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Summary record of the 906th meeting

Topic:
Special missions

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paragraph 34 of the section dealing with article 9 in his fourth report (A/CN.4/194/Add.1), and in paragraph 11 of the section dealing with article 10. His additional comments on article 9 would be found in the supplements to his fourth report (A/CN.4/194/Add.3 and 5) and his additional comments on article 10 in document A/CN.4/194/Add.3.

69. Mr. BARTOŠ, Special Rapporteur, said that article 9 did not raise any very serious problems. As between special missions representing States which were by definition equal, questions of precedence should be settled by an objective criterion; the only criterion the Commission had been able to propose was that of the alphabetical order of the names of the States, and it had seen no need to go into further detail.

70. The comments of Governments related mainly to the question of the alphabetical order. The Belgian Government wished the alphabetical order to be determined in conformity with the protocol in force in the receiving State. The Government of Israel proposed that precedence should be determined by the alphabetical order of the names of the States concerned. The Yugoslav Government proposed that the alphabetical order should be the one in use in the receiving State or, failing that, the method used by the United Nations. The Austrian Government merely expressed the wish that the Commission should specify in what language the alphabetical order was to be determined. The Chilean Government proposed the alphabetical order in the language of the receiving State. Lastly, the Netherlands Government proposed that articles 9 and 10 should be combined.

71. In its earlier discussions⁴ the Commission had not been able to settle the question of the alphabetical order. Some members had pointed out that the very name of certain countries varied from the protocol of one State to that of another. The matter was complicated if special missions met in a third State. It was, of course, out of the question to apply the criterion used in the Vienna Convention on Diplomatic Relations, namely, the date of the presentation of credentials.

72. He himself, in principle, favoured alphabetical order as a criterion and would prefer that it should, if possible, be the alphabetical order used by the United Nations. He did not believe, however, that the Commission need propose a rigid and uniform rule. He would leave it to the Commission to decide the matter.

73. Mr. AGO said he doubted the value of laying down, in the draft articles, a rigid rule from which practice was bound to differ. The rule would be appropriate if all missions had the same composition, but that was often not the case. For example, special missions from the States of the European Economic Community were to meet at Rome in a few days' time, on the occasion of the anniversary of the Treaty of Rome. If each of those missions were led by the Head of State, it would be possible to draw up a list of precedence in the alphabetical order of the names of the States. But it was inconceivable that a mission led by a Minister should take precedence

over a mission led by a Head of State, solely because the former represented a country whose initial letter came earlier in the alphabet. He therefore thought it would be better to leave individual cases to be settled by protocol as they arose.

74. Mr. YASSEEN said that the example quoted by Mr. Ago showed how hard the problem was to solve. It was sometimes agreed that the heads of all special missions should be on an equal footing in matters other than those of protocol. For example, at the Conferences of Heads of State or Government of Non-Aligned Countries held at Belgrade and Cairo, the head of each delegation, whether Emperor or Minister, had presided in turn. Deleting article 9 would not solve the problem. He hoped the Commission would make a fresh effort to find a more reliable criterion.

75. Mr. BARTOŠ, Special Rapporteur, pointed out that article 9 dealt with special missions with full competence, whereas article 10 dealt with special missions of a ceremonial or formal character. Mr. Ago's example would be more relevant to article 10.

76. It might perhaps be desirable to combine the two articles, although article 9 was based on the sovereign equality of States as recognized in the Charter, whereas article 10 was based on international custom and tradition, which sometimes survived changes of régime.

77. In his opinion, it would be preferable to mention the criterion of alphabetical order, but without specifying any particular language or alphabet.

The meeting rose at 1 p.m.

906th MEETING

Wednesday, 24 May 1967, at 10 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Tammes, Mr. Tsuruoka, 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]

ARTICLES 9 (General rules concerning precedence) [16, paras. 1 and 3] and 10 (Precedence among special ceremonial and formal missions) [16, para. 2] (continued)¹

⁴ See *Yearbook of the International Law Commission, 1964*, vol. I, 762nd meeting, paras. 25-63.

¹ See 905th meeting, paras. 66 and 67.

1. The CHAIRMAN invited the Commission to continue its discussion of articles 9 and 10.

2. Mr. BARTOŠ, Special Rapporteur, said that the difference between article 9 and article 10 reflected the difference in character between the two categories of special missions. For special missions with specific practical tasks, article 9 proposed a rule based on the equality of States, in other words, on the United Nations Charter, whereas for special missions of a ceremonial or formal character article 10 followed established custom in the various countries, and respected a traditional privilege of the receiving State.

3. The example given by Mr. Ago at the previous meeting² raised a question of the priority, not between special missions, but between the heads of special missions; that question could be settled in the draft provisions on high-level special missions if the Commission decided to prepare them.

4. He recommended that article 10 be retained on the understanding that, even if the receiving State followed certain rules of protocol that were incompatible with the sovereign equality of States, it must not exercise discrimination.

5. There was little in the way of comments by Governments on article 10. The Belgian Government found the article ambiguous and asked that it should be worded more clearly; the Greek Government concurred in that request. The Drafting Committee would certainly try to improve the article in that respect.

6. The Netherlands Government proposed that articles 9 and 10 should be combined; so did the Government of Israel, but it also proposed that there should still be two separate rules. In his opinion the second of those two proposals was the less open to objection, for the two kinds of special missions in question were quite different, as the Commission had recognized at its first examination of the draft articles.

7. Mr. USHAKOV said that matters of precedence were always very delicate and complicated. The article on precedence could cover only ceremonial occasions such as receptions and should be highly flexible.

8. Provision should perhaps be made in article 10 for the case in which a special mission was led by a head *ad interim*. Article 14 of the Vienna Convention on Diplomatic Relations dealt with that case by dividing heads of mission into three classes.

9. He suggested that, as in article 3, and for the same reasons, the expression "Except as otherwise agreed" at the beginning of article 9 be replaced by the expression "Except as specially agreed".

10. Mr. YASSEEN said that the Commission should try to find a criterion which would eliminate the delicate problems raised by articles 9 and 10. Both suggested methods—that based on the equality of special missions consequent upon the sovereign equality of States, as applied in article 9, and that based on the difference in

rank between heads of missions, as applied in article 10—had much to recommend them. If the criterion adopted was the sovereign equality of States, all that was needed was to apply the rule of the alphabetical order of names of States. On the other hand, if the rank of the head of mission was taken into account, the criterion would rest on personal considerations, without prejudice to the principle of the equality of missions. The Commission should endeavour to find a single criterion in order to avoid having to make a distinction between missions of a ceremonial or formal character and other special missions, especially since formal missions might have other functions to perform and other missions might have some formal characteristics.

11. In his view, the criterion adopted in article 9 was the more suitable for general application. The arguments for the opposite view were, however, almost equally cogent. The Commission would have to make a greater effort to find a way out of the impasse.

12. Mr. REUTER said that he supported Mr. Ushakov's proposal that the expression "Except as otherwise agreed" at the beginning of article 9 should be replaced by the words "Except as specially agreed". Questions of precedence had to be settled not only as between heads of mission but also as between other persons.

13. He agreed with Mr. Yasseen that it would be better to lay down only one rule on the subject. Questions of precedence were admittedly serious and delicate, but he had the impression that the problem was really simpler than it appeared in the two articles. A rule had to be devised for cases where there was no agreement; the best plan was to follow the usage of the place where the problem arose. By that he did not mean the usage of the receiving State, for special missions might well have to meet in a third country. In other words, his suggestion was to hand the problem over to the chief of protocol of the place where the special missions met.

14. Mr. CASTRÉN said that, after studying the comments by Governments on articles 9 and 10 and the written comments by the Special Rapporteur, and after listening to the views expressed at the current session, he was coming to the conclusion that the best solution was to combine articles 9 and 10, as some Governments and several members had suggested.

15. He saw no need to devote two separate articles to questions of precedence, whether between the special missions of two or more States meeting at the same place to carry out a common task, or between the members and within the staff of a single special mission.

16. For the first case, common rules should be established governing both ordinary special missions and missions of a ceremonial or formal character. As the Netherlands Government had suggested, the best plan would be to apply the protocol in force in the receiving State, rather than the rule of the alphabetical order of names of States. He agreed with Mr. Ago and Mr. Ushakov that the rule should be flexible and adapted to the practice and usage of States. Obviously every State would find it desirable to avoid discrimination and any rules involving discourtesy.

² Para. 73.

17. The question of the precedence of the members and staff of a single special mission was an internal problem for the sending State, which had only to notify the receiving State, as provided by article 9, paragraph 2. In the French text of that provision, the adjective "*même*" might usefully be inserted before the word "*mission*" in order to bring out the difference from the preceding paragraph, as the Finnish Government proposed.

18. Mr. BARTOŠ, Special Rapporteur, said that he had no objection to placing both rules in the same article but considered it necessary to keep two separate rules in order to deal with cases which all the authorities concurred in describing as totally different.

19. Mr. EUSTATHIADES said that matters of precedence came within the realm of courtesy; the main requirement was flexibility, and there was no reason to uphold the principle of the sovereign equality of States at all costs. In any case that principle was subject to exceptions, according to the majority rule and in many other ways. What mattered was to obviate any possible difficulties.

20. Of the two extreme solutions that might be contemplated, both of them mechanical—that of a round table, advocated long ago by William Penn, or even a round room with as many doors as there were persons meeting, and that of alphabetical order—the former was not always feasible and the latter was too mechanical to deal with all the situations mentioned by previous speakers.

21. Like Mr. Yasseen and Mr. Castrén, he was inclined to prefer a single rule to cover all special missions, whether special missions in the ordinary sense of the term or missions of a ceremonial or formal character. What should that single rule be? He would suggest following the usage of the receiving State or of the place of meeting, if necessary in combination with alphabetical order as a residual system. It was customary for the representatives of States to defer to the decisions of the receiving State in matters of precedence, and it was in the receiving State's own interest to ensure that any friction was avoided. The rule he suggested would leave the receiving State entirely free, but if it ran into difficulties it would be able to resort to the alphabetical order method, which was one way of recognizing the sovereign equality of States.

22. A single article on precedence, applicable to both categories of special missions, might be drafted to read:

"Except where regulated by the protocol in force or the usage prevailing in the receiving State or at the place of meeting, precedence shall be determined by the alphabetical order of the names of the States represented".

23. Mr. TSURUOKA said he agreed with Mr. Eustathiadès that, generally speaking, the representatives of States accepted the customs or usage prevailing at the place where they met. They were, however, quick to notice any difference in treatment and, when they did, tried to find the explanation in precedent. There was some justification for their susceptibility, for the prestige of the State was undoubtedly involved.

24. Use of the alphabetical order did not mean that rank need be disregarded. For example, in drawing up a list of the members of two or more special missions, the normal procedure would be to list the States in alphabetical order, but if the heads of the special missions were invited to an official dinner they would be seated by rank, and the alphabetical order would apply only between persons of the same rank. An order of precedence based on rank did not mean discarding the principle of sovereign equality of States, but it applied that principle only where the persons concerned were of equal rank.

25. In view of those considerations, articles 9 and 10 were not ill-conceived. However, as several speakers had already suggested, it would be well to specify that the receiving State was entitled to apply the rules of its own protocol. The articles would then have very broad connotations since they would reinforce custom.

26. In order to ensure that custom did not diverge too far from the principle of the sovereign equality of States, the Commission should try to correlate the set of rules proposed on precedence, either in two paragraphs of a single article or in two separate articles.

27. Mr. CASTAÑEDA said he agreed with those speakers who favoured the retention of articles 9 and 10.

28. It would not assist the receiving State if protocol problems were left to be decided in accordance with that State's usages. In practice, most of the difficulties arose precisely because a foreign mission disagreed with the local usage. The Commission could be of assistance to the receiving State by laying down some general rule to which the receiving State could refer in case of divergence of views.

29. With regard to the choice of the most suitable rule, it seemed to him that the only possible solution was to adopt the system of the alphabetical order, in the language of the receiving State.

30. Mr. BARTOŠ, Special Rapporteur, said that to adopt the proposals put forward by some members of the Commission would turn the United Nations system of law upside down.

31. The rule of the sovereign equality of States, laid down in Article 2 (1) of the Charter, was a precious and fundamental rule. When the voting order of Member States had been under discussion during the preparation of the rules of procedure of the General Assembly, there had been criticism of the system used at the Paris Peace Conference in 1946, when the great Powers had come first and then the other States in alphabetical order. The General Assembly had therefore decided to adopt the alphabetical order system. States were called on sometimes in English alphabetical order and sometimes in French alphabetical order, depending on who was in the chair at each meeting, but it had finally been decided to use the English alphabetical order. Since then United Nations organs had always observed that rule, which was a protest against the inequality of States and which avoided the difficulties of making a choice between alphabetical orders.

32. It had been said that precedence was a matter of protocol. In his view it involved the equality and dignity of States. The receiving State could not impose a protocol

incompatible with the principles of international law; indeed, it had to bring its own protocol into line with the new principles which had become part of positive international law. The Commission could not leave it to the receiving State to make whatever rules it thought fit. The Commission had not only to codify international law but also to encourage its progressive development, in accordance with Article 13 (1) *a* of the Charter.

33. Articles 9 and 10 could not alter the fundamental rules of international law. That was why he was proposing a general rule for working special missions in article 9, and a special rule for ceremonial and formal missions in article 10. The second category of special missions was in practice subject to rules which varied from one receiving State to another. For example, at some ceremonies in Latin American countries, such as the inauguration of a new President, the ambassadors extraordinary sent for the occasion were required to present full powers and the order of precedence was the order in which they did so. At the Court of St. James's the protocol in force, last revised in 1905, gave Heads of State related by blood to the reigning Sovereign precedence over other Heads of State. In some countries ambassadors extraordinary took precedence over permanent ambassadors. The Commission could allow for such special arrangements in the case of ceremonial and formal special missions without violating international law.

34. If the Commission decided to prepare draft provisions concerning high-level special missions, it would be able to extend to those missions the rule that precedence should be governed by the protocol of the receiving State.

35. The CHAIRMAN, summing up the discussion, said that some members had indicated a preference for a single rule but the Special Rapporteur had strongly opposed that approach and had urged the need for two different rules to deal with the different types of case. For ordinary working purposes, the Special Rapporteur advocated the rule based on the equality of States.

36. There were perhaps three kinds of cases: first, the ordinary special mission; secondly, the special mission sent for ordinary business but with high-ranking persons among its members; thirdly, the special mission for ceremonial occasions.

37. He did not believe that, at the present stage, voting would solve the difficulties that had arisen; articles 9 and 10 should therefore be referred to the Drafting Committee in general terms.

38. A general desire had been expressed in the Commission to ensure sufficient flexibility to take account of the practice in the matter and the Drafting Committee would no doubt take that desire into account.

39. He accordingly suggested that articles 9 and 10 be referred to the Drafting Committee, which would consider not only the questions of drafting but also the aspects of substance which had been raised during the discussion and prepare a new text or texts for submission to the Commission.

*It was so agreed.*³

³ For resumption of the discussion of article 9, see 927th meeting, paras. 34-43. Article 10 was deleted (*ibid.*, para. 44).

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

40.

Article 11

[13]

Commencement of the functions of a special mission

The functions 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 functions shall not depend upon presentation by the regular diplomatic mission or upon the submission of letters of credence or full powers.

41. The CHAIRMAN invited the Commission to consider article 11, the Special Rapporteur's proposals for which were contained in paragraph 21 of the section of his fourth report (A/CN.4/194/Add.1) dealing with that article and in his additional comments on article 11 in the supplements to his fourth report (A/CN.4/194/Add.3 and 5).

42. Mr. BARTOŠ, Special Rapporteur, said that the purpose of article 11 was to specify the time at which the functions of a special mission commenced; the essence of the article was that its functions commenced "as soon as that mission enters into official contact".

43. In paragraph (12) of its commentary to that article, the Commission had requested Governments to advise it whether the article should include a rule on non-discrimination in the reception and commencement of the functions of special missions of the same character. The Government of the Upper Volta alone had advocated the inclusion of such a provision in article 11.

44. Most of the Governments which had given their views on that point—those of Malta, the Netherlands, the United Kingdom and the United States—had replied in the negative. Their main argument was that the nature of special missions varied very widely and that it was consequently difficult to establish absolute equality of treatment. They also argued that it was difficult to define precisely what constituted discrimination: for example, whether a warmer or cooler reception fell into that category. His own view was that the article should not be amended in that respect.

45. The Belgian Government proposed a new wording (A/CN.4/188) which seemed to differ only in form from that adopted by the Commission. The proposal might be examined by the Drafting Committee. He himself believed that it would be better not to mention in the article the special case of ceremonial and formal special missions.

46. Mr. TAMMES said that, in paragraph 15 of his written observations (A/CN.4/194/Add.1), the Special Rapporteur had drawn a clear distinction, from the legal point of view, between the commencement of the privileges and immunities of the mission, covered by article 37, and the commencement of the functions of the mission, covered by article 11.

47. In view of that distinction, the Special Rapporteur should explain what was the independent legal significance of the commencement of functions, apart from the commencement of privileges and immunities. If there were no such independent significance, there would be no need for the first sentence of article 11, which could consequently be limited to a statement that the commence-

ment of the functions of the special mission would not depend upon its presentation or the submission of credentials.

48. He agreed with the comment made by certain Governments that the prohibition of discrimination should not be linked with the commencement of functions but should be extended to the whole duration of the mission.

49. Mr. BARTOŠ, Special Rapporteur, said in reply that the question at what moment a person began to enjoy privileges and immunities was settled in draft article 37, corresponding to article 39 of the Vienna Convention on Diplomatic Relations. As a general rule, it was the moment when the person entered the territory of the receiving State.

50. Admission to the territory of the receiving State was one thing and commencement of functions was another. The head of a diplomatic mission commenced his functions when he presented his letters of credence. The moment when a special mission commenced its functions had yet to be determined; article 11 proposed a rule on the subject. The important point was to draw a clear distinction between the two moments. In practice several days might elapse between the arrival of the persons concerned in the territory and the commencement of the functions of the special mission. A person who had been admitted to the territory but who had not yet commenced his functions enjoyed his privileges and immunities and was not just an ordinary alien. It sometimes happened that a special mission's work was postponed and the persons concerned returned to their country without the special mission's ever having commenced its functions; in that case, they enjoyed their privileges and immunities for the duration of their stay.

51. If the Commission agreed with Mr. Tammes that the commencement of the functions of a special mission depended, not upon its presentation by the permanent diplomatic mission or upon the submission of full powers, but only upon entry into official contact, article 11 could be rearranged along those lines. He would have no objection; indeed, such a change would have the advantage of simplifying the article.

52. Mr. USTOR said that he shared the view that non-discrimination was not closely connected with the commencement of the mission's functions but raised a broader problem; in fact, it was more closely connected with precedence. He noted, however, that there appeared to be no provision in the draft articles corresponding to article 18 of the 1961 Vienna Convention on Diplomatic Relations, which read: "The procedure to be observed in each State for the reception of heads of mission shall be uniform in respect of each class".

53. In the absence of credentials or of a solemn reception in the case of special missions, there was no place for a similar article in the present draft, but he suggested that the idea underlying article 18 of the 1961 Vienna Convention should be incorporated into the text of articles 9 and 10 which the Drafting Committee was to prepare. That underlying idea of non-discrimination, based on the principle of the equality of States, would thus be taken into account with regard to protocol problems as well.

54. Mr. USHAKOV asked the Special Rapporteur whether the second sentence in article 11 was really necessary. It looked more like a commentary to the first sentence than a rule.

55. Mr. BARTOŠ, Special Rapporteur, in reply to Mr. Ustor, said that the question of a general rule on non-discrimination would be discussed in connexion with draft article 40 *bis*; in any case it seemed to him unnecessary to repeat that rule in every article.

56. Replying to Mr. Ushakov, he said that the second sentence was necessary because some States required special missions to be presented by the permanent diplomatic mission and to submit letters of credence or full powers. That requirement might cause difficulties, and it was precisely to avert them that the second sentence had been included.

57. Mr. USTOR pointed out that although there was a general provision on non-discrimination in article 47 of the Vienna Convention on Diplomatic Relations, its article 18 nevertheless contained a specific reference to the obligation to accord uniform treatment to heads of mission.

58. Mr. EUSTATHIADES said that Mr. Tammes had been right to draw the Commission's attention to the distinction between the commencement of the mission's functions and the commencement of the régime of privileges and immunities. The Special Rapporteur himself had stated in his reply to the new suggestions by Governments (A/CN.4/194/Add.1) that "the commencement of the special mission's privileges and immunities should not be confused with the commencement of its functioning".

59. A provision determining the commencement of a special mission's functions would clearly be useful, but there was no need to link it to article 37. Various arguments could be advanced in support of such a provision, but one of them stood out: Article "X" (A/CN.4/194/Add.2) provided that "The provisions contained in these articles shall be compulsory for the States that have acceded to them, unless the provisions contained in particular articles provide expressly that they may be modified by the States concerned in their reciprocal relations by mutual agreement", while article "Y" provided that "The provisions of the present articles shall not affect other international agreements in force as between States parties to those agreements".

60. Exceptions to the régime of special missions were therefore possible either because there were other international agreements in force or because the States concerned had agreed bilaterally that the settlement of certain questions should depend on the date of the commencement of the mission's functions. A third possibility was the adoption—independently of any international agreements—of domestic regulations taking the commencement of a special mission's functions as a basis.

61. In his opinion, therefore, the Commission should decide to retain an article 11, independent of article 37.

62. Mr. BARTOŠ, Special Rapporteur, said that he was in favour of retaining article 11 as it stood. He saw no

need to add a non-discrimination clause; there was one already in article 40 *bis*.

63. Mr. Ushakov, who had commented on the second sentence in article 11, could rest assured that there was a genuine need for that provision. The Commission, in its codification work, should bear in mind that the convention would be applied not only by Ministries of Foreign Affairs but also by administrative organs and executive agents at a lower level, and it should make matters easier for them by drafting provisions which were as clear and as full as possible.

64. Mr. CASTRÉN said that the first sentence of the article was perfectly clear; it might perhaps be appropriate to place the second sentence in the commentary. He would, however, accept the decision of the majority.

65. Mr. BARTOŠ, Special Rapporteur, said that the Commission could combine the two sentences into one if it preferred.

66. The CHAIRMAN said there seemed to be general agreement on the need to include article 11, which had some similarity to article 13 of the Vienna Convention. It dealt with the functions of the special mission as such and not with the functions of individual members. It would not be appropriate to deal with the question of uniform reception in articles 9 and 10, and a provision on the lines of article 18 of the Vienna Convention might be considered.

67. Speaking as a member of the Commission, he said that the second sentence of article 11 seemed unduly rigid and perhaps the Drafting Committee should be asked to examine ways of introducing greater flexibility.

68. He suggested that article 11 be referred to the Drafting Committee for redrafting in the light of the discussion.

*It was so agreed.*⁴

ARTICLE 12 (End of the functions of a special mission)
[20, para. 1]

69. Article 12 [20, para. 1]
End of the functions of a special mission

The functions of a special mission shall come to an end, *inter alia*, upon:

- (a) The expiry of the duration assigned for the special mission;
- (b) The completion of the task of the special mission;
- (c) Notification of the recall of the special mission by the sending State;
- (d) Notification by the receiving State that it considers the mission terminated.

70. The CHAIRMAN invited the Commission to consider article 12, the Special Rapporteur's proposals for which were contained in paragraph 11 of the section on that article in his fourth report (A/CN.4/194/Add.1) and in his additional comments on article 12 in document A/CN.4/194/Add.3.

71. Mr. BARTOŠ, Special Rapporteur, said that the significance of the words "*inter alia*" in the first line of

the article was that the Commission had not wished to exclude other situations regarded by the States concerned as terminating the functions of a special mission.

72. The Belgian Government had proposed that, in the French text, the word "*rappel*" should be used rather than the word "*révocation*"; he thought the Drafting Committee would be able to decide that point after hearing Mr. Reuter's opinion.

73. The Belgian Government had also proposed the inclusion in article 12 of the provision in article 44, paragraph 2, which read: "The severance of diplomatic relations between the sending State and the receiving State shall not automatically have the effect of terminating special missions existing at the time of the severance of relations, but each of the two States may terminate the special mission". He was not in favour of that proposal, since it was for the States themselves to consider whether the functions of the special mission were terminated or not, and article 44, paragraph 2, specified that the functions of a special mission were not automatically terminated by the severance of diplomatic relations. The Belgian Government's comment might be reflected in the commentary, but not in the text of the article.

74. The Government of the Upper Volta had reintroduced a proposal submitted in 1960 by Mr. Sandström, the Commission's Special Rapporteur,⁵ and referred to in paragraph (4) of the commentary to article 12 of the present draft. The Commission had already considered the effects of an interruption of negotiations between the special mission and the local authorities, and had concluded that such an interruption did not automatically terminate the functions of the special mission unless the mission was recalled by the sending State, or the receiving State gave notice that it considered the mission terminated. In his opinion, the Commission should not cite in article 12 any other case of the termination of a special mission's functions beyond the cases already enumerated there.

75. The CHAIRMAN said that, as far as the English text was concerned, the word "recall" was the right one and he supposed that it should be translated by the word "*rappel*".

76. Mr. REUTER said that, in the legal terminology of French-speaking countries and countries using the French system of law, the word "*révocation*" meant a disciplinary measure against a civil servant. Like the Belgian Government he would prefer the word "*rappel*" to be used.

77. He was somewhat perplexed by the juxtaposition of substantive causes for the termination of functions, in sub-paragraphs (a) and (b) of the article, and the formal causes stated in sub-paragraphs (c) and (d). Whereas the expiry of the duration assigned for the special mission would come about so to speak mechanically, the completion of the task of the special mission required some notification procedure because it was a matter for the judgement of the States concerned to decide whether a task had been completed. As he saw it, the real causes should be set out first, and the problems of the end and com-

⁴ For resumption of discussion, see 927th meeting, paras. 45-55.

⁵ *Yearbook of the International Law Commission, 1960*, vol. II, p. 113, article 15 (a).

mencement of the functions of a special mission should be dealt with side by side.

78. He questioned whether the existence of a special mission always presupposed the existence of a receiving State. Negotiations between two special missions could conceivably be held on the territory of a third State; that had been the case in some of the negotiations which had led to the Evian Agreements between France and Algeria.

79. Mr. EUSTATHIADES, referring to the Belgian Government's comments,⁶ said the Special Rapporteur had suggested that article 44, paragraph 2, might be mentioned in the commentary to article 12. That did not seem a wholly satisfactory solution, since although article 44 was concerned with the duration of the facilities, privileges and immunities granted to the special mission, its paragraph 2 provided a means of terminating the functions of the special mission without stipulating that the severance of diplomatic relations automatically ended those functions.

80. Another important feature of paragraph 2 was that each of the two States might terminate the special mission if diplomatic relations were severed. That provision therefore affected the substance of article 12, and he would be inclined to recommend that the Commission add another sub-paragraph to article 12, which might read: "Notification by the sending State or the receiving State in the event of severance of diplomatic relations; such severance shall not necessarily involve the termination of the functions of the special mission."

81. Mr. USHAKOV said that he would rather that another sub-paragraph were added providing that a special mission might be terminated by agreement between the States concerned.

82. Mr. RAMANGASOAVINA said that sub-paragraphs (a) and (b) dealt with cases in which the mission's functions came to an end under normal conditions, whereas in the cases dealt with in sub-paragraphs (c) and (d) its functions ended before the expected duration had expired.

83. In sub-paragraph (a), the Commission should have specified that the expiry of the duration was not a peremptory time-limit, and should have made allowance for an extension. In the interests of consistency, the Commission might redraft sub-paragraph (c) on the lines of sub-paragraph (d): "Notification by the sending State that it is terminating the functions of the special mission". Moreover that wording would have the advantage of avoiding the use of the word "*révocation*" to which the Belgian Government and Mr. Reuter objected.

84. Mr. BARTOŠ, Special Rapporteur, said that, in enumerating the cases in which the functions of a special mission came to an end, the Commission might begin with agreement between the parties, as suggested by Mr. Ushakov. The sub-paragraph concerning the expiry of the duration would come next.

85. With regard to the task, he had some doubts after hearing Mr. Reuter. However, he thought it would be a

difficult matter to determine whether the task had been completed or not; perhaps the article should require a finding by one or both of the parties that the task had been completed.

86. He proposed that sub-paragraphs (c) and (d) be combined in a single sub-paragraph in terms similar to those suggested by Mr. Ramangasoavina: "Notification by the sending State or by the receiving State that it considers the mission terminated".

87. With regard to article 44, paragraph 2, which the Belgian Government proposed for inclusion in article 12, it should be remembered that the end of the functions of a special mission entailed some notification; article 44, paragraph 2, dealt solely with a possible reason for the termination of the special mission's functions.

88. Mr. Reuter had commented that special missions might negotiate in the territory of a third State; in that event, the third State played the part and assumed the obligations of the receiving State. The Commission might, however, take Mr. Reuter's comments into account in article 16, entitled "Activities of special missions in the territory of a third State".

89. Mr. ALBÓNICO said that cases provided for in articles 5 and 5 *bis* were not covered in article 12. Sub-paragraphs (a) and (b) should be retained and a new sub-paragraph (c) inserted to deal with instances of termination by agreement between all the States concerned.

90. The present sub-paragraphs (c) and (d) which dealt with the same legal situation, and in which the whole stress was on notification, should be combined into one.

91. Mr. BARTOŠ, Special Rapporteur, said his first suggestion had been that article 12 should mention agreement between the parties, without specifying the number of parties. His second suggestion had been that sub-paragraphs (c) and (d) should be combined in a single sub-paragraph.

92. The CHAIRMAN suggested that article 12 be referred to the Drafting Committee. The problems it raised were mainly of a drafting character. Mr. Ramangasoavina's suggestion would simplify the drafting and it would also take account of article 44, paragraph 2.

*It was so agreed.*⁷

The meeting rose at 1.5 p.m.

⁷ For resumption of discussion, see 929th meeting, paras. 1-20.

907th MEETING

Thursday, 25 May 1967, at 10 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr.

⁶ See above, para. 73.