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Summary record of the 905th meeting

Topic:
Special missions

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on the understanding that, if the sending State did not designate a head, it would designate the member of the special mission who was to represent it vis-à-vis the receiving State. Paragraph 3 should be retained provisionally but the Drafting Committee should be asked to make its terms less rigid.

62. Mr. AGO said that the problem of paragraph 3 was not merely a matter of toning down the wording. The real problem, as Mr. Ushakov had cogently pointed out, depended on the content of the preceding articles.

63. The provision had been included in the two Vienna Conventions because, in the case of diplomatic and consular missions alike, the sending State was free to decide by whom and by how many persons it would be represented. If the sending State was equally free to decide the composition of a special mission, paragraph 3 was necessary. If, however, the Commission laid down in a preceding article a rule requiring the sending State to inform the receiving State in advance of the composition of the special mission so that the receiving State might present its objections if any, that was an adequate safeguard and paragraph 3 was unnecessary.

64. It remained to consider the hypothetical case, envisaged by Mr. Ustor and the Special Rapporteur, of an increase in the size of the special mission while its work was in progress. But if the sending State had stated in advance how large the special mission was to be, it could make no drastic change in the size of the mission without the agreement of the receiving State; otherwise it would be in breach of the original arrangements.

65. Everything depended, therefore, on the wording adopted for articles 1 and 3. In any case, as Mr. Amado had often reminded the Commission, it must be assumed that States had sufficient experience to be able to cope with exceptional situations.

66. Mr. BARTOŠ, Special Rapporteur, said that he agreed with Mr. Ago. If, however, the Commission decided to delete paragraph 3, it should explain in the commentary that it had done so because the draft provided that the sending State should give the receiving State notice of the composition of the special mission and that the receiving State should have an opportunity to object. Then the Commission would not incur the reproach of having neglected an important provision of the Vienna Conventions.

67. The CHAIRMAN said that, leaving aside for the time being the question of paragraph 3, the Special Rapporteur's proposals had met with approval and the Commission could now refer article 6 to the Drafting Committee for consideration of the various points which had arisen during the discussion.

68. With regard to paragraph 3, he noted that some members wished to delete it outright; others thought that it was useful but that its wording needed to be revised in order to take account of the different situation of special missions; lastly, Mr. Ago had stated that the Commission's final view on the retention of paragraph 3 would depend on its ultimate decision with regard to articles 1 and 3. That meant that it would be premature to discuss now the question of the omission of paragraph 3

and of any explanation that might be given in the commentary for its omission.

69. Mr. CASTAÑEDA said he did not believe that it would be a satisfactory solution to delete paragraph 3 and explain the deletion in the commentary. Paragraph 3 was necessary in order to deal with the case in which there was no agreement between the sending State and the receiving State regarding the size of the mission; where an agreement existed on that point, there was no problem.

70. The CHAIRMAN suggested that article 6 be referred to the Drafting Committee for consideration in the light of the discussion; the Drafting Committee would examine, in the light of its decisions concerning earlier articles, the question whether paragraph 3 was necessary.

*It was so agreed.*⁷

The meeting rose at 6.5 p.m.

⁷ For resumption of discussion, see 926th meeting, paras. 74-98.

905th MEETING

Tuesday, 23 May 1967, at 10 a.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. 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 7 (Authority to act on behalf of the special mission) [14]

Article 7

[14]

Authority to act on behalf of the special mission

1. The head of the special mission is normally the only person authorized to act on behalf of the special mission and to send communications to the receiving State. Similarly, the receiving State shall normally address its communications to the head of the mission.

2. A member of the mission may be authorized either by the sending State or by the head of the special mission to replace the head of the mission if the latter is unable to perform his functions, and to perform particular acts on behalf of the mission.

2. The CHAIRMAN invited the Commission to consider article 7, the Special Rapporteur's proposals for which were contained in paragraph 20 of his comments on that article in his fourth report (A/CN.4/194/Add.1) and in

his additional comments on article 7 in the supplements to his fourth report (A/CN.4/194/Add.3 and 5).

3. Mr. BARTOŠ, Special Rapporteur, said that the rule that the head of the special mission was normally the only person authorized to act on behalf of the special mission and to send communications to the receiving State was a general, not an absolute rule. It was obvious that one person should negotiate and issue statements, but the rule needed flexible wording; that was why the Commission had used the word "normally" in the article. It had allowed for the possibility that States might agree that, in certain circumstances, other members should be authorized to act on behalf of the special mission.

4. The Swedish Government had expressed doubts about the use of the word "normally" and thought it should be replaced by the phrase "unless otherwise agreed". He himself was against the replacement or deletion of the word "normally" since the purpose of the article was to provide that one person, namely, the head of the mission, should be authorized to act on behalf of the special mission but that he could, if circumstances so required, be replaced by another member of the mission.

5. Mr. KEARNEY said he agreed with what had been said by the Special Rapporteur. Some modification of the text was, however, necessary so as to eliminate a certain rigidity in the article. It could be interpreted to mean that a head of mission could only be replaced if he was unable to perform his functions, but the sending State should be able to replace either him or any other member of a mission at any time.

6. Mr. BARTOŠ, Special Rapporteur, said he agreed with that view.

7. Mr. CASTRÉN said that he was satisfied with the text of article 7, subject to the changes proposed by certain Governments and accepted by the Special Rapporteur.

8. With regard to the word "normally", however, he shared the view expressed by the Government of Chile (A/CN.4/193/Add.1) and would prefer some such phrase as "Unless otherwise determined by the sending State, only the head of the mission...". Alternatively, the Commission might delete the words "normally the only person" from the first sentence of paragraph 1 and the words "Similarly" and "normally" from the second sentence of that paragraph.

9. With regard to paragraph 2, he thought that the Commission should adopt the Special Rapporteur's proposal, based on the Yugoslav Government's proposal in paragraph 5 of its comments (A/CN.4/188), and add to article 7 a new paragraph 3 reading:

"A member of the staff of the special mission may be authorized to perform particular acts on behalf of the mission."

On the other hand, he opposed the United States Government's proposal to add the sentence: "The receiving State shall be notified of a change of head of mission". That point was already dealt with in article 8, paragraph 1 (a).

10. Mr. REUTER said he supported Mr. Castrén's remarks, but there was one problem to which he wished to draw attention. The head of the special mission was the only person authorized to act on behalf of the special mission and to send communications to the receiving State. Those were diplomatic acts, but there were other forms of activity, such as statements or communications to the Press and talks with persons other than representatives of the receiving State, which did not come under the heading of diplomatic activities. It was customary, for instance, for the delegations of States to international organizations to appoint a spokesman who was not the head of the special mission. That being so, he wondered whether the Commission should not include a clause to that effect in article 7.

11. Mr. USTOR said that the Special Rapporteur's suggested amendment to paragraph 2, to substitute the words "A member of a special mission or of its staff" for the words "A member of the mission", might render the provision too broad by extending its scope to include service staff.

12. Mr. AGO said he thought that the Drafting Committee could make the drafting changes in paragraph 1 which had been proposed by Governments and accepted by the Special Rapporteur.

13. With regard to the problem raised by Mr. Reuter, it was true that it was often the mission's spokesman, and not the head of the special mission, who made statements to the Press. He therefore agreed with Mr. Reuter that the Commission should word the article more flexibly in order to allow for situations which arose in practice.

14. Mr. TSURUOKA said that, although provision might be made for exceptions to the rule, paragraph 1 was nevertheless very important because, in order to facilitate relations between the receiving State and the special mission, only one person should be authorized to send official communications and to negotiate with the State. Subject to an improvement in the drafting, therefore, he favoured the retention of paragraph 1.

15. The situation described by Mr. Reuter often arose in practice, but he doubted that the Commission should insert a clause to that effect in article 7; he feared that, if it went into too much detail, the Commission might overload the text of the draft convention it was to prepare.

16. Mr. RAMANGASOAVINA said a possible solution to the problem raised by communications, such as statements to the Press, made by the special mission to persons or bodies other than representatives of the receiving State, might be to transfer the phrase "and to perform particular acts on behalf of the mission" from paragraph 2 to the end of the first sentence in paragraph 1. It seemed to him that the words "particular acts" could be taken to mean activities which were not, strictly speaking, diplomatic, such as statements to the Press.

17. The CHAIRMAN, speaking as a member of the Commission, said that there was no need to complicate paragraph 1, which related primarily to the head of a

special mission and persons authorized to act vis-à-vis the receiving State. If the question of a spokesman was to be covered at all it should be in paragraph 2.

18. Paragraph 2 was unduly restrictive, and in the English text the word "and" would confine the authority to performing a particular act on behalf of the mission to cases when the head of the mission had been replaced. The French text was less awkward. If the word "or" were substituted, instances of special authority, for example to act as spokesman—who in most cases would have to act under the control of the head of the mission if there was one—would be covered.

19. Mr. BARTOŠ, Special Rapporteur, said that the Commission had to lay down a rule stating the conditions under which communications took place between the two States, with the special mission representing one sovereign State vis-à-vis another sovereign State. Under article 7 it was "normally" the head of the special mission who acted on behalf of the mission and sent communications to the receiving State, but in certain circumstances he could delegate his powers to a member of the mission. As the United States Government had pointed out, the sending State also had full liberty to change the head of the special mission, provided that it so notified the receiving State in advance.

20. There were international customs which prescribed the conditions in which the head of the special mission could be replaced, either by decision of the sending State or by his delegating powers to particular members. In special missions of particular importance, the head of the mission negotiated at the highest level and did not concern himself with administrative or secondary questions; on occasion he tacitly delegated his authority to members of the mission, or even technical or subordinate staff, to act for him.

21. As Mr. Reuter had pointed out, the "public relations" of the special mission presented an increasing problem, for statements made to the Press sometimes had implications concerning the attitude of the sending State. The question arose, therefore, whether the spokesman should be regarded as a mere technical official or as a member of the special mission authorized to make political statements. Receiving States had sometimes lodged protests on the ground that a spokesman could not make a public statement in the course of negotiations unless the receiving State was notified beforehand. If the Commission wished to settle the point, he would help it to do so, though personally he did not see how there could be any rule other than one of courtesy.

22. If the Commission wished to give the special mission freedom to make statements to the Press, article 7 could be amended accordingly; if it was a question of official acts, Mr. Ramangasoavina's proposal could be adopted. The Commission should also specify whether the head of the special mission was to be the only person authorized to send official communications. Perhaps it should also provide, either in article 7, or in article 6, that a member of the special mission might be designated to act on behalf of the mission or to send communications to the receiving State. It was essential for the receiving State to be certain that a communication sent by a member of the special

mission duly committed the sending State within the limits of the powers it had conferred on the mission.

23. Mr. USTOR said that article 7 departed from the Vienna Convention, which was based on the idea that a permanent mission was an institution of the sending State and not merely the ambassador's suite. Under the system of the Convention, the members of a permanent mission could act on behalf of the sending State in their respective competences. According to article 7 of the present draft, only the head of a mission represented the sending State; its members were his substitutes and could only act on his authority. Thus, in that respect there was a substantial difference between the Vienna Convention on Diplomatic Relations and the draft articles on special missions.

24. Mr. BARTOŠ (Special Rapporteur) said that, in a permanent diplomatic mission, the ambassador or the *chargé d'affaires* was the only person authorized to conduct negotiations or to send official communications, whereas in a special mission the task was very often divided among the various members, and each member might be authorized to negotiate on certain specific points. Sometimes members of the special mission even visited different parts of the territory of the receiving State for fact-finding purposes and the conclusions they reached were regarded as valid by the special mission. In that respect, therefore, it was impossible to place the special mission on the same footing as the permanent diplomatic mission.

25. Mr. EUSTATHIADES said he thought the word "Similarly" in paragraph 1 was inappropriate. In view of the United States comment that the receiving State should be notified of a change of head of the special mission, he suggested that the following sentence be added at the end of paragraph 2: "The receiving State shall be notified accordingly".

26. The CHAIRMAN, summing up the discussion, said that the Commission appeared to be generally satisfied with the structure of article 7, though it felt that greater flexibility and precision on the lines indicated by the Special Rapporteur were needed. He suggested that the article be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*¹

ARTICLE 8 (Notification) [11]

27. *Article 8* [11]
Notification

1. The sending State shall notify the receiving State of:
 - (a) The composition of the special mission and of its staff, and any subsequent changes;
 - (b) The arrival and final departure of such persons and the termination of their functions with the mission;
 - (c) The arrival and final departure of any person accompanying the head or a member of the mission or a member of its staff;
 - (d) The engagement and discharge of persons residing in the receiving State as members of the mission or as private servants of the head or of a member of the mission or of a member of the mission's staff.

¹ For resumption of discussion, see 927th meeting, paras. 1-14.

2. If the special mission has already commenced its functions, the notifications referred to in the preceding paragraph may be communicated by the head of the special mission or by a member of the mission or of its staff designated by the head of the special mission.

28. The CHAIRMAN invited the Commission to consider article 8, the Special Rapporteur's proposals for which were contained in paragraph 17 of the section of his fourth report (A/CN.4/194/Add.1) dealing with that article and in his additional comments on article 8 in the supplements to his fourth report (A/CN.4/194/Add.3 and 5).

29. Mr. BARTOŠ, Special Rapporteur, said that article 8 was modelled, with some changes, on article 10 of the Vienna Convention on Diplomatic Relations. The Commission should take care not to confuse the notification procedure with the proposed information clause in article 3.

30. Several Governments had submitted comments. The Government of Israel had suggested some drafting changes which he recommended the Commission to refer to the Drafting Committee.

31. The Yugoslav Government had proposed that the Commission should mention that in some countries recruitment was in practice limited to auxiliary staff without diplomatic rank. He did not think such a statement should appear in the text of the article, although it might be included in the commentary.

32. The Japanese Government disagreed with paragraph (8) of the commentary, which described as "a sensible custom" the provisions of paragraph 2 to the effect that the special mission itself could communicate a notification direct to the receiving State. He left it to the Commission to reach a decision on that observation, which in his opinion was of no great importance; nevertheless, a special mission would face considerable difficulties if, from the scene of its operations, it had to apply to the embassy or the Ministry of Foreign Affairs every time it engaged or discharged someone.

33. The Chilean Government considered that notification was hardly necessary in the case of the persons referred to in paragraph 1 (*d*), unless they were to enjoy diplomatic privileges and immunities. He did not share that opinion; the international practice was that States should know what individuals were employed by foreign States, and they needed to be able to exercise some degree of supervision.

34. Mr. REUTER said he would like the Special Rapporteur to explain the connexions between article 8 and the other articles, and in particular, when and for what purpose notification must be given.

35. Mr. BARTOŠ, Special Rapporteur, said that the purpose of the notification procedure was to tell the receiving State the names of the members of the special mission and its staff who were in that State's territory. Some Governments furnished the members and staff of special missions with documents certifying their status as members of special missions, for use by them in claiming the facilities, privileges and immunities granted to them. That system made it easier for the receiving State to

protect the members of special missions and to afford them all the privileges and immunities due to them in that capacity. Every receiving State had the indisputable right to know whether a person in its territory was or was not a member of a special mission.

36. Mr. AGO said that the Drafting Committee would have to co-ordinate articles 8 and 3 and even article 6 with extreme care in order to ensure that the draft articles were consistent and readily intelligible. Prior notice was a separate matter from the notification which was addressed to the receiving State when the special mission arrived or was already in its territory, and which enabled the administrative authorities of the receiving State to apply to the members of the special mission the régime provided for in the draft articles.

37. The new paragraph 3 proposed by the Special Rapporteur in paragraph 17 (4) of his comments on the article (A/CN.4/194/Add.1) seemed to him superfluous; in his opinion, the Commission should avoid going into too much detail.

38. An error seemed to have been made in the French text of article 8, paragraph 2, where the word "*modifications*" ought apparently to be replaced by the word "*notifications*".

39. Mr. TAMMES said he agreed with Mr. Ago. It would be useful to distinguish between two kinds of notification. First, prior information on certain essential features of the special mission, without which no agreement between the parties would be possible; and secondly, certain changes which might occur in regard to its head, staff or size after its arrival in the receiving State. The first kind of notification formed part of the initial agreement, whereas the second had to do with the orderly functioning of the mission. It would be preferable to avoid using the word notification to describe the first kind.

40. Mr. CASTRÉN said that the text of article 8 was satisfactory on the whole, and the Special Rapporteur's suggestions for certain changes in the commentary were also acceptable. Whether a new paragraph 3 need be added, entitling States to depart from the provisions of the article by agreement, depended on what became of the general provision on the subject.

41. The only point which caused him any concern was the Belgian Government's proposal that the opening words of paragraph 1 should be amended to provide that the sending State should notify the receiving State in advance. For the reasons given by the Special Rapporteur in his comments, it hardly seemed appropriate to require notification in advance in all cases. Perhaps the Commission could adopt a fairly flexible wording along the lines of the Vienna Convention on Diplomatic Relations, such as, "The sending State shall so far as possible give such notification in advance". However, he had no fixed ideas on the subject.

42. Paragraph 2, in his opinion, was a useful provision and should be retained.

43. Mr. USHAKOV said that he too considered that article 8 should be brought into conformity with the outcome of the discussion on article 3. That would need

only some simple drafting changes. Paragraph 1 might be amended to read:

"In addition to receiving the communications provided for in article 3 on the composition of the special mission and of its staff, the receiving State shall be notified of:

"(a) Any subsequent change in the composition of the special mission and of its staff."

Sub-paragraphs (b), (c) and (d) would then follow unchanged.

44. There seemed to be some inconsistency between paragraph 1, which provided that the sending State should effect the notifications, and paragraph 2, which provided that notifications might be communicated by the head of the special mission. He therefore proposed that the Commission adopt the wording of article 10 of the Vienna Convention on Diplomatic Relations, which merely stated "The Ministry... shall be notified of", without specifying what organ was to effect the notifications.

45. Paragraph 2 might be drafted to read:

"The head of the special mission may authorize a member of the mission or of its staff to present the communications provided for in the preceding paragraph."

46. Mr. EUSTATHIADES said that several speakers had stressed the need for a link between articles 3 and 8; that need had already become evident during the discussion of article 3.

47. Of all the questions dealt with in the draft articles, that of the notifications prescribed in article 8 was one of the most important. Unlike most of the other draft articles, which laid down rules to which exceptions were permitted by special agreement, article 8 dealt with a subject for which reference would be made to the convention, because notification set in motion the machinery of the privileges, immunities and facilities to be accorded to the special mission. It was therefore important to redraft the article in a more precise form.

48. As matters stood at present, article 3 would refer to prior notice or information. In paragraph (4) (a) of the commentary to that article, it was stated that the consent of the receiving State could be given in the form of a visa or in the form of acceptance of the notice of the arrival of a specific person; the reference to the latter form anticipated the subject-matter of article 8. A little further on, in paragraph (4) (c) of the commentary to article 3, it was stated that in practice the person or persons who would form a special mission were specifically designated in the agreement concerning the sending and reception of the special mission. The question might be asked, therefore, whether that specific designation of the composition of the special mission, on the one hand, and the consent of the receiving State by acceptance of the notice, on the other, would not produce exactly the same result as was aimed at in article 8.

49. Paragraph (3) of the commentary to article 8 explained that notification usually took place in two stages. The first was the preliminary notice, which should contain brief information concerning the persons

designated and "should be remitted in good time"; the second was regular notification through the diplomatic channel. In his opinion, the preliminary notice was more relevant to article 3, and the condition expressed in the words "in good time" should be prescribed in that article.

50. Mr. Ushakov's proposal clearly showed that there was a close link between article 3 and article 8, paragraph 1 (a). Since the two articles dealt with closely connected matters, the Commission should perhaps bring them closer together in the draft. In what was now article 3 it could deal with everything relating to the composition of the special mission and of its staff, and keep for what was now article 8 matters relating to changes in that composition, to the arrival and departure of persons, and to the engagement and discharge of persons residing in the receiving State.

51. In the commentary, a sharp distinction should be drawn between the notification provided for in article 3, which was the first communication of the list of persons and was intended to give the receiving State an opportunity to react, and the notification provided for in article 8, which was designed to set in motion the machinery of privileges and immunities. If the first notification was accepted it became valid *ex nunc* and brought the privileges and immunities into effect.

52. Mr. ALBÓNICO said that his first impression had been that the notification mentioned in article 8 would constitute the performance of the duty to notify the composition of the mission, a duty which would be specified in article 3. It had since become clear that the notification covered by article 8 was different from the notification to be mentioned in article 3. Following that clarification, he had serious misgivings regarding the purpose, scope and effects of article 8 and the consequences of any failure to observe its provisions.

53. With regard to the purpose of article 8, he must point out that article 11 specified that the "functions of a special mission shall commence as soon as that mission enters into official contact with the appropriate organs of the receiving State". Article 11 also specified that the commencement of the mission's functions would not depend upon the submission of credentials; it would therefore seem to follow that those functions would commence with the notification mentioned in article 8. The members of the special mission would thus enjoy their privileges and immunities only from the date of that notification.

54. If that was to be the effect of article 8, its provisions would be at variance with those of the 1928 Havana Convention regarding Diplomatic Officers, which had been ratified by no less than fifteen Latin American States. Under article 22 of that Convention,² diplomatic officers enjoyed their immunities "from the moment they pass the frontier of the State where they are going to serve and make known their position". The same article specified that those immunities continued to be enjoyed

² Reprinted in *United Nations Legislative Series*, vol. VII, Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities, New York, 1958, p. 421.

even after the mission was terminated, for the time necessary for the diplomatic officers to withdraw.

55. Thus, the Havana Convention did not require notification; diplomatic officers enjoyed the privileges and immunities specified in that Convention regardless of such notification, by the mere fact of their presence in the receiving State being made known.

56. Apart from article 11, there were a number of other provisions in the draft with which it was necessary to co-ordinate those of article 8. For example, the provisions on notification should apply when a member of the special mission was authorized to perform particular acts on behalf of the mission under paragraph 2 of article 7.

57. With regard to paragraph 2 of article 13 on the possibility of a special mission having more than one seat, it would be useful to require that the receiving State must be notified of the place where the mission would carry out its functions.

58. The scope of article 8 was thus not altogether clear and the article moreover contained no provisions concerning its effects; in particular, there was no indication of the consequences of non-observance of its provisions. The question arose whether the failure to make the notification required under article 8 would give the receiving State the right to refuse to recognize the special mission, or to extend privileges and immunities to its members.

59. Mr. BARTOŠ, Special Rapporteur, said that the purpose of article 8 was, first, to safeguard the security of the receiving State, which had the right to know what persons were coming to its territory with the special mission, and secondly, to give the persons composing the special mission the assurance that their presence was known to the receiving State and that they would accordingly receive the protection and facilities to which they were entitled.

60. It was true that, as a consequence of the discussion on article 3 at the present session, the Commission proposed to introduce a new idea into that article, namely, that of a preliminary notice stating the composition of the special mission before it was sent. In practice, however, not all the persons on the preliminary list would actually be sent to the territory of the receiving State, or would all arrive at the same time. On some occasions the head of the special mission and its highest-ranking members arrived only after some time had elapsed, during which the less important members had held preparatory negotiations. Very often, too, the sending State sent experts on various matters one after another, as the special mission took up their respective subjects. In all those cases the receiving State was entitled to know what persons had actually arrived, and it needed to know that in order to accord them the appropriate treatment.

61. Article 8, therefore, was not a repetition of what would be covered in article 3. Article 3 would require preliminary notice of the total composition of the special mission, while article 8 required notification of the actual arrival of the persons concerned. Under Mr. Ushakov's proposal, the notification prescribed in article 8, paragraph 1 (a), would apply only to a change in the composition of the special mission. For the reasons he had just

stated, he considered it necessary that article 8 should require notification of the actual arrival of the persons named in the list communicated in the preliminary notice.

62. With regard to paragraph 2, the reply to Mr. Ushakov's comment was that, in the circumstances described, the head of the special mission acted as an organ of the State. Normally the organ of the State was the sending State's permanent diplomatic mission in the receiving State. In practice, however, special missions were in direct contact with each other. Moreover, there were special missions between States which had no diplomatic relations or which did not recognize each other; in such cases notification would be impossible if, as several Governments had suggested, it were made a condition that the notification should always be given through the diplomatic channel. The Commission should therefore think hard before deleting paragraph 2.

63. Finally, it should be remembered that article 8 instituted an arrangement which could be modified by agreement between States. In his opinion, the article could be referred to the Drafting Committee.

64. The CHAIRMAN said that the discussion had shown a general desire to invite the Drafting Committee to co-ordinate the provisions of article 8 with those of other articles, in particular articles 1, 3 and 11. He himself would add article 37, on the duration of privileges and immunities, an article which expressly referred to notification.

65. He therefore suggested that article 8 be referred to the Drafting Committee for consideration in the light of the discussion, with the particular instruction to pay close attention to problems of co-ordination with other articles of the draft.

*It was so agreed.*³

ARTICLES 9 (General rules concerning precedence) [16, paras. 1 and 3] and 10 (Precedence among special ceremonial and formal missions) [16, para. 2].

66. *Article 9* [16, paras. 1 and 3]
General rules concerning precedence

1. Except as otherwise agreed, where two or more special missions meet in order to carry out a common task, precedence among the heads of the special missions shall be determined by alphabetical order of the names of the States.

2. The precedence of the members and the staff of the special mission shall be notified to the appropriate authority of the receiving State.

67. *Article 10* [16, para. 2]
Precedence among special ceremonial and formal missions

Precedence among two or more special missions which meet on a ceremonial or formal occasion shall be governed by the protocol in force in the receiving State.

68. The CHAIRMAN invited the Commission to consider the interrelated articles 9 and 10, the Special Rapporteur's proposals for which were contained in

³ For resumption of discussion, see 927th meeting, paras. 15-33.

paragraph 34 of the section dealing with article 9 in his fourth report (A/CN.4/194/Add.1), and in paragraph 11 of the section dealing with article 10. His additional comments on article 9 would be found in the supplements to his fourth report (A/CN.4/194/Add.3 and 5) and his additional comments on article 10 in document A/CN.4/194/Add.3.

69. Mr. BARTOŠ, Special Rapporteur, said that article 9 did not raise any very serious problems. As between special missions representing States which were by definition equal, questions of precedence should be settled by an objective criterion; the only criterion the Commission had been able to propose was that of the alphabetical order of the names of the States, and it had seen no need to go into further detail.

70. The comments of Governments related mainly to the question of the alphabetical order. The Belgian Government wished the alphabetical order to be determined in conformity with the protocol in force in the receiving State. The Government of Israel proposed that precedence should be determined by the alphabetical order of the names of the States concerned. The Yugoslav Government proposed that the alphabetical order should be the one in use in the receiving State or, failing that, the method used by the United Nations. The Austrian Government merely expressed the wish that the Commission should specify in what language the alphabetical order was to be determined. The Chilean Government proposed the alphabetical order in the language of the receiving State. Lastly, the Netherlands Government proposed that articles 9 and 10 should be combined.

71. In its earlier discussions⁴ the Commission had not been able to settle the question of the alphabetical order. Some members had pointed out that the very name of certain countries varied from the protocol of one State to that of another. The matter was complicated if special missions met in a third State. It was, of course, out of the question to apply the criterion used in the Vienna Convention on Diplomatic Relations, namely, the date of the presentation of credentials.

72. He himself, in principle, favoured alphabetical order as a criterion and would prefer that it should, if possible, be the alphabetical order used by the United Nations. He did not believe, however, that the Commission need propose a rigid and uniform rule. He would leave it to the Commission to decide the matter.

73. Mr. AGO said he doubted the value of laying down, in the draft articles, a rigid rule from which practice was bound to differ. The rule would be appropriate if all missions had the same composition, but that was often not the case. For example, special missions from the States of the European Economic Community were to meet at Rome in a few days' time, on the occasion of the anniversary of the Treaty of Rome. If each of those missions were led by the Head of State, it would be possible to draw up a list of precedence in the alphabetical order of the names of the States. But it was inconceivable that a mission led by a Minister should take precedence

over a mission led by a Head of State, solely because the former represented a country whose initial letter came earlier in the alphabet. He therefore thought it would be better to leave individual cases to be settled by protocol as they arose.

74. Mr. YASSEEN said that the example quoted by Mr. Ago showed how hard the problem was to solve. It was sometimes agreed that the heads of all special missions should be on an equal footing in matters other than those of protocol. For example, at the Conferences of Heads of State or Government of Non-Aligned Countries held at Belgrade and Cairo, the head of each delegation, whether Emperor or Minister, had presided in turn. Deleting article 9 would not solve the problem. He hoped the Commission would make a fresh effort to find a more reliable criterion.

75. Mr. BARTOŠ, Special Rapporteur, pointed out that article 9 dealt with special missions with full competence, whereas article 10 dealt with special missions of a ceremonial or formal character. Mr. Ago's example would be more relevant to article 10.

76. It might perhaps be desirable to combine the two articles, although article 9 was based on the sovereign equality of States as recognized in the Charter, whereas article 10 was based on international custom and tradition, which sometimes survived changes of régime.

77. In his opinion, it would be preferable to mention the criterion of alphabetical order, but without specifying any particular language or alphabet.

The meeting rose at 1 p.m.

906th MEETING

Wednesday, 24 May 1967, at 10 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Albónico, Mr. Bartoš, Mr. Castañeda, 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]

ARTICLES 9 (General rules concerning precedence) [16, paras. 1 and 3] and 10 (Precedence among special ceremonial and formal missions) [16, para. 2] (continued)¹

⁴ See *Yearbook of the International Law Commission, 1964*, vol. I, 762nd meeting, paras. 25-63.

¹ See 905th meeting, paras. 66 and 67.