

Document:-  
**A/CN.4/SR.937**

**Summary record of the 937th meeting**

Topic:  
**Special missions**

Extract from the Yearbook of the International Law Commission:-  
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61. Mr. REUTER said that he found the drafting of paragraph 1 of article 31 unsatisfactory. In particular, the words "the receiving State shall permit entry of and grant exemption from all customs duties" did not seem to be clear.

62. Mr. YASSEEN said that it was surely not essential to follow the provisions of the Vienna Convention to the letter. He too thought that the drafting of paragraph 1 should be improved.

63. Mr. CASTRÉN said that he still thought that the words "or of the members of their family who accompany them" in paragraph 1 (b) were unnecessary, since members of the family were dealt with in article 35.

64. Mr. AGO pointed out that article 35 contained no reference to articles intended for the personal use of members of the family. As those articles might be contained in the baggage of the representatives of the sending State or of the members of the diplomatic staff of the special mission, it was necessary that article 31 should also mention members of the family.

65. Mr. BARTOŠ, Special Rapporteur, said that the Commission was not obliged slavishly to reproduce the text of the Vienna Convention. Furthermore, the words "Within the limits of such laws and regulations" in paragraph 1 did not express the Commission's intention, which was that the receiving State should be obliged to grant customs exemption. In his view, the text of paragraph 1 could be improved; perhaps Mr. Reuter would suggest a different wording.

66. Mr. REUTER said that article 31 as at present drafted stated a purely discretionary rule and was therefore pointless. If the intention was to impose an obligation on the receiving State, the text of paragraph 1 should be revised.

67. Mr. JIMÉNEZ de ARÉCHAGA thought that the language of paragraph 1 could be changed, provided that no alteration was made in the substance. The future convention should not give special missions wider privileges than those granted to permanent diplomatic missions.

68. Mr. USHAKOV said that in his view the words "within the limits" did not mean that the receiving State could refuse to grant customs exemption.

69. Mr. KEARNEY said that the type of situation the provision was intended to cover was illustrated by the experience of the United States. The United States Government had, in fact, taken steps to prevent any member of the Foreign Service or of a permanent diplomatic mission from taking advantage of the economic situation in a foreign country. For example, if a member of such a mission was deemed to have made an undue profit from the sale of an automobile, he was obliged under an official regulation to turn the profit over to charity.

70. The CHAIRMAN pointed out that the Commission had discussed the purpose of the provision in detail on an earlier occasion and that the only objection to the article had been the retention of the words "in accordance with

such laws and regulations as it may adopt" used in the corresponding provision (article 36) of the Vienna Convention. Mr. Jiménez de Aréchaga had rightly pointed out that, in view of the principle of reciprocity involved, it was most unlikely that any State would enact unreasonable laws and regulations in that respect.

71. After a brief discussion, Mr. REUTER proposed that the French text of paragraph 1 should read:

*"Dans les limites des dispositions législatives et réglementaires qu'il peut adopter, l'Etat de réception autorise l'entrée et accorde l'exemption de droits de douane, taxes et autres redevances connexes autres que frais d'entreposage, de transport et frais afférents à des services analogues, en ce qui concerne:"*

72. The CHAIRMAN said that no change was required in the English text, and invited the Commission to vote on article 31.

*Article 31, with the changes made in the French text, was adopted unanimously.<sup>22</sup>*

The meeting rose at 6.5 p.m.

<sup>22</sup> See 938th meeting, paras. 66-68.

## 937th MEETING

Tuesday, 11 July 1967, at 3.15 p.m.

Chairman: Sir Humphrey WALDOCK

*Present:* Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, 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)

ARTICLE 32 (Administrative and technical staff) [36]<sup>1</sup>

1. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 32:

"Members of the administrative and technical staff of the special mission shall enjoy the privileges and immunities specified in articles 24 to 30, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 2 of article 26 shall not extend to acts performed outside the course of

<sup>1</sup> For earlier discussion, see 934th meeting, paras. 1-27.

their duties. They shall also enjoy the privileges mentioned in paragraph 1 of article 31 in respect of articles imported at the time of their first entry into the receiving State."

2. In accordance with the Commission's wishes, the Committee had aligned the article as closely as possible with the corresponding provision of the Vienna Convention on Diplomatic Relations. It had therefore added a final sentence similar to the final sentence in article 37, paragraph 2, of the Vienna Convention, the sole difference being that it had used the expression "first entry into the receiving State" instead of "first installation", which would hardly be appropriate to a special mission.

3. Mr. USHAKOV pointed out that the reference to articles 24 to 31 in the first sentence had been replaced by a reference to articles 24 to 30.

4. Mr. BARTOŠ, Special Rapporteur, said that the articles would be renumbered in the final draft and the cross-references from one article to another would be revised and concurred with the new numbering.

*Article 32 was adopted unanimously.*

#### ARTICLE 40 bis (Non-discrimination) [50]<sup>2</sup>

5. Mr. AGO, 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."

*Article 40 bis was adopted unanimously.*

#### INTRODUCTORY ARTICLE (Use of terms) [1]

6. The CHAIRMAN pointed out that the article on the use of terms was being examined on first reading and invited the Acting Chairman of the Drafting Committee to introduce the text.

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

##### "Use of terms"

"For the purposes of the present articles, the following expressions shall have the meanings hereunder assigned to them:

"(a) A 'special mission' is a mission of a representative and temporary character sent by one State to another State to deal with that State on specific questions or to perform a specific task in relation to the latter;

"(b) A 'permanent diplomatic mission' is a diplomatic mission sent by one State to another State and having the character provided for in the Vienna Convention on Diplomatic Relations;

"(c) A 'diplomatic mission' is a permanent diplomatic mission, a diplomatic mission to an international organization, or a specialized diplomatic mission having a permanent character;

"(d) A 'consular post' is any consulate-general, consulate, vice-consulate or consular agency;

"(e) The 'head of a special mission' is the person charged by the sending State with the duty of acting in that capacity;

"(f) A 'representative of the sending State in the special mission' is any person on whom the sending State has conferred that capacity;

"(g) The 'members of a special mission' are the head of the special mission, the representatives of the sending State in the special mission and the members of the staff of the special mission;

"(h) The 'members of the staff of the special mission' are the members of the diplomatic staff, the administrative and technical staff and the service staff of the special mission;

"(i) The 'members of the diplomatic staff' are the members of the staff of the special mission who have diplomatic status;

"(j) The 'members of the administrative and technical staff' are the members of the staff of the special mission employed in the administrative and technical service of the special mission;

"(k) The 'members of the service staff' are the members of the staff of the special mission employed by it as household workers or for similar tasks;

"(l) The 'private staff' are persons employed exclusively in the private service of the members of the special mission."

8. The Committee had considered that the definitions should be limited to those which were essential. The draft contained many expressions whose meaning was indicated implicitly or explicitly by the articles themselves.

9. Mr. REUTER said that the title of the article in French was not satisfactory and did not exactly correspond to the title in English.

10. Mr. AGO suggested that the article should be entitled in French: "*Emploi des termes*".

11. Mr. YASSEEN observed that the title "*Emploi des termes*" would perhaps not be appropriate if the word "*expression*" were retained in the body of the article.

12. Mr. REUTER proposed that the French version of the article should be entitled "*Terminologie*".

*It was so agreed.*

13. Mr. CASTRÉN said that there was a rather inelegant repetition in the French text in that, after the preliminary paragraph, stating that "the following expressions shall

<sup>2</sup> For earlier discussion, see 931st meeting, paras. 19-21.

have the meanings hereunder assigned to them”, each sub-paragraph in the French text began with the words “*L’expression ... s’entend*”. It was true that that wording was borrowed from article 1 of the Vienna Convention on Diplomatic Relations, but it should be possible to simplify it.

14. The CHAIRMAN suggested that Mr. Castrén’s point might be met by using the wording of the corresponding provision of the draft articles on the law of treaties.<sup>3</sup> A colon would thus be placed after the word “articles” in the preliminary paragraph and the rest of the sentence would be deleted.

*It was so agreed.*

15. The CHAIRMAN suggested that the Commission should adopt each definition separately.

*Sub-paragraph (a)*

16. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Commission had already considered, at its 932nd meeting,<sup>4</sup> a provisional version of the definition of special mission. In the light of the opinions expressed during that discussion, the Drafting Committee had worded the definition so as to indicate that the special mission could deal with the receiving State on specific questions or perform a specific task in relation to it.

17. The proposed definition had the restrictive character which the Commission had intended to give it.

18. The CHAIRMAN suggested that the last phrase of sub-paragraph (a) should be rearranged to read: “or to perform in relation to the latter a specific task”.

*It was so agreed.*

*Sub-paragraph(a), as amended, was adopted unanimously.*

*Sub-paragraph (b)*

19. Mr. AGO proposed that the word “*caractère*” in the French text should be in the plural.

20. The CHAIRMAN suggested that the word “characteristics” should be substituted for “character” in the English text.

*It was so agreed.*

21. Mr. EUSTATHIADES said that during the discussion of several articles, the Commission had decided either to delete or to add the word “permanent”. All the articles should therefore be carefully reviewed in the light of the definitions in sub-paragraphs (b) and (c).

22. Mr. AGO said that that had already been done by the Drafting Committee.

23. The CHAIRMAN said that the term “provided for in the Vienna Convention” implied that permanent diplomatic missions had not existed prior to the signature of that Convention. He suggested that the word “specified” would be more suitable.

24. Mr. YASSEEN suggested that sub-paragraph (b) should be redrafted to read: “A ‘permanent diplomatic mission’ is a diplomatic mission provided for in the Vienna Convention on Diplomatic Relations”.

25. Mr. AGO said that the permanent diplomatic mission was an institution recognized by general international law. Not all the States that became parties to the future convention on special missions would necessarily be parties to the Vienna Convention on Diplomatic Relations. The shortened definition suggested by Mr. Yasseen would therefore be dangerous.

26. The CHAIRMAN pointed out that although permanent diplomatic missions were not defined in the Convention on Diplomatic Relations, “consular post” was defined in the Convention on Consular Relations. That was a further argument for using the word “specified” instead of the words “provided for”.

27. Mr. AGO proposed the following wording: “and having the characteristics specified in the Vienna Convention on Diplomatic Relations”.

*It was so agreed.*

*Sub-paragraph(b), as amended, was adopted unanimously.*

*Sub-paragraph (c)*

28. Mr. AGO, Acting Chairman of the Drafting Committee, said that that sub-paragraph had been included in the introductory article, not in order to give a “definition” of a “diplomatic mission”, but because the Commission needed to use a general term in certain articles to designate either the permanent diplomatic mission accredited by the sending State to the receiving State or—regardless of whether such a permanent diplomatic mission existed or not—other missions of a diplomatic character, such as a mission to an international organization having its headquarters in the receiving State or a specialized diplomatic mission having a permanent character, which could not therefore be equated with a special mission.

29. Mr. JIMÉNEZ de ARÉCHAGA suggested that to define a diplomatic mission as a diplomatic mission to an international organization might prejudice the conclusions of Mr. El-Erian’s report on the topic of relations between States and inter-governmental organizations. He would also like to know exactly what was meant by “a specialized mission having a permanent character”.

30. Mr. AGO said that he himself had been exercised by the problem Mr. Jiménez de Aréchaga had just raised. However, sub-paragraph (c) did not deal in any way with the question of missions to international organizations; its primary purpose was to clarify the meaning of article 22, under which the receiving State was required to ensure the special mission’s freedom of communication with the government of the sending State, with the permanent diplomatic mission of the sending State to the receiving State and, if need be, with other missions of the sending State. For example, the special mission of a European State to the United States must be able to communicate freely with the permanent mission of the sending State to the United Nations in New York or with a specialized diplomatic mission of that State to the United States.

<sup>3</sup> *Yearbook of the International Law Commission, 1966*, vol. II, document A/6309/Rev.1, part II, following paragraph 38.

<sup>4</sup> Paras. 71-95.

31. Mr. BARTOŠ, Special Rapporteur, said that the provisions of article 22 were particularly important because the severance of diplomatic relations was becoming an increasingly common practice in the modern world. Thus some dozen countries had at present severed their diplomatic relations with the United States of America but maintained their missions to the United Nations in New York. The Drafting Committee had carefully weighed the importance of sub-paragraph (c) in the introductory article; in the draft, the expression "diplomatic mission" designated the organs of the sending State in general.
32. Mr. JIMÉNEZ de ARÉCHAGA said he was not entirely convinced that the inclusion of such a definition was warranted in order to take into account the entirely secondary question of freedom of communication between a special mission and a mission to an international organization, especially since its inclusion would have the effect of prejudging, without prior study, the important issues that might arise in connexion with the status of such missions. The Commission might well decide to equate those missions with diplomatic missions in all respects, but it would be rash, to say the least, to take such a decision before Mr. El-Erian's report had been examined, for the relationship between traditional diplomatic law and any special conventions governing the status of the missions might thereby be affected.
33. Referring to the missions described in the third phrase of the sub-paragraph, he asked if any members could give him examples of such missions which were neither special missions nor diplomatic missions.
34. Mr. USHAKOV observed that the article began with the words "for the purposes of the present articles". Sub-paragraph (c) was not, therefore, stating a universally valid definition.
35. Mr. BARTOŠ, Special Rapporteur, explained that there were many diplomatic missions having specialized functions and a permanent character—such as missions to the North Atlantic Treaty Organization and industrial co-operation and labour recruitment missions—whose diplomatic character was recognized, even though such missions were generally placed in an annex to the official list of diplomatic missions. Other examples were the missions which the United States had sent to Europe under the Marshall Plan and the missions exchanged by the member States of the European Economic Community.
36. The CHAIRMAN suggested that Mr. Jiménez de Aréchaga's point might to some extent be met if the second phrase of the paragraph was revised to read "a permanent mission to an international organization". In any event, as Mr. Ushakov had pointed out, the definitions were being drawn up solely for the purposes of the articles of the draft convention.
37. Mr. KEARNEY said that, since the problem arose only in connexion with paragraph 1 of article 22 on freedom of communication, Mr. Jiménez de Aréchaga's difficulty might be eliminated by slightly altering the second sentence of that paragraph to read "In communicating with the Government, the diplomatic missions, the consular posts and other missions of the sending State...".
38. Mr. AGO acknowledged that sub-paragraph (c) was hardly satisfactory, especially as it followed immediately on sub-paragraph (b). He therefore proposed that sub-paragraph (c) of the introductory article should be deleted and that the second sentence of article 22, paragraph 1, should be amended as suggested by Mr. Kearney.
39. Mr. BARTOŠ, Special Rapporteur, said that he was firmly opposed to a solution which was tantamount to denying an already established juridical fact, namely, that missions to international organizations and embassies of a specialized character were diplomatic missions. If Mr. Ago's proposal was put to the vote, he himself would not participate in the voting, as he considered that substance and form were so closely interrelated as to be inseparable.
40. Mr. USHAKOV said he shared Mr. Ago's view that it was hardly necessary to define in the introductory article an expression which was used in only one article of the draft. He therefore agreed to the deletion of sub-paragraph (c). But, in his opinion, to amend article 22, paragraph 1, as suggested by Mr. Kearney, would give rise to ambiguity. It would be better to leave article 22 as it was and to explain in the commentary to that article how the Commission intended it to be interpreted.
41. The CHAIRMAN reiterated his suggestion that the word "diplomatic" in the second phrase should be changed to "permanent".
42. Mr. AGO said that sub-paragraph (c) was not acceptable, for the definition it gave was incompatible with the one given in sub-paragraph (b). Although the purpose of sub-paragraph (c) was to distinguish the diplomatic mission from the permanent diplomatic mission, defined in the preceding sub-paragraph, it again used the adjective "permanent".
43. Mr. CASTAÑEDA said that not all the diplomatic missions sent to an international organization were permanent missions. One example was a mission sent to the Economic and Social Council. He therefore proposed the following wording: "mission accredited to an international organization".
44. The CHAIRMAN pointed out that the purpose of the definition was to give meaning to article 22, paragraph 1. He doubted whether the phrase in question could be interpreted as anything more than a reference to permanent missions to international organizations.
45. Mr. JIMÉNEZ de ARÉCHAGA said he had no intention of questioning the diplomatic character of such missions, but merely wished to stress the undesirability of prejudging Mr. El-Erian's report in order to meet such a limited need. Mr. Ushakov's point might perhaps be met by using the term "other diplomatic missions" in article 22, paragraph 1.
46. Mr. AGO suggested that sub-paragraph (c) should be deleted and that article 22, paragraph 1, should be retained as adopted; all categories of missions would then be covered.

47. Mr. BARTOŠ, Special Rapporteur, said that he was not opposed to deleting sub-paragraph (c). He could not, however, in any circumstances agree to its being amended, since that would distort the meaning of the definition, which was based on doctrine.

48. Mr. USHAKOV asked that the significance of the term "diplomatic mission" should be explained in the commentary to article 22.

49. The CHAIRMAN invited the Commission to vote on the retention of sub-paragraph (c).

*Sub-paragraph (c) was rejected unanimously by the members participating in the vote.*

50. Mr. BARTOŠ, Special Rapporteur, confirmed that he had not taken part in the vote.

*Sub-paragraph (d)*

51. Mr. AGO, Acting Chairman of the Drafting Committee, explained that sub-paragraph (d) was an almost exact reproduction of article 1, paragraph (a), of the Vienna Convention on Consular Relations.

*Sub-paragraph (d) was adopted unanimously.*

*Sub-paragraph (e)*

52. Mr. AGO, Acting Chairman of the Drafting Committee, said that the definition dealt with a very simple matter which did not call for any explanation.

*Sub-paragraph (e) was adopted unanimously.*

*Sub-paragraph (f)*

53. Mr. AGO, Acting Chairman of the Drafting Committee, said that that sub-paragraph, like the previous one, presented no problem of interpretation.

*Sub-paragraph (f) was adopted unanimously.*

*Sub-paragraphs (g) to (l)*

54. Mr. AGO, Acting Chairman of the Drafting Committee, said that sub-paragraphs (g) to (l) might be considered together, as they were complementary. The definitions they contained followed very closely those of article 1, paragraphs (b), (c) and (d), and (f), (g) and (h), of the Vienna Convention on Diplomatic Relations. Servants came into the category of "private staff".

55. Mr. CASTRÉN pointed out that the word "exclusively" in sub-paragraph (l) did not appear in the corresponding provision of the Vienna Convention on Diplomatic Relations.

56. Mr. AGO explained that that word had been used deliberately in order to make it clear that where a person was employed in a dual capacity, being simultaneously on the service staff of a special mission and also on the private staff of a member of the special mission, it was his status as member of the service staff which prevailed.

57. Mr. USHAKOV said that the word "exclusively" appeared in article 1, paragraph (i), of the Vienna Convention on Consular Relations.

*Sub-paragraphs (g) to (l) were adopted unanimously.*

58. The CHAIRMAN asked members whether they wished to suggest any further expressions for inclusion in the introductory article.

59. Mr. CASTRÉN pointed out that archives were defined in detail in article 1, sub-paragraph (k) of the Vienna Convention on Consular Relations and suggested that a similar definition should be included in the introductory article of the draft, since special missions were, generally speaking, more akin to consular posts than to diplomatic missions.

60. Mr. BARTOŠ, Special Rapporteur, thought that, in view of the diversity of special missions, it would be impossible to list the contents of their archives.

61. Mr. AGO said that in his view it was not really necessary to define the archives of special missions. The purpose of the introductory article was to explain the meaning attributed to certain expressions the interpretation of which was necessarily to some extent arbitrary. But the word "archives" could only be defined in the ordinary sense of the term, in which case there seemed to be no reason why a definition of other terms such as "property", "premises" and so forth should not also be included.

62. Mr. NAGENDRA SINGH said that he was inclined to agree with Mr. Ago that it was inadvisable to include a definition of the term "archives".

63. The CHAIRMAN, speaking as a member of the Commission, said that any such definition was liable to be interpreted restrictively.

64. Speaking as Chairman, he said that, if there were no further comments, he would consider that the Commission did not wish to include a definition of "archives".

*It was so agreed.*

65. Mr. CASTRÉN said that the Special Rapporteur's first proposal for the introductory article<sup>5</sup> had contained definitions of "sending State" and "receiving State". As the meaning of the term "receiving State" had given rise to discussion, the obvious conclusion was that its meaning was implicit in the articles themselves and that there was no longer any need to make the distinction between "third State" and "receiving State".

66. Mr. AGO explained that the Drafting Committee had indeed taken the view that the text of the articles was sufficiently clear to leave no room for confusion on that point and had decided not to define "sending State" and "receiving State", as a definition was always liable to create difficulties of interpretation.

67. The CHAIRMAN said that, if there were no further comments on the introductory article, he would assume that the Commission agreed to adopt that article.

*It was so agreed.*

ARTICLE 17 *quater* (Status of the Head of State and persons of high rank) [21]<sup>6</sup>

68. The CHAIRMAN said that, before inviting the Acting Chairman of the Drafting Committee to introduce the revised text of article 17 *quater* proposed by that

<sup>5</sup> Document A/CN.4/194/Add.2, article 0.

<sup>6</sup> For earlier discussion, see 923rd meeting, paras. 1-37, 924th meeting, paras. 1-47, and 925th meeting, paras. 1-30.

Committee, he wished to remind the Commission of its decision not to create a special category of high-level missions but merely to formulate a general provision dealing with the special status of certain dignitaries.

69. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Committee proposed the following title and text for article 17 *quater*:

*"Status of the Head of State and persons of high rank"*

"1. The Head of the sending State, when he leads a special mission, shall enjoy in the receiving State or in a third State, in addition to what is granted by these articles, the facilities, privileges and immunities accorded by international law to Heads of State on an official visit.

"2. The Head of the Government, the Minister for Foreign Affairs or other persons of high rank, when they take part in a special mission from the sending State, shall enjoy, in the receiving State or in a third State, in addition to what is granted by these articles, the facilities, privileges and immunities accorded to them by international law."

70. The whole draft dealt with special missions which, although not high-level missions, were nevertheless important missions having a representative character, and so could be accorded a status and granted privileges and immunities. There was thus no need to deal separately with high-level missions. But if the members of a mission included the Head of State or some other person of high rank, there was a risk of their being granted less than was accorded to them by general international law. The Drafting Committee therefore proposed article 17 *quater*, under which such persons enjoyed, over and above what was provided by the draft articles, the privileges and immunities accorded to them by general international law.

71. Mr. JIMÉNEZ de ARÉCHAGA said that he had misgivings, not about what article 17 *quater* said, but about what it omitted to say. The text now proposed made reference to the facilities, privileges and immunities accorded by international law to Heads of State on an official visit. General international law also accorded certain privileges to the suite of a Head of State and, if no reference were made to those privileges, article 17 *quater* might be liable to misinterpretation.

72. Mr. AGO, Acting Chairman of the Drafting Committee, explained that the Committee had pondered the problem raised by Mr. Jiménez de Aréchaga and had come to the conclusion that the privileges and immunities accorded in the draft convention were quite sufficient and in conformity with what was accorded to members of the suite by general international law. Cases in which the suite of a Head of State included persons of a very high rank were covered by paragraph 2 of the article.

73. Mr. USHAKOV said that, under the terms of the preamble, the rules of customary international law remained in force, and that was sufficient.

74. In reply to a question by Mr. REUTER, Mr. AGO said that it would be difficult to combine the two paragraphs of article 17 *quater* into a single paragraph. As the Special Rapporteur had explained to the members of the

Drafting Committee, international law accorded exceptional privileges to the Head of State on an official visit, but not to other persons of high rank in similar circumstances.

75. Mr. JIMÉNEZ de ARÉCHAGA said he was quite satisfied by the explanations given by Mr. Ago and Mr. Ushakov. He noted, in particular, that the provisions of article 17 *quater* would not affect existing international law and that the provisions of paragraph 2 also covered the suite of a Head of State.

*Article 17 quater was adopted unanimously.*

ARTICLE 17 *bis* (Derogation by mutual agreement from the provisions of part II) [—]<sup>7</sup>

76. The CHAIRMAN invited the Commission to give its views on the Drafting Committee's recommendation that article 17 *bis*, which had originated in a proposal by the Government of Pakistan, should be deleted.

77. Mr. AGO, Acting Chairman of the Drafting Committee, explained that the Drafting Committee proposed the deletion of article 17 *bis*, which was unnecessary because the draft did not rule out the possibility of the conclusion of special agreements.

78. Mr. BARTOŠ, Special Rapporteur, pointed out that the right of derogation was adequately safeguarded by the terms of paragraphs 2 (b) and (c) of article 40 *bis*.

79. The CHAIRMAN said that, if there were no further comments, he would assume that the Commission agreed to adopt the Drafting Committee's proposal to drop article 17 *bis*.

*The proposal was adopted unanimously.*

ARTICLE 17 *ter* (Difference between categories of special missions) [—]<sup>8</sup>

80. The CHAIRMAN said that the Drafting Committee now proposed to drop article 17 *ter* because it had been rendered superfluous by other decisions taken by the Commission.

*The proposal to delete article 17 ter was adopted unanimously.*

ARTICLE "X" (Legal status of the provisions) [—]

81. The CHAIRMAN said that the Drafting Committee had found that article "X" (A/CN.4/194/Add.2) was not consistent with the general economy of the draft articles adopted by the Commission; it therefore proposed its deletion.

*The proposal to delete article "X" was adopted unanimously.*

ARTICLE "Y" (Relationship between the present articles and other international agreements) [—]

82. Mr. AGO, Acting Chairman of the Drafting Committee, said the Drafting Committee considered that,

<sup>7</sup> For earlier discussion of articles 17 *bis* and 17 *ter*, see 925th meeting, paras. 31-53.

<sup>8</sup> See footnote 7.

with the Commission's adoption of the draft convention on the law of treaties, article "Y" (A/CN.4/194/Add.2) was no longer needed, and accordingly proposed its deletion.

83. Mr. EUSTATHIADES said that he saw no conclusive reason for deleting article "Y". It was conceivable that the parties to the convention on special missions might not be parties to the convention on the law of treaties. Moreover, paragraph 2 contained a provision which would be of assistance in applying the provisions of the draft. He was therefore reluctant to accept the proposal that article "Y" should be deleted.

84. Mr. CASTRÉN said he thought it would be preferable to delete article "Y", not merely because paragraph 1 was too restrictive, but also because the provision in paragraph 2 conflicted with article 40 *bis*.

85. Mr. USTOR said he also supported the proposal to delete article "Y". Paragraph 1 of that article was innocuous but would not serve any very useful purpose because there were very few agreements between States on the subject of special missions. Paragraph 2, on the other hand, was in contradiction with article 40 *bis*. Furthermore, difficulties had arisen with regard to the application of article 73, paragraph 2, of the 1963 Vienna Convention on Consular Relations on which paragraph 2 of article "Y" was based; in particular, in the event of an *inter se* agreement being concluded between two States parties to the 1963 Vienna Convention in contravention of article 73, paragraph 2, of that Convention, the actual rights of other parties vis-à-vis those two States were not entirely clear.

86. For those reasons, he believed that the inclusion of an article on the lines of article "Y" would create more problems than it would solve.

87. The CHAIRMAN said the essential objection to article "Y" was that the provisions of its paragraph 2 were too restrictive and hence inconsistent with those of article 40 *bis* on the right of derogation by agreement.

*The Drafting Committee's proposal to delete article "Y" was adopted unanimously.*

ARTICLE 40 (Obligation to respect the laws and regulations of the receiving State) [48]<sup>9</sup>

88. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 40:

"1. Without prejudice to their privileges and immunities, it is the duty of all persons belonging to special missions and enjoying these privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

"2. The premises of the special mission must not be used in any manner incompatible with the functions of the special mission."

89. Mr. JIMÉNEZ de ARÉCHAGA said that he had not participated in the earlier discussions on article 40

and therefore wished to know whether the departure in paragraph 2 from the language used in the corresponding paragraph 3 of article 41 of the Vienna Convention on Diplomatic Relations was deliberate. In fact, in the text now before the Commission, the important concluding portion of the paragraph had been omitted. In the text of the Vienna Convention, the words "the functions of the mission" were qualified by the concluding phrase "as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State".

90. The Commission had added that concluding phrase to the text in 1958 during its examination of the draft articles on diplomatic intercourse and immunities in order to reserve the question of the right of asylum in the premises of diplomatic missions.<sup>10</sup> That was a question to which great importance was attached by its Latin American members because of the existence in their part of the world of international agreements on the subject of diplomatic asylum.

91. Mr. AGO said that article 3 of the Vienna Convention on Diplomatic Relations laid down the functions of a diplomatic mission. That was why article 41, paragraph 3, of that Convention specified that the reference was to the functions of the mission "as laid down in the present Convention". As the Commission had recognized that it was impossible to define the functions of a special mission, the Drafting Committee had thought it preferable not to add the words "as laid down in the present Convention".

92. Mr. JIMÉNEZ de ARÉCHAGA said that the technical reasons advanced by Mr. Ago were not sufficient grounds for omitting the important passage he had just quoted. That omission could be construed as a denial of the validity of the existing rules of general international law in the Latin American region.

93. Moreover, he saw no harm in referring to general international law, since the preamble to the draft articles would contain a reference to the rules of international law and since the functions of special missions were governed by such rules.

94. He therefore proposed that the words he had quoted from article 41, paragraph 3 of the 1961 Vienna Convention should be added at the end of paragraph 2. Unless that proposal were adopted, he would feel obliged to reconsider his position with regard not only to article 40 but also to the whole of the draft on special missions. The matter was one of great importance and the omission of the passage in question could be construed as a decision against the right of diplomatic asylum.

95. Mr. KEARNEY explained that the Drafting Committee had adopted the shorter text for paragraph 2 solely in the interests of good drafting; there had been no intention of prejudging the question of the right of asylum. Thus, although he thought it unlikely that the question of asylum in the premises of special missions would arise, he was prepared to support the proposal by Mr. Jiménez de Aréchaga in order to meet the difficulty he had raised.

<sup>9</sup> For earlier discussion, see 910th meeting, paras. 72-81.

<sup>10</sup> *Yearbook of the International Law Commission, 1958*, vol. II, p. 104, paragraph (4) of commentary to article 40.

96. Mr. AGO said that while a special mission could grant the right of asylum, if the need arose, under the terms of a special agreement, the granting of the right of asylum could scarcely be regarded as one of the functions of a special mission.

97. Mr. JIMÉNEZ de ARÉCHAGA said that there was no intention of imposing the right of diplomatic asylum, which was an institution peculiar to the Latin American States. On the other hand, it was essential not to exclude that right and that would be the effect of omitting the concluding proviso which he had proposed. That proviso had originally been introduced in order to take account of the final sentence of paragraph 1: "They also have a duty not to interfere in the internal affairs of that State", a sentence which would be construed as excluding the right of diplomatic asylum.

98. The CHAIRMAN invited the Acting Chairman of the Drafting Committee and Mr. Jiménez de Aréchaga to consult together and propose a mutually satisfactory text for paragraph 2.

99. Mr. AGO, Acting Chairman of the Drafting Committee, proposed that article 40, paragraph 2, should be drafted to read as follows:

"The premises of the special mission shall not be used in any manner incompatible with the functions of the special mission, as envisaged in the present convention, in the rules of general international law or in any special agreements in force between the sending and the receiving State".

100. Mr. EUSTATHIADES said that he did not find the new text very satisfactory and it would perhaps be necessary to give some explanation in the commentary. However, if that text met Mr. Jiménez de Aréchaga's wishes, he was prepared to accept it.

101. Mr. JIMÉNEZ de ARÉCHAGA said that he was fully satisfied with the text read out by Mr. Ago. The Latin American treaties on the subject of asylum provided for the right of asylum in any premises which enjoyed diplomatic immunities; by virtue of the provisions of those treaties, the right of asylum had been applied to special missions.

102. Mr. EUSTATHIADES, referring to paragraph 1, said that he preferred the English term "belonging" to the expression "*qui entrent dans la composition*" used in the French text.

103. Mr. REUTER asked whether the words "all persons belonging to special missions" used in paragraph 1 meant "the members of the special mission" and "the private staff", the definition of which was given in the introductory article. If so, it would probably be better to use those two terms.

104. Mr. BARTOŠ, Special Rapporteur, replied that those two terms could not be used, as the members of the family of members of the special mission also enjoyed those privileges and immunities.

105. The CHAIRMAN put to the vote article 40 with the following amendments:

106. Firstly, the words "all persons belonging to special missions and enjoying these privileges and immunities" would be replaced by "all persons enjoying these privileges and immunities under the present articles". That change would meet the point raised by Mr. Eustathiades and Mr. Bartoš.

107. Secondly, the full stop at the end of paragraph 2 would be replaced by a comma and the following words would be added: "as envisaged in the present articles or in other rules of general international law or in any special agreements in force between the sending and the receiving State".

*Article 40, as amended, was adopted unanimously.*

The meeting rose at 5.40 p.m.

### 938th MEETING

*Wednesday, 12 July 1967 at 10.10 a.m.*

*Chairman: Sir Humphrey WALDOCK*

*Present: Mr. Ago, Mr. Bartoš, Mr. Castrén, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, 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]

1. The CHAIRMAN, said that, before inviting the Commission to consider the draft preamble which the Drafting Committee proposed for annexation to the draft articles, he wished to announce that a telegram had been received from Mr. Ruda expressing his regret at having been prevented from attending the present session of the Commission because he was representing his country in the Security Council. A letter had previously been received from Mr. Rosenne, expressing his regret at being prevented by his official duties from returning to Geneva to participate in the Commission's work.

### DRAFT PREAMBLE PROPOSED BY THE DRAFTING COMMITTEE

2. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for the preamble to a convention on special missions:

*"The States parties to this Convention.*

*"Recalling that the need of according a particular status to special missions of States has always been recognized,*

*"Bearing in mind the Purposes and Principles of the Charter of the United Nations relating to the sovereign equality of States, the maintenance of international*