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Summary record of the 903rd meeting

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have reasons of some other kind for not accepting a certain person: more particularly, reasons connected with the performance of the special mission's task. In that respect the Commission might perhaps be wise not to put special missions, which were temporary and specific, on the same footing as diplomatic or consular missions, which were permanent and general.

76. The CHAIRMAN pointed out that no government had raised that question.

77. If there were no further remarks, he would consider that the Commission agreed to refer article 4 to the Drafting Committee for consideration in the light of the comments made during the discussion.

*It was so agreed.*⁸

ARTICLES 5 (Sending the same special mission to more than one State) [4] and 5 *bis* (Sending of the same special mission by two or more States) [5]

78. *Article 5* [4]
Sending the same special mission to more than one State

A State may send the same special mission to more than one State. In that case the sending State shall give the States concerned prior notice of the sending of that mission. Each of those States may refuse to receive such a mission.

79. The CHAIRMAN invited the Commission to consider article 5, the Special Rapporteur's proposals for which were contained in paragraph 13 of the section of his fourth report (A/CN.4/194/Add.1) dealing with that article and in his additional comments on article 5 in documents A/CN.4/194/Add.3 and A/CN.4/194/Add.5.

80. It would be appropriate for the Commission to consider at the same time the Belgian Government's proposal (A/CN.4/188) for a new article 5 *bis* reading:

"Article 5 bis [5]

"Sending of the same special mission by two or more States

"A special mission may be sent by two or more States. In that case, the sending States shall give the receiving State prior notice of the sending of that mission. Any State may refuse to receive such a mission."

81. In his fourth report (A/CN.4/194/Add.1), the Special Rapporteur did not advise the Commission to adopt the Belgian proposal.

82. Mr. BARTOŠ, Special Rapporteur, said that article 5 was to some extent based on article 5 of the Vienna Convention on Diplomatic Relations. It often happened in practice that a State sent the same special mission to several different States—perhaps situated in the same region—one after another. Formerly missions of that kind had often been sent for purposes of protocol; nowadays they were more often concerned with economic questions, such as the purchase of commodities like coffee or petroleum. In such cases disputes might arise if the special mission, having concluded its business in the first country or countries visited, decided against going on to the others.

⁸ For resumption of discussion, see 926th meeting, paras. 67 and 68.

83. Several Governments—those of Sweden, the USSR, the Ukrainian SSR, the Byelorussian SSR, the Netherlands and the United States—considered the article superfluous.

84. The Belgian Government commented that article 5 was one-sided and proposed that the Commission should draft a rule for the converse situation in which two or more States, for reasons of economy, sent a joint special mission to another State. That question was in fact dealt with indirectly in article 6. He was nevertheless submitting to the Commission the article 5 *bis* proposed by the Belgian Government.

85. He left it to the Commission to decide whether article 5 should be retained or deleted. If article 5 were deleted, article 5 *bis* would also have to be deleted. Practice would seem to require that the question should be settled; on the other hand, no purpose would be served by proposing a rule which States would consider unnecessary.

The meeting rose at 12.55 p.m.

903rd MEETING

Friday, 19 May 1967, at 10 a.m.

Chairman: Sir Humphrey WALDOCK

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

Other Business

[Item 8 of the agenda]

THIRD SEMINAR ON INTERNATIONAL LAW

1. The CHAIRMAN invited Mr. Raton (Secretariat) to address the Commission on the subject of the Third Seminar on International Law organized by the United Nations Office at Geneva.

2. Mr. RATON (Secretariat) said that the third Seminar on International Law would be held from 22 May to 9 June; there would be twenty-four participants. In accordance with the wish expressed by the General Assembly and the Commission, the geographical distribution of the participants had been further improved, so that Africa south of the Sahara would now be represented by three participants, instead of one as at the second Seminar, Latin America also by three instead of one, and Asia by six instead of five; whereas western and eastern Europe, on the other hand, would have only seven and five representatives respectively.

3. The attendance of a larger number of nationals of developing countries had been made possible by generous gifts from the Governments of Denmark, the Federal

Republic of Germany, Israel, Norway and Sweden; the gifts, ranging from \$ 1,000 to \$ 1,500 had paid for the award of fellowships. Finland had also offered a fellowship but had laid down conditions which could not be met in 1967; it was to be hoped that the Finnish offer would be maintained for 1968.

4. As usual, the programme of the Seminar related to the work of the Commission; it included the law of treaties, on which the Chairman had agreed to discuss his experience as Special Rapporteur; special missions; relations between States and international organizations; new questions concerning the law of the sea; and codification in general. The programme had been expanded to cover certain points examined by the Sixth Committee of the General Assembly; for example, Mr. Tammes would speak on fact-finding commissions and Mr. Ustor on international trade law.

5. It was gratifying to see new members of the Commission taking an interest in the Seminar. He appealed to all members of the Commission, old and new alike, to suggest lectures they would be prepared to give at future seminars; for the Director-General of the United Nations Office at Geneva, encouraged by the approval of the Commission and the General Assembly, intended to organize further seminars in the future. The success of such seminars obviously depended on the co-operation of members of the Commission, who provided the technical guidance; the responsibility of the United Nations Office was limited to administrative matters.

6. The Seminar had no budget of its own, and it would have been impossible to award fellowships without financial assistance from Governments. In 1966 there had been two fellowships for two participants, and in 1967 five fellowships would be shared among eight participants. It was to be hoped that such financial aid would be continued.

7. The CHAIRMAN said he could assure Mr. Raton of the Commission's co-operation both at the present session for the third Seminar and at future sessions for other seminars and expressed the hope that the Commission's discussions would prove of interest to the participants in the Seminar.

Special Missions

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

(resumed from the previous meeting)

[Item 1 of the agenda]

ARTICLES 5 (Sending the same special mission to more than one State) [4] and 5 *bis* (sending of the same special mission by two or more States) [5] (resumed from the previous meeting)¹

8. The CHAIRMAN invited the Commission to discuss articles 5 and 5 *bis* which had been introduced by the Special Rapporteur at the previous meeting.

9. Mr. ROSENNE said he questioned whether it was in fact possible for the same special mission to be sent

to more than one State. Special missions were defined in the introductory article 0 (Expressions used) (A/CN.4/194)² by reference to "the performance of a specific task" and that element constituted an essential part of the definition. The example had been given of a special mission being sent successively to several States to purchase coffee; however, the specific task would not be the same, since the purchase of coffee from one State was not the same task as the purchase of coffee from another.

10. The Special Rapporteur recognized that the parties would always be free to derogate from the provisions of article 5, since among his conclusions (A/CN.4/194/Add.1) was the statement "that the article is not of a generally compulsory nature".

11. The Commission should give due weight to the opinion expressed by the Governments of six countries—Sweden, the USSR, the Ukrainian SSR, the Byelorussian SSR, the Netherlands and the United States—representing a wide spectrum of the international community, which had urged the deletion of article 5. He did not believe that the article added anything in substance to what was already said elsewhere. The first sentence was already covered by the provisions of articles 1 and 2; the second sentence was covered by the whole concept of notification and agreement that ran through the draft articles. So far as the sending State was concerned, therefore, the provisions of the article contained nothing new. As for the receiving State, the third sentence was in fact covered by the provisions of the draft articles as a whole.

12. Similar considerations applied to article 5 *bis* and he concurred with the Special Rapporteur's conclusion that the proposed new article was unnecessary.

13. His own general conclusion was that neither article 5 nor article 5 *bis* was necessary; the problems with which the two articles dealt could be mentioned in the commentary to article 1. It was essential to ensure that each one of the articles of the draft was a rule of law and did not involve the Commission in questions of protocol, courtesy or the good conduct of political relations.

14. Mr. USHAKOV said that he had not yet made up his mind whether article 5 was superfluous or necessary. The crux of the article seemed to be the third sentence, which provided that each of the States concerned might refuse to receive such a mission. That rule, however, was no different from the rule requiring the consent of the receiving State, which had already been laid down in article 1, paragraph 1. That suggested that article 5 was superfluous.

15. He might be wrong, however. If the article proved to be necessary, he would propose amending it to provide that a State might send the same special mission to two or more States unless one of those States objected. A similar formula was to be found in article 6 of the Vienna Convention on Diplomatic Relations.

16. Mr. BEDJAOUI said that he too had long been in doubt about the value of article 5. There were many

¹ See 902nd meeting, paras. 78 and 80.

² Also printed in *Yearbook of the International Law Commission*, 1966, vol. II, document A/CN.4/189/Add.1.

cases in which a State sent the same special mission to several States; the specific circumstances had then to be considered. Whether the mission was an itinerant economic mission or a political goodwill mission, it could be regarded as consisting of as many bilateral missions as there were receiving States, on each of which an agreement had to be concluded between the sending State and the receiving State. It could also be maintained, however, that the intention of the sending State was to appoint a single mission to obtain a comprehensive view of a particular problem.

17. Article 5 prompted two main considerations. First, it was justified because it dealt with a new legal problem—that of the relations, not between the sending State and the receiving State, but among the various receiving States. Difficulties could arise if the attitude taken by the special mission in one of the States it visited was displeasing to one of the other States in which it was expected. Those difficulties were of an objective kind as distinct from those dealt with in article 4, which were subjective in that they concerned individuals.

18. Secondly, if article 5 were retained, the provision concerning prior notice would have to be amplified. As it now stood, article 5 merely required the sending State to inform each receiving State individually. Such bilateral notification would duplicate the notice which the Commission had discussed in connexion with article 3. If article 5 was to serve a real purpose, it should prescribe multilateral notification, whereby each State would be advised that the special mission was to visit certain other States. The right balance had to be struck, however, and the Commission might go too far if it required the sending State to give notice not only of the composition of the special mission but also of its purpose and of all the details affecting it.

19. The contents of the notice should be defined in the commentary. The Commission might also specify in the commentary that any receiving State could withdraw its consent if it was displeased at the attitude taken by the special mission in another State.

20. Mr. BARTOŠ, Special Rapporteur, said that the situation envisaged in article 5 was that of a special mission appointed to deal with a question of collective rather than bilateral diplomacy. The task of a coffee-purchasing mission, for example, was to investigate the market and compare the terms offered by various countries.

21. Goodwill missions, of which there were many, also raised questions of prestige concerning the order in which they visited the receiving States. Again, the composition of a special mission sent to several States could also present problems in that the inclusion of certain individuals might please some States and displease others.

22. Mr. TAMMES said that if article 5 were deleted, there would be no legal consequences. The acceptance by each of the receiving States concerned of the multilateral nature of the special mission would be a part of their consent to receiving the special mission. That fact explained why so many governments had expressed the view that article 5 was redundant.

23. The position, however, was quite different in the case of the new article 5 *bis* proposed by the Belgian Government, which contained a necessary provision. The proposed new article would have legal consequences; it would cover a new situation which was not dealt with anywhere in the draft articles. If article 5 *bis* were not included and a dispute arose, it could be contended that the draft articles did not apply to a situation such as that envisaged by the Belgian Government. Argument by analogy would not be enough.

24. The Commission should therefore consider whether it wished to cover the situation to which the Belgian Government had drawn attention. Personally, he thought that article 5 *bis* should be included. Belgium, Luxembourg and the Netherlands had had an excellent experience of joint missions and in no case had he heard any suggestion of inequality in the protection of the interests of the three States, despite the differences in their size and strength. The Belgian suggestion was probably inspired by the encouraging experience to which he had referred.

25. Mr. CASTRÉN said that six Governments had proposed the deletion of article 5 and the Special Rapporteur had offered no opinion on the point. He personally was in favour of deleting it, for the reasons adduced by the Swedish Government: in particular, because the situation envisaged in the article was adequately covered by article 1, paragraph 1. Furthermore, there was no corresponding provision in the Vienna Convention on Diplomatic Relations.

26. If the Commission decided to retain article 5, he would propose that it should accept at least the Finnish Government's suggestion (A/CN.4/193/Add.4) that the scope of the article should be limited to the simultaneous accreditation of one special mission to several countries. As the Finnish Government pointed out, it was scarcely relevant that the mission had previously functioned in another country. In any case the last sentence of article 5 seemed superfluous, since article 1 of the draft already required the consent of the receiving State to the sending of a special mission.

27. Like Mr. Tammes, he agreed in principle to the inclusion in the draft articles of the article 5 *bis* proposed by the Belgian Government, although the Special Rapporteur in his report (A/CN.4/194/Add.1) had advanced certain arguments against the proposal.

28. In his own view, the adoption of such a provision would be justified on several grounds. First, joint special missions were already employed by States closely associated with each other. Secondly, whereas article 5 had no equivalent in the Vienna Convention on Diplomatic Relations, article 5 *bis* bore some resemblance to article 6 of that Convention. No risk or difficulty was involved in adopting a provision of that kind, for the sending States would be bound by the general rule to notify or inform the receiving State in advance, and the latter's consent was required in those circumstances as well.

29. With regard to the wording of article 5 *bis*, he proposed that the last sentence be deleted or replaced by a reference to article 1, paragraph 1.

30. Mr. YASSEEN said that article 5 emphasized the organ rather than its function. The case envisaged was that of a series of special missions which were timed close together and which thus derived a distinctive character from a certain unity of time.

31. He was not convinced that the article was superfluous; on the contrary, he thought it introduced a new feature. The notice provided for was not merely notice of the composition and task of the special mission but, first and foremost, notice that a special mission composed of the same persons was to visit certain States. That was a new rule and would be a useful means of averting difficulties in relations between States. The fact that the special mission was to visit a number of States was an important factor which the receiving States needed to know about in order to reach their decision. The essential provision of article 5 was therefore the second sentence, concerning notice. The last sentence really added nothing.

32. He might have occasion to express his views on article 5 *bis* at a later stage.

33. Mr. EL-ERIAN said he supported the retention of article 5. Those Governments that had proposed the deletion of that article had not raised any objection to the principles embodied in it; they had merely suggested that it was unnecessary because its contents were, in their view, already covered by other articles of the draft.

34. Personally he preferred not to attempt to read too much into the provisions of article 1 but instead to retain the express provisions of article 5. In practice, special missions were sent more often than not without any prior written agreement on all the points involved.

35. It was stated in paragraph (1) of the commentary to article 5 that there was "no corresponding provision in the Vienna Convention on Diplomatic Relations". That statement was perhaps literally true but he must point out that article 5, paragraph 1 of the Vienna Convention on Diplomatic Relations read:

"The sending State may, after it has given due notification to the receiving States concerned, accredit a head of mission or assign any member of the diplomatic staff, as the case may be, to more than one State, unless there is express objection by any of the receiving States."³

36. It was not without interest to recall that the article as thus adopted by the 1961 Vienna Conference differed from the text of article 5 which the Commission had adopted at its tenth session and which had been submitted to the Conference. That article was confined to the head of the mission and read:

"Unless objection is offered by any of the receiving States concerned, a head of mission to one State may be accredited as head of mission to one or more other States."⁴

37. As a result of the discussions at the Vienna Conference the scope of that article had been broadened so as to

include not only the head of the mission but also its members. It was clear therefore that article 5 of the draft on special missions was in harmony with the 1961 Vienna Convention. Its provisions were to some extent covered by those of article 1; it was however desirable, in the interests of the success of special missions and of the promotion of friendly relations among States, not to leave the rules in the matter to be inferred from article 1, but to cover them by means of the express provisions of article 5.

38. Mr. AGO said that his first reaction on reading the comments by Governments had been very similar to Mr. Rosenne's. On reflection, however, he had come to think that article 5 had some value after all.

39. The Commission's purpose in that article was to legislate for two clearly defined situations. The first was that a State wished to discuss a particular question with several States and found it convenient to send to each of them, in turn, a special mission composed of the same individuals. In that case there were as many special missions as receiving States; on each occasion, the special mission was a bilateral mission, on which the sending State and the receiving State must agree. A difficulty might nevertheless arise, in that State B might agree to receive a special mission from State A but might very well be reluctant to do so if the special mission had previously visited, or was subsequently to visit, State C in order to discuss similar business. State B had therefore to be notified that the special mission from State A was also going to visit State C.

40. The second situation, perhaps occurring less often but not to be neglected, was that a State wished to send a special mission to a group of States, not one after the other, but simultaneously. For example, an industrial country, wishing to investigate the prospects for technical assistance to a group of developing countries, would send a special mission to the capital of one of those countries to discuss the matter with that country and the other countries at the same time; either some members of the mission would visit the other countries, or the mission would receive representatives of those countries at the place where it had established its headquarters. Conversely, a developing country might, for instance, send a special mission to Brussels to negotiate with the three Benelux countries simultaneously. Such cases were really more akin to the situation envisaged in the Vienna Convention on Diplomatic Relations, which provided that the ambassador to a given State could be accredited to another State or States at the same time.

41. In order to cover all those possibilities it would be useful to retain article 5, but it needed wording more clearly. In particular, the notice referred to in the second sentence should state that the special mission was to visit several States in turn or simultaneously, and should specify the States concerned. He supported Mr. Ushakov's suggestion and thought the Drafting Committee would be able to find a satisfactory formula.

42. Article 5 *bis* dealt with an entirely different matter, namely, a joint special mission from several States. He thought the Commission would do well to adopt the Belgian Government's proposal and to embody it in a separate article.

³ United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. II, p. 83.

⁴ *Yearbook of the International Law Commission, 1958*, vol. II, p. 90.

43. Mr. CASTAÑEDA said that he fully agreed that itinerant special missions served a very useful purpose and that they were very much used in State practice. That type of mission gave rise to a number of special problems, such as the order of the visits to the various countries concerned, but it was doubtful whether there was any call for a special legal regime that would justify including in the draft a separate article on the subject.

44. He did not believe that the situation under discussion raised any special legal problems. It had been pointed out by Mr. Yasseen that the notification would, in such situations, have a special purpose and serve to inform the various receiving States of the fact that the same mission would visit all of them successively. If the suggestion were that the sending State should be under an obligation to inform the various receiving States of that fact, he thought it would be unwise to introduce a new rule to that effect. Such special missions were of an extremely flexible character and it was difficult to say in advance which countries would be visited. Sometimes, the results obtained in one country would affect the decision to send the same mission to another country. In certain cases, a special mission was sent to one group of countries and another to a second group of countries and the two missions afterwards joined forces for the purpose of their subsequent work.

45. In view of the wide variety of situations to be covered, he felt that it would be neither feasible nor desirable to try to formulate a general rule in the matter. Besides, article 5 as drafted did not contain any rule that was not already included in other articles of the draft, and it would be in accordance with the best methods of legislative drafting to drop the article as unnecessary. If, however, the Commission decided to retain it, no great harm would be done.

46. With regard to the Belgian Government's proposal for a new article 5 *bis*, it was important to note that the proposed provision, unlike article 5, did contain a new rule; it stated an exception to a general principle. However, the situations which it was intended to cover were very dissimilar and the problems to which they gave rise were necessarily the subject of special agreement between the States concerned. He was thinking, for example, of the problems of precedence as between the various national groups of a collective mission.

47. It would therefore be difficult to devise any rule but if the Commission wished to include an article on the subject, it should take a very general form and simply state that there was no obstacle to the sending of a joint mission by several States. Or the point could be dealt with in the commentary to one of the earlier articles.

48. Mr. REUTER said that, in considering article 5, it was important to distinguish three different factors: the individuals composing the special mission, the mission's task and the receiving States.

49. There were certainly many examples of special missions composed of the same individuals and performing the same task in several States; that task might be, for example, to hold consultations on a general topic concerning peace or international relations. That was a

clear case; as Mr. El-Erian had said, the draft articles ought to include a specific provision on that point, by analogy with the Vienna Conventions.

50. It was also possible, however, to envisage a slightly different situation: that of a special mission, composed of the same individuals, which visited several States to perform related but not identical tasks, for instance to purchase coffee in one State and oranges in another. As to whether it could be maintained that only one special mission was involved, his reply would probably be in the negative, but the point was debatable.

51. In the third case, the task might be identical but the individuals were different. There would undoubtedly be a connexion between special missions so constituted, and problems of susceptibility might arise among the receiving States; the giving of notice to the States concerned would help to solve those problems. If the Commission wished to remind States of their duty to behave correctly towards one another, it could draft article 5 in more general terms and merely state that, if the task of the special mission was connected with that of a similar special mission sent to another State, the receiving State should be so advised. Such a provision would of necessity be vague, but it would have the merit of covering all possibilities.

52. He made no formal proposal and would abide by the majority view, but he thought the Commission needed to know exactly what it wished to do.

53. In the light of the discussion and of the Vienna Convention on Diplomatic Relations, article 5 *bis* seemed to him essential. With the efforts made towards regional economic organization in Europe and Latin America it had become a common practice for a group of States to appoint a joint special mission to discuss particular matters collectively. Such a special mission was sometimes an organ or a representative of a joint organization; if the task to be performed went beyond the competence of that organization, the mission had to be authorized separately by each of the member States it represented, so as to be able to negotiate on behalf of all of them.

54. In short, he considered that articles 5 and 5 *bis* should be retained, but that their wording could be improved.

55. Mr. KEARNEY said that the discussion had shown that there were no legal requirements for article 5. All the arguments which had been advanced in favour of the retention of the article reflected political considerations. Although the Commission was not debarred from taking such considerations into account, it should not underestimate the ability of Ministries of Foreign Affairs to deal with the problems which had been mentioned. His impression was that an article on the lines of article 5 would not help those ministries and might even hamper their freedom of action to some extent.

56. The proposed new article 5 *bis* was a much more important provision, in view of the considerable existing practice of joint missions. That practice should be fostered because of its many advantages, including that of economy. However, a provision on the lines of article 5 *bis* would not deal with the matter adequately. Joint missions raised problems which affected many of the

articles of the draft, including for example, the article dealing with the seat of the mission.

57. In the circumstances, the Commission should consider the possibility of a special study or review of the draft articles in order to deal with the problem of joint missions, either by including a general article on such missions or by amending the appropriate articles of the draft.

58. The CHAIRMAN said that the trend of the debate showed that there was considerable support for retaining articles 5 and 5 *bis*, subject to greater precision being introduced into their contents; at any rate, there was a general desire not to take a decision on the retention or deletion of those articles before the Drafting Committee had tried its hand at a new text giving them more precision and content.

Mr. Ustor, Second Vice-Chairman, took the Chair

59. Mr. TSURUOKA said that, although prepared to accept the majority view, he personally would prefer to see article 5 deleted, because he did not think it was really necessary. Opinions on the article might vary according to whether or not the sending State was held to be under an obligation to inform the receiving State that a particular mission might be sent to a third State before or after visiting the receiving State. If the sending State was held to be under such an obligation, and it failed, either unintentionally or intentionally, to inform the receiving State that the mission was to be sent to a third State, the consent of the receiving State would be void *ab initio*.

60. There were two possibilities. The first was that the receiving State might ask the sending State whether the special mission was to visit another State as well, and—depending on the reply it obtained—agree or refuse, as it saw fit, to receive the special mission. The second possibility—admittedly an unlikely one—was that the sending State might falsely maintain that its special mission was to visit only the receiving State which asked the question; in such circumstances it was clear that the consent of that State was invalidated by the untruthful statement of the sending State.

61. Some considered it desirable to impose on the sending State, through the provisions of an article, the obligation to inform the receiving State that the same special mission was to be sent to another country. If that view was accepted, several questions arose, and some members of the Commission had stressed the difficulty of establishing criteria by which to determine whether a given mission was the same mission. Even if a mission retained the same general composition on successive visits to different States, it was possible that, for one reason or another, one particular member of the mission would head it while it was in State A and another member would do so when it reached State B. That being so, it was open to question whether identity of purpose or consecutiveness should be the criterion.

62. Such problems made it difficult to lay down a practical rule which would facilitate international relations; the Commission might leave them for States to solve through usage instead of trying to codify the rules

on the subject. At all events, even if article 5 contributed nothing of value, it presented no risks and could equally well be retained or deleted.

63. Mr. BARTOŠ, Special Rapporteur, said that in his commentary to article 5 (A/CN.4/194/Add.1) he had expressly mentioned the case “Where the same special mission, with the same membership and the same task, is sent to several States...”. That rule—identity of membership and of task—was the one followed in practice; in the United States, the diplomatic usage was to address a note to the sending State asking what itinerary the special mission was to follow and on what dates it would be staying in a particular country.

64. Mr. BEDJAOUÏ said that he was in favour of retaining article 5 and of adopting the article 5 *bis* proposed by the Belgian Government. There was certainly no doubt about article 5 *bis*. Since, however, the two articles served different purposes, the Commission should not combine them into one.

65. Article 5 *bis* was a major innovation and, as Mr. Reuter had pointed out, met a genuine practical need at a time when States were coming together in regional groupings but stopping short of total integration. Since such States retained their national sovereignty, they could not act through a supra-national body, and consequently they had to send joint special missions. The question then arose as to how such missions should be constituted but that was a political problem and the Commission should mention it neither in the commentary nor, *a fortiori*, in the article.

66. Mr. ROSENNE said that the notice referred to in the second sentence of article 5 presumably would indicate whether the special mission was to function simultaneously in two States or consecutively, and whether or not it would consist of the same persons. Of course its task in the two countries would never be fully identical. Those were the only legal considerations raised by the article for the Drafting Committee to consider.

67. The greatest caution was needed in regard to the requirement of giving notification, so as to avoid undue rigidity and interference in the freedom of States to evolve the new patterns of diplomacy needed in a rapidly changing world. Perhaps the whole matter could be covered by a small amendment to article 1, paragraph 1, whereby the words “or States” would be inserted after the words “consent of the State”.

68. Article 5 *bis* was undoubtedly useful, but possibly contained some hidden snags. The possibility would have to be considered of a special mission being composed partly of representatives of international organizations and partly of representatives of States, when it would not be clear what the exact demarcation of functions would be, or whether the representatives of an international organization were acting within the framework of its constituent instrument or exercising special competence conferred upon them by States. Possibly that particular question belonged to the topic of the relations between States and international organizations.

69. It was important not to exclude any of the various types of special mission, because an incomplete provision might frustrate the development of useful procedures. The Drafting Committee should be asked to try and evolve a text for article 5 *bis*.
70. Mr. RAMANGASOAVINA said that after listening to the arguments for and against the retention of article 5 and the adoption of a new article 5 *bis*, he was in favour of retaining article 5. That article dealt with a real situation, for it did happen that the same special mission was sent to two or more States, and that situation needed a legal basis.
71. The new article 5 *bis* supplemented article 5, and he hoped that the Commission would combine them in a single article providing that a State might send the same special mission to two or more States and that, conversely, a special mission might be sent by two or more States, the sending State or States then being required to give notice to the receiving State or States. The requirement of notice or information was what mattered, because States which were to receive a special mission needed to know its composition, purpose and itinerary in order to reach their decision.
72. Mr. YASSEEN said he approved the principle stated in article 5 *bis*, for there was nothing in positive international law to prevent several States from dispatching a single mission if the receiving State accepted it. It was a question of the sovereign will of States. Consequently, while he was favourably inclined towards the new article, he thought that, if the Commission decided to reject it, the situation would remain exactly as before because, provided that all the parties agreed, States would still be free to send joint special missions.
73. With regard to article 5, it was vital to retain the notification procedure; without it, the sending State would be at liberty not to inform the receiving State that the special mission was to visit other States, and that might lead to difficulties.
74. He therefore favoured the retention of article 5 and the adoption of the new article 5 *bis*. Article 5 was essential, however, whereas article 5 *bis* provided for something which was already possible under positive international law.
75. Mr. TSURUOKA said that, despite the Special Rapporteur's explanations, he still had some misgivings at the absence of provisions specifying the cases in which a special mission could be considered to be "the same special mission". Even though the commentary stated that a special mission was the same if it had the same membership, the question arose whether that still applied when one member of the mission was replaced. Again, where the commentary specified that the task must be the same, the question arose whether that meant the task in general or whether a minor change might prompt a decision that the task was no longer the same and consequently that the special mission was no longer the same. Without taking a perfectionist attitude, he hoped that the Commission would make a further effort and specify the cases in which a special mission was the same
76. He did not think article 5 *bis* had anything very new to contribute. However, since there was a similar provision—namely article 6—in the Vienna Convention on Diplomatic Relations, he would be inclined to accept it.
77. The CHAIRMAN,* speaking as a member of the Commission, said with reference to article 5 *bis* that the Special Rapporteur's observations contained cogent theoretical reasons against the sending of special missions by more than one State, one of them being that it could lead to inequality of rights. However, such missions were used in practice so that article 5 *bis* would constitute a codification of customary law.
78. As far as the sending of the same special mission to more than one State was concerned, some account must be taken of the fact that States might resent such a procedure. However, the article was necessary, particularly as a similar provision appeared in the Vienna Convention on Diplomatic Relations, to which no reservation had been made.
79. Mr. USHAKOV noted that the majority seemed to favour the new article 5 *bis*. In his opinion articles 5 and 5 *bis* were totally different, because the decision to send the same special mission to several States was a matter for the sending State and no prior agreement was needed in that case, whereas for the dispatch of a mission by several States, prior agreement was essential. Since the majority of the Commission appeared to agree with the principles embodied in article 5 *bis*, he suggested that the article should specify that, on the conclusion of a special agreement, a special mission might be sent by two or more States.
80. Mr. AGO said that, for a special mission to be regarded as the same mission, its membership should be essentially the same. Membership, however, was inadequate as a criterion; as the Special Rapporteur had rightly emphasized, its task had to be taken into account as well.
81. Mr. EUSTATHIADES said that articles 5 and 5 *bis* met not only existing needs but also needs which could arise in the future. The striking feature was not the legal aspect of the problem but the social requirements of the international community arising from the interdependence of States and regionalism both economic and cultural.
82. The problem arose and would arise in the future, both inside and outside international organizations. That new form of collective diplomacy could not be a matter of indifference to the Commission. Articles 5 and 5 *bis* brought both bilateral and collective diplomacy into play, and the Commission could not ignore those factors if it wished to ensure the development of international law. Little risk was involved because, under either article, all or any of the States concerned could refuse to receive such a mission.
83. In the case of article 5 *bis*, he was in no doubt that, from the legal point of view, the situation needed regulation.
84. With regard to article 5, the Commission might have referred in article 1 to the consent "of the States" instead

*.Mr. Ustor.

of the consent "of the State". There would be no objection to that solution from the legal point of view, but there were certain matters, such as notification, which were not mentioned in article 1. The Commission would have to go into the problem in greater detail in its commentary, and explain that notice was required where a special mission was to be sent to more than one State, either successively or simultaneously; the two possibilities should be distinguished in the interests of greater clarity. Also, paragraph 3 (b) of the commentary on article 5 stated that the special mission's "full powers may consist of a single document accrediting it to all the States with which the convention is to be concluded"; from the point of view of legal technicalities, that was a distinctive feature of the subject-matter of article 5.

85. According to the commentary, it was essential for the same special mission to have the same membership and the same task. The Commission might also provide for cases in which the membership was the same but the tasks were not; it should also draw a clear distinction between itinerant missions and simultaneous missions. That was not an academic problem but a real problem, and would become even more pressing in the future.

86. So far as presentation was concerned, the Commission could have drafted a single article beginning with the provisions of article 5 *bis*. That was a point of detail and he would not dwell on it, but he urged that more detailed explanations should be given in the commentary to article 5.

The meeting rose at 12.55 p.m.

904th MEETING

Monday, 22 May 1967, at 3 p.m.

Chairman: Sir Humphrey WALDOCK

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

Welcome to Participants in the Third Seminar on International Law

1. The CHAIRMAN, welcoming the participants in the seminar on international law, said he hoped participants would benefit from listening to the Commission's discussions and from the opportunity of exchanging views with members and each other.

Letter from Mr. de Luna's son

2. The CHAIRMAN said that he had received a letter from Mr. de Luna's son in reply to the Commission's

message of condolence on the death of his father. Mr. de Luna's son said that his family had been profoundly moved by the Commission's message. It had been his father's constant wish that the Commission continue its efforts to secure respect for international law by every State and respect for the values of every State so that each enjoyed legal guarantees in a stable peace.

The Commission took note of Mr. de Luna's letter.

Special Missions

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

(resumed from the previous meeting)

[Item 1 of the agenda]

ARTICLES 5 (Sending the same special mission to more than one State) [4] and 5 *bis* (Sending of the same special mission by two or more States) [5] *(resumed from the previous meeting)*¹

3. The CHAIRMAN invited the Commission to continue its consideration of articles 5 and 5 *bis*.

4. Mr. BARTOŠ, Special Rapporteur, said that, on reflection, he had changed his mind about articles 5 and 5 *bis*. On reading the comments sent in by Governments he had had a feeling that the two articles were perhaps superfluous. He had found, however, that all but two of the members of the Commission were in favour of the two texts, subject to a few changes, and the arguments advanced by those members during the debate had convinced him.

5. The Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic and the Ukrainian Soviet Socialist Republic had requested the deletion of article 5. Mr. Ushakov had shown some hesitancy, and Mr. Rosenne had taken the view that the Commission should transfer the provisions of article 5 to article 1.

6. Some members of the Commission had wondered whether it was possible to state in article 5 a rule which was not merely a matter of protocol but a rule of law. Since the Commission's last meeting he had studied both theory and practice, and had concluded that it was possible to impose on a State which sent a special mission to more than one State the obligation to inform the receiving States that it was one and the same special mission.

7. Allowances had to be made for the susceptibilities of receiving States which must be given an opportunity to lodge an objection if they considered that their prestige was at stake. Thus the State of Israel and the Arab States were firmly opposed, for political reasons, to the sending of a special mission with the same membership and the same task to both.

8. With regard to notification, it had been suggested² that the word "information" should be used in article 3;

¹ See 902nd meeting, paras. 78 and 80.

² See 902nd meeting, para. 35.