a dividing line between what was political and what was technical. He doubted, however, whether the Commission should discuss everything which concerned special missions.

20. The same applied to the problem of delegations to international conferences and congresses. From the legal point of view, they were undoubtedly special missions whose status was regulated by an international convention. If the Commission set out to deal with all the different kinds of special mission simultaneously, it would find that quite different rules were needed for some of them. From the theoretical point of view, missions of that sort must be classed as *ad hoc* diplomacy, but for practical purposes the Commission need not concern itself with them.

21. Mr. ROSENNE said he was grateful to the Secretariat for the valuable papers it had prepared, partly in response to requests by the Commission and partly in compliance with decisions of the General Assembly, on matters which were closely connected with the Commission's work even if they were not actually on its agenda. He was also glad that arrangements had now been made for sending documents to members by airmail.

22. He congratulated the Special Rapporteur on having brought out so clearly in his report the real nature of the problems raised by special missions. He hoped that most of the material in the introduction could be included in the Commission's own report, for the benefit of the General Assembly and of all international lawyers.

23. With regard to the scope of the topic of special missions, he fully accepted the general concept described in paragraphs 68-71 of the report as far as it went. But that concept was not sufficiently comprehensive to cover certain types of special mission, in particular, missions sent by two States to meet in the territory of a third State, with its consent, for the purposes of a particular negotiation. An example of that type of situation was the negotiations at Wassenaar in the Netherlands in 1952, between Israel and the Federal Republic of Germany, which had ended in the conclusion of an agreement at Luxembourg, with the consent and co-operation of the two third States concerned. He therefore suggested that the scope of the study should not be limited to the case in which one State sent a special mission to another for negotiations between the two of them.

24. With regard to visits by heads of States, heads of government and ministers, he inclined to the view that the Commission should confine itself to the more normal type of diplomatic activities likely to be entrusted to special missions, as distinct from visits of a more esoteric kind. Few important practical problems arose out of such visits, and any which might arise in connexion with the suites of the personages concerned could generally be solved with the aid of the rules governing permanent diplomatic missions.

25. He reserved his position on the question of embodying rules on special missions in a protocol until the Commission came to discuss the form the rules should take.

26. Mr. CADIEUX, after complimenting the Special Rapporteur on his distinguished contribution to the Commission's work, said that instead of trying to decide whether a special mission was of a ceremonial, political or technical character, it would be simpler just to ask whether it was official and whether the person in charge of it represented the State. In any case, there were two essential criteria: the temporary nature of a special mission and the consent of the receiving State.

27. But there was another important criterion, namely, the level or importance of the mission. Like Mr. Yasseen, he was reluctant to exclude visits by heads of State from the definition of special missions, since the right to commit the State was theirs *par excellence*.

28. In practice, the level or importance of the mission could raise difficult problems. Some countries were uncertain what status should be granted to members of special missions; in certain cases it was thought that they should be subject to the ordinary law. It would be difficult to extend to other classes of representatives, even if they were instruments of the national will, the immunities granted to professional diplomats whose whole career was devoted to their country's foreign relations. The Commission would therefore need to prepare its draft carefully if it was to have any chance of acceptance by parliaments. Admittedly special missions had multiplied and they served a most useful purpose, but the Commission should act cautiously and be tactful in regard to traditional diplomats, especially as they would play a decisive part in deciding the fate of its draft.

29. Mr. PAL, after paying a tribute to the Special Rapporteur, said he agreed with previous speakers that there was no reason to restrict the concept of special missions to purely political activities; in the light of recent developments, following which, with a general retreat of creative individuality from its functions in the social structure, the State acted as the very source of the criteria of community, assuming the social function of being the initiator, promoter and dictator of social cohesion, it was clear that the study should cover technical missions as well. At that stage he would not go into the details of the study, but could say that, broadly speaking, he agreed with the Special Rapporteur's comprehensive treatment.

30. Mr. ELIAS said that the Special Rapporteur's report showed remarkable insight and breadth of vision

in its treatment of a very amorphous subject. For the present, he would confine his remarks to the one issue which the Commission was called upon to deal with at that stage. He agreed with those speakers who had stressed the difficulty of drawing a distinction, in *ad hoc* diplomacy, between political and technical matters. Indeed, the very use of the word "diplomacy" implied that a political element was involved, even if the matters under discussion were economic, technical or scientific.

31. He thought that visits by heads of State or ministers should be covered in the report. It should first be ascertained whether they were dealt with in the 1961 Vienna Convention on Diplomatic Relations; if not, the Commission should support the Special Rapporteur's view that the question should be included in its study.

32. He agreed with the Special Rapporteur regarding the theory of functional necessity: the emphasis should be placed, not on the representative character of the persons concerned, but on the functions they performed.

33. The CHAIRMAN, speaking as a member of the Commission, said he agreed with most of the previous speakers on the point at issue. In his opinion it would be absurd to try to make a distinction between a political special mission and a technical special mission; for a "technical" mission was in fact nothing more than a mission dealing with a question of policy on economic, cultural, health or other matters, and was therefore always political in the broad sense of the term, even if it did not come within the traditional sphere of politics. The number and variety of such missions was bound to increase.

34. To avoid any ambiguity, it would be well to drop the term "*ad hoc* diplomacy" altogether and speak only of "special missions". That would make it clear that the Commission was not considering the situation which had prevailed before permanent diplomacy, but was dealing with the existing fact of missions whose functions were outside the normal sphere of diplomacy. The term "special mission" would also make it easier to examine the status of a person who represented a State without having the ordinary diplomatic functions.

35. To the case quoted by Mr. Rosenne, of a meeting held in the territory of a third State, should be added that of diplomats normally accredited to a third State, who might be entrusted with a special mission; such diplomats were usually protected by their diplomatic status, but there might be cases in which it would be necessary to regard them as members of a special mission.

36. Mr. BARTOŠ, Special Rapporteur, replying to the comments made, and dealing first with those of Mr. Yasseen, said it was not for any theoretical reason that he had hesitated to include visits by heads of State in his report on special missions, but because special rules on the subject already existed.

37. To Mr. Cadieux and Mr. Rosenne he pointed out that the questions of the consent of the receiving State and meetings in a third State were covered by articles 1, 4 and 14 of his draft.

38. He recognized the need to preserve the prerogatives of traditional diplomats; and in fact the term "*ad hoc* diplomacy" was not used in any of his draft articles.

39. As Mr. Elias had pointed out, the Commission should take the function as the basic criterion. It had to draft rules concerning special missions whose function was to represent the State.

40. Mr. YASSEEN said he understood the Special Rapporteur's concern, but he still maintained that a visit by a head of State or government, a minister for foreign affairs or other minister, was in fact a special mission. Such visits, particularly by a head of State, were so important that they were often the subject of a special agreement. But surely rules should be laid down for application in the absence of such an agreement.

41. Mr. BARTOŠ, Special Rapporteur, said that was a point on which the Commission would have to take a decision.

42. Mr. EL-ERIAN said that the scholarly study prepared by the Special Rapporteur was a valuable contribution not only to the work of the International Law Commission, but also to the literature of international law in general.

43. With regard to the scope of the topic, he agreed that special missions were something quite distinct from permanent missions and should therefore be treated separately.

44. He also agreed that it was difficult to draw a distinction between political and other missions. Both the preamble to the Vienna Convention on Diplomatic Relations⁴ and article 3 of the Convention itself showed that the scope of diplomatic relations could not be confined to the traditional political functions. It was perhaps worth noting that, in his own country, a law of 1925 on diplomatic regulations used the phrase "Political and Consular Corps" in its title, whereas a law of 1954 on the same subject spoke of the "Diplomatic" corps and no longer used the word "Political".

45. He agreed that the status of visiting heads of State and ministers should be excluded from the scope of the study. The immunity of visiting heads of State was regulated by general international law and occasionally also by constitutional law. The position of members of the suite of such visitors probably needed regulation, but that was no reason for including visiting heads of State or government in a study of special missions. With regard to ministers for foreign affairs, some further elucidation was necessary before he could express an opinion; in its discussion on the law of treaties, however, the Commission had agreed that a minister for foreign affairs did not in principle have to produce evidence of his authority to act on behalf of his country. In its study of special missions, the Commission intended to deal with persons authorized by a head of State to act for the purposes of a specific mission. That

⁴ United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, Vol. II, p. 82.

made him very reluctant to see heads of State and ministers for foreign affairs brought within the scope of the study.

46. Although he was inclined to agree with the Special Rapporteur that the basis of diplomatic immunity should be functional necessity, he must point out that not only the Commission, but also the 1961 Vienna Conference on Diplomatic Intercourse and Immunities had decided to adopt as the basis the representative character of the diplomatic mission coupled with functional necessity.

47. Mr. JIMÉNEZ de ARÉCHAGA said that the remarkable report by the Special Rapporteur broke new ground in international law in general and diplomatic law in particular. The Special Rapporteur had succeeded in a task which had been attempted in vain by the Commission at five meetings towards the end of its twelfth session.⁵ At most of those meetings it had unfortunately not had the benefit of the assistance of those members who, being members of the Drafting Committee, were then engaged in the formulation of the Commission's draft articles on consular relations.

48. With regard to the discussion of the report, he would have preferred the Commission's usual method of a discussion article by article, but he would, of course, agree to follow the method which had now been adopted.

49. As to the scope of the subject, he agreed with the Special Rapporteur's suggestion in paragraph 88 of his report "that both missions of diplomatic and political importance and those of a strictly technical nature should be recognized as special missions". It was impossible in practice to draw a distinction between political and technical missions. But while he agreed that technical missions should be included in the study, he must make it clear that in his view their inclusion did not mean that all missions should be subject to the same body of rules.

50. That applied particularly to the question of personal immunity from criminal, civil and administrative jurisdiction, which was the subject of the Special Rapporteur's article 26. For instance, it was extremely unlikely that States would be prepared to grant such immunity to the members of a technical mission engaged in discussions on a matter such as the control of animal diseases. For members of missions of that kind, privileges and immunities should be confined to those necessary for the performance of their duties; they should be similar to those enjoyed by consuls under the 1963 Vienna Convention on Consular Relations rather than to those enjoyed by diplomatic agents under the 1961 Vienna Convention on Diplomatic Relations. He fully agreed with Mr. Cadieux that an unduly liberal attitude to the question of the privileges of members of special missions would meet with strong resistance from parliaments. He need only remind the Commission of the objections raised in cer-

tain parliaments to the privileges embodied in the Convention on the Privileges and Immunities of the United Nations.⁶

51. With regard to visiting heads of State and ministers, the Commission could do no more than put forward rules governing precedence, as had been done by the Special Rapporteur in article 9, paragraph 2, of his draft. Any attempt to cover a wider field than that of diplomatic law would involve the Commission in needless controversy.

52. The CHAIRMAN agreed that the Commission should consider separately the important question whether visits by heads of State, heads of government or ministers, should be dealt with in the report on special missions.

53. Speaking as a member of the Commission, he said he had some doubt about the possibility of making any clear distinction between missions by a head of State, head of government or minister for foreign affairs, and missions led by any other personage.

54. Mr. BARTOŠ, Special Rapporteur, reiterated that there were rules of positive international law on that matter, which was why he had not dealt with it in his draft articles. As such visits had become much more frequent, the Commission might, as Mr. Yasseen had suggested, prepare general rules for any cases not already covered.

55. The CHAIRMAN, speaking as a member of the Commission, said he thought that if there were rules of customary international law, rather than leave the question aside the Commission should codify those rules.

56. Mr. TUNKIN said that there were many arguments in favour of dealing with such visits in the Commission's draft. But the Commission should consider the matter carefully before it took a decision.

57. The CHAIRMAN noted that the Commission agreed to defer taking a decision on the question whether visits by heads of State, heads of government or ministers should be considered as special missions.

58. He invited the Commission to take up the second question: should the draft articles on special missions be confined to direct relations between States, or should they also deal with delegations to conferences or congresses convened by States or by international organizations?

59. Mr. BARTOŠ, Special Rapporteur, pointed out that the previous year the Commission had decided to reserve its decision until it had heard the views of the two special rapporteurs dealing respectively with special missions and with relations between States and inter-governmental organizations. Theoretically, the draft articles should deal only with special missions concerned with relations between States, but in prac-

⁵ *Yearbook of the International Law Commission, 1960*, Vol. I. 565th, 567th, 569th, 576th and 577th meetings.

⁶ *United Nations Treaty Series*, Vol. I, p. 16.

tice it could hardly be maintained that there should be different sets of rules for missions to conferences convened by States and missions to conferences convened by international organizations, which were almost identical and differed only as to the entity convening them.

60. Mr. EL-ERIAN said that some consultation between the two special rapporteurs was necessary, but in the meantime he had no hesitation in saying that he would prefer the status of delegations to international conferences convened by States to be dealt with in the report on special missions, for such conferences were among the most common examples of *ad hoc* diplomacy. Admittedly, the number of international conferences convened by States outside international organizations was diminishing as a result of the growth of international organizations, but they nevertheless remained a distinct phenomenon in international life.

61. Mr. BRIGGS said he would have spoken with some diffidence had it not been for the masterly report by the Special Rapporteur, which had filled the gaps in the knowledge of the law on special missions. He certainly did not consider that the subject should be confined to diplomacy outside international conferences. It was purely fortuitous that the diplomacy conducted within international conferences, which was an important aspect of the subject, might have been covered under either of the topics assigned to two different special rapporteurs, and he welcomed Mr. El-Erian's willingness for it to be dealt with in the report on special missions. He was sure the Special Rapporteur would bear in mind the distinction between the two categories of conference and it should be for him to pronounce on whether or not the status of delegations to conferences convened by States was governed by residual rules.

62. Mr. VERDROSS said that the Commission must leave no gaps if its work was to be useful. The Convention on Diplomatic Relations, the Convention on Consular Relations, and the report begun by Mr. El-Erian on relations between States and inter-governmental organizations, dealt with certain specific questions; all the other questions should be settled in the report on special missions. It would accordingly have to deal with special diplomacy in the broadest possible sense, though that did not mean that the same rules should apply to every kind of special mission.

63. Mr. de LUNA agreed with Mr. El-Erian and Mr. Verdross. Delegations to conferences should be treated as special missions, whether the conferences were convened by international organizations or by States. Their functions were obviously the same in both cases; but in practice, in the first case the organization had established rules, whereas in the second case there might be rules or there might not. In other words, in the second case there was a problem of the progressive development of international law.

64. It should be noted that observers, who were considered in paragraph 100 of the report, were not necessarily envoys of States which had refused to

participate in a conference: they might also be sent to a regional conference by a State which, although situated outside the region concerned, had some interest in the questions to be discussed. Spain, for instance, often sent observers to conferences of the Hispano-American States.

65. Mr. ELIAS said that the status of delegations to conferences, whether convened by international organizations or by States, should be dealt with under one general heading as part of the topic of special missions. He had personally experienced the need for uniform rules on the privileges and immunities of special missions when he had been appointed by the United Nations, together with a Canadian, an Indian and a Swiss expert, to go to the Congo for the purpose of assisting the Government to settle certain constitutional problems and legal matters connected with Katanga and the copper mines. The Congolese Government had received them as persons accredited by their governments and not as a United Nations mission of experts, and had insisted on providing them with cars. An anomalous situation had then arisen when United Nations cars flying United Nations flags had been assigned to their assistants, who had consequently enjoyed privileges and immunities not granted to the experts themselves.

66. Mr. JIMÉNEZ de ARÉCHAGA said he must warn the Commission against a hasty reversal of the decision to exclude the status of delegations to conferences from the scope of the study on special missions, which he regarded as sound. In taking that decision the Commission had been guided largely by the importance of distinguishing between traditional bilateral diplomacy and what had been termed multilateral diplomacy. It had also been aware that some rules, such as those pertaining to the *agrément* and to the declaration of a person as *non grata*, were far from being the same for special missions and delegations to conferences.

67. In his report on *ad hoc* diplomacy⁷ Mr. Sandström, the Special Rapporteur, had examined the differences between the positions of delegations enjoying full diplomatic privileges and those enjoying the privileges and immunities conferred under the United Nations Convention on Privileges and Immunities, in regard to such matters as immunity from jurisdiction and exemption from customs duties. He had pointed out the anomaly of having two different sets of rules governing two types of conference, as a result of which delegations to conferences convened by international organizations might enjoy a lesser degree of diplomatic protection. In his (Mr. Jiménez de Aréchaga's) opinion, the privileges and immunities and the status of delegates to conferences should be the same whether the conference was convened by a State or by an international organization.

68. Sir Humphrey WALDOCK said that Mr. Bartos's report was bound to be of great value, since it would

⁷ *Yearbook of the International Law Commission, 1960, Vol. II, p. 108.*

apparently cover matters not regulated by the Vienna Convention on Diplomatic Relations.

69. During the discussion on special missions at the previous session he had thought that it would be somewhat artificial to distinguish between the status of delegations to conferences convened by States and that of delegations to conferences held under the auspices of international organizations. It would be helpful if the Special Rapporteur on relations between States and inter-governmental organizations could say what matters he thought should come within the scope of his report.

70. Mr. EL-ERIAN observed that he had not prepared a second report because, owing to the cancellation of the proposed winter session, the Commission had not concluded its preliminary consideration of the first (A/CN.4/161 and Add. 1). His initial intention had been to deal with the privileges and immunities of international organizations as such, of their officials, of experts appointed by them, of permanent missions to them and of representatives to conferences convened by them or held under their auspices. As members would have noted, the Special Rapporteur on special missions, in paragraph 21 of his report, had distinguished between the status of delegations and delegates to conferences convened by international organizations or held under their auspices, and that of delegations and delegates to conferences held outside international organizations.

71. He understood Mr. Jiménez de Aréchaga to favour a different distinction, namely, between bilateral and multilateral diplomacy. If that line were followed, presumably the status of delegations to international conferences, however convened, would be the same.

72. The CHAIRMAN, speaking as a member of the Commission, said he found it difficult to decide whether it was better to deal with everything, as Mr. Verdross had suggested, or whether questions which were perhaps very different ought not to be dealt with together. For the time being, he thought the Commission would be wise to confine its study to special missions sent from one State to another; later on, after it had examined Mr. El-Erian's report, it could decide whether there were any gaps to be filled in regard to missions to international conferences.

73. Mr de LUNA, referring to a comment by Mr. Cadieux, said he agreed that parliaments and governments were often reluctant to grant immunity; that was a practical point which should not be overlooked. The Commission would certainly have to draft rules covering delegations to conferences convened by States.

74. Mr. YASSEEN said that the question was whether missions sent to conferences should be dealt with in the report on special missions or in the report on relations between States and inter-governmental organizations. In his view, missions sent to conferences — whether convened by an international organization or by a State — must logically be regarded as special missions. If the Commission adopted a different posi-

tion, it might find itself dealing with matters that had nothing to do with relations between States and international organizations.

75. He agreed with Mr. Jiménez de Aréchaga that conference diplomacy was multilateral, whereas the diplomacy of special missions was usually bilateral.

76. The Commission might consider entrusting the whole question of conferences to a third Special Rapporteur, but there seemed to be no insurmountable obstacle to assigning it to the Rapporteur on special missions. In any case the two Special Rapporteurs were already agreed on that point.

77. Mr. ROSENNE said that, even if the functions of delegations to conferences held under the auspices of international organizations were to all intents and purposes identical with those of delegations to conferences convened by States, as Mr. de Luna had argued, the legal framework within which those two types of conference took place was so different that the difficulty of assimilating the status of delegations to them was virtually insurmountable. The difficulty would arise not so much over the privileges and immunities to be accorded, as over the procedure for waiver of privileges in a given case and the settlement of any differences that might arise. If the conference were convened by States, those matters would be dealt with through normal diplomatic channels, but the legal situation would be very different if it were held under the auspices of an international organization; in that case the organization would be interposed and the matters in question would be governed by the arrangements concerning the privileges and immunities of the organization. For example, so far as the United Nations was concerning, he believed that in certain cases the Secretary-General personally had to take decisions regarding the waiving of immunities.

78. Perhaps it would be advisable to postpone further discussion for a few days so that the two Special Rapporteurs could consider the problem and submit a joint proposal on how it should be handled and in which of the two reports. The Commission would then have a clearer picture of the scope of the report on relations between States and inter-governmental organizations.

79. He was uncertain whether the Special Rapporteur's argument that it would be difficult to draw up two sets of rules for the two types of conference was valid. In fact, there were already two sets of rules, those laid down in the Vienna Convention on Diplomatic Relations and those contained in the conventions on the privileges and immunities of international organizations. The substantive content of those rules might be very similar, but their legal basis was entirely different.

80. The CHAIRMAN said that the two Special Rapporteurs, Mr. Bartoš and Mr. El-Erian, would think the matter over, come to some agreement, and inform the Commission of their conclusions.

81. Speaking as a member of the Commission, he said that the differences between missions sent from

one State to another and delegations to international conferences seemed to him to be greater than the differences between delegations to conferences convened by States and delegations to conferences convened by international organizations.

The meeting rose at 1 p.m.

724th MEETING

Thursday, 14 May 1964, at 10 a.m.

Chairman: Mr. Roberto AGO

Welcome to Mr. Reuter

1. The CHAIRMAN welcomed Mr. Reuter and congratulated him on his election to fill the casual vacancy caused by the resignation of Mr. Gros.

Special Missions

(A/CN.4/166)

(resumed from the previous meeting)

[Item 4 of the agenda]

2. The CHAIRMAN invited the Commission to resume consideration of the report on special missions (A/CN.4/166).

3. Mr. EL-ERIAN said that, in accordance with the request made at the previous meeting,¹ Mr. Bartoš and he had discussed the question of how the status of delegations to conferences should be handled. In view of the complexity of the matter and the different opinions on it expressed in the Commission, they had concluded that for the time being Mr. Bartoš' report should be confined to inter-State special missions and his own report should deal with the status of delegations to conferences convened by international organizations. They considered that the Commission should wait until it had examined both reports before deciding how to deal with the status of delegations to conferences convened by States.

4. Mr. TSURUOKA said he wished first of all to congratulate the Special Rapporteur on his masterly report and draft. As a career diplomatist of more than thirty years' standing, he (Mr. Tsuruoka) would like to make a few practical comments. The Commission should not lose sight of its objective, which was to facilitate international co-operation. The special mission was an adaptation of diplomatic machinery to changed conditions; it was thus a part of diplomacy and, like permanent diplomacy, was designed to pro-

mote the interests of the country represented, in collaboration with the other countries concerned.

5. The special mission had two distinctive characteristics. First, in bilateral relations, whereas the resident mission was permanent and general, the special mission was occasional and partial. The Special Rapporteur had brought out that distinction very well. Secondly, whereas classical diplomacy was bilateral by definition, the special mission was often concerned with multilateral or collective relations.

6. The existence of those two forms of diplomacy raised a question of responsibility. There might be conflict between the permanent diplomatic mission and a special mission of a State in another State. However, the presumption must always be that the will of the States was one: both missions had the same purpose and the special mission became part of permanent diplomacy. A visit by a head of State, a head of government or a minister might have a very general purpose, but it nevertheless retained an occasional character; in the longer term, the responsibility still rested with the ambassador. The Commission should therefore draft the rules concerning special missions very carefully, without detracting from the role of permanent diplomacy.

7. The distinction between political and technical missions was not very important in practice. In Japan, the decision to send a special mission was taken by the Ministry of Foreign Affairs, and it was the ambassador on the spot who was responsible for ensuring its success.

8. Another point very clearly brought out in the report was that the principle of autonomy of the will of the parties prevailed. The Commission was to draft rules which would, of course, permit certain exceptions; it should confine itself to essentials, in other words, to considering the normal situation, and should not include rules relating only to details and special cases.

9. With regard to the discussion procedure, he would have preferred the Commission to examine the draft article by article.

10. Mr. CASTRÉN congratulated the Special Rapporteur on his excellent report, which seemed very complete; the ideas in it were progressive, and the solutions proposed sound and practical. With regard to the definition of special missions, they could certainly perform all sorts of official functions. As several speakers had said, the rules governing special missions might vary with their functions.

11. The questions of State and ceremonial visits had been set aside; it was certainly worth examining in greater detail, and the comments by Mr. El-Erian and Mr. Yasseen had already thrown much light on it.

12. Opinions were divided on the subject of delegations to international conferences and congresses. In strict logic, as Mr. Yasseen had said at the previous meeting,² such delegations were in fact entrusted with

¹ Paragraphs 78 and 80.

² Paragraph 74.