

Document:-  
**A/CN.4/SR.908**

**Summary record of the 908th meeting**

Topic:  
**Special missions**

Extract from the Yearbook of the International Law Commission:-  
**1967, vol. I**

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77. Paragraph 2, especially its final words, stated a very useful rule. The situation in question was quite exceptional: it involved nothing less than the loyalty of the individual towards the State of which he was a national. Such a situation was only acceptable if both the individual and that State enjoyed full guarantees. Even if the receiving State consented initially, it must always be entitled to prevent one of its own nationals from confronting it in the special mission of a foreign State.

78. Deletion of the final words would suggest that the consent of the receiving State, once given, could not be withdrawn. It had been said that the receiving State could declare a person *non grata*. In his view such a declaration, the principal consequence of which was departure from the State's territory, could only apply to an alien. In the present state of the law such a measure did not seem applicable to a national of the receiving State.

79. Paragraph 3 was indispensable. The fact that a special mission included a national of a third State might have unfortunate results, for example if grave tension existed or a serious dispute arose between the third State and the receiving State. The receiving State had to be able to object to such a situation. Moreover, under paragraph 1 the receiving State would normally expect to negotiate with a special mission consisting solely of nationals of the sending State.

80. Mr. BARTOŠ (Special Rapporteur) said he thought that the general rule stated in paragraph 1 should be at least as strict as the corresponding rule in the Vienna Convention on Diplomatic Relations, because special missions sometimes handled very delicate questions. The more fully he recognized the unwisdom of extending the requirement of the sending State's nationality to the entire staff of a special mission, the more necessary he found it to retain that requirement for diplomatic staff.

81. The rule contained in paragraph 2, particularly its final words, had been discussed at length at the Vienna Conference on Diplomatic Intercourse and Immunities. The opinion had finally prevailed that the presence in the mission of nationals of the receiving State might be harmful to relations between that State and the sending State. In the draft articles the rule would only apply to persons of high rank: the head and members of the mission and diplomatic staff. Questions concerning the rest of the staff were dealt with in articles 34 and 36 of the draft.

82. With regard to paragraph 3, it should be noted that if a person had the dual nationality of the sending State and the third State he would be regarded as a national of the sending State, and therefore the rule would not apply. The Vienna Conference had recognized that, if relations between the receiving State and the third State deteriorated, the presence of a national of the third State might be detrimental to relations between the sending State and the receiving State. But some countries lacked qualified staff and had to call on foreigners to make up their special missions. For that reason, although the practice had been authorized, it had been thought necessary for the receiving State to be able to exercise some control and to enjoy the same rights with regard to such persons as to its own nationals.

83. He would like to see the wording of the Vienna Convention retained in the article, because then the Commission could not be reproached for trying to innovate.

84. He urged that article 14 be retained without change, subject to the amendment to paragraph 1 proposed by the Chilean Government, which he had already accepted, and to review by the Drafting Committee.

85. The CHAIRMAN, summing up the discussion, said it seemed to be generally agreed that there should be no departure from the rules embodied in the Vienna Conventions without most substantial reasons. Most members felt that paragraph 2 should be maintained in its entirety. As for paragraph 3, it was equally necessary to retain it, in order to avoid the implication that the receiving State would not have the right in question where nationals of a third State were concerned. The provisions of paragraph 3 were not unduly rigid, since they merely specified that the receiving State "may reserve" the right provided for in paragraph 2 with regard to nationals of a third State.

86. He suggested that article 14 be referred to the Drafting Committee for consideration in the light of the discussion and for incorporation of the Chilean Government's proposal, bearing in mind the definition of special missions as far as the wording of paragraph 1 was concerned.

*It was so agreed.*<sup>4</sup>

The meeting rose at 1 p.m.

<sup>4</sup> For resumption of discussion, see 929th meeting, paras. 36-50.

## 908th MEETING

*Friday, 26 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. Jiménez de Aréchaga, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Tammes, Mr. Tsu-ruoka, 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 15 (Right of special missions to use the flag and emblem of the sending State) [19]

1. *Article 15* [19]

*Right of special missions to use the flag and emblem of the sending State*

A special mission shall have the right to display the flag and emblem of the sending State on the premises of the mission, on the residence of the head of the mission and on the means of transport of the mission.

2. The CHAIRMAN invited the Commission to consider article 15, the Special Rapporteur's proposals for which were contained in paragraph 13 of the section dealing with that article in his fourth report (A/CN.4/194/Add.1) and his additional comments on article 15 in document A/CN.4/194/Add.3.

3. Mr. BARTOŠ, Special Rapporteur, said that article 15 was based on article 20 of the Vienna Convention on Diplomatic Relations. Whether the proposed rule was necessary for all special missions was, however, open to question. In his opinion it was necessary for political missions, particularly those at a high level, and for certain technical missions, especially when they had to deal with frontier questions, to travel by ship or boat, or to participate in ceremonial occasions. It must be admitted, however, that some special missions had no need to fly their flag or to display their national emblem.

4. A further question was whether article 15 should be placed in part I of the draft, where it was now, or whether the right to display the flag should be regarded as a privilege or a facility for the performance of the special mission's tasks, in which case the article should be placed in part II. There was something to be said for both courses, and he left it to the Drafting Committee to suggest the right place for the article.

5. The Belgian Government suggested, with regard to the use of the flag and emblem on means of transport, that the rule should be brought more closely into line with article 20 of the Vienna Convention, and that the right to display the flag and emblem should be restricted to the means of transport of the head of the mission. In his view, what was appropriate for diplomatic missions, where the main consideration was protocol, might not be sufficient for special missions, for they might wish the public to know of their presence; furthermore the use of the flag might help the receiving State in protecting the special mission.

6. The Netherlands Government proposed two changes. The first was that the proviso "Except as otherwise agreed" should be inserted at the beginning of the article. He could accept that proposal, for the rule stated was one to which exceptions were permitted by agreement. The sending State was entitled *ex jure* to use its flag and emblem, but it did not surrender its sovereign rights if, pursuant to an agreement with the receiving State, it refrained from such use.

7. He could also accept the Netherlands Government's second proposal, namely, that the phrase "when used on official business" should be added at the end of the article. That proviso, taken from article 29, paragraph 2, of the Vienna Convention on Consular Relations, would be justified in the case of special missions.

8. Mr. USTOR said he noted that in his comments on article 15 in his fourth report (A/CN.4/194/Add.1), the Special Rapporteur stated: "During the discussion in the Sixth Committee of the General Assembly, the Hungarian representative expressed the view that there was no need to retain draft article 15, which should be regarded as an instance of the rule that special missions are required to comply with the laws and regulations of the receiving State."

9. That sentence did not accurately reflect the remarks which he had made as Hungarian representative in the Sixth Committee on that occasion, and which had been well summarized in the summary record of the 843rd meeting of the Sixth Committee as follows:

"The right granted under article 15 to use the flag and emblem of the sending State on the means of transport of the mission was more extensive than the right granted under article 20 of the 1961 Vienna Convention on Diplomatic Relations, and that might not be generally justified.

"As regards paragraph (2) of the commentary on article 15, he proposed a solution along the lines of article 29, paragraph 3 of the 1963 Vienna Convention on Consular Relations which subjected the right to use the flag and emblem of the sending State to the laws, regulations and usages of the receiving State. It went without saying that the local restrictions should not be discriminatory and should not nullify the aforementioned right"<sup>1</sup>

10. The sole purpose of his statement was to place the necessary clarification on record.

11. Mr. BARTOŠ, Special Rapporteur, said that it would be very dangerous to leave it open to the receiving State to authorize, or refuse to authorize, a sovereign State to use its flag and emblem.

12. Mr. CASTRÉN said that his impression was, first, that article 15 stated a rule from which the States concerned could derogate by agreement, and secondly that the article could remain where it was; but he would not go into those two questions for the time being.

13. Of the proposals submitted by Governments, the only one he thought the Commission need consider was the Netherlands Government's second proposal, to add the phrase "when used on official business" at the end of the article. Generally speaking, special missions should be treated as consular posts rather than as permanent missions so far as the use of the flag and emblem was concerned. A high-level special mission, however, might require different treatment.

14. Mr. RAMANGASOAVINA said that article 15 presented some minor problems. As the text stood, a special mission had the right to display the flag and emblem of the sending State on the premises of the mission, on the residence of the head of the mission and on the vehicles it used. He feared that right might be abused in the case of the mission's vehicles, and he therefore supported the Netherlands Government's proposal that the flag should be displayed on the means of transport only when the latter was being used on official business. It was true that circumstances sometimes made it appropriate to display the flag on a special mission's means of transport in order to give it prestige or a ceremonial character, but it would be a mistake to try to bring draft article 15 exactly into line with article 20 of the Vienna Convention on Diplomatic Relations.

<sup>1</sup> Official Records of the General Assembly, Twentieth Session, Sixth Committee, 843rd meeting, paras. 38 and 39.

15. The function of the permanent mission was to ensure that a nation was continuously represented, a principle which had engendered the controversial notion of extra-territoriality; but that did not apply to a special mission, which was of limited duration and which might take any of several forms. A high-level special mission naturally involved some ceremony, but there were many special missions of a more modest nature which on occasion, for reasons of safety, might even have to refrain from displaying a flag on their means of transport, for example when travelling in a disturbed area. The display of a flag or an emblem, therefore, depended on what was fitting at the time and on local conditions. Consequently, the agreement on that question should be made after, and not before, the special mission reached its destination.
16. He supported both the Netherlands Government's proposals, with some slight changes, and suggested that the article read: "With the agreement of the Government, a special mission may display the flag and emblem of the sending State... and on the means of transport of the mission when used on official business".
17. Mr. USHAKOV said he agreed with Mr. Raman-gasoavina. Indeed, not only was it unnecessary to display an emblem or a flag on the premises of the mission, but there was often no need for official premises at all. Many missions simply stayed at a hotel, where the display of the flag or emblem of the sending State would obviously be out of place.
18. The matter was one of privileges, not of immunities, and it was quite natural that different missions should enjoy different privileges. Little purpose would be served by displaying the flag or emblem of the sending State on the premises or vehicles of, say, a veterinary mission. In any event, the question was subject to the rules of international law and to the laws of the receiving State. Thus the USSR proposed to extend to special missions, subject to reciprocity, all the privileges and immunities accorded to permanent diplomatic missions.
19. He suggested that article 15 should open with the wording: "In conformity with the laws and regulations of the receiving State, a special mission may display...".
20. Mr. BARTOŠ, Special Rapporteur, said that the two Vienna Conventions forbade individual States to lay down rules on privileges and immunities that conflicted with the rules of international law on the subject, since domestic rules must take account of the privileges and immunities prescribed by the rules of international law. Any country could establish rules for domestic use concerning privileges and immunities, but they were not for external use and were not applicable to embassies or legations. Moreover, under article 41 of the Vienna Convention on Diplomatic Relations, the receiving State was required not to prejudice the privileges and immunities conferred on the representatives of countries by the rules of international law. It could enact legislation relating to the application of those rules to domestic organs, but it was forbidden to restrict the field of application or the extent of the privileges and immunities prescribed by the rules of international law. Where rules were for external use, international conventions or custom must be applied.
21. Mr. USHAKOV said that USSR legislation on the privileges and immunities accorded to permanent diplomatic missions was wholly based on the provisions of the Vienna Convention. He had merely mentioned certain domestic rules, such as that which—again in conformity with the Vienna Convention—provided that only the head of the mission could display a flag on his vehicle. Other countries conferred that right on all members of the mission.
22. The USSR had not yet prepared legislation on special missions, but it could perfectly well extend to them the privileges and immunities of permanent diplomatic missions on a basis of reciprocity, without in any way infringing the existing rules of international law.
23. The CHAIRMAN said that there was no need at the present juncture to engage in a discussion on the compulsory nature of article 15 or on the possibility of departing by agreement or unilaterally from the rules it embodied; the Commission would have to examine that question in a more general context at a later stage of its discussions.
24. As far as the contents of article 15 were concerned, the Commission should consider whether it wished to retain an article which was modelled on the corresponding provisions of the two Vienna Conventions.
25. Mr. YASSEEN said that, in his opinion, article 15 did not raise any serious problems; the rule it proposed could do no harm whatever and might even be useful in some cases.
26. The article was worded in such a way as to cover all contingencies and to obviate many difficulties. In particular, it imposed no obligation on the special mission to display the national flag or emblem if it preferred for some reason or other to go unnoticed.
27. Article 15 did not lay down any rule of *jus cogens*; States might agree that a special mission should not display the flag or emblem of the sending State. In the absence of such agreement, the special mission had a right to use that flag and emblem on its premises, if any, on the residence of its head, and on its means of transport, especially when used on official business. He therefore accepted the second proposal by the Netherlands Government.
28. On the other hand, the first amendment submitted by that Government did not seem essential. The Commission would be considering at a later stage the problem of the relative standing of the rules laid down in the draft articles, and there was no need to specify in article 15 that the rule stated there was subject to exceptions.
29. He had no preference with regard to the position of the article, which could be referred to the Drafting Committee.
30. The CHAIRMAN asked the Special Rapporteur whether there was any reason for allowing the sending State's flag to be used more freely on the means of transport than under article 20 of the Vienna Convention on Diplomatic Relations.
31. Mr. AGO said he recalled that the Commission intended to provide for the hypothetical case where a special mission had no head.

32. Mr. BARTOŠ, Special Rapporteur, in reply to the Chairman, said that the reason why article 15 was so worded was that, apart from the head of the special mission, other persons belonging to the mission might need to travel on official business. The restriction imposed by the Netherlands Government's second proposal seemed sufficient.

33. He still thought that Mr. Ushakov's proposal, making the use of the flag and emblem by the special mission subject to the laws of the receiving State, would be a source of difficulties and disputes. But to meet Mr. Ushakov, he proposed that an additional paragraph should be included in the article, modelled on article 29, paragraph 3, of the Vienna Convention on Consular Relations and reading:

"In the exercise of the right accorded by this article, regard shall be had to the laws, regulations and usages of the receiving State."

34. The CHAIRMAN noted that there was considerable support for the second proposal by the Netherlands Government to introduce the words "when used on official business".

35. He also noted the Special Rapporteur's suggestion to deal with the point raised by Mr. Ushakov by introducing a provision similar to paragraph 3 of article 29 of the 1963 Vienna Convention on Consular Relations.

36. In the commentary, the Special Rapporteur would no doubt explain why the use of the flag was being extended to the means of transport of persons other than the head of the special mission.

37. He suggested that article 15 be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*<sup>2</sup>

ARTICLE 16 (Activities of special missions in the territory of a third State) [18]

38. *Article 16* [18]  
*Activities of special missions in the territory of a third State*

1. Special missions may not perform their functions in the territory of a third State without its consent.

2. The third State may impose conditions which must be observed by the sending State.

39. The CHAIRMAN invited the Commission to consider article 16, the Special Rapporteur's proposals for which were contained in paragraph 16 of the section on that article in his fourth report (A/CN.4/194/Add.1) and in his additional comments on article 16 in document A/CN.4/194/Add.3.

40. Mr. BARTOŠ, Special Rapporteur, said that the Commission had added paragraph 2 to article 16 only after very full discussion.<sup>3</sup> It had also thought of specifying that the third State, after giving its consent, might withdraw it, but in the end had thought it sufficient to express that idea in the commentary, on the grounds that

third States should not be encouraged to give their consent lightly and then withdraw it.

41. Governments had given close attention to the question of possible withdrawal of the third State's consent. The Governments of Belgium (A/CN.4/188), Chile (A/CN.4/193/Add.1), Israel (A/CN.4/188), and the United States (A/CN.4/193) in their written comments, and the Hungarian delegation in the Sixth Committee,<sup>4</sup> had proposed that a provision should be added authorizing the third State to withdraw its consent. He recommended that that proposal be adapted and that a paragraph 3 be accordingly added providing that the third State might withdraw its consent at any time and without being obliged to give any reasons for its decision.

42. The Japanese Government (A/CN.4/188/Add.4) had raised two questions. First, whether the third State, once it had given its consent, had the rights and assumed the obligations of the receiving State under the draft. The addition of a paragraph 3, along the lines he had indicated, would make it easier to answer that question. In his opinion a consenting third State was not in exactly the same position as a receiving State. When consent had been given, and until it was withdrawn, the third State was bound to apply the rules of hospitality.

43. Secondly, the Japanese Government pointed out that, if the definition of a special mission in article 1 were adopted, special missions which were engaged in activities exclusively in the third State might not come within the definition of "special mission". In his own view, unless there was a special agreement, missions which did not conform to the definition given in article 1 were not "special missions" within the meaning of the draft articles; they were missions called upon to work in the territory of a third State, and that State was not, with regard to those missions, in the position of a receiving State within the meaning of the draft articles.

44. The Commission might deal with those two questions in the commentary.

45. Mr. TAMMES said that article 16 constituted a special application of the rule of general international law that one State could not perform sovereign acts in the territory of another without the latter State's consent. The discretionary right of the latter State to refuse that consent logically implied the right to attach conditions to that consent when given. The provisions of article 16 thus appeared as a restatement of existing law. The legal consequence was that the rule expressed in article 16 would apply whether the third State ratified the future convention on special missions or not.

46. However, the commentary to article 16 suggested that the article contained more than a restatement of existing law. The second sentence of paragraph (6) of that commentary implied that, for the duration of the special mission, the third State could not impose conditions other than those which it had initially laid down when giving its consent to the special mission's operations in its territory.

<sup>2</sup> For resumption of discussion, see 929th meeting, paras. 51-61.

<sup>3</sup> See *Yearbook of the International Law Commission, 1964*, vol. I, 763rd meeting, paras. 52-82, and 770th meeting, para. 8.

<sup>4</sup> *Official Records of the General Assembly, Twentieth Session, Sixth Committee, 843rd meeting, para. 40.*

47. Such an interpretation would not be consistent with the right recognized to the third State to withdraw its hospitality at any moment. That interpretation would also be inconsistent with the rights of a receiving State generally under the draft articles.

48. To illustrate his point, he would take the example of a conference of special missions to deal with an important political subject, held in the territory of a third State. In the event of wide publicity being given to the activities in question, as a result, for instance, of members' press conferences, the host country could easily be embarrassed. And clearly, the host country's position must be protected.

49. He therefore suggested that, in order to meet that point, article 16 be reworded on some such lines as:

"A third State which gives its consent to the performance of the functions of a special mission in its territory may at any time withdraw its consent or attach conditions thereto."

50. Mr. KEARNEY said that the question whether or not the third State had to assume the obligations imposed by the convention on the receiving State was an important one and could not be relegated to the commentary. If the answer was in the affirmative, as he thought it should be, the appropriate provision would need to be included in the article itself.

51. Mr. USHAKOV observed that article 16 in its present form raised problems of interpretation; that applied particularly to the term "third State". Did it mean a State which gave hospitality to special missions of other States so as to enable them to negotiate with each other? The USSR had been in that position when the delegations of India and Pakistan had met at Tashkent. He was inclined to think that in such a case the third State was really a receiving State. It had been suggested in connexion with another article that the reference to the receiving State should be replaced by a reference to the State in which missions met.

52. However, article 16 could also be understood to apply to the case where, for example, a special mission established to negotiate with two or more countries intended to perform its task in a country other than those with which it was to negotiate. The article therefore needed clearer drafting.

53. Mr. CASTRÉN said that he could accept the proposals put forward by several Governments for the addition to article 16 of an express provision authorizing a third State to withdraw its consent. In his opinion, however, the wording proposed by the Government of Israel went into too much detail; all that was needed was to add at the end of paragraph 1 the final words of article 14, paragraph 2, "which may be withdrawn at any time".

54. The remainder of the wording proposed by the Government of Israel could appear in the commentary, together with the Special Rapporteur's replies to the comments by the Japanese Government (A/CN.4/194/Add.3).

55. Mr. EUSTATHIADES said that article 16 was a useful provision, designed to facilitate contacts between

sending States by enabling them to dispatch special missions to the territory of a third State.

56. Paragraph 1 provided that "Special missions may not perform their functions in the territory of a third State without its consent". According to paragraph (3) of the commentary, however, the "formal consent" of that State was not necessary, while according to paragraph (4), "the prior approval of the third State is often simply a matter of taking note of the intention", and "If the third State makes no objection to the notification... approval is considered to have been given". The point was whether prior consent should be required or whether mere absence of objection—or tacit consent—was sufficient. In his opinion the consent should be express; if the Commission did not share that opinion it should state in the text of the article—and not in the commentary—that special missions might perform their functions in the territory of a third State provided that State did not object.

57. Some Governments had referred to the freedom of the third State to withdraw its consent at any time. In his view, when the third State agreed to receive special missions in its territory it was acquainted with the functions they were to perform; the Commission should not emphasize that acknowledged freedom of the third State in the text of the article, lest it hamper the activities of the special missions. Exceptional circumstances could, of course, arise and if the Commission wished to mention withdrawal of consent in the text, the phrase "in wholly exceptional cases" should be added.

58. The problem of applying the system of privileges and immunities to special missions performing their functions in the territory of a third State had been raised by the Belgian Government and by the Japanese Government. If the special missions were dispatched by States signatories of the convention and the third State was also a party to the convention, the problem did not arise; but if any one of those three States had not ratified the convention, there was no assurance that a special agreement would be concluded. The Commission might mention that problem in the commentary.

59. Mr. JIMÉNEZ de ARÉCHAGA said that according to the commentary the approval of the third State might be expressed by taking note of an oral notification of the intention to send a special mission to its territory, no time limit being established for inferring acceptance. It was not surprising that the reference to the obligations of the third State in the commentary had aroused concern among Governments, a number of which wished to reinsert certain safeguards in the text of the article.

60. The Belgian Government's proposal to insist on the need to obtain the prior consent of the third State was justified, as was the United States Government's proposal that it should be "express" consent. He agreed with the limitation in the Government of Israel's proposal that the consent could be conditional and that it could be withdrawn without any reason being given.

61. As to whether the provisions of the convention applied to the third State, a question that had been raised

by the Belgian and Japanese Governments, that depended upon whether the third State gave its consent and was willing to extend either all or some of the privileges provided for in the draft articles.

62. If all those limitations were inserted, the question arose as to whether article 16 should be retained or whether the matter could be left to be regulated on an *ad hoc* basis by the States concerned.

63. Mr. BARTOŠ, Special Rapporteur, suggested that the Commission should specify in the article that the rights and obligations of the third State towards special missions performing their functions in its territory would be those of a receiving State. If that point was made only in the commentary it might be virtually ignored because, although the authorities responsible for implementing a convention knew the text, they were often unfamiliar with the commentary.

64. Mr. CASTAÑEDA said he agreed with the Special Rapporteur that the legal position of the third State should be made clear as well as whether the régime of the draft articles applied to it, and whether the fact of its giving consent automatically made it subject to the draft articles. He would have thought it was necessary to provide that once a third State had given its consent for a special mission to operate in its territory, it would have to observe the provisions of the draft articles. He doubted whether it was necessary to require that consent be "express".

65. Mr. YASSEEN said it was questionable whether the convention would apply to a State which was genuinely a third State and in whose territory special missions performed their functions. In his opinion the Commission could not place a third State on exactly the same footing as a receiving State until it had examined the problem in greater detail.

66. Mr. AGO said he agreed with Mr. Yasseen. The Commission could not expect to impose on a third State all the obligations of a receiving State. A somewhat similar problem had arisen during the drafting of the Vienna Convention on Diplomatic Relations, in connexion with the passage of a diplomat through the territory of a third State. The problem facing the Commission was different, in that special missions might remain in the territory of the third State for some time. The Commission should examine the full consequences of that situation.

67. Mr. CASTRÉN said that, unless the third State imposed conditions as provided for in paragraph 2, it would be regarded as a receiving State. Perhaps the Commission might specify in the article that, except as otherwise agreed, the third State might impose conditions which must be observed by sending States.

68. Mr. USTOR said that if a third State was not a party to the convention, the provisions of the convention would not be binding on it, except if they embodied general rules of international law. Those provisions which constituted progressive development would only be binding on the parties.

69. Mr. EUSTATHIADES said he feared that the term "third State" might be taken to mean a State not a party to the convention. He would therefore prefer some such wording as: "... in a territory other than that of the States sending the special missions". But, although that wording would be clearer, it would not resolve the question of substance, namely that of the régime to be applied. The Commission should therefore consider whether it should not further clarify the matter by going into greater detail either in the commentary or in the article itself.

70. Mr. AGO said he did not think Mr. Eustathiades's suggestion would solve the problem. Obviously, if the third State had not ratified the convention, it was in any case only required to apply the provisions of the convention to the extent that they corresponded to the customary rules of international law. But even if the third State had ratified the convention, it could not be considered bound to treat special missions as though they were special missions sent to itself. In any event, the problem was too complex for the Commission to solve before the end of the meeting; it would have to examine the draft articles as a whole and decide which of their provisions it could apply to a third State.

71. Mr. YASSEEN said that the Commission might ask the Special Rapporteur to reconsider the problem and let it have his conclusions.

72. Mr. USTOR said he entirely agreed with Mr. Yasseen; article 16 needed to be given more substance.

73. Mr. TSURUOKA said he did not think the Commission should depart from the text of article 16. A third State which consented to receive special missions in its territory thereby accepted certain obligations, and there was every reason to suppose that it would take all necessary measures to enable the special missions to perform their functions in its territory without undue impediment.

74. Mr. BARTOŠ, Special Rapporteur, said that the expression "third State" was used in the Vienna Conventions and no one had felt any need to define it; it had been in current use in international law for more than a century. In private law the analogous expression "third party" denoted a person who was not a party to a juridical relationship but who might in certain cases have certain rights and obligations by virtue of that relationship.

75. The Commission could leave it to the sending State and the third State to define by agreement the conditions under which special missions would perform their functions in the territory of the third State; failing agreement, the customary rules of international law would apply. He agreed, however, that the problem merited more detailed study and, if the Commission so desired, he was prepared to submit a specific report on the subject at its next meeting.

76. The CHAIRMAN suggested that further discussion of article 16 be postponed until the next meeting.

*It was so agreed.*

### Appointment of Drafting Committee

77. The CHAIRMAN said that the Commission's officers proposed that the Drafting Committee should consist of the two Vice-Chairmen, Mr. Ruda and Mr. Ustor; the General Rapporteur, Mr. El-Erian; the Special Rapporteurs, Mr. Bartoš and Mr. Ago; Mr. Albónico, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ushakov and Mr. Yasseen. Mr. Albónico might not be able to attend the whole session, in which case another Spanish-speaking member would be co-opted. It was hoped that the Committee would begin its work the following week. The tempo of its work would be partly determined by the speed of production of the summary records.

*It was so agreed.*

The meeting rose at 1 p.m.

### 909th MEETING

*Monday, 29 May 1976, at 3 p.m.*

*Chairman:* Sir Humphrey WALDOCK

*Present:* Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

### Special Missions

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

*(resumed from the previous meeting)*

[Item 1 of the agenda]

ARTICLE 16 (Activities of special missions in the territory of a third State) [18]  
*(resumed from the previous meeting)*<sup>1</sup>

1. The CHAIRMAN said that a telegram of good wishes had been received from Mr. Tunkin, a former member of the Commission. He welcomed Mr. Nagendra Singh to the Commission.

2. Mr. NAGENDRA SINGH said it was a great privilege to join the Commission. He was glad to be able to take part in the present discussion and regretted that his arrival had been delayed.

3. The CHAIRMAN said that in the course of the debate on article 16, the question had arisen of the legal régime applicable in the cases envisaged in that article and the legal obligations of the host State in those cases.

4. The further question had also arisen of the possible difference between the case where the host State had invited the participants to a meeting of special missions and the

case where the State merely tolerated the use of its territory for the purposes of such a meeting. He invited the Special Rapporteur to give his views on those points.

5. Mr. BARTOŠ, Special Rapporteur, said that, on reflection, he had the following suggestions to make on article 16. The words "which may be withdrawn at any time" should be added to paragraph 1; paragraph 2 should remain unchanged, and a new paragraph 3 should be added, to read:

"In the absence of any special agreement, the third State is required to guarantee to special missions the privileges and immunities necessary for the performance of their task."

That formula would provide an adequate guarantee and at the same time it was flexible since the States concerned would be free to determine by agreement what privileges and immunities special missions should enjoy. The Drafting Committee could, of course, make whatever drafting changes it saw fit.

6. Mr. YASSEEN said he welcomed the Special Rapporteur's suggestions. In particular, the addition to paragraph 1 of the phrase "which may be withdrawn at any time" would obviate many difficulties.

7. He asked whether the new paragraph 3 suggested by the Special Rapporteur meant that special missions performing their functions in the territory of a third State were to enjoy all the privileges and immunities provided for in the draft articles, or whether the expression "necessary for the performance of their task" had a restrictive meaning. It was arguable that some of the privileges and immunities provided for in the draft articles were not essential to the performance of the functions of special missions and were based rather on the theory of representation.

8. Mr. BARTOŠ, Special Rapporteur, said that in his opinion the only privileges and immunities which the third State was required to grant were those essential to the functioning of the special mission. The third State was making a sacrifice even by admitting special missions to its territory; it could not be expected to assume any responsibilities beyond those essential to enable the special missions to perform their task. In other words, he did not think that article 16 should place the third State on exactly the same footing as a receiving State, for there was a considerable difference between the two situations. A third State for the purpose of article 16 was a host State which lent its good offices, and it should be put to the least possible inconvenience by doing so.

9. He had considered whether article 16 should specify what privileges and immunities were necessary, but had concluded that it was better to leave that to be settled by practice.

10. Mr. YASSEEN said he agreed with the Special Rapporteur that a State which invited the special missions of two other States to meet in its territory should not, except as specially agreed, be obliged to grant such special missions any privileges or immunities beyond those necessary for the performance of their task. It was nevertheless

<sup>1</sup> See 908th meeting, para. 38.