

Document:-
A/CN.4/SR.941

Summary record of the 941st meeting

Topic:
<multiple topics>

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

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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.

Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Special Missions

(A/CN.4/193 and Addenda; A/CN.4/194 and Addenda)

(resumed from the 938th meeting)

[Item 1 of the agenda]

ARTICLE 3 (Appointment of the members of the special mission) [8]¹

1. The CHAIRMAN said that, when the Commission had adopted article 3, the opening phrase "Subject to the provisions of articles ..." had not included the numbers of the articles referred to.

2. The Special Rapporteur had now informed him that the reference was to articles 4 and 14. He therefore invited the Commission to note that article 3, in its final form, read:

"Subject of the provisions of articles 4 and 14, the sending State may freely appoint the members of the special mission after having informed the receiving State of its size and of the persons it intends to appoint."

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

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

(resumed from the previous meeting)

CHAPTER II: SPECIAL MISSIONS

(continued)

Part II. Facilities, privileges and immunities (continued)

COMMENTARY TO ARTICLE 18 (Accommodation of the special mission and its members) [23] (A/CN.4/L.124/Add. 5)

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

3. The CHAIRMAN suggested that in paragraph (2) the opening words "The essential difference between these two provisions ..." should be amended to read: "The essential difference between article 18 of the present draft and article 21 of the Vienna Convention on Diplomatic Relations ...".

It was so agreed.

Paragraph (2), as amended, was approved.

Paragraph (3)

4. The CHAIRMAN suggested that in paragraph (3) the concluding words of the first sentence "to move quickly and often" should be amended to read "to move quickly as and when necessary".

It was so agreed.

Paragraph (3), as amended, was approved.

Paragraph (4)

Paragraph (4) was approved.

Paragraph (5)

5. The CHAIRMAN suggested that the words "to defray the whole or part of the expenses" should be amended to read "to defray any of the expenses".

It was so agreed.

Paragraph (5), as amended, was approved.

The commentary to article 18, as amended, was approved.

COMMENTARY TO ARTICLE 19 (Inviolability of the premises) [25] (A/CN.4/L.124/Add. 5 and Corr. 1)

Paragraph (1)

The text of paragraph (1) as given in document A/CN.4/L.124/Add. 5 and Corr. 1 was approved.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were approved.

Paragraph (4)

6. The CHAIRMAN said he found the drafting of the second sentence of paragraph (4) (A/CN.4/L.124/Add. 5 Corr. 1) inadequate. He suggested, first, that the reference to "the majority of the Commission" should be deleted, since it was the Commission itself which took the decision; and secondly, that the statement that the provision had been "criticized" by several members should be replaced by wording to the effect that the provision had been opposed by several members of the Commission on the ground that it might lead to abuses.

It was so agreed.

Paragraph (4), as amended, was approved.

The commentary to article 19, as amended, was approved.

COMMENTARY TO ARTICLE 20 (Inviolability of archives and documents) [26] (A/CN.4/L.124/Add. 5)

COMMENTARY TO ARTICLE 21 (Freedom of movement) [27] (A/CN.4/124/Add. 5)

COMMENTARY TO ARTICLE 22 (Freedom of communication) [28] (A/CN.4/124/Add. 5 and Corr. 1)

The commentaries to articles 20, 21 and 22 were approved.

COMMENTARY TO ARTICLE 15 (Right of special missions to use the flag and emblem of the sending State) [19] (A/CN.4/124/Add. 6)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were approved.

Paragraph (3)

7. The CHAIRMAN suggested that in paragraph (3) the words "The Commission thought it useful to include in article 15 the provisions of article 29, paragraph 3 of the Vienna Convention on Consular Relations" should be amended in two ways. First, the reference should be to the inclusion of a provision similar to that paragraph of the

¹ For earlier discussion, see 931st meeting, paras. 106-117.

Vienna Convention on Consular Relations. Secondly, some description of the contents of that paragraph should be given for the benefit of those who were not familiar with the text of the 1963 Vienna Convention.

It was so agreed.

Paragraph (3), as amended, was approved.

The commentary to article 15, as amended, was approved.

COMMENTARY TO ARTICLE 23 (Exemption of the premises of the special mission from taxation) [24] (A/CN.4/L.124/Add. 6)

The commentary to article 23 was approved.

COMMENTARY TO ARTICLE 24 (Personal inviolability) [29] (A/CN.4/L.124/Add. 6)

8. The CHAIRMAN observed that the drafting of the English text needed adjustment. Since the same was true of the commentaries to a number of other articles, he suggested that the Secretariat should be authorized to make stylistic changes in the English text of all the commentaries, where necessary.

9. Mr. USHAKOV drew attention to the need to replace the opening words of paragraph (2) "The majority of the Commission considered ..." by the words "The Commission considered ...". The same correction would have to be made in a number of other commentaries.

10. The CHAIRMAN said that if, there were no objection, he would assume that the Commission agreed to authorize the Secretariat to make the drafting changes to which Mr. Ushakov and he himself had referred, throughout the text of the commentaries.

It was so agreed.

The commentary to article 24, as amended, was approved.

COMMENTARY TO ARTICLE 25 (Inviolability of the private accommodation) [30] (A/CN.4/L.124/Add. 6)

COMMENTARY TO ARTICLE 26 (Immunity from jurisdiction) [31] (A/CN.4/L.124/Add. 6)

COMMENTARY TO ARTICLE 27 (Waiver of immunity) [41] (A/CN.4/L.124/Add. 6)

The commentaries to articles 25, 26 and 27 were approved.

COMMENTARY TO ARTICLE 27 bis (Settlement of civil claims) [42] (A/CN.4/L.124/Add. 6)

11. Mr. JIMÉNEZ de ARÉCHAGA proposed that it should be explained in the second sentence that the Commission had included the article in its draft in order to give concrete expression to a principle stated in the preamble, namely, that the purpose of immunities was to protect the interests of the sending State and not those of persons.

12. Mr. AGO said that the commentary should also specify that the Commission had drafted an article on the subject, not a recommendation.

13. In the French text, there was a mistake in the last phrase which needed to be corrected: the words "État

d'envoi" should be replaced by "État de réception". In addition, the words "settlement of civil claims brought" were not appropriate; it was necessary also to cover the case of settlement out of court.

14. After a brief discussion, the CHAIRMAN suggested that the commentary should be reworded to read:

"This article is based on the important principle stated in Resolution II adopted on 14 April 1961 by the United Nations Conference on Diplomatic Intercourse and Immunities. The Commission embodied this principle in an article of its draft because the purpose of immunities is to protect the interests of the sending State, not those of the persons concerned, and in order to facilitate, as far as possible, the satisfactory settlement of civil claims made in the receiving State against members of special missions. This principle is also referred to in the draft preamble drawn up by the Commission."

The commentary to article 27 bis, as thus amended, was approved.

COMMENTARY TO ARTICLE 28 (Exemption from social security legislation) [32] (A/CN.4/L.124/Add. 6)

The commentary to article 28 was approved.

COMMENTARY TO ARTICLE 29 (Exemption from dues and taxes) [33] (A/CN.4/L.124/Add. 6)

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

15. Mr. TAMMES said that the word "discrimination" used in the last sentence of paragraph (2) was unsatisfactory. It was not a question of discrimination; the Commission had not wished to establish a different régime for special missions.

16. Mr. BARTOŠ, Special Rapporteur, proposed that the last sentence of paragraph (2) be deleted.

It was so agreed.

Paragraph (2), as amended, was approved.

The commentary to article 29, as amended, was approved.

COMMENTARY TO ARTICLE 30 (Exemption from personal services and contributions) [34] (A/CN.4/L.124/Add. 6)

The commentary to article 30 was approved.

COMMENTARY TO ARTICLE 31 (Exemption from customs duties and inspection) [35] (A/CN.4/L.124/Add. 6)

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

17. Mr. AGO said that the last sentence of paragraph (2) should be amended, since the expression "make it necessary" was not justified.

18. Mr. KEARNEY said he found the last sentence difficult to understand. Since special missions were temporary,

it might be thought that, on the contrary, the members did not need to be accompanied by members of their family.

19. Mr. BARTOŠ, Special Rapporteur, stressed that the last sentence contained the words "persons of their family who do not normally form part of their household". The Commission had considered that, in view of the temporary character of special missions, their members might include persons who, because of age or poor health, were not accustomed to travel and might need to be accompanied by members of their family who did not form part of their household.

20. The CHAIRMAN proposed the deletion of the words in brackets "(sister, married daughter, etc.)"

21. Mr. AGO proposed that the last sentence of paragraph (2) should be redrafted to read:

"It considered that, in view of the characteristics of special missions, it should be possible for members to be accompanied by persons of their family who do not normally form part of their household."

It was so agreed.

Paragraph (2), as amended, was approved.

Paragraph (3)

Paragraph (3) was approved.

Paragraph (4)

22. Mr. REUTER proposed that, in the French text of paragraph (4), the word "exigé", in the first sentence, should be replaced by "réclamé".

It was so agreed.

23. Mr. JIMÉNEZ de ARÉCHAGA proposed that in the last sentence of the same paragraph the words "in each particular case" should be deleted.

It was so agreed.

Paragraph (4), as amended, was approved.

The commentary to article 31, as amended, was approved.

COMMENTARY TO ARTICLE 32 (Administrative and technical staff) [36] (A/CN.4/L.124/Add. 6)

24. Mr. BARTOŠ, Special Rapporteur, proposed that, in paragraph (3), it should be specified that the reference in the first sentence was to article 37 of the Vienna Convention, and in the second sentence to article 32 of the draft.

It was so agreed.

The commentary to article 32, as amended, was approved.

COMMENTARY TO ARTICLE 33 (Members of the service staff) [37] (A/CN.4/L.124/Add. 6)

The commentary to article 33 was approved.

COMMENTARY TO ARTICLE 34 (Private staff) [38] (A/CN.4/L.124/Add. 6)

The commentary to article 34 was approved.

COMMENTARY TO ARTICLE 35 (Members of the family) [39] (A/CN.4/L.124/Add. 6)

25. Mr. BARTOŠ, Special Rapporteur, said he had intentionally omitted to point out that certain Governments considered that members of the family required an authorization from the receiving State. The Commission had been against such a requirement, and it was preferable not to draw the attention of the conference to that point.

The commentary to articles 35 was approved.

COMMENTARY TO ARTICLE 36 (Nationals of the receiving State and persons permanently resident in the territory of the receiving State) [40] (A/CN.4/L.124/Add. 6)

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

26. Mr. AGO said that in the last sentence of paragraph (2) the term "its jurisdiction" was ambiguous, and should be replaced by the words "the application of its laws".

27. The CHAIRMAN proposed that the last sentence of paragraph (2) should be deleted, since the Commission was not called upon to make a formal pronouncement on the matter; it was sufficient to specify that the Commission had followed the corresponding provisions of the Vienna Convention.

It was so agreed.

Paragraph (2), as amended, was approved.

The commentary to article 36, as amended, was approved.

COMMENTARY TO ARTICLE 37 (Duration of privileges and immunities) [44] (A/CN.4/L.124/Add. 6)

28. Mr. AGO, supported by Mr. BARTOŠ, Special Rapporteur, proposed that in the second sentence of the French text the word "régime" should be replaced by the word "traitement".

It was so agreed.

The commentary to article 37, as amended, was approved.

COMMENTARY TO ARTICLE 38 (Property of a member of the special mission or of a member of his family in the event of death) [45] (A/CN.4/L.124/Add.6)

The commentary to article 38 was approved.

COMMENTARY TO ARTICLE 39 (Transit through the territory of a third State) [43] (A/CN.4/L.124/Add. 6)

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

29. The CHAIRMAN proposed that, in the first sentence of paragraph (2), the words "are new" should be replaced by "are not in the Vienna Convention".

It was so agreed.

Paragraph (2), as amended, was approved.

The commentary to article 39, as amended, was approved.

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

COMMENTARY TO THE INTRODUCTORY ARTICLE (Use of terms) [1] (A/CN.4/L.124/Add. 10)²

Paragraph (1)

30. Mr. AGO, observing that the Commission preferred to avoid the use of the word "definition", proposed that the last part of paragraph (1) should be redrafted to read: "... the Commission has specified in the introductory article of the draft the meaning of the expressions most frequently used in it".

It was so agreed.

Paragraph (1), as amended, was approved.

Paragraph (2)

31. Mr. AGO proposed that, in the second sentence of paragraph (2), the words "regarded as" should be inserted before the words "a special mission in the sense used in the draft".

32. Mr. TAMMES proposed that the words "a substantive rule" at the end of paragraph (2) should be replaced by "an essential element".

33. Mr. YASSEEN supported that proposal and proposed that the words "of the concept of a special mission" should be added after "an essential element."

34. Mr. KEARNEY said it would be rather inappropriate to say in paragraph (2) that the conditions to be fulfilled by a special mission constituted an essential element of the concept of a special mission; in fact, those conditions constituted a complete definition and not just one of the elements of that definition.

35. The CHAIRMAN pointed out that paragraph (3) of the commentary specified some of the other characteristics of a special mission.

36. Mr. AGO proposed that paragraph (2) should be redrafted as follows:

"Sub-paragraph (a) of the introductory article defines the subject of the draft: special missions. It lays down the necessary minimum conditions which a mission must fulfil in order to be regarded as a special mission in the sense used in the draft".

It was so agreed.

Paragraph (2), as amended, was approved.

Paragraph (3)

37. Mr. AGO proposed that the opening words of the second sentence of paragraph (3) (a) should be reworded to read: "Special missions in the sense in which the term is used in the draft cannot be considered ...". He further proposed that the opening words of the last sentence of paragraph (3) (a) should be amended to read: "Consequently, the Commission did not consider that it should deal in its draft ...".

38. Mr. KEARNEY proposed the deletion of the word "special" before the word "missions" in the last sentence of paragraph (3) (a).

It was so agreed.

39. Mr. AGO expressed the view that paragraph (3) (b) should go into rather more detail, since the representative character of a special mission was an essential element of the draft.

40. The CHAIRMAN said that paragraph (3) (b) of the commentary was rather inadequate. In one short sentence, it made the bare statement that one of the essential characteristics of a special mission was the fact that it represented the sending State. It was essential to amplify that passage, which dealt with a crucial point; the Commission had revised its whole draft on the basis of the representative character of special missions, which distinguished those missions from mere visits by government officials.

41. Mr. USTOR said that the idea could perhaps be clarified by giving the example of visits by officials who represented national interests and not the State as a whole, such as representatives of a national bank.

42. The CHAIRMAN said that it would be dangerous to give actual examples which would commit the Commission to a particular interpretation. He suggested that a sentence, couched in general terms, should be added to paragraph (3) (b) of the commentary in order to explain the idea expressed in the present single sentence of that paragraph. Readers of the earlier reports prepared by the Special Rapporteur and by the Commission itself would want some explanation of the Commission's change of approach, which had taken place at the present session and was based precisely on the emphasis now placed on the representative character of the special mission. The Commission had abandoned all attempts to draw any distinctions between different categories of special missions; a special mission, provided it has a representative character would always receive the same treatment.

43. Mr. JIMÉNEZ de ARÉCHAGA supported the Chairman's proposal and agreed that it would be dangerous to give examples.

44. Mr. KEARNEY said he also supported the Chairman's views. The additional sentence proposed by the Chairman could perhaps state that the representative character of a special mission was an essential element which distinguished a special mission from visits by officials who did not have that representative character.

45. Mr. YASSEEN said it would be better not to stress the representative character of special missions too much. A special mission must be representative, it was true, but it did not necessarily have to represent the whole of the State; it might only represent the State for part of its competence. For example, in a country in which the central bank was regarded as an organ of the State, the director of the central bank might, as the head of a special mission, represent the State within the limits of the bank's competence.

² For earlier discussion of the commentaries to the introductory article and to article 1, see 939th meeting, paras. 46-61.

46. Mr. USHAKOV said that if a mission was to be a special mission in the sense used in the draft, it must include at least one person representing the sending State. If the director of the central bank was appointed representative of the State in a mission sent to a foreign State, the mission would be a special mission; if not, it would not be a special mission.

47. Mr. CASTAÑEDA proposed that its should be specified in paragraph (3) (b) that the special mission must be representative, in the sense that its members officially represented the sending State.

48. The CHAIRMAN, replying to Mr. Yasseen, said that the competence of the representative of the sending State was not necessarily limited to his competence as an organ under the constitutional law of that State. The representative of the State might be vested with special powers.

49. Mr. YASSEEN said he acknowledged that a representative's competence might be extended. But even if his representative character was recognized only to the extent of his competence, he would still be the representative of the State. That concept did not conflict with the representative character of the special mission.

50. Mr. JIMÉNEZ de ARÉCHAGA suggested that the idea put forward by the Chairman and Mr. Kearney, namely, that special missions were distinguished from official visits by their representative character, should be added in paragraph (3) (b). That would show the minimum requirement of the draft.

51. Mr. AGO proposed that sub-paragraph (b) should read:

"It must represent the sending State. In the Commission's view this is an essential distinguishing characteristic of special missions in the sense used in the draft, by which a special mission can be distinguished from other official missions or visits."

It was so agreed.

52. Mr. AGO proposed that in the first sentence of paragraph (3) (c) the words "precisely" and "but need not necessarily be very limited" should be deleted, and that in the French text the word "*mais*" should be replaced by "*et*".

It was so agreed.

53. Mr. JIMÉNEZ de ARÉCHAGA said he feared that the examples given in the last sentence of paragraph (3) (d) were not conclusive, for special missions too could be missions for assistance or for economic and industrial co-operation, immigration missions, and so on.

54. The CHAIRMAN suggested that, to meet that objection, the word "permanent" might be inserted, in the last sentence of paragraph (3) (d), between the words "are" and "missions".

It was so agreed.

Paragraph (3), as amended, was approved.

Paragraph (4)

55. Mr. AGO proposed that in paragraph (4) the word "defines" should be replaced by the word "describes";

the words "the character prescribed" should be replaced by the words "the characteristics specified"; and the last sentence should be deleted.

It was so agreed.

Paragraph (4), as amended, was approved.

Paragraph (5)

56. Mr. AGO proposed that in paragraph (5) the words "of the introductory article" should be inserted after the words "sub-paragraph (a)" in the first sentence. In the French text of the same sentence, the words "*considérée comme*" should be inserted before "*une mission spéciale*", the word "*est*" should be replaced by "*figure*" and the words "*au regard*" should be deleted.

It was so agreed.

Paragraph (5), as amended, was approved.

Paragraph (6)

57. Mr. AGO proposed that the last sentence of paragraph (6) should be deleted and the two remaining sentences worded as follows:

"Sub-paragraph (c) of the introductory article is drafted in the same terms as article 1 (a) of the Vienna Convention on Consular Relations. Sub-paragraphs (d), (f), (g), (h), (i), (j) and (k) are based, with a few changes in terminology, on the definitions in sub-paragraphs (a), (b), (c), (d), (f), (g) and (h) of article 1 of the Vienna Convention on Diplomatic Relations."

It was so agreed.

Paragraph (6), as amended, was approved.

The commentary to the introductory article, as amended, was approved.

COMMENTARY TO ARTICLE 1 (Sending of special missions)
[2] (A/CN.4/L.124/Add. 10)³

Paragraph (1)

58. After an exchange of views, Mr. REUTER proposed that in paragraph (1) of the French text the words "*à moins de s'y être engagés préalablement*" should be replaced by the words "*sauf s'il s'agit de l'exécution d'un engagement préalable*".

It was so agreed.

Paragraph (1), as amended, was approved.

Paragraph (2)

59. After a brief discussion, Mr. AGO proposed that paragraph (2) should be redrafted to read:

"In practice, there are differences in the form given to the consent required for the sending of a mission, according to whether it is a permanent diplomatic mission or a special mission. For a permanent diplomatic mission the consent is formal, whereas for special missions it takes extremely diverse forms, ranging from a formal treaty to tacit consent."

It was so agreed.

Paragraph (2), as amended, was approved.

The commentary to article 1, as amended, was approved.

³ See footnote 2.

COMMENTARY TO ARTICLE 41 (Organ of the receiving State with which official business is conducted) [15] (A/CN.4/L.124/Add. 9)

The commentary to article 41 was approved.

Part II. Facilities, privileges and immunities (resumed)

Part III. General provisions

COMMENTARY TO ARTICLE 40 (Obligation to respect the laws and regulations of the receiving State) [48] (A/CN.4/L.124/Add. 9)

COMMENTARY TO ARTICLE 42 (Professional activity) [49] (A/CN.4/L.124/Add. 9)

COMMENTARY TO ARTICLE 43 (Right to leave the territory of the receiving State) [46] (A/CN.4/L.124/Add. 9)

The commentaries to articles 40, 42 and 43 were approved.

COMMENTARY TO ARTICLE 44 (Consequences of the cessation of the functions of the special mission) [47] (A/CN.4/L.124/Add. 9)

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

60. The CHAIRMAN suggested that the words "merely contemplates the possibility" in the first sentence of paragraph (2) should be amended to read "necessarily contemplates only the case".

It was so agreed.

Paragraph (2), as amended, was approved.

Paragraph (3)

Paragraph (3) was approved.

The commentary to article 44, as amended, was approved.

COMMENTARY TO ARTICLE 17 *quater* (Status of the Head of State and persons of high rank) [21] (A/CN.4/L.124/Add.7)

Paragraph (1)

61. Mr. KEARNEY suggested that the last phrase of paragraph (1), after the words "privileges and immunities", should be amended to read "which he retains on becoming a member of a special mission".

It was so agreed.

62. The CHAIRMAN suggested that the second and third sentences of paragraph 1 should be combined to read "After a careful study of the matter, the Commission concluded that the rank of the head or members of a special mission does not give the mission any special status".

It was so agreed.

Paragraph (1), as amended, was approved.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were approved.

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

COMMENTARY TO ARTICLE 40 *bis* (Non discrimination) [50] (A/CN.4/L.124/Add. 7)

The commentary to article 40 bis was approved.

The commentaries to the draft articles on special missions, as a whole, as amended, were approved, subject to drafting changes.

I. HISTORICAL BACKGROUND (A/CN.4/L.124/Add. 8)

Paragraphs 1 to 23

63. The CHAIRMAN said that the Commission need not consider paragraphs 1 to 23 of chapter II as the passage on the historical background of the subject of special missions had been submitted to it at previous sessions.

Paragraph 24

Paragraph 24 was approved.

Section I of chapter II was approved.

II. RECOMMENDATION OF THE COMMISSION

64. The CHAIRMAN said that the Commission would have to make a recommendation to the General Assembly on how the draft articles should be dealt with. The analogous recommendation concerning the draft articles on the law of treaties⁴ stated that the Commission had decided, in conformity with article 23, paragraph 1 (*d*) of its Statute, to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the Commission's draft articles on the law of treaties and to conclude a convention on the subject. The Commission had gone on to express the hope that the titles given to parts, sections and articles of its draft, which it considered helpful for an understanding of the structure of the draft and for promoting ease of reference, would be retained in any convention which might be concluded in the future on the basis of the draft articles.⁵ The latter part of the recommendation should be restated in the recommendation on special missions, and all members would agree that the draft articles should form a convention. The only doubtful point was whether the convention should be adopted at a plenipotentiary conference or whether the United Nations might adopt some other procedure, such as consideration of the draft in the Sixth Committee of the General Assembly and subsequent adoption and signature in the usual way.

65. He thought that three possibilities were open to the Commission: first, to follow the example of the recommendation on the law of treaties; second, to recommend two variants, mentioning the possibility of a conference or some other United Nations procedure; or third, to make a general recommendation that the draft articles should be converted into a convention, without stating any specific method.

⁴ *Yearbook of the International Law Commission, 1966*, vol. II, document A/6309/Rev.1, part II, para. 36.

⁵ *Ibid.*, para. 37.

66. Mr. AGO said that the Chairman had summed up the situation very well. The Commission's aim was to see that the draft articles were converted into a convention, but it was for the General Assembly to decide how that should be done.
67. Mr. TABIBI said he too thought it would be wise to leave the matter to the General Assembly to decide. It should be borne in mind, however, that the General Assembly prepared its calendar of conferences some years in advance, and it would be advisable to say that the possibility of a conference should be provided for in the future.
68. Mr. CASTAÑEDA thought it would be advisable to say that the draft articles should be discussed by eminent and specialized jurists, so that Member States would be forewarned to send representatives of the necessary calibre to represent them in the Sixth Committee, if it was decided that that body should deal with the convention.
69. Mr. USHAKOV suggested that the Commission adopt the usual formula, which was to recommend that the General Assembly should convene a plenipotentiary conference, so that States might accept the convention without discussion.
70. Mr. BARTOŠ urged that the Commission should confine itself to expressing the wish that the draft articles should become a convention and should leave it to the General Assembly to find the appropriate method.
71. Mr. TABIBI said that, if the Commission considered it a matter of urgency to supplement the Vienna Conventions with a convention on special missions, it should recommend that the General Assembly convene a plenipotentiary conference. Moreover, unless the Commission stressed the importance it attached to the conclusion of a convention, the subject might merely be given routine consideration in the Sixth Committee, and the quality of the work might be inferior to that of a plenipotentiary conference.
72. Mr. YASSEEN thought that the Commission should decide whether it wished to recommend the General Assembly to convene a plenipotentiary conference or to leave it to the Assembly to take that decision.
73. Mr. NAGENDRA SINGH said in his view the recommendation should be as flexible as possible. A conference would have been essential if the subject had been an independent one, but since the draft articles were so largely based on the Vienna Conventions, it seemed appropriate to leave it to the General Assembly to decide whether the question should be dealt with in the Sixth Committee or by other means. Moreover, insistence on a conference might delay the adoption of the convention, because of the expense and time involved.
74. Mr. USTOR said that the wisest course would be to recommend the convening of a conference, for experience had shown that to entrust General Assembly Committees with the drafting of legal texts was not a satisfactory solution. The Commission should not hesitate to follow the recommendation it had adopted on the law of treaties; in any case its recommendations were not binding on the General Assembly.
75. Mr. AGO thought that it would be better to follow the usual practice of convening a plenipotentiary conference. Nevertheless, it was for the General Assembly to take the decision. What should be avoided was an ambiguously worded recommendation which might give the General Assembly or the Sixth Committee the impression that the International Law Commission did not attach due importance to the draft articles and that they could be adopted without being made into a formal convention.
76. Mr. KEARNEY pointed out that the time factor militated against holding a conference on special missions. It was proposed to hold two conferences on the law of treaties in 1968 and 1969, and there was a very strong movement in the United Nations to cut down the number of conferences as much as possible. He would not oppose a recommendation to convene a conference, but he thought that the difficulties involved should be borne in mind.
77. Mr. STAVROPOULOS (Legal Counsel) said he agreed with Mr. Tabibi that representatives on the Sixth Committee were not all eminent jurists; many of the delegations to the Assembly did not include such persons. Nevertheless, the Sixth Committee might welcome the opportunity of being able to adopt an international instrument, and the subject of special missions, which was an auxiliary part of diplomatic law, seemed particularly appropriate for the purpose. Moreover, if enough advance publicity was given to the draft articles, Member States were likely to send qualified representatives.
78. The CHAIRMAN suggested that the opening passage of the recommendation should read: "At the 941st meeting on 14 July 1967, the Commission decided, in conformity with article 23 of its Statute, to recommend to the General Assembly that appropriate measures be taken for the conclusion of a convention on special missions".
That proposal was adopted by 9 votes to none, with 5 abstentions.
79. Mr. USHAKOV said he had abstained because he still thought that the Commission should have recommended the General Assembly to convene a plenipotentiary conference.
80. Mr. TABIBI said he had abstained from voting because the recommendation failed to draw the General Assembly's attention to the importance of sending qualified representatives to the Sixth Committee for the adoption of the convention.
81. Mr. BARTOŠ pointed out that in 1966 the Commission had recommended the General Assembly to convene a plenipotentiary conference.
82. Mr. REUTER said that, generally speaking, the Commission should not confine itself to preparing texts for conventions and should adopt a more flexible attitude. However, when it was obvious that the only course to follow with regard to a particular topic was to adopt a diplomatic convention, the Commission should not

hesitate to say so. It was for those reasons that he had abstained.

83. Mr. YASSEEN said that he had voted for the proposed recommendation as it did not preclude the convening of a plenipotentiary conference. The Commission's idea had been to leave it to the General Assembly to consider ways and means in the light of practical considerations.

84. The CHAIRMAN said he would make it clear, when representing the Commission in the Sixth Committee, that the Commission considered it very important for the convention to be adopted as soon as possible. In view of the very heavy calendar of conferences of the United Nations, the adoption of the convention would be substantially delayed if a conference had to be convened.

85. Mr. AGO explained that he had voted for the recommendation in the hope that it would lead to the convening of a plenipotentiary conference. The danger of excessive delay was a real one, but so was the danger that would be incurred if the draft convention was submitted to a body whose members were not necessarily qualified to approve a text of that kind.

CHAPTER I: ORGANIZATION OF THE SESSION (A/CN.4/L.124)

86. Mr. JIMÉNEZ de ARÉCHAGA suggested that the word "and" in the last sentence of paragraph 5 should be replaced by "or".

It was so agreed.

Chapter I, as amended, was approved.

CHAPTER III: OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION (A/CN.4/L.124/Add. 11)

Paragraph 1

87. The CHAIRMAN suggested that the words "a group of members consisting of" in the second sentence of paragraph 1 should be deleted.

It was so agreed.

Paragraph 1, as amended, was approved.

Paragraph 2

Paragraph 2 was approved.

Paragraph 3

88. The CHAIRMAN suggested that the reference to "Judge Lachs" in the last sentence should read "Mr. Lachs".

It was so agreed.

Paragraph 3, as amended, was approved.

Paragraphs 4 to 6

Paragraphs 4 to 6 were approved.

Paragraph 7

89. Mr. YASSEEN, referring to the second sentence, observed that it was not the Commission's practice to confirm a Special Rapporteur in his office. There was a

long-standing decision by the Commission that a special rapporteur who was re-elected retained his position as special rapporteur.

90. The CHAIRMAN suggested that the second sentence should read "The Commission confirmed the instructions given to Mr. Ago at the fifteenth session ...".

It was so agreed.

Paragraph 7, as amended, was approved.

Paragraphs 8 to 10

Paragraphs 8 to 10 were approved.

Paragraph 11

91. Mr. AGO suggested that the enumeration of unilateral acts given in brackets in the first sentence should be deleted.

It was so agreed.

Paragraph 11, as amended, was approved.

Paragraph 12

Paragraph 12 was approved.

Paragraph 13

92. In reply to a question by Mr. JIMÉNEZ de ARÉCHAGA, the CHAIRMAN said that the words "the topic of most-favoured-nation clauses in the law of treaties" in the penultimate sentence had been used to make it clear that that topic was being taken up in connexion with a subject already referred to the Commission by the General Assembly.

Paragraph 13 was approved.

Paragraph 14

Paragraph 14 was approved.

Paragraph 15

93. Mr. STAVROPOULOS (Legal Counsel) said that the only ten-week period that could be assigned to the Commission for its twentieth session was from 27 May to 2 August 1968, since the Conference on the Law of Treaties was almost certain to take place from 26 March to 24 May 1968. The Secretary-General had recently received an invitation from the Government of Austria to hold both Conferences on the Law of Treaties in Vienna. All Member States had been notified of the invitation and had been requested to send their comments.

Paragraph 15 was approved.

Paragraphs 16 to 21

94. Mr. BARTOŠ said that it was the practice to include in the report the names of the members of the Commission who attended sessions of other bodies.

95. Mr. JIMÉNEZ DE ARÉCHAGA thought it should be explained that the Commission had sent members to attend sessions of the Asian-African Legal Consultative Committee and the European Committee on Legal Co-operation because the agendas for those sessions included subjects of interest to the Commission.

96. The CHAIRMAN suggested that the two sections referred to by Mr. Jiménez de Aréchaga should be amplified.

It was so agreed.

Paragraphs 16 to 21, as amended, were approved.

Paragraphs 22 and 23

Paragraphs 22 and 23 were approved.

Paragraph 24

97. Mr. BARTOŠ suggested that the two members of the Secretariat referred to in the fourth sentence should be mentioned by name, since they had acted in their personal capacity during the Seminar.

It was so agreed.

Paragraph 24, as amended, was approved.

Paragraphs 25 and 26

Paragraphs 25 and 26 were approved.

Paragraph 27

98. The CHAIRMAN suggested that the square brackets enclosing the last sentence should be removed.

It was so agreed.

Paragraph 27, as amended, was approved.

Chapter III of the draft report was adopted as amended.

The draft report of the Commission on the work of its nineteenth session (A/CN.4/L.124 and Add. 1 to 11), as approved, was adopted.

Closure of the Session

99. The CHAIRMAN said that the session had been a disturbed one in some ways, for several members had been unable to be present, including two officers of the Commission. It had, moreover, been necessary to leave aside the work of one Special Rapporteur. Nevertheless, the session had been most interesting and had made a definite and valuable contribution to the codification and progressive development of international law. Owing to the efforts and enthusiasm of the Special Rapporteur on special missions, the Commission had been able to complete its draft articles, thereby adding a stone to the edifice of diplomatic law. He wished to reiterate his thanks to the Special Rapporteur for his devotion to duty and the extraordinary learning and practical knowledge he had brought to bear on all the subjects under discussion. Despite the tenacity with which he held to his views, Mr. Bartoš had shown great loyalty to the Commission and it was largely due to his willingness to appreciate the need for a consensus that the session had passed so smoothly and ended so successfully.

100. He was sure that members who had not served on the Drafting Committee would wish to express their appreciation of that body's excellent work, and, particularly, of Mr. Ago's devotion and skill.

101. His thanks were also due to Mr. Ustor, who had ably supported him as Second Vice-Chairman and who was to be congratulated on his appointment as Special Rapporteur on the topic of most-favoured-nations clauses.

102. He also expressed his deep appreciation of the work of the Commission's Secretariat, which had been particularly smooth and effective during the nineteenth session. His thanks were also due to all the other members of the Secretariat who had assisted the Commission.

103. In conclusion, he thanked all the members of the Commission for their unfailing courtesy, co-operation and friendship, which had made his task so easy and had enabled the Commission to produce work which would stand comparison with instruments prepared at other sessions and would again redound to its credit.

104. Mr. AGO said that the previous year the Commission had warmly congratulated Sir Humphrey Waldock on his remarkable work as Special Rapporteur. During the present session it had had occasion to appreciate the wisdom, intelligence and authority with which he had discharged the duties of Chairman. The Chairman's task had been a particularly delicate one that year because the Commission's membership had just been changed. But thanks to the friendly atmosphere he had created, the old and new members had worked closely together and had even come to feel that they belonged to a single family.

105. Mr. JIMÉNEZ de ARÉCHAGA, speaking on behalf of Mr. Castrén and Mr. Castañeda as well as himself, expressed his great appreciation of the courtesy, seriousness of purpose and devotion to duty with which the Chairman had conducted the session. The Special Rapporteur had made a very important contribution to the Commission's traditions. As the foremost authority on special missions, Mr. Bartoš had nevertheless had the patience to listen carefully to the views of much less experienced colleagues and, even when he disagreed with them, had reported their views loyally to the Drafting Committee. The procedure of submitting summaries to the Drafting Committee for the formulation of final proposals was an excellent one, which should be followed in the future, although it placed a heavy burden on the Secretariat. The articles adopted reflected a laudable spirit of compromise, and, thanks to the work of the Drafting Committee, were excellently worded.

106. Mr. TABIBI, speaking for himself and Mr. Nagenda Singh, said that the Chairman had long set a splendid example to all members of the Commission, who looked up to him as a symbol of strength, wisdom and patience, and above all of hard work and excellent use of time. He agreed with Mr. Ago that the Commission had established a unique atmosphere of unity and friendship, which was unparalleled in other organs of the United Nations. That atmosphere was largely due to such old members as the Chairman and Mr. Bartoš, whose experience and authority enabled members to co-operate in producing excellent results. He associated himself with the thanks expressed to the Secretariat.

107. Mr. YASSEEN commended the courtesy, great moral qualities and learning displayed by the Chairman in conducting the debates. He also expressed his admiration for Mr. Bartoš, who had undertaken the delicate task of preparing a draft convention on special missions with outstanding success. Lastly, he congratulated Mr. Ustor,

the Second Vice-Chairman of the Commission, and Mr. Ago, the Acting Chairman of the Drafting Committee, whose work had contributed very greatly to the success of the session. He associated himself with the Chairman's commendation of the members of the Secretariat.

108. Mr. BARTOŠ congratulated Sir Humphrey Waldock on the outstanding success with which he had presided over the Commission's work, and thanked him for agreeing to act once again as Special Rapporteur. He took the opportunity of expressing his gratitude to all members of the Secretariat. As Special Rapporteur he had been able to appreciate the remarkable organization of the Secretariat, thanks to which the work could be perfectly co-ordinated.

109. Mr. TAMMES said that, as a new member of the Commission, he had learned a great deal from the Chairman's consummate mastery of the English language, from the great devotion to duty of the Special Rapporteur and from the care, patience and skill of the Acting Chairman of the Drafting Committee. His first experience of a session of the Commission had been unforgettable.

110. Mr. USHAKOV, said that, as a new member of the Commission, he wished to thank the Chairman, the Special Rapporteur and all the senior members for their invaluable collaboration and their kindness to him.

111. Mr. IGNACIO-PINTO associated himself with the congratulations and thanks expressed to the Chairman, the General Rapporteur, the Acting Chairman of the Drafting Committee, the members of the Commission and all the members of the Secretariat.

112. Mr. KEARNEY expressed his thanks to the Chairman, the Special Rapporteur and the Secretariat for making his first period of service on the Commission such an enjoyable and rewarding experience.

113. Mr. USTOR expressed his deep appreciation of the Chairman's masterly conduct of the Commission's work and his congratulations to the Special Rapporteur, whose great wisdom had contributed so largely to the success of

the session. His first appearance as a member of the Commission had been a great event for him, particularly as he had been elected Second Vice-Chairman and appointed Special Rapporteur for the topic of most-favoured-nation clauses; he would do his best to prove worthy of the trust that had been placed in him. In conclusion, he thanked all the members of the Secretariat for their help during the session.

114. Mr. STAVROPOULOS (Legal Counsel) expressed his regret at having been prevented from attending the Commission's earlier meetings by the crisis which had compelled four members to be absent. Nevertheless, he considered himself fortunate to have attended a meeting at which the Commission had concluded its work on an important subject.

115. The Commission's decisions on additional topics fully corresponded to the wishes of the General Assembly, which considered it desirable for a text to be submitted to it every five years.

116. Over the years, he had come to the conclusion that the Commission's work would be facilitated if the Secretariat was entrusted with the task of preparing an initial draft for the Special Rapporteur. It was well known that not all Special Rapporteurs had the time to do the necessary preparatory work, which would, of course, be concerned with the collection of data, not with opinions. That could not be made a rule, however, since the wishes of individual Special Rapporteurs must be respected.

117. In conclusion, he expressed his appreciation of the many compliments that had been addressed to the Secretariat.

118. The CHAIRMAN thanked the members of the Commission for their kind words and declared the nineteenth session of the International Law Commission closed.

The meeting rose at 1.30 p.m.
