

Document:-  
**A/CN.4/SR.940**

**Summary record of the 940th meeting**

Topic:  
**<multiple topics>**

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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).

3. Mr. USHAKOV said that although he had no objection to the new version of paragraph (3), he thought that the reference to objections in the second sentence was rather similar to the reference to objections in the last sentence of paragraph (2).

4. Mr. BARTOŠ, Special Rapporteur, said he had been asked to include a specific reference to the right of the receiving State to raise objections, as distinct from the opportunity to raise objections referred to in paragraph (2).

*The new text of paragraph (3) was approved.*

*Paragraph (4)*

5. Mr. AGO asked if paragraph (4) was necessary.

6. Mr. BARTOŠ, Special Rapporteur, said he thought it was necessary to point out that there were other forms of objection.

*Paragraph (4) was approved.*

*Paragraph (5)*

7. The CHAIRMAN said he thought the last sentence of paragraph (5) was too categorical and suggested that the words "is obsolete and that it" should be deleted.

*It was so agreed.*

*Paragraph (5), as amended, was approved.*

*The commentary to article 3, as amended, was approved.*

COMMENTARY TO ARTICLE 4 (Persons declared *non grata* or not acceptable) [12] (A/CN.4/L.124/Add.1)

*Paragraph (1)*

*Paragraph (1) was approved.*

*Paragraph (2)*

8. Mr. KEARNEY suggested that in paragraph (2) the reference should be to acceptance of the members of the mission, and not of the mission itself.

9. Mr. BARTOŠ, Special Rapporteur, said that even where a Special Mission had been accepted in accordance with the provisions of article 3, the receiving State was still entitled at any time to declare a member of it *persona non grata*. Nevertheless, he was prepared to accept Mr. Kearney's proposal.

10. The CHAIRMAN suggested that the text should indicate that even after the receiving State had accepted the mission, it had the right to declare any member of it *persona non grata*.

11. Mr. BARTOŠ, Special Rapporteur, proposed that the text should read: "Even when the receiving State has raised no objection to the membership of the Special Mission, it unquestionably has the right...".

12. Mr. AGO agreed that that wording made it clear that the situation referred to was that in which the receiving State had raised no objection when it received the necessary prior information about the membership and size of the Special Mission.

13. Mr. BARTOŠ, Special Rapporteur, said that many States wished to know whether, if they had already

given any kind of approval to a proposed Special Mission, they were still entitled to declare a member of it *persona non grata*. The receiving State could do so at any time, even after acceptance of the mission.

*Paragraph (2), as amended, was approved.*

*Paragraph (3)*

*Paragraph (3) was approved.*

*Paragraph (4)*

14. Mr. USTOR thought that the example given in the second part of paragraph (4) was not really a declaration of a person as *non grata*.

15. Mr. CASTRÉN suggested that the second part of paragraph (4) should be deleted, as it was unnecessary.

16. Mr. BARTOŠ, Special Rapporteur, said that the second part of that paragraph had only been included as an illustration, and he would agree to its deletion.

17. The CHAIRMAN suggested that the second sentence of paragraph (4) should be redrafted in the English version.

*Paragraph (4), as amended, was approved, subject to drafting changes in the English text.*

*Paragraph (5)*

18. The CHAIRMAN said that paragraph (5) raised the question whether the fact that a Head of State, Head of Government or Minister for Foreign Affairs participating in a special mission could not be declared *persona non grata* could be regarded as a privilege or immunity. He thought not.

19. Mr. JIMÉNEZ de ARÉCHAGA thought that paragraph (5) could be deleted. It was clear that a receiving State had the right to declare *non grata* even a person of high rank, in accordance with the provisions of the article.

20. Mr. AGO said that there should be a reference to the question in the commentary.

21. Mr. BARTOŠ, Special Rapporteur, said that if the person declared *non grata* was in fact the only person qualified to carry out a particular function in relation, for example, to a treaty, the declaration would prevent the treaty from being executed. That was why the commentary referred not to "high rank" but to "a certain rank or qualifications."

22. Mr. JIMÉNEZ de ARÉCHAGA said that there seemed to be some confusion as to the effect of declaring a person *non grata*. It merely meant that the declaring State refused to deal further with that person; his status in his own country was not affected. He thought it would be preferable to delete the paragraph.

23. Mr. AGO said he still thought that there should be a reference to the matter in the commentary, though perhaps not in the form adopted in paragraph (5). Perhaps the commentary could merely state that the Commission believed it necessary to point out that, in accordance with a well-established practice, a declaration of *persona non grata* did not apply to persons such as

a Head of State, Head of Government or Minister of Foreign Affairs, if they participated in a special mission.

24. Mr. BARTOŠ, Special Rapporteur, said that the text he had submitted was based on the proposals of various Governments, which did not wish it to be permissible for other governments to declare *non grata* persons occupying certain posts, especially when the arrangements between States provided that those persons should carry out duties as members of a special mission. He was prepared to accept Mr. Ago's suggestion.

25. Mr. JIMÉNEZ de ARÉCHAGA said he thought the Commission need not deal with the question. States had sometimes been known to refuse to continue negotiating with a Head of State. A State always had the right to stop dealing with a particular person, whatever his status in his own country.

26. The CHAIRMAN said that article 4 used language that was inappropriate to the case of a Minister for Foreign Affairs. A Head of State or Minister for Foreign Affairs would not be declared *persona non grata*, but relations between the receiving State and the special mission would be broken off. He himself would prefer the solution proposed by Mr. Ago to the existing text; a reference without undue stress would be harmless. He did not think that the case was really covered by the language of article 4.

27. Mr. BARTOŠ, Special Rapporteur, said that if the receiving State had been notified that the head of the mission would be the Minister for Foreign Affairs, and then proceeded to declare him *persona non grata*, he thought such an action would, from the standpoint of international courtesy, overstep the limits permissible under international law.

28. The CHAIRMAN said that in the case of a Minister for Foreign Affairs the principle would not apply, since the case would be disposed of by some means other than declaring him *persona non grata*, as Mr. Ago had suggested.

29. Mr. JIMÉNEZ de ARÉCHAGA said it was rare for a State to take the formal action of declaring a person *non grata* in so many words. The right referred to in article 4 would be exercised within the limits of courtesy and of the diplomatic usage applicable to all missions.

30. The CHAIRMAN said that where a Head of State or Minister for Foreign Affairs was concerned, the States themselves were face to face, whereas in other situations it was not the States themselves but junior officials who were involved. Consequently, in the first case, the procedure would not be to declare the official *persona non grata*, but to break off the mission.

31. Mr. JIMÉNEZ de ARÉCHAGA said that very diplomatic terms were used for declaring persons *non grata*, even if they were only junior officials.

32. Mr. USHAKOV said that he knew of no case in which a Head of a State or Head of Government had been declared *persona non grata*; he thought the Commission should do as Mr. Ago had suggested.

33. Mr. AGO said that declarations of *persona non grata* were usually rather specific, and the article in question was also specific. In such cases the sending State was obliged to recall the person concerned and replace him, and if it did not, the receiving State was entitled not to regard him as a member of the special mission any longer. Clearly that procedure applied to specific persons, and was not the same as breaking off relations because the Head of State or some other person was regarded as *non grata*.

34. He proposed that paragraph (5) should be redrafted to show that although the Commission had not considered it necessary to include a specific reference to the question in the text of the article, it had thought fit to point out that, in accordance with a well-established practice, the procedure of declaring persons *non grata* did not apply to such persons as a Head of State, Head of Government or Minister for Foreign Affairs, if they participated in a special mission.

35. Mr. BARTOŠ, Special Rapporteur, said he agreed to that proposal, since it corresponded to what had been suggested by some Governments, although it had not been thought appropriate to include such a reference in the text.

*Paragraph (5), as amended, was approved.*

*The commentary to article 4, as amended, was approved.*

COMMENTARY TO ARTICLE 5 (Sending of the same special mission to two or more States)[4] (A/CN.4/L.144/Add.2)

*Paragraph (1)*

*Paragraph (1) was approved.*

*Paragraph (2)*

*Paragraph (2) was approved.*

*Paragraph (3)*

36. Mr. USTOR, referring to the last sentence in paragraph (3) (a), said it was not clear to him why the words "simultaneously or successively" were appropriate, since if several missions were sent they need not be sent simultaneously, and if only one was sent its visits would have to be successive.

37. Mr. BARTOŠ, Special Rapporteur, said that in the French text the title of the article and the first sentence of paragraph (3) (a) made the situation quite clear by the use of the expression "*auprès de*". A single mission could negotiate with the diplomatic mission of several other States all situated in the territory of a single State.

38. Mr. JIMÉNEZ de ARÉCHAGA questioned whether sub-paragraphs (b) and (c) of paragraph (3) were necessary.

39. The CHAIRMAN said that if sub-paragraph (b) was maintained, he would like to see a change in the second sentence, as he thought the reference to the discourtesy of circular appointments went beyond what was necessary.

40. Mr. JIMÉNEZ de ARÉCHAGA said he thought that the end of paragraph (3) (a) could well be followed by paragraph (4), sub-paragraphs (b) and (c) being deleted.

41. Mr. AGO said he thought the word “*accréditement*” in the second sentence of paragraph (3) (b) was inappropriate, as it should be applied only to diplomatic missions. In his opinion it was unnecessary for the Commission to deal with questions of courtesy and paragraph (3) (b) should consist only of the first sentence.

*It was so agreed.*

42. Mr. YASSEEN suggested that in the French text of paragraph (3) (c) the expression “*s’abstenir d’*”, in the first sentence, should be replaced by the words “*ne pas*”.

*Paragraph (3), as amended, was approved.*

*Paragraph (4)*

*Paragraph (4) was approved.*

*The commentary to article 5, as amended, was approved.*

COMMENTARY TO ARTICLE 5 *bis* (Sending of a joint special mission by two or more States) [5] (A/CN.4/L.124/Add.2)

*Paragraph (1)*

43. Mr. YASSEEN said that the reference at the end of paragraph (1) to avoiding certain expenses was unsatisfactory, because there might be other reasons why a joint mission was desirable.

44. Mr. BARTOŠ, Special Rapporteur, suggested that the end of the sentence should read “the institution of joint missions has certain advantages for them”.

*Paragraph (1), as amended, was approved.*

*Paragraph (2)*

*Paragraph (2) was approved.*

*Paragraphs (3) and (4)*

45. Mr. CASTRÉN said that paragraph (4) dealt with an incontestable fact referred to in paragraph (3).

46. The CHAIRMAN suggested that the two paragraphs should be combined.

47. Mr. KEARNEY proposed that in the English version of paragraph (4) the words “being a member of” should be replaced by the words “participating in”.

*Paragraphs (3) and (4), as amended and combined, were approved as paragraph (3).*

*Paragraph (5)*

*Paragraph (5) was approved.*

*Paragraph (6)*

48. Mr. BARTOŠ, Special Rapporteur, proposed that the words “The Government of Israel” should be amended to read “One Government”. The end of the second sentence of paragraph (6) might read “... that was a matter which belonged essentially to the topic of relations between States and inter-governmental organizations and which could appropriately be dealt with in that context”.

*The commentary to article 5bis, as amended, was approved.*

COMMENTARY TO ARTICLE 5 *ter* (Sending of special missions by two or more States in order to deal with a question of common interest) [6] (A/CN.4/L.124/Add.2)

*The commentary to article 5ter was approved.*

COMMENTARY TO ARTICLE 6 (Composition of the special mission) [9] (A/CN.4/L.124/Add.2 and Corr.1)

49. The CHAIRMAN drew the Commission’s attention to the amendments proposed in document A/CN.4/L.124/Add.2/Corr.1.

*Paragraph (1)*

*Paragraph (1) was approved.*

*Paragraph (2)*

50. Mr. AGO said that the term “representative” should be explained. He proposed that the first sentence should read: “Every special mission must include at least one representative of the sending State, that is to say, a person to whom that State has assigned the task of being its representative in the special mission”. It was essential to mention the person to whom the sending State assigned the task of being its representative in the special mission, for in a more general sense all the members of a special mission were representatives of the sending State.

*Paragraph (2), as amended, was approved.*

*Paragraph (3)*

51. Mr. JIMÉNEZ de ARÉCHAGA thought that both paragraphs (3) and (4) were out of place in the commentary on article 6 and, if retained, should be transferred to the commentary on article 9.

52. Mr. CASTRÉN suggested that paragraph (3) might be deleted, as it was not relevant to article 6. Paragraph (4) could be retained.

*It was decided to delete paragraph (3).*

*Paragraph (4)*

53. Mr. AGO thought that the first sentence of paragraph (4) was satisfactory, but the rest should be deleted. Paragraph (2) was rather specific, but the second sentence of paragraph (4) seemed to reopen the question of the composition of the special mission.

54. Mr. BARTOŠ, Special Rapporteur, suggested that the first sentence of paragraph (4) should read: “In practice, the sending State often appoints a head of the special mission and a deputy head”.

*Paragraph (4), as amended, was approved.*

*Paragraph (5)*

55. Mr. KEARNEY said he thought the last sentence of paragraph (5) should be deleted. The question referred to was one to be decided by the sending State alone. An expert might or might not have diplomatic status, according to the nature of the special mission.

56. The CHAIRMAN said he agreed that the last sentence of paragraph (5) was too categorical and was

not consistent with the position the Commission had taken in the article. The question whether an expert had diplomatic status or was merely a technical expert was one for the sending State. It would therefore be preferable to delete the sentence.

57. Mr. BARTOŠ, Special Rapporteur, agreed that the last sentence should be deleted.

58. The CHAIRMAN said that the end of the second sentence of paragraph (5) was not quite satisfactory: the reference to advisers and experts gave the impression that they were part of the diplomatic staff.

59. Mr. AGO said that the Commission could only recognize two categories of staff, diplomatic staff, and administrative and technical staff. Experts and advisers of a special mission would have to be included in one or other of those categories.

60. Mr. BARTOŠ, Special Rapporteur, suggested that paragraph (5) should be deleted, since it did not appear to be consistent with the statement in the preceding paragraph that the composition of a special mission and the titles of its members were matters within the exclusive competence of the sending State.

61. The CHAIRMAN suggested that the first sentence and the first part of the second sentence of paragraph (5) should be retained; the remainder of the paragraph, beginning with the words "but it pointed out" should be deleted.

*It was so agreed.*

*Paragraph (5), as amended, was approved.*

*Paragraph (6)*

62. Mr. BARTOŠ, Special Rapporteur, drew attention to the corrections to the last sentence (A/CN.4/L.124/Add.2/Corr.1) by which the words "without loss of status by a member of the permanent diplomatic mission" were amended to read "by a member of the permanent diplomatic mission without loss of the privileges and immunities he enjoys as such". He pointed out that some States considered the two functions in question incompatible because of the obligations of career diplomats vis-à-vis the receiving State.

63. Mr. AGO proposed that the third sentence should be amended to read "Opinions differ on this point".

*It was so agreed.*

*Paragraph (6), as amended, was approved.*

*Paragraph (7)*

64. The CHAIRMAN drew attention to the correction to paragraph (7) contained in the corrigendum (A/CN.4/L.124/Add.2/Corr.1)

*Paragraph (7), as amended by the corrigendum, was approved.*

*Paragraph (8)*

65. Mr. BARTOŠ, Special Rapporteur, proposed that paragraph (8) should be deleted.

*It was so agreed.*

*The commentary to article 6, as amended, was approved.*

COMMENTARY TO ARTICLE 7 (Authority to act on behalf of the special mission) [14] (A/CN.4/L.124/Add.2)

*Paragraphs (1) and (2)*

*Paragraphs (1) and (2) were approved.*

*Paragraph (3)*

66. The CHAIRMAN suggested that the last sentence of paragraph (3) should be amended to read: "The legal status of this representative is similar to that of a head of special mission".

*It was so agreed.*

*Paragraph (3), as amended, was approved.*

*Paragraph (4)*

*Paragraph (4) was approved.*

*Paragraph (5)*

67. Mr. JIMÉNEZ de ARÉCHAGA asked whether the last two sentences were necessary.

68. Mr. BARTOŠ, Special Rapporteur, said that the practice of having a *chargé d'affaires ad interim* was not universal.

69. Mr. CASTRÉN said he favoured the retention of those sentences, since the practice did exist and should be referred to in the commentary.

70. The CHAIRMAN suggested that it would be sufficient to retain the penultimate sentence.

*Paragraph (5) was approved without amendment.*

*Paragraph (6)*

*Paragraph (6) was approved.*

*Paragraph (7)*

71. Mr. KEARNEY proposed the deletion of the final phrase "... or, in the absence of diplomatic relations, through the mission of the State protecting the sending State's interests". Those words gave the impression that the special mission would handle its correspondence through the mission of a third State, which he did not think would happen in practice.

72. Mr. BARTOŠ, Special Rapporteur, and the CHAIRMAN said that they had no objection.

*Mr. Kearney's proposal was adopted.*

*Paragraph (7), as amended, was approved.*

*The commentary to article 7, as amended, was approved.*

COMMENTARY TO ARTICLE 8 (Notification) [11] (A/CN.4/L.124/Add.2)

*Paragraphs (1) and (2)*

*Paragraphs (1) and (2) were approved.*

*Paragraph (3)*

73. Mr. AGO said he had certain reservations on the commentary to article 8, because the question of prior notice had already been dealt with in article 3.

74. Mr. BARTOŠ, Special Rapporteur, said it was necessary to make a clear distinction between the prior notice and the second, regular notification which was usually sent to the Ministry of Foreign Affairs of the receiving State.

75. Mr. AGO proposed that the first thirteen lines of the paragraph, ending with the words "in article 8", should be deleted and replaced by the following words: "The notifications referred to in this article should not be confused with the prior notice provided for in article 3".

76. Mr. BARTOŠ, Special Rapporteur, said that in that case the following sentence should begin with the words: "They are usually sent ...".

*It was so agreed.*

*Paragraph (3), as amended, was approved.*

*Paragraph (4)*

77. Mr. USTOR proposed that paragraph (4) should be deleted, since, inasmuch as notification was generally informal, it might give the impression that the Commission was introducing an innovation.

78. Mr. BARTOŠ, Special Rapporteur, said that he had had much experience as a member of special missions; although prior notification of departure to the receiving State was not always necessary in practice, absence of notification gave rise to misunderstanding, since it was not known whether the members of the special mission had left or not.

79. Mr. USTOR said he did not think it was the Commission's intention to introduce a provision making it obligatory for the special mission to deliver an official note to the receiving State concerning its departure. He therefore pressed his proposal.

80. Mr. REUTER said he considered it desirable that the special mission should give formal notification of its departure.

81. Mr. CASTRÉN agreed with Mr. Reuter that notification should be a formal act and that a reference to that fact should be included in the commentary.

82. The CHAIRMAN thought that the language of article 8 showed the need for a certain formality, but the question was whether the point should be stressed in paragraph 4 of the commentary. He pointed out that a similar provision had been included in the Vienna Convention on Diplomatic Relations, but that if States considered it inappropriate in a convention on special missions, they would be free to reject it.

83. Mr. USHAKOV said that since the text of article 8 was the same as the corresponding text in the Vienna Convention, the commentary should also be the same.

84. The CHAIRMAN said that when the Commission had adopted article 8, it had obviously considered that it should be open to an interpretation such as that given in the last sentence of paragraph (4).

85. Mr. JIMÉNEZ de ARÉCHAGA thought the difficulty could be overcome by deleting the first sentence and retaining the last.

86. Mr. YASSEEN said he did not think that the article was of a peremptory character; some such wording as "ought to be given" might be used.

87. The CHAIRMAN pointed out that the wording of the English text of article 8, paragraph 1, "shall be notified", was very strong.

88. Mr. KEARNEY agreed with the Chairman. The receiving State should be formally notified of the departure of the special mission, since otherwise it would be unable to take the appropriate action with respect to the special mission's premises, archives and the like.

89. Mr. BARTOŠ, Special Rapporteur, said that the receiving State should be notified of the departure as well as of the arrival of the special mission, so that its appropriate organs, in particular, its Ministry of Foreign Affairs, would know whether their responsibilities with respect to the special mission had ceased or not.

90. The CHAIRMAN thought that the Commission could accept paragraph (4) if the wording was toned down. In particular, the word "customary" in the first line should be avoided. He suggested that the first and second sentences should be combined and reworded to read: "In many cases, notice is not given of the departure of the special mission, as the members of the mission merely communicate verbally and informally ...".

91. Mr. BARTOŠ supported that suggestion.

*Paragraph (4), as thus amended, was approved.*

*Paragraph (5)*

92. Mr. BARTOŠ, Special Rapporteur, pointed out that in many countries, like his own, the members of a special mission could remain there after the termination of the mission, but that in others their visas were only valid so long as the purpose for which they had been issued still existed. Consideration should also be given to the duration of the privileges and immunities of the members of the special mission after the mission had completed its task.

93. The CHAIRMAN suggested that paragraph (5) should be deleted, since no similar paragraph was contained in the corresponding commentaries on the two Vienna Conventions.

*It was so agreed.*

*Paragraph (6)*

*Paragraph (6) was approved.*

*The commentary to article 8, as amended, was approved.*

COMMENTARY TO ARTICLE 9 (Rules concerning precedence) [16] (A/CN.4/L.124/Add.3)

*Paragraph (1)*

94. Mr. AGO proposed that the word "meet" in paragraph (1) should be changed to "are together", since it

was always possible that members of two or more special missions might meet unexpectedly, for example, at a reception given by the Head of State.

*It was so agreed.*

*Paragraph (1), as amended, was approved.*

*Paragraph (2)*

95. Mr. JIMÉNEZ de ARÉCHAGA thought that the whole of paragraph (2) should be deleted.

96. The CHAIRMAN suggested that the paragraph should be revised to read as follows; "In relations between a single special mission and the representatives of the receiving State, the matter is one of courtesy rather than precedence, and the rules of courtesy suffice to solve any problems which arise. The Commission has therefore not dealt with the matter in its draft articles".

*It was so agreed.*

*Paragraph (2), as amended, was approved.*

*Paragraph (3)*

97. The CHAIRMAN suggested that paragraph (3) should be revised to read as follows: "The Commission considers that it is impossible to take the Vienna Convention on Diplomatic Relations as a basis for determining precedence between special missions meeting on the territory of a receiving State or of a third State".

*It was so agreed.*

*Paragraph (3), as amended, was approved.*

*Paragraph (4)*

98. The CHAIRMAN suggested that the reference to "certain writers" in the second sentence should be deleted.

*It was so agreed.*

99. Mr. BARTOŠ, Special Rapporteur, said that the sentence could be redrafted to read: "In this connexion, the Commission considers that it is wrong to maintain that the head of a special mission of a diplomatic or political character is always, in practice, a person holding diplomatic rank". He proposed that the following three sentences should be deleted.

*It was so agreed.*

*Paragraph (4), as amended, was approved.*

*Paragraphs (5) to (11)*

*Paragraphs (5) to (11) were approved.*

*The commentary to article 9, as amended, was approved.*

COMMENTARY TO ARTICLE 11 (Commencement of the functions of a special mission) [13] (A/CN.4/L.124/Add.3)

*Paragraphs (1) to (5)*

*Paragraphs (1) to (5) were approved.*

*Paragraph (6)*

100. Mr. AGO proposed that paragraph (6) should be redrafted to read: "It should be noted that the commencement of the functions of a special mission does not necessarily coincide with the entry into force of the régime of

privileges and immunities of its members, for this régime enters into force as soon as the person concerned arrives in the territory of the receiving State, or, in the case of a person who is already there, as soon as he is appointed to the special mission".

*It was so agreed.*

*Paragraph (6), as amended, was approved.*

*The commentary to article 11, as amended, was approved.*

COMMENTARY TO ARTICLE 12 (End of the functions of a special mission) [20] (A/CN.4/L.124/Add.3)

*Paragraph (1)*

*Paragraph (1) was approved.*

*Paragraph (2)*

101. Mr. AGO thought that the first sentence would be clearer if it was redrafted on the following lines: "In 1960, the Commission decided that the reasons for termination of the functions of special missions were the same as those given in its draft on diplomatic relations for termination of the functions of diplomatic agents".

*It was so agreed.*

*Paragraph (2), as amended, was approved.*

*Paragraph (3)*

102. Mr. AGO said that it was for the States concerned to note, rather than decide, that a special mission had ceased to exist.

103. The CHAIRMAN suggested that the first sentence should be revised to read: "The Commission considers that it is for the States concerned to note that a special mission has ceased to exist or to decide that it should be brought to an end".

*It was so agreed.*

*Paragraph (3), as amended, was approved.*

*Paragraph (4)*

*Paragraph (4) was approved.*

*Paragraph (5)*

104. Mr. BARTOŠ, Special Rapporteur, proposed that the beginning of the third sentence should be amended to read: "Some governments and some writers ...".

*It was so agreed.*

*Paragraph (5), as amended, was approved.*

*Paragraph (6)*

*Paragraph (6) was approved.*

*The commentary to article 12, as amended, was approved.*

COMMENTARY TO ARTICLE 13 (Seat of the special mission) [17] (A/CN.4/L.124/Add.4)

*Paragraph (1)*

105. The CHAIRMAN said he thought the final clause of the second sentence was incorrect; a special mission would not necessarily have its seat where it was working.

106. Mr. AGO said that that was very often the case, nevertheless. To make the situation clear, he proposed that the words "in many cases" be substituted for the word "normally".

*It was so agreed.*

*Paragraph (1), as amended, was approved.*

*Paragraphs (2) and (3)*

*Paragraphs (2) and (3) were approved.*

*Paragraph (4)*

107. Mr. JIMÉNEZ de ARÉCHAGA questioned whether it was worth mentioning the United Nations Charter in the third sentence, in connexion with such a small point.

108. Mr. BARTOŠ, Special Rapporteur, said that the reference had been included because there had been a specific case in which a sending and a receiving State involved in litigation had both invoked the principle of the sovereign equality of States laid down in the Charter. Nevertheless, he would not object to the deletion of the words "the United Nations Charter concerning".

*It was so agreed.*

*Paragraph (4), as amended, was approved.*

*The commentary to article 13, as amended, was approved.*

COMMENTARY TO ARTICLE 14 (Nationality of the members of the special mission) [10] (A/CN.4/L.124/Add.4)

*Paragraphs (1)-(3)*

*Paragraphs (1), (2) and (3) were approved.*

*Paragraph (4)*

109. The CHAIRMAN said that the first sentence was incomplete, for it did not make clear that the question arose when a special mission was in a third State. He suggested that the words "nationality of the sending State" should be replaced by the words "nationality either of a third or of the sending State".

110. Mr. BARTOŠ, Special Rapporteur, objected that it was only the sending State that was in question.

111. Mr. AGO proposed that the sentence should be amended to read "... the members of a special mission can have the nationality of a third State".

*It was so agreed.*

112. Mr. BARTOŠ, Special Rapporteur, said that the last sentence of paragraph (4) was not clear and should be redrafted.

113. The CHAIRMAN suggested that the matter should be left to the Special Rapporteur.

*It was so agreed.*

*Paragraph (4), as amended, was approved.*

*Paragraph (5)*

*Paragraph (5) was approved.*

*Paragraph (6)*

114. Mr. USTOR questioned whether paragraph (6) was really necessary. It merely drew attention to something the Commission had not done.

115. Mr. BARTOŠ, Special Rapporteur, said that the reference to refugees and stateless persons had been included at the request of the High Commissioner for Refugees. That question was referred to in the two Vienna Conventions and it had been mentioned in the Commission; the sentence showed that the Commission had given some consideration to the matter.

116. Mr. REUTER said it was going rather too far to say that there was no need for special rules on the question. It would be better to amend the second sentence to read: "It concluded that it was not for the Commission to propose special rules ..."

117. Mr. AGO thought that the wording should be as general as possible. The status of refugees and stateless persons would be covered by the general rules of international law.

118. The CHAIRMAN said that in his view the Commission should state that there was no rule in either of the Vienna Conventions. It might then add that it was for that reason that the matter had to be left to general practice.

119. Mr. AGO said he feared that that solution might give the impression that the Commission did not wish stateless persons to be placed on the same footing as nationals of another country, which was not the case.

120. Mr. BARTOŠ, Special Rapporteur, suggested that the Commission's conclusion should be that the matter should be settled according to the general rules of international law.

121. The CHAIRMAN suggested that the words "special rules on this question" should be replaced by the words "relevant rules of international law." A reference to the two Vienna Conventions should also be included, so that the second sentence would read: "It concluded that, as in cases coming under the two Vienna Conventions, this matter should be settled according to the relevant rules of international law."

*It was so agreed.*

*Paragraph (6), as amended, was approved.*

*Paragraph 7*

*Paragraph 7 was approved.*

*The commentary to article 14, as amended, was approved.*

COMMENTARY TO ARTICLE 16 (Activities of special missions in the territory of a third State) [18] (A/CN.4/L.124/Add.4)

*Paragraph (1)*

*Paragraph (1) was approved.*

*Paragraph (2)*

122. Mr. CASTRÉN proposed that the words "between the sending States" should be deleted from the end of

the first sentence of paragraph (2), as the sentence did not refer to sending States only.

123. Mr. BARTOŠ, Special Rapporteur, said that it did in fact refer only to sending States, but the wording might be amended to read "the States concerned".

*Paragraph (2), as amended, was approved.*

*Paragraph (3)*

124. Mr. JIMÉNEZ de ARÉCHAGA proposed that the words "*la médiation, les bons offices ou simplement d'offrir son hospitalité*" in the French text of the first sentence of paragraph (3), should be replaced by "*sa médiation, d'offrir ses bons offices ou simplement d'accorder l'hospitalité*".

*It was so agreed.*

*Paragraph (3), as amended, was approved.*

*Paragraph (4)*

125. Mr. AGO said he considered it inadvisable to mention a State by name and pass judgement on its actions. He therefore proposed that the words "for example, Switzerland during the war" should be deleted and that the word "third" should be inserted between the words "some" and "States" in the first line.

*It was so agreed.*

*Paragraph (4), as amended, was approved.*

*Paragraph (5)*

126. Mr. CASTRÉN said that paragraph (5) should not refer only to withdrawal of consent, for the receiving State might change the conditions on which it was willing to receive a special mission, and the mission might be withdrawn on that account.

127. The CHAIRMAN suggested that the paragraph should be deleted.

*It was so agreed.*

*Paragraph (6)*

128. Mr. AGO proposed that the last part of the first sentence, from the word "activities" to the end, should be replaced by the words "relations between the special missions of two States in the territory of a third State ...", which would remove all ambiguity.

*It was so agreed.*

*Paragraph (6), as amended, was approved.*

*Paragraphs (7)-(9)*

*Paragraphs (7), (8) and (9) were approved.*

*The commentary to article 16, as amended, was approved.*

*Part II. Facilities, privileges and immunities*

GENERAL CONSIDERATIONS (A/CN.4/L.124/Add.5)

*Paragraphs (1) and (2)*

*Paragraphs (1) and (2) were approved.*

*Paragraph (3)*

129. Mr. AGO said that it was not correct to say that those who had opposed the Commission's taking the Vienna Convention on Diplomatic Relations as the basis for the draft on special missions had done so "on the grounds that such missions were not of a representative character". They had merely maintained that special missions did not have the same character as diplomatic missions.

130. Mr. KEARNEY said that the problem might also be whether special missions had a diplomatic character. Some Governments did not wish to accord diplomatic status to all official or special missions. He thought it would be dangerous to include any reference to the discussion that had taken place in the Commission unless it was considerably amplified.

131. The CHAIRMAN suggested that the last part of the last sentence, from the words "*on the grounds that*" to the end, should be deleted.

*It was so agreed.*

*Paragraph (3), as amended, was approved.*

*Paragraph (4)*

132. The CHAIRMAN said that the first sentence did not seem to be accurate.

133. Mr. AGO suggested that it be amended to read: "The majority of the Commission considered that, subject to certain restrictions, special missions should be granted the same facilities, privileges and immunities as permanent diplomatic missions".

134. Mr. BARTOŠ, Special Rapporteur, said that the last part of the second sentence, from the words "each individual special mission" to the end, could be added to the first sentence.

135. Mr. USTOR pointed out that paragraphs (2) and (3) related to events in 1958 and 1960, whereas paragraph (4) related to 1967, but that was not clear from the text.

136. The CHAIRMAN suggested that the paragraph should start with the words "At the present session, the Commission ...".

137. Mr. AGO proposed the wording: "The Commission considered that each individual special mission should be granted everything which may be essential for the regular performance of its functions, having regard to its nature and task".

138. Mr. REUTER proposed that the order of the two sentences should be reversed.

139. Mr. AGO proposed that the two sentences be redrafted to read: "At the present session, the Commission decided that every special mission should be granted everything that is essential for the regular performance of its functions, having regard to its nature and task. The Commission concluded that, under those conditions, there were grounds for granting special missions, subject

to some restrictions, privileges and immunities similar to those accorded to permanent diplomatic missions.”

140. Mr. USTOR thought that there should be some reference to the representative character of special missions.

141. Mr. BARTOŠ, Special Rapporteur, said that he did not agree with that view.

142. Mr. YASSEEN drew attention to the fact that opinion had been divided in the Commission about the meaning of “representative character”.

143. Mr. AGO pointed out that in order to avoid controversial issues, the Commission had decided on a very specific text.

144. The CHAIRMAN said that the Commission had taken a clear stand by making the representative character of a mission the basis for granting privileges and immunities. As the point was dealt with elsewhere in the draft, it was not essential to mention it in paragraph (4).

*Paragraph (4), as amended by Mr. Ago, was approved.*

*Paragraph (5)*

145. Mr. REUTER proposed that the word “accordingly”, in the first sentence, should be deleted.

*It was so agreed.*

146. Mr. AGO proposed that the second sentence should be replaced by the following wording: “It had departed from that convention only on particular points for which a different solution was required”.

*It was so agreed.*

*Paragraph (5), as amended, was approved.*

*The section entitled “General considerations”, as amended, was approved.*

COMMENTARY TO ARTICLE 17 (General facilities) [22] (A/CN.4/L.124/Add.5)

*Paragraph (1)*

*Paragraph (1) was approved.*

*Paragraph (2)*

147. The CHAIRMAN suggested the words “each special mission” should be replaced by the words “special missions”, which would be more correct in a general statement.

*It was so agreed.*

*Paragraph (2), as amended, was approved.*

*Paragraph (3)*

148. Mr. KEARNEY proposed that the words “It is only a minority of special missions”, at the beginning of the third sentence, should be replaced by “There are only a few special missions”.

149. Mr. BARTOŠ, Special Rapporteur, said that the cases in which more extensive facilities were needed were indeed very few. The last sentence was merely an amplification and could be deleted. In drafting article 17, he had had in mind the Commission’s considered view that

special missions could not claim the same facilities and privileges as diplomatic missions.

150. The CHAIRMAN said that the last two sentences could be deleted as the point was clearly made in the second sentence.

151. Mr. AGO agreed. The second sentence could then be reworded to read: “In fact, the receiving State cannot be required to provide a special mission with facilities which are not in keeping with the characteristics of the mission.”

*It was so agreed.*

*Paragraph (3), as amended, was approved.*

*The commentary to article 17, as amended, was approved.*

#### **Adoption of the Draft Articles on Special Missions**

152. The CHAIRMAN invited the Commission to vote on the draft articles as a whole.

*The draft articles on special missions, as a whole, were adopted unanimously.*

153. The CHAIRMAN congratulated the Special Rapporteur on the excellent work he had done, and proposed that the Commission adopt the following draft resolution:

*“The International Law Commission*

*Having adopted the draft articles on special missions, Desires to express to the Special Rapporteur Mr. Milan Bartoš, its deep appreciation of the outstanding contribution he has made to the treatment of the topic during the past four years by his tireless devotion and scholarly research, thus enabling the Commission to bring to a successful conclusion the important task of completing, with this draft, the work on codification already carried out in connexion with diplomatic and consular relations.”*

154. Mr. AGO supported the draft resolution, which did justice to the outstanding capacities of the Special Rapporteur. His knowledge was profound, but his attitude remained flexible and he had constantly shown his willingness to accept amendments proposed by members of the Commission.

*The draft resolution was adopted unanimously.*

155. Mr. BARTOŠ, Special Rapporteur, thanked the Commission for the tribute it had paid him. His task had given him great pleasure.

The meeting rose at 6 p.m.

#### **941st MEETING**

*Friday, 14 July 1967, at 9.55 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.*