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**Summary record of the 757th meeting**

Topic:  
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Commission itself concerning topics for future codification. Of course, that argument was not conclusive, and a number of problems had indeed arisen from the implementation of the Convention, but the gaps and imperfections discovered in the text had evidently not been of such magnitude as to induce States to call for its revision. The same was true of the Convention on the Privileges and Immunities of the Specialized Agencies and of the various headquarters and host agreements.

76. He wondered also whether the Commission was equipped to carry out such a review, for which the collections of texts in the Legislative Series<sup>7</sup> would not suffice. It would be a delicate and possibly a difficult matter to obtain from the Secretariats of the organizations themselves, and from Governments, the requisite additional material.

77. On the question of competence he firmly remained of the opinion he had expressed at the previous session to which the Secretary had made reference. Given the circumstances in which the 1946 Convention had been adopted, he had grave doubts as to whether the Commission was competent on its own initiative to undertake any review of the Convention without some indication from the General Assembly that such a step would be welcomed. He emphasized that point because of his anxiety that the Commission should not enter into any conflict with the General Assembly of the kind that had occurred early on in its existence when serious differences between it and the General Assembly had arisen over their respective competence concerning matters falling within the Commission's Statute. Those disagreements had undoubtedly adversely affected some of the Commission's early work.

78. The discussion had revealed that there was a matter that could usefully be studied, namely the position of permanent missions — presumably primarily those accredited to the United Nations — although even that was to some extent covered by the 1946 Convention itself or by related instruments.

79. Mr. YASSEEN supported Mr. Lach's proposal that the Special Rapporteurs concerned should meet to demarcate their respective topics. The Commission should await the result of that consultation before it took a final decision on the matters to be considered in Mr. El-Erian's report. That would also be the best way of preventing overlapping between the various reports.

The meeting rose at 1 p.m.

## 757th MEETING

Thursday, 2 July 1964 at 10 a.m.

Chairman: Mr. Roberto AGO

### Relations between States and Inter-Governmental Organizations

(A/CN.4/161 and A/CN.4/L.104)

(continued)

[Item 5 of the agenda]

1. The CHAIRMAN invited the Commission to continue its consideration of agenda item 5.
2. Mr. TABIBI said that he wished to reply to three points raised by Mr. Rosenne at the previous meeting.
3. The first point related to his (Mr. Tabibi's) statement at the previous meeting that the Special Rapporteur should study the defects and gaps of the existing Conventions on the privileges and immunities of the United Nations and its specialized agencies. Mr. Rosenne had suggested that there had been no agitation in the General Assembly for a revision of those Conventions. In fact, both the French delegation, which had sponsored the proposal that had ultimately become Assembly resolution 1289 (XIII), and a number of other delegations, had had very much in mind all the practical aspects of relations between States and inter-governmental organizations, and the questions touched upon by the Conventions on privileges and immunities were eminently practical. Of course, States did not often refer openly in United Nations debates to the difficulties which had arisen in the matter because of a desire not to embarrass the Secretariat or the host governments concerned; however, many of the problems which had arisen had been and still were the subject of protracted negotiations. In the circumstances, it was very desirable that the Special Rapporteur should examine the experience gained in the application of the Conventions in question, study the practice in the matter and the developments which had taken place since the Conventions had been concluded, and consider what could be done to fill any existing gaps and remedy deficiencies. In doing so, the Special Rapporteur would rely on the help and assistance of the Secretariat, which could make available to him its unrivalled experience and much valuable unpublished source material.
4. The second point raised by Mr. Rosenne was that of the relationship between the Commission and the General Assembly. On that point, he considered that the Assembly had left the Commission free to study the topic as it saw fit; however, the Commission, as a creation of the General Assembly, constantly reported to it on its work. The Commission would therefore report to the General Assembly any decision it might take on the question of priorities as between the various aspects of the topic.

<sup>7</sup> United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10 and 11), United Nations publication, Sales Nos. 60.V.2 and 61.V.3.

5. The third point concerned the differences existing between the various international organizations themselves. It was a fact that there were great discrepancies as between one organization and another. The various organizations had been created at different times and under different conditions. As a result, there were glaring differences in many respects. For example, he understood that in Geneva the Director-General of the International Labour Office enjoyed greater privileges than did the Secretary-General of the United Nations. Another example was the position of experts in the field, which varied considerably according to whether they were regarded as United Nations experts or, say WHO experts or UNESCO experts.

6. As was well-known in United Nations circles, one of the most difficult problems of the United Nations family was that of co-ordination, and the Administrative Committee on Co-ordination, consisting of the administrative heads of the specialized agencies under the chairmanship of the Secretary-General of the United Nations, had been set up precisely in order to try to unify the practice on various matters affecting all the organizations concerned.

7. Mr. TUNKIN said that there appeared to be general agreement that the most appropriate field for immediate study was that of the so-called "diplomatic relations" between States and inter-governmental organizations, covering the concrete subjects of the status of the organizations themselves, the status of permanent missions and that of representatives to international organizations.

8. Beyond that point, the Commission should not commit itself, but should leave for decision later the question whether the problem of treaties of international organizations would be dealt with under the law of treaties, or under the topic of relations between States and inter-governmental organizations. Similarly, no decision would be taken at the moment regarding the apportionment of the topics of State responsibility and State succession, in relation to international organizations, among the Special Rapporteurs concerned.

9. The subject, which was vast, would to some extent cover the same ground as existing Conventions, in particular the Conventions on the privileges and immunities of the United Nations and the specialized agencies. However, the subject covered, at least at the present stage, a good deal more, and the question of its actual relationship with existing Conventions could be left aside for the time being. It was equally premature to enter at present into the question whether specific instructions were needed from the General Assembly or not. The Special Rapporteur would be instructed by the Commission to study the problem of "diplomatic" relations between States and international organizations; when he had submitted his proposals, the Commission would see whether it needed any additional instructions from the General Assembly. The Commission would consider the matter in the light of the concrete questions studied and of their relationship with the existing conventions.

10. Mr. BRIGGS stressed that the topic of relations between States and inter-governmental organizations

covered a very vast and uncharted field. He believed that much exploratory work by the Special Rapporteur was still needed in order to uncover material that might serve for the purpose of drafting rules in the matter.

11. Personally, he would have preferred that prior consideration should be given to the topic in its relation to the law of treaties, but the majority view in the Commission appeared to be that "diplomatic law", in other words the subjects mentioned in question No. IV of the working paper (A/CN.4/L.104), should receive priority. Since the Special Rapporteur on the topic of Special missions had submitted a report on that topic (A/CN.4/166), it seemed appropriate that the Special Rapporteur on relations between States and inter-governmental organizations should deal with the subject of permanent missions to such organizations.

12. It was essential, however, to avoid two pitfalls. The first and gravest was that of attempting to define what constituted an inter-governmental organization. He had worked for some ten years with the Harvard Research and well recalled the insistence of the late Professor Manley O. Hudson and others that it was not necessary to define the term "State" for the purposes of the Harvard drafts. In fact, it had been possible to go ahead with the drafts without any such definition. All that had been done was to describe the sense in which the term "State" had been used in those drafts. Similarly, with regard to the topic under discussion, the Special Rapporteur would no doubt identify the types of organizations he had in mind but he should avoid attempting any definition or any theoretical discussion of the legal personality of international organizations; the subject should be approached on a purely practical basis.

13. In the second place, the Commission should avoid any attempt to rewrite such instruments as the Conventions on the privileges and immunities of the United Nations and of the specialized agencies and the United Nations Headquarters Agreement. He did not believe that it was even necessary to consult the General Assembly on that question. Obviously, the Special Rapporteur, in his study of "diplomatic law" in its application to relations between States and inter-governmental organizations, would consider the provisions of those treaties and could perhaps suggest possible improvements. However, there was a wealth of other material available for study.

14. Mr. BARTOŠ said he was glad to note that Mr. Tunkin and Mr. Briggs agreed with him that many legal questions affecting international organizations required to be studied — their constitutions, the different types of organization involved, their legal status, the relations between organizations and the relations of those organizations with States. On the other hand, he did not agree with the opinions expressed by Mr. Tunkin and Mr. Briggs on the subject of the status of the representatives of States and that of persons representing the organizations in their relations with States, which was dealt with in the two principal Conventions on the privileges and immunities of the United Nations and of the specialized agencies. He did not think that

the revision of those Conventions should receive priority; later, perhaps, after the Commission had come to some conclusions with regard to the legal status of the organizations and their agents, had worked out some general principles, and had considered how those principles applied to the existing Conventions, it might discuss the desirability of such a revision. Like Mr. Briggs, he took the view that the Commission had no need to ask the General Assembly for instructions on that point. The Commission had been asked by the General Assembly to study the topic and to determine as a result whether it was possible to codify and develop progressively the relevant rules. It was undoubtedly necessary to clear up certain points first. No member of the Preparatory Commission of 1945-46 had grasped the implications of so vast an organization. Subsequently, the disputes between the major Powers, the cold war and the Korean war had hampered the formation of any very clear doctrine. Some had visualized the United Nations as an ideal State; others had disagreed with that concept; and still others had asked themselves what would happen if the Organization disappeared. The fact was that the international organizations were a reality and international life would be unthinkable without them. Accordingly, he considered that the preliminary question of the legal status of those organizations should be studied first; that study would provide the basis or a subsequent examination of the practical aspects of the topic.

15. Mr. de LUNA said that the Special Rapporteur would have to frame at least an empirical definition of the meaning of "inter-governmental organizations". Unless he had such a definition in mind, it would be impossible for him to make a selection from among the enormous mass of situations and instruments available to him for study. As an example of a borderline case, he mentioned the *Comité International du Bois*, the membership of which comprised both Governments and private entities. The Special Rapporteur's definition would be adopted by the Commission purely as a working hypothesis and, while the Commission could well avoid taking sides on theoretical issues, it would have to decide what it meant by "inter-governmental organization" for the purposes of its work.

16. Mr. EL-ERIAN, Special Rapporteur, thanked the members of the Commission for their valuable comments and constructive criticisms. Those comments had dealt with a wide range of subjects of both a theoretical and a practical nature. Reference had been made to such matters as the place of inter-governmental organizations in contemporary international law, the impact of their widening activities on the complexity of international relations, the diversity of the various organizations in contrast with the comparative homogeneity of States, the difficulty of defining what organizations were covered by the topic, and the possible effect of the Commission's work on existing Conventions. Reference had also been made to the relations of the Commission with the General Assembly and the need, sooner or later, to request the Assembly's directives and views. He did not propose to comment on all those points, for that would require a very careful study of the records of the discussion. At that stage, he would

confine himself to some general remarks on a few points.

17. With regard to the relevance of the eighth paragraph of the preamble to General Assembly resolution 1505 (XV), it had been said that that passage was addressed to the Assembly and not to the International Law Commission. However, no matter to whom that passage was addressed, its object was clearly the work of the Commission and it related to the selection of topics for study by the Commission. The resolution had in fact been adopted in connexion with a discussion of the Commission's report on its future work.

18. With regard to the general Conventions on the privileges and immunities of the United Nations and the specialized agencies, some apprehension had been expressed both by members of the Commission and by a number of legal advisers of organizations with regard to the possible effect of the Commission's work on those privileges and immunities. He believed that undue emphasis had been placed on the idea of the possible replacing or rewriting of those conventions. What was envisaged was a general study of the whole question in the light of eighteen years' experience, to ascertain what kind of problems arose in practice and whether they were adequately covered by existing provisions. It was too early at that stage to consider whether the investigation would lead to any suggestion for the replacement, rewriting or supplementing of the existing Conventions, or to determine to what extent some of their provisions embodied customary rules of international law binding upon States even if not parties to the Conventions. It should be remembered that about half of the States Members of the United Nations were not parties to the 1946 Convention on the Privileges and Immunities of the United Nations and that only one-third were parties to the Convention on the Privileges and Immunities of the Specialized Agencies. Those Conventions were therefore by no means universal. Moreover, their application and interpretation had given rise to a very large number of problems which deserved careful study. It would therefore be a great mistake not to study the subject comprehensively.

19. With respect to question No. V in his working paper he believed that attention should be focused in the first place upon universal organizations, those described by French writers as *organisations à vocation universelle*. The organizations in question were chiefly those belonging to the United Nations family, but there was no intention to exclude the small number of other universal organizations. Regional organizations would not be excluded from the actual study; their valuable experience would have to be drawn upon. It should be remembered that the forerunner of all international organizations had been the European Danube Commission, a regional body. No attempt should be made, however, at that stage to formulate rules governing regional organizations, although any work done on universal organizations might well ultimately have some bearing on them, as some were modelled on the universal organizations.

20. With regard to the help of the Secretariat, he said he had already begun some consultations with the legal

advisers of some organizations and would be grateful for the communication of instruments and legal opinions on the legal problems that had arisen. The Secretariat would, as usual, provide all material available to it. In view of the special character of the topic, which was directly related to international organizations, help from the Secretariat was of great significance, particularly with regard to the application and interpretation of the general Conventions on privileges and immunities.

21. On the subject of the Commission's relations with the General Assembly, he thought that it was too early at the present stage to consult the Assembly. The result of the Commission's work would be submitted to the General Assembly in due course and every opportunity would be provided for obtaining the opinions of all the organizations interested in the topic.

22. He agreed that the term "diplomatic law" was not a very satisfactory one in the context. The intention was to cover all the modalities of application of the legation system to the relations between States and inter-governmental organizations. States maintained representatives with the organizations, and the organizations themselves had sent representatives to States; and the question of the precise terminology to be applied to that institution would have to be faced.

23. The CHAIRMAN, speaking as a member of the Commission, said he had unfortunately not been able to be present at the interesting discussion on Mr. El-Erian's working paper. From the remarks by the immediately preceding speakers he gathered that the majority of the Commission considered that relations between States and regional organizations should not be dealt with in the report. In his view, that would be a very serious mistake. The international organizations were a complex phenomenon; they were extremely varied and those which did not have a universal character were by far the more numerous. In regional organizations, the tendency towards association was even stronger than in organizations of a universal character; the consequence was that treaties between regional organizations and States were more common than those between organizations of a universal character and States. If, therefore, the Commission were to confine itself to the topic of the relations of organizations of a universal character with States, it would be leaving a serious gap. Besides, relations with States were apt to follow a very similar pattern, whether the organization in question was of a universal or of a regional character. The Special Rapporteur would have to consider whether there were really any pronounced differences and to make suggestions based on his conclusions. In any case, it was an aspect of the question that should not be disregarded.

24. Mr. TUNKIN said that any draft convention to be prepared concerning the relations between States and inter-governmental organizations should be concerned with those of a universal character and not with regional organizations, though the experience of the latter could be taken into account in the study.

25. Mr. de LUNA said that, as he had stated before, the Commission could not disregard the regional organi-

zations. What it should do was to determine whether there were general rules applicable to all international organizations without distinction, though naturally there could be no question of substituting those rules for the constitutional rules governing those organizations, whether universal or regional.

26. Mr. BARTOŠ referred to the proposal made by Mr. Lachs at the previous meeting, which was that a small *ad hoc* committee should be set up, consisting of the Special Rapporteurs and the General Rapporteur, to consider whether there was any overlapping between their respective fields.

27. Sir Humphrey WALDOCK said that he had not been present during the discussion on Mr. Lachs's proposal and thought it premature. Little would be gained at the present juncture by a discussion among the Special Rapporteurs of the points at which their respective studies might overlap. Co-ordination of that sort could be undertaken later.

28. Mr. BRIGGS said that he was inclined to agree with the previous speaker but hoped that the question of treaties to which international organizations were parties would not be left out altogether: they would either need to be dealt with in the draft on the law of treaties or in the report on relations between States and inter-governmental organizations.

29. Mr. ELIAS, speaking as the member who had initiated the idea, said that he had not made as formal a proposal as Mr. Lachs but had simply wished to make sure that the Special Rapporteurs in their own good time would discuss the delimitation of the different topics in the way outlined in paragraph 12 of annex II to the Commission's report on its fifteenth session.<sup>1</sup>

30. Mr. BARTOŠ pointed out that the Commission had taken the specific decision not to concern itself with treaties between international organizations and States; when the Commission had come to consider Mr. El-Erian's questions Nos. II and III, most of its members had taken the view that matters of substance should be left aside and dealt with as far as possible in the reports on such substantive subjects as State succession and State responsibility. Sir Humphrey Waldock no doubt considered himself bound by the Commission's first decision; but in its instructions to Mr. El-Erian the Commission had implied that anything concerning treaty law in relation to international organizations would be dealt with in the substantive reports. There was thus some inconsistency in the instructions given to the Special Rapporteurs, and its consequence would be that the subject of treaties entered into by international organizations would not be covered in the reports. Hence, there was a risk that such treaties would not be dealt with by the Commission.

31. Mr. YASSEEN said that his intention in supporting Mr. Lachs's proposal had been to facilitate a decision by the Commission. Mr. El-Erian had asked the

<sup>1</sup> *Official Records of the General Assembly, Eighteenth Session, Supplement No. 9.*

Commission to determine the scope, at least in certain respects, of the topic referred to him. Since it had become apparent during the discussion that the various subjects to be dealt with had certain points in common, he had decided that Mr. Lachs's proposal that the Special Rapporteurs should confer to ensure that their reports did not overlap was a sound one.

32. The CHAIRMAN said that, in the circumstances, he would suggest that the Special Rapporteurs should meet informally before the end of the session to discuss points concerning which each would wish to learn how the others were going to proceed.

*It was so agreed.*

### Special Missions

(A/CN.4/166)

(resumed from the 725th meeting)

[Item 4 of the agenda]

33. The CHAIRMAN invited the Commission to examine the draft articles in the report on special missions (A/CN.4/166) article by article.

#### Article 1

34. Mr. BARTOS, Special Rapporteur, said that he had not given any explicit definition of "special mission" in article 1, but it was implied in paragraph 1. The Commission would have to decide whether special missions should be defined at the outset or whether the definition might be deferred and grouped with whatever other definitions might be required; that was the method usually followed by the Commission in writing its drafts.

35. In view of Mr. Tunkin's remark at the 724th meeting that special missions might have very broad functions he was deleting the words "special and" before "specific assignments". The first passage in paragraph 1 would then stress that special missions were intended for the performance of specific assignments. Complications of two kinds had arisen in practice where that condition had not been observed; on occasions, a State had declined to discuss with the members of a special mission any matters other than those within the terms of its assignment, and sometimes the sending State had objected that the special mission had acted *ultra vires*.

36. The second characteristic mentioned in paragraph 1 was the temporary nature of special missions.

37. The third point was that a State could not send a special mission to another State without the latter's consent. That was the fundamental principle of the article and it rested on practice. The Commission should give its view on that principle.

38. The Commission would also have to express its view concerning the principle stated in paragraph 2. Experience showed that special missions were used notably when no regular diplomatic or consular rela-

tions existed between States. There had even been cases in which States engaged in armed conflict had resorted to the procedure of the special mission in order to initiate negotiations for a truce, an armistice or peace. In addition, there were many examples in history of cases in which special missions had been instructed to prepare for the recognition of a newly created State; in such cases the special mission had served to establish diplomatic relations.

39. Mr. ROSENNE said that two rules set out in article 1, that a special mission had to be sent by a State and that there was no obligation on the other State to receive it, were entirely acceptable.

40. However, he did not consider it appropriate to lay such great stress on action *ultra vires* in paragraph (1) (b) of the commentary and in article 2. Such emphasis would introduce an element of rigidity into an institution which by its very nature should be flexible.

41. He agreed that definitions should be avoided, but questioned whether the Special Rapporteur had followed his own injunction inasmuch as he had included three very precise epithets in article 1, paragraph 1, namely "special", "specific" and "temporary". The Vienna Convention on Diplomatic Relations, 1961,<sup>2</sup> made no attempt to define diplomatic missions and only contained a partial description of their characteristics. He considered that articles 1 and 2 should be redrafted on rather different lines. Article 1 should specify the types of diplomatic missions to which the draft articles were intended to apply, making it clear that the draft would not cover those coming within the scope of the two Vienna Conventions on Diplomatic and on Consular Relations or missions that were the subject of host or Headquarters agreements or of any other special agreements between two States.

42. The content of article 1, paragraph 2, was important. Since, as pointed out in the last section of the draft (general and final clauses), article 45 of the Vienna Convention on Diplomatic Relations would apparently not be applicable to special missions, paragraph 2 of article 1 should be drafted more broadly and refer also to the continuing operation of special missions. He would go further and suggest that the draft should mention that special missions could also operate in cases of non-recognition.

43. The content of article 14 should be combined with article 1 so as to make it clear throughout that the draft articles were applicable to all special missions, whether sent to negotiate with the receiving State or merely operating in it.

44. Mr. de LUNA said that he approved both of the principles underlying article 1 and of its wording.

45. With regard to paragraph 2, the Special Rapporteur himself stated in the last sentence of paragraph (2) of his commentary that during the existence of the special mission, States were entitled to conduct through

<sup>2</sup> United Nations Conference on Diplomatic Intercourse and Immunities, Vienna, 2 March - 14 April 1961, *Official Records*, Vol. II (United Nations publication, Sales No. 62.X.1).

that mission relations which were within the competence of the general mission. That was a point of particular importance if no diplomatic or consular relations existed between two States. In such circumstances one of the Governments might send a special mission to settle problems which would normally be within the competence of the general mission under the pretext of dealing with a particular matter, and so avoid exposing itself to domestic political difficulties; once it was on the spot, the special mission in fact performed a more general task and prepared the way for the resumption of normal diplomatic relations. He suggested that the rule stated in paragraph 2 might be expressed in less categorical terms, and the competence of special missions would be more precisely defined if at the end of the paragraph a passage on the following lines were added: "In this case, States are entitled to conduct through the special mission relations which are within the competence of the general mission".

*Mr. Briggs, First Vice-Chairman, took the Chair.*

46. Mr. TABIBI said that the Special Rapporteur had prepared a scholarly and valuable report, the main purpose of which was to enable the Commission to complete its codification of diplomatic law and to facilitate the operation of a useful institution. The Commission should beware of establishing any rules that might hamper the smooth conduct of special missions, which were growing in number.

47. In general, he approved of article 1, paragraph 1, but he did not believe that such a strict requirement as formal consent by the receiving State should be imposed (analogous to the *agrément* needed for diplomatic missions proper, as such a requirement could cause unwarranted delays. Indeed in paragraph (1) (c) of the commentary the Special Rapporteur himself had recognized that such consent could be given informally. Surely, it would suffice if the draft provided that the sending State should notify the receiving State of its intention to send a special mission.

48. Some drafting change was needed in the first sentence of paragraph (1) (a) of the commentary to avoid unnecessary repetition. He could not agree to the proposition in the second sentence of paragraph (1) (a) of the commentary as it was inconsistent with modern practice. For example, Algerian representatives had been invited to the Belgrade Conference of non-aligned Powers; and the Bandung Powers had decided to invite to future meetings representatives of national movements from non-self-governing territories which had not yet attained independence, thus recognizing them as entitled to take part in negotiations.

49. He could likewise not subscribe to the statement in paragraph (1) (b) of the commentary, as there were cases where a special mission was sent to perform certain tasks, including the establishment of a permanent mission; for example, after India had attained independence, a special mission had been sent by the Government of Pakistan to Afghanistan.

50. Mr. JIMÉNEZ de ARÉCHAGA expressed his complete agreement with article 1, which threw a very

clear light on the problems involved. The consent of the State to which the Special mission was to be sent was necessary, even though that consent might be implied and not express. The question had arisen because the previous Special Rapporteur on the topic, the late Mr. Sandström, had dealt with the subject by indicating which of the articles on diplomatic relations applied to special missions and which ones did not so apply.<sup>3</sup> So long as that approach had been followed, it had been appropriately stated that since no formal *agrément* was necessary for the sending of a special mission, the article on *agrément* did not apply to special mission. It was clear, however, that a special mission could not be sent to an unwilling State.

51. Accordingly, he favoured the text proposed by the Special Rapporteur, which removed any doubt there might exist on the point, and he did not think that the requirement of consent should be replaced by the requirement of notification.

52. Mr. YASSEEN said that article 1, paragraph 1, reflected existing international practice and well described the characteristics of a special mission: a special mission was sent by one State to another State, it was responsible for a specific assignment, it was temporary, and the consent of the State to which it was sent had to be obtained. The Special Rapporteur had been right not to specify the form in which such consent should be given, for it might even be tacit.

53. He was rather doubtful whether paragraph 2 should be kept. The rule stated in that paragraph was correct, but self-evident. Since States which had no diplomatic relations with each other could enter into and establish full diplomatic relations, they could manifestly also establish partial relations.

54. Mr. ELIAS said he found article 1 generally acceptable. However, on a point of drafting which was to some extent one of substance, he thought that, in the light of Mr. Tunkin's remarks during the earlier discussion, it would be preferable to replace the expression "temporary special missions" by "temporary missions".

55. With regard to Mr. Tabibi's remarks on political movements, he thought that the Special Rapporteur's commentary was a correct statement of the law. If a political movement gained recognition as a belligerent, it constituted a subject of international law; otherwise, the examples that could be cited were those of States which had not yet attained full independence but which — on political rather than legal grounds — had been allowed to send representatives to certain conferences. However, even where a political movement's representatives were allowed to participate in a conference, that did not necessarily mean that they became a special mission.

56. Paragraph 2 of the article, although it stated a fairly obvious rule, would be useful in order to remove all doubt regarding the existence of that rule.

<sup>3</sup> See Mr. Sandström's report on *ad hoc* diplomacy in *Yearbook of the International Law Commission, 1960*, Vol. II, p. 108.



57. Mr. TABIBI explained, in reply to Mr. Elias, that he had not criticized the commentary from the point of view of legal theory, but merely pointed out that it was not advisable to include certain passages in a document to be submitted to the General Assembly. Moreover, a statement like that in paragraph (1) (b) of the commentary failed to take account of the practice, particularly at the United Nations, in which the line of demarcation between special missions, representatives to conferences and permanent missions, was very often indistinct. For example, the Ministers of Commerce attending the recent Conference on Trade and Development at Geneva had used the opportunity to carry on certain negotiations.

58. Mr. AMADO said that the articles submitted were admirably constructed and entirely served their purpose, that of giving form and body to the propositions submitted earlier by the late Mr. Sandström. The articles were intended to fill a gap left by the two Vienna Conventions, that on Diplomatic Relations and that on Consular Relations; they supplemented those Conventions and were not intended to solve all the diplomatic problems raised by the multifarious activities of modern times.

59. Article 1 was unexceptionable, and he could not see that anything could be added to or taken away from it. While he appreciated Mr. Yasseen's argument, he could not agree with his remarks concerning paragraph 2.

60. To discuss the commentary was premature; it was the Commission's practice not to write the commentary until it had finished debate on the articles themselves. In any case, the passage in the commentary to which Mr. Rosenne had referred was more or less a meditation of the Special Rapporteur's own.

61. The Special Rapporteur had been right to refrain from seeking to define the meaning of "special mission", for all definitions were dangerous.

62. Sir Humphrey WALDOCK asked whether the Special Rapporteur attached any special significance to the words "or consular" in paragraph 1. The essential point seemed to be the existence of regular diplomatic relations.

63. Mr. BARTOŠ, Special Rapporteur, explained that his thought had been the same as Sir Humphrey's before the special situation between the Federal Republic of Germany and Yugoslavia had been established. The Federal Republic received and sent special missions responsible for matters germane to consular relations; hence it considered that the severance of diplomatic relations had not involved the severance of all relations between the two States. Paradoxically, the consular sections of the two embassies had continued to function, one at Belgrade under the auspices of the French Embassy and the other at Bonn under those of the Swedish Embassy. He had thought that the phrase "diplomatic or consular relations" would be useful, but he would not insist on keeping it. He had long considered diplomatic relations and consular relations as forming an invisible whole, but several cases had led him to draw not only a theoretical but also a prac-

tical distinction between the two. Sometimes consular relations existed although diplomatic relations had not yet been established or had been severed.

64. Mr. TUNKIN suggested that the Secretariat should circulate to members of the Commission the text of the Vienna Convention on Diplomatic Relations, so that it could compare the Special Rapporteur's articles with the provisions of the Convention.

65. Mr. CASTRÉN said he conceded that it was not necessary that the draft should open with a definition of "special mission". It would, however, be desirable that the Commission should at its next meeting consider the question of definitions, in particular so far as they related to the head of a special mission and its members, for there seemed to be some lack of uniformity in the concepts in the various articles.

66. He agreed with Mr. Elias that the word "special" before the word "missions" should be deleted in paragraph 1. Secondly, while it was true that a State was not bound to receive a special mission, too much should not be made of the requirement of consent. In the light of Mr. Tabibi's remarks the Commission might insert the words "express or implied" before the word "consent", and might explain — perhaps in the commentary — that such consent could be given *ex post facto*.

67. Paragraph 2 should preferably be retained, even though it stated the obvious; if he recollected rightly, the Vienna Convention on Consular Relations, 1963, contained an analogous provision.

68. The Special Rapporteur had stated that political movements, and in particular insurgents, recognized as belligerents had the capacity to send special missions. If the Commission considered that that should be the meaning of the article, it would have to redraft it accordingly. Alternatively, it might decide that the draft should deal exclusively with special missions sent by one State to another.

The meeting rose at 1 p.m.

## 758th MEETING

Friday, 3 July 1964, at 10 a.m.

Chairman: Mr. Roberto AGO

### Special Missions

(A/CN.4/166)

(continued)

[Item 4 of the agenda]

### DRAFT ARTICLES ON SPECIAL MISSIONS

#### ARTICLE 1 (continued)

1. The CHAIRMAN invited the Commission to continue its consideration of article 1 in the Special Rapporteur's first report (A/CN.4/166).