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Summary record of the 899th meeting

Topic:
Special missions

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72. The special mission came into being as soon as consent had been requested by the competent authorities of the sending State and given by the competent authorities of the receiving State.

73. The CHAIRMAN said that it appeared to be the general opinion of the Commission that the word "consent" in article 1, paragraph 1, should not be qualified.

74. Mr. BARTOŠ, Special Rapporteur, said that the Netherlands Government had proposed that the receiving State should give its consent and determine the mission's status. That was a serious problem, for, if the Netherlands proposal were accepted, the mission's status would depend on an institution of municipal law, whereas special missions were specific institutions in international law. To leave the receiving State free to determine the status of a special mission would hardly promote the progress of international law and good relations among peoples, and would open the door to disputes, discrimination or improper interference, which was precisely what the Commission wished to avoid.

The meeting rose at 12.55 p.m.

899th MEETING

Friday, 12 May 1967, at 10 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Bedjaoui, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Special Missions

(A/CN.4/193 and Addenda; A/CN.4/194 and Addenda)

(continued)

[Item 1 of the agenda]

ARTICLE 1 (The sending of special missions) [2 and 7, para. 1] (continued)¹

1. The CHAIRMAN said that at the previous meeting² the Special Rapporteur had given his reasons for rejecting the suggestions put forward by the Netherlands Government in its comments on articles 1 and 2 (A/CN.4/194/Add.1). He invited the Commission to consider those suggestions.

2. Mr. CASTRÉN said that while he had no objection in principle to the Netherlands Government's proposal

which, in his view, was unlikely to involve all the disadvantages mentioned by the Special Rapporteur, he could not recommend its adoption, because, first, it was unnecessary since the consent of the receiving State was always required for a mission to be able to function as a special mission, and that State was free to withhold its consent. Secondly, the receiving State might subject its consent to certain conditions relating, for example, to the status of the special mission, taking into account, of course, any non-discrimination clauses and the rules of *ius cogens*.

3. He saw no reason why the Commission should have to include in the text of the article itself provisions relating to the special mission's status, and oblige States to conclude detailed agreements on the subject.

4. However, he would have no objection to the inclusion of a reference to the Netherlands proposal in the commentary to article 1.

5. Mr. REUTER said he thought the Commission should consider the question raised by the Netherlands Government at the final stage of its work, though the problem would certainly be raised in the course of discussion.

6. The purpose of the convention was to lay down minimum rules which would be applicable in all cases where States had made no specific agreement. To such States the convention would be of great value. The problems raised by the sending of special missions were in practice of very rare occurrence, but when they did arise they were undoubtedly serious. Supposing, for example, that a member of a special mission was prosecuted for a crime or offence committed in the territory of the receiving State, the application of the provisions of a convention would make it much easier to solve the political problems involved.

7. Admittedly, a State signatory to the convention should be able to except any mission from the scope of the general system as it saw fit, but the Commission's reason for drafting a convention was undoubtedly to lay down rules of general application.

8. Mr. BEDJAOUÏ said he agreed with Mr. Reuter. Undoubtedly the Netherlands Government, like many others, wished to guard against the unforeseen dispatch of special missions, but its proposal would be apt to create problems, especially for countries which had just attained independence and which would frequently have occasion to dispatch or receive special missions for purposes of international co-operation. The Commission should therefore lay down a minimum number of rules that would be acceptable to as many States as possible, on the understanding that States would retain the power to conclude treaties or agreements as they saw fit in each individual case.

9. Mr. YASSEEN said that mutual consent was all that was needed for a mission to secure recognition as a special mission; once the mission existed, it would *ipso facto* have the status which the Commission was trying to establish. Such consent could, of course, be made subject to certain conditions or reservations. But the Netherlands proposal went too far, in that it made not only the sending of a special mission, but the grant to

¹ See 898th meeting, para. 24.

² Para. 74.

that mission of status as such, dependent on mutual consent, either express or tacit.

10. Mr. USHAKOV said it seemed to him that the problem raised by the Netherlands Government had already been solved in paragraph 1 of the draft article; the sending State and the receiving State could always make an agreement providing for a waiver of the rules of the convention.

11. Mr. TAMMES said that he had already explained at the previous meeting³ that the Netherlands Government's suggestion was not intended to be in any way restrictive; its purpose was merely to ensure that a special mission would be recognized as such within the meaning of the draft articles now under discussion. That idea had already been clearly expressed in connexion with article 2 by the Special Rapporteur in his fourth report where he had said: "On receiving a visiting foreign mission, the receiving State is entitled to make it clear that it is not considered as a special mission" (A/CN.4/194/Add.1).

12. Mr. USTOR said that no objection would be made to the Netherlands Government's suggestion if it were interpreted in accordance with the explanation just given by Mr. Tammes, but he must point out that the language used in that suggestion contained the peremptory word "shall"—"The task of a special mission and its status as such shall be determined by mutual consent".

13. He himself agreed fully with Mr. Reuter, Mr. Yasseen and Mr. Bedjaoui that article 1 should not preclude the parties to the convention from making bilateral agreements concerning the status of a special mission, but that in cases where they did not do so, the special mission should automatically have the status of a special mission under the convention.

14. Mr. BARTOŠ, Special Rapporteur, said that the Commission had itself insisted that the consent of both the sending State and the receiving State was required for a special mission to be recognized as such. Perhaps the position was that, as the Australian Government had observed (A/CN.4/193/Add.3, para. 6), the draft articles and the commentaries as at present drafted did not adequately reflect the idea that States may themselves determine what they should regard as a special mission.

15. As Mr. Yasseen had rightly said, States could attach reservations and conditions to their consent, and in his view the Drafting Committee might so specify in the text of article 1. States should be left free to make exceptions to the general rules, and the sending State might possibly forgo sending special missions if the receiving State requested exceptions for reasons, not only of prestige, but perhaps relating to its sovereignty. Where no special agreement had been concluded on the subject between the States, the system provided by the convention should come into operation.

16. Moreover the Commission had provided for the possibility of limiting, by agreement, the privileges and immunities granted to a special mission. It might also happen that, at the opposite extreme, the receiving State

would allow the special mission of the sending State to carry on certain activities in its territory, as was the case among the Benelux Governments; but it was for those States to settle that point for themselves. The Commission had proposed to the General Assembly, and the Assembly had agreed, that States might waive the general rules in the case of certain special missions, and article 1 might therefore include a clause on reservations and conditions.

17. Mr. EUSTATHIADES said that he was satisfied with the explanations given by the Special Rapporteur. In his view, the point at issue was one of substance which might be dealt with either in the commentary or in the text of the article, perhaps by means of a reference to the article on derogations. Some members of the Commission thought, perhaps, that in starting from a set of maximum rules and then providing for limitations in certain cases, there had been a tendency to go too far. They harboured some misgivings on the subject but he did not share them.

18. The CHAIRMAN said he thought the Commission could accept the general recommendations of the Special Rapporteur with regard to article 1, paragraph 1 and refer that paragraph to the Drafting Committee for further consideration with a view to giving it somewhat greater flexibility.

19. Mr. BARTOŠ, Special Rapporteur, said that the Drafting Committee would no doubt bear Mr. Eustathiades' suggestions in mind and would confine itself to mentioning in the commentary the question of reservations and conditions.⁴

20. The CHAIRMAN invited the Special Rapporteur to introduce article 1, paragraph 2.

21. Mr. BARTOŠ, Special Rapporteur, said that the fourth category of comments by governments dealt with the existence of diplomatic and consular relations between the sending State and the receiving State. That was a political as well as a legal matter, and the Commission had stressed in paragraph (3) of its commentary that "the existence of such relations is not an essential prerequisite" for the sending and reception of special missions; it had added that "During the existence of the special mission... States are entitled to conduct through the special mission relations which are within the competence of the general mission", and had expressed the opinion that, in cases where States or Governments did not recognize each other, special missions "could be helpful in improving relations between States".⁵ However, the Commission had not considered it necessary to add a clause to that effect to article 1. Thus for example, Spain and Yugoslavia, which did not recognize each other, sent each other special missions and regulated their relations, especially their economic relations, in that way.

22. The Swedish Government had proposed (A/CN.4/188) that a provision be added to article 1 that sending or

³ Para. 54.

⁴ For resumption of discussion, see 926th meeting, paras. 1-22.

⁵ *Yearbook of the International Law Commission, 1965*, vol. II, p. 166.

receiving a special mission did not in itself imply the recognition of a State. The Belgian Government had made a similar comment that special missions might be sent between States or Governments which did not recognize each other; but it specified that that in no way prejudged subsequent recognition (A/CN.4/188).

23. In the Sixth Committee of the General Assembly, the delegation of Ceylon had proposed that the application of the rules concerning special missions be confined to States which had diplomatic relations with each other.⁶

24. The Government of the Union of Soviet Socialist Republics considered that the question should be dealt with in the text of the article, in the following form: "Neither diplomatic and consular relations nor recognition is necessary for the sending and reception of special missions". (A/CN.4/188/Add.2)

25. Lastly, the Government of Chile had proposed that it be stated in paragraph 2 of the article that "special missions may be sent or received regardless of whether the Governments concerned recognize each other". (A/CN.4/193/Add.1)

26. Thus, Government comments might be regarded as falling into two categories. First come the proposal of the Government of Ceylon, which was the opposite of the other Governments' views and which paid little regard to the fact that in practice the exchange of special missions often took place between States which did not have diplomatic or consular relations.

27. With regard to the second category of comments, the Commission had shown caution by indicating in its commentary that the sending and reception of special missions by States which did not have regular diplomatic relations, or which were engaged in armed hostilities, were subject to the rules of the convention.

28. The Commission was therefore faced with three questions. The first was whether the application of the rules should be limited to States having diplomatic relations with each other. The second was whether mutual non-recognition was a bar to the sending and reception of special missions. And the third was whether or not to indicate that the sending and reception of special missions did not constitute tacit recognition.

29. The Swedish Government had examined the situation where, in a civil war, the insurgents were recognized as belligerents. That was a complex and extremely controversial problem, and he suggested that the Commission refrain from dealing with it at that stage in its work.

30. He would recommend that the Commission reject the proposal by the Government of Ceylon and specify in the text of the article that non-recognition was no bar to the sending and reception of special missions. The Commission should further specify that the sending or reception of special missions by States which did not recognize each other did not constitute tacit recognition. It could do that either in the text of the article or in the commentary.

⁶ *Official Records of the General Assembly, Twentieth Session, Sixth Committee, 850th meeting, para. 8.*

31. Mr. EUSTATHIADES said that, leaving aside the question of the recognition of belligerents or insurgents, as the Special Rapporteur suggested, there remained only two questions to settle. The first was the question of the existence of diplomatic relations and the second, in two parts, whether non-recognition was a bar to the sending of a special mission, and whether the sending of a special mission implied recognition.

32. With regard to the first question there was no doubt in his mind that paragraph 2 of article 1 must be retained and he would not dwell on the matter.

33. With regard to the second question, the Swedish Government's comments made it pertinent to consider whether the sending of a special mission constituted a negotiation which, according to one view, might be regarded as tacit recognition. In his own opinion, recognition might lead to the establishment of diplomatic relations, but such a consequence was by no means a foregone conclusion. If a State wished to send a special mission without recognizing the receiving State, it must so state in express terms. In the absence of any indication to the contrary, it could be asserted that the sending of a special mission was a serious factor to be borne in mind in determining the existence of tacit recognition. A case in point was that of the 1949 Geneva Conventions,⁷ under which the application of a minimum set of rules did not imply recognition of the belligerents in a civil war. The Swedish Government had confined itself to asking the question. The best plan would be to follow the precedents set by the 1949 Geneva Conventions, the 1954 Hague Convention⁸ and other agreements or treaties.

34. It was for the Commission to decide whether the question should be dealt with in the commentary or in the text of the article, but he saw no need to specify that non-recognition was no impediment to the sending of special missions.

35. Mr. REUTER said that the Commission could not accept the Government of Ceylon's proposal.

36. There was, in his opinion, no necessity to stress the point concerning the sending of special missions where no diplomatic or consular relations existed. If, however, the Commission intended to examine the problem of recognition, it should find a form of words to the effect that the sending of a special mission did not necessarily mean recognition, but that the exchange of letters preceding the sending of the mission, the composition and the purpose of the mission might be equivalent to tacit recognition.

37. He doubted the wisdom of going deeply into a subject which involved a number of thorny problems; it might be thought that, if the Commission added a provision on that point to article 1, a State would be able to claim the benefit of the rules of the convention and that, once it was free to do so, it could hardly be denied participation in the convention, and that might amount to recognition.

⁷ United Nations, *Treaty Series*, vol. 75.

⁸ Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at the Hague on 14 May 1954 (United Nations, *Treaty Series*, vol. 249, p. 216).

38. A problem arose in that connexion in France, where the courts had to decide disputes affecting the delegation of North Viet-Nam; in view of such cases, it would be preferable to keep article 1 as it stood and to refrain from going into every of the problem in the text of the article.
39. Mr. YASSEEN said he still felt, despite what Mr. Eustathiades had said, that there were three questions to be answered. First, as the Special Rapporteur had pointed out, it was clear that the absence of diplomatic relations was no obstacle to the sending of a special mission, which might be the only means of contact between the two States concerned. Paragraph 2 was therefore calculated to facilitate and improve international relations.
40. Secondly, and for the same reasons, the absence of reciprocal recognition by two States should not be allowed to hinder the sending of a special mission; such a mission might well be sent for the specific purpose of negotiating recognition.
41. Thirdly, the sending of a special mission might constitute a stage in the process of recognition—a significant pointer to the general attitude of one State towards another. It would be a mistake to risk diminishing the positive value in that respect which could attach to the act of sending or receiving a special mission.
42. Mr. BEDJAOUÏ said that there would be no justification for subjecting the sending of a special mission to the dual requirement that the two States should have diplomatic relations and should recognize each other. The wording already adopted by the Commission went some way to settle the matter, and could be supplemented along the lines proposed by the Government of the Soviet Union.
43. The problem of recognition, however, had two aspects which, for all Mr. Eustathiades had said of them, were separate and distinct. The problem was a delicate one, and often a matter of politics rather than law. It might perhaps be a mistake to specify in the article that the sending or reception of a special mission did not imply mutual recognition by the States concerned. In the Conventions to which Mr. Eustathiades had referred, and whose provisions were essentially humanitarian, it was normal to say that the application of some of those provisions did not imply mutual recognition by the States concerned.
44. Special missions dealt with a wide variety of problems and it would be a pity, as Mr. Yasseen had observed, to slam the door on any chance of regarding an exchange of special missions as a step towards recognition. It would be better to state in the commentary that the sending or reception of a special mission did not “necessarily” mean that States recognized each other.
45. Mr. TSURUOKA suggested that the Commission should simply delete paragraph 2, which in his view described the present state of affairs but added nothing to paragraph 1 so far as rule-making was concerned.
46. There was no need to mention the question of recognition; everything depended on the consent of the State. From the practical point of view, only one situation would be worth taking into consideration: that of a State which had not recognized another State and which hesitated to receive a special mission from it, or to send one to it lest its action be construed as express or implied recognition. The Commission would therefore facilitate international relations, and perhaps promote the eventual establishment of genuine relations between two such States, by saying that the sending or reception of a special mission did not necessarily imply recognition. Since the question of recognition was very delicate, however, it would be better not to mention it in the text of the article.
47. Deletion from the text of any reference to diplomatic relations and to recognition would also facilitate the ratification of the future convention on special missions; for sometimes, when the examination of a treaty in the legislature was likely to provoke argument, a Government shrank from facing the difficulties, with the result that ratification was slow in coming.
48. He would prefer to see the points under discussion dealt with only in the commentary.
49. Mr. USHAKOV said he supported the Special Rapporteur’s proposals.
50. Eight Governments had declared themselves in favour of including in article 1 a provision that neither the existence of diplomatic or consular relations nor mutual recognition by States was necessary for the sending or reception of a special mission. If supplemented along those lines, paragraph 2 would reflect current practice in international relations.
51. As to whether or not the sending or reception of a special mission signified that the two States concerned recognized each other, it was now established international practice that States which did not recognize each other could make certain contacts, either through special missions or by participating together in the work of international organizations, without any implication of mutual recognition. For example, the talks now going on between the People’s Republic of China and the United States through their ambassadors at Warsaw—who could be deemed to be entrusted with a special mission—in no way signified that those two States recognized each other.
52. He did not think it was necessary to make that point in the article itself, but he would have no objection if the Commission stated it in the commentary, or even in the article, if it so preferred. Such a passage would reflect current practice and contemporary international law.
53. Mr. RAMANGASOAVINA said he too thought it impossible to accept the proposal of Ceylon that only States recognizing each other should be allowed to exchange special missions. It was between States that did not recognize each other, and between States that did not maintain diplomatic relations, that the sending of special missions could prove especially useful. Recognition, however, was a separate act—a matter of politics, and often of expediency, of which it was preferable to avoid all mention in the article.
54. Furthermore, paragraph 2, as it stood, might lead newly-independent States into error by encouraging them to think that diplomatic and consular relations were

unnecessary and that they could settle everything through special missions—a course that they already tended to take, for such missions were cheaper than permanent missions. He therefore proposed that paragraph 2 be amended to read:

“The sending and reception of special missions may take place between States whether or not they maintain diplomatic and consular relations.”

That wording would also have the advantage of avoiding the question of recognition altogether.

55. Mr. CASTRÉN said he agreed with the Special Rapporteur that there was no reason to change the article by adding new features, unless it was to include in paragraph 2 a mention of recognition, as several Governments had suggested.

56. He also supported the Special Rapporteur's proposal that a statement should be added to the commentary, but not to the article, to the effect that the sending or reception of a special mission did not necessarily prejudice the recognition by States of each other.

57. He would revert to the specific question of civil war and insurrection at a later stage.⁹

58. Mr. AGO said he was sure that the members of the Commission were in agreement on the substance. Paragraph 1 made the essential point: for the sending of a special mission, everything depended on the consent of the States concerned. If consent was the deciding factor, the contents of paragraph 2 might seem superfluous; even so, it was perhaps advisable to state the obvious.

59. There was, however, one point of legal importance which ought to be brought out later, namely, that the sending of a special mission to a non-recognized State did not automatically imply recognition of that State. It seemed more necessary to settle that point of law than to state what was now stated in paragraph 2.

60. For the rest, he was confident that the Drafting Committee would be able to find a satisfactory form of words.

61. Mr. KEARNEY said he could not agree that the question of non-recognition was so clear and straightforward that it could just be referred directly to the Drafting Committee.

62. The question of non-recognition had two aspects: non-recognition of a government and non-recognition of a State. The question of non-recognition of a government should be comparatively easy to cover in paragraph 2 of article 1; that of the non-recognition of a State, on the other hand, was a much more difficult problem. One of the consequences of the non-recognition of one State by another was that the two entities concerned were not in treaty relations with each other. It was therefore difficult to see how the proposed provision on non-recognition would operate: the two States concerned had no treaty relations and the provision in question would be embodied in a treaty, namely, the future instrument on special missions.

63. Most of the suggestions for covering the question of non-recognition were based on the idea that inclusion of a provision on the subject would facilitate ultimate recognition. That might be true in regard to the recognition of governments but the situation was altogether different with respect to the recognition of States. The draft articles to some extent prejudged the question of recognition. To give one simple example, article 15 dealt with the right of special missions to use the flag and emblem of the sending State: the flag and emblem constituted evidence of sovereignty and the flying of the flag, or the display of the emblem, of the sending State could therefore be considered as an indication of recognition.

64. He was therefore inclined to the view that it would be preferable not to include in paragraph 2 any reference to the problem of recognition, but to deal with the matter in the commentary.

65. He was a strong supporter of the use of special missions but thought that the inclusion of a provision on non-recognition would lead the Commission on to difficult legal terrain, besides involving the danger—to which Mr. Tsuruoka had drawn attention—of rendering the draft less likely to attract State support.

66. Mr. EUSTATHIADES said that he was entirely in favour of using an expression such as “does not necessarily imply recognition” at the point where the text was to provide that the sending of a special mission had no legal consequences with regard to the recognition of a State by another. The idea expressed by the words “in itself” or by the word “necessarily” was certainly to be found in the Geneva and Hague Conventions to which he had referred in his previous statement.

67. Mr. Bedjaoui had rightly drawn attention to the humanitarian character of those Conventions, but the problem was also a political one. It was difficult to prevent States from getting the impression that, if they consented to receive a special mission from a State which they did not recognize—with all that consent involved concerning the application of the provisions governing such questions as status—they would at least be admitting the existence of that State, which would confront them not only with political but also with technical problems, if only those of deciding on the minimum facilities that could be extended to such a mission.

68. That was an extremely delicate point, and governments were justifiably anxious about it. Since the question had been raised, the Commission had to answer it and in such a way as to facilitate relations between States, whether or not they recognized each other. If it was felt that the answer would overload the text of the article, it should be included in the commentary.

69. Mr. BARTOŠ, Special Rapporteur, said that the majority of members appeared to favour the idea of settling the question of recognition, as several Governments had requested, either by adding a provision on the subject to paragraph 2 or by stating in the article or in the commentary that the sending of a special mission did not prejudice the question of recognition between States. He too considered that the question should be settled,

⁹ See 900th meeting, paras. 2-5.

partly because a contrary argument had been advanced and partly because, as Mr. Eustathiades had shown, States hesitated to perform an act which might commit them. Practical considerations demanded the establishment of contacts between States which did not recognize each other. It was therefore important that the Commission should clear up that point in one way or another in its draft articles, without going into matters of theory or the question of the form of recognition.

70. Mr. Ramangasoavina had drawn attention to the particular requirements of newly-independent States. He himself would add that new States were not always accorded immediate recognition by all other States; there again it would be useful to mention recognition in paragraph 2 of the article.

71. He had nothing new to propose, but accepted Mr. Ago's suggestion, which would solve the problem. He recommended that article 1 should be referred to the Drafting Committee so that the Committee might find a satisfactory form of words.

72. Mr. TSURUOKA said that he had no objection to the procedure recommended by the Special Rapporteur. However, he wished to stress that, since the Commission wanted to strengthen international relations, it must take the utmost care in drafting a statement on the problem of recognition. It was always possible that a State might wish to recognize another State tacitly, avoiding an excessively formal act likely to raise difficulties of, say, domestic policy, and might for that purpose decide to send a special mission, if necessary a high level one. The wording adopted by the Commission must not deprive it of that possibility.

73. Mr. BARTOŠ, Special Rapporteur, said that, even where formal recognition was granted, it was often preceded by the sending of a special mission with specific instructions to negotiate terms for recognition or to establish a *modus vivendi* leading to recognition later on. Such methods were necessary in international relations. Mr. Tsuruoka could rest assured that the consent of States was required, which meant that all risk was eliminated. The sovereign will of States was inviolable.

74. Mr. AGO said that Mr. Tsuruoka need have no anxiety. If a State wished to proceed to recognition of another State by sending a special mission, nothing could prevent it from doing so, and the circumstances of the individual case would make that apparent.

75. Furthermore States needed to be reassured about the other consequences which the sending of a special mission might have—a matter of concern to Mr. Kearney. The Commission had two ways of doing that. First, the text required the consent of States for the sending of a special mission, as the Special Rapporteur had just pointed out; consequently, in cases of the kind referred to by Mr. Kearney, the State could always refuse to send or refuse to receive a special mission. Secondly, the Commission should in his view specify that the sending or reception of a special mission did not automatically mean that the States concerned had undertaken to recognize each other.

76. Mr. USTOR said that there appeared to be general agreement on the essence of the matter; the difficulties which had arisen related merely to the manner in which the provisions of paragraph 2 would be drafted. Personally, he supported the Special Rapporteur's proposal to include in paragraph 2 a brief reference to recognition. The amended text would then adequately reflect the existing state of affairs.

77. He did not favour the suggestion by some members for the inclusion in article 1 of a safeguard regarding the implications as to recognition of the sending and acceptance of a special mission. The best solution would be to include in the commentary a passage which would reassure States on that score. The question was largely one of drafting and could safely be left to the Drafting Committee.

78. The CHAIRMAN said he noted that some members wished to include in paragraph 2 an explicit reference to the question of recognition, while an almost equal number would prefer to deal with the matter in a separate, or third, paragraph in the form of a safeguarding clause. The clause in question would state that neither the sending nor the receiving of a special mission was to be regarded as necessarily implying recognition. The use of such a wording would have the advantage of avoiding the question of State recognition and the treaty position that might depend on that question.

79. In a sense, the problem might be one of drafting because all members agreed that special missions could be exchanged by States that did not recognize each other. The problem of drafting and presentation was an important one, because if it were not solved in a satisfactory manner States might be deterred from accepting the draft.

80. Speaking as a member of the Commission, he said he was attracted to the solution proposed by Mr. Ago, which was in a sense intermediate between inclusion of a reference to non-recognition in paragraph 2 and the omission of such a reference from the text, leaving the matter to be dealt with in the commentary.

81. The intermediate solution would have the advantage of giving effect to the suggestions made by governments but of doing so negatively or by implication. As it stood, paragraph 2 was open to the interpretation that the Commission had set aside the question of recognition. The adoption of an additional paragraph as proposed by Mr. Ago would constitute an admission that special missions could be exchanged by States that did not recognize each other; that admission, however, would be couched in discreet language and would therefore not be so challenging.

82. Speaking as Chairman, he suggested that the question be referred to the Drafting Committee, which would devise a formula to meet the views expressed in the course of the discussion.

*It was so agreed.*¹⁰

The meeting rose at 1 p.m.

¹⁰ For resumption of discussion, see 926th meeting, paras. 1-22.