

Document:-  
**A/CN.4/SR.926**

**Summary record of the 926th meeting**

Topic:  
**Special missions**

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44. The CHAIRMAN said that article "X" should be left aside, as it was controversial and would have to be aligned with other articles in the light of the decisions taken by the Commission.<sup>7</sup>

45. Mr. YASSEEN said that article 17 *bis* merely dealt with a special application of articles "X" and "Y" and that it would be better to defer consideration of the question until the Commission considered article "Y" (A/CN.4/194/Add. 2), on the relationship between the draft articles and other international agreements.

46. The CHAIRMAN said that article "X" was a very broad provision which raised the question of a *jus cogens* in a general fashion. It was possible to have firm views on that article without necessarily holding the same views on the narrow issue raised in article 17 *bis*. The Special Rapporteur was anxious to elucidate the Commission's views on the substance of article 17 *bis*; the wording of the provision, which would be conditioned by that of articles 40 *bis*, "X" and "Y", could be left to the Drafting Committee. The Commission should now decide whether it wished to include a clause along those lines; he appreciated that the provision might involve some difficulty for certain members in connexion with such a question as inviolability.

47. Mr. USHAKOV said that articles 17 *bis* and 17 *ter* were unnecessary, for there was nothing to prevent States from considering that a given mission was not a special mission within the meaning of the draft, and that the provisions on special missions were therefore inapplicable.

48. Mr. NAGENDRA SINGH said he considered that the provision in article 17 *ter* was useful. In view of the wide variety of special missions which had to be provided for, it would be wise to mention the possibility of differential treatment and derogation by mutual consent.

49. Mr. AGO said that the Commission was called upon to give its views only on the underlying principle of article 17 *bis*. The purpose of that article was to enable States, not to consider that certain missions were not special missions within the meaning of the convention, but to grant special missions greater or lesser privileges and immunities than those provided for in the convention. The question was one of a partial derogation from the provisions of the convention. In his opinion, the principle was sound and should be retained, but the article itself was superfluous, as the principle could appear in article "X", on the legal status of the provisions. In any case, the Commission could not take a decision on article "X" until all the other articles of the Convention had been drafted.

50. Mr. JIMÉNEZ de ARÉCHAGA said he supported the view that States should have latitude to agree on more limited privileges and immunities, having regard to the regular functions of special missions and to the nature of their tasks. He also endorsed Mr. Castrén's and Mr. Tammes's suggestions: there must be minimum criteria for the facilities, privileges and immunities to be enjoyed by missions which were not entitled to benefit by the full

range of diplomatic privileges and immunities. The best solution might be to combine articles 17 *bis* and 17 *ter*.

51. Mr. USHAKOV said that the derogation in article 17 *bis* was, in his opinion, general rather than partial.

52. Mr. BARTOŠ, Special Rapporteur, said that the purpose of article 17 *bis* was to stipulate that privileges and immunities would be granted subject to derogation by agreement between the States concerned. If that idea was accepted, the Commission must decide where it was to appear. It might perhaps constitute a paragraph of article "X".

53. The CHAIRMAN suggested that, since the Commission seemed to be agreed on the desirability of including a provision along the lines of articles 17 *bis* and 17 *ter*, the text should be referred to the Drafting Committee.

*It was so agreed.*<sup>8</sup>

The meeting rose at 1 p.m.

<sup>8</sup> For resumption of discussion, see 937th meeting, paras. 76-80, when it was decided to delete these articles.

## 926th MEETING

*Wednesday, 21 June 1967, at 10 a.m.*

*Chairman:* Sir Humphrey WALDOCK

*Present:* Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Tammes, 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]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

1. The CHAIRMAN invited the Commission to consider the texts of articles submitted by the Drafting Committee.

ARTICLE 1 (Sending of special missions) [2 and 7]<sup>1</sup>

2. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 1:

"1. States may, for the performance of specific tasks, send temporary special missions to another State with the consent of the latter.

"2. The existence of diplomatic or consular relations is not necessary for the sending or reception of special missions.

<sup>7</sup> It was subsequently decided to delete article "X". See 937th meeting, para. 81.

<sup>1</sup> For earlier discussion, see 898th meeting, paras. 24-74, 899th meeting, paras. 1-82, and 900th meeting, paras. 1-60.

- “3. A State may send a special mission to a State, or receive one from a State, which it does not recognize.”
3. That text differed only slightly from the one considered by the Commission. Paragraph 3 took into account the views expressed by certain Governments and members of the Commission who wanted the article to specify that non-recognition did not imply that special missions could not be sent. The idea was also implicit in the new text that the sending of a special mission did not automatically imply recognition, since it allowed some latitude of interpretation of the consequences of sending such a mission.
4. Mr. USTOR pointed out that the word “temporary” in paragraph 1 had only been adopted provisionally by the Drafting Committee, since it might later be decided not to use that qualification except in the article on definitions.
5. Mr. BARTOŠ, Special Rapporteur, said that the temporary nature of special missions was an important factor, which should be stated both in the description and in the definition of special missions. Moreover, it was important to mark the difference between special missions which came to an end once their task was accomplished and specialized non-temporary missions, such as the technical missions which socialist countries sent for an unlimited period or the missions arranged between Common Market countries, which were often bilateral and which would continue as long as the organization itself.
6. Mr. KEARNEY said that paragraph 3 raised some difficulties, since it introduced the concept of recognition into article 1. The Drafting Committee had thought that, as drafted, the paragraph would not raise the question of recognition, but if that were the case, it was redundant, since it merely restated the requirement of the consent of both States, set out in paragraph 1. On the other hand, if it implied a reference to recognition, that should be stated directly. In his opinion, the paragraph was unnecessary, but if the majority of the Commission wished to retain it, it should be explicitly stated that the sending of a special mission to a State had no effect on recognition.
7. Mr. YASSEEN said he could accept the article submitted by the Drafting Committee. The decision on the word “temporary” should be deferred until the Commission came to consider the article on the definition of special missions. No one actually questioned the purely temporary character of special missions.
8. Although paragraphs 2 and 3 were both necessary, paragraph 3 was the more important. Three different situations could arise in relations between two States. Either the States might not recognize each other; or the States might recognize each other but have no diplomatic and consular relations; or again the States might recognize each other and have diplomatic and consular relations. In the third case there was no problem about sending a special mission. The second case was covered by paragraph 2, and the first by paragraph 3. In the first case, all that the Commission could indicate was that States which did not recognize each other could exchange special missions, but that that would in no way prejudice the question of mutual recognition.
9. Mr. AGO, Acting Chairman of the Drafting Committee, said that the special missions with which the Commission was dealing were certainly temporary special missions; the decision as to whether or not to retain the word “temporary” should be postponed until the definitions had been settled.
10. Paragraphs 2 and 3, which did not lay down a rule but simply stated a fact, could be deleted, but if the Commission did decide to retain paragraph 2, it must also retain paragraph 3.
11. Mr. BARTOŠ, Special Rapporteur, said that the article could be adopted as it had been submitted by the Drafting Committee. The Commission was not competent to give its views on the recognition of States and should confine itself to saying that States which did not recognize each other could exchange special missions. In that sphere, practice had finally prevailed over theory, as was shown by the recent decision of the Federal Republic of Germany to send a mission to the German Democratic Republic. Paragraph 3 was therefore not only reasonable but necessary, for although diplomatic and consular relations were of necessity bilateral, recognition, on the contrary, could be unilateral—one party recognized the other but was not recognized by it—and that raised a separate problem.
12. The CHAIRMAN, speaking as a member of the Commission, said that he had never been in favour of including paragraphs 2 and 3. If, however, other members considered that they had some utility, to place them in article 1 seemed to give them disproportionate emphasis. He would prefer to see article 1 reduced to the first paragraph and followed by articles 5, 5 *bis*, and 5 *ter*, then by the present paragraphs 2 and 3 of article 1 as a separate article, and then by article 2.
13. There was a discrepancy between paragraphs 1 and 3. Paragraph 1 spoke of “States” and “temporary special missions” while paragraph 3 spoke of “a State” and “a special mission”—in the singular.
14. Speaking as Chairman, he said that the Commission should not take conclusive votes on the articles as yet, since the coherence of the draft might thereby be lost. Since, however, the Drafting Committee must have some guidance as to the acceptability of the articles, he suggested that for the time being the Commission endorse the articles in principle, reserving the question of arrangement for subsequent decision.
- It was so agreed.*
15. Mr. BARTOŠ, Special Rapporteur, proposed the following order for the articles: paragraph 1 of article 1, article 5, article 5 *bis*, article 5 *ter*, paragraphs 2 and 3 of article 1 as a separate article, article 6, article 3 and article 4.
16. In article 1, paragraph 1, which dealt with the simplest case, he considered it better to use the formula: “A State may... send a temporary special mission to another State...”. Since article 5 dealt with the sending of the same mission to two or more States, and article 5 *bis* with the sending of a joint mission to a State by two or more States, there was a problem of structural arrange-

ment, but that could be left aside for the time being and taken up later, as had been agreed.

17. Mr. KEARNEY suggested that the Special Rapporteur should insert some explanation in the commentary to clarify the Commission's position with regard to recognition.

18. Mr. REUTER said that article 1 was hardly suitable for a discussion of structural arrangement, in view of the differences of opinion over paragraph 1 and the questionable value of paragraphs 2 and 3.

19. From a drafting standpoint, he was not in favour of replacing the plural by the singular, since the article might then be interpreted as implying that a State could send only one special mission.

20. Mr. AGO, Acting Chairman of the Drafting Committee, said he concluded from the discussion that paragraph 1 of article 1 now became article 1, and that the other two paragraphs would form a separate article, the place of which, probably after article 5 *ter*, would be settled later.

21. In paragraph 1, the question of retaining the adjective "temporary" would be left over until the definition had been adopted. The Drafting Committee could decide whether to use the plural or the singular; in his opinion the singular was preferable and certainly did not exclude the possibility of sending several special missions. In any case, the present wording "States ... to another State ..." was bad and should be revised.

22. The CHAIRMAN suggested that, in the light of those clarifications, the Commission approve article 1.

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

#### ARTICLE 2 (Field activity of a special mission) [3]<sup>3</sup>

23. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following title and text for article 2:

##### *"Field of activity of a special mission"*

"The field of activity of a special mission shall be specified by the consent of the sending State and of the receiving State."

24. The only change made in the Commission's text had been the replacement of the word "task" by the words "field of activity". To some extent at least, the task of the special mission was determined by the sending State, whereas the consent of both States did not concern that task but rather the field in which the mission could negotiate with the receiving State. The word "competence" had been rejected because of its legal implications and the difficulties to which it might give rise.

25. Mr. TAMMES said that there was a discrepancy between the French and English texts of article 2, since the French referred to "*consentement mutuel*", whereas the English merely referred to "consent".

26. In view of the discussion at the last few meetings, he was obliged to reserve his position on the article. In

connexion with articles 17 *bis* and 17 *ter*, a number of speakers, including the Special Rapporteur, had expressed the view that a State could, so to speak, contract out of the convention if it did not regard a mission as a special mission. He was not sure whether that was in fact possible, but if it was, the logical place to say so was in article 2.

27. The CHAIRMAN, speaking as a member of the Commission, said he could not see how that problem arose in connexion with article 2, although the question of what actually constituted a special mission and whether a visit of foreign officials should be regarded as a special mission arose in a number of articles and would have to be dealt with in a specific article.

28. Mr. TAMMES said he had raised the question in connexion with article 2 because the Special Rapporteur had referred to it in his observations on that article.

29. Mr. CASTAÑEDA said that the Commission could, of course, take Mr. Tammes's comments into account when it considered the article on definitions, but that would be equivalent to treating the consent of the receiving State as a constituent element of the legal status of the special mission. It would be better simply to state that the consent was necessary for the system of facilities, privileges and immunities provided for in the draft to enter into force. That provision should be included in article 2, for if mutual consent was indispensable in order to specify the special mission's field of activity, a special mission could not be recognized as such within the meaning of the draft without the consent of the receiving State. The field of activity and the legal status of the special mission were related concepts and could be discussed at the same time by the States concerned.

30. The CHAIRMAN, speaking as a member of the Commission, said that that suggestion would involve the Commission in defining the tasks of special missions, and that, in his opinion, was impossible.

31. Mr. REUTER said that, like Mr. Tammes, he had noticed that the words "*consentement mutuel*" were used in the French text of article 2 as adopted by the Drafting Committee, whereas in the English text the word "consent" was used. On the other hand, in paragraph 1 of article 1, the words used were "consent" and "*consentement*" respectively. The lack of symmetry was perhaps intentional and he wondered whether in reality it did not conceal a problem of substance. Also, the Drafting Committee had replaced the word "task" in article 2 by the expression "field of activity". That change might lead to the belief that an attempt was being made to give the sending State a less active role in the matter of consent. The Commission should place the States on a level of complete equality and use a wording which would make it clear that consent must be given by both States for the same purpose, by express or tacit agreement.

32. Mr. BARTOŠ, Special Rapporteur, said that he would not present the article on definitions until the Commission had completed its consideration of the draft articles as a whole.

33. The Commission should not go back to problems which had already been discussed. Members who wished

<sup>2</sup> For resumption of discussion, see 930th meeting, paras. 2-16.

<sup>3</sup> For earlier discussion, see 900th meeting, paras. 64-93.

to change the draft articles should follow the normal procedure and submit amendments.

34. Mr. AGO, Acting Chairman of the Drafting Committee, referring to article 1, said that when a State took the initiative of sending a mission, it had to obtain the consent of the receiving State; the Drafting Committee had therefore considered that the expression "mutual consent" could not logically be used in that case. On the other hand, in order to determine a special mission's field of activity under the terms of article 2, States entered into negotiations and that required mutual consent.

35. The Drafting Committee had thought that the word "task" could be understood as meaning the purpose which the sending State assigned to the special mission and that, in that sense, the consent of the receiving State was unnecessary. On the other hand, the "field of activity", an expression which the Drafting Committee had considered more precise, had to be determined by the mutual consent of the sending State and the receiving State, which, as Mr. Reuter has pointed out, was given on a level of complete equality.

36. He saw no necessity to refer to the status of the special mission in article 2, for if the States concerned agreed that it was a special mission, its status was defined in the draft articles themselves.

37. Mr. JIMÉNEZ de ARÉCHAGA said that while he agreed that discussion of the question whether special agreement was required in each case might be deferred, he did not think that it should be deferred until the Commission began to consider its article on definitions. Perhaps article 2 would be clearer if the term "scope of the tasks" were used instead of "field of activity".

38. Mr. USTOR said he could not quite agree that a State might refuse to accept a special mission or to recognize the sending State, but could not deny the status of a special mission sent to it. For instance, a State might inform another State that it wished to send a group concerned with railway questions; the other State might agree to accept the group but might question whether it constituted a special mission, and the sending State might agree that, although the group could negotiate certain matters, it really represented only certain narrow interests, and would not fall within the scope of the convention.

39. Mr. REUTER said that the problem was to decide whether it was clear from article 2 that the sending State and the receiving State were on a par. The initiative in sending a special mission was not always taken by the sending State; the mission might have been sent at the request of the receiving State itself or following negotiations between the States concerned.

40. Mr. TAMMES said he could not agree with Mr. Ago's argument about article 2. The Commission was preparing a convention to accommodate States, and if a certain article was liable to create confusion, it was obliged to draw attention to the problems involved. If the sending State believed that a special mission was entitled to full protection in accordance with the Vienna Convention on Diplomatic Relations and the receiving State held

a different view, article 2 could become a source of confusion, litigation and dispute.

41. Mr. KEARNEY said that the point could be settled if the Commission would define what it meant by special missions.

42. Mr. USHAKOV said that an official of a given State who entered into relations, for the purpose of negotiations, with representatives of another State in the territory of that State could not claim to be a member of a special mission. The Commission might make that clear in article 2.

43. Mr. BARTOŠ, Special Rapporteur, said that in the example given by Mr. Ushakov, if the official were the bearer of a message inviting the appropriate authorities of the receiving State to consider him a member of a special mission and if those authorities gave their consent, the official had the status of a member of a special mission within the meaning of the draft articles. It often happened in practice that during a first phase of diplomatic negotiations, one State sent emissaries to another State and that, during a second phase, if the negotiations led to positive results, the emissary or emissaries would be regarded, following the consent of the receiving State, as members of a special mission. It was in order to take such a situation into account that the expression "prior consent" had not been used in the text of either article 1 or article 2: the word used was simply "consent", without any qualification.

44. The CHAIRMAN, speaking as a member of the Commission, said that the concern expressed by Mr. Tammes and other members did not properly relate to article 2, which dealt only with the scope of the activities of special missions, not with their character. The broader problem of the capacity in which visiting officials acted and whether they constituted special missions was scattered throughout the articles of the convention. The Commission would, however, become involved in hopeless difficulties if it made the field of activity of a special mission the criterion for the definition of such missions.

45. Mr. YASSEEN said that article 2 ought not to cause any difficulty, since the field of activity of every special mission was delimited by virtue of the most indubitable rule of all, namely, that it required the mutual consent of the sending State and the receiving State.

46. Mr. JIMÉNEZ de ARÉCHAGA said he quite agreed with the view that, when a State agreed to receive representatives on temporary missions and proper notification had been made, the convention must apply even in the absence of formal recognition. He had only raised the question because other members seemed to have doubts on the subject.

47. The CHAIRMAN said that that aspect of the question should not be dealt with in connexion with article 2.

48. Speaking as a member of the Commission, he said he wished to suggest two drafting improvements: first, to replace the word "specified" by "determined", and secondly, to insert the word "mutual" before the word "consent", in order to bring the text into line with the

French original, and make it conform to the corresponding text of the two Vienna Conventions.

49. Speaking as Chairman, he suggested that the Commission should approve article 2, subject to final drafting by the Drafting Committee.

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

ARTICLE 3 (Appointment of the members of the special mission) [8]<sup>5</sup>

50. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following title and text for article 3:

*"Appointment of the members of the special mission"*

"Subject to the provisions of articles ..., the sending State may freely appoint the members of the special mission after having informed the receiving State of the number and the identity of the persons it intends to appoint."

51. Some members of the Commission had stressed the need for the sending State to inform the receiving State, before the appointment, of the number and identity of the persons it intended to appoint, so that the receiving State could object if it wished. The text now proposed for article 3 incorporated that idea, but without specifying the purpose of the communication, which was implied.

52. Mr. CASTRÉN said that at the 902nd meeting<sup>6</sup> Mr. Eustathiades had proposed specifying that the receiving State must be informed "in good time". He would also like to know the reason for requiring the sending State to inform the receiving State of the identity of the persons it intended to appoint.

53. Mr. AGO said that the Drafting Committee had gone further than Mr. Eustathiades because it had specified that the sending State should appoint the members of the special mission after it had informed the receiving State.

54. The Drafting Committee had felt it necessary to specify that the identity of the persons concerned should also be mentioned in the communication to the sending State, since the receiving State might object not only to the number of persons in the special mission but also to the inclusion of a particular person in that mission.

55. Mr. YASSEEN asked whether, in the French text, it would not be preferable to say "*après avoir fait connaître*" rather than "*après avoir informé*".

56. Mr. REUTER agreed that the expression "*après avoir fait connaître*" was more in conformity with protocol usage.

57. The CHAIRMAN, speaking as a member of the Commission, suggested that, in the light of the explanations given by the Acting Chairman of the Drafting Committee, article 3 be reworded to read:

"Subject to the provisions of articles ... and after having informed the receiving State of the number and the identity of the persons it intends to appoint, the sending State may freely appoint the members of the special mission."

58. Mr. JIMÉNEZ de ARÉCHAGA said that the text of article 3 differed substantially from the text submitted to governments for their comments. The proviso "after having informed the receiving State ..." introduced in a disguised form the concept of the prior consent of the receiving State. Was that change based on comments by Governments?

59. Mr. AGO, Acting Chairman of the Drafting Committee, said that the text now proposed represented a compromise between the complete freedom advocated by some members of the Commission and the absolute requirement of consent urged by others.

60. The CHAIRMAN said that, from the legal point of view, the position would be that the sending State appointed the members of the special mission but the appointment was not effective under the draft articles until the receiving State had been informed.

61. Mr. CASTRÉN said he could accept article 3 as proposed, since article 1 specified that a special mission was sent with the consent of the receiving State.

62. Mr. YASSEEN said that the compromise solution embodied in article 3 would not serve if the communication to be made by the sending State to the receiving State were considered as a mere formality, and if it were admitted that the sending State could appoint someone notwithstanding an objection by the receiving State.

63. Mr. AGO said that one was entitled to expect the sending State to take account of any objections put forward by the receiving State. If it did not, the receiving State could always declare a person *non grata*. It was precisely in order to avoid that happening that article 3 required the sending State to notify the receiving State of the number and identity of the persons it intended to appoint.

64. Mr. YASSEEN suggested that the Drafting Committee consider the possibility of transferring the provisions of article 3 to article 4, which dealt with persons declared *non grata* or not acceptable.

65. The CHAIRMAN, speaking as a member of the Commission, said that he would oppose any close link being established between article 3 and article 4; the question of initial acceptance was a different one from that of persons declared *non grata* or not acceptable.

66. Speaking as Chairman, he said that, if there were no objection, he would consider that the Commission agreed to approve article 3 in principle on the understanding that the Drafting Committee would re-examine the wording.

*It was so agreed.*<sup>7</sup>

<sup>4</sup> For resumption of discussion, see 930th meeting, paras. 17-25.

<sup>5</sup> For earlier discussion, see 900th meeting, paras. 94-100, 901st meeting, paras. 1-77, and 902nd meeting, paras. 1-45.

<sup>6</sup> Para. 22.

<sup>7</sup> For resumption of discussion, see 930th meeting, paras. 26-42.

ARTICLE 4 (Persons declared *non grata* or not acceptable) [12]<sup>8</sup>

67. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 4:

“1. The receiving State may, at any time and without having to explain its decision, notify the sending State that any representative or any member of the diplomatic staff of the special mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.

“2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the special mission.”

68. The CHAIRMAN said that, if there were no objection he would consider that the Commission agreed to approve article 4 in principle.

*It was so agreed.*<sup>9</sup>

ARTICLE 5 (Sending of the same special mission to two or more States)<sup>10</sup>

ARTICLE 5 *bis* (Sending of a joint special mission by two or more States)<sup>10</sup>

ARTICLE 5 *ter* (Sending of special missions by two or more States in order to deal with a question of common interest)<sup>11</sup>

69. Mr. AGO, Acting Chairman of the Drafting Committee proposed the following titles and texts for articles 5, 5 *bis* and 5 *ter*:

*Article 5* [4]

“*Sending of the same special mission to two more States*”

“A State may send the same special mission to two or more States after having consulted all of them beforehand. Any of those States may refuse to receive that special mission.”

*Article 5 bis* [5]

“*Sending of a joint special mission by two or more States*”

“Two or more States may send a joint special mission to another State unless that State, which shall be consulted beforehand, objects thereto.”

*Article 5 ter* [6]

“*Sending of special missions by two or more States in order to deal with a question of common interest*”

“Two or more States may each send a special mission at the same time to another State in order to

deal, with the agreement of all of them, with a question of common interest.”

70. Article 5 covered not only the case of a special mission sent to two or more States in succession but also that of a special mission which was sent to several States at the same time and whose seat would have to be determined.

71. Mr. REUTER said that articles 5, 5 *bis* and 5 *ter* made it clear that the consent of the receiving State was essential. In the circumstances, the provisions of article 3 might perhaps seem too weak to those who already hesitated to accept that article.

72. Mr. CASTRÉN said he could accept the new articles 5 *bis* and 5 *ter*. With regard to article 5, he had already expressed the view that it was unnecessary and was open to a variety of interpretations. He would, however, abide by the decision of the majority.

73. The CHAIRMAN said that, if there were no objection, he would consider that the Commission agreed to approve articles 5, 5 *bis* and 5 *ter* in principle.

*It was so agreed.*<sup>12</sup>

ARTICLE 6 (Composition of the special mission) [9]<sup>13</sup>

74. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 6:

“1. The special mission may consist of one or more representatives of the sending State from among whom the sending State may appoint a head. It may also include diplomatic staff, administrative and technical staff and service staff.

“2. Members of a permanent diplomatic mission accredited to the receiving State may be included in the composition of the special mission while retaining their functions in the permanent diplomatic mission.

“[3. In the absence of an express agreement on the question, the receiving State may require that the size of a special mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and to the tasks and the needs of the special mission.]”

75. The terminology which had been adopted was in full conformity with that of the Vienna Convention on Diplomatic Relations, except that special missions, unlike diplomatic missions, did not always have a head. Since the expression “members of the special mission” covered all the persons who formed part of the special mission, the Drafting Committee had ultimately adopted the expression “representatives of the sending State in the special mission” to designate the persons who headed the special mission.

76. Paragraph 3 had been placed in square brackets because some members of the Commission had taken the view that it was not essential.

77. The CHAIRMAN suggested that the opening words of paragraph 1, “The special mission may consist ...”

<sup>8</sup> For earlier discussion, see 902nd meeting, paras. 46-77.

<sup>9</sup> For resumption of discussion, see 930th meeting, paras. 43-45.

<sup>10</sup> For earlier discussion, see 902nd meeting, paras. 78-85, 903rd meeting, paras. 8-86, and 904th meeting, paras. 3-14.

<sup>11</sup> New article.

<sup>12</sup> For resumption of the discussion on these three articles, see 930th meeting, paras. 46-50.

<sup>13</sup> For earlier discussion, see 904th meeting, paras. 15-70.

should be amended to read "The special mission consists ...".

78. Mr. AGO, Acting Chairman of the Drafting Committee, said he could accept that change.

79. Mr. KEARNEY said that in article 6 the word "representative" was used in a somewhat different sense from that of a person who constituted a special mission all by himself—the meaning given to the term in the Commission at an earlier stage. In article 6, the term meant any person authorized to act on behalf of the sending State. It was important, therefore, that a precise definition of the term should be included in the draft articles. It must be made clear, for example, whether the term meant a person who had full powers to bind the sending State in negotiations with another State. If that were the meaning, article 6 would exclude from the concept of special missions two types of visits by government officials: first, informal exploratory missions and secondly, missions of a purely technical character which did not affect inter-governmental relations.

80. Mr. AGO, Acting Chairman of the Drafting Committee, said that in all probability a definition of the term "representative" would have to be included in the draft articles. As far as article 6 was concerned, if the mission consisted of a single person, that person would automatically be a representative of the sending State under the terms of paragraph 1 of the article. Where the mission consisted of several persons, the sending State would have to indicate whether one or more of those persons had the status of representatives. There was a clear need for elasticity in the provisions of article 6.

81. Mr. REUTER asked whether the Chairman's suggested wording "The special mission consists of one or more representatives..." was intended as a first step towards the definition of a special mission.

82. The CHAIRMAN, speaking as a member of the Commission, said that, in making his proposal, he had had the question of the definition of "special mission" very much in mind. Some distinction would have to be made between a special mission and an unofficial visit. The concept of a special mission being headed by one or more representatives of the sending State was a useful one in that connexion. It was not necessary that the representatives should be empowered to conduct negotiations; a special mission could be sent merely for the purpose of exchanging information. However, a special mission had essentially an official character which gave it a representative function.

83. Mr. AGO said that the example given by Mr. Ustor, of persons representing railway administrations, illustrated one of the negative elements which the Commission would have to take into account in defining the notion of "special mission".

84. Mr. BARTOŠ, Special Rapporteur, said that in his opinion the expression "special mission" applied only to a mission which represented a State and expressed the sovereign will of the sending State.

85. The CHAIRMAN pointed out that a provision on the lines of paragraph 3 appeared in article 11 of the

Vienna Convention on Diplomatic Relations and in article 20 of the Vienna Convention on Consular Relations.

86. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Vienna Conventions did not require advance information to be given of the number of members of the mission, so that the provisions of paragraph 3 were all the more necessary.

87. Mr. USHAKOV said that he had pointed out on several occasions that paragraph 3 was unnecessary, since article 3 already provided that the receiving State could object to the number of members of the special mission.

88. Mr. BARTOŠ, Special Rapporteur, said that the number of members of a special mission might be regarded as acceptable at a given time but not acceptable later. Moreover, from the strictly legal point of view, he did not believe that the receiving State should be the sole judge of the size of a mission. It was in order to take into account the wishes of the small and medium States that the Vienna Conference had included in the Convention on Diplomatic Relations the clause which appeared in paragraph 3. If the Commission decided to maintain that paragraph, the text should be placed in square brackets; if it decided to delete it, it could explain in the commentary that the paragraph had been considered unnecessary following the adoption of article 3.

89. Mr. JIMÉNEZ de ARÉCHAGA said he was in favour of deleting paragraph 3.

90. Mr. YASSEEN said that article 3 contained already sufficient safeguards for small countries; paragraph 3 of article 6 could therefore be dropped.

91. Mr. BARTOŠ, Special Rapporteur, said that the receiving State could always terminate a special mission.

92. Mr. USHAKOV said that paragraph 3 should be deleted.

93. Mr. CASTRÉN and Mr. RAMANGASOAVINA said that paragraph 3 should be retained in order to cover possible developments.

94. Mr. CASTAÑEDA said that paragraph 3 gave the receiving State a useful instrument for purposes of negotiation and should therefore be kept.

95. Mr. KEARNEY said he also favoured the retention of paragraph 3.

96. Mr. USTOR said that, under the amended version of article 3, it was open to the receiving State to terminate the special mission. Paragraph 3 of article 6 was consequently redundant.

97. The CHAIRMAN, speaking as a member of the Commission, said that the provisions in article 8, on the notification of changes in the composition of the special mission, were also relevant. However, if paragraph 3 were dropped from article 6, the result would be that a receiving State which objected to the size of a special mission would have only two courses open to it. The first was to object to certain individual members of the special

mission under article 4; the second was to threaten to terminate the special mission unless the size of its staff were reduced. Neither of those courses was satisfactory and there would therefore be some usefulness in retaining paragraph 3.

98. Speaking as Chairman, he suggested that a final decision on the retention or deletion of paragraph 3 be deferred until the final adoption of the draft articles, and that article 6 be approved in principle on that understanding.

*It was so agreed.*<sup>14</sup>

The meeting rose at 1 p.m.

<sup>14</sup> For resumption of discussion, see 930th meeting, paras. 51-53.

## 927th MEETING

*Thursday, 22 June 1967, at 11.45 a.m.*

*Chairman:* Sir Humphrey WALDOCK

*Present:* Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Tammes, 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]

### DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

*(continued)*

ARTICLE 7 (Authority to act on behalf of the special mission) [14]<sup>1</sup>

1. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 7:

“1. The head of the special mission or, if the sending State has not appointed a head, one of the representatives of the sending State designated by the latter, is authorized to act on behalf of the special mission and to address communications to the receiving State. The receiving State shall address communications concerning the special mission to the head of the mission or, if there is none, to the representative referred to above.

“2. A member of the special mission may be authorized by the sending State, by the head of the special mission or, if there is none, by the representative referred to in paragraph 1 above, either to substitute for the head of the special mission or for the aforesaid

representative, or to perform particular acts on behalf of the mission.”

2. The Drafting Committee had made some purely formal changes in article 7 and had taken into account the two possible cases in which either the sending State appointed a head of mission, or one of the representatives of the sending State was authorized to act on behalf of the special mission and to address communications to the receiving State.

3. The CHAIRMAN suggested that, in paragraph 2, the word “substitute” be replaced by the word “deputize”.

4. In paragraph 1, the second sentence seemed too strong, since the permanent diplomatic mission was sometimes used as a channel of communication with the special mission.

5. Mr. AGO said that the eventuality to which the Chairman had referred was probably covered by the general rule that the parties could always agree on a procedure different from that set forth in the various draft articles.

6. Mr. USTOR said that paragraph 1 was unduly narrow, because a member of the diplomatic staff of the special mission other than a representative might be authorized by the sending State to address communications to the receiving State.

7. Mr. BARTOŠ, Special Rapporteur, said that although the permanent diplomatic mission of the sending State might serve as an intermediary through which the special mission could receive communications from the receiving State, it could not act as a substitute for the special mission itself and send communications to the receiving State on behalf of that mission.

8. Mr. AGO, replying to Mr. Ustor’s remark, said that if an ambassador was a member of the special mission, he was usually regarded as a representative of the sending State, not as a mere member of the diplomatic staff of the special mission.

9. Mr. CASTRÉN suggested that, in the French version, the words “*au chef de la mission*” in the second sentence of paragraph 1 be replaced by the words “*au chef de celle-ci*”.

10. The CHAIRMAN said that the corresponding change in the English text would be to replace the words “the head of the mission” by “its head”.

11. Mr. AGO, Acting Chairman of the Drafting Committee, asked whether the word “its” might not be ambiguous.

12. Mr. KEARNEY said that if the words “the head of the mission” were altered to “its head” in paragraph 1, the same change would have to be made in paragraph 2 and perhaps elsewhere in the draft.

13. The CHAIRMAN said that, in English, there was no inelegance in the use of the expression “the head of the mission” immediately after “the special mission”, so that the text could be retained as it stood.

<sup>1</sup> For earlier discussion, see 905th meeting, paras. 1-26.