Document:-
A/CN.4/SR.939

Summary record of the 939th meeting

Topic:
<multiple topics>

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

Committee of the General Assembly.[16] The Commission had not, however, so far tackled that topic.

84. Mr. AGO thought that the Commission should begin by drawing a distinction between very broad topics and topics of more limited scope. With regard to the former, the Commission had already placed on its agenda succession of States and State responsibility. As the term of office of members of the Commission expired in four years' time, it was useless to contemplate studying another topic of that magnitude; it was questionable whether the Commission would be able to complete the codification of those two topics. On the other hand, it was desirable that the Commission should always have on its agenda more limited topics which it could take up, if necessary, in the absence of the special rapporteur responsible for a broader topic.

85. He himself feared that a codification of the question of the right of asylum might disturb the balance which seemed to have established itself in practice. As to the question of historic bays, also proposed by the General Assembly, its codification would perhaps complete the law of the sea, but it was not an urgent problem.

86. On the other hand, the question of the most-favoured-nation clause was of great importance and was connected with international trade, the study of which had been recommended by the General Assembly. Indeed, the Commission had touched on that topic in preparing the draft convention on the law of treaties, and had expressed the view that a special study should be devoted to it. It would therefore be logical to place it on the agenda.

87. Mr. NAGENDRA SINGH also thought that the Commission should complete its work on the topics already before it before adopting new ones. Perhaps it was because the Commission took so long to complete its work that the General Assembly was tempted to entrust topics to other bodies.

88. The CHAIRMAN pointed out that there was no question of including any more major topics in the Commission's programme for the time being. Indeed, work on relations between States and inter-governmental organizations, State succession and State responsibility was likely to take up the remainder of the term of office of the Commission's members and possibly another five years. It was useful, however, to have in reserve a more limited topic which could be discussed in the intervals when the Special Rapporteur and the Drafting Committee were preparing texts on a major topic. The subject of the most-favoured-nation clause, which was complementary to the law of treaties, was not urgent, but might be completed during those intervals.

The meeting rose at 1.5 p.m.

[16] For discussion of this subject in the Sixth Committee, see *Official Records of the General Assembly, Fourteenth Session, Sixth Committee*, 602nd-612th meetings.

939th MEETING

Thursday, 13 July 1967, at 10.10 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, 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.

Organization of Future Work

(A/CN.4/L.119)

(continued)

[Item 6 of the agenda]

1. The CHAIRMAN said he wished to assure Mr. Tabibi and other speakers that the Commission had always been careful to respect the wishes of the General Assembly. The working paper on the organization of future work (A/CN.4/L.119) showed the position with regard to the various topics in the Commission's general programme, including those proposed by the General Assembly, and he himself had drawn the Commission's attention at the 896th meeting[1] to the report of the Sixth Committee to the General Assembly at its twenty-first session.[2] The Commission's earlier discussions had shown that all its members were aware of the importance of the General Assembly's directives; indeed, the Commission's current programme had been handed down to it from its previous members, and the decision to give priority to State succession in respect of treaties had been taken in response to the Assembly's instructions.

2. It should be borne in mind, however, that the Commission's programme was very heavy and that even if all the Special Rapporteurs submitted reports and draft articles in time and could be at the Commission's disposal when required, the programme was likely to take not only the current five-year period, but also the next, to complete. That could be used as an argument against adding any further topics to the programme, but it was wise to have a limited topic in reserve for consideration during periods when the major topic could not be discussed because the Special Rapporteur was unavoidably absent or had not completed his report in time.

3. While he fully appreciated Mr. Tabibi's wish to have the whole question of the Commission's work studied by a subsidiary body of the Commission, it should be remembered that the choice of any major topic would commit the Commission far into the future. Care must be taken not to give the General Assembly the impression that there was any possibility of adding new topics to the Commission's present programme or to arouse undue expectations.

4. Mr. NAGENDRA SINGH said he considered that Mr. Jiménez de Aréchaga's proposal for the inclusion of

[1] Para. 4.

[2] *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 84, document A/6516.

a subsidiary topic in the programme was a wise one, particularly as the subject of the most-favoured-nation clause met the four basic requirements for such a topic. The first was that it must be subsidiary in character, the second, that it must not interfere with considerations of the main topic, the third, that it could be taken up only when time was available, and the fourth, that it must be one of those proposed for study by the Sixth Committee. The subject of the most-favoured-nation clause had been raised during the twenty-first session of the General Assembly, since such clauses were being included in trade agreements between developed and developing countries, and no agreement had yet been reached on their specific wording. He believed that the Special Rapporteur on the subsidiary topic should be someone who was not obliged to devote much time to any of the main topics.

5. The CHAIRMAN said that the relevant passage of the Sixth Committee's report on that question read: "With respect to the most-favoured-nation clause, certain representatives suggested that the question should be considered in the Sixth Committee or at the future conference of plenipotentiaries on the law of treaties. Others were prepared to support any proposal that the Commission should study the most-favoured-nation clause without linking it to the general codification of the law of treaties. In their opinion, the adoption of a convention on the law of treaties would facilitate the study by the International Law Commission of the problems arising in connexion with that clause".[3]

6. Mr. JIMÉNEZ de ARÉCHAGA said it would be advisable for the Commission to appoint a fifth Special Rapporteur to begin work on a limited topic which could be completed within the remaining four years of the term of office of the Commission's existing members. The budgetary appropriations provided for five Special Rapporteurs, and that number had proved convenient, in view of the many circumstances which might interfere with a Special Rapporteur's work, both before and during sessions of the Commission. Thus, during the current session, the Commission had been placed in a most difficult position, from which it had been able to extricate itself only thanks to the devotion and industry of the Special Rapporteur on special missions.

7. It was obvious that the fifth topic could not be a major one, for the Commission already had too many broad subjects on its agenda. He could not agree with Mr. Ago that the topic of relations between States and inter-governmental organizations was a limited one; the voluminous and complex documentation submitted by the Secretariat bore witness to its wide scope. Similarly, the topic of State succession in respect of treaties would need much research and study, even though the number of articles mature for codification was not large. It was therefore more than doubtful whether the study of those two topics could be completed in four years.

8. Mr. Ago had rightly pointed out that it would be inappropriate to take up the two more limited topics indicated by the General Assembly, the right of asylum and the juridical régime of historic waters, since the former was already included in the agenda of the General Assembly for its twenty-second session and was not mature for codification on a world-wide basis, while it would not be proper to take up the latter in the existing political situation.

9. In the course of its work on the law of treaties, the Commission had been confronted with an important subject related to the law of trade, that of the legal aspects and application of the most-favoured-nation clause. Rather than request the Special Rapporteur on the law of treaties to include relevant articles in his draft, the Commission had thought it preferable that the topic should form the subject of a special study at a later date.[4] A number of representatives in the General Assembly had also referred to the advisability of a study of the matter, the most general opinion having been that the Commission itself was the most appropriate body to deal with the topic.

10. The appointment of a special rapporteur on the topic would in no way be tantamount to disregarding the decisions of the General Assembly. When the Commission had begun its work on the law of treaties, in compliance with instructions from the General Assembly, it had naturally retained a certain scientific freedom of discussion and the right to isolate certain questions arising in the course of its examination of the main topic. Furthermore, the Assembly itself had set up a body to study all the legal rules governing international trade; the most-favoured-nation clause was used mainly in trade agreements, and the Commission's work on that subject would contribute to that of the new body. Conversely, the Commission would profit by discussions in the new organ, and it would therefore be wise to appoint as special rapporteur a member of the Commission who was already taking part in the work of the Commission on International Trade Law.

11. Mr. CASTRÉN said he adhered to the views he had previously expressed on the need for the Commission to concentrate on the two major topics—succession of States and Governments and State responsibility—and also on relations between States and inter-governmental organizations. He thought, however, that the question of the most-favoured-nation clause, which was related to the law of treaties and which undoubtedly came within the Commission's terms of reference could be included as a secondary topic in the programme of future work. He also recognized that treaties and unilateral acts were generally studied in succession and were to some extent complementary.

12. Mr. REUTER said he had some comments to make on the question whether the Commission should include the most-favoured-nation clause in the agenda for its twentieth session.

13. Firstly, he welcomed the Chairman's decision to submit draft articles on succession in respect of treaties at the next session, since that would considerably ease the situation as far as the Commission's work programme was concerned, and in the light of that fact, he would agree to the appointment of a new special rapporteur for the topic of the most-favoured-nation clause. Secondly, it had to be

[3] *Ibid.*, para. 47.

[4] *Yearbook of the International Law Commission, 1964*, vol. II, p. 176, para. 21.

borne in mind that although the Commission was subject to the directives of the General Assembly, both the latter and its Sixth Committee were highly appreciative of any suggestions it might put forward, particularly through those of its members who participated in the work of the Sixth Committee. Thirdly, in order to comply with the spirit of the Charter of the United Nations and the Statute of the International Court of Justice, the selection of rapporteurs must, of course, be made with due regard for geographical and political distribution. That should not, however, obscure the fact that the work of those members of the Commission was done in a personal capacity, and that they should not be regarded as representatives of States. The Commission should first find out which members were prepared to undertake the work and should take account of the views of the other members of the Commission in considering the possibility of dividing the work if the topic to be studied was too broad.

14. Lastly, he urged that there should be a restriction of public debate and an increase in the number of closed meetings. That would enable the Commission to achieve more in the way of practical results and to act more effectively.

15. Mr. TABIBI said that he wished to make it clear that, in his statement at the preceding meeting, he had in no way intended to imply that the Commission was not following the directives of the General Assembly; indeed, the Commission's report was annually praised and completely endorsed by the Sixth Committee, and the Assembly was fully aware of the valuable services already rendered by the Commission in promoting international co-operation for observance of the rule of law. Nevertheless, times had changed since the Commission had been established twenty years before and the new Members of the United Nations were constantly raising topics to which they attached capital importance. The Commission might believe that certain topics were not yet mature for consideration, but Member States might hold other views; for example, the Commission had not considered that the topic of land-locked countries was ready for codification, but a Convention on the subject was nevertheless now in force. Further consideration should, therefore, be given to the Commission's general approach to its work, to its methods, to world-wide requirements and to the position of Special Rapporteurs: it might even be thought advisable to appoint two Special Rapporteurs to deal with the same topic.

16. Although he agreed with the Chairman that the General Assembly's expectations should not be raised, he wished to point out that if the Commission failed to include certain topics in its long-term programme, other organs might be called upon to deal with them, and it would then be too late for the Commission to study the legal aspects, with which it was best equipped to deal. He therefore urged that an over-all review of the Commission's work should be undertaken for the purpose of drawing up a list of new topics, on the understanding that they would not be considered until the topics currently under study had been completed.

17. Mr. USHAKOV thought that the three major topics included in the Commission's agenda would amply suffice to occupy it throughout its twentieth session. However, he recognized that the most-favoured-nation clause was not a new topic, and that it followed on and complemented the law of treaties; it was also fairly limited in scope. Thus, the Commission might include it in its agenda for the twentieth session, while giving priority to the three topics already selected.

18. Mr. KEARNEY said that he personally would also prefer the Commission to include in its agenda certain important topics such as the juridical régime of historic waters and the utilization of international rivers. Nevertheless, he agreed on the need to include a subject which could be handled within the confines of the Commission's current work, and supported the proposal to include the topic of the most-favoured-nation clause in the programme of work.

19. He also agreed with Mr. Tabibi that a serious over-all study should be made of the long-term programme. The Commission's twentieth anniversary would be an appropriate time for a full-scale review of its agenda, operation and procedures.

20. Mr. BARTOŠ said he was in favour of continuing the work on the law of treaties by a study of the most-favoured-nation clause, which was fully compatible with the recommendations of the United Nations General Assembly. That subject was among the first of the secondary questions relating to the law of treaties that remained to be studied separately. It had many aspects, some of which touched on political mattters. The topic came under the heading of the progressive development of international law, and should therefore be studied under article 16 of the Commission's Statute. It called for the appointment of a special rapporteur as well as the formulation of a plan of work and of a questionnaire for circulation to Governments.

21. He further considered that the Commission should also include in its work programme the question of a possible revision of its Statute and its internal procedure. In the twenty years since the Statute had been drafted and adopted, major changes had occurred in international relations as well as in the composition of the international community and of the United Nations; in fact, the actual meaning of some expressions had altered. In view of the inevitable delays involved in work of that kind, the revised or supplemented version of the Statute could enter into force when the membership of the Commission was renewed in 1972.

22. Mr. YASSEEN said that in view of the practical arguments put forward, he agreed that it would be advisable to include in the work programme a study of the most-favoured-nation clause; the Commission could take up that topic as a reserve, when it had a little time at its disposal between the stages of its work on the main topics. The subject in question was one of topical interest to the international community and called for a detailed study from a new standpoint.

23. The question of the most-favoured-nation clause was already well known from certain standpoints and thus in one sense came under the heading of codification. But as it was necessary to take account of new trends, Mr. Bartoš

had rightly suggested that the Commission should study the question under article 16 of its Statute.

24. Thus, although he recognized the merits of the proposal by Mr. Jiménez de Aréchaga so far as the present situation was concerned, he maintained the position he had taken at the previous meeting regarding the selection of topics for the future. That choice should be made more methodically, and the members of the Commission should have more time to reflect on the matter.

25. Mr. AGO thought that the Commission should in future disregard the distinction made in the Statute between the codification of international law and its progressive development, since that distinction had ceased to have any justification. There was hardly a single subject in which those two aspects did not overlap, and even the written instruments themselves automatically evolved under the influence of events.

26. The CHAIRMAN said he fully agreed with Mr. Bartoš that the Commission should proceed in accordance with article 16, rather than article 18, of its Statute. The situation was somewhat unusual in that the question had been referred to the Commission by the General Assembly and could have been dealt with in connexion with the law of treaties. He had thought, however, that a study of the most-favoured-nation clause in the context of the draft articles would have taken the general codification too far, so that the work could not have been completed within the five-year period in question. Nevertheless, it should be made clear that the Commission was not undertaking a new topic, but was developing a subject already under study.

27. He invited the Commission to vote on the proposal to include the topic of the most-favoured-nation clause in its agenda.

The proposal was adopted unanimously.

28. The CHAIRMAN said he had consulted the Officers of the Commission on the choice of a Special Rapporteur for the topic of the most-favoured-nation clause, and proposed that the Commission should appoint Mr. Ustor, who was eminently fitted for the office by his special interest in the law of trade and its codification and by his high qualities as a jurist.

Mr. Ustor was appointed Special Rapporteur by acclamation.

29. Mr. USTOR thanked the Commission for the confidence it had shown in him and said he would do his best to bring the work entrusted to him to a successful conclusion.

30. The CHAIRMAN observed that the Commission seemed to be agreed on the need to include in the agenda of its next session a study on topics likely to contribute to the codification and progressive development of international law as well as on the relationship between its work and the legal activities of other United Nations organs, its methods of work and the possible revision of its rules of procedure and its Statute. He invited the Commission to vote on the proposal to include such a study in its agenda.

The proposal was adopted unanimously.

Other Business

[Item 8 of the agenda]

Programme of Publications by the Secretariat

31. The CHAIRMAN invited the Secretary to the Commission to give a brief account of certain aspects of the programme of publications of the Office of Legal Affairs for the remainder of 1967 and for 1968.

32. Mr. MOVCHAN (Secretary to the Commission) said that one of the Secretariat's most urgent tasks was to produce the necessary advance documentation for the United Nations Conference on the Law of Treaties. As it had done for the previous codification conferences, the Secretariat had prepared a "Guide" to the history of the draft articles, giving the references to all proposals, amendments, discussions and decisions relating to each article in the Commission's final draft on the law of treaties. That document was expected to be reproduced in provisional form in time for the discussion of the law of treaties in the Sixth Committee at the next session of the General Assembly.[5] The Secretariat was also preparing a bibliography on the law of treaties, containing an up-to-date list of books and articles published on the topic in as many countries as possible, and it hoped that it would be ready in time for the discussion in the Sixth Committee.

33. In 1957, the Secretariat had published a *Handbook of Final Clauses* (ST/LEG/6) and a *Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements* (ST/LEG/7), two publications which were cited in the commentaries to the draft articles on the law of treaties. Since both publications were by now considerably out of date, the Secretariat had thought it useful to prepare new editions for the use not only of the Conference on the Law of Treaties but also of other conferences which were called upon to draft conventions. The preparation of those revised texts was well advanced, and the inclusion in the Commission's report of a recommendation on the desirability of their publication would help to overcome certain difficulties in the way of such publication.

34. With regard to the future work of the Commission, the priorities which had been fixed made it advisable for the Secretariat to concentrate on publications relating to succession of States. In response to a request by the Secretariat, Member States had furnished it some years previously with extensive material relating to the succession of States as it affected countries which had gained their independence since the Second World War; on the basis of that material, a printed volume would appear in the *United Nations Legislative Series* not later than October 1967.

35. With regard to the subject of succession of States in respect of treaties, the Secretariat had already prepared in 1962 a memorandum on the practice of the Secretary-General entitled "Succession of States in relation to general multilateral treaties of which the Secretary-General is the depositary".[6] More up to date information

[5] Document A/C.6/376.

[6] *Yearbook of the International Law Commission, 1962*, vol. II, pp. 106-131.

on that aspect of the subject would be included in the revised version of the *Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements.*

36. The Secretariat had also been preparing for a number of years a series of studies on the practice relating to succession of States in respect of multilateral conventions concluded under the auspices of international organizations other than the United Nations. As many of those studies as possible would be published as Commission documents before the opening of its next session.

37. In 1967, a study entitled "The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities" (A/CN.4/L.118 and Add. 1 and 2) had appeared in provisional form. The Secretariat proposed to publish that somewhat voluminous study in a more permanent form in 1968, with all the necessary corrections and additions.

38. In view of the large number of inquiries which the Secretariat had received, it had considered it desirable to bring up to date the collections of laws, regulations and treaties on the law of the sea[7] which had been published for the use of the two United Nations Conferences on the Law of the Sea held in 1958 and 1960. It had therefore requested Member States to supply it with the most recent legal material at their disposal concerning control over the sea and the sea bed and sub-soil outside the limits of territorial waters. That material would be published in 1968 in a printed volume of the *United Nations Legislative Series.*

39. The Secretariat was at present engaged in collecting material for a further volume of the *Reports of International Arbitral Awards*; that volume would contain awards which had been handed down in recent years and the text of which had not yet appeared in other standard collections. In order to enable the Secretariat to prepare that volume, he appealed to members of the Commission who had served on recent arbitral tribunals to do everything they could to help it to obtain the text of the awards of those tribunals for publication.

40. The *United Nations Juridical Yearbook* would be issued as usual; the volume for 1966 would be published in due course.

41. That programme of publications was somewhat ambitious in view of the small size of the staff of the Office of Legal Affairs and the limited time available for research because of the need to attend sessions of the International Law Commission and various committees, including the Sixth Committee of the General Assembly, but the Secretariat would make every effort to carry it out.

42. The CHAIRMAN congratulated the Secretariat on its remarkable programme and expressed the hope that it would be expanded still further in view of the great value of those publications. He suggested that the Commission should recommend the Secretariat to publish revised editions of the two handbooks mentioned by the Secretary; as the Special Rapporteur on the topic of the law of treaties, he could testify to the great value of those two publications, which were bound to be particularly useful to all those who would participate in the Conference on the Law of Treaties; the two studies in question provided a quick insight into practice and usage in the matter.

43. Mr. TABIBI noted that the information supplied by Governments on the subject of succession of States would be published before the Commission's next session. He asked the Secretary to confirm that the information in question would be given to the Special Rapporteurs concerned.

44. Mr. MOVCHAN (Secretary to the Commission) replied that some of the material which had been received had been communicated to Mr. Lachs, the previous Special Rapporteur; it would now be made available to the new Special Rapporteurs, Sir Humphrey Waldock and Mr. Bedjaoui, who had been designated to deal with the two aspects of the topic of succession of States and Governments.

45. The CHAIRMAN said that, if there were no further comments, he would consider that the Commission agreed to include in its report a passage recommending the publication of revised editions of the *Handbook of Final Clauses* (ST/LEG/6) and the *Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements* (ST/LEG/7).

It was so decided.

Draft Report of the Commission on the Work of its Nineteenth Session

(A/CN.4/L.124 and Addenda)

CHAPTER II: SPECIAL MISSIONS

Part I. Sending and conduct of special missions

COMMENTARIES TO ARTICLE 1 (Sending of special missions) [2] (A/CN.4/L.124/Add. 1) AND TO THE INTRODUCTORY ARTICLE (Use of terms) [1] (A/CN.4/L.124/Add. 7)

46. The CHAIRMAN invited the Commission to consider the draft report on the work of its nineteenth session, beginning with the commentary to article 1.

47. In his opinion, paragraphs (2) (*b*) and (*d*) of that commentary were tantamount to an explanation of the concept of a special mission. Since the Commission had now decided to include a definition of "special mission" in the introductory article, those passages could with advantage be transferred to the commentary to that article.

48. Mr. AGO supported the Chairman's suggestion. Originally article 1 had been the only article in which it was stated what a special mission was. But the Commission had since adopted an introductory article, which would precede article 1 and which stressed the representative and temporary character of special missions; that representative and temporary character was not reiterated in article 1

[7] *Laws and Regulations on the Regime of the High Seas*, vol. I. (ST/LEG/SER.B/1) (United Nations publication, Sales No: 1951.V.2) and vol. II (ST/LEG/SER.B/2) (Sales No: 1952.V.1) and *Laws and Regulations on the Regime of the Territorial Sea* (ST/LEG/SER.B/6) (Sales No: 1957.V.2).

(the future article 2), which emphasized the question of consent. The draft as a whole would therefore certainly gain in clarity if paragraphs (2) (*b*) and (*d*) of the commentary to article 1 were transferred to the commentary to the introductory article.

49. Mr. BARTOŠ, Special Rapporteur, said that the commentary to article 1 set forth the essential characteristics of the special mission. If certain sub-paragraphs of that commentary were transferred to the commentary to another article, the commentary to article 1 would not give a complete picture of the special mission. The introductory article, which was concerned with definitions, did not lay down any legal rules in the strict sense, and article 1 retained its overriding importance. He would therefore prefer not to truncate the commentary to article 1. If the Commission nevertheless adopted the Chairman's suggestion, it would be better to transfer the whole of paragraph (2) of the commentary on article 1 to the commentary on the introductory article, so that the latter article gave a full picture of the special mission.

50. Mr. AGO pointed out that the expression "substantive rule" in paragraph (2) of the commentary to the introductory article was not very suitable since a substantive rule generally laid down rights and obligations. What the Commission wished to say was that the definition of the special mission constituted an essential rule.

51. Mr. REUTER proposed that the words "substantive rule" should be replaced by the words "fundamental rule".

It was so agreed.

52. Mr. CASTRÉN said that paragraph (3) of the commentary to article 1 seemed merely to repeat what had already been said in paragraph (2).

53. Mr. BARTOŠ, Special Rapporteur, said that paragraph (3) was of great importance. Some Governments in fact maintained that the consent of the State to which it was proposed to send a special mission should be express. The Commission had, however, considered that consent should always be given in such a way as to indicate a genuine willingness without necessarily being express.

54. Mr. CASTRÉN pointed out that the question of consent was already dealt with in paragraph (2) (*c*). That paragraph could be expanded, but the same question should not be dealt with in two separate places.

55. Mr. BARTOŠ, Special Rapporteur, proposed that in order to satisfy Mr. Castrén, the idea contained in the first sentence of paragraph (3) should be added to paragraph (2) (*c*) and that paragraph (2) (*c*), thus expanded, should be retained in the commentary to article 1.

56. The CHAIRMAN suggested that paragraph (2) (*c*) should be retained in the commentary to article 1, but should be combined with paragraph (3) of that commentary.

It was so agreed.

57. Mr. KEARNEY suggested that the words "the United States" should be deleted from paragraph (2) (*d*). According to the present practice, not all United States missions for economic co-operation constituted permanent specialized missions.

58. The CHAIRMAN suggested that the words "the Australian" should be deleted before "immigration missions" and the words "of the socialist countries"after "the industrial co-operation missions".

59. Mr. BARTOŠ, Special Rapporteur, agreed to the deletion of the names of countries in paragraph (2) (*d*), which would simply read: "Examples of permanent specialized missions are missions for economic co-operation and assistance to certain States, immigration missions, industrial co-operation missions, trade missions or delegations which are of a diplomatic nature, etc."

60. Mr. REUTER thought that the last sentence of paragraph (2) (*b*) could be deleted, since it merely repeated what had been stated previously. He also wished to propose some purely drafting changes.

61. The CHAIRMAN suggested that members should submit to the Secretariat any suggestions for drafting changes in the commentaries to article 1 and the introductory article, and that the Secretariat should endeavour to submit at the next meeting a revised text of those commentaries incorporating the various proposals adopted during the discussion.

It was so agreed.[8]

COMMENTARY TO ARTICLE 1 *bis* (Non-existence of diplomatic or consular relations and non-recognition) [7] (A/CN.4/L.124/Add. 1).

Paragraph (1)

62. Mr. AGO said that in paragraph (1), as in paragraph (2), it seemed to him that it was not for the Commission to rule on whethers pecial missions were useful or necessary: it should simply confine itself to noting that, in certain circumstances, such missions had proved useful or necessary. He inquired whether the Special Rapporteur would agree to amend the end of the last sentence of paragraph (1) to read: "... because it considers that even where such relations do not exist, special missions have been sent and have proved particularly useful".

63. Mr. REUTER thought it preferable not to refer to the Commission's views in the commentaries. He therefore proposed that the words: "The Commission considered it useful to stress in its draft article" at the beginning of the last sentence of paragraph (1) should be deleted and that the text should read "The existence of diplomatic and consular relations is not a prerequisite for the sending and reception of special missions. International practice has shown that special missions can be particularly useful where such relations do not exist".

64. Mr. BARTOŠ, Special Rapporteur, urged that the words "The Commission considered it useful to stress in its draft article" should be retained, because the last sentence of paragraph (1) expressed the Commission's view.

[8] For resumption of discussion, see 941st meeting, paras. 30-59.

Furthermore, delegates to international conferences generally wished to know what that view was.

65. Mr. AGO said that, as he understood it, the idea the Special Rapporteur had sought to convey was as follows: when two States maintained regular diplomatic relations, the sending of special missions was unnecessary because the task envisaged could be entrusted to the permanent mission; where, however, diplomatic relations did not exist, the sending of special missions was necessary.

66. The CHAIRMAN, speaking as a member of the Commission, said that in his view the second and third sentences of paragraph (1) were not very well placed, and broke the logical continuity of the argument.

67. Speaking as Chairman, he proposed that, in the light of the discussion, the second sentence of paragraph (1) should be deleted.

It was so agreed.

68. The CHAIRMAN said that, if there were no further comments, he would consider that the Commission agreed to leave the first part of the last sentence of paragraph (1) unchanged and to replace the concluding part of that sentence by the text suggested by Mr. Ago.

It was so agreed.

Paragraph (1), as amended, was approved.

Paragraph (2)

69. Mr. AGO proposed that the second sentence of paragraph (2) should be amended to read: "The Commission considered that absence of recognition was not a bar to the sending of a special mission, and it dealt with this point in paragraph 2 of article 1 *bis*".

70. Mr. KEARNEY noted that, according to the concluding sentence of paragraph (2) of the commentary, the Commission had not examined the question whether the sending or reception of a special mission prejudged the question of recognition. That sentence did not constitute a full statement of the Commission's decision; as he recalled it, that decision had been not to include a provision on the subject in the draft articles because, in the Commission's view, it lay outside the scope of the topic of special missions.

71. Mr. CASTRÉN said that he also believed that the Commission had in fact examined the question whether the sending or reception of a special mission prejudged the question of recognition.[9] He therefore proposed that the words "examine the question" should be replaced by the words "decide the question".

72. Mr. BARTOŠ, Special Rapporteur, proposed that the last sentence of paragraph (2) should be redrafted to read: "The Commission did not, however, decide the question whether the sending or reception of a special mission prejudges the solution of the problem of recognition, as that problem lies outside the scope of the topic of special missions".

[9] For discussion of this question, see 899th meeting, paras. 22 *et seq.*, and 900th meeting, paras. 1-46.

73. The CHAIRMAN suggested that the last sentence of paragraph (2) should be amended on the lines suggested by Mr. Bartoš.

It was so agreed.

Paragraph (2), as amended, was approved.

The commentary to article 1 bis as a whole, as amended, was approved.

COMMENTARY TO ARTICLE 2 (Field of activity of a special mission) [3] (A/CN.4/L.124/Add. 1)

Paragraph (1)

74. Mr. AGO said that paragraph (1) was not sufficiently precise. He suggested it should state that, in view of the nature of special missions, the Commission had not thought it possible to list the functions of such missions and, for that reason, had adopted for the article a wording which differed from that of the corresponding article of the Vienna Convention.

75. Mr. BARTOŠ, Special Rapporteur, agreed to the amendment of paragraph (1) in that sense.

Paragraph (1), as amended, was approved.

Paragraph (2)

76. Mr. KEARNEY said that paragraph (2) did not draw a clear distinction between the special mission's task and its field of action, assuming that they were, in fact, two different things.

77. Mr. BARTOŠ, Special Rapporteur, pointed out that there was a difference between the task and the field of action. The task might be more extensive than the field of action. It often happened that the receiving State agreed to the task of a special mission, but restricted its field of action.

78. Mr. REUTER thought that Mr. Kearney's comments should be taken into account. Paragraphs (2) and (3) were somewhat unexpected and posed a rather difficult problem of presentation.

79. Mr. USHAKOV, referring to the first sentence of paragraph (2), said that the special mission's task was also determined by the mutual consent of the sending and receiving States.

80. Mr. AGO suggested that paragraph (2) should be redrafted to read:

> "2. The Commission thought it should distinguish between the task of the special mission and its field of action, which determines the limits within which the special mission must carry on its activities, and sometimes also the means it must use to perform its task".

81. Mr. JIMÉNEZ de ARÉCHAGA suggested that the first sentence should be redrafted so as not to deal with the purely internal matter of the relations between a special mission and the sending State.

82. Mr. BARTOŠ, Special Rapporteur, proposed that the text should merely state that "the field of activity is determined by mutual consent of the sending and receiving States" and that "the field of activity determines the limits ...".

83. The CHAIRMAN said that if there were no further comments, he would consider that the Commission agreed to approve paragraph (2) in the form just proposed by Mr. Bartoš.

It was so agreed.

84. The CHAIRMAN suggested that a passage should be added to explain that the Commission had not thought it necessary to include an article on the subject because the question depended on the circumstances in each individual case.

Paragraph (3)

85. Mr. JIMÉNEZ de ARÉCHAGA proposed that the concluding sentence of paragraph (3) should be deleted. Article 3 provided for the mutual consent of the States concerned and such agreement could be arrived at subsequently.

86. Mr. BARTOŠ, Special Rapporteur, replying to an objection raised by Mr. AGO, proposed that the whole of paragraph (3) should be deleted, since its effect was, after all, to draw attention to the possibility of following an undesirable course of action.

87. Mr. REUTER said he agreed to the deletion of the whole of paragraph (3). However, if the Commission decided to retain it, he suggested that the words "have gone beyond their field of action" should be replaced by the words "had in fact extended their field of action".

88. The CHAIRMAN said that, if there were no objection, he would consider that the Commission agreed to delete paragraph (3), which dealt with an extremely delicate legal question and was not absolutely necessary.

It was so agreed.

Paragraph (4)

89. Mr. AGO pointed out that the word "*mutuel*" should be deleted in the last line of the French text of paragraph (4).

Paragraph (4), as amended, was approved.

Paragraph (5)

90. Mr. YASSEEN proposed that the words "the internal organization of" in the second sentence of paragraph (5) should be deleted, so that the text read "this was a matter for the sending State, which alone had the power to resolve such a conflict".

Paragraph (5), as amended, was approved.

Paragraph (6)

91. Mr. KEARNEY suggested that paragraph (6) should be reworded so as not to enter into questions of the internal procedures of the sending State.

92. Mr. BARTOŠ, Special Rapporteur, said that in the case of frontier incidents, for example, the permanent diplomatic mission of the sending State accredited to the receiving State did not have the power to resolve the question. In such circumstances, the two States concerned had to establish special missions. He himself would prefer to delete paragraph (6).

93. The CHAIRMAN noted that there was general agreement to dispense with paragraph (6). When the special mission's activity or existence came to an end, the effect of that termination was determined in accordance with the rules in force; its tasks would be entrusted to a permanent diplomatic mission under the operation of diplomatic law, unless treaty law provided otherwise.

94. If there were no further comments, he would consider that the Commission agreed to drop paragraph (6).

It was so agreed.

The commentary to article 2, as amended, was approved.

The meeting rose at 1.10 p.m.

940th MEETING

Thursday, 13 July 1967, at 3.15 p.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, 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.

Draft Report of the Commission on the Work of its Nineteenth Session

(A/CN.4/L.124 and Addenda)

(continued)

CHAPTER II: SPECIAL MISSIONS

(continued)

Part I. Sending and conduct of special missions (continued)

COMMENTARY TO ARTICLE 3 (Appointment of the members of the special mission) [8] (A/CN.4/L.124/Add.1 and Corr.1)

Paragraph (1)

1. Mr. AGO suggested that the beginning of the second sentence of paragraph (1) should be amended to read "In the first place, the rule laid down in article 3 applies to all the members of the Special Mission, including the head of the Special Mission if there is one".

It was so agreed.

Paragraph (1), as amended, was approved.

Paragraph (2)

Paragraph (2) was approved.

Paragraph (3)

2. The CHAIRMAN drew the Commission's attention to the new version of paragraph (3) (A/CN.4/L.124/Add.1/Corr.1).