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Summary record of the 768th meeting

Topic:
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Extract from the Yearbook of the International Law Commission:-
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should be able to provide information regarding the different techniques used in the preparation of multi-lingual versions. It sometimes occurred that the drafting committee of an international conference submitted to the conference a report stating that the various language versions were concordant. Where no such report existed, the situation would, of course, be completely different. Those cases indicated the importance of the *travaux préparatoires* for that aspect of the law of treaties.

65. It would therefore be extremely useful for the Commission if the Secretariat were to submit at the next session a document giving all useful factual information on conference procedures in respect of the versions of a treaty in different languages.

66. Mr. TUNKIN said that he found himself in general agreement with the provisions of article 74, but understood the hesitation of the Special Rapporteur regarding paragraph 2 (b). The provisions of that paragraph might well conflict with the constitutions of certain international organizations and with the practices adopted by them. He therefore urged that those provisions should be worded more cautiously, along the lines already adopted by the Commission when it had referred to international organizations in certain other articles of the draft on the law of treaties.

67. Mr. BRIGGS favoured the inclusion of draft articles on the question of treaties drawn up in two or more languages or having two or more texts or versions. Draft articles on those points would represent a valuable contribution by the Commission to the codification and development of the law of treaties.

68. As far as he had been able to assess, the rules set forth in articles 74 and 75 appeared satisfactory.

69. He had been struck by the statement in the second sentence of paragraph (5) of the commentary: "But it needs to be stressed that in law there is only one treaty ... even when the two authentic texts appear to diverge". It was correct to state that there was only one text of any treaty, although there might be versions in several languages. For those reasons, he believed that Article 111 of the Charter was not correct when it referred to the Chinese, French, Russian, English and Spanish "texts" rather than to versions of the text.

70. Accordingly, he was not altogether satisfied with the drafting of article 74, in so far as it suggested that a treaty could have two or more authentic texts. The provisions of the article should be reworded in such a manner as to refer to two or more language versions of the same treaty.

71. Mr. BARTOŠ said that he had no objection to article 74 but he would like to draw attention to a practice which had become common in the past ten years. For reasons of prestige some States required a treaty to be drawn up in their national language. There thus existed a version in the language of each of the parties, but, because the languages of the parties were not widely known and were not recognized as diplomatic languages, to facilitate understanding and interpretation a translation in a third language was annexed

which was authoritative, the other two versions being also regarded as authentic. That was an innovation not considered in the draft. He would ask the Special Rapporteur at least to refer to the practice in his commentary, if he could not do so in the articles.

72. Mr. TUNKIN said that he could add other examples of a similar kind. The practice of States showed a considerable variety of approach to the languages question. For example, the Treaty of Friendship of 1928 between the Soviet Union and Yemen had been drawn up in Arabic and Russian but the treaty itself stated that only the Arabic text was authentic.

73. In his view, the provisions of paragraph 1 of article 74 covered cases like those mentioned by Mr. Bartoš and himself.

74. The CHAIRMAN said that he also thought that paragraph 1 of article 74 covered those cases.

75. He suggested that articles 74 and 75 should be referred to the Drafting Committee, with the comments made during the discussion.

It was so agreed.

The meeting rose at 1 p.m.

768th MEETING

Friday, 17 July 1964, at 10 a.m.

Chairman: Mr. Roberto AGO

Representation of the Commission at the nineteenth session of the General Assembly

1. Mr. LIANG, Secretary to the Commission, suggested that, as in former years, the Commission should appoint its Chairman to represent it at the next session of the General Assembly. He drew attention, in that respect, to the relevant passage in the Commission's report on its fifteenth session.¹

2. Mr. BRIGGS, supported by Mr. TUNKIN and Mr. AMADO, proposed that the Chairman should be asked to represent the Commission at the nineteenth session of the General Assembly. No one was better qualified to present to the Assembly the views of the Commission and to represent its interests.

The proposal was adopted by acclamation.

¹ Official Records of the General Assembly, Eighteenth Session, Supplement No. 9, para. 80.

Date and Place of the Commission's seventeenth session

[Item 7 of the agenda]

3. The CHAIRMAN invited the Commission to discuss item 7 of its agenda: date and place of the seventeenth session.

4. Mr. LIANG, Secretary to the Commission, said that the place would no doubt be Geneva. As far as the date of the opening of the session was concerned, referred to the Commission's decision that it should be the first Monday of May, unless otherwise decided.

5. Mr. TABIBI said that the Commission should consider holding a meeting outside Geneva at some future date, particularly if it were to hold a winter session.

6. The CHAIRMAN said that if a winter session had been arranged for 1965, he would have liked to make arrangements for the Commission to meet at Rome. It was still too early to consider the position with regard to the proposed winter session in 1966.

7. Mr. ROSENNE suggested that in view of the late session of the General Assembly in 1964, it might be advisable for the Commission to commence its next session on 10 May 1965.

8. Mr. YASSEEN also favoured that date.

9. Mr. VERDROSS and Mr. CASTRÉN opposed the suggestion that the session should begin on 10 May 1965, because it would involve a one-week postponement of the end of the session.

10. The CHAIRMAN, after an informal consultation, noted that the Commission as a whole preferred to adhere to the usual practice of commencing the session on the first Monday of May. He therefore suggested that the seventeenth session should commence on 3 May 1965 and, as usual, last for ten weeks.

It was so agreed.

Co-operation with other bodies

(A/CN.4/171 and 172)

(resumed from the 745th meeting)

[Item 8 of the agenda]

11. The CHAIRMAN invited the Commission to resume its consideration of item 8 of its agenda.

12. Mr. LIANG, Secretary to the Commission, drew attention to a letter of 8 May 1964 from the President of the International Union of Judges, addressed to him as Secretary to the Commission, requesting that the Union be authorized to collaborate with the Commission in pursuance of article 26, paragraph 1, of its Statute. It was also requested in the same letter that the Union should be included in the list provided for in article 26, paragraph 2, of the Statute in order that it might receive the Commission's documents.

13. The request for inclusion of the Union in the list prepared for the distribution of the Commission's documents raised no problem, and arrangements were being made to place the International Union of Judges on that list.

14. On the question of co-operation in pursuance of article 26, paragraph 1, of the Commission's Statute, he stated that, after consultation with the Chairman, he would submit that it was necessary to bear in mind the precedents established by the Commission in the matter of co-operation with the legal bodies of the Organization of American States and with the Asian-African Legal Consultative Committee. Since the International Union of Judges did not have on its agenda any subject which corresponded to those studied by the Commission, the Secretariat should be authorized to reply that the Commission would be glad to establish co-operation with the Union if its programme were to include subjects identical with or intimately related to those discussed in the Commission. His letter would add a list of the subjects at present before the Commission and would end with an indication that it was open to any members of the International Union of Judges who wished to do so to attend the meetings of the Commission.

15. The CHAIRMAN suggested that the Secretary should be authorized to reply in that sense to the request by the International Union of Judges.

It was so agreed.

16. Mr. LIANG, Secretary to the Commission, said that the Commission had been invited to send an observer to the next session of the Asian-African Legal Consultative Committee to be held at Baghdad in January or February 1965. In that connexion, he drew attention to the Commission's decision at its fifteenth session to send its then Chairman as observer to the Consultative Committee's session at Cairo in February 1964.² By the same decision, the Chairman had been authorized, in the event of his being unable to attend, to appoint another member of the Commission or its Secretary to represent the Commission at the Committee's session.

17. He suggested that a similar formula might be adopted for the 1965 session of the Committee.

18. Mr. YASSEEN said that it would be particularly appropriate that the Chairman of the Commission's current session should attend the Baghdad meeting of the Asian-African Legal Consultative Committee; in the first place, it was desirable to follow precedent, for the Committee's previous session had been attended by the then Chairman as observer; in the second place, the Chairman at the current session was an eminent representative of European legal thinking and of the international spirit.

19. The CHAIRMAN said that he looked forward to attending the Baghdad meeting but thought it would be a useful precaution to include the customary provision

² *Ibid.*, para. 69.

about the possibility of appointing another member of the Commission or the Secretary to act as observer in his place.

20. If there was no objection, he would consider that the Commission agreed to that course.

It was so agreed.

21. Mr. BARTOŠ drew attention to the report on the sixth session of the Asian-African Legal Consultative Committee submitted by Mr. Jiménez de Aréchaga, who had attended that session as observer for the Commission (A/CN.4/172).

22. He proposed that the Commission should take note of that report.

The proposal was adopted.

23. Mr. LIANG, Secretary to the Commission, said that during the past year no communication had been received from the juridical bodies of the Organization of American States with regard to the next session of the Inter-American Council of Jurists. He recalled that it had been customary for the Commission to send an observer to meetings of that Council. However, it did not appear likely that any meeting of that Council would be held before the Commission's next session. A paragraph to cover the subject of co-operation with the Inter-American Juridical Committee would be included in the Commission's report for the current session.

24. The CHAIRMAN drew attention to the memorandum prepared by the Secretariat, in connexion with agenda item 8, on the subject of the distribution of the Commission's documents (A/CN.4/171).

25. Mr. LIANG, Secretary to the Commission, said that in its report on the fifteenth session³ the Commission had expressed the hope that the relevant regulations of the United Nations would be so adapted as to secure a better exchange of documentation between the Commission and the bodies with which it co-operated.

26. The Secretariat had considered it appropriate to submit to the Commission a memorandum on the factual situation (A/CN.4/171); it was for the Commission to decide what further action it might wish to take.

27. From the practical point of view, he suggested that it might be advisable for the Commission to designate a small group to study the whole subject at the beginning of the next session.

28. He stressed that any free distribution of documents on a very large scale could not be undertaken by the Secretariat without the authorization of the appropriate organs of the United Nations. It should be borne in mind that some interested non-governmental organizations had a very large membership. On that problem, he drew special attention to paragraph 24 of the Secre-

tariat memorandum and, in particular, to the last sentence: "Careful consideration would be required in order to establish criteria for the purpose of selecting organizations to which the documents of the Commission would be given".

29. Mr. ROSENNE said that the discussion at the fifteenth session, and indeed at the earlier sessions, from which paragraph 70 of the previous year's report had emerged, had been concerned not so much with the free distribution of documents as with the regular exchange of documents with the bodies with which the Commission maintained formal relations. He welcomed the suggestion by the Secretary for the convening of a small group of members early in the next session to consider the whole question. In the meantime, it would be useful if the Secretariat could prepare a document dealing with the organization of the exchange of documentation.

30. Sir Humphrey WALDOCK pointed out that some members of the Commission who did not hold government posts found it extremely difficult to obtain United Nations legal documents relevant to their work. He suggested that arrangements should be made for members to receive such documents. He believed that members of the Commission should have first priority with regard to the distribution of documents of that type.

31. Mr. PAREDES stressed that it was essential to distribute the Commission's documents to all those interested in the subjects discussed by the Commission. Only in that manner would it be possible to disseminate those documents in such a manner that they reached the right persons and that a favourable atmosphere was created to gain acceptance by Governments for the Commission's drafts.

32. In that connexion, he pointed out that there existed in Ecuador an Institute of International Law, to which the Commission's documents should be sent.

33. Mr. de LUNA said that he agreed with the suggestion by Mr. Paredes but he also agreed with the Secretary's remark that it was not possible to send the Commission's documents to individual members of scientific bodies. He expressed his strong support for the suggestion made by Sir Humphrey Waldo. As far as he was concerned, although he was in the service of his Government, he had only been able to assemble an incomplete set of useful United Nations legal documents by means of a great deal of time-consuming effort and only as a result of the kindness of individual members of the Secretariat.

34. It was particularly important that the legal documents of the United Nations should be sent to the individual members of the Commission directly at their home addresses.

35. The CHAIRMAN said that all the members of the Commission would no doubt agree with Mr. de Luna on that last point.

³ *Ibid.*, para. 70.

36. There could be no doubt that if it was desired that the work of the Commission should be known and studied, and that it should produce its full effects, the Commission's documents should reach all universities and scientific bodies. He hoped therefore that the United Nations would incur the comparatively small expenditure of printing the extra copies of documents necessary to ensure such a useful dissemination of the Commission's documents. The subject was one of vital importance to the United Nations as a whole.

37. The suggestion that a small committee should study the problem early in the next session would no doubt also meet with general approval.

38. Mr. LIANG, Secretary to the Commission, said that he had received a letter from Mr. Paredes on the subject of the Institute of International Law of Ecuador and he was glad to state that there should be no difficulty in arranging to send the Commission's documents to that academic body.

39. He urged all members of the Commission to give the names of any other institutes engaged in the special study of international law; an request that the Commission's documents be sent to bodies of that type would meet with a favourable response from the United Nations. What could not be done was to send the Commission's documents to individuals, because such a distribution would open the door to unduly numerous requests for the free distribution of the United Nations documents.

40. Turning to the suggestion by Sir Humphrey Waldock, he said that all members of the Commission were certainly entitled to receive United Nations legal documents. However, it would not be at all easy for the Secretariat to select what documents to send. He recalled that on one occasion a member of the Commission had complained that he had received so many documents that he was unable to classify them.

41. The Juridical Yearbook of the United Nations had now appeared in mimeographed form and would be sent to members of the Commission. In that publication members would find the documents they needed; in addition, they could make requests for any specific sets of documents of legal interest. It would, however, be difficult to arrange that all the documents of the General Assembly and the Security Council be sent automatically to members of the Commission.

42. The problem of the exchange of documents which had been raised by Mr. Rosenne was principally a question of distribution. As far as the Asian-African Legal Consultative Committee was concerned the position was that the individual members of that Committee did not receive the documents. The Committee was composed of government representatives who changed from one session to another and the Secretariat's view was that where a Government received the documents, no copies were sent to an individual representative.

43. Sir Humphrey WALDOCK said that his request had been a modest one. Surely, such documents as the

proceedings of the two Vienna Conferences of 1961 and 1963 should be sent to the members of the Commission as a matter of course.

44. Mr. CASTRÉN urged that members of the Commission should receive full sets of records of the discussions in the Sixth Committee of the General Assembly. He had had considerable difficulty in consulting the only set at the Ministry for Foreign Affairs at Helsinki.

45. Mr. TABIBI supported the request by Sir Humphrey Waldock. He pointed out, however, that the Secretariat was under strict instructions from the Fifth Committee to keep down the volume of free distribution of documents; in carrying out those instructions, the Secretariat was obliged to be restrictive, regardless of the merit of the request made.

46. He stressed that the only practical course would be for the Commission to include a paragraph in its report on the subject; the Sixth Committee of the General Assembly would then take a decision in the matter and there should be no difficulty in obtaining the action desired.

47. Mr. BARTOŠ said that it was not always possible to consult United Nations documents even in the appropriate ministries. Nor was it an ideal solution to obtain them through the United Nations Information Centres.

48. Many legal documents did not come before the Sixth Committee, but originated in the Third Committee (e.g. those concerning human rights) or in the Fourth Committee (e.g. those concerning decolonization). He suggested that the Secretariat should send to the members of the Commission at least the monthly list of the documents published by the United Nations, from which members would then be able to select and order those of interest to them.

49. The CHAIRMAN said that, when attending the General Assembly as the representative of the Commission, he would do his utmost to bring the views of the Commission to the attention of the Assembly.

50. Meanwhile, the various suggestions by members would be studied by the Secretariat for possible action.

The Commission took note of the Secretariat's memorandum (A/CN.4/171).

Special Missions

(resumed from the 763rd meeting)

[Item 4 of the agenda]

ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

ARTICLE 1 (The sending of special missions)

51. Mr. BRIGGS, Chairman of the Drafting Committee, said the Committee proposed the following text for article 1:

"1. For the performance of specific tasks, States may send temporary special missions with the consent of the State to which they are sent.

"2. The existence of diplomatic or consular relations between the States concerned is not necessary for the sending and reception of special missions."

52. Mr. RUDA said he found the text acceptable but suggested that the end of paragraph 1 be modified to read "with the consent of the receiving state".

53. Mr. BARTOŠ, Special Rapporteur, said that at that point it would be premature to speak of "the receiving State".

54. The CHAIRMAN, speaking as a member of the Commission, said that the expression "to which it is intended to send them" would be preferable.

55. Mr. YASSEEN observed that the stress should fall on the idea of making contact with the State whose consent was necessary. Furthermore, he preferred the adjective *temporaires* to the adverb *temporairement* in the context, for it was not the sending that was temporary but the mission itself.

56. The CHAIRMAN, speaking as a member of the Commission, proposed the following wording: "For the performance of specific tasks, States may send temporary special missions with the consent of the State to which they intend to send them".

57. Mr. LACHS said that paragraph 1 overemphasized the time element: the fulfilment of a special mission might take a long time. Furthermore, he thought the words "to which they are sent" were not entirely appropriate.

58. The CHAIRMAN, speaking as a member of the Commission, said that the Drafting Committee had faithfully reproduced the Commission's idea that the temporary nature of special missions should be stressed in contrast to the permanence of regular diplomatic missions.

59. Mr. ROSENNE, referring to Mr. Lachs's second remark, said that the purpose of that passage in question was to cover all types of special missions and to stress that in each case the consent of the State in which such missions were to perform their task had to be obtained.

60. Mr. LACHS suggested that the missions in question should be described as being "of a non-permanent character" instead of "temporary".

61. Mr. CASTRÉN said that, while he considered the Chairman's formula sound, he would prefer the wording: "... temporary special missions to other States with their consent".

62. Mr. BARTOŠ, Special Rapporteur, said that the object was to capture the ideas expressed by the Commission, in particular the idea that special missions were temporary in nature. He agreed with the Chairman's formula.

63. After some discussion concerning the phrase *auprès duquel*, the CHAIRMAN suggested that the meaning of the phrase should be explained in the commentary.

64. He proposed that in paragraph 2 the phrase "either for the sending or for the reception" should be substituted for the phrase "for the sending and reception".

It was so agreed.

Article 1 was adopted unanimously, with the amendments proposed by the Chairman.

ARTICLE 2 (The task of a special mission)

65. Mr. BRIGGS, Chairman of the Drafting Committee, said the Committee proposed the following text for article 2:

"1. The task of a special mission shall be specified by mutual consent of the sending State and of the receiving State.

"[2. During the existence of a special mission, its tasks shall be presumed to be excluded from the competence of the regular diplomatic mission.]"

66. The requirement of mutual consent was stated explicitly in paragraph 1. Opinion had been divided on paragraph 2 which had accordingly been submitted in square brackets. The Special Rapporteur had been of the opinion that the provision should be retained in order to elicit the views of Governments, while other members of the Committee had considered that the Commission should not submit alternative texts on matters which it should be in a position to decide. If the passage in brackets was not approved as part of the article, the point should be dealt with in the commentary.

67. Mr. de LUNA said that he could appreciate the Special Rapporteur's concern but thought that article 2 as drafted would not entirely avoid all possibility of conflict between special missions and regular missions.

68. Any difficulties that arose should remain within the domestic jurisdiction of the sending State, and matters of precedence and the like should be settled between the heads of mission.

69. It would be better to omit the provision as drafted in order to avoid any dispute.

70. Mr. BARTOŠ, Special Rapporteur replied that the question, if it arose, would not be internal but international; if any doubt about a special mission's competence was raised after it had finished its work, the dispute had to be settled between the States concerned. He had no very strong opinion on the matter and for that reason had asked that paragraph 2 be put within square brackets; he would now prefer that the provision be deleted and that Governments' attention be drawn to the question in the commentary.

71. The CHAIRMAN said that accordingly paragraph 2 would be dropped from article 2, but its substance would be mentioned in the commentary.

72. Mr. CASTRÉN said that, though he would have preferred paragraph 2 to be retained tentatively, he would bow to the majority.

Article 2 was adopted unanimously, subject to the deletion of paragraph 2 and to a drafting amendment affecting the French text.

ARTICLE 3 (Appointment of the head and members of the special mission)

73. Mr. BRIGGS, Chairman of the Drafting Committee, said the Committee proposed the following text for article 3 :

"Except as otherwise agreed, the sending State may freely appoint the head of the special mission and its members. Such appointment does not require the prior consent of the receiving State."

74. Mr. BARTOŠ, Special Rapporteur, proposed that the words "the head and members of the special mission and of its staff" be substituted for "the head of the special mission and its members".

75. The CHAIRMAN, speaking as a member of the Commission, said that the wording should be amended to refer the head and members of the special mission as well as its staff, and the following sentence should read "such appointments do not require..."

It was so agreed.

Article 3, as amended, was adopted unanimously.

ARTICLE 4 (Persons declared *non grata* or not acceptable)

76. Mr. BRIGGS, Chairman of the Drafting Committee, said the Committee proposed the following text for article 4 :

"1. The receiving State may, at any time and without having to explain its decision, notify the sending State that the head or any other member of the special mission or a member its staff is *persona non grata* or not acceptable.

"2. In any such case, the sending State shall either recall the person concerned or terminate his functions with the special mission. If the sending State refuses to carry out its obligations, the receiving States may refuse to recognize the person concerned as the head or a member of the special mission or as a member of its staff."

77. Paragraph 1 had been condensed and both that provision and paragraph 2 were modelled on article 9 of the Vienna Convention on Diplomatic Relations, 1961.

78. Mr. YASSEEN proposed the deletion of the words "a member of" before "its staff" in paragraphs 1 and 2.

It was so agreed.

Article 4, as amended, was adopted unanimously.

ARTICLE 5 (Sending the same mission to several States)

79. Mr. BRIGGS, Chairman of the Drafting Committee, said the Committee proposed the following text for article 5 :

"A State may send the same special mission to more than one State. In that case the sending State shall give the States concerned prior notice of the sending of that mission. Each of those States may refuse to receive such a mission."

Article 5 was adopted unanimously, subject to drafting changes affecting the French text.

ARTICLE 6 (Composition of the special mission)

80. Mr. BRIGGS, Chairman of the Drafting Committee, said the Committee had prepared two new articles, based on a redraft prepared by the Special Rapporteur, to replace the original article 6. The new article 6 read :

"1. The special mission may be entrusted to a single representative or to a delegation composed of a head and other members.

"2. The special mission may include diplomatic staff, administrative and technical staff and service staff.

"3. In the absence of an express agreement as to the size of the staff of a special mission, the receiving State may require that the size of the staff be kept within limits considered by it to be reasonable and normal, having regard to circumstances and to the needs of the special mission, in the light of its tasks."

81. The CHAIRMAN, speaking as a member of the Commission, drew attention to the ambiguity resulting from the use of the word "mission" in paragraph 1 in the sense of "task". The paragraph should be redrafted; it might read : "The special mission may be constituted by...". Another possibility, preserving the original meaning of the term, would be : "The tasks of the special mission may be entrusted...".

82. Mr. de LUNA agreed. In addition he thought that paragraph 3 might be simplified, for the expression : "having regard to ... tasks" was an unnecessary repetition. The notion of task was already inherent in the phrase concerning circumstances and needs. The phrase "in the light of its tasks" might therefore be dropped.

83. The CHAIRMAN pointed out that the text was modelled on article 20 of the Vienna Convention on Consular Relations, 1963.

84. Mr. BARTOŠ, Special Rapporteur, said that, admittedly, the term "needs" of the mission included the notion of tasks. He therefore agreed with Mr. de Luna, for in a draft on special missions it was not necessary to take into account all the considerations which had influenced the drafting of the Vienna Convention on Consular Relations. The word "tasks", however, as important.

85. The CHAIRMAN, speaking as a member of the Commission, said that the text should be as close as possible to that of the Vienna Convention on Diplomatic Relations. He suggested that the phrase in question in paragraph 3 should read : "having regard to circumstances, to the tasks and to the needs of the mission".

86. Mr. BARTOŠ, Special Rapporteur, said that he accepted that amendment.

87. Mr. LACHS also agreed, and proposed that paragraph 1 should begin: "The tasks of the special mission may be entrusted to...". That formula would be in keeping with article 1, paragraph 1.

88. The CHAIRMAN, speaking as a member of the Commission, suggested that, as the article was concerned essentially with the composition of the special mission, paragraph 1 should begin with the words "The special mission may be constituted by a single...". To that extent he would like to amend his earlier suggestion.

89. Mr. BARTOŠ, Special Rapporteur, explained that the term "representative" in paragraph 1 had been chosen after lengthy discussion and a good deal of difficulty to cover cases in which a mission was composed of a single person only.

90. He had wished to meet the Commission's wishes in connexion with paragraph 2. After considerable thought, however, he had come to the conclusion that some experts were neither diplomats nor members of the technical staff. He could explain in the commentary that the Commission had meant the term "diplomatic staff" to cover both diplomats in the strict sense and experts.

91. The best formulation might be: "A special mission may attach to itself experts and a diplomatic staff".

92. Mr. TUNKIN said that formula would involve some contradiction. A dividing line could hardly be drawn between experts and diplomatic staff, for some persons might be both.

93. Mr. BARTOŠ, Special Rapporteur, said that although it was certainly conceivable that the same person might be an expert and a diplomat, there were also cases in which Governments declined to confer the status of diplomat upon experts, however eminent.

94. The phrase might therefore read "A diplomatic staff, experts, administrative and technical staff...".

95. Mr. TUNKIN said that the usual phrase was "advisers and experts". The term "diplomatic staff" covered both categories.

96. Mr. ROSENNE agreed with Mr. Tunkin and believed that it would be wiser to leave the text untouched because, if the Commission departed from the wording of the Vienna Convention, difficulties might arise over the question of privileges and immunities.

97. Mr. de LUNA suggested that the text should be kept, leaving room for experts, to whom no reference was made in the Vienna Convention. He acknowledged the drawback pointed out by Mr. Tunkin, but said that, in practice, persons entitled to diplomatic rank would always claim diplomatic status. The effect of the text as it stood would be, however, that the other persons would not be included among the technical and administrative staff.

98. The CHAIRMAN, speaking as a member of the Commission, asked whether the experts and the other members of the staff mentioned in the article were to be regarded as forming part of the mission.

99. Mr. BARTOŠ, Special Rapporteur, said that the case under discussion was that where experts were not members of a mission. It was for the sending State to decide whether they were truly part of the diplomatic staff.

100. Mr. TSURUOKA asked what would happen if experts who were not members of a mission claimed the same privileges as its members. An agreement between the countries concerned would be required. Either that would have to be provided for or else such experts would have to be excluded from the categories which enjoyed diplomatic privileges.

101. The CHAIRMAN suggested that that problem should be deferred until the topic of privileges was considered.

102. Mr. BARTOŠ, Special Rapporteur, said that the terms to which Mr. Tunkin had referred occurred in the Convention on the Privileges and Immunities of the United Nations,⁴ section 16 of which defined "representatives" as including advisers and technical experts. The intention had been to place representatives on the same footing as experts on mission for the United Nations who were referred to in section 22 of the said Convention. However, experts accompanying government representatives on special mission were not in the same position.

103. At the Vienna Conference of 1961, where the problem had been quite different, technical assistants of heads of mission had been regarded as diplomats in order to draw the distinction between them and the technical services and other attachés and counsellors belonging to what had previously been customarily known as senior diplomatic staff. The Commission had therefore regarded experts as diplomatic staff.

104. The CHAIRMAN suggested that explanations concerning the position of experts on special mission should be given in the commentary and that their position should be reconsidered in connexion with privileges. He put article 6 to the vote, with the amendments thereto, in particular a wording for the end of paragraph 3: "having regard to circumstances and to the needs and tasks of the mission".

Article 6, as amended, was adopted unanimously.

ARTICLE 6 A (Authority to act on behalf of the special mission)

105. Mr. BRIGGS, Chairman of the Drafting Committee, said the Committee proposed the following text for article 6 A:

"1. The head of the special mission of the representative is normally authorized to make statements

⁴ United Nations Treaty Series, Vol. 1.

on behalf of the special mission. The receiving State shall pass its communications to the special mission through the head of the mission.

"2. A particular member of the mission may be authorized either by the sending State or by the head of the special mission to replace the head of the mission if the latter is unable to perform his functions, and to perform particular acts on behalf of the mission."

106. Mr. AMADO said that the expression "through the head of the mission" was not accurate.

107. The CHAIRMAN, agreeing, suggested that the phrase should read: "shall address to the head of the mission its communications to the special mission".

108. Mr. LACHS said that the reference to a representative might create misunderstanding.

109. Mr. BARTOŠ, Special Rapporteur, said that the words "or the representative" might be omitted, for the intention was self-evident if the mission was not composed of more than one person.

110. The CHAIRMAN added that it was equally obvious, that, if a mission was composed of only one member, that person could speak on his own behalf.

111. Mr. TSURUOKA suggested that the word "normally", which was already in the first sentence, should be added in the second. The word "Similarly" might be inserted at the beginning of the second sentence.

112. Mr. TUNKIN suggested that the word "normally" should be deleted.

113. Mr. TSURUOKA said that the provision was concerned mainly with the relationship between the permanent mission and the head of the special mission or whichever of its members was authorized to make statements on behalf of the special mission. The powers of a special mission might be very limited, and the permanent mission might on occasion be instructed to make certain statements. There was no established practice, and hence the Commission should not be too categorical or too explicit.

114. The CHAIRMAN said that all that the article should state was that only the head of mission was authorized to make statements on behalf of the mission.

115. Mr. BARTOŠ, Special Rapporteur, said in reply to Mr. Tsuruoka that in practice the responsibility and work were apportioned from the outset within each mission, and even if the mission's task was limited, that allocation of functions was carried out normally in daily practice.

116. Mr. LACHS said that the Chairman's suggestion was acceptable but as drafted paragraph 1 was too restrictive. The head of the special mission might not necessarily wish to make a statement but might, for example, wish to communicate by letter with the receiving State. In addition, his function of representing the special mission should be mentioned in the first sentence of paragraph 1.

117. Mr. AMADO pointed out the difference between the title and the text. The title referred to acts and the article to statements. Did "to act" mean the same as "to make communications"?

118. He doubted whether the word "particular" was useful in the opening passage of paragraph 2.

119. The CHAIRMAN said that Mr. Amado had found the right word, "communications". Statements were continually being made in the course of negotiation, but the context dealt with the expression of the mission's intention, and that meant statements which bound and committed the mission.

120. Mr. TUNKIN criticized the phrase "on behalf of the special mission". Should it not rather be replaced by "on behalf of the State"? Surely a Prime Minister when speaking as the head of the special mission was acting primarily on behalf of the State.

121. Mr. BRIGGS said that paragraph 1 might be simplified to read: "The head of the special mission normally represents and speaks for the special mission, and the receiving State shall address its communications to the special mission through the head of the special mission".

122. Mr. BARTOŠ, Special Rapporteur, agreed with Mr. Tunkin. He added, however, that most special missions were not at such a high level and consequently were very careful to refrain from speaking on behalf of the State. He also supported Mr. Briggs's suggestion.

123. Mr. AMADO said that the head of the mission expressed the mission's thought and that communications were to be addressed to him by the receiving State.

124. The CHAIRMAN suggested that the references to "representation" and "State" should be omitted.

125. Mr. de LUNA said that he supported the formula suggested earlier by the Chairman. To his mind, it would be better not to specify too clearly on behalf of whom communications were passed. The point to stress was that the head of the mission alone was authorized to pass and receive communications.

126. Mr. BARTOŠ, Special Rapporteur, said that a special mission might not only pass and receive communication, but might also draw up documents, such as an instrument demarcating a frontier, for example.

127. Mr. ROSENNE agreed with Mr. Amado that it was most undesirable to go into too much detail. In some respects the subject matter of article 6 A would be governed by the initial agreement between two States and by the full powers or credentials. The discussion indicated that paragraph 1 was redundant and could be deleted without loss.

128. After further debate, the CHAIRMAN suggested that the meaning of the word "normally" should be explained in the commentary and that article 6 A should be amended to read:

"1. The head of the special mission is normally the only person authorized to act on behalf of the special mission and to send communications to the receiving State. Similarly, the receiving State shall normally address its communications to the head of the special mission.

"2. A member of the mission may be authorized..." [remainder as proposed by the Drafting Committee].

Article 60 A, as so amended, was adopted unanimously.

ARTICLE 7 (Notification)

129. Mr. BRIGGS, Chairman of the Drafting Committee proposed the following wording for article 7 :

"1. The sending State shall notify the receiving State of :

"(a) the composition of the special mission and of its staff, the arrival and final departure of such persons, the termination of their functions with the mission, and any subsequent changes ;

"(b) the arrival and final departure of any person accompanying the head or a member of the mission or a member of its staff ;

"(c) the engagement and discharge of persons residing in the receiving State as members of the mission or as private servants of the head or of a member of the mission or of a member of the mission's staff.

"2. If the special mission has already commenced its functions, the notifications referred to in the preceding paragraph may be communicated by the head of the special mission or by a member of the mission or of its staff designated by the head of the special mission."

130. The CHAIRMAN said that the new draft followed the text of the corresponding provision in the Vienna Convention on Diplomatic Relations. He wished to point out that in paragraph 1 (a) the word *leur* was incorrectly used, and that any "changes" to be notified necessarily took place before the departure of the mission.

131. Mr. BARTOŠ, Special Rapporteur, said that he, too, was dissatisfied with the drafting of paragraph 1 (a). He had included the reference to "any subsequent changes" at the last moment.

132. Mr. LACHS said that paragraph 1 should be redrafted so as to mention first the notification of the composition of the mission and of any changes in that composition occurring before its arrival, next notification of its arrival and departure, thirdly, notification of the arrival and departure of accompanying persons, and last notification of the termination of functions.

It was so agreed.

Article 7, redrafted as suggested, was adopted unanimously.

ARTICLE 8 (General rules concerning precedence)

133. Mr. BRIGGS, Chairman of the Drafting Committee, said the Committee proposed the following text for article 8 :

"1. Except as otherwise agreed, where two or more special missions meet in order to carry out the same task, precedence among the heads of the special missions shall be determined by alphabetical order of the names of the States.

"2. The precedence of the members and the staff of the special mission shall be notified by the head of that mission to the appropriate authority of the receiving State."

134. Mr. BARTOŠ, Special Rapporteur, said that all the necessary explanations regarding alphabetical order would be given in the commentary and would take into account what had been said during the discussion.

135. Mr. YASSEEN suggested that the reference to the head of mission should be omitted from paragraph 2 of the article ; the order of precedence might in some cases be notified by the Minister for Foreign Affairs.

136. Mr. LACHS agreed with that suggestion.

137. Mr. BARTOŠ, Special Rapporteur, said that he would prefer to leave the text as it was ; in practice, the Department of Protocol always asked the head of a mission to confirm the order of precedence already communicated to it. He agreed to mention the matter in the commentary.

Article 8 was adopted unanimously.

ARTICLE 9 (Precedence among special ceremonial and formal missions)

138. Mr. BRIGGS, Chairman of the Drafting Committee, said the Committee proposed the following text for article 9 :

"Precedence among two or more special missions which meet on the same formal or ceremonial occasion shall be governed by the protocol in force in the receiving State."

139. Mr. TSURUOKA asked whether the expression "formal occasion" was correct.

140. The CHAIRMAN said that he preferred the expression "special ceremonial and formal missions" used in the title of the article.

141. Mr. LACHS said that he did not know what was meant by a "formal" mission and hoped that that designation could be dropped.

142. Mr. ROSENNE said that he, too, was unaware of the difference between a ceremonial and a formal mission.

143. Mr. BARTOŠ, Special Rapporteur, said that in practice the two were quite distinct. For instance, a

funeral was a ceremonial occasion ; but the conveyance of congratulations on an occasions such as the inauguration of a new head of State was not.

Article 9 was adopted by 12 votes to none, with 1 abstention.

ARTICLE 10 (Commencement of the function of a special mission)

144. Mr. BRIGGS, Chairman of the Drafting Committee, said the Committee proposed the following text for article 10 :

"The function of a special mission shall commence as soon as that mission enters into official contact with the appropriate organs of the receiving State. The commencement of its function shall not depend upon official presentation by the regular diplomatic mission or upon the submission of letters of credence or full powers."

145. Mr. YASSEEN considered that there was no need to qualify the word "presentation" by the word "official".

146. Mr. de LUNA hoped that the term would be kept, since presentation had a very specific meaning in protocol.

147. Mr. TSURUOKA proposed that the second sentence be placed in the commentary rather than in the body of the article.

148. He also suggested that the commentary should explain what was meant by "appropriate organs".

149. Mr. YASSEEN thought that that suggestion concerned substance, especially in view of the phrase "submission of letters of credence or full powers".

150. Mr. BARTOŠ, Special Rapporteur, agreed that a matter of substance was involved. In practice, presentation was often deliberately delayed.

151. The CHAIRMAN suggested that the sentence should read : "...shall not depend upon official presentation of the special mission by the regular diplomatic mission".

152. Mr. TSURUOKA said his principal concern was that the article should not give the impression that the mere fact of forming part of a special mission could empower a person to commit a State.

153. Mr. BARTOŠ, Special Rapporteur, said that the text reflected existing practice.

154. The CHAIRMAN said that it was clear that the text in no way exempted a State from the duty to submit letters of credence and full powers ; but, in his opinion, it would be enough to explain that in the commentary.

Article 10 was adopted unanimously.

The meeting rose at 1.10 p.m.

769th MEETING

Friday, 17 July 1964, at 3.40 p.m.

Chairman : Mr. Roberto AGO

Special Missions

(continued)

[Item 4 of the agenda]

ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

ARTICLE 11 (End of the function of a special mission)

1. The CHAIRMAN drew attention to the following text proposed by the Drafting Committee for article 11 :

"The function of a special mission shall come to an end, *inter alia* :

"(a) upon the expiry of the duration of the special mission ;

"(b) upon the completion of the task of the special mission ;

"(c) upon notification of the recall of the special mission by the sending State ;

"(d) upon notification by the receiving State that it considers the mission terminated."

2. He suggested that the word "functions" in the plural should be used instead of "function", a change which would necessitate a consequential change in article 10.

It was so agreed.

Article 11, as amended and subject to drafting changes, was adopted unanimously.

Law of Treaties

(resumed from the 767th meeting)

[Item 3 of the agenda]

ARTICLE 70 (General rule) [concerning the interpretation of treaties],

ARTICLE 71 (Cases where the meaning of a provision is in doubt),

ARTICLE 72 (Terms having a special meaning) and

ARTICLE 69 A (Modification of a treaty by a subsequent treaty, by subsequent practice or by customary law)