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Summary record of the 762nd meeting

Topic:
Special missions

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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. BARTOS, 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. BARTOS, 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.

7. Mr. ROSENNE said he agreed that article 7 should be simplified. In that connexion, he recommended a closer adherence to the language used in article 10 of the 1961 Vienna Convention on Diplomatic Relations or to that of article 24 of the 1963 Vienna Convention on Consular Relations. In particular, he suggested that the opening words of paragraph 1 should be couched in completely impersonal terms, so as to state that the Ministry of Foreign Affairs of the receiving State "shall be notified", without specifying by whom. The Commission should take into consideration the case of a special mission to a country where the sending State had no permanent diplomatic mission; the notification would then be made by some other means.

8. Mr. TUNKIN said that he found article 7 on the whole acceptable. It was quite correct to provide that the sending State should inform the receiving State of such matters as the composition, arrival and departure of, and any changes in, the special mission. However, the formulation in article 7 was unduly detailed and much too rigid.

9. With regard to paragraph 1, he agreed with the suggestion for the adoption of the language of the 1961 Vienna Convention since there might well be no permanent diplomatic mission of the sending State in the receiving State. In addition, the requirement that the notification should be made "in the regular way" seemed unduly rigid. The notification in question was in practice not always made by means of a diplomatic note; the whole matter depended largely on the level and importance of the special mission. In some cases, a mere telephone call might be sufficient. The whole matter could be left to the States concerned.

10. Paragraph 2 could be deleted. The idea of notification could be embodied in paragraph 1; and the question who was qualified to make changes in the composition of the special mission was a purely internal one for the sending State.

11. He supported the retention of paragraph 3, but suggested that paragraph 4 should be dropped since the requirement of notification applied not only to persons who were members of the armed forces but also to civilians.

12. Mr. BARTOS, Special Rapporteur, said that the article could, of course, be simplified and redrafted on the basis of article 10 of the Vienna Convention on Diplomatic Relations. However, there were two difficulties in practice. First, whereas the permanent mission was known even before its arrival, the special mission was not known to the receiving State until it had been presented. Secondly, it was a question in dispute between States whether the head of a special mission had the right to give the notification, or whether only the head of the permanent mission had that right. He personally thought it necessary to specify that the notification should be given in a particular form, that form being, while not excessively rigid, nevertheless fairly well defined. In particular, it did not seem to him to be sufficient to give the notification by telephone; notifications so given sometimes led to embarrassing and even ridiculous situations, as when, for example an

unauthorized person announced to the Ministry of Foreign Affairs, by telephone, the arrival of a special mission and the Ministry made arrangements to receive the mission formally, but the mission did not arrive. Notification was necessary for practical reasons as well. The receiving State would wish to give instructions to the frontier police and to the Customs authorities to facilitate the mission's entry; and sometimes, moreover, advance notice was necessary to reserve hotel rooms or apartments.

13. According to his draft of paragraph 1, notification was to be given by the regular permanent mission; the word "regular" was not useless, for there also existed specialized permanent missions. He would agree to the use of a more flexible wording, such as "through the diplomatic channel".

14. At the end of paragraph 1 he had intentionally used a formula differing from that appearing in the Vienna Convention on Diplomatic Relations, because often the head of a special mission was accompanied by his private secretary, or his doctor, or by a member of his family not normally forming part of his household (e.g. a married daughter). A fairly comprehensive rule was necessary for special missions, which generally stayed for only a very short time in the receiving country.

15. Replying to Mr. Castrén's question whether the notification should be given in advance, he said he had not thought it necessary to reproduce the rule incorporated in article 10, paragraph 2, of the Vienna Convention on Diplomatic Relations; that rule was uncertain because it began with the phrase "Where possible.". However, he was prepared to introduce a similar provision in article 7.

16. With regard to paragraph 2, he said that the exception concerning the case of the replacement of the head of the mission was of some importance. Such replacement, like the final departure of the whole mission, should be notified through the diplomatic channel.

17. He did not insist on the maintenance of paragraph 4 which he had placed between brackets mainly to show that the question dealt with in the paragraph might arise. Many States required regular prior notice of the arrival of members of the armed forces, but other States regarded that rule as obsolete.

18. Mr. CASTRÉN suggested that the Commission should explain in the commentary on the article why the formula used to describe the group of persons accompanying the members of the mission differed from that in the Vienna Convention on Diplomatic Relations.

19. Mr. de LUNA supported Mr. Castrén's suggestion.

20. With regard to notification, by telephone, he said that some chanceries allowed that form of notification, subject to confirmation through the diplomatic channel.

21. The deletion of paragraph 4 would not prevent States which wanted to be told in advance of the

arrival of members of armed forces from requiring such notification to be given, but it would be better not to require all States to conform to that rule.

22. The CHAIRMAN thought that, so far as the form of the notifications was concerned, the Drafting Committee would be able to find a formula both sufficiently flexible and sufficiently precise, based on article 10 of the Vienna Convention on Diplomatic Relations.

23. Speaking as a member of the Commission, he thought that the Drafting Committee should in that respect draft rules which were neither too detailed nor too rigid, for it would be strange if more stringent requirements were laid down for special missions than for permanent diplomatic missions. The Drafting Committee should be guided more by the Convention on Diplomatic Relations than by the Convention on Consular Relations, for relations through special missions were closer to diplomatic than to consular relations.

24. Speaking as Chairman, he suggested that article 7 should be referred to the Drafting Committee.

It was so agreed.

ARTICLE 8 (Precedence)

25. Mr. BARTOS, Special Rapporteur, said that he had divided the rules concerning precedence into two categories; article 8 contained those relating to special missions in general, and article 9 those relating to special ceremonial and formal missions.

26. With regard to the rules in articles 8, he had taken the view that the order of precedence could not be established according to the order of presentation of credentials. He had accordingly adopted as an objective criterion the alphabetical order of the titles of the States in the English versions in use at the United Nations. The official list of States Members of the United Nations had even been supplemented, for the purposes of conferences held under United Nations auspices, by the names of non-member States. By means of that criterion the principle of the sovereign equality of States would be respected.

27. In making provision for the case where the special mission met only organs of the receiving State, he had not wished to opt for either of the two opposite conceptions of the role of the receiving State; he had merely incorporated a reservation in paragraph 3. The substance of that paragraph could be transferred to the commentary.

28. Paragraph 4 stated that the order of precedence among the members of a special mission should be determined by the head of the special mission.

29. Paragraph 5 dealt with the question of precedence in cases where there was contact between two special missions. Formerly, special missions had almost always been composed of career diplomats, and even in modern times the States of Latin America customarily gave a provisional diplomatic rank to the members of a special mission. But that practice was not general; often a

senior official, or a professor, served on a special mission in that capacity. It might perhaps be better not to formulate a rule on that subject, and instead to leave it to the various delegations to settle those questions according to the rules of courtesy. The Commission could, therefore, decide to delete paragraph 5.

30. Mr. AMADO thought that in paragraph 1 the word "titles" should be omitted. It would be better to say: "... shall follow the alphabetical order of their respective States according to the rule adopted [or: according to the criterion established] by the United Nations".

31. Mr. BARTOS, Special Rapporteur, proposed the following wording: "... shall follow the alphabetical order of States in use in English at the United Nations".

32. Mr. de LUNA considered that the Special Rapporteur was right in deciding (by contrast with Mr. Sandström's draft)¹ not to determine the order of precedence of special missions either according to the order of presentation of credentials or according to diplomatic rank. He approved the idea of generalizing the rule adopted by the United Nations, with the reservation, however, that the alphabetical order might not always be the English alphabetical order. In many cases, the official protocol list of the receiving State could be used. That list regulated the order of precedence among the permanent missions accredited to a State. Why, then, should it not also be used for special missions? He proposed, therefore, that paragraph 1 should be amended on the following lines: "... shall, except in cases where the established rule of an international organization is to be applied, follow the alphabetical order of States used in the official protocol list of the receiving State". A problem would arise in the case of the special mission of a State which had no diplomatic relations with the receiving State and whose name, therefore, did not appear on the receiving State's official list. It would probably be unnecessary to encumber the text with a rule covering that situation; the question should be settled without difficulty simply by inserting the name of the country in the official list of the receiving State.

33. Mr. BRIGGS supported the method proposed in paragraph 1. He preferred the uniformity that would be introduced by that method to the lack of uniformity which would result from the system advocated by Mr. de Luna.

34. He agreed with the proposed deletion of paragraphs 3 and 5.

35. With regard to paragraph 2, he suggested that the rule therein mentioned should apply not only to two special missions but also to two or more special missions.

36. Mr. CASTRÉN said he approved the ideas contained in article 8 and the way in which they were expressed.

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

37. In order to stress the difference between article 8 and article 9, the title of article 8 might be changed to : "General rules governing precedence".

38. He suggested that, in order to bring article 8 into line with article 9, the word "several" before "special missions" in paragraph 1 should be replaced by the words "two or more".

39. Paragraph 2 seemed unnecessary ; the case there contemplated was already covered by paragraph 1.

40. The substance of paragraphs 3 and 5 could be transferred to the commentary.

41. Mr. PESSOU said that he shared Mr. de Luna's opinion. The alphabetical order in use at the United Nations was not a perfect criterion ; it might, in particular, raise problems with regard to the order of precedence among States which were not Members of the United Nations.

42. Mr. ROSENNE supported the suggestion by Mr. de Luna which would not interfere with the introduction of an objective criterion into the rule embodied in paragraph 1. The difficulties that would arise under the system proposed in article 8 were well illustrated by the case mentioned by a previous speaker, of the Holy See, which in some lists of the United Nations appeared under that name and sometimes as "Vatican City".

43. He agreed with Mr. Castrén that the contents of paragraph 2 were covered by paragraph 1. However, paragraph 2 by itself was not entirely satisfactory. The provision should take the form of a residual rule, which would apply only in the absence of any other agreement. For example, the practice in the International Court of Justice was to give precedence to the representatives of the plaintiff State, and the host State, in the case of an international arbitration taking place in its territory, might wish to follow a similar practice.

44. Mr. RUDA said that he had no objection to the English language as such, but thought that a more objective criterion could be found by using, as suggested in the penultimate sentence of paragraph (24) of the commentary, the order of the names of States used in the official diplomatic list of the receiving State. As an illustration of the difficulties that might arise from an attempt to change existing practices, he pointed out that at meetings held in South America, it was customary to follow the order of the Spanish names of countries and, for example, to place the United States representative under the letter "E" (for Estados Unidos), in other words high in the list ; if the order of the English names were to be used, that representative would drop to a much lower place.

45. Mr. YASSEEN said he approved the idea underlying the article ; the alphabetical order was in conformity with the nature of the institution of special missions and with the principle of the sovereign equality of States. But he shared the opinion of Mr. de Luna, Mr. Pessou and Mr. Ruda with regard to the use of the English alphabetical order. The practice of the

English alphabetical order could perhaps be regarded as a general rule valid for large international conferences, but it was hardly workable in the case of a meeting in which most of the special missions were not English-speaking. The addition of the words "in principle" between "shall" and "follow" would show that the rule allowed for exceptions, and it would be possible to explain its scope in the commentary.

46. Mr. LIANG, Secretary to the Commission, said, in connexion with the point raised by Mr. Rosenne, that, in conferences convened by the United Nations such as the two Vienna Conferences, it was invariably the Holy See which took part. However, in certain specialized agencies such as the Universal Postal Union, because of the function performed by the agency concerned, the participant appeared to be the Vatican City State.

47. Mr. TUNKIN expressed his agreement with the idea contained in article 8. He had, however, some doubts regarding the formulation, even of paragraph 1. In a conference, it was clear that the alphabetical order would be followed, but the draft under discussion did not deal with conferences but with special missions. In the case of two special missions, one headed by the head of the Government of a country and another by the under-secretary for foreign affairs of the other, it would be strange to give precedence to the latter over the former because of the alphabetical order of the names of the countries. However, if an alphabetical order were to be suggested it would not seem correct to impose a particular language ; it would be more appropriate to refer to the language used in the diplomatic list of the receiving State.

48. He agreed with Mr. Castrén that the problem dealt with in paragraph 2 was already covered by paragraph 1.

49. Since the Commission appeared to be agreed that paragraphs 3 and 5 should be omitted, he would refrain from commenting thereon.

50. Referring to paragraph 4, he thought it was not altogether correct to say that the order of precedence among the members of the staff of the special mission was determined by the head of the mission. The notification would perhaps be made by the head of mission, but the actual decision as to the precedence among the members of the mission was an internal one for the sending State ; it might well be decided by the Government itself.

51. Mr. TABIBI said that he had no personal interest in the matter under discussion because, regardless of the language or the alphabet used, Afghanistan was always first on any list.

52. He thought, however, that the question of precedence was of some importance, because the matter could lead to difficulties. He therefore supported the Special Rapporteur's proposal ; whatever one's sentiments about the English language as such, it could not be denied that it was very widely used as a language of communication all over the world, and in particular in Asia and Africa.

53. The CHAIRMAN, speaking as a member of the Commission, said that in the matter of the precedence of special missions an alphabetical order had to be followed in order to forestall the risk of disputes. But the Commission could hardly specify that that alphabetical order must always be in a particular language.

54. Article 8, as proposed by the Special Rapporteur, was sound in the context of a draft concerning special missions at a level lower than the "summit". But it could happen that several special missions, one of them headed by a head of State, came together. Would even in such a case the order of precedence follow the alphabetical order? Or might it not be preferable to make provision for possible exceptions?

55. Mr. BARTOS, Special Rapporteur, said that he accepted Mr. Castrén's suggestion concerning the title of article 8.

56. He also accepted the suggestion that the word "several" should be replaced by the words "two or more" before the words "special missions" in paragraph 1.

57. Even where the alphabetical order was followed, disputes concerning the order of precedence were frequent. He had taken the view that the practice of the United Nations constituted an established rule. Obviously the Commission could propose some other rule in its stead. There would be some objection to following the alphabetical order of the protocol list of the receiving State, for the name used in that list was not always that asked for by the State concerned. In practice, therefore, some difficult questions might have to be settled. That was why he hesitated to draft a provision under which the receiving State could replace an objective order of precedence by some other order.

58. After thanking Mr. Tunkin for his pertinent remarks on paragraph 4, he said that he would redraft the provision to say simply that the head of the special mission "shall submit a list giving the order of precedence"; he agreed that the list was usually drawn up by the Ministry of Foreign Affairs. It was always important to pay attention to matters of form, for, although form was not necessarily connected with substance, substance was always to some extent dependent on form.

59. With regard to the question of possible differences in the relative standing of the heads of a number of special missions, to which Mr. Tunkin and the Chairman had referred, he did not think that that was a good reason for abandoning the use of alphabetical order as an objective criterion. In reality the special position of a head of State or of the head of a Government would always receive recognition out of courtesy; but it would be a departure from the rules drawn up by the Congress of Vienna to say that some persons took precedence on grounds other than those of diplomatic rank. In the United Nations, delegations led by a head of State had no special privileges in the matter of precedence. It was a question of choice between the courtesy due to a head of State, a Prime Minister or

a Minister for Foreign Affairs and the rule of the equality of States. In the case covered by article 9, the rule of the Court of St. James's in fact constituted a departure from the Vienna Regulations of 1815. The Commission was therefore free to propose a special rule for special missions. He had no strong views on the point, apart from the wish to safeguard the principle of the equality of States. Furthermore, what rule would be followed in practice when there were two special missions, one led by the Prime Minister of a small State and the other by the Deputy Prime Minister of a great Power?

60. He thought it would be safer to rely on the principle of alphabetical order and that it would be more practical to use the English alphabetical order. The addition of a proviso such as "except as otherwise agreed" would suffice to allow exceptions to the rule.

61. The CHAIRMAN thought that the use of a flexible formula of that kind would help to solve the problem: reference might also be made in the commentary to cases where the mission was led by a head of State. With regard to the question of precedence among the other members of the mission, referred to in paragraph 4, it would probably be preferable to replace the words "shall be determined by the heads of the missions" by the words "shall be determined by the sending State", for the list of the names of the other members of the mission was in most cases drawn up either by a government department or by a permanent delegation.

62. Mr. YASSEEN said that it was necessary to stress the principle of the equality of special missions, which was directly derived from the principle of the sovereign equality of States; he was therefore in favour of following the rule of the alphabetical order. With respect to the question of precedence in cases where there were several special missions, some led by a head of State and others by heads of Government or ministers, he referred to the procedure followed at the Conference of Non-Aligned Countries held at Belgrade in 1961, where even Foreign Ministers leading their delegations had, like the heads of State, taken the chair in rotation. The chairmanship at such gatherings did not depend entirely on precedence but was closely connected with it.

63. The CHAIRMAN suggested that article 8 should be referred to the Drafting Committee.

It was so agreed.

ARTICLE 9 (Precedence among special ceremonial and formal missions)

64. Mr. BARTOS, Special Rapporteur, explained how the question of precedence between special missions of a ceremonial and formal nature arose. In principle, *ad hoc* ambassadors extraordinary took precedence over titular ambassadors extraordinary and over ministers plenipotentiary. But it often happened that important persons such as Prime Ministers preferred not to use the style of *ad hoc* ambassador for they regarded

themselves as belonging to a higher category than ambassadors in general. Should they be placed in a special category together with members of ruling families, presidents of parliaments and other notabilities? And should special precedence be accorded to ambassadors who did not have the title of an *ad hoc* ambassador? Cases had occurred where heads of special missions had left a ceremony in protest.

65. Experience had shown, moreover, that it was becoming increasingly difficult to apply the rule followed since the Vienna Regulations of 1815, under which precedence depended on the time when credentials had been presented; nor was it possible to take the time of arrival as a guide.

66. It was necessary to provide rules on the point, for it gave rise to extremely difficult problems, particularly in certain regions. Unless the Commission wished to abandon the attempt, it was essential to go into detail.

67. The CHAIRMAN doubted whether a question of international law was really involved; to a large extent, it might be rather a question of the rules of protocol, which did not need exhaustive codification.

68. Mr. BARTOS, Special Rapporteur, suggested the adoption of a brief and flexible expression such as "the precedence among special missions of a ceremonial and formal nature shall be governed by the protocol in force in the host country".

69. The CHAIRMAN suggested that article 9 should be referred to the Drafting Committee with the request that it should be guided by the Special Rapporteur's last proposal.

It was so agreed.

ARTICLE 10 (Commencement of the function of the special mission)

70. Mr. BARTOS, Special Rapporteur, drew attention to the difference between the commencement of the function of a special mission and that of the function of a regular permanent mission. In the case of the regular permanent mission, two dates were material — that of the establishment of the mission and that of the entry into function of the head of mission and the diplomatic staff. In the case of special missions, the two events usually coincided, and the mission's functions began when its members entered into contact with the authorities of the receiving State or with the other special missions. For many years it had been the practice for the special mission to be introduced to the authorities of the receiving State by the regular diplomatic mission, but of late such official introductions had no longer been the absolute rule; the prior presentation of credentials was no longer required and notification was regarded as sufficient.

71. Sending States frequently complained of discrimination: they asserted that in the absence of prior agreement, special missions of the same standing or having comparable functions were received in a noti-

ceably different manner by the authorities and organs of the host State. The problem could not be solved on the basis either of the Vienna Regulations or of the rules at present applicable to permanent diplomatic missions. Consequently, in formulating article 10, he had endeavoured to lay down a general rule corresponding with modern practice.

72. Mr. LACHS said that article 10 broadly reflected practice and as usual the Special Rapporteur had prepared a most valuable commentary. There were cogent reasons for not imposing on special mission rigid rules of protocol in regard to official presentation and the presentation of letters of credence or full powers. The relationship between paragraphs 1 and 2 on the one hand and paragraph 3 on the other should be more clearly brought out in the text. The Commission might recommend that States should adopt the rules in the first two, and might draft paragraph 3 in less categorical terms allowing for exceptions by agreement between them.

73. Mr. VERDROSS said that everything depended on paragraph 1. If that paragraph was accepted, then logically paragraph 2, which was a negative formulation of paragraph 1, should form part of the commentary, not of the article.

74. Mr. CASTRÉN said that he, too, had thought that paragraph 2 should be omitted, but perhaps it might be possible to merge the two paragraphs by making a reference at the end of paragraph 1 to the presentation of credentials or full powers.

75. Mr. BARTOS, Special Rapporteur, said that paragraph 2 was not merely the inverse of paragraph 1. The most serious difficulties arose when it had to be decided at what moment the special mission had commenced its function. It might be possible to replace those paragraphs by a single paragraph which would begin with the existing wording of paragraph 2 and would then go on to say "it shall commence when the special mission or special missions enter into official contact...".

76. With regard to paragraph 3, he agreed with Mr. Lach's remarks; the second part of that paragraph should be replaced by the words "in accordance with paragraph 1".

77. Mr. TUNKIN agreed with the foregoing remarks made by the Special Rapporteur. He questioned the need for paragraph 3, since rules for the reception of special missions were a separate matter and had nothing to do with the commencement of their functions.

78. Mr. AMADO endorsed Mr. Tunkin's comments. Furthermore, in paragraph 2 the phrase "contingent upon official presentation by the regular diplomatic mission" was somewhat ambiguous. Obviously, the intention was to refer to presentation by the regular diplomatic mission to the Government of the receiving State, but the passage was far from clear. Perhaps the words *subordonné à* in the French text could be replaced by the words *conditionné par*.

79. Mr. PESSOU thought that paragraph 2 should be maintained, perhaps by amalgamating the first two paragraphs in the following form : "The special mission shall commence when it has entered into official contact with the organs of the host State through the presentation of letters of credence or full powers".

80. Mr. BRIGGS agreed that paragraphs 1 and 2 should be merged and shared Mr. Tunkin's view concerning paragraph 3. The Vienna Convention of 1961 dealt in two separate articles with the taking up of diplomatic functions and the application of uniform rules for the reception of diplomatic missions.

81. Mr. BARTOS, Special Rapporteur, accepted Mr. Amado's suggestion for paragraph 2.

82. Paragraph 3 could be approached from two different points of view: either it dealt with reception in general, in which case it might form the subject of a separate article; or it was concerned with the establishment of uniform rules applicable to the commencement of the function of all special missions. Perhaps the paragraph might be redrafted to read : "The host State shall prescribe uniform rules for the reception and functioning of all special missions of the same kind". If it should be decided to delete the paragraph, the idea of non-discrimination should not be dropped but should form the subject of an article to be added at the end of chapter I.

83. The CHAIRMAN suggested that article 10 should be referred to the Drafting Committee.

It was so agreed.

ARTICLE 11 (End of the function of the special mission)

84. Mr. BARTOS, Special Rapporteur, said that the question of the end of the function of a special mission should be regarded in a different way from that of the end of a permanent diplomatic mission; it was impossible to say that the latter had concluded or accomplished its assignment at the time of its termination.

85. Sub-paragraph (a) applied equally to all diplomatic missions, for there might be diplomatic missions of limited duration. An agreement between the parties to prolong the duration of the mission would not necessarily take the same form as the agreement under which the mission had been set up; it might be in simplified form.

86. Sub-paragraph (c) dealt with the suspension of the work of a special mission. Did a mission continue to exist when such a formal suspension occurred, or did suspension necessarily mean that the mission had terminated? The question was answered in two different ways in practice. The host State always took the view that the mission had ceased to exist, whereas the sending State took the opposite view and maintained that, although no longer performing its work, the mission retained its privileges and immunities.

87. In making the list which appeared in article 11, he had based himself on Satow and on practice. There might be cases where a mission's functions ceased for

other reasons — hence his use of the words *inter alia* — but they arose either when a mission ceased to exist or when it had placed itself beyond the control of the State which had sent it.

88. The CHAIRMAN, speaking as a member of the Commission, said that since the list drawn up by the Special Rapporteur was virtually exhaustive, it would be better to substitute "in particular" for "*inter alia*", which implied that there were many other reasons for the end of the function.

89. With regard to sub-paragraph (a), he thought some reference should be made to cases where the duration of the mission had been fixed in advance; he suggested that the beginning of the sub-paragraph might be redrafted to read "Upon the expiry of the agreed term of duration...".

90. Apart from sub-paragraph (c), all the sub-paragraphs from (a) to (g) dealt with the end of the function. It was in sub-paragraph (c) that the real problem was referred to, that of suspension. If a mission arrived in the receiving State and it was then decided to suspend its work for a few weeks, in the course of which it would make some preliminary studies, it could not be said to have ceased to exist during that period. Accordingly, sub-paragraph (c) should preferably form a separate and more cautiously-worded paragraph.

91. Mr. BARTOS, Special Rapporteur, said that both views were held: some considered that in such circumstances the mission ceased to exist and that its work, if resumed, would have to be entrusted to another mission sent for that purpose, while others took the view that the mission remained in existence and that its work had merely been interrupted.

92. Mr. RUDA said that the text of article 11 could be simplified by dropping sub-paragraph (d) and (e) both of which were covered by sub-paragraph (b). He suggested that some other expression than "*inter alia*" could be used in the opening sentence.

93. Mr. BRIGGS queried whether the interruption of the negotiations should lead to the end of the function of a special mission. Perhaps it would be preferable to delete sub-paragraph (c) and deal with the matter elsewhere.

94. As far as the English text was concerned the expression "*inter alia*" was more precise than "in particular" and would be rendered by the word *notamment* in French.

95. Mr. LACHS said that there were three reasons why the functions of a special mission might come to an end; the temporal covered in sub-paragraph (a), the substantive covered in sub-paragraph (b) of which sub-paragraphs (d) and (e) were only illustrations that could with advantage be transferred to the commentary, and the subjective, which depended upon the intention of the parties and which was covered in sub-paragraphs (f) and (g). In regard to the last he said there might be cases where a sending State recalled a special mission while at the same time wishing to give the impression that the negotiations would continue later.

96. He agreed with the Chairman's comments on subparagraph (c) and would go further in suggesting that it should be omitted altogether, as it did not come within the scope of any of the three reasons he had enumerated. The point could be covered in the commentary.

97. Mr. AMADO said that he could not agree that there should be a reference to the interruption of a mission in an article entitled "End of the function of the special mission". "Interruption" and "suspension" were not necessarily synonymous with "end". The special mission might merely be pausing for reflection. It would therefore be necessary either to adopt Mr. Lachs's suggestion or to draft a separate article concerning the interruption or suspension of a special mission's functions.

98. The CHAIRMAN, speaking as a member of the Commission, said that cases of suspension and interruption could hardly be regulated otherwise than by a provision stating that the end of the mission's function took place by agreement between the States concerned. There might be cases where both States intended that the suspension of the mission's work should entail the end of the mission, but there might be others where both States agreed that the mission should remain where it was in order to be in a position to resume its work.

99. Mr. YASSEEN said that, in his view, there were three decisive factors — the duration of the mission, its assignment and the will of the parties. The first factor was referred to in subparagraph (a) and the second in subparagraph (b); subparagraphs (d) and (e) were therefore unnecessary.

100. The will of the parties — the third factor — could be referred to in a single subparagraph, which would naturally give preference to the host State, because, being in a privileged position by reason of its territorial jurisdiction, it was entitled to terminate all special missions. The sub-paraphraph might say that a special mission came to an end upon notification by the host State that it regarded the mission as having terminated, or by virtue of an expression of will by either State.

101. Mr. CASTRÉN supported the speakers who had suggested the deletion of subparagraphs (b), (d) and (e), for the reasons given by them.

102. Mr. ROSENNE said that he was in general agreement with the article and could support the suggestions for its simplification. On what was perhaps a drafting point he asked whether it was the function or the special mission itself that came to an end.

103. Mr. BARTOS, Special Rapporteur, said that he was prepared to incorporate the substance of subparagraphs (d) and (e) in subparagraph (b).

104. With regard to subparagraph (c), he illustrated the case by referring to what happened when there was a change of Government. If the new Government of the host State had not yet decided whether the mission should continue or be interrupted and if the Government of the sending State was equally doubtful,

was the mission to be regarded as still in existence, even during that period of indecision? It might be preferable to draft a separate paragraph stating that the functions of the special mission could be interrupted or suspended by the will of the two parties or of either of them; such a provision would show that the situation he had described could occur and should not be confused with the cessation of a special mission's functions.

105. Referring to Mr. Yasseen's suggestion, he said that notification of the recall of a mission and a notification by the receiving State that it regarded the mission as having terminated were two different things both in politics and in law; they represented two different kinds of diplomatic *démarche* one of which was more serious than the other. The Vienna Convention on Diplomatic Relations provided for notification of the termination of the functions of a diplomatic agent.

106. The CHAIRMAN, speaking as a member of the Commission, said that he agreed with the Special Rapporteur's view that a notification terminating a special mission from a foreign country was an extremely serious step.

107. Mr. de LUNA said that he fully shared the Special Rapporteur's views.

108. The CHAIRMAN suggested that article 11 should be referred to the Drafting Committee.

It was so agreed.

Appointment of a Member of the Drafting Committee

Mr. Obed Pessou was appointed a member of the Drafting Committee in replacement of Mr. Reuter, who had had to leave before the end of the session.

The meeting rose at 1 p.m.

763rd MEETING

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

Chairman : Mr. Herbert W. BRIGGS

Later : Mr. Roberto AGO

Special Missions

(A/CN.4/166)

(continued)

[Item 4 of the agenda]

DRAFT ARTICLES ON SPECIAL MISSIONS

ARTICLE 12 (Seat of the special mission)

1. The CHAIRMAN invited the Commission to take up article 12 in the Special Rapporteur's report (A/CN.4/166).