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Summary record of the 932nd meeting

Topic:
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Extract from the Yearbook of the International Law Commission:-
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136. Mr. KEARNEY said that a great many special missions were diplomatic in character. Since such missions were essentially temporary, it was appropriate for paragraph 2 of article 6 to describe the diplomatic mission accredited to the receiving State as the "permanent diplomatic mission".

137. Mr. USTOR explained that the purpose of paragraph 2 was not merely to state that members of the permanent diplomatic mission could be included in the composition of the special mission; it was intended to make it clear that if such persons were included in the composition of the special mission, they would retain their status as members of the permanent diplomatic mission. It would not rule out the inclusion in the special mission of members of another mission.

138. Mr. AGO said that, after thinking the matter over, he wondered whether it would not be necessary to specify in the last half of the sentence that the persons in question retained their status, in other words their privileges and immunities as diplomats, rather than their "functions" in the permanent diplomatic mission. He proposed that the article should be referred to the Drafting Committee for consideration of that particular point.

139. The CHAIRMAN said that, in the absence of any objection, he would assume that the Commission approved Mr. Ago's proposal that article 6 should be referred back to the Drafting Committee for the submission of a final text, bearing in mind the Commission's decision not to include paragraph 3.

*It was so agreed.*³⁵

The meeting rose at 1.5 p.m.

³⁵ For resumption of discussion and adoption of article 6, see 933rd meeting, paras. 84-86.

932nd MEETING

Tuesday, 4 July 1967, at 10.5 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Also present: Mr. Rizvi, Observer for the Asian-African Legal Consultative Committee.

Co-operation with Other Bodies

(resumed from the 911th meeting)

[Item 5 of the agenda]

1. The CHAIRMAN invited Mr. Rizvi, the observer for the Asian-African Legal Consultative Committee, to address the Commission.

2. Mr. RIZVI (Observer for the Asian-African Legal Consultative Committee) expressed the regret of the Chief Justice of Thailand, the President of the Asian-African Legal Consultative Committee for 1967, at his inability to attend the Commission's session because of unavoidable engagements in his Court. At the President's request, and with the agreement of the Government of Pakistan, he himself had the honour to represent the Committee.

3. He had been much impressed by the work of the International Law Commission in devising ways and means of promoting world peace and understanding. All the subjects on the Commission's agenda had one common factor—the desire to establish fellowship among different States in accordance with the principle of living honourably and letting others live honourably.

4. The subject of special missions could be traced back to the earliest days of known history. Permanent diplomatic missions constituted a stage in the evolution of that ancient institution. However, the powers of such missions were not sufficiently broad to cover the very wide range of questions arising in the relations between States; hence the need to evolve a legal system placing temporary special missions on an international basis. The Commission was engaged at the current session in formulating just such a system, which would prove a very useful means of promoting world fellowship. The Asian and African countries would derive particular benefit from that system, because most of them could not afford to maintain permanent missions in a large number of countries and had to deal with their problems through the machinery of special missions. He therefore wished to express the gratitude of his Committee for the work the Commission had done on the topic.

5. He would like to suggest to the Commission that the definition of "special mission" should be wide enough to include the members of an arbitral tribunal or the mediators who might be appointed by different countries to settle outstanding disputes or bring about a compromise.

6. The sphere of activity of the Asian-African Legal Consultative Committee was very similar to that of the Commission. At its tenth session at Bangkok in 1966, the Committee had adopted a final draft on the rights of refugees, including the right of asylum, the right to compensation and the right of repatriation. The Committee had been greatly assisted in its work by the advice and guidance given on a number of intricate questions by Mr. Yasseen, the representative of the Commission.

7. In view of the importance of its work, the Committee's membership would probably be enlarged in the near future. The subjects before it included the law of treaties; in 1966, it had appointed a special rapporteur for that subject and his report would be considered at the Committee's next session early in 1968. On the instructions of the Government of Pakistan, he himself had requested the Committee to include in its agenda the important question of the use of river waters on a territorial basis.

8. The Secretary of the Committee had already sent the Commission an invitation to participate in its next session. Since that session would be held at Karachi, he wished

to add his own personal invitation to the Commission. In view of the importance of the subjects to be discussed and the Committee's earnest desire to benefit from the Commission's guidance, he very much hoped that the invitation would be accepted.

9. Mr. YASSEEN said that he first wished to thank the President, Secretary, and all members of the Asian-African Legal Consultative Committee for their warm welcome and to express his appreciation of the generous hospitality extended by the Government of Thailand.

10. He also wished to lay particular stress on the importance of contacts with that Committee, which manifestly wished to co-operate with the Commission. Under article 3 (a) of its statutes, one of the Committee's purposes was to examine "questions that are under consideration by the International Law Commission, and to arrange for the views of the Committee to be placed before the said Commission". Furthermore, at its fifth session at Rangoon, the Committee had decided to add to that article the words: "to consider the reports of the Commission and to make recommendations thereon to the Governments of the participating countries".

11. One of the items on the agenda of the Bangkok session had been the consideration of the reports of the International Law Commission on the work of its seventeenth and eighteenth sessions and matters arising out of the Commission's work. The Committee had given special attention to the question of the attitude of Governments towards the draft convention on the law of treaties, a question on which he himself had been asked to speak. After stressing the importance of co-operation by regional organizations with the Commission, he had requested the Committee to make a thorough study of the articles of the draft convention and to inform the Governments of all participating countries of its opinion, in order to facilitate the work of the plenipotentiary conference which the General Assembly of the United Nations had decided to convene. Having regard to the importance of the task incumbent upon it, the Committee had decided to appoint a special rapporteur for the subject: he was to examine the draft convention from the Asian-African viewpoint and to consult the Governments of the participating countries with a view to reaching conclusions that would reflect the attitude of the African and Asian States.

12. He (Mr. Yasseen) would be submitting to the Commission a detailed report on the work of the eighth session of the Asian-African Legal Consultative Committee.¹

13. Mr. TABIBI said that the Commission had developed the sound tradition of maintaining close contact and co-operation with regional bodies. Those relations were particularly important in the case of the Asian-African Legal Consultative Committee in view of the influence exerted by the new nations of Asia and Africa on the formulation of the new principles of the law of nations.

14. The Committee, which had originally been an Asian body, and had subsequently extended its activities to Africa, was doing extremely useful work. Its members were outstanding jurists occupying such posts as Chief

Justice or Minister of Justice in their respective countries; its recommendations therefore enjoyed the full support of the Governments concerned. For that reason, he thought that the Commission should carefully examine the Committee's past reports, especially in connexion with the agenda item "Organization of future work."

15. He also wished to pay a tribute to the outstanding work of the Committee's secretariat and to urge that, in addition to the exchange of observers, the International Law Commission and the Asian-African Legal Consultative Committee should co-operate more closely through their secretariats, in particular through the exchange of documents.

16. Mr. NAGENDRA SINGH said he whole-heartedly supported the remarks of Mr. Yasseen and Mr. Tabibi, particularly with regard to the position and importance of the Asian-African Legal Consultative Committee. He fully agreed that the Commission should maintain the closest possible relationship with that regional body.

17. The CHAIRMAN thanked the observer for the Asian-African Legal Consultative Committee for his statement and for his invitation to the Commission to send an observer to the Committee's next session at Karachi.

18. The Commission desired to associate itself with the thanks just expressed by Mr. Yasseen for the hospitality extended to him as the Commission's representative during the Committee's tenth session at Bangkok.

19. The Commission also endorsed Mr. Yasseen's remarks on the particular importance of its contacts with the Committee as part of its continuing co-operation with all regional bodies concerned with the codification of international law. The Asian-African Legal Consultative Committee was required by its statute to examine the Commission's reports and to make recommendations thereon to the Governments of member countries. It was therefore essential that there should be the fullest understanding between the two bodies with regard to the Commission's work.

20. In conclusion, he stressed the value which the Commission attached to the presence at its sessions of observers from the regional bodies dealing with the codification of international law. The necessarily short statements made by those observers in the Commission were supplemented by all the information obtained by its members in informal contacts outside the Commission's meetings.

Special Missions

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

(resumed from the previous meeting)

[Item 1 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE ON THIRD READING

(resumed from the previous meeting)

21. The CHAIRMAN invited the Commission to resume consideration of the draft articles adopted by the Drafting Committee on third reading.

¹ Subsequently issued as document A/CN.4/197.

ARTICLE 7 (Authority to act on behalf of the special mission) [14]²

22. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 7:

"1. The head of the special mission or, if the sending State has not appointed a head, one of the representatives of the sending State designated by the latter, is authorized to act on behalf of the special mission and to address communications to the receiving State. The receiving State shall address communications concerning the special mission to the head of the mission or, if there is none, to the representative referred to above, either directly or through the permanent diplomatic mission.

"2. A member of the special mission may be authorized by the sending State, by the head of the special mission or, if there is none, by the representative referred to in paragraph 1 above, either to substitute for the head of the special mission or for the aforesaid representative, or to perform particular acts on behalf of the mission."

23. Mr. BARTOŠ, Special Rapporteur, said that the words "or, if the sending State has not appointed a head, one of the representatives of the sending State designated by the latter" had been inserted in paragraph 1 to show that the sending State was not obliged to appoint a head of mission.

24. Mr. USHAKOV said that the phrase "or through the permanent diplomatic mission" had been added at the end of paragraph 1 on the Chairman's suggestion.

Article 7 was adopted unanimously.

ARTICLE 8 (Notification) [11]³

25. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 8:

"1. The Ministry of Foreign Affairs of the receiving State, or such other organ as may be agreed, shall be notified of:

"(a) The composition of the special mission and any subsequent changes;

"(b) The arrival and final departure of members of the mission and the termination of their functions with the mission;

"(c) The arrival and final departure of any person accompanying a member of the mission;

"(d) The engagement and discharge of persons residing in the receiving State as members of the mission or as persons in private service;

"(e) The designation of the head of the special mission or, if there is none, of the representative referred to in paragraph 1 of article 7, and of any substitute for them;

"(f) The address of the premises occupied by the special mission and any necessary information concerning them.

"2. Whenever possible, notification of arrival and final departure must be given in advance."

26. The Drafting Committee had thought it best to set out in a single article all the matters on which the receiving State had to be notified. That was the reason for the addition of sub-paragraph (f), dealing with the premises, as the end of paragraph 1.

27. Mr. USTOR pointed out that the form of words used in the introductory phrase of paragraph 1: "The Ministry of Foreign Affairs of the receiving State, or such other organ as may be agreed..." differed from that used in paragraph 1 of article 11 to convey the same idea.

28. The CHAIRMAN, speaking as a member of the Commission, proposed that that opening sentence should be amended to read: "The Ministry of Foreign Affairs or such other organ of the receiving State as may be agreed..."

29. If the Commission adopted that proposal, he would suggest at a later stage that identical wording should be used in paragraph 1 of article 11.

30. Mr. KEARNEY said that the purpose of paragraph 1 (f) was to enable the receiving State to discharge its responsibilities connected, in particular, with inviolability. Since under article 25 the receiving State was responsible for ensuring the inviolability of the private accommodation of the representatives of the sending State in the special mission and of the members of its diplomatic staff, it seemed desirable that paragraph 1 (f) should also stipulate the need to notify the address of such private accommodation.

31. Mr. BARTOŠ, Special Rapporteur, explained that, in the Drafting Committee's opinion, it would be going too far to require notification of all changes of address of members of a special mission, who often stayed at a hotel. In any event, as the members of the mission had to respect the regulations in force in the receiving State, they would fill up a police registration form on their arrival at a hotel if the regulations in force so required.

32. Mr. USHAKOV said he agreed with Mr. Kearney that the private accommodation of the members of a special mission should be protected. He doubted, however, whether it was really necessary to require that the addresses of all members of the mission should be notified to the organ concerned. The Vienna Convention on Diplomatic Relations included no such requirement. In his opinion, the phrase "and any necessary information" was therefore sufficient.

33. Mr. KEARNEY pointed out that the system of filling in police registration forms did not exist in many countries, of which the United States was one.

34. He did not feel very strongly about his suggestion, but thought that unless provision was made for notification of private addresses, it would be impossible to rule out a breach of the inviolability of a hotel room occupied by a representative of the sending State or a member of the diplomatic staff of the special mission.

35. The CHAIRMAN, speaking as a member of the Commission, said that he found the words "any necessary

² For earlier discussion, see 930th meeting, paras. 54-58.

³ For earlier discussion see 930th meeting, paras. 59-74.

information concerning them” rather obscure. If those words were to be retained, the commentary would have to make it clear whether the information was required for purposes of identification or for purposes of protection.

36. Mr. BARTOŠ, Special Rapporteur, said that various expressions had been proposed, such as “description” and “identification of the premises”. The Drafting Committee had ultimately decided in favour of the wording “any necessary information”.

37. Mr. CASTRÉN said that although the wording of sub-paragraph (f) was admittedly somewhat vague, in the light of the explanations just given he thought it could be accepted as it stood.

38. Mr. KEARNEY agreed with the Chairman’s criticism of the vagueness of the words “and any necessary information concerning them”. He suggested that they should be replaced by the phrase “and any additional information necessary to identify them”, which was more precise.

39. Mr. AGO, Acting Chairman of the Drafting Committee, supported that suggestion.

40. Mr. BARTOŠ, Special Rapporteur, said that he too accepted it.

41. Mr. USHAKOV said that he was not in favour of the proposed amendment, as it would be preferable to leave the two States completely free to settle the point between themselves. There would be no objection, however, to explaining in the commentary that the expression “any necessary information concerning them” meant the information necessary for identifying the premises.

42. Mr. USTOR suggested that if the adjective “full” or “detailed” was inserted before the word “address”, the final phrase might be dispensed with.

43. Mr. YASSEEN said it seemed to him that the word “address” was enough in itself, since it normally included all the information necessary to ensure that a communication reached the person for whom it was intended. There was no reason, however, why the expression “full address” should not be used.

44. Mr. RAMANGASOAVINA said that he was in favour of leaving sub-paragraph (f) as it was. The Drafting Committee had chosen the expression “any necessary information concerning them” after considerable thought and it was deliberately very broad; in some cases, it might be necessary to give information going beyond mere identification.

45. Mr. NAGENDRA SINGH supported Mr. Kearney’s suggestion; the present wording of the second part of paragraph 1 (f) was very vague.

46. The CHAIRMAN, speaking as a member of the Commission, said that since paragraph 1 (f) was intended to create a legal obligation connected with inviolability, it was necessary to clarify the purpose of the provision. He suggested, therefore, that the end of paragraph 1 (f) should be reworded as follows: “and any additional

information that may be necessary to identify them”. That wording would make it clear that the address of the premises would normally suffice but that, if any additional information proved to be necessary, it must be supplied.

47. Mr. EUSTATHIADES said that, during the previous discussion of the point, the consensus of opinion in the Commission had been that the notification concerning the special mission’s premises should give all the necessary details for their precise identification: floor, staircase number, number of rooms and so forth.

48. Mr. BARTOŠ, Special Rapporteur, said that the information to be given to the receiving State was not merely a postal address but the precise place where the premises occupied by the special mission were situated.

49. Mr. AGO said that the use of the word “address” perhaps gave rise to some difficulty; it was not merely a question of an address in the sense of the place to which mail might be sent, but of information identifying the premises actually occupied by the special mission. It might perhaps be desirable to substitute “the situation” for “the address”.

50. Mr. EUSTATHIADES, supported by Mr. YASSEEN, suggested the use of the word “site”.

51. Mr. RAMANGASOAVINA said that he preferred the word “situation”, but could accept the word “site”.

52. Mr. USHAKOV said that he preferred the word “site”.

53. Mr. NAGENDRA SINGH said that the word “address” was sufficiently precise to cover all that was required.

54. Mr. KEARNEY agreed; the proposed alternative wording seemed unnecessarily complicated.

55. The CHAIRMAN, speaking as a member of the Commission, said that the word “address” would be adequate if paragraph 1 (f) were limited to the opening clause; if, however, the concluding phrase were to be retained, it would be desirable to replace the word “address” by “site”. He therefore proposed that paragraph 1 (f) should be reworded to read: “The site of the premises occupied by the special mission and any information that may be necessary to identify them”.

56. Mr. USTOR pointed out that the expression “the premises occupied by the special mission” was used for the first time in article 8. In all other articles, the expression “the premises of the special mission” was used. He therefore proposed that the latter expression should be adopted for paragraph 1 (f) of article 8.

57. Mr. AGO said that there was a difference in that respect between permanent diplomatic missions and special missions. It was logical to speak of the mission’s premises in referring to permanent diplomatic missions, but he would have preferred to use the expression “premises occupied by the special mission” throughout in referring to special missions. The important point, of course, was to use the same term in all the articles.

58. Mr. BARTOŠ, Special Rapporteur, agreed with Mr. Ago. The expression "premises occupied by the special mission" denoted an actual situation; it also gave some indication of the time involved: the reference was to the premises during the period of their occupation by the special mission.

59. Mr. USTOR pointed out that since a special mission was by definition temporary, its premises would necessarily also be temporary. There was no need to stress that temporary character by using the words "occupied by". He therefore urged that the expression "the premises of the special mission" should be used in paragraph 1 (f).

60. The CHAIRMAN suggested that it should be left to the Drafting Committee to choose one of the two expressions—"premises of the special mission" and "premises occupied by the special mission"—and use it throughout the draft articles in the interests of consistency.

The Chairman's suggestion was adopted unanimously.

61. The CHAIRMAN invited the Commission to vote on article 8 with the amendments he had proposed to the opening sentence of paragraph 1 and to the text of paragraph 1 (f).

Article 8 was adopted unanimously with those two amendments.

ARTICLE 9 (Rules concerning precedence) [16]⁴

62. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 9:

"1. Where two or more special missions meet on the territory of the receiving State or of a third State, precedence among the missions shall be determined, in the absence of a special agreement, according to the alphabetical order of the names of the States used by the protocol of the State on whose territory the missions are meeting.

"2. Precedence between the members of the same special mission shall be that which is notified to the receiving State or to the third State on whose territory two or more special missions are meeting.

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

63. The article had been amended to provide for the case of special missions meeting on the territory of a third State.

64. Paragraph 2 had been improved by the addition of the words "that which is" before the word "notified".

65. Paragraph 3 was the former article 10.

Article 9 was adopted unanimously.

ARTICLE 11 (Commencement of the functions of a special mission) [13]⁵

66. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 11:

"1. The functions of a special mission shall commence as soon as the mission enters into official contact with the Ministry of Foreign Affairs of the receiving State or with such other organ of the receiving State as may be agreed.

"2. The commencement of the functions of a special mission shall not depend upon presentation by the permanent diplomatic mission of the sending State or upon the submission of letters of credence or full powers."

67. The words "of the receiving State" should be deleted after the words "the Ministry of Foreign Affairs" in order to bring the article into line with article 8.

68. Mr. EUSTATHIADES asked whether the Drafting Committee had expressly rejected the suggestion he had made at the 930th meeting⁶ that the word "other" should be deleted before the word "organ" in article 11, paragraph 1.

69. Mr. AGO replied that the Drafting Committee had studied that suggestion by Mr. Eustathiades, which also affected article 8. The Committee had considered that the deletion of the word "other" gave rise to a further difficulty: the phrase "or with such organ of the receiving State" could be understood as referring exclusively to a physical person, whereas the expression "or with such other organ of the receiving State" clearly showed that the reference was to an administrative organ analogous to a ministry.

70. Mr. EUSTATHIADES said that that difficulty could have been overcome by replacing the word "Ministry" by the word "Minister". However, he appreciated that the Commission wished to follow the model of the Vienna Convention as closely as possible and would not therefore press the point.

Article 11 was adopted unanimously.

PROVISIONAL DEFINITION OF THE TERM "SPECIAL MISSION" PROPOSED BY THE DRAFTING COMMITTEE⁷

71. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Committee had adopted the following provisional definition of the term "special mission":

"A 'special mission' is a temporary mission of a representative character sent by one State to another State [to discuss specific questions with it] [for the performance of a specific task in that State]."

72. The problem before the Committee had been to reconcile two concepts, that of important special missions which, though not permanent diplomatic missions, had a quasi-diplomatic character, and that of small groups of technicians or other specialists sent from one country to another which did not possess all the characteristics

⁴ For earlier discussion, see 930th meeting, paras. 75-91.

⁵ For earlier discussion, see 930th meeting, paras. 92-102.

⁶ Para. 96.

⁷ For earlier discussion, see 897th meeting, paras. 5-47.

of the representation of States. After considerable deliberation, it had been decided that the only solution was to submit a restrictive definition, stating that a special mission had a representative character and the capacity to treat with the other State at the international level. That restrictive definition would leave States free to extend the régime to other groups not having a representative character; the important point was that they were not obliged to do so. Thus, special missions differed from permanent diplomatic missions in two respects: they were temporary in character and they had specific tasks to perform. The Drafting Committee's difficulty had been to find a definition which was not a description. The wording of the clause could certainly be improved, but the Commission should now decide whether it agreed with the underlying principle of the definition. That principle was based on the articles on privileges and immunities that had already been approved, and it went without saying that if the Commission did not agree with the Drafting Committee's ideas, its approach to those articles would have to be revised.

73. Mr. USHAKOV said that the definition proposed followed from the articles already adopted. He personally approved the text without reservation.

74. Mr. RAMANGASOAVINA noted with satisfaction that the proposed text faithfully reflected the trend of the discussion during the session.

75. Far from being mutually exclusive, the two solutions envisaged at the end of the sentence were complementary. Some special missions expected active participation by the receiving State, whereas others looked only for its goodwill and protection. In the former case, the word "discuss" was more appropriate, and in the latter, the word "performance". He therefore proposed that both the ideas expressed in square brackets in the text should be retained, and linked by the word "or".

76. Mr. BARTOŠ, Special Rapporteur, said he agreed that the two ideas submitted by the Drafting Committee concerning the purpose of the special mission were not mutually exclusive, but he would prefer to link them by the word "and" rather than by the word "or". He would use that definition in the introductory article he was to submit.

77. Mr. EUSTATHIADES said that the text proposed had the merit of clarity, since it gave a specific indication of the régime envisaged for special missions; it was also useful, since it met the desire of certain Governments to have a definition.

78. If a choice had to be made between the two phrases between square brackets at the end of the text, he would prefer the second, which in his view covered all the tasks that might be assigned to the special mission, from negotiation to conclusion of a treaty. He did not think it was necessary to combine the two phrases.

79. If the Commission adopted the second phrase, the words "in that State" could be deleted, since they were rendered superfluous by the words "sent by one State to another State". Moreover, the performance of the task would not necessarily take place in the receiving State.

80. Furthermore, if the Commission opted for the first phrase, the retention of the word "representative" might create certain difficulties, since the proposed formula: "to discuss specific questions with it" implied that some missions were not of a representative character. In that case it would be necessary for the commentary to define the exact meaning of the word "representative".

81. Mr. NAGENDRA SINGH said he fully supported the substance of the provisional definition, since it incorporated the three distinguishing characteristics of special missions—their temporary nature, their specific tasks and their representative character. With regard to the first phrase in square brackets, however, he considered that the term "to discuss with" was too vague; it was also inaccurate to state that a special mission performed a specific task in another State, for its task might relate to a number of States or even to the world at large. In his opinion, it would be enough to say that a special mission meant a mission of a representative and temporary character "with a special task, sent by one State to another State".

82. Mr. IGNACIO-PINTO said he approved the proposed text and welcomed the fact that the definition emphasized the representative character of the special mission.

83. With regard to the alternatives proposed at the end of the text, the phrase "to discuss specific questions with it" covered some cases and not others, and did not overlap with the phrase beginning with the words "for the performance of". Both ideas were sound and should therefore be retained in the definition.

84. Mr. TAMMES said that the word "representative" was not legally precise and could be improved upon; but in his view that word or a similar term should be retained in the definition in order to remind the parties of the need to agree in advance on the nature and perhaps on the level of the mission for the purpose of determining whether or not the provisions on privileges and immunities were applicable. The definition was thus an important contribution to the practical value of the draft.

85. Although he had no strong views on the alternatives in square brackets, he had a certain preference for the second, since the first did not seem to cover the wide range of functions summarized by the Special Rapporteur in his reports.

86. Mr. CASTRÉN noted that the text proposed involved two changes in the definition submitted by the Special Rapporteur in his fourth report (A/CN.4/194/Add.2, article 0). The first was the omission of a reference to the consent of the receiving State, a reference which was in fact unnecessary since it already appeared in article 1. The second was the inclusion of a very important new element, which was the representative character of the special mission. It would, however, be advisable to clarify that notion in the commentary, as Mr. Eustathiades had proposed.

87. With regard to the alternatives proposed in the last part of the text, the second phrase appeared preferable

because it was more general. He would not, however, be opposed to adopting a combination of the two.

88. Mr. CASTAÑEDA said he welcomed the new restrictive definition of the special mission, which made it possible to distinguish between true special missions and those which were not special missions within the meaning of the draft. The addition of the word "representative" was essential. Admittedly, the legal meaning of that word did not emerge clearly from the text, but it was unnecessary to go into that point in the definition.

89. If a choice had to be made between the two phrases proposed at the end of the text, he would prefer the first, which he considered was broader and would make it easier to take account of the heterogeneous character of special missions.

90. Mr. KEARNEY said he agreed with preceding speakers that it was wise to introduce the idea of the representative character of special missions into the definition, which thus covered missions which represented the State as a whole in dealings with other States, but did not cover visits to other countries by groups of government officials concerned with limited technical matters not involving representation of the State.

91. With regard to the two variants in the last part of the definition, he considered that the first reflected the representative character of the special mission more satisfactorily than the second, for certain groups making official visits which did not have a representative character nevertheless performed specific tasks, and the retention of the second variant might to some extent negate the term "representative character". The best solution might be to combine the alternatives to read "to deal with the latter regarding specific tasks".

92. Mr. USTOR said that the great merit of the provisional definition was that it clearly stated what a special mission was and what it was not. The term "representative character" obviously meant that the special mission must represent the State as a whole, and that groups of government officials which only represented certain interests of the State were not special missions. The definition would help to dispel the misgivings that had been expressed in the Sixth Committee of the General Assembly and would clearly indicate the Commission's stand on the question of privileges and immunities: it would be quite obvious that special missions, as defined in the clause, must be granted full diplomatic privileges and immunities.

93. Mr. TABIBI also supported the Drafting Committee's definition, which covered all the essential aspects of special missions. He agreed with Mr. Nagendra Singh that the two variants regarding specific questions and tasks would only confuse the issue, and that it would suffice simply to state that a special mission had a specific task.

94. The CHAIRMAN, speaking as a member of the Commission, said that, earlier in the session, he had pointed out that the representative character of a special mission must be an essential element of the Commission's concept of such missions, for otherwise it would be almost impossible to draw any line between a mission

ranking as a special mission for the purposes of the draft articles and a mere visit by officials or experts serving official purposes but not intended to be a "mission". He therefore welcomed the provisional definition submitted by the Drafting Committee.

95. Speaking as Chairman, he suggested that the Drafting Committee should be asked to reconsider the clause in the light of the suggestions made.

*It was so agreed.*⁸

The meeting rose at 1.5 p.m.

⁸ For resumption of discussion and adoption of the definition of a special mission, see 937th meeting, paras. 16-18.

933rd MEETING

Wednesday, 5 July 1967, at 3.10 p.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Special Missions

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

(continued)

[Item 1 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

1. The CHAIRMAN invited the Commission to resume consideration of articles adopted by the Drafting Committee on first reading.

ARTICLE 26 (Immunity from jurisdiction) [31]¹

2. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 26:

"1. The representatives of the sending State on the special mission and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the receiving State.

"2. They shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State, except in the case of:

"(a) A real action relating to private immovable property situated in the territory of the receiving State, unless the person in question holds it on behalf of the sending State for the purposes of the mission;

¹ For earlier discussion, see 917th meeting, paras. 1-69.