

Document:-  
**A/CN.4/SR.761**

**Summary record of the 761st meeting**

Topic:  
**Special missions**

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

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actually arrived in the receiving State. It was worth noting, moreover, that the word *grata* in the expression *persona non grata* was etymologically related to the word *agrément*.

92. Mr. BARTOŠ, Special Rapporteur, said that the Vienna Convention on Diplomatic Relations distinguished between persons for whom the *agrément* was necessary — heads of missions — and other persons, *viz*, the members of the diplomatic staff. During the discussion on the Convention on Consular Relations, ideas had changed and the two categories previously differentiated had been treated as one. In his view the question was a technical one; if the Commission did not approve of the terms used in the Convention on Consular Relations, it could use some other word.

93. Mr. ROSENNE said that the Commission was faced with the choice between the system laid down in article 9 of the Convention on Diplomatic Relations and that of article 23 of the Convention on Consular Relations. Personally, he would favour the former, as special missions essentially belonged to the diplomatic field. However, if the majority preferred the latter as a later expression of opinion of a diplomatic conference, he would abide by such a decision. The proposition that, once prior consent had been given in the form laid down in article 4, the right to declare a person *non grata* or not acceptable was excluded, could not be entertained because that right was an independent one having its source outside the initial agreement to receive members of the mission, which in ordinary diplomatic intercourse was always given in some manner, even if only in the form of a visa.

94. Mr. TSURUOKA said that in his view it would be preferable to incorporate both expressions — *persona non grata* and “not acceptable” — in the article, for, although some special missions were of a decidedly diplomatic and political character, others were of a purely technical nature.

95. Mr. BARTOŠ, Special Rapporteur, said that he had studied the practice in force in France and in the United States. In both a distinction was drawn between a declaration that a person was *non grata* and the practice of refusing to include in the diplomatic list the name of a person appointed to a diplomatic post. His own preference would be for a solution on the lines of that suggested by Mr. Tsuruoka, namely to use both expressions without giving an explanation and to leave their interpretation open. The only possible conclusions would then be that a State was at liberty to decline to admit a particular person into its territory.

96. The CHAIRMAN suggested that the article should be referred to the Drafting Committee, which would decide whether the Vienna Convention on Diplomatic Relations should be followed in whole or in part and whether the idea contained in paragraph (1) of the commentary should be incorporated in the text of the article. The Drafting Committee would also consider what attitude the receiving State could adopt if the sending State refused to take the action requested.

*It was so agreed.*

97. Mr. ROSENNE said that he had assumed that article 4 would be redrafted on the model of the whole of article 9 of the Convention on Diplomatic Relations or of the whole of article 23 of the Convention on Consular Relations.

The meeting rose at 1. p.m.

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## 761st MEETING

Wednesday, 8 July 1964, at 10 a.m.

Chairman : Mr. Roberto AGO

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### Special Missions

(A/CN.4/166)

(continued)

[Item 4 of the agenda]

#### DRAFT ARTICLES ON SPECIAL MISSIONS

ARTICLE 5 (Appointment of a special mission to more than one State)

1. The CHAIRMAN invited the Commission to consider article 5 of the Special Rapporteur's report (A/CN.4/166).

2. Mr. BARTOŠ, Special Rapporteur, said that article 5 of his draft was modelled on article 5 of the Vienna Convention on Diplomatic Relations, 1961. Since the end of the Second World War, some States had adopted a practice of sending goodwill missions, and even economic missions of a general character, to more than one State in the same region; but it could happen that the receiving State, for political reasons, declined to accept the mission on the ground that it had previously visited some other State, or even that it was subsequently to visit several other States.

3. He proposed to replace the word “appointment” in the title of the article by the word “sending”, which would be more correct.

4. Mr. de LUNA said that, in general, he approved the article and the commentary. The provision was a useful one, since a “blanket” appointment was a lack of international courtesy which receiving States usually resented. He agreed that the word “sending” would be better in the title.

5. The CHAIRMAN thought that the word *simultané* in the French text of the title should be omitted since it might create difficulties.

6. Mr. ROSENNE said that article 5 was acceptable but the phrase "with the same assignments" was not necessary having regard to the manner in which the Commission had decided special missions should be sent and accepted.

7. He wondered whether there was any special reason for not using in the final proviso the language of article 5, paragraph 1, of the Vienna Convention on Diplomatic Relations which read: "unless there is express objection by any of the receiving States".

8. Mr. YASSEEN said that the article filled an obvious need. He pointed out, however, that the assignments of a special mission sent to several different States sometimes varied in accordance with the problems which existed between the sending State and the various receiving States. Consequently, he thought that the words "with the same assignments" were unnecessary.

9. The title might well be altered to read "sending of the same special mission to more than one State".

10. Mr. CASTRÉN said he liked the French text of the title; the English text did not include the word "simultaneous". In the body of the article, the word "simultaneous" was not used, and the last sentence of paragraph 2 (a) of the commentary made it clear that, when special missions were sent to more than one State successively, the consent of each receiving State had to be obtained. It was true that there might be cases where it would not be appropriate to send the same special mission to several different States and where the last States to be visited might refuse to accept the mission in accordance with the rule laid down in article 1. But it would certainly be excessive to require the consent of the States in which the special mission had already completed its assignment before it could pursue its activities in the other States. The commentary was not very clear on that point.

11. He therefore proposed that the article should be amended to read:

"A State may accredit the same special mission simultaneously to more than one State, provided that none of the States concerned objects expressly."

His proposed text omitted the words "with the same assignments" because, as a general rule, a special mission had specific assignments and it might moreover be difficult to say whether the mission was in fact carrying out the same assignments in all the different countries. The proviso in his amendment with the word "expressly" was based on a similar clause in article 5, paragraph 1, of the Vienna Convention on Diplomatic Relations.

12. Mr. PESSOU thought that the idea contained in the expression "with the same assignments" should be retained; perhaps the word "assignments" should be replaced by the word "functions", which would correspond more closely with the facts.

13. Mr. PAL said he could accept the substance of article 5 but believed it should be reformulated on the

lines of article 5, paragraph 1, of the Vienna Convention according to which the receiving State had to be notified of the fact that the mission was being sent to more than one State.

14. Mr. BRIGGS agreed with article 5 and considered that the title was accurate at least as far as the English text was concerned. The words "with the same assignments" should be dropped and the proviso at the end replaced by that contained in article 5, paragraph 1, of the 1961 Vienna Convention.

15. Mr. YASSEEN said that he was opposed to the adoption of the formula used in the Vienna Convention on Diplomatic Relations. In the case of a permanent mission, and in particular of its head, the *agrément* was required, whereas it was not required in the case of a special mission. It was for that reason that any objection to the sending of a permanent mission had to be "express", but where special missions were concerned the situation was different.

16. The CHAIRMAN, speaking as a member of the Commission, thought that the words "with the same assignments" might create difficulties. Since the assignment was specified by the sending State—with the consent of the receiving State—it might happen that, out of three or four successive receiving States, some might be prepared to agree to a certain assignment and others a slightly different assignment. Furthermore, the assignments given to a special mission might vary slightly with the relations prevailing between the sending State and each of the States it was to visit in succession. On the other hand, it was also true that, in the case of a given mission, its assignments were broadly speaking the same. It was possible therefore that the formula was too rigid and inconsistent with the fact that the consent of each receiving State was required.

17. The idea behind the proviso was clear enough but the language used might give rise to misunderstandings: it might be thought that each receiving State was entitled to object to the special mission visiting the other States. The form of words used in the Vienna Convention on Diplomatic Relations was less ambiguous.

18. Mr. LACHS associated himself with the Chairman's comments and pointed out that a special mission might be given different assignments to perform in different States: that possibility should certainly not be excluded. As far as the proviso was concerned, he pointed out that a State could only object to receiving a mission in its own territory, but could not speak for other States even if its reason was that relations between the States concerned were strained or that there was some difficulty over recognition.

19. Mr. YASSEEN proposed that the last passage in article 5 should be replaced by the words "each of those States may object in so far as it is concerned".

20. Mr. RUDA said that he agreed with the substance of the article. It was understandable that a receiving State should have a right to object to a mission with the same assignment being sent to several States.

21. Mr. AMADO said that the article dealt with a particular type of special mission, and the words "with the same assignments" should not be deleted without due reflection.

22. Mr. BARTOŠ, Special Rapporteur, said that the differing opinions on the text reflected differences of opinion on the substance. In the phrase "the same special mission", did the word "same" mean that the persons serving on the mission were the same or that its assignments were the same? He was inclined to favour Mr. Ruda's interpretation, which was that the mission was one which dealt with the same questions in several different countries. In order to facilitate the adoption of the article, he was prepared to drop the words "with the same assignment"; but he preferred Mr. Yasseen's suggestion, since it was impossible to repeat the wording of article 5 of the Vienna Convention on Diplomatic Relations, which dealt with an entirely different question.

23. In reply to the Chairman's remarks on the final proviso, he said that provision should be made to cover the case where, after a mission had completed its work in one State, that State announced that it would be an unfriendly act if the mission were subsequently to proceed to some other State.

24. Referring to the suggestion by Mr. Castrén and Mr. Rosenne that the objection (if any) had to be express, he said that there would be one difficulty: there could only be an express objection if there had been prior notification. It might perhaps be provided in another paragraph that the sending State was under an obligation to notify the receiving States in advance of the dispatch of the same special mission.

25. He was inclined to favour Mr. Pessou's suggestion that the word "assignments" should be replaced by the word "functions", since the former necessarily implied the achievement of a task.

26. The CHAIRMAN, speaking as a member of the Commission, said that in his view the words "the same special mission" would suffice, without the words "with the same assignments", which would to some extent limit the sending State's freedom to make changes as time went on in the scope of the mission. He found Mr. Yasseen's proposal with regard to the final passage entirely acceptable.

27. Mr. EL-ERIAN fully supported the principle underlying the article and considered that the proviso enabling the receiving State to object should form part of the article.

28. Mr. CASTRÉN said that he still believed that the wording was too general. Mr. Yasseen's proposal did not offer a solution, since it was somewhat vague and open to different interpretations. The language of the Vienna Convention on Diplomatic Relations was preferable.

29. Mr. YASSEEN said that he had accepted the article on the understanding that notification would be required, as the Special Rapporteur had just said.

30. The CHAIRMAN suggested that the article should be referred to the Drafting Committee.

*It was so agreed.*

#### ARTICLE 6 (Composition of the special mission)

31. Mr. BARTOŠ, Special Rapporteur, introducing his draft article 6, said that the composition of a special mission differed from that of a permanent diplomatic mission. A special mission very often comprised a number of persons, several of whom were collectively or individually empowered to express the will of the sending State. A permanent diplomatic mission, on the other hand, was always personified by the head of mission or by the *chargé d'affaires* or *chargé des affaires* replacing him. Paragraph 4 was based on article 11 of the Vienna Convention dealing with the size of the mission.

32. Mr. VERDROSS pointed out that, if a mission consisted of a single person, it could hardly be said that it was "composed of its head and as necessary, of members of the mission." He proposed the following text:

"The mission is composed of a single person or of its head and other members of the mission. It may also have a staff."

33. Paragraph 2 could be simplified by replacing the words "and the receiving State shall pass... through him" by "and to whom the receiving State shall address its communications".

34. Paragraph 4, too, was very complicated. It might be redrafted to read:

"Except as otherwise agreed, the sending State is free to determine the size of the special mission. The receiving State may however require that the number..."

35. Mr. de LUNA approved Mr. Verdross's proposals.

36. He had misgivings about paragraph 1. In the absence of definitions, the terminology had to be interpreted by reference to the context. What was implied in the distinction that was apparently made between the members of the mission and its staff? Article 7, paragraph 2, which made the same distinction, did not provide any definition either. Moreover, if paragraph 3 of article 6 were read in conjunction with paragraph (3) of the commentary, one gained the impression that the word "staff" meant subordinate or technical staff which could be recruited locally and did not include diplomats or experts.

37. It might be preferable to use the language of article of the Vienna Convention on Diplomatic Relations, so as to ensure that not only the rules but also the terminology employed were uniform with that Convention. He would propose the following wording for paragraph 1 of article 6: "The special mission is composed of a single person, or of its head and, as necessary, of members of the diplomatic staff, the administrative and technical staff and the service staff".

38. Mr. TABIBI agreed with the remarks of the two preceding speakers concerning paragraph 1, the first sentence of which might be reworded to read: "The special mission is composed of one or more members". The functions of the head of the mission would be stated in the full powers.
39. It should be made clear in paragraph 2 that there was a difference between statements issued on behalf of the Government represented by the special mission and those issued to the Press by public relations officers or persons specially designated for the purpose.
40. It was desirable not to introduce in paragraph 3 any rigid rules as to who was authorized to make valid statements on behalf of the State.
41. Mr. AMADO said that he did not find the second sentence of paragraph 1 satisfactory. He agreed with the amendments proposed by Mr. Verdross to paragraph 2, but, in addition, he thought that the words "regarded as" should be deleted and that the words "authorized to make statements" should be followed by the words "and to take decisions". The kind of "flying mission" which the Commission was discussing, although very common (e.g. in connexion with the "Alliance for Progress"), had no administrative staff. He would prefer a formula which was less suggestive of permanence but which was clearly drafted.
42. The CHAIRMAN, speaking as a member of the Commission, said that, in fact the article was concerned only with one type of situation, that where the mission was composed of several persons and where a head of mission should be appointed. It was not necessary to consider cases in which the mission consisted of a single person, but it was necessary to state that, where the mission comprised several individuals, the sending State should appoint a person to lead it.
43. In general, he had the impression that the Special Rapporteur had been over-conscientious and had gone into too much detail, particularly with regard to the question of full powers. Special missions varied greatly: what would happen if a special mission consisted of the Head of State and the Minister for Foreign Affairs. Should the latter be denied the right to make statements, even in cases where the Head of State was not perhaps constitutionally responsible?
44. Mr. BARTOŠ, Special Rapporteur, said that, in drafting the articles, he had not given consideration to special missions led by the Head of State or by the Minister for Foreign Affairs. He proposed to draft a special chapter covering cases where the mission was headed by persons of such eminence.
45. Mr. ROSENNE said that he was in agreement with the fundamental principles underlying article 6 but had some doubts as to their presentation. It would be preferable if the same terminology for describing the different categories of personnel were used as in the 1961 Vienna Convention; that usage would probably simplify matters when the Commission came to consider the privileges and immunities of special missions.
46. He shared the Chairman's doubts about paragraphs 2 and 3 and questioned the need to retain them: no attempt had been made in the Vienna Convention to go into such detail. In some cases the work of special missions would culminate in a treaty, and in such cases the partial definition of the full powers contained in article 1 of the Commission's draft on the law of treaties<sup>1</sup> and the rules indicating when full powers were required, laid down in article 4 of that draft (the drafting of which had occasioned difficulties in 1962) would apply. In some respects the content of paragraphs 2 and 3 of the article under discussion went beyond existing practice and might hamper the work of special missions.
47. Unlike article 11 in the Vienna Convention, the provision contained in paragraph 4 apparently left it exclusively to the sending State to determine the size of the mission: that reversal of approach would have to be justified.
48. Mr. EL-ERIAN said that article 6 dealt with three matters: the composition of a special mission, the full powers and the size of the mission. He suggested that the three matters might form the subject of separate articles.
49. The CHAIRMAN, speaking as a member of the Commission, observed that the matters dealt with in article 6 were closely interconnected; he would be reluctant to divide them among several articles.
50. Mr. YASSEEN said he had no objection to the substance of paragraphs 1 to 3, which he merely found a little too elaborate. He would accept M. Verdross's proposals concerning the wording of those paragraphs, especially paragraph 1.
51. Paragraph 4 was not modelled on article 11 of the Vienna Convention on Diplomatic Relations, and he was glad that it was not. Under article 11 of that Convention, the receiving State was master of the situation because it could limit the size of the mission to what it considered reasonable. It would be going too far to introduce a similar provision in the draft on special missions. An even balance should be struck between those missions so far as their size was concerned. A mission which came to a foreign country for a short time could, of course, communicate with its capital, but did not enjoy the same facilities as its opposite numbers, who had behind them the entire governmental apparatus of the receiving State. Accordingly, he doubted the usefulness of the passage starting with the words "or unless the receiving State". The initial part of the paragraph, as far as the words "by agreement", would be amply sufficient to meet the requirements of international relations.
52. Mr. CASTRÉN said that in his view the article was necessary, and *grosso modo*, he accepted its wording although some, at least, of the suggestions made by previous speakers were well-founded. He had only one

<sup>1</sup> *Yearbook of the International Law Commission, 1962, Vol. II, p. 161.*

comment to make. Paragraph 2 provided that the head of the special mission was authorized to make statements on the mission's behalf, but it appeared from paragraph 3 that other members of the special mission were also authorized to make such statements at the same time as the head of mission or, in some special cases, in his stead. In order to eliminate that apparent contradiction, it might be desirable to add in paragraph 2, after the words "regarded as", the word "normally" or the word "primarily".

53. Mr. VERDROSS, replying to the Chairman, maintained that paragraph 1 in the form proposed by the Special Rapporteur indeed related—more particularly on account of the words "as necessary"—both to the case where the special mission comprised only one member and to the case where it comprised several members. Accordingly, his own proposal with regard to that paragraph was valid.

54. He supported Mr. Yasseen's suggestion concerning paragraph 4. There was a difference between the case contemplated in that article and that dealt with in article 11 of the Vienna Convention on Diplomatic Relations. In paragraph 4 of the article under consideration, the words "failing a contrary arrangement" would suffice.

55. The CHAIRMAN, speaking as a member of the Commission, explained that, when commenting on paragraph 1, he had been thinking that the paragraph could be amended in such a way as to relate solely to the case where the special mission comprised several members.

56. Mr. TUNKIN said that there was no provision in the Vienna Convention analogous to that contained in paragraph 1, but the latter might be regarded as useful in a draft dealing with special missions.

57. Paragraph 2 was unnecessary and paragraph 3 was excessively complicated. It should only deal with the case where the head of a special mission was prevented from carrying out his functions and could be modelled on article 19 of the 1961 Vienna Convention, with appropriate modifications.

58. Paragraph 4 could be greatly shortened as it only needed to stipulate that, in the absence of any arrangement to the contrary, the sending State was free to determine the size of the special mission.

59. The CHAIRMAN asked the Special Rapporteur whether, in the light of the discussion, he might simplify article 6 by reducing it to two paragraphs, one dealing with the composition of the special mission and the problems which arose when the mission comprised several members, and the other incorporating the substance of the present paragraph 4. The rule concerning the case where the head of the special mission was prevented from performing his functions might form the subject of a separate article.

60. Mr. ROSENNE, referring to paragraph 4, said that despite the difference of emphasis between it and article 11 of the Vienna Convention of 1961, the purpose

of the two provisions was the same. It was important to protect the receiving State against having to admit excessively large special missions, and he could not accept the shortened form for paragraph 4 suggested by the previous speaker.

61. Mr. RUDA said he agreed with Mr. Rosenne. It was necessary to take into account the size which special missions were apt to take at present. Special missions were both numerous and varied; in paragraph 86 of his report, the Special Rapporteur had listed no fewer than fourteen main categories of special missions. From his own experience, he could say that there were quite a few more.

62. With regard to the size of special missions, he pointed out that those sent in connexion with the "Alliance for Progress" often included hundreds of persons; under the draft articles proposed by the Special Rapporteur, those persons would enjoy many privileges and immunities. In cases of that type, it would be a genuine imposition upon the receiving State not to enable it to require the number of members of the special mission to be kept within the necessary limits.

63. He strongly supported the retention, as proposed by the Special Rapporteur, of the idea which was contained in paragraph 4 and which was similar to that embodied in article 11 of the 1961 Vienna Convention on Diplomatic Relations and article 20 of the 1963 Vienna Convention on Consular Relations.

64. Mr. LACHS considered that the article could be very much condensed if a great deal of its content were transferred to the commentary.

65. As far as paragraph 4 was concerned, it was important to take into account the rights and obligations of both the sending and the receiving States.

66. Mr. BARTOŠ, Special Rapporteur, said that he was convinced that it was necessary, in order to satisfy the needs of the modern international community, to retain the ideas reflected in the various paragraphs of article 6.

67. He might, however, consider dividing the article into three separate articles. The first would provide that the special mission could consist of one or several members (an idea which had already appeared in the 1960 draft by Mr. Sandström), and it would deal with the composition of special missions consisting of several members. He had not made any distinction between diplomatic, technical and subordinate staff, because there were no general rules on that subject so far as special missions were concerned; moreover, he had thought that that question would be settled by the definitions, which were to be drafted later. However, he was prepared to deal with that question if the Commission so wished.

68. A second article would relate to the question of representation and the authority to express the will of the State. A rule on that matter, which gave rise to very many disputes between States was essential. The question was a purely legal one: what were the powers

of the negotiators? The State which contested the validity of a negotiator's powers could declare that the outcome of the negotiations was void.

69. The Commission could, if it so wished, formulate a rule for cases where the head of the special mission was prevented from performing his functions, but he personally did not think that it would be reasonable to introduce the notion of *chargé d'affaires ad interim* in the draft on special missions.

70. A third article would deal with the question of the size of the special mission. There were two conflicting views on that point. According to the first, it was the sending State which, in the light of its needs, determined the number of members of the special mission; while according to the other view, the receiving State was not obliged to accept an unlimited number of members of the special mission, even if there was no prior arrangement on the subject. The question had very often arisen in practice and had been studied by the two Vienna Conferences of 1961 and 1963. At the Vienna Conference on Consular Relations, the more recent of the two, only a few States had upheld the first thesis. The United Kingdom delegation, which had at first defended it, had, on instructions from its Government, modified its position in the course of the Conference. In that respect, he had followed the opinion expressed by the majority of States. Neither of the two views was illogical, but the question was how to reconcile the interests of States. Since there was no universal rule on the matter, it was open to the Commission to develop the law; it was for the Commission to decide.

71. He proposed that he should draft three articles on the lines he had indicated and submit them to the Commission for consideration.

72. The CHAIRMAN suggested that preferably the Special Rapporteur should draft two articles, because the subject matter he proposed to deal with in the third article could be covered in the first.

73. Mr. BARTOŠ, Special Rapporteur, said that he was at the Commission's disposal. The substance of article 6 could be divided between two articles. The first would comprise the present paragraph 1, somewhat amplified, and the present paragraph 4, with provisions modelled on article 20 of the Vienna Convention on Consular Relations, the last instrument to have been adopted by the majority of States. The second article would incorporate the substance of the present paragraphs 2 and 3.

74. Mr. TUNKIN said that it very often happened that the head of the special mission returned home for consultations, and that in his absence another member of the mission became the provisional head of the mission. There was certainly an analogy between that case and that of an embassy's *chargé d'affaires ad interim*. One might say that the replacement was head *ad interim* of the special mission.

75. Mr. BARTOŠ, Special Rapporteur, said that the validity of such delegated authority had been contested

on the ground that the person in whom powers had been vested could not delegate them. In general practice, what happened was rather that several members of the special mission simultaneously held full powers to express the will of the State. The first need was to ensure the validity of legal acts performed by special missions. The Commission had already drafted a rule concerning the representation of States in its draft articles concerning the conclusion of treaties;<sup>2</sup> but special missions accomplished all kinds of other acts, such as *constatations*, acknowledgement of debts, validation of certain documents, etc. He had based himself on the ordinary practice; the Commission could, of course, formulate a rule which departed from that practice, but he would not advise it to do so.

76. Mr. AMADO said that, while he understood Mr. Tunkin's arguments, he would be reluctant to regard the person replacing the head of a special mission as a *chargé d'affaires ad interim*, for it was an essential feature of a special mission that it was temporary and to some extent itself existed *ad interim*. True, it very often happened that, when a special mission was led by a head of State, the head of State was replaced after a certain time by one of his ministers. But all those questions were not so complex that they could not be dealt with in a single article. It was difficult to do better than as the Special Rapporteur had proposed.

77. Mr. TUNKIN said it would be regrettable if the Commission imposed unnecessary and even dangerous restrictions on States when the current practice was that the head of a special mission, while continuing to be head of the mission, was, when absent, temporarily replaced by another member of the mission authorized to act in his stead.

78. Mr. BARTOŠ, Special Rapporteur, said that he did not oppose the idea that the head of the special mission could be replaced by a member of the mission; what he was opposed to was the idea that such replacement should be treated on a par with the institution of the *chargé d'affaires ad interim*. In a permanent mission only one person held the powers at a particular time — the head of mission when he was present and the *chargé d'affaires ad interim* when the head of mission was absent. On the other hand, it might happen in the case of a special mission that the head and other members of the mission were authorized to act simultaneously. Accordingly, his proposal would not limit the freedom of States; in fact, its effect would be to increase that freedom.

79. Mr. TUNKIN said that his proposal had not been that the term *chargé d'affaires ad interim* should be used, but simply that use should be made of the idea underlying that institution.

80. The CHAIRMAN, speaking as a member of the Commission, suggested that the Special Rapporteur should incorporate in the second of the articles intended

<sup>2</sup> *Ibid.*, pp. 161 et seq.

to replace article 6 the idea which was expressed in article 4, paragraph 1, of the Commission's draft on the law of treaties. That provision would apply in cases where the special mission was led by a head of State, a head of Government, or a Minister for Foreign Affairs, and in that way the Commission would not have to settle the question of the distribution of powers within a special mission headed by a person of lower rank.

81. Mr. BARTOŠ, Special Rapporteur, said he accepted that suggestion, and he pointed out that the rule incorporated in article 4, paragraph 1, of the draft on the law of treaties appeared in the rules of procedure of the General Assembly and of the Councils of the United Nations.

82. Mr. BRIGGS said that the discussion had been sufficiently detailed to permit referring directly to the Drafting Committee the new draft articles which the Special Rapporteur would prepare; the Drafting Committee would examine those draft articles and report to the Commission.

83. Mr. CASTRÉN pointed out that one question of substance remained to be settled: whether the "unless" clause of the present paragraph 4 should be retained. Not all members had expressed their views on that point.

84. Mr. de LUNA said he thought that all those who had said nothing on the subject approved the qualifying clause proposed by the Special Rapporteur.

85. The CHAIRMAN put to the vote the principle of the clause, starting with the words "or unless the receiving State" in the existing paragraph 4, on the understanding that the Special Rapporteur would modify that provision to bring it into line with article 20 of the Vienna Convention on Consular Relations.

*The principle was adopted by 13 votes to none, with 3 abstentions.*

86. The CHAIRMAN suggested that the Commission should ask the Special Rapporteur to draft two new articles to replace article 6, and to submit them direct to the Drafting Committee.

*It was so agreed.*

#### ARTICLE 7 (Notification of arrival and departure)

87. Mr. BARTOŠ, Special Rapporteur, said that his draft article 7 was of a purely technical character, having its equivalent in the two Vienna Conventions of 1961 and 1963. He did not think that it would elicit many comments from members of the Commission.

The meeting rose at 12.55 p.m.

#### 762nd MEETING

Thursday, 9 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 7 (Notification of arrival and departure) (continued)

1. The CHAIRMAN invited the Commission to continue its consideration of article 7 in the Special Rapporteur's first report (A/CN.4/166).

2. Mr. VERDROSS said that the article was purely technical and presented no serious problems. He suggested that the wording of paragraph 1 should be simplified by deleting the word "regular" before the words "permanent mission" and also the words "in the regular way".

3. Mr. CASTRÉN said that he accepted the ideas expressed by the Special Rapporteur in the article. However, the title should be "Notifications" or "Notifications concerning special missions", because the article did not deal solely with notifications of the arrival and departure of the special mission.

4. He asked why, at the end of paragraph 1, the Special Rapporteur had preferred the expression "the persons accompanying them" to the expression "members of the family" which was used in the Vienna Convention on Diplomatic Relations, 1961.

5. Paragraph 2 was too elaborate and should be shortened.

6. While accepting the substance of paragraph 4 he pointed out that if that provision, which appeared in brackets in the draft, was maintained, it might affect the interpretation of paragraph 1. In the proposed wording, paragraph 1 did not state clearly whether the various notifications had to be given before the arrival and departure of the persons concerned. Under the Vienna Conventions, advance notice was generally required. In paragraph (2) of the commentary, the Special Rapporteur referred to preliminary notice, without specifying whether such notice was mandatory in all cases, mandatory in certain cases only, or optional. The inference to be drawn from paragraph 4 of the article seemed to be that preliminary notice was not necessary in the case of persons other than members of the armed forces.