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**Summary record of the 927th meeting**

Topic:  
**Special missions**

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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.

14. If there were no objection, he would consider that the Commission agreed to approve article 7 in principle, subject to minor drafting changes.

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

ARTICLE 8 (Notification) [11]<sup>3</sup>

15. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 8:

“1. The Ministry of Foreign Affairs of the receiving State, or such other organ as may have been agreed on, shall be notified of:

“(a) The composition of the special mission and any subsequent changes;

“(b) The arrival and final departure of members of the mission and the termination of their functions with the mission;

“(c) The arrival and final departure of any person accompanying a member of the mission;

“(d) The engagement and discharge of persons residing in the receiving State as members of the mission or as persons in private service;

“(e) The designation of the head of the special mission or, if there is none, of the representative referred to in paragraph 1 of article 7 and of any substitute for them.

“2. Whenever possible notification of arrival and final departure must be given in advance”.

16. The obligation of the sending State to inform the receiving State of the number and identity of the persons it intended to appoint had now been provided for in article 3, as a preliminary to appointing them, and the Drafting Committee considered that that obligation should not be confused with the notifications set out in article 8.

17. Mr. BARTOŠ, Special Rapporteur, said that, in the French text, the word “*organisme*” in paragraph 1 should be replaced by the word “*organe*”.

18. Mr. Yasseen said he preferred the former wording of article 8 because it provided that notification should be made not to “the Ministry of Foreign Affairs of the receiving State, or such other organ as may have been agreed on”, but to “the State”, without specifying a particular organ or authority.

19. Mr. KEARNEY said that, where special missions were concerned, it seemed desirable to specify the need to notify the Ministry of Foreign Affairs, which would have to deal with such problems as immunities and visas for members of the special mission.

20. Mr. REUTER said he did not think there could be any confusion between the notification procedure provided for in article 8 and the obligation to supply information which appeared in article 3. As Mr. Yasseen had pointed out, article 8 contained a reference to the Ministry of Foreign Affairs or such other organ as might have been agreed on, whereas article 3 only mentioned the receiving State. The Commission should bring the two texts into line.

21. Mr. CASTRÉN said he was not sure whether a person authorized to address communications on behalf of the special mission or to perform certain specific acts could be regarded as a substitute. He suggested that the words “of the persons referred to in paragraphs 1(b) and 1(c)” be inserted after the words “final departure” in paragraph 2.

22. Mr. CASTAÑEDA said that, at the Vienna Conference on Diplomatic Intercourse and Immunities, the representatives of the small countries had urged that the notifications provided for in article 10 of the Convention on Diplomatic Relations should be addressed to the Ministry of Foreign Affairs or “such other ministry as may be agreed”. In his opinion, the Ministry of Foreign Affairs was the appropriate organ of the receiving State where special missions were concerned and the reference to it in article 8 should therefore be retained.

23. Mr. BARTOŠ, Special Rapporteur, said that in practice the notifications listed in article 8 had often been addressed to the embassy of the receiving State in the sending State. The procedure provided for in article 3 was designed to enable the receiving State to be informed by whatever diplomatic channel was available and to give it an opportunity of objecting to the proposed size of the special mission or to the intention of appointing a particular person as a member, whereas the purpose of article 8 was to enable the Ministry of Foreign Affairs or another organ of the receiving State to make all necessary arrangements for extending facilities, privileges and immunities to members of the special mission and for ensuring their safety.

24. Mr. JIMÉNEZ de ARÉCHAGA said that some objective criteria were necessary to define special missions and the concept of “representative” provided a useful criterion. The requirement that the Ministry of Foreign Affairs should be notified was linked with that concept and should be retained.

25. Mr. USTOR said that while, from the theoretical point of view, he agreed with Mr. Yasseen that it was not necessary to refer to the Ministry of Foreign Affairs, from the practical point of view the reference should be retained in the interests of good administration. He was in favour of introducing into article 3 the idea that the information there mentioned should be conveyed through the diplomatic channel.

26. Sooner or later the Commission would have to consider the problem of the consequences of failure to make the required notification, and the position that would arise for a special mission if the provisions of article 8 were disregarded.

27. Mr. AGO said he did not agree that a reference to the Ministry of Foreign Affairs should be inserted in article 3, as Mr. Reuter had suggested, since in practice members of special missions could be appointed without reference to that Ministry. On the other hand, the purpose of the notifications listed in article 8 was to bring the system of facilities, privileges and immunities into operation, and that was a matter which normally fell within the jurisdiction of the Ministry of Foreign Affairs.

<sup>2</sup> For resumption of discussion, see 930th meeting, paras. 54-57.

<sup>3</sup> For earlier discussion, see 905th meeting, paras. 27-65.

28. Mr. USHAKOV proposed that the words "in its membership" be added at the end of paragraph 1(a).

29. Mr. REUTER said that in France certain diplomatic communications and despatches were addressed with absolute priority to the Minister for Foreign Affairs and sometimes to the Head of State. Technical ministries had a tendency to take direct action at the international level, but that was a regrettable practice, since it was the Ministry of Foreign Affairs which held the archives and had the necessary information to enable it to decide whether the receiving State could accept a given person as a member of a special mission.

30. Mr. YASSEEN said he did not think that the Commission should specify the organ of the receiving State to which notifications should be addressed: that was a matter to be settled by the constitutional law of the receiving State.

31. Mr. USHAKOV said he could accept either wording. Under article 10 of the Vienna Convention on Diplomatic Relations, notifications were to be addressed to "the Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed".

32. The CHAIRMAN said that the majority of members wished to retain the references to the Ministry of Foreign Affairs and to "such other organ as may have been agreed on", which were based on the corresponding text in article 10 of the Vienna Convention on Diplomatic Relations. The text would thus emphasize that the Ministry of Foreign Affairs was the natural channel of communication. Personally, he had no objection to following the example of the Vienna Convention in article 8.

33. He suggested that the Commission approve article 8 in principle, subject to rewording by the Drafting Committee in the light of the suggestions made during the discussion.

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

ARTICLE 9 (Rules concerning precedence) [16]<sup>5</sup>

34. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Committee proposed the following title and text for article 9:

*"Rules concerning precedence"*

"1. Where two or more special missions meet on the territory of the receiving State, precedence among the missions shall be determined, in the absence of a special agreement, by the alphabetical order of the names of the States used by the protocol of the receiving State.

"2. Precedence between the members of the same special mission shall be notified to the appropriate organs of the receiving State.

"3. 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."

35. The only important change made in the article was the deletion of any reference to precedence among heads of missions. Paragraph 1 dealt only with precedence among the missions.

36. Mr. BARTOŠ, Special Rapporteur, pointed out that the words "in order to carry out a common task" had also been deleted from paragraph 1.

37. Mr. AGO said that the Committee had decided to delete those words because the provision was applicable even in cases where special missions did not in fact meet to carry out a common task.

38. Mr. CASTRÉN asked what the term "precedence among the missions" could mean if the paragraph did not relate to missions which were carrying out the same task.

39. Mr. AGO said that, although missions usually met because they had to carry out a common task, they might also meet for other reasons.

40. Mr. BARTOŠ, Special Rapporteur, suggested that the words "among the missions" in paragraph 1 be replaced by the words "among these missions".

41. Mr. YASSEEN said that article 9 should be reworded. For instance, in paragraph 1 in the French version, the words "*par l'ordre alphabétique*" should be replaced by "*d'après l'ordre alphabétique*" and in paragraph 3 the words "*par le protocole en vigueur*" should be replaced by the words "*selon le protocole en vigueur*".

42. The CHAIRMAN said that, in paragraph 1 of the English text, the word "by" in the phrase "by the alphabetical order" should be replaced by the words "according to".

43. He suggested that the Commission approve article 9 in principle, subject to modification in the light of comments made during the discussion.

*It was so agreed.*<sup>6</sup>

ARTICLE 10 (Precedence among special ceremonial and formal missions) [—]<sup>7</sup>

44. Mr. AGO, Acting Chairman of the Drafting Committee, said that article 10 had been deleted.

ARTICLE 11 (Commencement of the functions of a special mission) [13]<sup>8</sup>

45. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 11:

"1. The functions of a special mission shall commence as soon as the mission enters into official contact with the Ministry of Foreign Affairs of the receiving State or with another appropriate organ designated by the receiving State.

"2. The commencement of the functions of a special mission shall not depend upon presentation by the

<sup>4</sup> For resumption of discussion, see 930th meeting, paras. 59-74.

<sup>5</sup> For earlier discussion of articles 9 and 10, see 905th meeting, paras. 66-77, and 906th meeting, paras. 1-39.

<sup>6</sup> For resumption of discussion, see 930th meeting, paras. 75-91.

<sup>7</sup> See footnote 5.

<sup>8</sup> For earlier discussion, see 906th meeting, paras. 40-68.

permanent diplomatic mission of the sending State or upon the submission of letters of credence or full powers."

46. Only a few drafting changes had been made to article 11. Speaking as a member of the Commission, he proposed that the words "or with another... organ" in paragraph 1 should be replaced by "or with the other... organ".

47. The CHAIRMAN said that there was a slight difference between the English and French texts of paragraph 1. The English text referred to "another appropriate organ" whereas the French text referred to "*un autre organe compétent*".

48. Mr. AGO said that the wording of article 11 should be brought into line with that of article 8.

49. Mr. CASTRÉN said that when article 11 was being considered, some members had proposed the deletion of paragraph 2. Since paragraph 1 determined the commencement of the functions of a special mission in a positive manner, it seemed pointless to add a clause containing a negative provision. In his opinion, paragraph 2 could be included in the commentary.

50. Mr. BARTOŠ, Special Rapporteur, said he was in favour of retaining paragraph 2. Several members had thought it necessary from the psychological point of view to specify that the commencement of the functions of a special mission did not depend upon presentation of the mission by the permanent diplomatic mission of the sending State or upon the submission of letters of credence or full powers, since certain countries placed obstacles in the way of the functioning of special missions. Paragraph 2 was therefore necessary, and could be very useful, despite its negative form.

51. Mr. AGO thought that the final phrase of paragraph 1 should read "or with the other appropriate organ agreed on".

52. Mr. BARTOŠ, Special Rapporteur, said that in some countries it was not the Ministry of Foreign Affairs that dealt with military, trade or cultural missions. In his opinion, the word "designated" could be deleted, but the words "or with the other appropriate organ in the receiving State" should be retained.

53. Mr. USHAKOV suggested that the expression used in article 8, "or such other organ as may have been agreed on", should also be used in article 11.

54. The CHAIRMAN said that the English text might be amended to read "... contact with the Ministry of Foreign Affairs or other agreed organ of the receiving State".

55. He suggested that the Commission approve article 11 in principle and refer it to the Drafting Committee for final rewording.

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

The meeting rose at 1 p.m.

<sup>9</sup> For resumption of discussion, see 930th meeting, paras. 92-102.

## 928th MEETING

*Friday, 23 June 1967, at 10.45 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.

### Organization of Future Work

(A/CN.4/195, 196; A/CN.4/L.119)

*(resumed from the 917th meeting)*

[Item 6 of the agenda]

1. The CHAIRMAN said that the Officers of the Commission had reached no final conclusions on the organization of future work, but had asked him to communicate their preliminary views to the Commission. The two main problems were to secure work for the Commission's next session and to establish a general pattern for the future. The Officers had considered the state of the material before the Commission. Mr. El-Erian had submitted his second report on relations between States and inter-governmental organizations (A/CN.4/195), but had not yet submitted a set of draft articles. A letter would be sent to Mr. El-Erian asking him whether there was any likelihood of his being able to provide a set of draft articles for the Commission's next session. Mr. Ago had been asked whether there was any possibility of his providing some general articles on State responsibility as a basis for discussion, but had said that that would be difficult and he would prefer to submit a fuller report, with articles, in 1969.

2. As Chairman of the Sub-Committee on Succession of States and Governments and before being appointed Special Rapporteur, Mr. Lachs had submitted a preliminary report on State succession, which was annexed to the Commission's report on its fifteenth session.<sup>1</sup> The General Assembly was urging the Commission to proceed with its work on that subject, which was particularly important because there were so many new States. The Commission should therefore appoint a new Special Rapporteur on State succession in place of Mr. Lachs, who had been elected to the International Court. The Officers had noted that the Sub-Committee, in its 1963 report, had advised that the subject should be dealt with under three broad headings: succession in respect of treaties, succession in respect of rights and duties resulting from sources other than treaties, and succession in respect of membership of international organizations.<sup>2</sup> Moreover, Mr. Lachs had repeated that opinion in a recent conversation with him (the Chairman). Although there were no hard and fast lines of demarcation between the three topics, the Officers had concluded that they should be treated separately, but with close co-ordination to

<sup>1</sup> *Yearbook of the International Law Commission, 1963*, vol. II, p. 260.

<sup>2</sup> *Ibid.*, p. 261, para. 13.