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Summary record of the 820th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1965, vol. I

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131. Consideration of the whole problem should be postponed until the draft was re-examined by the Commission at a later stage.

132. Mr. ROSENNE said he could agree to consideration of paragraph 1 being deferred.

Consideration of paragraph 1 was deferred.

Paragraph 2

133. Mr. ROSENNE said that the purpose of paragraph 2 was to protect existing and future agreements between States in the same way as had been done in article 73, paragraph 1, of the Vienna Convention on Consular Relations. Such a provision was extremely important in order to emphasize the residuary character of the articles and should certainly be incorporated in the draft. Personally, he did not consider that it belonged to the final clauses; in the present case it was a matter of substance.

134. Mr. AGO suggested that paragraph 2 also should be considered at the last stage. He doubted whether it was right that it should apply only to Part II, instead of being placed at the end of the draft and applying to the articles as a whole. He could see that the clause would be useful for some conventions; but he doubted whether, if certain States should decide to adopt the convention on special missions, it was really advisable to lay down the principle that special agreements giving such missions a less important status should prevail over the convention. He thought the Commission should reserve its final decision.

135. Mr. RUDA said he agreed with Mr. Ago. He was not sure of the meaning of the words "whether or not either or both of these States are parties to the present articles"; they were not included in article 73, paragraph 1, of the Vienna Convention on Consular Relations. If one of the States was not a party to the articles, its special agreements concerning special missions would not be affected, as the provision was not *jus cogens*.

136. Mr. ROSENNE said that the issue was an important one and should be mentioned in the report, even though the Commission had reached no decision on it.

137. The CHAIRMAN, speaking as Special Rapporteur, said that the questions Mr. Rosenne had raised were too important to be left out of the report, and should be examined more thoroughly later on.

Paragraph 3

138. The CHAIRMAN, speaking as Special Rapporteur, said it was not advisable to give definitions applying to one part of the draft only; definitions should apply to the text as whole, so that a word would not have one meaning in one part and another meaning in the other. Besides, the Commission had already asked the Special Rapporteur to submit definitions at the next session.

139. Mr. JIMÉNEZ de ARÉCHAGA said that Mr. Rosenne's idea of taking the Vienna Convention as a basis was excellent, and should be adopted.

140. The CHAIRMAN proposed that the Commission should decide not to transmit article 16 *bis* to the

Drafting Committee, but to mention in the report that it would be considered later, during the second reading.

It was so agreed.

The meeting rose at 1 p.m.

820th MEETING

Thursday, 8 July 1965, at 10 a.m.

Chairman: Mr. Milan BARTOŠ

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

Also present: Mr. Provenzali-Heredia, observer for the Inter-American Council of Jurists.

Co-operation with Other Bodies

(A/CN.4/176)

(resumed from the previous meeting)

[Item 7 of the agenda]

1. The CHAIRMAN invited the observer for the Inter-American Council of Jurists to make a statement.

2. Mr. PROVENZALI-HEREDIA (Observer for the Inter-American Council of Jurists) said that although the subjects studied by the inter-American juridical bodies and the International Law Commission were not always the same, there was often an obvious parallel, so that the presence of observers was not a mere formality. As contemporary international life was characterized by co-operation in all sectors of human activity — political, economic and legal — it was important for the representatives of regional systems to be thoroughly familiar with the general rules of law formulated by international juridical bodies. It was also important that the new countries should make known their desire that certain principles essential for their independent existence and their political and social development should be studied with a view to enriching or modifying traditional international law.

3. The American continent had worked out rules of great juridical value. With regard to the legal effects of reservations to multilateral treaties, the Pan-American rule, which rejected the unanimity theory for the acceptance of a reservation and admitted reservations among countries *inter se*, facilitated the progress of international law and safeguarded the sovereignty of all States, both those which accepted and those which rejected such reservations.

4. With regard to territorial and diplomatic asylum, the Inter-American Juridical Committee of Rio de Janeiro had prepared drafts which, having acquired the status of conventions, constituted legal rules of the greatest value relating to an institution of which the countries of America were justly proud.

5. With regard to the international responsibility of States, various rules had been evolved in the Latin American countries and had been re-cast by the Inter-American Council of Jurists at its meeting at San Salvador in February 1965. Those rules concerned such matters as equal treatment of nationals and foreigners, the condemnation of diplomatic intervention and armed intervention for the protection of foreign private interests, and the acceptance of a new concept of denial of justice; they were bound to influence the changes being made in international law to adapt it to the realities of a period which was as turbulent, politically, as it was fertile in juridical and social innovations.

6. In the sphere of private international law, the American continent had a code known as the "Bustamante Code". The Inter-American Council of Jurists had adopted the recommendation of its Juridical Committee at Rio de Janeiro that that historic code should be brought up to date, and a special inter-American conference was to revise it in 1966. That ambitious work, for which preliminary studies had been in progress for more than ten years, would include the introduction into the Code of new rules which had become indispensable, such as those concerning conflict of laws relating to labour.

7. In addition, two international instruments for unifying the law were in preparation. The first was a convention on extradition, which would be applicable throughout the continent, as it had been approved by the Inter-American Council of Jurists and was on the agenda of the eleventh Inter-American Conference. The second was a draft treaty enumerating the cases deemed to constitute intervention and designed to secure constant and strict observance of the principle of non-intervention, which was laid down in the charter of the Organization of American States and was a fundamental principle both of the Organization and of each of its member States.

8. Other subjects under study were the legal aspects of the Alliance for Progress and the Common Market, and the legal aspects of economic integration of the American countries to secure the economic emancipation of Latin America.

9. Such were the projects on which the jurists of North and South America were working together in order to find precise and satisfactory rules of law; and that was why they kept themselves informed of the work of the International Law Commission, which was today making the most valuable contribution to the science of international law.

10. With its draft articles on the law of treaties, the Commission might well be offering the world what was perhaps the most outstanding legal product of the time in the international sphere. The draft involved the incorporation, to the extent that they were susceptible of general application, of all expressions of legal thought and of the attitudes of the communities which would apply them. For that reason, the Commission's acceptance of the American position regarding reservations had been widely welcomed.

11. It was essential that the adoption of the draft on the law of treaties should not be jeopardized by any

discrepancies between its content and the provisions of the various constitutional systems governing the internal procedure to be followed in respect of international instruments. That could be ensured by making a detailed study of the meaning and application of the simplest terms—signature or accession, legislative approval and ratification—and their synonyms, used to denote successive and indispensable steps in the conclusion of a treaty.

12. With regard to co-operation between the Commission and the inter-American juridical bodies, it was a pity that Mr. Jiménez de Aréchaga, the Commission's observer at the fifth session of the Inter-American Council of Jurists, with his usual modesty, had not reproduced in his report (A/CN.4/176) the resolution recognizing how fruitful that co-operation was. The Commission would gather from the resolution—with which it was surely familiar—why he had stressed the need to strengthen the contact between the Commission and the inter-American bodies.

13. After following the Commission's proceedings and reading the reports of the observers it had sent to regional juridical bodies, he was taking steps to propose to the Juridical Committee that it invite the Commission to appoint an observer to be present at Rio de Janeiro, if not for the entire ninety-day annual session, at least for long enough to see how the Committee worked and what subjects it dealt with. Meanwhile, it was essential to establish active communications between the Commission and the Committee through the exchange of documents, especially the latest documents, in order to dispel the erroneous belief that it was the slowness of juridical bodies which made the adoption of permanent rules by political organs lag so far behind events.

14. He thanked the Commission for giving him an opportunity to speak and expressed the hope that it would soon bring its work to a successful conclusion.

Law of Treaties

(resumed from the 816th meeting)

[Item 2 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (concluded)

ARTICLE 1 (Use of terms)¹

15. The CHAIRMAN invited the Commission to consider the Drafting Committee's proposals concerning article 1.

16. The Drafting Committee had decided to recommend the deletion of sub-paragraphs (b) and (g) and of the references to "signature" in sub-paragraph (d), and the postponement of decisions on sub-paragraph (c), on a new sub-paragraph (f) *ter* relating to the definition of a "contracting State", and on paragraph 2.

Those recommendations were adopted.

¹ For earlier discussions, see 777th meeting, paras. 5-78, 778th meeting, paras. 1-60, and 810th meeting, para. 11.

17. Sir Humphrey WALDOCK, Special Rapporteur, said that for the remainder of article 1, the Drafting Committee proposed the following text :

" 1. For the purposes of the present articles :

(a) 'Treaty' means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

(d) 'Ratification', 'Accession', 'Acceptance' and 'Approval' mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.

(e) 'Full powers' means a document emanating from the competent authority of a State designating a person to represent the State for negotiating, adopting or authenticating the text of a treaty or for expressing the consent of the State to be bound by a treaty.

(f) 'Reservation' means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, acceding to, accepting or approving a treaty, whereby it purports to exclude or to vary the legal effect of certain provisions of the treaty in their application to that State.

(f) *bis* 'Party' means a State which has consented to be bound by a treaty and for which the treaty has come into force.

(f) *quater* 'International organization' means an inter-governmental organization."

18. With regard to the changes made, the reference to "signature" had been dropped from sub-paragraph (d) because of the changes made in the rules concerning signature. The definition had been shortened and somewhat modified to bring out the fact that the draft articles concerning ratification, accession, acceptance and approval dealt with the international act and not with any internal procedures which might precede it.

19. Sub-paragraph (e) had been slightly modified. The 1962 text² had been more or less confined to a formal instrument of full powers, but the revised version took into account the modern practice of employing less formal methods.

20. Sub-paragraph (f) contained an extremely important definition, essentially the same as that agreed upon at the fourteenth session.³ The Drafting Committee had sought to bring out that, however designated, any statement purporting to exclude or vary the legal effects of certain provisions of a treaty would constitute a reservation.

21. In sub-paragraph (f) *bis*, the Drafting Committee had put forward a new definition that would need to be examined later in conjunction with the definition of a "contracting State" that might be included as sub-paragraph (f) *ter*.

22. Sub-paragraph (f) *quater* was also new and had been inserted so as to exclude non-governmental organizations.

23. The Drafting Committee had spent some time discussing paragraph 2, and while concluding that some provision on those lines would be necessary, had decided that for lack of time the matter would have to be postponed until the next session.

24. The Commission was invited to approve the text put forward for article 1 on a provisional basis as it would require further consideration when the Commission reviewed the draft articles as a whole.

25. Mr. JIMÉNEZ de ARÉCHAGA said that the Spanish text of sub-paragraph (f) *bis* would have to be slightly amended, as the word "parte" could not stand alone.

26. Mr. BRIGGS said that the French text of sub-paragraph (d) would need to be rectified as the word "international", qualifying the word "act", had been omitted. That was an important point because, as the Special Rapporteur had emphasized in the Drafting Committee, there was a tendency to confuse the internal and international aspects of the act of ratification.

Article 1 was adopted by 16 votes to none.

ARTICLE 3 *bis* (Treaties which are constituent instruments of international organizations or which have been drawn up within international organizations)⁴

27. Sir Humphrey WALDOCK, Special Rapporteur, said that the Drafting Committee had discussed the proposal he had made in his fourth report (A/CN.4/177) for the insertion of an article 3 *bis* concerning the constituent instruments of international organizations or treaties drawn up within them, and had decided to recommend that such a provision be included in the draft on a provisional basis.

The text read :

"The application of the present articles to treaties which are constituent instruments of an international organization or have been drawn up within an international organization shall be subject to the rules of the organization in question."

28. Mr. ROSENNE said that the title of the article in the French version should be brought into line with the English.

Article 3 bis was adopted by 16 votes to none.

Special Missions

(resumed from the previous meeting)

[Item 3 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE
(concluded)

ARTICLE 24 (Inviolability of the property of the special mission) [19, para. 3]⁵

29. The CHAIRMAN said that Mr. Elias had proposed that article 24 should be combined with article 19.

² Yearbook of the International Law Commission, 1962, Vol. II, p. 161.

³ *Ibid.*

⁴ For earlier discussion, see 780th meeting, paras. 17-26.

⁵ For earlier discussions, see 806th meeting, paras. 55-75, and 817th meeting, paras. 33-58.

After discussion the Drafting Committee had adopted a text for a third paragraph to be added to article 19, which was intended to satisfy both the supporters of the Vienna Convention and those who thought that the provisions of that Convention should be adapted to the case of special missions. The text read :

“ 3. The premises of the special mission, their furnishings, other property used in the operation of the special mission and its means of transport shall be immune from search, requisition, attachment or execution by the organs of the receiving State. ”

30. Mr. PESSOU said that the words “ search ” and “ requisition ” seemed to duplicate “ attachment ” and “ execution ”.

31. The CHAIRMAN explained that the purpose of a search was to look for something or to establish a certain state of affairs; a search could be carried out without anything being attached, whereas by attachment the disposal of a thing was restricted or something was taken away from someone. The list was taken from the Vienna Convention on Diplomatic Relations.⁶

The new paragraph 3 of article 19 proposed by the Drafting Committee was adopted by 16 votes to none.

Article 19 as a whole, as amended, was adopted by 16 votes to none.

Draft Report of the Commission on the work of its seventeenth session

(A/CN.4/L.111 and addenda)

(resumed from the 819th meeting)

CHAPTER V : OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

(A/CN.4/L.111/Add.1)

(continued)

32. The CHAIRMAN invited the Commission to resume consideration of section A.1. He proposed that the last two paragraphs be replaced by the text prepared by the General Rapporteur and Mr. Jiménez de Aréchaga, which read :

“ The Inter-American Juridical Committee, the standing organ of the Inter-American Council of Jurists, was represented by Mr. Elbano Provenzali-Heredia, who addressed the Commission.

A standing invitation has been extended to the Commission to send an observer to the Inter-American Council of Jurists. The Commission took note that the next meeting of the Council would be held in Caracas, Venezuela, but that the date had not yet been set. If the meeting is held before the next session of the Commission, the Commission requested its Chairman, Mr. Milan Bartoš, to attend it, or, if he were unable to do so, to appoint another member of the Commission or its Secretary to represent the Commission. ”

It was so agreed.

Section A.1., as amended, was adopted.

33. Mr. WATTLES (Secretariat) said that Mr. Rosenne had suggested the following passage concerning the Commission's summary records for insertion between sections D and E of chapter V :

“ The Commission examined certain suggestions concerning the presentation of its records in the *Yearbook of the International Law Commission*, made for the purpose of facilitating its use. A number of suggestions were adopted and will be reflected in the volumes of the *Yearbook* for 1965. ”

34. Mr. BRIGGS said he did not wish to denigrate the utility of the more detailed table of contents now included in volume I, but the value of both volumes of the *Yearbook* would be greatly enhanced if they included an index.

35. The CHAIRMAN, speaking as a member of the Commission, supported Mr. Briggs's suggestion and expressed the hope that the next edition of the Commission's *Yearbook* would have a name and subject index.

36. Mr. ROSENNE said that he had looked into some of the technical problems of producing the Commission's *Yearbooks* and, while he agreed that indexes were useful, he had come to the conclusion that, apart from other considerations, their inclusion might delay the printing of the *Yearbooks* by as much as six months. There had been a marked improvement in the table of contents and method of cross-referencing in volume I of the 1964 *Yearbook*, and further improvements were to be introduced by the Secretariat. He therefore urged the Commission not to take a hasty decision on the matter but to wait until the 1965 *Yearbook* had come out and, in the meantime, to ask the Secretariat to submit a paper setting out the financial and administrative implications of providing an index to both volumes.

37. Mr. WATTLES (Secretariat) said that the question of indexing various United Nations publications had been thoroughly studied at Headquarters and it had proved virtually impossible to find qualified persons willing to undertake the work. Members would also be aware that an index could not be translated, but had to be separately compiled in each language, and the Commission's *Yearbooks* were published in three languages. If the Commission so desired, the Secretariat could certainly report on the problem at the next session.

38. Mr. BRIGGS said he was not entirely convinced by Mr. Rosenne's argument, but he would be satisfied if the Secretariat could submit a paper on the subject for consideration by the Commission at its eighteenth session.

39. The CHAIRMAN suggested that the Commission should adopt the proposed passage, which would be inserted before the section concerning the Seminar on International Law.

It was so agreed.

Chapter V, as amended, was adopted.

⁶ *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, Vol. II, p. 84, article 22, para. 3.*

CHAPTER III : SPECIAL MISSIONS
(A/CN.4/L.111/Add.3)

INTRODUCTION

40. The CHAIRMAN pointed out that paragraphs 1 to 11 of the Introduction reproduced paragraphs 25 to 35 of the Commission's report on the work of its sixteenth session;⁷ he suggested that it was unnecessary to discuss them.

It was so agreed.

Paragraphs 1-11 were adopted.

Paragraphs 12 to 14 were adopted without comment.

41. Mr. ROSENNE said that the present tense should be used in the second and third sentences of paragraph 15.

Paragraph 15, thus amended, was adopted.

Paragraph 16 was adopted without comment.

COMMENTARIES

42. The CHAIRMAN invited the Commission to consider the commentaries on the articles in Part II.⁸

Commentary on article 17 (General facilities) [17]

Paragraphs (1) to (3) were adopted.

43. Mr. TUNKIN said he doubted whether the third sentence in paragraph (4) could stand. The point needed further thought.

44. The CHAIRMAN, speaking as Special Rapporteur, suggested that the sentence should be amended by adding the words "for example, in the case of high-level special missions or frontier demarcation special missions".

Paragraph (4), thus amended, was adopted.

45. Sir Humphrey WALDOCK said he had doubts about the proposition in the last sentence of paragraph (5): "Facilities that are not listed may be required and due under the general norms of international law". It was not at all certain that there existed a general rule of international law obliging States to accord such facilities to special missions. Everything really depended on the effective interpretation of the agreement of the parties in the treaty relating to the special mission. He suggested that the sentence in question should be deleted.

46. Mr. BRIGGS suggested that paragraphs (5) and (6) should be combined, only the first sentence of each being retained. The remainder of both paragraphs should be dropped.

47. Mr. TUNKIN said that the facilities depended entirely on the terms of the agreement. The agreement might, of course, contain a general provision to the effect that all facilities necessary for the purpose of the special mission would be granted; in that case, the issue would depend on the interpretation of that general provision. However, if the facilities to be granted to the special mission were actually specified in the agreement,

there could be no question of any additional facilities being required by virtue of international law; he did not believe an obligation to grant such additional facilities existed under general international law. Nor was there any rule limiting the power of States to enumerate exhaustively the facilities to be granted to a special mission.

48. The CHAIRMAN said he believed, on the contrary, that even if the facilities to be accorded to the mission were not specified in the agreement establishing it, it was self-evident that it should enjoy all the facilities necessary for the performance of its task. That did not depend on the good will of the receiving State in any way; it was the prevailing international practice, to which reference had been made at the Vienna Conference. Since paragraph (5) dealt with the mission's task, while paragraph (6) dealt with its members, he proposed that, with a view to shortening the commentary and combining the two paragraphs, the beginning of paragraph (5) should be amended to read: "The Commission believes that it often happens in practice that the parties specify what facilities should be guaranteed to special missions, but these should include the facilities necessary for the normal performance of the task of the mission and the normal life of its members".

49. Mr. PAL pointed out that the text of article 17 was explicit enough, in that it specified that the receiving State should accord to the special mission "full facilities for the performance of its functions, having regard to the nature and task of the special mission". There was therefore no need for any interpretation of the article in the commentary, and he proposed that paragraph (5) should be deleted.

50. Sir Humphrey WALDOCK supported that proposal. The difficulty did not arise from the text of article 17, but from the much wider problem of the relation between a treaty and the provisions of the draft articles, a question with which it was unnecessary to deal in the commentary on article 17.

51. The CHAIRMAN proposed that paragraphs (5), (6) and (7) be deleted.

It was so agreed.

The commentary on article 17, as amended, was adopted.

Commentary on article 18 (Accommodation of the special mission and its members) [18]

Paragraph (1) was adopted.

52. Mr. AGO proposed the deletion of the word "temporary" before "accommodation" in the third sentence of paragraph (2).

53. Mr. ROSENNE said that the words "cannot claim" in the second sentence of paragraph (2) were too categorical; he suggested the words "cannot in general claim".

54. The CHAIRMAN said that the sending State could never make such a claim.

55. Mr. AGO proposed that the sentence should be redrafted to read: "The Commission is of the opinion that it is not necessary to provide that the State sending a special mission has in all cases the right to acquire

⁷ *Official Records of the General Assembly, Nineteenth Session Supplement No. 9*, pp. 35-36.

⁸ For discussions on the articles, see 804th-809th meetings, 817th meeting, paras. 1-96, 819th meeting, paras. 92-140, and 820th meeting, paras. 29-31.

land for the construction of accommodation for the mission.”

56. Mr. TUNKIN accepted that proposal.

Paragraph (2), thus amended, was adopted.

57. Mr. CASTRÉN proposed that in the French version of the fourth sentence of paragraph (3) the words “*mais nous croyons*” should be replaced by the words “*mais on considère*”.

Paragraph (3), thus amended, was adopted.

58. Sir Humphrey WALDOCK said that paragraph (4) went into unnecessary detail and was expressed in unduly strong terms.

59. Mr. TUNKIN agreed; the paragraph was more suited to a Special Rapporteur's report than to the Commission's own commentary.

It was decided to delete paragraphs (4), (5) and (6).

60. Mr. AGO proposed that the word “sometimes” should be substituted for “generally” in the penultimate sentence of paragraph (7) and that the word “generally” in the final sentence should be deleted.

Paragraph (7), thus amended, was adopted.

The commentary on article 18, as amended, was adopted.

Commentary on article 19 (Inviolability of the premises)
[19]

Paragraphs (1) and (2) were adopted.

61. Mr. AGO proposed that in the French version of the second sentence of paragraph (3) the word “*très*” before “*souvent*” should be deleted.

It was so agreed.

62. Mr. TUNKIN thought that the first sentence of paragraph (3) should not state that the rule laid down in the Vienna Convention on Diplomatic Relations “should be interpreted in a special way in the case of special missions”. He suggested that the sentence should be amended to state that, in the application of the rule in question to special missions, account should be taken of the fact that special missions were not always in the same position as permanent missions.

63. The CHAIRMAN, speaking as Special Rapporteur, suggested that the sentence should be amended to read: “In 1965 the Commission took the view that the provisions of the Vienna Convention on Diplomatic Relations should be applied to special missions, with due regard for the circumstances of such missions”.

64. Mr. TUNKIN accepted that formula.

Paragraph (3), thus amended, and with the deletion of the last sentence, was adopted.

65. In reply to Mr. AGO, the CHAIRMAN, speaking as Special Rapporteur, explained that the term “specialized mission” in the first sentence of paragraph (4) meant missions to international organizations or missions which dealt with special matters and had in practice the rank of embassies, such as the missions to NATO or the Marshall Plan missions.

66. Mr. AGO suggested that the words “ordinary or specialized” might be omitted.

67. Mr. BRIGGS proposed the deletion of the last sentence of paragraph (4).

68. The CHAIRMAN, speaking as Special Rapporteur, said that, although he believed the sentence was useful, it was not essential, and he could agree to its deletion.

69. Mr. AGO proposed that paragraph (4) should be redrafted to read: “The offices of special missions are often located in premises which already enjoy the privilege of inviolability. That is so if they are located in the premises of the permanent diplomatic mission of the sending State, if there is one at the place. If, however, the special mission occupies private premises, it must equally enjoy the inviolability of its premises, in order that it may perform its functions without hindrance and in privacy, irrespective of the location of the premises in question.”

Mr. Ago's proposal was adopted.

70. Mr. AGO proposed that paragraph (5) should be redrafted to read: “The Commission discussed the situation which may arise in certain exceptional cases where the head of a special mission refuses, with or without good reason, to allow representatives of the authorities of the receiving State to enter the premises of the special mission. In such cases, the Ministry of Foreign Affairs of the receiving State may appeal to the head of the regular diplomatic mission of the sending State, asking for permission to enter the premises occupied by the special mission.”

71. Mr. TUNKIN said that Mr. Ago's formulation was in general terms acceptable to him. The text proposed by the Special Rapporteur was not adequate; the Commission had decided to adopt, for special mission's premises, the rule on inviolability contained in the Vienna Convention on Diplomatic Relations.⁹ It was not possible, therefore, to place a different interpretation on that rule in the commentary. The Vienna Convention on Consular Relations was not relevant; the situation contemplated in article 19 was completely different from that of consular premises. Under the Vienna Convention on Consular Relations, the local authorities had the right to enter consular premises in certain circumstances in which the consent of the head of post was presumed. No such presumption existed with regard to diplomatic premises; under the Vienna Convention on Diplomatic Relations, the matter was left to the head of mission to decide: the local authorities could not dispute his decision.

72. Consequently he was not entirely satisfied with the text proposed by Mr. Ago, in so far as it suggested that the local authorities might consider the reasons given by the head of the special mission to be unjustified. The local authorities could not enter into the question whether the reasons were justified or not; all that they could do was to appeal to the head of the permanent diplomatic mission, asking for permission to enter the premises.

73. Mr. ROSENNE suggested that, in accordance with the usual practice, a passage might be included in the commentary to the effect that some members of the Commission had favoured the inclusion in article 19

⁹ *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, Vol. II, p. 84, article 22.*

of a provision similar to that embodied in paragraph 2 of article 31 of the Convention on Consular Relations,¹⁰ but that that view had not prevailed, and the Commission had decided to base the text on the corresponding provision of the Vienna Convention on Diplomatic Relations.

74. Mr. AGO said that Mr. Tunkin's objection was justified and that the reference to paragraph 2 of article 31 of the Vienna Convention on Consular Relations should be dropped. He therefore proposed that the latter part of paragraph (5), starting with the words "This practice", should be deleted.

75. The CHAIRMAN, speaking as Special Rapporteur, said that he would have preferred the reference to the Vienna Convention on Consular Relations to be retained at least in a footnote. However, he would not press the point, and he accepted Mr. Ago's first proposal.

Mr. Ago's first proposal was adopted.

76. Mr. AGO proposed that paragraph (6) be deleted.

It was so agreed.

77. In reply to Mr. AGO, the CHAIRMAN, speaking as Special Rapporteur, said that it was absolutely necessary to retain the words "by whomsoever owned" in paragraph (7).

Paragraph (7) was adopted.

The commentary on article 19, as amended, was adopted.

The meeting rose at 1.5 p.m.

¹⁰ *United Nations Conference on Consular Relations, Official Records, Vol. II, p. 180.*

821st MEETING

Friday, 9 July 1965, at 9 a.m.

Chairman: Mr. Milan BARTOŠ

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

Draft Report of the Commission on the work of its seventeenth session

(A/CN.4/L.111 and addenda)

(concluded)

CHAPTER III: SPECIAL MISSIONS

(A/CN.4/L.111/Add.3 to 5)

(concluded)

COMMENTARIES *(concluded)*

1. The CHAIRMAN invited the Commission to continue consideration of the commentaries on the articles in Part II.¹

¹ For discussions on the articles, see 804th-809th meetings, 817th meeting, paras. 1-96, 819th meeting, paras. 92-140, and 820th meeting, paras. 29-31.

Commentary on article 20 (Inviolability of archives and documents) (A/CN.4/L.111/Add.3) [20]

Paragraphs (1) to (3) were adopted.

2. The CHAIRMAN proposed that 'in the French version the latter part of the first sentence of paragraph (4) should be amended to read: "... *la possession des documents par les membres de la mission spéciale ou par son personnel*".

Paragraph (4), thus amended, was adopted.

The commentary on article 20, as amended, was adopted.

Commentary on article 21 (Freedom of movement) [21]

3. Sir Humphrey WALDOCK proposed that the last sentence of paragraph (1) be deleted, as it was unnecessary.

Paragraph (1), thus amended, was adopted.

4. Mr. TUNKIN proposed that the first two sentences of paragraph (2) should be deleted. The first sentence did not accurately reflect the fact that the Commission had reached the same conclusion at the present session as in 1960, and the second sentence purported to interpret the Vienna Convention on Diplomatic Relations. He also proposed the deletion of the last two sentences, concerning so-called prohibited zones. The paragraph would start with the sentence "Special missions have limited tasks", the words "on the other hand" being dropped in consequence of the deletion of the first two sentences.

5. Sir Humphrey WALDOCK supported Mr. Tunkin's proposed amendments.

Paragraph (2) was adopted with those amendments.

6. Mr. TUNKIN proposed the deletion of paragraph (3) concerning the case of States which imposed restrictions on the movement of aliens in their territory.

Paragraph (3) was deleted.

Mr. ROSENNE proposed that, in the first sentence of paragraph (4), the words "or to a consular post of the sending State" should be inserted after the words "permanent diplomatic mission to the receiving State". He also proposed the deletion of the second sentence, which purported to give the reasons for guaranteeing the freedom referred to in the first sentence.

Paragraph (4) was adopted with those amendments.

8. Mr. AMADO said that the word "stations" in the first sentence of paragraph (5) was not satisfactory.

9. Mr. AGO proposed that it should be replaced by the word "persons". In addition, he proposed the deletion of the words "a need which permanent diplomatic missions do not experience" in the second sentence.

Paragraph (5) was adopted with those amendments.

10. Mr. AGO proposed that paragraph (6) be deleted.

It was so agreed.

11. The CHAIRMAN, speaking as Special Rapporteur, suggested that paragraph (7), which dealt with a special case, should also be deleted.

It was so agreed.