

Document:-  
**A/CN.4/SR.821**

**Summary record of the 821st meeting**

Topic:  
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of a provision similar to that embodied in paragraph 2 of article 31 of the Convention on Consular Relations,<sup>10</sup> 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.

<sup>10</sup> *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.<sup>1</sup>

<sup>1</sup> 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.*

12. The CHAIRMAN, speaking as Special Rapporteur, said that paragraph (8) was the result of a decision taken by the Commission at its sixteenth session, but he thought the wording should be changed.

13. Sir Humphrey WALDOCK said that paragraph (8) was too brief to be understandable; it should either be expanded, so as to explain the idea, or be deleted.

14. The CHAIRMAN, speaking as Special Rapporteur, said he would have no objection to deleting the paragraph.

*Paragraph (8) was deleted.*

*The commentary on article 21, as amended, was adopted.*

*Commentary on article 22 (Freedom of communication)*  
[22]

15. Mr. ROSENNE said he noted a lack of uniformity in the opening words of the commentaries, some of which began "This article" or "The text of this article" and others "This draft article" or "The drafting of this article".

16. Mr. LACHS suggested that the opening words should be "This draft article" in every case.

17. The CHAIRMAN, speaking as Special Rapporteur, said that some of the articles reproduced verbatim the provisions of the Vienna Convention on Diplomatic Relations, while others merely reproduced the ideas contained in those provisions. However, he would agree to the use of a uniform phrase.

*Paragraphs (1) to (3) were adopted.*

18. Mr. AGO proposed that paragraph (4) should be redrafted to read: "For the most part, the special mission maintains its relations with the sending State through that State's permanent diplomatic mission, if there is one in the receiving State. For this reason, the special mission has the right, in particular, to send and to receive the courier who maintains relations between it and the permanent diplomatic mission."

19. Mr. TUNKIN said that a point of substance arose in connexion with the last sentence of paragraph (4), and probably also in connexion with the commentaries on some other articles. Expressions such as "the special mission has the right to send and to receive" should be avoided, for while the draft articles which the Commission adopted sometimes expressed an existing rule of international law, they often also contained suggestions *de lege ferenda*. He therefore proposed that the passage should be amended to read: "For this reason, the article provides that the special mission has the right . . ."

20. The CHAIRMAN, speaking as Special Rapporteur, said that the practice of States was not uniform in that matter, and legal opinion was divided. The Commission should not commit itself one way or the other.

21. Mr. AGO proposed that, in the circumstances, the second sentence of his proposal should read: "For this reason, particular provision is made for the special mission's right to send . . ."

22. Mr. PAL said that article 22 did not in fact provide for the right of the special mission to send and to receive

couriers; its provisions were based on the assumption that such a right existed.

23. The CHAIRMAN believed that Mr. Tunkin's proposal should be accepted, since the situation differed according to whether the Commission noted the existence of a right or merely considered that such a right should be recognized.

24. Mr. ROSENNE said that the point of substance raised by Mr. Tunkin was a very important one and affected the whole draft.

25. He therefore proposed that in paragraph 15 of the introduction to chapter III (A/CN.4/L.111/Add.3) the following sentence should be inserted: "In preparing the draft articles, the Commission has sought to codify the modern rules of international law concerning special missions, and the articles formulated by the Commission contain elements of progressive development as well as of codification of the law."

26. He had taken that sentence from the introduction to chapter II (Law of Treaties) of the Commission's report on its fourteenth session.<sup>2</sup> A similar sentence had appeared in all the Commission's reports on the law of treaties.

27. Mr. BRIGGS supported that proposal.

28. The CHAIRMAN, speaking as Special Rapporteur, accepted the proposal.

*Mr. Rosenne's proposal was adopted.*

29. Mr. AGO said that paragraph (5) might be interpreted as dealing solely with the case of a special mission functioning in a frontier area.

30. The CHAIRMAN, speaking as Special Rapporteur, said it would be better to delete paragraphs (4) and (5) in order to avoid any misinterpretation.

*Paragraphs (4) and (5) were deleted.*

31. The CHAIRMAN proposed that in the French text of paragraph (6) the words "*moyens de transmission sans fil*" should be replaced by the words "*postes émetteurs*".

32. Mr. AGO suggested that the beginning of paragraph (6) might read: "The Commission did not think that it should depart from the practice whereby special missions are not allowed to use . . ."

33. Mr. BRIGGS said that paragraph (6) did not seem necessary; the rule was laid down in the article and did not appear to need any commentary.

34. Mr. ROSENNE said it would be useful to retain paragraph (6) in the form suggested by Mr. Ago, because it reflected the provisions embodied in the two Vienna Conventions and the arrangements adopted by the International Telecommunication Union.

35. Sir Humphrey WALDOCK said it was desirable to retain paragraph (6), because the matter it dealt with had been the subject of much discussion at the two Vienna Conferences and some comment was necessary.

36. Mr. PESSOU said that the express reference to wireless transmitters might be interpreted as permitting certain espionage activities.

<sup>2</sup> *Yearbook of the International Law Commission, 1962, Vol. II, p. 161, para. 22.*

37. The CHAIRMAN suggested that the Commission should adopt the amendment suggested by Mr. Ago.

*It was so agreed.*

*Paragraph (6), thus amended, was adopted.*

38. The Chairman, speaking as Special Rapporteur, explained that paragraph (7) was intended to show that the Commission had been aware of the difference between the provisions of the Convention on Diplomatic Relations and those of the Convention on Consular Relations concerning the bag, and that it had decided in favour of the absolute inviolability of the bag of special missions.

39. Mr. PESSOU said that recent events in Africa, for example, had demonstrated the importance of the question.

*Paragraph (7) was adopted.*

40. Mr. AGO proposed that paragraph (8) should be deleted.

*It was so agreed.*

41. The CHAIRMAN proposed that in the last sentence of paragraph (9) the word "also" should be inserted after the word "may".

42. Mr. BRIGGS proposed that the last sentence of paragraph (9), which related to captains of commercial inland waterway vessels, should be deleted.

43. Mr. TUNKIN proposed the deletion of the word "for" before "it has been observed" in the first sentence of paragraph (9).

44. Sir Humphrey WALDOCK said that that change would bring the passage into line with the French text; the whole text should be checked to ensure the concordance of the two versions.

*Paragraph (9) was adopted with the amendments proposed by the Chairman and Mr. Tunkin.*

*The commentary on article 22, as amended, was adopted.*

*Commentary on article 23 (Exemption of the mission from taxation) [23]*

*Paragraph (1) was adopted.*

45. Mr. AGO proposed that in the first sentence of paragraph (2) the word "all" should be deleted and the words "were applicable" should be replaced by the words "should be applicable".

*It was so agreed.*

*Paragraph (2), thus amended, was adopted.*

46. Mr. AGO proposed that the third sentence of paragraph (3) should be amended to read: "Nevertheless, special missions may be authorized to charge such dues in certain exceptional cases provided for in international agreements", and that the fourth sentence should begin with the words "The Commission therefore decided...".

*It was so agreed.*

*Paragraph (3), thus amended, was adopted.*

*The commentary on article 23, as amended, was adopted.*

47. The CHAIRMAN said that article 24, concerning the inviolability of the special mission's property, was only mentioned *pro memoria*, since it had been incorporated in article 19.<sup>3</sup>

*Commentary on article 25 (Personal inviolability) [24]*

*Paragraph (1) was adopted.*

48. The CHAIRMAN, speaking as Special Rapporteur, suggested that in the second sentence of paragraph (2), the word "very" before the word "difficult" should be deleted.

49. Mr. BRIGGS said that the expression "minor consular immunity" was not clear.

50. The CHAIRMAN, speaking as Special Rapporteur, explained that the expression was convenient and was accepted in practice.

51. Mr. CASTRÉN thought it would be preferable to speak of functional immunity, as in the commentary on article 27.

52. Mr. AMADO suggested that the phrase "it is very difficult to adopt..." should be replaced by a statement to the effect that the Commission had been reluctant to lay down precise rules on the question.

53. Mr. AGO proposed that paragraph (2) should be replaced by the following text: "The Commission discussed the advisability of granting to the members of special missions only personal inviolability limited to the performance of their functions. The majority of the Commission did not consider that course acceptable".

54. Mr. LACHS and the CHAIRMAN accepted that proposal.

*Paragraph (2), thus amended, was adopted.*

55. Mr. AMADO proposed that paragraph (3) be deleted.

*It was so agreed.*

*The commentary on article 25, as amended, was adopted.*

*Commentary on article 26 (Inviolability of the private accommodation) [25]*

*Paragraph (1) was adopted.*

56. Mr. AMADO, referring to the French text, said that in the second sentence of paragraph (2) he was not satisfied with the word "durable" and found the expression "seulement provisoirement" rather awkward.

57. The CHAIRMAN, speaking as Special Rapporteur, proposed that the sentence in question, which reflected a remark made by Mr. Amado,<sup>4</sup> should be deleted.

*It was so agreed.*

58. Mr. LACHS proposed that, in order to take account of Mr. Amado's remark, the phrase "by reason of the temporary nature of special missions" should be added to the first sentence.

*It was so agreed.*

<sup>3</sup> See 820th meeting, para. 29.

<sup>4</sup> See 807th meeting, para. 47.

59. Mr. PESSOU suggested that in the French text the term “*résidence*” might be preferable to “*demeure*” or “*logement*”.

60. The CHAIRMAN, speaking as Special Rapporteur, observed that the article had already been adopted by the Commission. Moreover, the meaning of “*résidence*” in diplomatic practice was not the same as in civil law, for it generally denoted the building in which the head of the mission lived.

*Paragraph (2), as amended, was adopted.*

61. Mr. ROSENNE said that, as far as the English text was concerned, the word “pretext” in the second sentence of paragraph (3) was too strong and had a pejorative tone.

62. The CHAIRMAN, speaking as Special Rapporteur, said he had deliberately used a pejorative term in order to indicate the false grounds the police might put forward for entering the accommodation of the special mission.

63. Sir Humphrey WALDOCK agreed with Mr. Rosenne and suggested that the words “ground” should be substituted for the word “pretext”. The Commission should not too emphatically criticize a practice of States, however much it might disapprove of it.

64. Mr. LACHS agreed with the previous speaker; the Commission should assume that States would act honestly in the matter of the inviolability of private accommodation.

65. Mr. ROSENNE said that the second sentence of paragraph (3) would need further modification, because the whole of a building in which a special mission was accommodated would presumably be accessible to the public.

66. The CHAIRMAN, speaking as Special Rapporteur, proposed that the last part of the second sentence, from the words “on the pretext” to the end, should be deleted.

*It was so agreed.*

67. Mr. TUNKIN proposed that the opening words “The Commission considers that” should be deleted, since the rest of paragraph (3) also set out rules applicable to permanent missions.

68. The CHAIRMAN, speaking as Special Rapporteur, agreed to the deletion of the words “The Commission considers that”. The paragraph would then begin: “The inviolability of the accommodation of the members of special missions should be guaranteed . . .”.

*It was so agreed.*

*Paragraph (3), as amended, was adopted.*

*The commentary on article 26, as amended, was adopted.*

*Commentary on article 27 (Immunity from jurisdiction) [26]*

*Paragraph (1) was adopted.*

69. Mr. AGO proposed the deletion of paragraph (2), which contained historical material that was no longer of great interest, and the combination of paragraphs (3) to (6) into a single paragraph reading:

“The Commission discussed the question whether members of special missions should or should not be

granted complete and unlimited immunity from criminal, civil and administrative jurisdiction. Some members of the Commission took the view that, in principle, only functional immunity should be granted to all special missions. There should be no deviation from this rule, except in the matter of immunity from criminal jurisdiction; for any interference with the liberty of the person prevents the free accomplishment of the special mission’s tasks. Disagreeing with that opinion, the majority of the Commission decided that full immunity from the jurisdiction of the receiving State in all matters (criminal, civil and administrative) should be granted to the members of special missions. However, the Commission added in paragraph 2 the phrase ‘Unless otherwise agreed’, to indicate that it was open to the States concerned to limit the immunity from jurisdiction. In short, the ordinary rule proposed by the Commission is complete immunity from criminal, civil and administrative jurisdiction, the States concerned being at liberty to agree on a limited form of immunity.”

70. Mr. ROSENNE said that the text proposed by Mr. Ago would need some amendment since the freedom of States to derogate from the rules set out in article 27 applied only to civil and administrative jurisdiction.

*The text proposed by Mr. Ago was adopted, subject to the necessary amendment.*

*The commentary on article 27, as amended, was adopted.*

*Commentary on article 27 bis (Waiver of immunity) [27]*

*The commentary on article 27 bis was adopted.*

*Commentary on article 28 (Exemption from social security legislation) [28]*

*Paragraph (1) was adopted.*

71. Mr. LACHS proposed that paragraphs (2) and (3) should be deleted as being unnecessary; they only contained an account of the historical background.

*It was so agreed.*

72. Mr. AGO, referring to paragraph (4), said it was doubtful whether the members of all special missions faced “risk to life and health”.

73. The CHAIRMAN, speaking as Special Rapporteur, proposed the insertion of the words “in certain cases” after the words “the difficulty of the special mission’s tasks”, and the deletion of the last sentence of the paragraph.

*It was so agreed.*

*The commentary on article 28, as amended, was adopted.*

*Commentary on article 28 bis (Exemption from dues and taxes) [29]*

74. The CHAIRMAN proposed that in paragraph (1) the words “Article 28 bis” should be replaced by the words “This article”.

*It was so agreed.*

75. Mr. AGO proposed that the last sentence of paragraph (2) be deleted.  
*It was so agreed.*  
*The commentary on article 28 bis, as amended, was adopted.*
- Commentary on article 29 (Exemption from personal services and contributions) [30]*
- Paragraph (1) was adopted.*
76. Mr. LACHS proposed that paragraph (2) be deleted.  
*It was so agreed.*
77. Mr. AGO proposed that paragraph (3) be deleted.
78. The CHAIRMAN, speaking as Special Rapporteur, opposed that proposal. The paragraph contained his own views, which the Commission had decided to note in the commentary.  
*Paragraph (3) was adopted.*
79. The CHAIRMAN, speaking as Special Rapporteur, proposed that paragraph (4) be deleted.  
*It was so agreed.*  
*The commentary on article 29, as amended, was adopted.*
- Commentary on article 30 (Exemption from customs duties and inspection) (A/CN.4/L.111/Add.4) [31]*
- Paragraph (1) was adopted.*
80. The CHAIRMAN, speaking as Special Rapporteur, proposed that paragraphs (2) and (3) be deleted.  
*It was so agreed.*
81. Mr. ROSENNE asked what was the meaning of the passage in parentheses in paragraph (4), (" e.g. in the case of special receptions or special machine installations ")
82. The CHAIRMAN, speaking as Special Rapporteur, said that differences of opinion on that subject had arisen between sending States and receiving States. However, he was prepared to accept the deletion of the passage in question.
83. Mr. AGO proposed that the words " in favour of special missions " in the last sentence be deleted.  
*It was so agreed.*  
*Paragraph (4), as amended, was adopted.*
84. The CHAIRMAN, speaking as Special Rapporteur, proposed that paragraphs (5) and (6) be deleted.  
*It was so agreed.*
85. Mr. TUNKIN proposed that paragraph (7) be deleted.  
*It was so agreed.*
86. The CHAIRMAN, speaking as Special Rapporteur, proposed the deletion from paragraph (8) of the reference to beverages, foodstuffs and cigarettes in the first sentence; the whole of the second sentence; and the word " deliberately " in the last sentence.  
*Paragraph (8) was adopted with those amendments.*
87. Mr. AGO proposed that paragraph (9) be deleted.  
*It was so agreed.*  
*The commentary on article 30, as amended, was adopted.*
- Commentary on article 31 (Administrative and technical staff) [32]*
- The commentary on article 31 was adopted.*
- Commentary on article 32 (Members of the service staff) [33]*
- The commentary on article 32 was adopted.*
- Commentary on article 33 (Private staff) [34]*
- Paragraph (1) was adopted.*
88. Mr. AMADO proposed that the words " the idea ", in the first sentence of paragraph (2) be deleted.  
*It was so agreed.*
89. The CHAIRMAN, speaking as Special Rapporteur, proposed the deletion of the last part of the paragraph, from the words " to their personal comfort " to the end.
90. Mr. ROSENNE said he would prefer the reference to health to be retained.
91. Mr. AGO proposed the formula " to their health or personal comfort " .  
*The proposal was adopted.*  
*Paragraph (2), as amended, was adopted.*
92. Mr. AGO proposed that the last three sentences of paragraph (3), beginning with the words " There are no special rules . . . " be deleted.  
*It was so agreed.*
93. Mr. AMADO noted that the expression " the question arises, in practice " occurred twice in paragraph (3) and proposed that, in the second instance, it should be replaced by a different formula.  
*It was so agreed.*  
*Paragraph (3), as amended, was adopted.*
94. The CHAIRMAN, speaking as Special Rapporteur, proposed that in paragraph (4) the words " ' minor ' immunity " should be replaced by " functional immunity ". He also proposed that the example at the end of the first sentence and the last part of the second sentence should be deleted.  
*It was so agreed.*
95. Mr. AGO proposed that the word " also " in the first sentence of paragraph (4) be deleted.  
*It was so agreed.*  
*Paragraph (4), as amended, was adopted.*  
*The commentary on article 33, as amended, was adopted.*
- Commentary on article 34 (Members of the family) [35]*
- Paragraph (1) was adopted.*
96. The CHAIRMAN, speaking as Special Rapporteur, proposed that the first sentence of paragraph (2) be deleted.  
*It was so agreed.*

97. Mr. TUNKIN questioned whether the last sentence of paragraph (2) was consistent with the terms of article 34.

98. The CHAIRMAN, speaking as Special Rapporteur, proposed that the last sentence be deleted.

*It was so agreed.*

99. Mr. AGO proposed that the words “(involving travel)”, in the third sentence, be deleted.

*It was so agreed.*

*Paragraph (2), as amended, was adopted.*

100. Mr. AMADO said he was not satisfied with the first sentence of paragraph (3).

101. The CHAIRMAN, speaking as Special Rapporteur, proposed that the first two sentences of paragraph (3) should be replaced by one sentence reading: “The Commission realized that the attempt to specify what persons are covered by the expression of ‘members of the family’ had ended in failure at both the Vienna Conferences (in 1961 and 1963).”

*It was so agreed.*

102. Mr. JIMÉNEZ de ARÉCHAGA proposed that the sentence in brackets at the end of the paragraph “(A married daughter often accompanies her father . . .)” be deleted.

*It was so agreed.*

103. Mr. ROSENNE suggested that the words “However, in the case of special missions” should be inserted at the beginning of the third sentence of paragraph (3), in order to show that the situation was not the same as in the case of diplomatic or consular missions.

104. The CHAIRMAN, speaking as Special Rapporteur, proposed that the passage should be amended to read: “However, in the case of special missions, the Commission believes that the number of such persons should be limited.”

*It was so agreed.*

*Paragraph (3), as amended, was adopted.*

105. The CHAIRMAN, speaking as Special Rapporteur, proposed that paragraph (4) should begin with the words: “In practice, restrictions are sometimes general . . .” and that the last sentence of the paragraph should be deleted.

106. Mr. AGO proposed the deletion of all the passages in brackets.

*Those amendments were adopted.*

107. The CHAIRMAN, speaking as Special Rapporteur, proposed that paragraph (5) be deleted.

*It was so agreed.*

108. Mr. AGO proposed that paragraph (6) be joined to paragraph (4) as its last sentence.

*It was so agreed.*

*Paragraph (4), as amended, was adopted.*

*The commentary on article 34, as amended, was adopted.*

*Commentary on article 35* (Nationals of the receiving State and persons permanently resident in the territory of the receiving State) [36]

*Paragraph (1) was adopted.*

109. Mr. AGO proposed that paragraph (2) be deleted.

*It was so agreed.*

*Paragraph (3) was adopted.*

110. The CHAIRMAN, speaking as Special Rapporteur, proposed that the last three sentences of paragraph (4), the whole of paragraph (5) and the last three sentences of paragraph (6) be deleted.

*It was so agreed.*

*The commentary on article 35, as amended, was adopted.*

*Commentary on article 36* (Duration of privileges and immunities) [37]

*The commentary on article 36 was adopted.*

*Commentary on article 37* (Case of death) [38]<sup>5</sup>

*Paragraph (1) was adopted.*

111. Mr. ROSENNE proposed that the words “very often” in the second sentence of paragraph (2) be deleted.

*It was so agreed.*

*The commentary on article 37, as amended, was adopted.*

*Commentary on article 38* (Transit through the territory of a third State) [39]

112. The CHAIRMAN, speaking as Special Rapporteur, proposed the deletion of paragraph (2), which had been written before the Drafting Committee had prepared the final text of article 38.

*The commentary on article 38 was adopted with that amendment.*

*Commentary on article 39* (Obligation to respect the laws and regulations of the receiving State) (A/CN.4/L.111/Add.5) [40]

113. Mr. LACHS said he was not satisfied with the word “standard”, which was used twice in paragraph (1).

114. Mr. AGO proposed that the word “standard” be replaced by the word “general” and that, in the third sentence, the words “to international law” be replaced by the words “to the general rules of international law”. He also proposed that the penultimate sentence be deleted.

*Paragraph (1) was adopted with those amendments.*

*Paragraph (2) was adopted.*

*The commentary on article 39, as amended, was adopted.*

<sup>5</sup> See 819th meeting, paras. 101-107.

*Commentary on article 40* (Organ of the receiving State with which official business is conducted) [41]

115. Mr. ROSENNE said that, to avoid unnecessary repetition, the passage beginning with the words "all the organs of the receiving State", in the second sentence of paragraph (1), and ending with the words "communicate with" in the fourth sentence, should be deleted.

*It was so agreed.*

*Paragraph (1) was adopted with that amendment.*

116. Mr. AGO proposed that the second sentence of paragraph (2) should be deleted, and that the next sentence should begin with the words "The relations of special missions are confined to ...".

*It was so agreed.*

117. Mr. ROSENNE said that the latter part of paragraph (2) went into too much detail and suggested that the passage from the sixth sentence onwards, beginning with the words "In practice", might be dropped.

*It was so agreed.*

*Paragraph (2), as amended, was adopted.*

*The commentary on article 40 as amended, was adopted.*

*Commentary on article 41* (Professional activity) [42]

*Paragraph (1) was adopted.*

118. The CHAIRMAN, speaking as Special Rapporteur, proposed that the first sentence of paragraph (2) should be combined with the last two sentences of paragraph (3), the remainder of those two paragraphs being deleted.

*It was so agreed.*

*The commentary on article 41, as amended, was adopted.*

*Commentary on article 42* (Right to leave the territory of the receiving State). [43]

119. Mr. AGO suggested that the words "who enjoy only ... from criminal jurisdiction" in paragraph (3) be deleted.

*It was so agreed.*

120. Mr. ROSENNE said that as article 42 reproduced word for word the text of article 44 of the Vienna Convention on Diplomatic Relations, paragraphs (2) to (6) of the commentary were unnecessary and should be deleted.

121. Sir Humphrey WALDOCK considered that paragraphs (4), (5) and (6) of the commentary could be dispensed with.

122. The CHAIRMAN, speaking as Special Rapporteur, said he could agree to the deletion of paragraphs (3), (4), (5) and (6), provided that those paragraphs were quoted in the summary record, viz:

"(3) Although this inviolability is not guaranteed to members of the service staff and of the private staff, such persons, if they are not nationals of the receiving State, have the right under article 42 to leave that State's territory.

(4) It should be stressed that, for the purposes of article 42, nationals of the receiving State and persons permanently resident in its territory are not treated on the same footing. The deciding factor is the nationality of the persons concerned.

(5) It should further be noted that this article, like the corresponding article of the Vienna Convention on Diplomatic Relations, is based on the notion of the unity of the family, a principle of humanitarian international law. The members of the family have the right to leave the territory of the receiving State even if they possess its nationality.

(6) The question was raised, from the point of view of theory, whether the right to leave the territory of the receiving State meant the right to repatriation or that the person in question was permitted to leave the territory of the receiving State for any destination of his choice. Modern thinking tends towards the latter view (freedom of movement of the individual)".

*It was so agreed.*

*The commentary on article 42, as amended, was adopted.*

*Commentary on article 43* (Cessation of the functions of the special mission) [44]

*Paragraphs (1) and (2) were adopted.*

123. The CHAIRMAN, speaking as Special Rapporteur, said that in the parentheses in the second sentence of paragraph (3), the words "on that article" should be replaced by the words "on article 1" in order to avoid any possible confusion.

*Paragraph (3), thus amended, was adopted.*

124. Mr. AGO proposed that the last two sentences of paragraph (4) be deleted.

125. The CHAIRMAN, speaking as Special Rapporteur, said he could agree to that proposal provided that, in the first sentence, the words "by unilateral act" were added after the words "the right of the States concerned to terminate".

126. Mr. ROSENNE suggested that the passage in question should read "The right of each of the States concerned to terminate by unilateral act ...".

*It was so agreed.*

*Paragraph (4), as amended, was adopted.*

*Paragraph (5) was adopted.*

*The commentary on article 43, as amended, was adopted.*

#### C. SUGGESTIONS AND REMARKS BY THE COMMISSION

127. Mr. ROSENNE said that the title of section C was inadequate and should be amended to read "Other decisions, suggestions and observations by the Commission".

*It was so agreed.*

*Paragraphs 1 and 2 were adopted.*

128. Mr. ROSENNE said that, although he agreed with the content of paragraph 3, he thought it was not sufficiently explicit for obtaining suggestions from Governments concerning "high-level" special missions.

He suggested that the draft provisions submitted by the Special Rapporteur on the subject of such missions in his second report (A/CN.4/179) should be annexed to the Commission's report.

129. The CHAIRMAN, speaking as Special Rapporteur, said it should be explained that the draft provisions in question had been prepared by him, but had not been discussed by the Commission and were included merely for information.

*Paragraph 3 was adopted.*

130. Mr. TUNKIN proposed that paragraph 4 be deleted. It was premature to mention the question of the legal status of delegations to international conferences and congresses. The Commission could discuss that question later, when it had before it Mr. El-Erian's proposals on the topic of relations between States and inter-governmental organizations.

*Paragraph 4 was deleted.*

131. Mr. TUNKIN proposed that paragraph 5 should state simply that the Commission had, as usual, not dealt with the question of final clauses. When preparing the final draft, the Commission might perhaps make suggestions on the method of drafting the final clauses.

*Mr. Tunkin's proposal was adopted.*

132. The CHAIRMAN proposed that the last two sentences of paragraph 6, beginning with the words "Such differentiation" should be deleted.

*It was so agreed.*

*Paragraph 6 was adopted with that amendment.*

133. Mr. TUNKIN proposed that the concluding sentence of paragraph 7, which stated that the draft articles on special missions were residual in nature, should be deleted. That statement raised a very broad issue, with which the Commission was not called upon to deal at that stage.

*It was so agreed.*

134. The CHAIRMAN proposed that, in the first sentence of paragraph 7, the words "for the time being" should be added after "Nor did the Commission accept" and that the second sentence should be deleted.

*It was so agreed.*

*Paragraph 7 was adopted with those amendments.*

*Section C, as amended, was adopted.*

*Chapter III of the draft report, as amended, was adopted.*

*The draft report of the Commission on the work of the first part of its seventeenth session (A/CN.4/L.111 and Add.1 to 5) was adopted as a whole, as amended, subject to drafting changes.*

#### **Closure of the first part of the seventeenth session**

135. The CHAIRMAN thanked the members of the Commission for their co-operation and expressed his particular gratitude to the two Vice-Chairmen, the General Rapporteur, and the Special Rapporteur on the law of treaties. He added that the Commission had

greatly appreciated the excellent services provided by the Secretariat and by the European Office of the United Nations.

136. Mr. AGO paid a tribute to the Chairman's masterly conduct of the proceedings and commended him especially on the manner in which he had performed his duties as Special Rapporteur on special missions.

137. Mr. AMADO praised the Chairman's qualities of leadership, thanked his colleagues and expressed his gratitude to all members of the Secretariat.

138. Mr. TUNKIN said that the results achieved during the first part of the session were largely due to the efforts of the Chairman and other officers of the Commission. He also paid a tribute to the work of the Secretariat.

139. The atmosphere in which the Commission worked had been aptly described by one of its former members, the late Mr. Douglas L. Edmonds, when he had said: "We have disagreed without being disagreeable".

140. Mr. ROSENNE said that the achievement represented by the completion of work on the forty-four articles on special missions was entirely due to the vigour and enthusiasm of the Chairman as Special Rapporteur. He associated himself with the tributes paid to the Chairman and other officers of the Commission, and to the Secretariat.

141. Mr. PAL said that the Commission could congratulate itself on its choice of Chairman and other officers for the seventeenth session and associated himself with the gratitude expressed to the Secretariat for its contribution to the work of the Commission.

142. Mr. TSURUOKA and Mr. YASSEEN associated themselves with the tributes paid to the Chairman, the other officers of the Commission, the special rapporteurs and the Secretariat.

143. Sir Humphrey WALDOCK associated himself with the remarks of the previous speakers and said that, as Special Rapporteur on the law of treaties, he owed a debt of gratitude to the Chairman for his help.

144. Mr. JIMÉNEZ de ARÉCHAGA paid a tribute to the Chairman, the other officers and special rapporteurs, and to the work of the Secretariat.

145. Mr. RUDA said that the Chairman's leadership had helped to maintain the atmosphere of friendship, understanding and objectivity which was a characteristic feature of the work of the Commission. A special tribute was due to Sir Humphrey Waldock, as Special Rapporteur on the law of treaties, for his immense contribution to a task of historic importance. In associating himself with the tributes paid to the Secretariat, he said that the records provided by the language services were of great value to the Commission.

146. Mr. PESSOU associated himself with the tributes paid to the Chairman and to the other officers of the Commission and expressed his gratitude to the Secretariat.

147. Mr. ELIAS expressed his appreciation to the Chairman and the two Vice-Chairmen for their co-operation, and thanked the members of the Commission

for their kind words regarding his work as General Rapporteur. He also thanked the Secretariat for the services provided.

148. Mr. LACHS associated himself with the expressions of gratitude to the Chairman, the other officers of the Commission, the special rapporteurs and the Secretariat. He added a special tribute to Mr. Amado, for his unique combination of great humanism and deep knowledge of law, and to Mr. Pal, whose modesty and

whose contribution to international law would never be forgotten by the members of the Commission.

149. The CHAIRMAN thanked his colleagues for their kind words and declared the first part of the seventeenth session of the International Law Commission closed.

The meeting rose at 1.5 p.m.

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