

Document:-  
**A/CN.4/SR.931**

**Summary record of the 931st meeting**

Topic:  
**Special missions**

Extract from the Yearbook of the International Law Commission:-  
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"1. Special missions from two or more States may meet on the territory of a third State only after obtaining the express consent of that State, which retains the right to withdraw it.

"2. In giving its consent, the third State in question may impose conditions which shall be observed by the sending States.

"3. The third State shall assume in respect of the sending States the rights and obligations of a receiving State only to the extent that it so indicates."

107. Mr. USHAKOV questioned whether it was accurate to use the term "sending States" for States whose special missions met on the territory of a third State.

108. The CHAIRMAN, speaking as a member of the Commission, proposed the deletion of the words "in question" in paragraph 2.

109. Mr. EUSTATHIADES supported that proposal; in paragraph 3, the expression used was simply "the third State". The words "in question" were therefore superfluous.

110. Mr. BARTOŠ, Special Rapporteur, accepted that proposal.

111. Mr. AGO said that he also accepted that change.

112. The CHAIRMAN said that, if there were no objection, he would assume that the Commission agreed to approve article 16 in principle, with the deletion of the words "in question".

*It was so agreed.*<sup>24</sup>

#### ARTICLE 17 (General facilities) [22]<sup>25</sup>

113. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 17:

"The receiving State shall accord to the special mission the facilities required for the performance of its functions, having regard to the nature and task of the special mission."

114. The Drafting Committee had made only one change: it had replaced the words "full facilities" by "the facilities required".

115. The CHAIRMAN said that, if there were no comments, he would assume that the Commission agreed to approve article 17 in principle.

*It was so agreed.*<sup>26</sup>

#### ARTICLE 18 (Accommodation of the special mission and its members) [23]<sup>27</sup>

116. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed that article 18 be redrafted to read:

<sup>24</sup> For resumption of discussion and adoption of article 16, see 933rd meeting, paras. 87-89.

<sup>25</sup> For earlier discussion, see 912th meeting, paras. 45-74, and 913th meeting, paras. 1-40.

<sup>26</sup> For adoption of article 17, see 936th meeting, para. 9.

<sup>27</sup> For earlier discussion, see 913th meeting, paras. 41-78.

"The receiving State shall assist the special mission if it so requests in obtaining the necessary premises and suitable accommodation for its members".

117. A number of changes had been made in the original text. The Drafting Committee had introduced the words "if it so requests" and had replaced the words "appropriate premises" by "the necessary premises". It had also deleted the concluding words of the original text: "and, if necessary, ensure that such premises and accommodation are at their disposal".

118. Mr. CASTRÉN asked if any substantive amendment to the article had been made by deleting the words "and staff" after the words "for its members".

119. Mr. BARTOŠ, Special Rapporteur, replied that in the new terminology adopted by the Drafting Committee the expression "members of the special mission" included the representatives and the staff of the mission. That terminology was based on the Vienna Convention on Diplomatic Relations. Hence it would only be necessary to mention the staff if a particular category was meant, for example, the diplomatic staff.

120. The CHAIRMAN proposed two drafting changes to bring the English text into line with the French: first, a comma should be introduced after "the special mission" and another comma after "if it so requests"; secondly, the words "in obtaining the necessary premises and suitable accommodation" should be replaced by "in procuring the necessary premises and in obtaining suitable accommodation".

121. If there were no objection, he would assume that the Commission agreed to approve article 18 in principle, with those drafting changes.

*It was so agreed.*<sup>28</sup>

The meeting rose at 1 p.m.

<sup>28</sup> For adoption of article 18, see 936th meeting, para. 10.

### 931st MEETING

*Friday, 30 June 1967, at 10.5 a.m.*

*Chairman:* Sir Humphrey WALDOCK

*Present:* Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Ramangasoavina, Mr. Tabibi, 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)*

1. The CHAIRMAN invited the Commission to consider articles proposed by the Drafting Committee on

first reading and called upon the Acting Chairman of the Drafting Committee to introduce the texts.

ARTICLE 19 (Inviolability of the premises) [25]<sup>1</sup>

2. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 19:

“1. The premises of the special mission shall be inviolable. The agents of the receiving State may not enter the premises of the special mission, except with the consent of the head of the special mission or, if appropriate, of the head of the permanent diplomatic mission of the sending State accredited to the receiving State.

“2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the special mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

“3. The premises of the special mission, their furnishings, other property used in the operation of the special mission and its means of transport shall be immune from search, requisition, attachment or execution.”

3. He pointed out that at Mr. Kearney's request, a footnote had been added to the Drafting Committee's text stating that, during the discussion in the Commission, some members had favoured the addition of the following sentence: “Such consent may be assumed in case of fire or other disaster requiring prompt protective action.”

4. Mr. KEARNEY said that the footnote should be considered when the article was put to the vote.

5. Mr. BARTOŠ, Special Rapporteur, said he did not think that the Commission should linger over article 19, as it had already been discussed at length. The views expressed by the minority would be set out in his report.

6. The CHAIRMAN pointed out that, as a result of the minor amendments made in the article, it was now practically identical with the corresponding provision—article 22—of the Vienna Convention on Diplomatic Relations. He suggested that the Commission should approve the text in principle.

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

ARTICLE 39 (Transit through the territory of a third State) [43]<sup>3</sup>

7. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 39:

“1. If a representative of the sending State in a special mission or a member of its diplomatic staff

<sup>1</sup> For earlier discussion, see 913th meeting, paras. 79-90, and 914th meeting, paras. 3-63.

<sup>2</sup> For resumption of discussion and adoption of article 19, see 936th meeting, paras. 11-21.

<sup>3</sup> For earlier discussion, see 909th meeting, paras. 27-87.

passes through or is in the territory of a third State, while proceeding to take up his functions or returning to the sending State, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the person referred to in this paragraph, or travelling separately to join him or to return to their country.

“2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the transit of members of the administrative and technical or service staff of the special mission, and of members of their families, through their territories.

“3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. Subject to the provisions of paragraph 4, they shall accord to the couriers and bags of the special mission in transit the same inviolability and protection as the receiving State is bound to accord.

“4. The third State shall be bound to comply with the obligations mentioned in the foregoing three paragraphs only if it has been informed in advance, either in the visa application or by notification, of the transit of the special mission, and has raised no objection to it.

“5. The obligation of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in these paragraphs, and to the official communications and bags of the special mission, when the use of the territory of the third State is due to *force majeure*.”

8. The Special Rapporteur would inform the Commission of the changes that had been made.

9. Mr. BARTOŠ, Special Rapporteur, said that except for the addition of paragraph 4, article 39 reproduced, *mutatis mutandis*, the provisions of article 40 of the Vienna Convention on Diplomatic Relations. The additional paragraph was intended to specify the manner in which a third State had to be informed in advance of the special mission's transit through its territory and provided for the possibility of that State's raising an objection to such transit.

10. The CHAIRMAN pointed out that paragraph 4 had already been considered by the Commission. The text was practically identical with the one previously considered, except for the deletion of the words “subject to the provisions of paragraph 4” from paragraph 1.

11. Mr. USHAKOV suggested that the words “of persons belonging to the special mission” should be substituted for the words “of the special mission” in paragraph 4. The adoption of his suggestion would make the text of paragraph 4 more uniform, as there was a reference in the French version to the “*obligations à l'égard des personnes mentionnées dans les trois paragraphes précédents*”, whereas further on the phrase used was “*transit de la mission spéciale*”, which was, in his view, too abstract.

12. The CHAIRMAN drew attention to a discrepancy between the English and French texts of paragraph 4, the English text of which referred only to the obligations mentioned in the foregoing paragraphs, whereas the French text referred to the obligations in respect of the persons mentioned in those paragraphs.

13. Mr. BARTOŠ, Special Rapporteur, said he saw no objection to accepting Mr. Ushakov's proposal.

14. Mr. CASTRÉN proposed the wording "*de leur transit*" for the French text.

15. The CHAIRMAN pointed out that some difficulty might arise in connexion with paragraph 3, which related not only to the transit of persons, but also to that of correspondence and other official communications.

16. Mr. KEARNEY said he thought that the reference to the transit of the special mission had been deliberately included in paragraph 4 so as to ensure that the third State extended transit facilities to individuals in their capacity of members of the special mission. If reference was made to persons, the text should make it clear that that was their capacity.

17. Mr. BARTOŠ, Special Rapporteur, thought that the Commission might ask the Drafting Committee to re-examine the text of article 39 with particular reference to paragraph 4.

18. The CHAIRMAN suggested that the Commission should refer the point raised to the Drafting Committee and should approve the article in principle.

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

#### ARTICLE 40 *bis* (Non-discrimination) [50]<sup>5</sup>

19. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 40 *bis*:

"1. In the application of the provisions of the present articles, no discrimination shall be made as between States.

"2. However, discrimination shall not be regarded as taking place:

"(a) Where the receiving State applies any of the provisions of the present articles restrictively because of a restrictive application of that provision to its special mission in the sending State;

"(b) Where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present articles;

"(c) Where States agree among themselves to reduce reciprocally the extent of the facilities, privileges and immunities for their special missions, although such a limitation does not exist with regard to other States."

20. Paragraphs 1 and 2 of the article corresponded to the Special Rapporteur's original text. The Drafting Committee had deleted the words "in general or for particular categories of their special missions" in paragraph 2 (c) and

the whole of paragraph 3, in view of the Commission's decision not to distinguish between different categories of special missions.

21. The CHAIRMAN suggested that article 40 *bis* should be approved in principle.

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

#### ARTICLE 20 (Inviolability of archives and documents) [26]<sup>7</sup>

22. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 20:

"The archives and documents of the special mission shall be inviolable at any time and wherever they may be."

23. The text was identical with that already considered by the Commission and was taken from the corresponding provision (article 24) of the Vienna Convention.

24. The CHAIRMAN suggested that the Commission should approve article 20 in principle.

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

#### ARTICLE 21 (Freedom of movement) [27]<sup>9</sup>

25. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 21:

"Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the special mission freedom of movement and travel on its territory to the extent that this is necessary for the performance of the functions of the special mission."

26. The article remained unchanged except that the words "unless otherwise agreed" had been deleted, because the Committee had thought it undesirable to lay special emphasis on the possibility of other procedures.

27. The CHAIRMAN suggested that the Commission should approve article 21 in principle.

*It was so agreed.*<sup>10</sup>

#### ARTICLE 22 (Freedom of communication) [28]<sup>11</sup>

28. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 22:

"1. The receiving State shall permit and protect free communication on the part of the special mission for all official purposes. In communicating with the Government, the diplomatic missions, the consular posts and other special missions of the sending State, or with

<sup>6</sup> For adoption of article 40 *bis*, see 937th meeting, para. 5.

<sup>7</sup> For earlier discussion, see 915th meeting, paras. 1-6.

<sup>8</sup> For adoption of article 20, see 935th meeting, para. 40.

<sup>9</sup> For earlier discussion, see 915th meeting, paras. 8-35.

<sup>10</sup> For resumption of discussion and adoption of article 21, see 935th meeting, para. 41.

<sup>11</sup> For earlier discussion, see 915th meeting, paras. 36-59.

<sup>4</sup> For resumption of discussion and adoption of article 39, see 933rd meeting, paras. 103-106.

<sup>5</sup> For earlier discussion, see 910th meeting, paras. 1-59.

sections of the same mission, wherever situated, the special mission may employ all appropriate means, including couriers and messages in code or cipher. However, the special mission may install and use a wireless transmitter only with the consent of the receiving State.

"2. The official correspondence of the special mission shall be inviolable. Official correspondence means all correspondence relating to the special mission and its functions.

"3. The bag of the special mission shall not be opened or detained.

"4. The packages constituting the bag of the special mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the special mission.

"5. The courier of the special mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

"6. The sending State or the special mission may designate couriers *ad hoc* of the special mission. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier *ad hoc* has delivered to the consignee the special mission's bag in his charge.

"7. The bag of the special mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the special mission. By arrangement with the appropriate authorities, the special mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft."

29. The only paragraph that had been changed was paragraph 1, the Drafting Committee having amplified the second sentence to cover all the necessary channels of communication.

30. The CHAIRMAN, speaking as a member of the Commission, inquired whether it was appropriate to refer to diplomatic missions in the plural in paragraph 1.

31. Mr. BARTOŠ, Special Rapporteur, replied that the expression "the diplomatic missions" had been used in the plural because the special mission might have to communicate not only with the permanent diplomatic mission accredited to the receiving State but also with permanent diplomatic missions situated in the territory of neighbouring States.

32. Mr. EUSTATHIADES thought that the definition of the expression "official correspondence" in paragraph 2 might perhaps be better placed in the definitions article.

33. Mr. BARTOŠ, Special Rapporteur, observed that the official correspondence mentioned in that paragraph was the official correspondence sent or received by the special mission, not the official correspondence of the

sending State and its various organs. In the Vienna Convention on Diplomatic Relations, the definition of official correspondence was similarly given in the text of article 27, not in article 1—the definitions article.

34. Mr. RAMANGASOAVINA suggested that paragraph 2 might be drafted in a single sentence, reading: "The official correspondence of the special mission, which includes all correspondence relating to the special mission and its functions, shall be inviolable."

35. The CHAIRMAN said that, in view of the obvious analogy with the corresponding provision, article 27, of the Vienna Convention and of the fact that the Vienna Convention did not place the provision in its article on definitions, it would be better not to make any changes.

36. Mr. BARTOŠ, Special Rapporteur, read out article 27, paragraph 2, of the Vienna Convention on Diplomatic Relations, the text of which was identical with that of article 22, paragraph 2, of the draft articles on special missions. The Commissions had reproduced from the Vienna Conventions those provisions which were applicable to special missions; it had not thought it proper to make drafting changes, even where it considered that the style was unsatisfactory.

37. Mr. KEARNEY suggested that the term "diplomatic missions" in paragraph 1 should be qualified by the adjective "permanent". Since the phrase "the other missions" in article 27, paragraph 1 of the Vienna Convention mainly referred to permanent diplomatic missions, there was no reason why the Commission should not use a term which would clarify the text of the article under consideration.

38. Mr. BARTOŠ, Special Rapporteur, said he did not think that the Commission should insert the qualifying adjective "permanent" before "diplomatic missions", for, although there were permanent diplomatic missions which were specialized missions, there were also special diplomatic missions which were not permanent.

39. Mr. EUSTATHIADES observed, in support of the Special Rapporteur's remark, that a diplomatic mission sent by one State to another State to which it accorded *de facto* recognition was not a permanent diplomatic mission.

40. The CHAIRMAN suggested that article 22 should be approved in principle, but that the text should be referred back to the Drafting Committee for rewording in the light of the debate.

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

ARTICLE 23 (Exemption of the special mission from taxation) [24]<sup>13</sup>

41. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 23:

"1. The Sending State and the members of the special mission acting on its behalf shall be exempt

<sup>12</sup> For resumption of discussion and adoption of article 22, see 935th meeting, paras. 42-52.

<sup>13</sup> For earlier discussion, see 915th meeting, paras. 60-85.

from all national, regional or municipal dues and taxes in respect of the premises of the special mission, other than such as represent payment for specific services rendered.

"2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or with a member of the special mission."

42. The title of the article did not indicate the important fact that the exemption in question related solely to the premises of the special mission. The words "acting on its behalf" had been inserted after "members of the special mission" in paragraph 1.

43. Mr. BARTOŠ, Special Rapporteur, said he wished to explain that, having regard to cases where, for example, a mission was not authorized to conclude a treaty or where such authorization was given to a person acting on its behalf, the Drafting Committee had thought if preferable to adopt the expression "*agissant pour le compte de la mission*" instead of "*agissant au nom de la mission*" in the French version of the text.

44. Mr. USHAKOV said he wished to revert to an objection he had already put forward in the Drafting Committee. In this opinion, the provision was too broad if it was applicable to all members acting on behalf of the special mission. Article 23 of the Vienna Convention on Diplomatic Relations granted exemption from taxation only to the sending State and the head of the mission.

45. Mr. USTOR said he did not think that the insertion of the words "acting on its behalf" made any real change in the meaning of the article. The purpose of the phrase was to specify the persons on whom the receiving State could levy taxes in respect of the mission's premises had no provision been made for exemption: it was scarcely conceivable that any and every member of the special mission would be liable for such taxes. In any event, the article must exempt all members of the mission from taxation in respect of the premises, while, under article 23 of the Vienna Convention, only the head of the mission was regarded as being liable for such taxation.

46. Mr. BARTOŠ, Special Rapporteur, agreed with Mr. Ustor. The word "head" had been included in the earlier text, but, having regard to the fact that, as emphasized in draft article 7, missions did not necessarily have a head, the Commission had substituted the expression now under consideration. It would be equally possible to say: "the sending State and the member of the special mission authorized to act on the mission's behalf".

47. It should also be borne in mind that the article did not deal with personal privileges, but with privileges in respect of the premises of the special mission, and that the legal transactions in question related to such matters as purchases, sales and leases. In any event, the meaning of article 23 was identical with that of article 23 of the Vienna Convention on Diplomatic Relations.

48. Mr. EUSTATHIADES suggested the wording: "the sending State and the persons referred to in article 7", since the provision was strictly applicable to them alone.

49. Mr. BARTOŠ, Special Rapporteur, said that he accepted the proposal of Mr. Eustathiades and suggested that it should read: "the sending State and the member of the special mission referred to in article 7", or, even better, "the member of the special mission authorized under article 7 to act on behalf of the mission".

50. Mr. USTOR said it was important to prevent any misinterpretation of the text by national fiscal authorities, which might construe it to mean that members of a special mission acting on behalf of the sending State under article 7 were immune from taxation in respect of the premises of the mission, while the other members were not. It was essential to retain the idea that no member of the special mission was liable to taxes in respect of the premises.

51. Mr. CASTRÉN said that if Mr. Eustathiades's proposal was accepted the latter part of paragraph 2 would also have to be amended.

52. Mr. TABIBI pointed out that paragraph 2 might be interpreted as contradicting the exception provided for in the last phrase of paragraph 1.

53. The CHAIRMAN said that the same difficulty had arisen in connexion with the Vienna Convention and had been discussed in the Commission. The general conclusion had been that, although the problem dealt with in paragraph 2 played an unimportant part in the law of many countries, it was a matter of concern to some others. The wording of article 23 of the Vienna Convention had therefore been followed.

54. Mr. EUSTATHIADES observed that paragraph 1 in the English text ended with the words "specific services rendered" and in the French text with "*services particuliers rendus*". It might perhaps be better to refer to "*services spéciaux*", the term used in various other contexts, for instance in connexion with river commissions.

55. The CHAIRMAN pointed out that, in the English text, the word "its" in the phrase "acting on its behalf" might relate either to the sending State or to the special mission. He suggested that the Drafting Committee should be asked to consider modifying the text in that respect and also to examine the suggestion by Mr. Eustathiades; on that understanding the Commission might approve article 23 in principle.

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

#### ARTICLE 24 (Personal inviolability) [29]<sup>15</sup>

56. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Committee proposed the following wording for article 24:

"The person of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall be inviolable. They shall not be liable to any form of arrest or detention. The receiving

<sup>14</sup> For resumption of discussion and adoption of article 23, see 935th meeting, paras. 53-55.

<sup>15</sup> For earlier discussion, see 916th meeting, paras. 1-60.

State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.”

57. The text remained unchanged, except for the substitution of the phrase “of the representatives of the sending State in the special mission and of the members of its diplomatic staff” for “of the head and members of the special mission and of the members of its diplomatic staff”. The text was practically identical with the corresponding provision (article 29) of the Vienna Convention.

58. The CHAIRMAN suggested that the Commission should approve article 24.

*It was so agreed.*<sup>16</sup>

ARTICLE 25 (Inviolability of the private accommodation) [30]<sup>17</sup>

59. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 25:

“1. The private accommodation of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall enjoy the same inviolability and protection as the premises of the special mission.

“2. Their papers, correspondence and, subject to the proviso in article 26, paragraph 4, their property shall likewise enjoy inviolability.”

60. The text largely corresponded to the Special Rapporteur’s original proposal and to article 30 of the Vienna Convention, except that the word “accommodation” was used instead of “residence”. Paragraph 2 had been amplified by a reference to article 26, paragraph 4, which provided for exceptions from immunity in respect of matters in which measures of execution could be taken.

61. Mr. BARTOŠ, Special Rapporteur, said that a slight change had been made in paragraph 2, the possessive adjective “their” having been substituted for the definite articles before “documents”, “correspondence”, and “property”. It had been decided to retain the word “biens” in the French text, as it was entirely appropriate in that context.

62. The CHAIRMAN pointed out that the English text of the proviso in paragraph 2 departed from the wording of article 30, paragraph 2, of the Vienna Convention, the corresponding phrase of which read “except as provided in paragraph 3 of article 31”. The difficulty lay in the fact that the provision of article 26, paragraph 4, of the draft was itself expressed negatively; it would be better to follow the wording of the Vienna Convention.

63. He suggested that the Commission should approve article 25 in principle.

*It was so agreed.*<sup>18</sup>

DRAFT ARTICLES PROPOSED BY THE  
DRAFTING COMMITTEE ON SECOND READING  
(continued)

ARTICLE 12 (End of the functions of a special mission) [20]<sup>19</sup>

64. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 12:

“1. The functions of a special mission shall come to an end, *inter alia*, upon:

“(a) The agreement of the States concerned;

“(b) The completion of the task of the special mission;

“(c) The expiry of the duration assigned for the special mission, unless it is explicitly extended;

“(d) Notification by the sending State that it is terminating or recalling the special mission;

“(e) Notification by the receiving State that it considers the special mission terminated.

“2. The severance of diplomatic or consular relations between the sending State and the receiving State shall not of itself have the effect of terminating special missions existing at the time of such severance.”

65. In paragraph 1 (a), the Drafting Committee had deleted the word “mutual”, which had appeared before “agreement” in the previous version of the article.

66. In paragraph 2, the Drafting Committee had replaced the word “automatically” by “of itself”. It had also replaced the words “existing at the time of the severance of relations” by “existing at the time of such severance”.

67. The CHAIRMAN said that, in the absence of any objection, he would assume that the Commission approved article 12.

*It was so agreed.*<sup>20</sup>

ARTICLE 13 (Seat of the special mission) [17]<sup>21</sup>

68. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 13:

“1. A special mission shall have its seat in the locality agreed upon by the States concerned.

“2. In the absence of agreement, the special mission shall have its seat in the locality where the Ministry of Foreign Affairs of the receiving State is situated.

“3. If the special mission’s functions are performed in different localities, the special mission may have more than one seat; one of such seats may be chosen as its principal seat.”

69. In paragraphs 1 and 2 of the English text the words “at the place” appearing in the earlier text had been replaced by “in the locality”. In paragraph 3, the reference to the special mission’s functions involving travel or being performed by different sections or groups had been

<sup>16</sup> For adoption of article 24, see 935th meeting, para. 56.

<sup>17</sup> For earlier discussion, see 916th meeting, paras. 61-97.

<sup>18</sup> For resumption of discussion and adoption of article 25, see 935th meeting, paras. 57-59.

<sup>19</sup> For earlier discussion, see 929th meeting, paras. 2-20.

<sup>20</sup> For adoption of article 12, see 936th meeting, para. 2.

<sup>21</sup> For earlier discussion, see 929th meeting, paras. 21-35.

dropped and had been replaced by a reference to those functions being "performed in different localities". That wording would cover all possible situations.

70. The CHAIRMAN suggested the deletion of the word "upon" from the English text of paragraph 1.

71. Mr. KEARNEY supported that proposal.

72. Mr. EUSTATHIADES said he was doubtful about the use of the word "*localité*" in the French text.

73. The CHAIRMAN pointed out that the Drafting Committee had not altered the French text; it had only replaced the word "place" in the English text by the broader and more suitable term "locality".

74. Mr. EUSTATHIADES urged that the more appropriate term "*ville*" should be used in the French text. In the extremely rare event of the Ministry of Foreign Affairs not being in a town or city, any difficulty that might arise could be solved by means of an agreement between the two States concerned.

75. Mr. USHAKOV said that the Drafting Committee had discussed the problem of the use of the word "*localité*" in the French text, but had preferred to retain it because it was the term used in article 12 of the 1961 Vienna Convention on Diplomatic Relations.

76. The CHAIRMAN pointed out that the word "localities" was used in the English text of the 1961 Vienna Convention.

77. If there were no further comments, he would assume that the Commission approved article 13, subject to the deletion of the word "upon" from paragraph 1.

*It was so agreed.*<sup>22</sup>

ARTICLE 14 (Nationality of the members of the special mission) [10]<sup>23</sup>

78. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 14:

"1. The representatives of the sending State in the special mission and members of its diplomatic staff should in principle be of the nationality of the sending State.

"2. Nationals of the receiving State may not be appointed to a special mission except with the consent of that State, which may be withdrawn at any time.

"3. The receiving State may reserve the right provided for in paragraph 2 with regard to the nationals of a third State who are not also nationals of the sending State."

79. In paragraph 1, the opening words had been brought into line with the terminology used in other articles of the draft.

80. Mr. EUSTATHIADES questioned the adequacy of the expression "may reserve" in paragraph 3. That

expression seemed to suggest that, in order to make use of the right set forth in paragraph 3, the State concerned would have to make an express reservation to the future convention. The real intention of paragraph 3 was to state the right of the receiving State to make use, with regard to the nationals of a third State, of the faculty set forth in paragraph 2.

81. Mr. USHAKOV pointed out that the wording of paragraph 3 had been taken from article 8, paragraph 3, of the Vienna Convention on Diplomatic Relations.

82. The CHAIRMAN said that the expression "may reserve" was admittedly not very satisfactory because of the technical meaning of the term "reservation". There was, of course, no intention of referring to a reservation in that sense; paragraph 3 simply meant that the receiving State could invoke the right provided for in paragraph 2 with regard to the nationals of a third State. It was, however, undesirable to depart from the language already used in the 1961 Vienna Convention.

83. Mr. BARTOŠ, Special Rapporteur, said he recognized that the expression "may reserve the right" was perhaps not very satisfactory, but it had a very precise meaning: whereas the receiving State had an absolute right of refusal with respect to the persons referred to in paragraph 2, the analogous right relating to the persons referred to in paragraph 3 could not be exercised unless the receiving State declared that it wished to exercise it. That meaning had been clearly specified at the 1961 Vienna Conference, and the same expression was to be found in article 22, paragraph 3, of the Vienna Convention on Consular Relations.

84. The CHAIRMAN said that, in the absence of any objection, he would assume that the Commission approved article 14.

*It was so agreed.*<sup>24</sup>

#### DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE ON THIRD READING

85. The CHAIRMAN invited the Commission to consider articles adopted by the Drafting Committee on third reading. In accordance with its usual practice, the Commission would vote on those articles, subject to any drafting changes that might be necessitated by the Commission's decisions on other articles.

ARTICLE 1 (Sending of special missions) [2]<sup>25</sup>

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

"A State may, for the performance of a specific task, send a [temporary] special mission to another State with the consent of the latter."

87. The article now consisted of only one paragraph, the former paragraphs 2 and 3 having become article 1 *bis*.

<sup>22</sup> For resumption of discussion and adoption of article 13, see 936th meeting, paras. 3-6.

<sup>23</sup> For earlier discussion, see 929th meeting, paras. 36-50.

<sup>24</sup> For adoption of article 14, see 936th meeting, paras. 7 and 8.

<sup>25</sup> For earlier discussion, see 930th meeting, paras. 2-16.

88. The only remaining question was whether the word "temporary" should be retained or deleted and a decision on it could be postponed until the Commission had adopted the article on definitions.

89. Mr. EUSTATHIADES said his recollection was that no imperative reason for retaining the word "temporary" had been brought out during the previous discussion of the matter.

90. Mr. USTOR said he fully realized that all the special missions covered by the draft articles were temporary in character. That fact would have to be stated somewhere in the draft articles, but it was necessary to find the most suitable wording for that purpose.

91. The CHAIRMAN said that the matter depended on the definition of "special mission". It was of course necessary to emphasize the temporary character of special missions, but if the definition of a special mission left no room for doubt on that point, it would be inelegant to repeat the adjective "temporary" in article 1, bearing in mind that the title of the draft convention would be "Convention on special missions" and not "Convention on temporary special missions".

92. Once a special mission was defined as being of a temporary character, it was clear that, for purposes of the draft articles, the term "special mission" always referred to missions of a temporary character. It would therefore be appropriate simply to refer to "special missions" throughout the text.

93. He therefore suggested that the Commission should adopt article 1, reserving a decision on the use of the word "temporary" until after it had considered the definition of "special mission".

94. Mr. AGO said that he supported the Chairman. The main purpose of the article was to stress the fact that a special mission could be sent only with the consent of the receiving State, not to emphasize the temporary character of a special mission. If its temporary character was brought out in the definition of "special mission", there was no need to mention the point again in article 1.

95. Mr. BARTOŠ, Special Rapporteur, said that, in his view, it was essential to draw attention in some part of the draft to the temporary character of special missions. Article 1 might be put to the vote without the word "temporary", on the understanding that there would be a reference to the temporary character of special missions in the definition of "special mission".

96. Mr. EUSTATHIADES said he agreed with the Chairman. As the draft was to be entitled "special missions", it would be odd to qualify the reference to "a special mission" in article 1 with the word "temporary". If the temporary character of special missions was not ultimately mentioned in the definition, the word "temporary" could be restored in article 1, but in that case it should be included in the part of the article between commas, which would then read "for the performance of a specific and temporary task".

97. The CHAIRMAN put article 1 to the vote, without the adjective "temporary", on the understanding that

that characteristic of special missions would be mentioned in the definition of the term "special mission".

*Article 1 was adopted unanimously.*

ARTICLE 1 *bis*. (Non-existence of diplomatic or consular relations and non-recognition) (new article) [7]

98. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following title and text for article 1 *bis*:

*"Non-existence of diplomatic or consular relations and non-recognition"*

"1. The existence of diplomatic or consular relations is not necessary for the sending or reception of a special mission.

"2. A State may send a special mission to a State, or receive one from a State, which it does not recognize."

99. Article 1 *bis* consisted of the two paragraphs detached from article 1 and would probably be placed elsewhere in the draft.

100. The CHAIRMAN said that he too considered that the article should be placed later in the draft.

*Article 1 bis was adopted unanimously.*

ARTICLE 2 (Field of activity of a special mission) [3]<sup>26</sup>

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

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

102. The Drafting Committee had made no change in the French text.

103. The CHAIRMAN explained that the English text of article 2 had been improved: the word "specified" had been replaced by "determined" and the adjective "mutual" had been inserted before "consent".

104. Mr. TAMMES said that, in voting for article 2, he wished to make a reservation regarding the decision which would be ultimately taken on the crucial articles "Y" and "Z".

105. The CHAIRMAN explained that article 2 could be adopted at that stage, although it might be affected by other articles to be adopted later.

*Article 2 was adopted unanimously.*

ARTICLE 3 (Appointment of the members of the special mission) [8]<sup>27</sup>

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

"Subject to the provisions of articles..., the sending State may freely appoint the members of the special

<sup>26</sup> For earlier discussion, see 930th meeting, paras. 17-25.

<sup>27</sup> For earlier discussion, see 930th meeting, paras. 26-42.

mission after having informed the receiving State of its size and of the persons it intends to appoint.”

107. At the final stage, the numbers of the articles referred to in the initial proviso would have to be inserted.

108. In accordance with a suggestion by the Chairman, the Drafting Committee had added the reference to the size of the mission, which would make it possible to omit paragraph 3 of article 6.

109. Mr. CASTAÑEDA said that he would abstain in the vote on the article because, in his view, it should contain an express reference to the receiving State's right to refuse to accept a given person as a member of the special mission without having to explain its decision.

110. Mr. AGO inquired whether it would satisfy Mr. Castañeda if there were a reference in the commentary to the fact that the purpose of requiring the sending State to submit the information was to enable the receiving State to object, if it wished, to certain persons whom it was intended to appoint.

111. Mr. YASSEEN said that he had raised the same question during the earlier discussion, but he was sure that the real purpose of the article was to enable the receiving State to make comments which would have to be taken into account by the sending State. Where special missions were concerned, it was entirely a question of agreement between the parties: if one State did not accept what the other State proposed, there would be no special mission.

112. Mr. USHAKOV said that he, too, thought that Mr. Castañeda's idea was implied in the text of article 3. He agreed that the idea should be mentioned in the commentary.

113. Mr. EUSTATHIADES said it seemed to him that the words “the persons it intends to appoint” and the proximity of article 4, under which the receiving State was given an opportunity to declare a person *non grata* or not acceptable, made the text of article 3 sufficiently clear. He would have no objection to the precise meaning of the article being brought out in the commentary.

114. Mr. AGO said that the reaction of the receiving State to the list of names communicated to it under article 3 was a different matter from the much more formal procedure provided for in article 4. The whole purpose of the information required under article 3 was to provide for the possibility of an arrangement which would make it unnecessary to resort later to the procedure laid down in article 4.

115. Mr. CASTAÑEDA said he shared the view that the situation contemplated in article 4 was altogether different from the one he had mentioned in connexion with article 3. It was better that the receiving State should be able to object to only one person, as a result of the information provided under the article, instead of being compelled to object to the special mission as a whole. It was true, however, that the idea to which he had referred was implied in the article and he would not therefore press the point, on the understanding that it would be mentioned in the commentary.

116. Mr. BARTOŠ said that he too considered that Mr. Castañeda's idea was implied in the article and could be developed in the commentary. But it was important not to confuse the provisions of articles 3 and 4. Under article 3, prior information was required which would enable the receiving State to make its comments in advance, whereas the procedure provided for in article 4 had to be used by the receiving State after the members of the special mission had been appointed. It had to be remembered that the two articles would be further apart in the final text of the draft.

117. The CHAIRMAN put article 3 to the vote, on the understanding that the purpose of the article, namely, to enable the receiving State to raise objections in connexion with the information communicated to it by the sending State, would be explained in the commentary.

*Article 3 was adopted unanimously.*<sup>28</sup>

ARTICLE 4 (Persons declared *non grata* or not acceptable) [12]<sup>29</sup>

118. 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 of the sending State in the special mission or any member of its diplomatic staff is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any 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.”

119. The article was based on the corresponding article of the Vienna Convention on Diplomatic Relations and had already been fully discussed.

*Article 4 was adopted unanimously.*

ARTICLE 5 (Sending of the same special mission to two or more States) [4]<sup>30</sup>

120. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 5:

“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.”

<sup>28</sup> See 941st meeting, paras. 1 and 2.

<sup>29</sup> For earlier discussion, see 930th meeting, paras. 43-45.

<sup>30</sup> For earlier discussion of articles 5, 5 *bis* and 5 *ter*, see 930th meeting, paras. 46-50.

121. As in the case of articles 5 *bis* and 5 *ter*, no further change had been made in article 5, which reflected the Commission's views.

*Article 5 was adopted unanimously.*

ARTICLE 5 *bis* (Sending of a joint special mission by two or more States) [5]<sup>31</sup>

122. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 5 *bis*:

"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 bis was adopted unanimously.*

ARTICLE 5 *ter* (Sending of special missions by two or more States in order to deal with a question of common interest) [6]<sup>32</sup>

123. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 5 *ter*:

"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."

*Article 5 ter was adopted unanimously.*

ARTICLE 6 (Composition of the special mission) [9]<sup>33</sup>

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

"1. A special mission consists 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."

125. The terminology used in the article to designate the different categories of persons forming a special mission had been brought into line with that used in the other articles.

126. Paragraph 3 of the original text<sup>34</sup> had been omitted, as the size of the special mission was now mentioned in article 3 as one of the matters on which it was necessary to inform the receiving State in advance. After considering the matter at length, the Drafting Committee had come to the conclusion that the addition of those words to article 3 made paragraph 3 of article 6 superfluous. If it were decided to restore that paragraph, the text adopted for article 3 would have to be changed.

127. Mr. CASTRÉN said he did not think that the alteration made in article 3 justified the omission of paragraph 3 of article 6. As the Special Rapporteur and several members of the Commission had pointed out, the situation might change during the time the special mission was carrying out its task and it might become necessary to reduce the mission's size. He therefore proposed that paragraph 3 should be restored.

128. Mr. EUSTATHIADES supported Mr. Castrén's proposal.

129. The CHAIRMAN put to the vote the proposal to restore paragraph 3.

*The proposal was rejected by 6 votes to 2, with 5 abstentions.*

130. The CHAIRMAN invited the Commission to consider the text of article 6 as submitted by the Drafting Committee.

131. Mr. EUSTATHIADES said that he doubted whether the adjective "permanent" in paragraph 2 was really necessary.

132. Mr. BARTOŠ, Special Rapporteur, said that the mission referred to in paragraph 2 was the diplomatic mission accredited to the receiving State. The adjective "permanent" was absolutely necessary in order to distinguish that mission from the other diplomatic missions of the sending State, namely, a mission to an international organization or a permanent specialized mission, which was also a diplomatic mission.

133. Mr. YASSEEN said that in his view the passage could only refer to the diplomatic mission accredited to the receiving State, and it therefore made little difference whether the word "permanent" was deleted or left where it was.

134. Mr. EUSTATHIADES said he fully understood that the word "permanent" had been included in order to distinguish the mission in question from the special mission, which was essentially temporary. But would paragraph 2 as at present worded apply to the members of a diplomatic mission sent to a State which had only been accorded *de facto* recognition? Some writers held that a diplomatic mission of that type was temporary and subject to recall so that it could not be regarded as a permanent diplomatic mission.

135. Mr. BARTOŠ, Special Rapporteur, replying to Mr. Eustathiades, said that in such a case there were no diplomatic relations in the true sense; missions sent to a State which had been accorded *de facto* recognition were not accredited to that State within the meaning of the Vienna Convention. Consequently, the omission of the word "permanent" would in no way make it possible to apply the provisions of paragraph 2 to the members of such a mission. His own view was that the adjective "permanent" should be retained; the expression "permanent diplomatic mission" was in common use. Moreover, there might be other specialized diplomatic missions which were not permanent diplomatic missions accredited in accordance with the Vienna Convention.

<sup>31</sup> See footnote 30.

<sup>32</sup> See footnote 30.

<sup>33</sup> For earlier discussion, see 930th meeting, paras. 51-53.

<sup>34</sup> See 904th meeting, para. 15.

136. Mr. KEARNEY said that a great many special missions were diplomatic in character. Since such missions were essentially temporary, it was appropriate for paragraph 2 of article 6 to describe the diplomatic mission accredited to the receiving State as the "permanent diplomatic mission".

137. Mr. USTOR explained that the purpose of paragraph 2 was not merely to state that members of the permanent diplomatic mission could be included in the composition of the special mission; it was intended to make it clear that if such persons were included in the composition of the special mission, they would retain their status as members of the permanent diplomatic mission. It would not rule out the inclusion in the special mission of members of another mission.

138. Mr. AGO said that, after thinking the matter over, he wondered whether it would not be necessary to specify in the last half of the sentence that the persons in question retained their status, in other words their privileges and immunities as diplomats, rather than their "functions" in the permanent diplomatic mission. He proposed that the article should be referred to the Drafting Committee for consideration of that particular point.

139. The CHAIRMAN said that, in the absence of any objection, he would assume that the Commission approved Mr. Ago's proposal that article 6 should be referred back to the Drafting Committee for the submission of a final text, bearing in mind the Commission's decision not to include paragraph 3.

*It was so agreed.*<sup>35</sup>

The meeting rose at 1.5 p.m.

<sup>35</sup> For resumption of discussion and adoption of article 6, see 933rd meeting, paras. 84-86.

## 932nd MEETING

*Tuesday, 4 July 1967, at 10.5 a.m.*

*Chairman:* Sir Humphrey WALDOCK

*Present:* Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

*Also present:* Mr. Rizvi, Observer for the Asian-African Legal Consultative Committee.

### Co-operation with Other Bodies

*(resumed from the 911th meeting)*

[Item 5 of the agenda]

1. The CHAIRMAN invited Mr. Rizvi, the observer for the Asian-African Legal Consultative Committee, to address the Commission.

2. Mr. RIZVI (Observer for the Asian-African Legal Consultative Committee) expressed the regret of the Chief Justice of Thailand, the President of the Asian-African Legal Consultative Committee for 1967, at his inability to attend the Commission's session because of unavoidable engagements in his Court. At the President's request, and with the agreement of the Government of Pakistan, he himself had the honour to represent the Committee.

3. He had been much impressed by the work of the International Law Commission in devising ways and means of promoting world peace and understanding. All the subjects on the Commission's agenda had one common factor—the desire to establish fellowship among different States in accordance with the principle of living honourably and letting others live honourably.

4. The subject of special missions could be traced back to the earliest days of known history. Permanent diplomatic missions constituted a stage in the evolution of that ancient institution. However, the powers of such missions were not sufficiently broad to cover the very wide range of questions arising in the relations between States; hence the need to evolve a legal system placing temporary special missions on an international basis. The Commission was engaged at the current session in formulating just such a system, which would prove a very useful means of promoting world fellowship. The Asian and African countries would derive particular benefit from that system, because most of them could not afford to maintain permanent missions in a large number of countries and had to deal with their problems through the machinery of special missions. He therefore wished to express the gratitude of his Committee for the work the Commission had done on the topic.

5. He would like to suggest to the Commission that the definition of "special mission" should be wide enough to include the members of an arbitral tribunal or the mediators who might be appointed by different countries to settle outstanding disputes or bring about a compromise.

6. The sphere of activity of the Asian-African Legal Consultative Committee was very similar to that of the Commission. At its tenth session at Bangkok in 1966, the Committee had adopted a final draft on the rights of refugees, including the right of asylum, the right to compensation and the right of repatriation. The Committee had been greatly assisted in its work by the advice and guidance given on a number of intricate questions by Mr. Yasseen, the representative of the Commission.

7. In view of the importance of its work, the Committee's membership would probably be enlarged in the near future. The subjects before it included the law of treaties; in 1966, it had appointed a special rapporteur for that subject and his report would be considered at the Committee's next session early in 1968. On the instructions of the Government of Pakistan, he himself had requested the Committee to include in its agenda the important question of the use of river waters on a territorial basis.

8. The Secretary of the Committee had already sent the Commission an invitation to participate in its next session. Since that session would be held at Karachi, he wished