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Summary record of the 758th meeting

Topic:
Special missions

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57. Mr. TABIBI explained, in reply to Mr. Elias, that he had not criticized the commentary from the point of view of legal theory, but merely pointed out that it was not advisable to include certain passages in a document to be submitted to the General Assembly. Moreover, a statement like that in paragraph (1) (b) of the commentary failed to take account of the practice, particularly at the United Nations, in which the line of demarcation between special missions, representatives to conferences and permanent missions, was very often indistinct. For example, the Ministers of Commerce attending the recent Conference on Trade and Development at Geneva had used the opportunity to carry on certain negotiations.

58. Mr. AMADO said that the articles submitted were admirably constructed and entirely served their purpose, that of giving form and body to the propositions submitted earlier by the late Mr. Sandström. The articles were intended to fill a gap left by the two Vienna Conventions, that on Diplomatic Relations and that on Consular Relations; they supplemented those Conventions and were not intended to solve all the diplomatic problems raised by the multifarious activities of modern times.

59. Article 1 was unexceptionable, and he could not see that anything could be added to or taken away from it. While he appreciated Mr. Yasseen's argument, he could not agree with his remarks concerning paragraph 2.

60. To discuss the commentary was premature; it was the Commission's practice not to write the commentary until it had finished debate on the articles themselves. In any case, the passage in the commentary to which Mr. Rosenne had referred was more or less a meditation of the Special Rapporteur's own.

61. The Special Rapporteur had been right to refrain from seeking to define the meaning of "special mission", for all definitions were dangerous.

62. Sir Humphrey WALDOCK asked whether the Special Rapporteur attached any special significance to the words "or consular" in paragraph 1. The essential point seemed to be the existence of regular diplomatic relations.

63. Mr. BARTOŠ, Special Rapporteur, explained that his thought had been the same as Sir Humphrey's before the special situation between the Federal Republic of Germany and Yugoslavia had been established. The Federal Republic received and sent special missions responsible for matters germane to consular relations; hence it considered that the severance of diplomatic relations had not involved the severance of all relations between the two States. Paradoxically, the consular sections of the two embassies had continued to function, one at Belgrade under the auspices of the French Embassy and the other at Bonn under those of the Swedish Embassy. He had thought that the phrase "diplomatic or consular relations" would be useful, but he would not insist on keeping it. He had long considered diplomatic relations and consular relations as forming an invisible whole, but several cases had led him to draw not only a theoretical but also a prac-

tical distinction between the two. Sometimes consular relations existed although diplomatic relations had not yet been established or had been severed.

64. Mr. TUNKIN suggested that the Secretariat should circulate to members of the Commission the text of the Vienna Convention on Diplomatic Relations, so that it could compare the Special Rapporteur's articles with the provisions of the Convention.

65. Mr. CASTRÉN said he conceded that it was not necessary that the draft should open with a definition of "special mission". It would, however, be desirable that the Commission should at its next meeting consider the question of definitions, in particular so far as they related to the head of a special mission and its members, for there seemed to be some lack of uniformity in the concepts in the various articles.

66. He agreed with Mr. Elias that the word "special" before the word "missions" should be deleted in paragraph 1. Secondly, while it was true that a State was not bound to receive a special mission, too much should not be made of the requirement of consent. In the light of Mr. Tabibi's remarks the Commission might insert the words "express or implied" before the word "consent", and might explain — perhaps in the commentary — that such consent could be given *ex post facto*.

67. Paragraph 2 should preferably be retained, even though it stated the obvious; if he recollected rightly, the Vienna Convention on Consular Relations, 1963, contained an analogous provision.

68. The Special Rapporteur had stated that political movements, and in particular insurgents, recognized as belligerents had the capacity to send special missions. If the Commission considered that that should be the meaning of the article, it would have to redraft it accordingly. Alternatively, it might decide that the draft should deal exclusively with special missions sent by one State to another.

The meeting rose at 1 p.m.

758th MEETING

Friday, 3 July 1964, at 10 a.m.

Chairman: Mr. Roberto AGO

Special Missions

(A/CN.4/166)

(continued)

[Item 4 of the agenda]

DRAFT ARTICLES ON SPECIAL MISSIONS

ARTICLE 1 (continued)

1. The CHAIRMAN invited the Commission to continue its consideration of article 1 in the Special Rapporteur's first report (A/CN.4/166).

2. Mr. TUNKIN said that, so far as essentials were concerned, he agreed with the Special Rapporteur's draft of article 1: a special mission was sent by one State to another, and the consent of the other State was doubtless necessary.
3. The Special Rapporteur had agreed to omit the words "special and" in paragraph 1; it was arguable, however, that the word "specific" should be omitted as well, for the assignments given to special missions might be quite vague and general, and practice showed that in many cases they were not specific. It was for the States to decide in each case whether the mission's assignment should or should not be spelt out in all particulars.
4. As he had said during the general discussion, the only distinctive feature of special missions was their temporary character. He had even suggested that the expression "temporary missions" should be employed.
5. Furthermore, the present drafting of paragraph 1 might give rise to doctrinal difficulties in the matter of the rights of States. To avoid that controversy, and also in order not to over-emphasize the element of consent (which might be either express or implied), the Drafting Committee might consider the following redraft: "A temporary mission is sent by one State to another State with the consent of the latter".
6. In all other respects he could accept the Special Rapporteur's text.
7. Mr. TSURUOKA suggested that the Commission should explain in the commentary on the article that the consent to the sending of a special mission should be given by the organs of the State which were authorized according to international law to express the will of the State; similarly, the proposal to send the special mission should emanate from the duly authorized organs. If that point was not made clear, disputes might arise which would not facilitate the task of special missions.
8. Mr. BRIGGS said that he was in complete agreement with the purpose of article 1. With regard to the formulation, he accepted paragraph 2 as it stood. He wished to make some observations, however, concerning paragraph 1.
9. In the first place, he noted that the Special Rapporteur had not employed the formula used in the Vienna Convention on Diplomatic Relations, 1961. Article 2 of that Convention stated: "The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent". Similarly, paragraph 1 of article 2 of the Vienna Convention on Consular Relations, 1963, stated: "The establishment of consular relations between States takes place by mutual consent". It would perhaps be of advantage to make like provision for the mutual consent of the States concerned in article 1, paragraph 1, of the draft on special missions.
10. In the opening words of the paragraph, he found the reference to "specific assignments" somewhat rigid. A situation could arise in which a special mission sent to attend a State funeral, for example, might take the opportunity to engage in certain discussions, the specific purpose of which had not been among the mission's original purposes. He therefore suggested that some element of flexibility should be introduced into the provisions of paragraph 1, so as not to leave out the possibility of informal negotiations without formal consent. He thus supported Mr. Tunkin's suggestion in favour of greater freedom in respect of the tasks assigned to the special mission. It was undesirable to impose upon them an unduly rigid framework, since it was impossible to foresee all the tasks that would be included in a series of conversations.
11. On a point of drafting, he said he was not altogether satisfied with the term "assignment" used in articles 1 and 2 to translate the French term "*tâche*"; a more appropriate rendering should be found.
12. Agreeing with the remarks made by Mr. Rosenne at the previous meeting, he said it was undesirable to emphasize that any mission which exceeded the limits of its assignment would be acting *ultra vires*.
13. The CHAIRMAN, speaking as a member of the Commission, said that he agreed with Mr. Tunkin that the essential characteristic of a special mission was that it was temporary; that characteristic was the key to the distinction to be made between the treatment of special missions and that of ordinary diplomatic missions. However, despite a certain preference for the expression "temporary missions", he realized that it might be difficult to drop the expression "special missions", which was in common use.
14. He also shared Mr. Tunkin's opinion regarding the word "specific".
15. Mr. YASSEEN said it was his understanding that Mr. Tunkin was opposed (not to the idea that the assignments of special missions should be described as "specific", but to the idea that they should be regarded as very specific. In his own view, since the sending of a special mission was subject to the consent of the receiving State, that State was entitled to know what was to be the mission's purpose; accordingly, its assignment would have to be specified to some extent.
16. Mr. de LUNA said he would prefer that at least in the title the expression "special missions" should be retained for it was in common use. But it was the adjective "temporary" which indicated the essential characteristic of the special missions under consideration, for the draft was so conceived as not to cover permanent special missions.
17. Mr. PAL, reading paragraph 1 of article 1 with paragraph 1 of article 2, said that the idea intended to be conveyed was no doubt that the assignment should not be vague and that the two States concerned should be clear what the mission's tasks would be. He did not believe that there was any difference of opinion in the Commission with regard to the substance of that idea, and hence the questions raised with regard to paragraph 1 of article 1 were largely questions of drafting and could be left to the Drafting Committee.
18. Mr. TSURUOKA supported the remarks made by Mr. Yasseen and Mr. Pal. The assignment of a special

mission should be specific, but that did not mean that it could not be general. When a special mission was led by a head of government and was received by another head of government, it was manifest that all kinds of questions might be taken up. But a special mission might be led by someone of lower rank. To facilitate the performance of its assignment, it was most desirable that that assignment should be specified in advance.

19. Mr. REUTER said that the members of the Commission were agreed as to the substance; the only questions which required clarification related to the terminology and could be settled by the Drafting Committee. In the title it would be dangerous to depart from the accepted term "special missions". It could hardly be laid down that the object of a special mission had to be defined rigidly; nevertheless, the assignment of a special mission should either be specified or else fit into a specific frame of reference.

20. Mr. ROSENNE said that the discussion on the term "special missions" used in the title of the draft reminded him of the problem faced by the Commission when it had dealt with the law of the sea and had been called upon to choose between the terms "territorial waters" and "territorial sea".

21. He believed it would be premature to try to reach a decision on the title until the Commission had considered all the draft articles on the topic under discussion.

22. Mr. RUDA thought that the title "special missions", which was the traditional term, should be retained.

23. In article 1, paragraph 1, he urged that both adjectives, "temporary", and "special", should be retained before the word "missions". The missions in question were temporary, as opposed to permanent diplomatic missions; they were also "special" by contrast with permanent missions, which were concerned with the whole range of diplomatic relations.

24. With regard to the assignment of the special mission, he agreed with Mr. Yasseen that the assignment should be specific. The State to which the special mission was to be sent should have a clear idea of the subject matter and of the negotiations about to be initiated; the fact that its consent had to be obtained necessarily implied that it should be informed of the purpose of the mission.

25. With regard to the suggestion by Mr. Briggs that a reference to the mutual consent of the two States concerned should be added, he pointed out that there was a difference between the case of special missions and that of permanent missions. The case envisaged in article 2 of the Vienna Convention on Diplomatic Relations was that of the establishment of diplomatic relations between two States which exchanged permanent missions; in that context, it was appropriate to refer to the mutual consent of those two States. In the case now under discussion, only one mission was involved, and what mattered was that the need for the con-

sent of the State to which the mission was to be sent should be indicated.

26. He thought that paragraph 2, although not perhaps indispensable, should be retained.

27. He supported article 1 as submitted by the Special Rapporteur, both in substance and in form.

28. Mr. AMADO said that, like Mr. Ruda, he thought that the word "specific" and the expression "temporary special missions" should be retained and that a reference to "mutual consent" would be out of place in the draft. The Commission should adopt the article as it stood.

29. Mr. PESSOU said that in his view article 1 was very satisfactory because it expressed in a simple way what had to be said. The Special Rapporteur has used the word "specific" to mark a contrast with the classic assignments of a permanent mission and to show that the assignment of a special mission was supplementary. One should not read too much into the word.

30. Mr. VERDROSS said that, for the same reasons as those given by Mr. Amado, he supported the text proposed by the Special Rapporteur.

31. Mr. EL-ERIAN congratulated the Special Rapporteur on his very precise formulation of article 1 and on his learned commentary to that article and expressed his support for the article under discussion.

32. The CHAIRMAN, speaking as a member of the Commission, said that there seemed to be some misunderstanding concerning the word "specific" or "specified". The principle, on which all the Commission's members certainly agreed, was that the special mission's assignment should be known to and accepted by the State receiving the mission; that State should not be taken by surprise. That was made clear in article 2. But he could not accept the idea that the purpose of the special mission must be limited. It was true that some special missions were sent to deal with a particular problem, a technical problem, but others, e.g. a mission led by a head of State, were sent to make a general survey of all political questions of concern to the two States. In the latter case the assignment given to the mission could be described as specific in the sense that it was known in advance that it would be very broad, but it was not limited to a particular purpose.

33. The question of consent was dealt with in article 2. The important element of article 1 was rather the occasional character of the special mission.

34. Mr. LACHS supported the Chairman's remarks. The limitation embodied in paragraph 1 of article 1 seemed superfluous, since the succeeding articles made provision for the consent of the State to which the mission was to be sent. The fact that its consent would have to be obtained implied that the State concerned would have to be aware of the purpose of the mission.

35. There could be many types of special missions. Some such missions were of an exploratory character and covered the whole field of relations between the

two States concerned; in many cases, a mission of that type was headed by an ambassador and not by a Head of State or Government. A special mission was also sometimes sent as a preliminary step to the establishment of diplomatic relations, and its assignment would then cover many problems.

36. Mr. AMADO said that, despite the arguments put forward by the Chairman and Mr. Lachs, he still thought that the word "specific" should be retained. Special missions were sometimes sent in cases where no diplomatic relations, and not even consular relations, existed between two States. Accordingly, the State which was to receive the mission should know why the mission was coming; the purpose of the mission should be specified, spelt out, defined. The phrase suggested by Mr. Reuter "a specific frame of reference" conveyed the idea well, he thought. As a compromise, he proposed that the opening passage of paragraph 1 should be replaced by the words "For specific purposes".

37. Mr. TUNKIN said he still held the view that the expression "For the performance of specific assignments" suggested rather a mission of a technical character with a strictly limited assignment. But there were much more important special missions whose assigned tasks were very broad and not specified in advance. For example, when two prime ministers met, all kinds of questions were sure to be discussed; the agenda for the discussion might not be drawn up until after the talks had begun.

38. He proposed that the Commission should proceed to consider article 2 and revert to article 1 later.

39. Mr. de LUNA said that, in logic, the comprehension of a term was in inverse ratio to the extension of its meaning. An assignment could be specific and at the same time very general. He approved the wording proposed by the Special Rapporteur.

40. Mr. TSURUOKA pointed out that, if the Commission should decide that article 2 would deal with the question of the assignments of special missions, then the first phrase in article 1, paragraph 1, should be deleted.

41. Mr. BARTOS, Special Rapporteur, replying to the comments made, said that with regard to the way in which the missions under considerations should be styled he had felt obliged to keep to the term "special missions", which had been used not only by writers but also by the General Assembly and which appeared in a text unanimously adopted by the Vienna Conference on Diplomatic Intercourse and Immunities. It was also the expression which the Commission had used in defining his own terms of reference. The Commission might consider using the term "temporary missions" in the body of the articles, but it would be preferable to retain the term "special missions" in the title.

42. The first specific question asked was whether the first phrase in article 1, paragraph 1, anticipated what was said in article 2 concerning the assignments given to special missions. Article 1 was essentially an introductory provision and contained an indirect definition of the special mission. In seeking to specify in the very

first article that the assignments given to a special mission should be "specific", he had been thinking in particular of the actions of Hitler, which he regarded as an illustration of a method by which a great Power might try to impose its will on other States, requiring them to send special missions to it without the purpose of those special missions being specified, and itself sending special missions with unrestricted freedom to settle any question. In modern times, chanceries were always anxious to know what task was assigned to a special mission. It had not been his intention, in using the term "specific assignments", to refer to technical or limited assignments; the special mission might even be directed to review the whole of the relations between two countries, but if so, its object should be specified in advance so that the State receiving the special mission would know what would be the subject of the talks. Even if a special mission was led by a head of State or a prime minister, the rule was that the two States concerned should have agreed in advance on a general agenda, though the agenda could be expanded as the talks proceeded. The Commission should draft provisions guarding against surprise action by a State. He did not insist on the use of the word "specific"; the Drafting Committee might perhaps find a more elastic wording which would nevertheless safeguard the negotiations. The question was important, and was linked to that of the consent of the State receiving the special mission.

43. So far as that consent was concerned, he could not accept Mr. Tabibi's criticism expressed at the previous meeting. In drafting his text he had wished to make a clear distinction between the notice of the arrival of the special mission — which was a technical matter, affecting rather security and protocol — and the consent of the receiving State, which had a legal and political significance. Cases had occurred in practice where such notice had been followed by a refusal; if the special mission had nevertheless arrived, it had sometimes been received out of pure courtesy, but it had not been able to negotiate, because the receiving State had not been under any obligation to negotiate in such circumstances. He was prepared to agree that the requirement of consent should not be over-emphasized and to accept a negative formulation, such as "on condition that the State does not refuse"; but he was not disposed to accept with enthusiasm the suggestion, made by Mr. Castrén at the previous meeting, that consent could be given *ex post facto*. It would be sufficient if the Commission's draft indicated that the consent could be implied, for a State which agreed to negotiate was by implication consenting to receive the mission. In paragraph (3) of the commentary on article 1 he had mentioned several ways in which the consent could be signified. On that point also the Drafting Committee might perhaps find more flexible wording.

44. Replying to another comment by Mr. Tabibi, he pointed out that the Commission's draft should deal solely with special missions as described in the literature and as they existed in State practice; in other words, temporary missions. It was not concerned with two other categories of missions, namely: special mis-

sions of a permanent character, such as those maintained by Australia in some countries to deal with immigration questions and those exchanged by States members of the NATO to deal with military questions; and missions to international organizations, which constituted a separate category and came within the scope of the topic for which Mr. El-Erian was Special Rapporteur.

45. With regard to the doubts expressed by Mr. Tabibi concerning the desirability of using the word "State", he agreed with Mr. Elias that the thought was praiseworthy and progressive. However, since the question was one of law, the Commission was bound to consider only missions sent by one State to another. Reference had been made to insurgents recognized as belligerents and said to be equivalent to a State. The example of the Bandung declaration, referred to by Mr. Tabibi, was not a novel case; during the First World War, the Polish movement had been recognized by the Allies as a subject of international law. In using the expression "subject of international law" in his commentary, he had been thinking in particular of two cases he had witnessed in his own country. The first was that of a special mission sent to Belgrade, purportedly on behalf of the Republic of Eastern Nigeria. The Government of the Federation of Nigeria had pointed out that the Republic of Eastern Nigeria was not a subject of international law and that any negotiation considered might serve the Central Government of the Federation of Nigeria; that point of view had been accepted by the Yugoslav Government. The second case was that of a treaty concluded between Austria and Slovenia concerning the movement of Austrian tourists in Yugoslavia — a treaty whose provisions were to be extended to Croatia. By a Note addressed to the Austrian Government, the Yugoslav Government had explained that, while Slovenia and Croatia had a very large measure of autonomy, they were not subjects of international law. Since the Yugoslav Government had agreed to conclude a treaty of the same tenor on behalf of Yugoslavia, the matter had been settled to the satisfaction of both countries. It was in the light of those situations that he took the view that special missions could be sent only by States. Mr. Tsuruoka had been right to emphasize that the State should act through the competent organ or service of the Government.

46. Several members had already replied to Mr. Briggs's suggestion that it might be of advantage to make provision for mutual consent, as in the two Vienna Conventions. Mr. Ruda had rightly pointed out that the draft was not concerned with the establishment of two permanent reciprocal missions: only one mission was involved, which was to be temporary, and there was no question of an exchange. A State expressed its will and that expression of will was accepted by the other State. Although in law the two situations were analogous, it would be stretching the language to use the term "mutual consent" in such cases.

47. Mr. de Luna had said that special missions should be clearly distinguished from ordinary general missions. He was prepared to acknowledge that it was one of the weaknesses of his report that it did not distinguish suf-

ficiently clearly between the two kinds of mission. The Commission could not, of course, impose a form of conduct on States and so interfere in their internal affairs; but it would have to find legal rules to ensure that there was no duplication and to provide a firm basis for the action of both types of mission.

48. He had answered at the previous meeting the comments made by Sir Humphrey Waldock and Mr. Yasseen on paragraph 2.

49. What he had wished to make clear in paragraph (1) (b) of the commentary was that special missions should act within a definite frame of reference; it could of course be broadened by the two parties, but the special mission would be acting *ultra vires* if it went too far beyond the limits of its assignment. The passage in the commentary was perhaps too rigid, and he was prepared to replace it by a more flexible expression. The Commission would have an opportunity of reverting to that question in connexion with another article; the point as of particular importance in that it affected special missions that negotiated a treaty in simplified form, in other words a treaty which did not require ratification.

50. Mr. CASTRÉN, noting the reference to insurrection in paragraph (1) (a) of the commentary, drew attention to paragraph III of the introduction, which spoke of Governments in the process of formation — in other words, Governments of "States about to be born" — and to the Special Rapporteur's opinion expressed in that paragraph that the political agents of such States should be accorded the status of special missions. Although he agreed with the Special Rapporteur, he wished to point out that the status of such States differed greatly from that of States which had been recognized and which were thus subjects of international law. Consequently, it was difficult to apply the general rules which the Commission was formulating in the former instance; it would be better to regulate the case of such agents by an *ad hoc* arrangement. He suggested that paragraph (1) (a) of the commentary which dealt with insurrection.

51. The CHAIRMAN, speaking as a member of the Commission, suggested that the Drafting Committee should consider the most controversial point and take into account Mr. Amado's suggestion and Mr. Tsuruoka's proposal that the article should not refer to "assignments", which were dealt with in article 2. The last part of paragraph 1 would then read "...States may send temporary special missions to other States with the consent of the latter".

ARTICLE 2 (The assignment of a special mission)

52. Mr. CASTRÉN said that in principle he accepted the ideas set out in the article, although it was perhaps too detailed. Paragraph 2, which was corollary to paragraph 1, might well be deleted, especially as it conflicted to some extent with paragraph 3 which, moreover, constituted an important exception to the provisions of paragraph 2. Since, however, States were always at liberty to organize their relations with one another otherwise than as provided in paragraph 2, on

condition that they mutually agreed to do so, paragraph 3 was also superfluous and its provisions were in any case covered by those in paragraph 1. Accordingly, he would propose that paragraphs 2 and 3 should be dropped.

53. Mr. VERDROSS said that he agreed with the views on which the article was based. Nevertheless, he thought that the rule laid down in paragraph 1 was not entirely correct. The terms of the assignment could no doubt be formulated by the sending State but could hardly be specified by that State alone. It would be more accurate to say that the assignment "is specified by agreement between the sending State and the receiving State".

54. So far as paragraphs 2 and 3 were concerned, he agreed with Mr. Castrén; the provisions in question were already covered by paragraph 1, since, if the assignment could be specified by an agreement, its scope could likewise be broadened or reduced by an agreement.

55. In paragraph 4, the words "shall be deemed" seemed unnecessary, especially as it was not clear by whom the assignment was to be "deemed to be excluded...".

56. Mr. ELIAS said that the four paragraphs of article 2 were acceptable but might need some redrafting if the initial phrase in article 1, paragraph 1, referring the phrase "special mission" should be qualified by the indefinite article. In paragraph 4, some adjective other than "regular" should be found to describe a diplomatic mission, lest be inferred that a special mission was irregular.

57. Mr. ROSENNE said that, in line with his previous observations concerning the concept of *ultra vires*, he considered that paragraphs 2 and 3 should be dropped. He also hoped that paragraph 4 might be dispensed with, since it might impinge upon internal administrative matters; furthermore, if retained it would need some modification so as not to exclude so categorically the possibility of a permanent mission dealing with some of the matters nominally coming within the assignment of a special mission. For example, there might be some overlapping in the functions exercised respectively by a large technical assistance mission and a permanent mission.

58. Mr. YASSEEN said that he endorsed the principles set out in article 2. In paragraph 1, however, he would prefer the wording proposed by Mr. Verdross, since in cases where the receiving State invited another State to send a special mission to discuss certain matters, it was the receiving State which specified the assignment of that special mission.

59. He did not think that there was much point in retaining paragraph 2, since what it stated could be directly inferred from paragraph 1.

60. On the other hand, he thought that it might be useful to retain paragraph 3, for it allowed for the possible amendment of the original agreement in such a way that, by a later agreement between the two States,

the assignment would be exceeded. The decision to that effect would depend on the consent of the two States concerned.

61. Mr. TSURUOKA said that he would accept Mr. Verdross's proposed wording of paragraph 1. His views on paragraphs 2 and 3 coincided with those of Mr. Yasseen.

62. With regard to paragraph 4, he said that the words "shall be deemed..." apparently referred to what happened when the assignment was not mutually agreed. He would prefer that paragraph to be deleted, since in most cases the decision depended on mutual consent between the two States, and the circumstances envisaged in paragraph 4 were somewhat exceptional.

63. The CHAIRMAN, speaking as a member of the Commission, said that while he endorsed the principle stated in paragraph 1, he would prefer Mr. Verdross's formula, although he thought that it would be better to replace the word "specified" by "established".

64. Paragraph 2 seemed to him to be implied in paragraph 1 and hence unnecessary.

65. On the other hand, he was not so sure that paragraph 3 was superfluous. Although it was true that the possibility of amending the mission's assignment by agreement would be inherent in the principle set forth in paragraph 1, it might be useful to say so, in order to forestall opposition to changes in the original scope of the assignment.

66. He was doubtful whether paragraph 4 was necessary, for the situation would largely depend on the circumstances. If a special mission was sent for a considerable time and had a definite assignment, the permanent mission did not normally concern itself with whatever was covered by that assignment. But it happened very frequently that a special mission was merely of a temporary nature, that preparations for it were made by the permanent mission and that some members of the permanent mission served on the special mission. There was therefore no need to lay down special rules in that respect.

67. Mr. LACHS agreed with the Chairman's observations and supported Mr. Verdross's amendment. He also subscribed to Mr. Yasseen's view that there should be some mutual accord between the two States as to the task of the special mission.

68. Paragraph 2 should be dropped, for a permanent mission might take over the functions of a special mission and indeed some officials of the former might serve on the latter.

69. Mr. TABIBI said that he entirely agreed with the purpose of article 2 but believed that paragraph 4 would have to be modified as it might create practical difficulties. In many cases, there was a close inter-relationship between permanent and special missions. For example, it was the practice of his Government to appoint ambassadors as heads of special missions who, being on the spot, could prepare their work in advance, were familiar with the institutions of the receiving

State and were well-placed to continue the work after the mission had left. Such a procedure could greatly facilitate the operation of special missions and should certainly not be ruled out.

70. Mr. de LUNA said that he accepted Mr. Verdross's suggestion in respect of paragraph 1; but he saw no reason why the word "specified" should be replaced by "established". In his view, "specified" was merely the opposite of "unspecified"; it was perfectly admissible to "specify" some general task that had not been closely defined.

71. He considered that paragraph 2 should be deleted and paragraph 3 retained. Paragraph 4 should be dropped, as it was dangerous; in his experience, special missions were always assisted in their task by the permanent diplomatic mission, where it existed. It was purely a question of internal organization and was a matter for the sending State.

72. Mr. TUNKIN said that, while in principle he approved article 2 he preferred Mr. Verdross's text for paragraph 1 as being more accurate.

73. Paragraphs 2 and 3 should be deleted. It was undesirable to carry regulation to extremes, and there was a risk that paragraph 3 might make it more difficult to alter the scope of the mission's assignment. Moreover, a more flexible way of solving the problem was provided in paragraph 1.

74. He thought that paragraph 4 should be dropped. Relations between permanent missions and special missions were so diverse that one could hardly draft a rule that would be rigid and yet would apply to every kind of situation.

75. Mr. BARTOŠ, Special Rapporteur, explained that two ideas were at the root of article 2: first, the assignment of a special mission was specified by the will of the two States, and, secondly, what was the respective competence of the special and of the permanent mission in relation to that assignment?

76. So far as the first idea was concerned, it was essential that the special mission should have an assignment, whether general or specialized. That assignment was "specified" — not "established" — by the sending and receiving States. The main point was that the consent of both States was required, and Mr. Verdross's wording was therefore preferable.

77. Paragraph 2 was in no way contradicted by paragraph 3, but it was not absolutely necessary and might be referred to the Drafting Committee.

78. In paragraph 3 he had wished to take into account what occurred in certain States in Northern Europe and in the United States of America where, before a special mission departed, a parliamentary committee laid down the terms of its assignment and where the leadership of such a mission was entrusted to an Ambassador-at-large. The question had arisen on several occasions whether the will of the State or Government in setting up the mission could be changed by the negotiators; in some cases the powers granted to the mission had been

disavowed and had even been held to have been infringed. It would therefore be preferable to retain paragraph 3 and to explain why that had been done. Governments would be at liberty to oppose the text.

79. Most members of the Commission seemed to be in favour of deleting paragraph 4. There were admittedly cases where the competence of the permanent mission was merged with that of the special mission, but it might not be. In the case of the USSR, for example, there were instances where the titular ambassador to the country concerned was not the head of the special mission; much depended upon the prominence of the person appointed to lead that mission. In the practice of Belgium, on the other hand, the titular ambassador was always the first plenipotentiary, even if the Foreign Minister — a member of the Cabinet — was a member of the mission. He did not wish to enter into such questions of precedence, but he still thought that, for the sake of stability in international relations, a rule should be laid down. The most radical solution would be to delete the words "shall be deemed" which Mr. Verdross had criticized. If the Commission was unable to reach a decision on that paragraph, it should be placed in brackets and the decision left to the States. In every Ministry of Foreign Affairs it often happened that doubts arose and that the question was asked whether the ambassador was to be the sole judge of the policy to be adopted; there were cases where the ambassador expressed his disapproval of the results of a special mission. Whatever view one took, the question was one that should be settled.

80. The CHAIRMAN, speaking as a member of the Commission, agreed with the Special Rapporteur that further reflection on paragraph 4 would be desirable and that the opinion of Governments on the point should be sought.

81. Mr. AMADO said that the Commission was breaking new ground; the Special Rapporteur was to be commended for having endeavoured to incorporate the rather elusive facts in an appropriate rule. The rule should be left to evolve in the course of time and should not be influenced by current events.

82. Mr. CASTRÉN noted that the Commission agreed that articles 1 and 2 should be referred to the Drafting Committee, which would decide whether paragraph 3 of article 2 should be retained in the draft.

The meeting rose at 12.50 p.m.