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Summary record of the 804th meeting

Topic:
Special missions

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107. The CHAIRMAN said that, if there was no objection, he would consider that the Commission agreed to adopt the Special Rapporteur's suggestion.

*It was so agreed.*¹¹

The meeting rose at 1.5 p.m.

¹¹ For resumption of discussion, see 815th meeting, paras. 35-62.

804th MEETING

Thursday, 17 June 1965, at 10 a.m.

Chairman: Mr. Milan BARTOŠ

Present: Mr. Ago, Mr. Amado, Mr. Briggs, Mr. Castrén, Mr. Elias, Mr. Jiménez de Aréchaga, Mr. Pal, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Mr. Verdross, Sir Humphrey Waldock, Mr. Yasseen.

Special Missions

(A/CN.4/179)

[Item 3 of the agenda]

PRELIMINARY QUESTIONS

1. The CHAIRMAN invited the Commission to consider the second report on special missions (A/CN.4/179), submitted by himself as Special Rapporteur for the topic.

2. Speaking as Special Rapporteur, he asked the Commission first to decide three preliminary questions arising out of paragraphs 1 (a), (c) and (d) of his report.

3. So far as the first question was concerned, he suggested that his corrections to the articles adopted by the Commission at its sixteenth session¹ should not be discussed until after the Commission had received the comments of governments.

4. The second question concerned the drafting of rules relating to so-called "high-level" special missions. Although he had been instructed by the Commission to prepare rules concerning the legal status of such missions, he had had difficulty in gathering material, whether drawn from the practice or from the literature. He had only been able to produce the six rules which appeared in the last section of his second report. If the Commission so wished, he could, after the study of the articles on special missions in general and before the close of the session, submit some conclusions as to how far it was necessary to prepare more detailed rules on the subject of "high-level" special missions.

5. The third question concerned the joint proposal on the legal status of delegations to international conferences and congresses, which the Commission had

¹ *Yearbook of the International Law Commission, 1964, Vol. II, pp. 208-210.*

requested from Mr. El-Erian, Special Rapporteur on relations between States and inter-governmental organizations, and from himself as Special Rapporteur on special missions. He had collected some material on the subject, but had not been able to confer with Mr. El-Erian with a view to preparing a joint proposal. The matter might be deferred until the January session in 1966.

6. He would like to have the Commission's opinion on the first of those three questions.

7. Mr. ROSENNE said that he fully agreed with the Chairman's suggestion regarding the first question. He suggested, however, that, once the Commission had completed its work at the current session on the next group of articles on special missions, the Drafting Committee should consider whether any language adjustments were necessary in articles 1 to 16.

8. The CHAIRMAN said that, if there were no further comments, consideration of the proposed changes in articles 1-16 (A/CN.4/179, paras. 134-148) would be deferred until a later session.

It was so agreed.

9. The CHAIRMAN invited the Commission to express its views on the second question.

10. Mr. BRIGGS said that it would be more appropriate to discuss the Special Rapporteur's draft provisions concerning so-called high-level special missions after the Commission had completed the draft articles on special missions.

11. The CHAIRMAN said that, in the absence of further comments, he would take it as agreed that the subject should be deferred until after the study of articles 17 to 40 had been completed.

It was so agreed.

12. The CHAIRMAN invited the Commission to express its views on the third question.

13. Mr. TUNKIN suggested that the question be left open, as Mr. El-Erian was absent.

It was so agreed.

14. The CHAIRMAN asked whether the Commission wished to have a general debate on articles 17 to 40.

15. Mr. TUNKIN proposed that the Commission should proceed immediately to discuss the articles one by one.

It was so decided.

ARTICLE 17 (General facilities) [17]

Article 17

General facilities

[17]

The receiving State shall offer a special mission all the facilities necessary for the smooth and regular performance of its task, having regard to the nature of the special mission.

16. The CHAIRMAN, speaking as Special Rapporteur, said that article 17 stated a rule which was found in all works dealing with the question; it was not a rule of courtesy but an obligation *ex jure*.

17. Mr. TUNKIN asked why the wording of article 17 differed from that of article 25 of the Vienna Convention on Diplomatic Relations and article 28 of the Vienna Convention on Consular Relations.
18. The CHAIRMAN, speaking as Special Rapporteur, said that the difference was not based on doctrinal considerations. He had merely wished to take account of the particular nature of special missions.
19. Mr. YASSEEN said that the rule should be adopted, regardless of whether the obligation existed in positive law, for it laid down the receiving State's first duty toward a special mission coming into its territory.
20. There was a slight difference between the French and the English texts, in that the latter did not use the comparative form of the adjectives "smooth and regular". The text might be simplified to read "the regular performance of its task", which would be closer to the wording of article 25 of the Vienna Convention on Diplomatic Relations.
21. Mr. PESSOU said that a formula such as "The members of a special mission shall enjoy in the territory of the receiving State all the facilities necessary for the performance of their task" would not change the meaning but would more adequately reflect the fact that the State was a sovereign entity.
22. Mr. AMADO urged that in the French text the word *accomplissement*, used in the corresponding articles of both Vienna Conventions, should be used rather than *exécution*.
23. Mr. ROSENNE said that, while he accepted the general lines of article 17, he felt that the actual text went somewhat beyond what was expressed in the commentary. He therefore suggested that the article should be redrafted to read: "The receiving State shall offer a special mission adequate facilities for the performance of its task, having regard to the nature of the special mission". That formulation involved the omission of the words "smooth and regular" before "performance", which did not add much to the meaning of the provision.
24. The concluding proviso "having regard to the nature of the special mission" was necessary and served to limit the duties of the receiving State.
25. There remained the legal question mentioned in the last sentence of paragraph (2) of the commentary; but that could hardly be solved in the draft articles.
26. Mr. JIMÉNEZ de ARÉCHAGA said that, in his view, the draft articles on special missions did not constitute an isolated piece of work, but formed part of the general codification of diplomatic law and consequently should be integrated into the structure of the Vienna Conventions of 1961 and 1963.
27. The Commission should always bear in mind how the draft articles might affect those two existing Conventions. It should avoid the temptation to try to improve on the wording adopted for the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963. Even if there were room for improvement, the Commission should adhere to the language used in those two Conventions and confine its work to specifying any limitations or modifications that were appropriate, bearing in mind the peculiar nature of special missions. Only in that manner would it be possible to avoid gratuitously creating problems of interpretation.
28. He accordingly proposed that the wording of article 17 should follow exactly that of article 25 of the Vienna Convention of 1961 and article 28 of the Vienna Convention of 1963, with the addition of the concluding proviso "having regard to the nature of the special mission" which, as pointed out by Mr. Rosenne, embodied a useful and necessary limitation.
29. Mr. ELIAS said that it had been his intention to suggest that article 17 should be amended to read "The receiving State shall provide facilities adequate for the performance by a special mission of its task", but after listening to Mr. Jiménez de Aréchaga's comments he agreed that it would be desirable to use as nearly as possible the actual words of the two Vienna Conventions.
30. Mr. TUNKIN said that, in essence, article 17 was intended to state the rule that the receiving State should extend to the special mission the same facilities for the performance of its functions as it accorded to a permanent diplomatic mission or to a consular post.
31. He fully supported the arguments put forward by Mr. Jiménez de Aréchaga regarding the need to follow the language used in the corresponding provisions of the two Vienna Conventions. Any departure from that language might have an adverse effect on interpretation.
32. He did not, however, think that the proviso "having regard . . ." should be retained. Obviously, the receiving State would bear in mind the special character of the special mission; but it would do likewise in the case of a permanent mission and of a consular post, and neither article 25 of the Vienna Convention on Diplomatic Relations nor article 28 of the Vienna Convention on Consular Relations provided that the receiving State should, when according full facilities, bear in mind the special character of a permanent mission or of a consular post, as the case might be.
33. Mr. PAL said he saw no convincing reason to depart from the language used in the corresponding provisions of the two Vienna Conventions. The substance of article 17 would be adequately expressed if the wording of article 25 of the Vienna Convention on Diplomatic Relations were used.
34. Mr. RUDA said that he, too, considered that the language of the two Vienna Conventions should be followed, but with the addition of the concluding proviso.
35. Sir Humphrey WALDOCK said that the point raised by Mr. Jiménez de Aréchaga was extremely important. Any departure from the wording used in the existing conventions could give rise to serious difficulties whenever questions of interpretation arose. The point affected all the draft articles, and not merely article 17.
36. The special character of special missions was already sufficiently brought out by the various provisions in articles 1 to 16. In the circumstances, it would seem

unwise to stress it too much in article 17. All that was necessary in the way of limitation was merely to replace, in the text of article 25 of the 1961 Vienna Convention, the word "mission" by "special mission". He therefore suggested that article 17 should be revised to read:

"The receiving State shall grant full facilities for the performance of the functions of the special mission".

37. Mr. CASTRÉN said that the Commission's draft should follow the wording of the corresponding articles of the Vienna Conventions as closely as possible and that in any case the last phrase in the Special Rapporteur's draft article 17 "having regard to the nature of the special mission" should be dropped, since it might be interpreted as a limitation.

38. Mr. BRIGGS said that at first he had thought that the concluding proviso should be retained, as suggested by Mr. Rosenne and Mr. Ruda, particularly in view of the temporary nature of the special mission; but in the light of the discussion he had reached the conclusion that the best course was that suggested by Sir Humphrey Waldock.

39. Mr. TSURUOKA said he had no strong feeling about either retaining or deleting the idea expressed in the last phrase. One of the characteristics of special missions, other than their temporary nature, was the variety of functions which they performed. If the phrase was retained, it would emphasize that peculiar nature of special missions and of the privileges they should enjoy; there was little risk of its being misinterpreted.

40. Mr. ROSENNE said that, as there was no real disagreement on substance, Sir Humphrey Waldock's proposed wording could perhaps meet the case.

41. The CHAIRMAN, speaking as Special Rapporteur, said that the Commission was agreed that an article was needed corresponding to article 25 of the Vienna Convention on Diplomatic Relations and to article 28 of the Vienna Convention on Consular Relations. He had based his draft article 17 on both those articles, but had also tried to show in what respects special missions differed from permanent missions and from consulates. The Drafting Committee could decide to draw that distinction either in the article itself or in the commentary.

42. With regard to the general question of the relationship between the draft articles and the corresponding articles of the two Vienna Conventions, he said that the Commission had decided to prepare a separate convention on special missions. The question was whether the terms of the two earlier Conventions should be followed, or whether in some respects the new draft should differ from them in order to reflect certain distinctions. He thought that as far as possible the wording of the Vienna Conventions should be followed, but possibly his ideas on the distinctions which should be drawn were not shared by the other members of the Commission.

43. Article 25 of the Vienna Convention of 1961 spoke of "the mission" whereas article 28 of the Vienna Convention of 1963 spoke of "the consular post". Special missions differed from both, and the difference might have far-reaching consequences in practice. Special missions always claimed the same facilities as

regular diplomatic missions. Moreover, special missions sometimes needed additional facilities not enjoyed by regular missions. He would accordingly prefer that the article should make the distinction quite clear.

44. Furthermore, in his opinion, article 17 should deal with the special mission as an institution, and should not transform an objective rule into a subjective one applying to the individual members of the mission. The facilities to be accorded to members as such would be set out in other articles.

45. The formula proposed by Mr. Tunkin, which would provide that the receiving State should do everything in its power to enable the special mission to perform its task, might give rise to disputes, especially if a mission was sent to a federal State, whose Government might argue that certain facilities came under the authority not of the central Government but of the governments of the individual States. He (the Chairman) considered that the article should place the obligation squarely on the receiving State and should not leave that State free to judge what was or was not within its power.

46. The phrase "the smooth and regular performance of its task" had been used advisedly, for there was some difference between rendering a task possible and rendering it easy. He would agree to replace the word *exécution* by *accomplissement*.

47. He urged that the idea expressed in the last part of the sentence should be retained, either in the body of the article or at least in the commentary.

48. Speaking as CHAIRMAN, he suggested that article 17 and all the comments concerning it should be referred to the Drafting Committee.

*It was so agreed.*³

ARTICLE 18 (Accommodation of the special mission and its members) [18]

Article 18

[18]

Accommodation of the special mission and its members

1. The receiving State shall facilitate the accommodation of the special mission at, or in the immediate vicinity of, the place where it is to perform its task.

2. If the special mission, owing to the nature of its task, has to change the site of its activities, the receiving State shall enable it to remove to other accommodation at any place where its activities are to be pursued.

3. This rule also applies to the accommodation of the head and the members of the special mission, and of the members of the staff of the special mission.

49. The CHAIRMAN, speaking as Special Rapporteur, said that article 18 of his draft differed from article 21 of the Vienna Convention on Diplomatic Relations and from article 30 of the Vienna Convention on Consular Relations in that it did not make provision for the acquisition of premises, because special missions were temporary. At the same time, article 18 did not exclude the practice of certain States of establishing a house or permanent centre for the accommodation of their successive special missions.

³ For resumption of discussion, see 817th meeting, paras. 1-4.

50. The accommodation problem was often much more difficult in the case of a special mission than in that of a regular diplomatic mission. As yet, there was no rule of law concerning the accommodation of special missions. It should be laid down as a rule *de lege ferenda* that the host State should facilitate the accommodation of the special mission. Problems had arisen in practice, for example in countries where persons of a different colour were not admitted to hotels, and in very small localities where accommodation facilities were very limited.
51. Paragraph 2 dealt with the case where special missions moved from one place to another. Permanent diplomatic missions did not move, save in exceptional cases, such as war or the seasonal transfer of government services.
52. The purpose of paragraph 3 was to extend to the accommodation of the members of the special mission the rule concerning the premises which the mission required for the purpose of its task.
53. Mr. VERDROSS said that article 18 very justly differentiated the obligations of the receiving State towards special missions. The rule applicable to special missions should be both less and more exacting than that applicable to diplomatic and consular missions: less exacting, because the receiving State was not obliged to authorize the acquisition of premises, but more exacting because the receiving State had to make it possible for the special mission to find accommodation and to move from place to place in the performance of its functions.
54. In paragraph (4) of his commentary to article 18, the Special Rapporteur alluded to the obligation to observe the rules of non-discrimination in cases where several special missions from different States met. That idea should, perhaps, be expressed in the article itself.
55. With regard to the drafting, he suggested that in the French text of paragraph 3 the expression *cette règle est également valable* should be replaced by the expression *cette règle s'applique également*.
56. Mr. JIMÉNEZ de ARÉCHAGA said that article 18 provided a good example of the need to adapt the provisions of the two Vienna Conventions so as to take into account the peculiar nature of special missions. He commended the Special Rapporteur for dropping the reference to the acquisition of premises, which would be out of place in the draft on special missions.
57. However, it would not be advisable to impose on the receiving State the duty to facilitate the accommodation of the special mission, as was done in paragraph 1, and of its members, as was done in paragraph 3. All that could be expected of the receiving State was that it should assist in obtaining such accommodation, and the wording of those two paragraphs should be amended accordingly. The position was completely different from that of permanent missions, in respect of which the receiving State could either facilitate the actual acquisition of premises—if necessary, by enacting legislation to that effect—or help the mission to obtain premises by lease or otherwise.
58. The idea of the possible change of site, embodied in paragraph 2, was not in its right place in article 18; it would be better to deal with the question in the provisions on freedom of movement.
59. Mr. CASTRÉN said he accepted article 18 in substance and realized that it could not follow the provisions of the Vienna Conventions.
60. It would no doubt be possible to simplify the article somewhat; for example, paragraph 2 was not absolutely necessary, for the obligation to make provision for certain movements necessitated by the particular nature of a special mission's task was implied in paragraph 1, as well as in article 17. If the Commission should decide to delete paragraph 2, it might amend paragraph 1 by replacing the word "place" by "places".
61. Paragraph 3 stated in substance the same rule as paragraph 2 of the corresponding articles of the Vienna Conventions. The difference in wording was not very substantial; the Vienna Conventions used the expression "assist in obtaining suitable accommodation", which was very close to the expression "facilitate the accommodation of the special mission", used in paragraph 1.
62. Mr. RUDA said that the purpose of article 18 was to lay down the duty of the receiving State to facilitate the accommodation of a special mission. However, it was essential to state expressly that accommodation should be adequate. He therefore proposed the insertion of the word "adequate" before "accommodation" in paragraphs 1 and 3.
63. In the case of a permanent mission, article 21 of the Vienna Convention on Diplomatic Relations offered the receiving State a choice: it could either enable the sending State to acquire the necessary premises, or it could assist the mission "in obtaining accommodation in some other way". Since, in the case of a special mission, the receiving State would not have the possibility of adopting the first of those alternatives, it was desirable to amend paragraphs 1 and 3 in such a manner as to lay down the duty to "assist in facilitating" the accommodation.
64. The Drafting Committee should consider the possibility of amalgamating the provisions of paragraphs 1 and 3 so as to express in one provision the same rule for the accommodation of the special mission and for that of its personnel.
65. Mr. YASSEEN said that, in general, the wording of the articles in the Vienna Conventions should be followed as far as possible. But because diplomatic and consular missions differed materially from special missions, the Commission was drafting a separate convention on special missions. The resemblance between the two kinds of mission was more apparent than real; that was why it had been found necessary to renounce the method, initially chosen, of determining, with respect to each article in the two Vienna Conventions, whether it applied or did not apply to special missions. The Commission should therefore feel at liberty to adopt or to depart from the terms of the Vienna Conventions, according to the circumstances.

66. Article 18 illustrated the difference to be made *vis-à-vis* diplomatic and consular missions. Since special missions functioned for a short time, the question of accommodation might be particularly difficult, and therefore the obligation on the receiving State had to be more precise and should be an obligation to achieve a certain result rather than simply an obligation to use certain means. The formula proposed by the Special Rapporteur satisfied the needs of the situation and reflected the difference to be made between the obligations which rested on the receiving State according as the accommodation was that of a permanent or that of a special mission.

67. The example quoted by Mr. Jiménez de Aréchaga was not really relevant; it related rather to missions to international conferences and to the problems of the headquarters of international organizations.

68. Itinerant special missions occurred in practice, but he did not think they deserved a special paragraph. Paragraph 1, amended as suggested by Mr. Castrén, would perhaps deal adequately with cases of that kind.

69. He supported the drafting amendment to paragraph 3 suggested by Mr. Verdross.

70. Mr. AGO said that, in his opinion, the Special Rapporteur had probably given the article too much prominence by dividing it into three paragraphs; a single paragraph should be sufficient. He accordingly proposed the following text, which was based on the Vienna Conventions, subject to necessary adjustments:

“The receiving State shall assist the special mission in procuring appropriate premises and in obtaining suitable accommodation for its members”.

71. Mr. AMADO³ pointed out that, if it was necessary to deal with the question of accommodation, it should not be forgotten that the State which received a special mission would think of that problem.

72. Mr. TUNKIN said he agreed with the Special Rapporteur that the wording of the Vienna Conventions could not be used in article 18 because of the essentially different character of special missions. While he supported the underlying idea of the text, he was sure that it could be considerably simplified by the Drafting Committee. The kind of text proposed by Mr. Ago would be adequate. There was no need to mention, for example, that the accommodation should be in the immediate vicinity of the place where the mission's task was to be performed, or to provide for the eventuality of its having to change the site of its activity.

73. The CHAIRMAN, speaking as Special Rapporteur, said that the details in article 18 were strictly necessary. Some of the passages might, however, be transferred to the commentary, and the provisions thereby shortened. The wording proposed by Mr. Ago did not cover all the requirements. In some cases, the receiving State would not merely have to “assist” the special mission in finding accommodation, but would have to “ensure” its accommodation. If the Commission should adopt Mr. Ago's proposal, it would have to introduce that idea.

74. He accepted Mr. Verdross's proposal that the words *est également valable pour le* should be replaced

by the words *s'applique également au* in the French text of paragraph 3.

75. In the text proposed by Mr. Ago, the word “suitable” should be replaced by “appropriate”.

76. He suggested that the article should be referred to the Drafting Committee, together with the text proposed by Mr. Ago.

*It was so agreed.*³

ARTICLE 19 (Inviolability of the premises of the special mission) [19]

Article 19

[19]

Inviolability of the premises of the special mission

1. The premises of a special mission shall be inviolable. This rule shall apply even if the special mission is accommodated in a hotel or other public building, provided that the premises used by the special mission are identifiable.

2. The receiving State has a duty to take all appropriate steps for the protection of the premises of the special mission, and in particular to prevent any intrusion into or damage to those premises, any disturbance of the special mission in its premises, and any impairment of its dignity.

3. Agents of the receiving State shall not enter the said premises without the special consent of the head of the special mission or the permission of the head of the regular diplomatic mission of the sending State accredited to the receiving State.

77. The CHAIRMAN, speaking as Special Rapporteur, said that article 19 of his draft corresponded in substance to article 22 of the Vienna Convention on Diplomatic Relations and article 31 of the Vienna Convention on Consular Relations, though in order to take account of the needs of special missions he had been obliged to depart from those provisions to some extent.

78. Mr. VERDROSS said he approved of the article in substance, subject to some drafting changes. In paragraph 1, the words “shall be” should be replaced by the word “are”. As a consequence of that amendment, paragraph 3 would become superfluous. The second sentence of paragraph 1 could be deleted, and the words “even if the special mission is accommodated in a public building” added to the first sentence.

79. Mr. JIMÉNEZ de ARÉCHAGA said that article 19 was an extremely important one. He asked whether the Special Rapporteur had deliberately omitted the provision contained in article 22, paragraph 3, of the Vienna Convention on Diplomatic Relations and in article 31, paragraph 4, of the Vienna Convention on Consular Relations concerning the immunity of premises, property and means of transport from search, requisition, attachment or execution.

80. The CHAIRMAN, speaking as Special Rapporteur, replied that, as one of the changes he had had to make in order to take account of the peculiar nature of special missions, he had dealt with that question in a separate article (article 24).

³ For resumption of discussion, see 817th meeting, paras. 5 and 6.

81. Mr. CASTRÉN said that, like Mr. Verdross, he took the view that the second sentence in paragraph 1 could be transferred to the commentary.
82. Mr. RUDA said he supported Mr. Verdross's proposal that the content of paragraph 3 should be transferred to paragraph 1.
83. The receiving State was under a special duty to protect the premises of a special mission and it would be appropriate in paragraph 2 to use the wording of the Vienna Convention on Diplomatic Relations.
84. Mr. PESSOU proposed that the words "The receiving State has a duty to take", in paragraph 2, be replaced by the words "The receiving State shall take".
85. Mr. PAL said he was fully satisfied with the reasons given by the Special Rapporteur in the commentary for certain departures from the Vienna Conventions. Subject to the necessary drafting improvements, article 19 was acceptable. He did not favour Mr. Verdross's amendment to the first sentence in paragraph 1, which should remain as it stood.
86. Mr. ELIAS suggested that the content of article 24 should be incorporated in article 19 as a new paragraph 2, in order that all the provisions concerning inviolability should, as in the case of article 31 of the Vienna Convention on Consular Relations, be grouped in one article. The existing paragraph 2 of article 19 should be transferred to the commentary. Paragraph 3 in abbreviated form could become the second sentence in paragraph 1. That rearrangement would be more logical and clearer.
87. The mandatory form should be retained in the first sentence if the Commission desired to impose a firm obligation on the receiving State.
88. Mr. BRIGGS said that, in his opinion, the Special Rapporteur's conception of the scope of the article was correct. The article was not easy to draft because of the different senses in which the word "inviolability" had been used, both in the draft under discussion and in the Vienna Conventions. According to the context, it might mean prohibition of entry, an obligation to protect, or immunity from seizure of archives, arrest and detention, search, attachment or execution. The Special Rapporteur had rightly omitted from the article the provisions contained in article 22, paragraph 3, of the Vienna Convention on Diplomatic Relations.
89. He did not particularly favour the proposal for shortening paragraph 3. Paragraph 2 should certainly be retained because it dealt with the important obligation on the receiving State to protect the premises from intrusion by unauthorized persons.
90. The subject of the inviolability of the archives of the special mission was sufficiently important to merit a separate article.
91. Mr. REUTER said that, although he had not much personal experience of special missions, he realized that the draft rules should contain more than just generalities. Accordingly, however much the Drafting Committee might simplify the text, it should sacrifice nothing. In the event of disputes, questions of immunity raised insoluble problems if the relevant provisions were not sufficiently detailed, for then a mere recital of principles was useless.
92. With regard to the phrase "provided that the premises used by the special mission are identifiable", which he regarded as indispensable, he thought that the point should be expressed even more forcefully, for the receiving State should be told what those premises comprised. The Vienna Conventions had not perhaps devoted enough attention to the matter. Some States did not keep lists of premises which were entitled to protection.
93. The CHAIRMAN, speaking as Special Rapporteur, said Mr. Reuter's comments would enable him to fill a gap in the text. It was quite true that, if the receiving State was expected to protect premises, it had to know exactly what premises were involved.
94. The proposals put forward by Mr. Verdross seemed sound, and the Commission should consider them when they had been drafted in appropriate language.
95. Mr. ROSENNE said that, during the discussion on special missions at the previous session,⁴ he had contended that the Commission should depart as little as possible from the provisions of the Vienna Convention on Diplomatic Relations, and where it found that necessary, should justify its action in each case. He had also suggested⁵ that the Commission would, in some cases, find it more useful to draw on the Vienna Convention on Consular Relations than on the other, a view which had been confirmed by the Special Rapporteur in the introduction to his second report.
96. That argument certainly held good for article 19, but its scope should be extended by including the provision contained in the last sentence of article 31, paragraph 2, of the Vienna Convention on Consular Relations. It was essential to allow for protective action to be taken in the case of fire or other disaster, particularly as the premises of a special mission might be located in a series of rooms or on one or more floors of a building.
97. He did not share the preoccupations of Mr. Briggs concerning the use of the word "inviolability", since the context itself always indicated what legal connotation should be ascribed to that word.
98. Regarding the question raised by Mr. Reuter, he wondered whether the English and French texts of the last phrase in paragraph 1 of article 19 exactly corresponded. The former was preferable, the point being that the premises used by special missions should be "identifiable" by the public and the authorities of the receiving State.
99. The proposal by Mr. Elias was essentially one of rearrangement which should be left until article 24 was taken up.
100. The CHAIRMAN, speaking as Special Rapporteur, explained that he had only referred to the identification of the premises, whereas Mr. Reuter had pointed out that the receiving State should be told in advance what those premises were.

⁴ *Yearbook of the International Law Commission, 1964, Vol. I, p. 12, para. 36.*

⁵ *Ibid.*, p. 14, para. 64.

101. Mr. TUNKIN said that the question of inviolability had been discussed at length during the preparation of the Commission's draft on diplomatic relations, and the Commission had rightly concluded, as far as the premises of a diplomatic mission were concerned, that the agents of a receiving State could not enter without the special permission of the head of mission in each case and that the receiving State had a duty to protect the premises from entry by private persons.

102. The question of prior notice raised by Mr. Reuter had also been discussed, but the suggestion that inviolability should be contingent upon prior notice had been rejected because such a rule would unduly complicate matters. It was self-evident that the receiving State could not be regarded as under an obligation to protect the premises of a special mission if its authorities were unaware of the whereabouts of the premises, but it would be unwise to insert a provision on the matter lest the alleged absence of notice be used as a pretext by States for not taking the requisite protective action.

103. He doubted whether Mr. Rosenne was right in thinking that the draft should be closely modelled on the Vienna Convention on Consular Relations, because it was arguable that the analogies between special and diplomatic missions were closer. He was firmly against Mr. Rosenne's proposal for the insertion of a provision corresponding to that in the last sentence of article 31, paragraph 2, of the Convention on Consular Relations. That provision had in fact been inserted by the Vienna Conference and not by the Commission, which had agreed that, in the interests of friendly co-operation between States, any possibility of intrusion into consular or diplomatic premises should be ruled out.

104. He supported Mr. Verdross's proposal that the content of paragraph 3 should form the second sentence of paragraph 1 since the provision as so amended would then state the fundamental rule on inviolability.

105. Mr. VERDROSS said that Mr. Briggs and Mr. Tunkin had referred to the two meanings of the term "inviolability". First, it had a negative meaning—that of prohibition of entry. Secondly, it had a positive meaning—that of the obligation to protect. The first meaning could be covered in paragraph 1 and the second in paragraph 2 of the article; paragraph 3 could then be deleted.

The meeting rose at 1 p.m.

805th MEETING

Thursday, 17 June 1965, at 3.15 p.m.

Chairman: Mr. Milan BARTOŠ

Present: Mr. Ago, Mr. Briggs, Mr. Castrén, Mr. Elias, Mr. Jiménez de Aréchaga, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Mr. Verdross, Sir Humphrey Waldock, Mr. Yasseen.

Special Missions

(A/CN.4/179)

(continued)

[Item 3 of the agenda]

ARTICLE 19 (Inviolability of the premises of the special mission) [19] (continued)¹

1. The CHAIRMAN invited the Commission to continue its consideration of article 19.

2. Mr. ROSENNE referred to his suggestion, made at the 804th meeting, that the scope of article 19 should be extended by including a provision based on the last sentence of article 31, paragraph 2, of the Vienna Convention on Consular Relations.² Mr. Tunkin had opposed the suggestion on the grounds that the provision in question had been inserted in the Vienna Convention by the United Nations Conference on Consular Relations and not by the Commission itself, which had agreed that in the interests of friendly co-operation between States any possibility of intrusion into premises, whether consular or diplomatic, should be excluded.³

3. The fact that the States represented at the Conference had found it necessary to introduce the provision in article 31 of the Convention spoke for itself. In the case of special missions, which rarely occupied buildings of their own but were usually accommodated in buildings used for other purposes as well, it was as essential as in the case of consular missions that the consent of the head of the mission to entry into the premises could be assumed in case of fire or other disaster requiring prompt protective action.

4. Mr. BRIGGS agreed with Mr. Rosenne.

5. The CHAIRMAN, speaking as Special Rapporteur, said that his difficulties in drafting article 19 could best be understood in the light of the difference between the articles on which it was based: article 22 of the Vienna Convention on Diplomatic Relations and article 31 of the Vienna Convention on Consular Relations, which were not constructed along the same lines. The former said that "the premises of the mission shall be inviolable", whereas the second said that "consular premises shall be inviolable to the extent provided in this article".

6. So far as substance was concerned, the Vienna Convention on Diplomatic Relations laid down the absolute inviolability of the mission's premises, and hence the duty of agents of the receiving State to refrain from entering them. The Vienna Convention on Consular Relations on the other hand (in particular article 41) empowered the authorities of the receiving State to take certain action against consular officers.

7. With regard to the active protection due to special missions, he had followed the provisions of the two Vienna Conventions, which were largely parallel. In addition, he had drawn conclusions from events that had occurred in recent years, which had led to intrusions into premises in connexion with popular movements

¹ See 804th meeting, following para. 76.

² *Ibid.*, para. 96.

³ *Ibid.*, para. 103.