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**REPORT
OF THE
INTERNATIONAL LAW
COMMISSION**

**on the work of its seventeenth session
3 May—9 July 1965**

GENERAL ASSEMBLY

OFFICIAL RECORDS : TWENTIETH SESSION

SUPPLEMENT No. 9 (A/6009)

INDEXED

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INDEX SECTION

UNITED NATIONS

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**UNITED NATIONS
*New York, 1965***

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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Chapter I

ORGANIZATION OF THE SESSION

1. The International Law Commission, established in pursuance of General Assembly resolution 174 (II) of 21 November 1947, and in accordance with its Statute annexed thereto, as subsequently amended, held the first part of its seventeenth session at the European Office of the United Nations from 3 May to 9 July 1965. The work of the Commission during this part of the seventeenth session is described in this report. Chapter II of the report contains a description of the Commission's work on the law of treaties and twenty-five articles, consisting of general provisions and provisions on the conclusion of treaties, reservations, entry into force and registration, correction of errors and the functions of depositaries. Chapter III contains a description of the Commission's work on special missions and forty-four articles, with commentaries on the topic of special missions; sixteen of these articles were provisionally adopted by the Commission at its sixteenth session in 1964, and twenty-eight articles at the present session. Chapter IV relates to the programme of work and organization of future sessions of the Commission. Chapter V deals with a number of administrative and other questions.

A. Membership and Attendance

2. The Commission consists of the following members:

Mr. Roberto AGO (Italy)
Mr. Gilberto AMADO (Brazil)
Mr. Milan BARTOŠ (Yugoslavia)
Mr. Mohammed BEDJAOU (Algeria)
Mr. Herbert W. BRIGGS (United States of America)
Mr. Marcel CADIEUX (Canada)
Mr. Erik CASTRÉN (Finland)
Mr. Abdullah EL-ERIAN (United Arab Republic)
Mr. Taslim O. ELIAS (Nigeria)
Mr. Eduardo JIMÉNEZ DE ARÉCHAGA (Uruguay)
Mr. Manfred LACHS (Poland)
Mr. LIU Chieh (China)
Mr. Antonio de LUNA (Spain)
Mr. Radhabinod PAL (India)
Mr. Angel M. PAREDES (Ecuador)
Mr. Obed PESSOU (Senegal)
Mr. Paul REUTER (France)
Mr. Shabtai ROSENNE (Israel)
Mr. José María RUDA (Argentina)
Mr. Abdul Hakim TABIBI (Afghanistan)
Mr. Senjin TSURUOKA (Japan)
Mr. Grigory I. TUNKIN (Union of Soviet Socialist Republics)
Mr. Alfred VERDROSS (Austria)
Sir Humphrey WALDOCK (United Kingdom of Great Britain and Northern Ireland)
Mr. Mustafa Kamil YASSEEN (Iraq)

3. On 18 May 1965, the Commission elected Mr. Mohammed Bedjaoui (Algeria) to fill the vacancy which had arisen in consequence of the resignation of Mr. Victor Kanga (Cameroon).

4. All the members, with the exception of Mr. Liu Chieh, attended the session of the Commission.

B. Officers

5. At its 775th meeting, held on 3 May 1965, the Commission elected the following officers:

Chairman: Mr. Milan Bartoš

First Vice-Chairman: Mr. Eduardo Jiménez de Aréchaga

Second Vice-Chairman: Mr. Paul Reuter

Rapporteur: Mr. Taslim O. Elias

6. At its 777th meeting, held on 5 May 1965, the Commission appointed a Drafting Committee composed as follows:

Chairman: Mr. Eduardo Jiménez de Aréchaga

Members: Mr. Roberto Ago; Mr. Herbert W. Briggs; Mr. Taslim O. Elias; Mr. Manfred Lachs; Mr. Paul Reuter; Mr. Grigory I. Tunkin; Sir Humphrey Waldock and Mr. Mustafa Kamil Yasseen. Mr. Milan Bartoš took part in the Committee's work as Special Rapporteur on special missions when the articles relating to that topic were considered. In addition, the Commission at its 797th meeting held on 8 June 1965, appointed Mr. José María Ruda as a member of the Committee, and at its 811th meeting, on 25 June 1965, appointed Mr. Shabtai Rosenne as a member. The Committee was responsible for the preparation of the English, French and Spanish texts of the draft articles.

7. Also at its 777th meeting, the Commission appointed a Committee to study the exchange and distribution of its documents. The Committee was composed of Mr. Roberto Ago, Mr. Manfred Lachs, Mr. Obed Pessou, Mr. Shabtai Rosenne and Mr. José María Ruda. The Committee submitted a report¹ to the Commission.

8. Mr. Constantin A. Stavropoulos, Legal Counsel, attended the 793rd and 794th meetings, held on 1 and 2 June 1965 respectively, and represented the Secretary-General at those meetings. Mr. Constantin A. Baguinian, Director of the Codification Division of the Office of Legal Affairs, represented the Secretary-General at the other meetings of the session, and acted as Secretary to the Commission.

C. Agenda

9. The Commission adopted an agenda for the seventeenth session, consisting of the following items:

1. Filling of a casual vacancy in the Commission (Article 11 of the Statute).
2. Law of treaties.

¹ A/CN.4/L.110.

3. Special missions.
4. Relations between States and inter-governmental organizations.
5. Question of the organization of future sessions.
6. Dates and places of the meetings in winter and summer 1966.
7. Co-operation with other bodies.
8. Other business.

10. In the course of the session, the Commission held forty-seven public meetings and four private meetings. In addition, the Drafting Committee held thirteen meetings. The Commission considered all the items on its agenda, except that on relations between States and inter-governmental organizations.

Chapter II

LAW OF TREATIES

A. Introduction

SUMMARY OF THE COMMISSION'S PROCEEDINGS

11. At its fourteenth, fifteenth and sixteenth sessions the Commission provisionally adopted parts I, II and III of its draft articles on the law of treaties, consisting respectively of twenty-nine articles on the conclusion, entry into force and registration of treaties, twenty-five articles on the invalidity and termination of treaties and nineteen articles on the application, effects, modification and interpretation of treaties. In adopting each part the Commission decided, in accordance with articles 16 and 21 of its Statute, to submit it, through the Secretary-General, to Governments for their observations.

12. At its sixteenth session, the Commission decided that in 1965 it would, after considering the comments received from Governments, conclude the second reading of part I, and as many further articles as possible of part II, of the draft on the law of treaties, in accordance with suggestions of the Special Rapporteur. It also asked the Secretariat to request Governments to submit their comments on part II by January 1965 at the latest, so that the Commission could consider them at its seventeenth session. Moreover, while recalling its decision of 1958² that it should prepare its final draft only at the second session following that in which its first draft had been prepared, the Commission expressed the hope that the comments of Governments on part III of the law of treaties would be available to it before the commencement of its eighteenth session in 1966.

13. At the present session the Commission had before it a document, submitted by the Secretariat and dated 23 February 1965, which set out in volume I the written comments of Governments and in volume II the comments of delegates in the Sixth Committee on parts I and II of the Commission's draft articles on the law of treaties (A/CN.4/175). It also had before it four documents setting out the written comments of four further Governments received after the above-mentioned date (A/CN.4/175/Add.1-4).³ The comments of Governments and delegations in these documents contained detailed criticisms and proposals regarding the substance or wording of the draft articles. Eight other Governments, the Commission was informed, had replied stating that they did not have any observations to make at the present stage of the work on the law of treaties.

14. The Commission also had before it: (1) a report (A/5687) on "Depositary Practice in Relation to Reser-

vations", dated 29 January 1964 and submitted by the Secretary-General to the General Assembly in accordance with resolution 1452 B (XIV) and (2) certain further information and material concerning the practice of depositaries and of the Secretary-General as registering authority under Article 102 of the Charter supplied by the Secretariat in response to the request of certain members of the Commission.⁴

15. In addition, the Special Rapporteur submitted a report (A/CN.4/177 and Add. 1-2) containing: (1) a summary, article by article, of the comments of Governments and delegations on the twenty-nine articles of part I and the first three articles of part II provisionally adopted by the Commission in 1962 and 1963; and (2) proposals for the revision of the articles in the light of those comments. The Commission considered that report at its 776th-803rd, 810th-816th, 819th and 820th meetings, and re-examined the twenty-nine articles of part I. Owing to lack of time it decided to adjourn its examination of addendum II of the Special Rapporteur's report dealing with articles 30-32 of part II until its next session.

16. *Form of the draft articles.* The Commission noted that certain Governments had commented on the question of the form ultimately to be given to the draft articles and that two Governments had expressed the view that the form should be that of a "code" rather than of a "convention" on the law of treaties. This question was discussed by the Commission in 1961 and 1962 at its thirteenth and fourteenth sessions. In its report for 1962 it explained the considerations which had led it in the previous year to decide to change the scheme of its work on the law of treaties from that of a "code" to that of draft articles capable of serving as a basis for a multilateral convention:

"First, an expository code, however well formulated, cannot in the nature of things be so effective as a convention for consolidating the law: and the consolidation of the law of treaties is of particular importance at the present time when so many new States have recently become members of the international community. Secondly, the codification of the law of treaties through a multilateral convention would give all the new States the opportunity to participate directly in the formulation of the law if they so wished; and their participation in the work of codification appears to the Commission to be extremely desirable in order that the law of treaties may be placed upon the widest and most secure foundations."

The Commission, in re-examining the question at the present session, saw no reason to modify the views which it had expressed in 1962. On the contrary, it recalled that at the seventeenth session of the General Assembly the Sixth Committee had stated in its report that the great majority of representatives had approved

² Official Records of the General Assembly, Thirteenth Session, Supplement No. 9 (A/3859), paras. 60-61.

³ The Governments which submitted written comments were: Afghanistan, Australia, Austria, Burma, Canada, Czechoslovakia, Denmark, Finland, Israel, Jamaica, Japan, Luxembourg, Malaysia, Netherlands, Pakistan, Poland, Portugal, Sweden, Turkey, Uganda, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America.

⁴ See A/CN.4/SR.791, para. 61, and A/CN.4/SR.801, paras. 17-20.

the Commission's decision to give the codification of the law of treaties the form of a convention. The Commission, moreover, felt it to be its duty to aim at achieving the maximum results from the prolonged work done by it on the codification of the law of treaties. Accordingly, it reaffirmed its decision of 1961 to prepare draft articles "intended to serve as the basis for a convention". At the same time it noted that the appropriate moment for it to exercise its competence under article 23, paragraph 1, of its Statute to make recommendations to the General Assembly regarding the action to be taken concerning its draft would be when it had completed its work on the revision of the articles and submitted its final report to the General Assembly.

17. In reaffirming its decision to prepare draft articles intended to serve as a basis for a convention the Commission observed that the draft articles provisionally adopted and submitted to Governments still contained some elements of a "code"; and that, in conformity with its decision, these elements must, so far as possible, be eliminated in the course of the revision of the articles. This observation it considered to apply particularly to the articles in part I on the conclusion, entry into force and registration of treaties the revision of which was its principal task at the present session.

18. *A single draft convention.* When provisionally adopting parts I (conclusion, entry into force and registration), II (invalidity and termination) and III (application, effects, modification and interpretation), the Commission left open at its fourteenth, fifteenth and sixteenth sessions the question whether the articles should be cast in the form of a single draft convention or of a series of related conventions. At the present session, in addressing itself to the revision of the draft articles as a whole, the Commission concluded that the legal rules set out in the different parts are so far inter-related that it is desirable that they should be codified in a single convention. It considered that, while certain topics in the law of treaties may be susceptible of being dealt with separately, the proper co-ordination of the rules governing the several topics is likely to be achieved only by incorporating them in a single, closely integrated, set of articles. Accordingly, it decided that in the course of their revision the draft articles should be rearranged in the form of a single convention.

19. *Scope of the draft articles.* At its fourteenth session,⁵ the Commission reaffirmed decisions which it had previously taken in 1951 and 1959 to defer examination of treaties entered into by international organizations until it had made further progress with its draft on treaties concluded by States. At the same time, however, it recognized that international organizations may possess a certain capacity to enter into international agreements and that these agreements fall within the scope of the law of treaties. Moreover in article 1 (a) of part I it defined the term treaty, as used in the draft articles, to mean "any international agreement in written form . . . concluded between two or more States or other subjects of international law"; and in commenting upon this definition,⁶ it explained that the term "other subjects of international law" was "designed to provide for treaties concluded by (a) international organizations, (b) the Holy See which enters into treaties on the same basis as States, and (c) other

international entities, such as insurgents, which may in some circumstances enter into treaties". Again, in formulating the rules regarding capacity to conclude treaties in article 3, it included as paragraph 3 of that article a provision concerning the treaty-making capacity of international organizations.

20. The Commission at the present session noted that many of its draft articles on the law of treaties, as provisionally adopted, were formulated in terms applicable only to treaties concluded between States; and that further special study of treaties concluded by international organizations would be needed before it could be in a position to codify satisfactorily the rules applicable to this category of treaties. It considered, moreover, that its primary task at the present stage of the codification of international law was to codify the fundamental principles of the law of the treaties and that it would conduce to a greater clarity and simplicity in the statement of these principles if the draft articles were explicitly confined to treaties concluded between States. If a codifying convention covering treaties concluded between States were concluded, it would always remain possible, if found desirable, to supplement it by a further convention dealing specially with treaties concluded by international organizations. Accordingly, both for the above reasons and to give greater consistency to the structure of the draft articles, the Commission decided explicitly to limit the scope of the articles to treaties concluded between States. This decision finds expression in a new article inserted at the beginning of the draft which reads: "The present articles relate to treaties concluded between States". It also finds expression in a consequential change made in the definition of the term "treaty" as used in the draft articles and in the deletion from article 3 of the provision relating to the capacity of international organizations to conclude treaties.

21. At the same time, the Commission recognized that the principles set out in the draft articles are to a large extent relevant also in the case of treaties concluded between States and other subjects of international law and between two or more such other subjects of international law. The Commission also considered it essential to avoid any possibility that the limitation of the draft articles to treaties concluded between States might be construed as denying the legal force of such other forms of treaties or the application to them of principles set forth in the draft articles which would be applicable to them under general international law independently of the draft articles. Accordingly, it inserted in article 2 a new provision safeguarding the legal force of these forms of treaties and the application to them of relevant principles of general international law which find a place in the draft articles on treaties concluded between States.⁷

22. *Revision of the draft articles at the present session.* At the present session, as stated in paragraph 1, the Commission re-examined the twenty-nine articles of part I on the conclusion, entry into force and registration of treaties. In addition to the changes already mentioned in paragraph 19, the articles were extensively revised with the object of eliminating from them such purely descriptive elements as might be appropriate in a "code" but out of place in a convention; and, where

⁷ Article 2, as adopted in 1962, already contained an analogous provision safeguarding the legal force of international agreements not in written form; and this provision, in slightly expanded form, also appears in the new text of article 2.

⁵ *Official Records of the General Assembly, Seventeenth Session, Supplement No. 9 (A/5209)*, para. 21.

⁶ *Ibid.*, paragraph 8 of the commentary to article 1.

necessary, the articles were redrafted so as to formulate them more explicitly as rules of law. As part of this process, the Commission provisionally decided to omit article 5 dealing with the negotiation and drawing up of a treaty which it considered to be descriptive rather than stating a legal rule.

23. In its 1962 report, the Commission employed the concept of "treaties in simplified form" as a basis for formulating certain rules in article 4 (authority to negotiate, draw up, authenticate, sign, ratify etc.) and in article 12 (ratification). It was, however, suggested by certain Governments in their comments that this concept does not have sufficient precision for it to be an adequate criterion in determining the application of legal rules. The use of simplified forms for the conclusion of many types of treaties is in the opinion of the Commission a development in treaty practice which is of great importance. Nevertheless, after re-examining the question the Commission concluded that there is substance in the view that the concept of a "treaty in simplified form" lacks the degree of precision necessary for it to provide a satisfactory criterion for distinguishing between different categories of treaties in formulating the rules in articles 4 and 12. Accordingly, it decided to reformulate those articles in terms which do not call for any precise distinction to be drawn between "formal treaties" and "treaties in simplified form". In conformity with this decision the Commission further decided to delete the definition of "treaty in simplified form" from article 1, paragraph 1 (b).

24. The statement of the law regarding "ratification" contained in article 12, as drafted in 1962, depended entirely on the drawing of a distinction between "formal treaties" and "treaties in simplified form". Consequently, the Commission's decision not to employ that distinction would in any event have necessitated a reformulation of the article. In addition, the comments of governments disclosed differences of opinion, similar to those which had emerged in the Commission itself in 1962, as to whether or not there exists in the international law of today any basic residuary rule that ratification of a treaty is necessary unless a contrary intention appears. The Commission re-examined the whole question of the rules regarding signature and ratification as acts expressing consent to be bound by a treaty. Some members, as in 1962, favoured the statement of a residuary rule requiring ratification in the absence of a contrary intention. Others considered that such a rule would not reflect the actual position found in treaty practice today when so many treaties are concluded in simplified forms without ratifications being required. The Commission concluded that the question whether signature does or does not express consent to be bound or whether it is subject to ratification is essentially one of intention; and that its appropriate course was simply to set out in one article the conditions under which signature would be considered as a definitive expression of consent to be bound and in another the conditions under which consent to be bound would be expressed through ratification, acceptance or approval without stating any residuary rule in international law either in favour or against the need for ratification. It accordingly redrafted articles 11 and 12 on these lines, at the same time incorporating in article 12 the rules regarding "acceptance" and "approval" which had formed the subject of a separate article—article 14—in its 1962 report. In addition, it re-arranged the several provisions of its 1962 draft dealing with signature, initialling and signature *ad referendum* in such a manner

as to make it possible to dispense with the article. Thus, in revising the articles dealing with signature, ratification, acceptance and approval, the Commission found it possible to dispense with both articles 10 and 14 by transferring their substantive provisions to other articles.

25. A question which the Commission examined was that of participation in a treaty, which was dealt with in its 1962 report in article 8 (Participation in a treaty) and article 9 (Opening of a treaty to the participation of additional States). The comments of governments disclosed certain divergencies of view on these articles, more especially with regard to participation in general multilateral treaties. The Commission, as in 1962, was divided on this question and decided to adjourn the discussion of articles 8 and 9 together with the definition of "general multilateral treaty" in article 1 until the resumption of its session next January. Having regard to the close connexion of these articles with article 13 concerning accession to treaties, the Commission also decided to postpone its re-examination of the latter article until its January session.

26. Another question which the Commission examined was that of reservations to multilateral treaties. It noted that in their comments governments, although offering detailed criticisms of the Commission's drafts, appeared in general to endorse its proposal for the solution of this difficult problem. Accordingly, the Commission retained the substance of the articles on reservations, namely, of articles 18-22, which it had provisionally adopted in 1962. At the same time it revised and re-arranged their provisions extensively in order to simplify their formulation and to take account of suggestions made by governments.

27. The Commission, in all, adopted revised texts of twenty-five articles. In doing so, it noted that there were certain points of terminology to which it might be necessary to return in the final stage of the Commission's work in order to ensure consistency in the use of terms throughout the draft articles. It also noted that some articles might require further examination in 1966 in order to harmonize their provisions with those of later articles; and that in any event it would be necessary in 1966, in re-arranging the draft articles as a single convention, to give further consideration to the order in which the various articles should be placed. The Commission concluded that the texts of articles adopted at the present session must still be treated as subject to review at the eighteenth session when its work on the draft articles on the law of treaties will be completed.

28. Having regard to the considerations mentioned in the preceding paragraphs, the Commission did not think that any useful purpose would be served by attaching detailed commentaries to the texts in the present report. While requesting the Special Rapporteur to prepare drafts of the commentaries to accompany these articles, it preferred to postpone its consideration of the commentaries until its eighteenth session when it would have before it the final texts of all the articles to be included in the draft convention.

29. The Commission accordingly decided to confine itself in this report to the foregoing explanations of the revision of part I of the draft articles undertaken by it at the present session and to set out in the report only the revised texts of the articles. These texts, as adopted by the Commission on the proposal of the Special Rapporteur, are reproduced below.

B. Draft articles on the law of treaties

Part I

CONCLUSION, ENTRY INTO FORCE AND REGISTRATION OF TREATIES

SECTION I: GENERAL PROVISIONS

Article 0

The scope of the present articles

The present articles relate to treaties concluded between States.

Article 1

Use of terms

1. For the purposes of the present articles:

(a) "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

(b)

[Deleted by the Commission.]

(c) "General multilateral treaty"....

[Decision postponed until the Commission resumes its examination of articles 8 and 9.]

(d) "Ratification", "Accession", "Acceptance" and "Approval" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.

[Reference to "signature" deleted by the Commission.]

(e) "Full powers" means a document emanating from the competent authority of a State designating a person to represent the State for negotiating, adopting or authenticating the text of a treaty or for expressing the consent of the State to be bound by a treaty.

(f) "Reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, acceding to, accepting or approving a treaty, whereby it purports to exclude or to vary the legal effect of certain provisions of the treaty in their application to that State.

(f)(bis) "Party" means a State which has consented to be bound by a treaty and for which the treaty has come into force.

(f)(ter) "Contracting State"....

[Consideration of the use of this term and of the problem of terminology to be used in regard to States having a right to be consulted or notified with respect to acts relating to a treaty has been deferred by the Commission until a later stage of its work.]

(f)(quater) "International organization" means an inter-governmental organization.

(g)

[Deleted by the Commission.]

2.

[Decision concerning the inclusion of a provision regarding the characterization or classification of international agreements under internal law postponed.]

Article 2

Treaties and other international agreements not within the scope of the present articles

The fact that the present articles do not relate

(a) To treaties concluded between States and other subjects of international law or between such other subjects of international law; or

(b) To international agreements not in written form shall not affect the legal force of such treaties or agreements or the application to them of any of the rules set forth in the present articles to which they would be subject independently of these articles.

Article 3

Capacity of States to conclude treaties

1. Every State possesses capacity to conclude treaties.

2. States members of a federal union may possess a capacity to conclude treaties if such capacity is admitted by the federal constitution and within the limits there laid down.

Article 3 (bis)

Treaties which are constituent instruments of international organizations or which have been drawn up within international organizations

The application of the present articles to treaties which are constituent instruments of an international organization or have been drawn up within an international organization shall be subject to the rules of the organization in question.

SECTION II: CONCLUSION OF TREATIES BY STATES

Article 4

Full powers to represent the State in the negotiation and conclusion of treaties

1. Except as provided in paragraph 2, a person is considered as representing a State for the purpose of negotiating, adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty only if:

(a) He produces an appropriate instrument of full powers; or

(b) It appears from the circumstances that the intention of the States concerned was to dispense with full powers.

2. In virtue of their functions and without having to produce an instrument of full powers, the following are considered as representing their State:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

(b) Heads of diplomatic missions, for the purpose of negotiating and adopting the text of a treaty between the accrediting State and the State to which they are accredited;

(c) Representatives accredited by States to an international conference or to an organ of an international organization, for the purpose of negotiating and adopting the text of a treaty.

Article 5

Negotiation and drawing up of a treaty
[Deleted by the Commission]

Article 6

Adoption of the text

1. The adoption of the text of a treaty takes place by the unanimous agreement of the States participating in its drawing up except as provided in paragraphs 2 and 3.

2. The adoption of the text of a treaty at an international conference takes place by the vote of two-thirds of the States participating in the conference unless:

(a) By the same majority they shall decide to apply a different rule; or

(b) The established rules of an international organization apply to the proceedings of the conference and prescribe a different voting procedure.

3. The adoption of the text of a treaty by an organ of an international organization takes place in accordance with the voting procedure prescribed by the established rules of the organization in question.

Article 7

Authentication of the text

The text of a treaty is established as authentic and definitive by such procedure as may be provided for in the text or agreed upon by the States concerned and failing any such procedure by:

(a) The signature, signature *ad referendum* or initialling by the representatives of the States concerned of the text of the treaty or of the Final Act of a conference incorporating the text; or

(b) Such procedure as the established rules of an international organization may prescribe.

Article 8

Participation in a treaty

[Decision postponed by the Commission]

Article 9

The opening of a treaty to the participation of additional States

[Decision postponed by the Commission]

Article 10

Initialling and signature ad referendum as forms of signature

[Deleted by the Commission and substance incorporated in article 11]

Article 11

Consent to be bound expressed by signature

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when:

(a) The treaty provides that signature shall have that effect;

(b) It appears from the circumstances of the conclusion of the treaty that the States concerned were agreed that signature should have that effect;

(c) The intention of the State in question to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiations.

2. For the purposes of paragraph 1:

(a) The initialling of a text constitutes a signature of the treaty when it appears from the circumstances that the contracting States so agreed;

(b) The signature *ad referendum* of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

Article 12

Consent to be bound expressed by ratification, acceptance or approval

1. The consent of a State to be bound by a treaty is expressed by ratification when:

(a) The treaty or an established rule of an international organization provides for such consent to be expressed by means of ratification;

(b) It appears from the circumstances of the conclusion of the treaty that the States concerned were agreed that ratification should be required;

(c) The representative of the State in question has signed the treaty subject to ratification; or

(d) The intention of the State in question to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiations.

2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

Article 13

Accession

[Decision postponed by the Commission pending decisions on articles 8 and 9]

Article 14

Acceptance or approval

[Deleted by the Commission and substance incorporated in article 12]

Article 15

Exchange or deposit of instruments of ratification, accession, acceptance or approval

Unless the treaty otherwise provides, instruments of ratification, accession, acceptance or approval become operative:

(a) By their exchange between the contracting States;

(b) By their deposit with the depositary; or

(c) By notification to the contracting States or to the depositary, if so agreed.

Article 16

Consent relating to a part of a treaty and choice of differing provisions

1. Without prejudice to the provisions of articles 18 to 22, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.

2. The consent of a State to be bound by a treaty which permits a choice between differing provisions is effective only if it is made plain to which of the provisions the consent relates.

Article 17

Obligation of a State not to frustrate the object of a treaty prior to its entry into force

A State is obliged to refrain from acts calculated to frustrate the object of a proposed treaty when:

(a) It has agreed to enter into negotiations for the conclusion of the treaty, while the negotiations are in progress;

(b) It has signed the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty;

(c) It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

SECTION III: RESERVATIONS TO MULTILATERAL TREATIES

Article 18

Formulation of reservations

A State may, when signing, ratifying, acceding to, accepting or approving a treaty, formulate a reservation unless:

(a) The reservation is prohibited by the treaty or by the established rules of an international organization;

(b) The treaty authorizes specified reservations which do not include the reservation in question; or

(c) In cases where the treaty contains no provisions regarding reservations, the reservation is incompatible with the object and purpose of the treaty.

Article 19

Acceptance of and objection to reservations

1. A reservation expressly or impliedly authorized by the treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

2. When it appears from the limited number of the contracting States, the object and purpose of the treaty and the circumstances of its conclusion that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound, a reservation requires acceptance by all the States parties to the treaty.

3. When a treaty is a constituent instrument of an international organization, the reservation re-

quires the acceptance of the competent organ of that organization, unless the treaty otherwise provides.

4. In cases not falling under the preceding paragraphs of this article:

(a) Acceptance by another contracting State of the reservation constitutes the reserving State a party to the treaty in relation to that State if or when the treaty is in force;

(b) An objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State;

(c) An act expressing the State's consent to be bound which is subject to a reservation is effective as soon as at least one other contracting State which has expressed its own consent to be bound by the treaty has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Article 20

Procedure regarding reservations

1. A reservation, an express acceptance of a reservation, and an objection to a reservation must be formulated in writing and communicated to the other contracting States.

2. If formulated on the occasion of the adoption of the text or upon signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation. However, an objection to the reservation made previously to its confirmation does not itself require confirmation.

Article 21

Legal effects of reservations

1. A reservation established with regard to another party in accordance with articles 18, 19 and 20:

(a) Modifies for the reserving State the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) Modifies those provisions to the same extent for such other party in its relations with the reserving State.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

3. When a State objecting to a reservation agrees to consider the treaty in force between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

Article 22

Withdrawal of reservations

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides or it is otherwise agreed, the withdrawal becomes operative when notice of it has been received by the other contracting States.

SECTION IV: ENTRY INTO FORCE AND REGISTRATION

Article 23

Entry into force of treaties

1. A treaty enters into force in such manner and upon such date as it may provide or as the States which adopted its text may agree.

2. Failing any such provision or agreement, a treaty enters into force as soon as all the States which adopted its text have consented to be bound by the treaty.

3. Where a State consents to be bound after a treaty has come into force, the treaty enters into force for that State on the date when its consent becomes operative, unless the treaty otherwise provides.

Article 24

Entry into force of a treaty provisionally

1. A treaty may enter into force provisionally if:

(a) The treaty itself prescribes that it shall enter into force provisionally pending ratification, accession, acceptance or approval by the contracting States; or

(b) The contracting States have in some other manner so agreed.

2. The same rule applies to the entry into force provisionally of part of a treaty.

Article 25

Registration and publication of treaties

Treaties entered into by parties to the present articles shall as soon as possible be registered with the Secretariat of the United Nations. Their registration and publication shall be governed by the regulations adopted by the General Assembly of the United Nations.

Article 26

Correction of errors in texts or in certified copies of treaties

1. Where, after the authentication of the text of a treaty, the contracting States are agreed that it contains an error, the error shall, unless they otherwise decide, be corrected:

(a) By having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(b) By executing or exchanging a separate instrument or instruments setting out the correction which it has been agreed to make; or

(c) By executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter:

(a) Shall notify the contracting States of the error and of the proposal to correct it if no objection is raised within a specified time-limit;

(b) If on the expiry of the time-limit no objection has been raised, shall make and initial the correction in the text and shall execute a *procès-verbal* of the rectification of the text, and communicate a copy of it to the contracting States;

(c) If an objection has been raised to the proposed correction, shall communicate the objection to the other contracting States and, in the case of a treaty drawn up by an international organization, to the competent organ of the organization.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which it is agreed should be corrected.

4. (a) The corrected text replaces the defective text *ab initio*, unless the contracting States otherwise decide.

(b) The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

5. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procès-verbal* specifying the rectification and communicate a copy to the contracting States.

Article 27

The correction of errors in the texts of treaties for which there is a depositary

[Deleted by the Commission and substance incorporated in article 26]

Article 28

Depositaries of treaties

1. The depositary of a treaty, which may be a State or an international organization, shall be designated by the contracting States in the treaty or in some other manner.

2. The functions of a depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance.

Article 29

Functions of depositaries

1. The functions of a depositary, unless the treaty otherwise provides, comprise in particular:

(a) Keeping the custody of the original text of the treaty, if entrusted to it;

(b) Preparing certified copies of the original text and any further text in such additional languages as may be required by the treaty or by the established rules of an international organization, and transmitting them to the contracting States;

(c) Receiving any signatures to the treaty and any instruments and notifications relating to it;

(d) Examining whether a signature, an instrument or a reservation is in conformity with the provisions of the treaty and of the present articles and, if need be, bringing the matter to the attention of the State in question;

(e) Informing the contracting States of acts, communications and notifications relating to the treaty;

(f) Informing the contracting States when the number of signatures or of instruments of ratification, accession, acceptance or approval required for the entry into force of the treaty have been received or deposited.

(g) Performing the functions specified in other provisions of the present articles.

2. In the event of any difference appearing between a State and the depositary as to the perfor-

mance of the latter's functions, the depositary shall bring the question to the attention of the other contracting States or, where appropriate, of the competent organ of the organization concerned.

Article 29 (bis)

Communications and notifications to contracting States

Whenever it is provided by the present articles that a communication or notification shall be made to contracting States, such communication or notification shall be made:

(a) In cases where there is no depositary, directly to each of the States in question;

(b) In cases where there is a depositary, to the depositary for communication to the States in question.

Chapter III

SPECIAL MISSIONS

A. Introduction

SUMMARY OF THE COMMISSION'S PROCEEDINGS

30. At its tenth session, in 1958, the International Law Commission adopted a set of draft articles on diplomatic intercourse and immunities. The Commission observed, however, that the draft dealt only with permanent diplomatic missions. Diplomatic relations between States also assumed other forms that might be placed under the heading of "ad hoc diplomacy", covering itinerant envoys, diplomatic conferences and special missions sent to a State for limited purposes. The Commission considered that these forms of diplomacy should also be studied, in order to bring out the rules of law governing them, and requested the Special Rapporteur to make a study of the question and to submit his report at a future session.⁸ The Commission decided at its eleventh session (1959) to include the question of ad hoc diplomacy as a special topic on the agenda of its twelfth session (1960).

31. Mr. A. E. F. Sandström was appointed Special Rapporteur. He submitted his report to the twelfth session, and on the basis of this report the Commission took decisions and drew up recommendations for the rules concerning special missions.⁹ The Commission's draft was very brief. It was based on the idea that the rules on diplomatic intercourse and immunities in general prepared by the Commission should on the whole be applied to special missions by analogy. The Commission expressed the opinion that this brief draft should be referred to the Conference on Diplomatic Intercourse and Immunities convened at Vienna in the spring of 1961. But the Commission stressed that it had not been able to give this subject the thorough study it would normally have done. For that reason, the Commission regarded its draft as only a preliminary survey, carried out in order to put forward certain ideas and suggestions which should be taken into account at the Vienna Conference.¹⁰

32. At its 943rd plenary meeting on 12 December 1960, the General Assembly decided,¹¹ on the recommendation of the Sixth Committee, that these draft articles should be referred to the Vienna Conference with the recommendation that the Conference should consider them together with the draft articles on diplomatic intercourse and immunities. The Vienna Conference placed this question on its agenda and appointed a special Sub-Committee to study it.¹²

33. The Sub-Committee noted that these draft articles did little more than indicate which of the rules

on permanent missions applied to special missions and which did not. The Sub-Committee took the view that the draft articles were unsuitable for inclusion in the final convention without long and detailed study which could take place only after a set of rules on permanent missions had been finally adopted. For this reason, the Sub-Committee recommended that the Conference should refer this question back to the General Assembly so that the Assembly could recommend to the International Law Commission further study of the topic, i.e., that it continue to study the topic in the light of the Vienna Convention on Diplomatic Relations which was then drawn up. At its fourth plenary meeting, on 10 April 1961, the Conference adopted the Sub-Committee's recommendation.¹³

34. The matter was again submitted to the General Assembly. On 18 December 1961, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 1687 (XVI), in which it requested the International Law Commission to study the subject further and to report thereon to the General Assembly.

35. At its fourteenth session, the Commission decided to place the question of special missions on the agenda of its fifteenth session, and requested the Secretariat to prepare a working paper¹⁴ on the subject.¹⁵

36. During its fifteenth session, at the 712th meeting, the Commission appointed Mr. Milan Bartoš as Special Rapporteur for the topic of special missions.¹⁶

37. On that occasion, the Commission took the following decision:

"With regard to the approach to the codification of the topic, the Commission decided that the Special Rapporteur should prepare a draft of articles. These articles should be based on the provisions of the Vienna Convention on Diplomatic Relations, 1961, but the Special Rapporteur should keep in mind that special missions are, both by virtue of their functions and by their nature, an institution distinct from permanent missions. In addition, the Commission thought that the time was not yet ripe for deciding whether the draft articles on special missions should be in the form of an additional protocol to the Vienna Convention, 1961, or should be embodied in a separate convention or in any other appropriate form, and that the Commission should await the Special Rapporteur's recommendations on that subject."¹⁷

38. In addition, at the same session, the Commission considered again whether the study of special missions should also cover the status of government delegates to

⁸ Official Records of the General Assembly, Thirteenth Session, Supplement No. 9 (A/3859), para. 51.

⁹ Yearbook of the International Law Commission, 1960, vol. II, pp. 179 and 180.

¹⁰ Ibid., p. 179, para. 37.

¹¹ Resolution 1504 (XV).

¹² The Sub-Committee was composed of the representatives of Ecuador, Iraq, Italy, Japan, Senegal, the USSR, the United Kingdom, the United States of America and Yugoslavia.

¹³ Yearbook of the International Law Commission, 1963; vol. II, document A/CN.4/155, paras. 44-45.

¹⁴ A/CN.4/155 (see footnote 13 above).

¹⁵ Official Records of the General Assembly, Seventeenth Session, Supplement No. 9 (A/5209), para. 76.

¹⁶ Ibid., Eighteenth Session, Supplement No. 9 (A/5509), para. 65.

¹⁷ Ibid., para. 64.

congresses and conferences, and it inserted the following paragraph in its annual report to the General Assembly:

"With regard to the scope of the topic, the members agreed that the topic of special missions should also cover itinerant envoys, in accordance with its decision at its 1960 session.¹⁸ At that session the Commission had also decided¹⁹ not to deal with the privileges and immunities of delegates to congresses and conferences as part of the study of special missions, because the topic of diplomatic conferences was connected with that of relations between States and inter-governmental organizations. At the present session, the question was raised again, with particular reference to conferences convened by States. Most of the members expressed the opinion, however, that for the time being the terms of reference of the Special Rapporteur should not cover the question of delegates to congresses and conferences."²⁰

39. The Special Rapporteur submitted his report²¹ and the Commission, at its sixteenth session, considered it twice. First, at the 723rd, 724th and 725th meetings, it engaged in a general discussion and gave the Special Rapporteur general instructions on continuing his study and submitting a second report at the following session. Secondly, at the 757th, 758th, 760th-763rd and 768th-770th meetings, it examined a number of draft articles and adopted sixteen articles which were included in its report to the General Assembly on the work of its sixteenth session, and were to be supplemented, if necessary, during its seventeenth session. It decided that these articles would be submitted to the General Assembly and to the Governments of Member States for information.

40. Owing to the circumstances prevailing at the time of its regular session in 1964, the General Assembly did not discuss the report and consequently did not express its opinion to the Commission. Accordingly, the Commission had to resume its work on the topic at the point it had reached at its sixteenth session in 1964.

41. The topic of special missions was placed on the agenda of the Commission's seventeenth session, at which the Special Rapporteur submitted his second report on the subject.²² The Commission considered that report at its 804th, 809th, 817th, 819th and 820th meetings.

42. The Commission considered all the articles proposed in the Special Rapporteur's second report. It adopted 28 articles of the draft, which follow on from the sixteen articles adopted at the sixteenth session. The Commission requested that the General Assembly should consider all the articles adopted at the sixteenth and seventeenth sessions as a single draft.

43. In preparing the draft articles, the Commission has sought to codify the modern rules of international law concerning special missions, and the articles formulated by the Commission contain elements of progressive development as well as of codification of the law.

44. In conformity with articles 16 and 21 of its Statute, the Commission decided to communicate its

¹⁸ *Yearbook of the International Law Commission, 1960*, vol. I, 565th meeting, para. 26.

¹⁹ *Ibid.*, para. 25.

²⁰ *Official Records of the General Assembly, Eighteenth Session, Supplement No. 9 (A/5509)*, para. 63.

²¹ A/CN.4/166.

²² A/CN.4/179.

draft articles on special missions to the Governments through the Secretary-General, inviting their comments. The Governments are asked to submit their comments by 1 May 1966. This short time-limit is regarded as essential if the Commission is to finish its preparation of the final draft on special missions with its present membership.

45. The Commission decided to submit to the General Assembly and to the Government of Member States, in addition to the draft articles in section B of this chapter, certain other decisions, suggestions and observations (set forth in section C) on which the Commission requests any comments likely to facilitate its subsequent work.

B. Draft articles on special missions²³

Part I

GENERAL RULES²⁴

Article 1²⁵

The sending of special missions

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

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

Commentary

(1) Article 1 of the draft on special missions differs from the provisions of the Vienna Convention on Diplomatic Relations. The difference is due to the fact that the tasks and duration of special missions differ from those of regular missions.

(2) A special mission must possess the following characteristics:

(a) It must be sent by a State to another State. Special missions cannot be considered to include missions sent by political movements to establish contact with a particular State, or missions sent by States to establish contact with a movement. In the case of insurrection or civil war, however, any such movements which have been recognized as belligerents and have become subjects of international law have the capacity to send and receive special missions. The same concept will be found in the Vienna Convention on Diplomatic Relations (article 3, paragraph 1 (a)).

(b) It must not be in the nature of a mission responsible for maintaining general diplomatic relations between the States; its task must be precisely defined. But the fact that a task is defined does not mean

²³ Articles 1-16 were adopted by the Commission at its sixteenth session (1964) on the basis of the Special Rapporteur's first report (A/CN.4/166). Articles 16-36 of that report were not discussed by the Commission and were replaced by articles 17-40 of the Special Rapporteur's second report (A/CN.4/179) which was discussed by the Commission at its seventeenth session and formed the basis of articles 17-44 of these draft articles.

²⁴ Title adopted at the 819th meeting.

²⁵ Introduced as article 1 of Special Rapporteur's first report (A/CN.4/166). Discussed at the 757th and 758th meetings of the Commission. Drafting Committee's text discussed and adopted at the 768th meeting. Commentary adopted at the 772nd meeting. The Commission decided that this article would be preceded by a definitions article.

that its scope is severely limited; in practice, some special missions are given far-reaching tasks of a general nature, including the review of relations between the States concerned and even the formulation of the general policy to be followed in their relations. But the task of a special mission is in any case specified and it differs from the functions of a permanent diplomatic mission, which acts as a general representative of the sending State (article 3, paragraph 1 (a) of the Vienna Convention on Diplomatic Relations). In the Commission's view, the specified task of a special mission should be to represent the sending State in political or technical matters.

(c) A State is not obliged to receive a special mission from another State unless it has undertaken in advance to do so. Here, the draft follows the principle set out in article 2 of the Vienna Convention, but the Commission points out that the way in which consent is expressed to the sending of a permanent diplomatic mission differs from that used in connexion with the sending of a special mission. In the case of a special mission, consent usually takes a more flexible form. In practice, such an undertaking is generally given only by informal agreement; less frequently, it is given by formal treaty providing that a specific task will be entrusted to the special mission; one characteristic of a special mission, therefore, is that consent for it must have been given in advance for a specific purpose.

(d) It is of a temporary nature. Its temporary nature may be established either by the term fixed for the duration of the mission or by its being given a specific task, the mission usually being terminated either on the expiry of its term or on the completion of its task.²⁶ Regular diplomatic missions are not of this temporary nature, since they are permanent (article 2 of the Vienna Convention on Diplomatic Relations). However, a permanent specialized mission which has a specific sphere of competence and may exist side by side with the regular permanent diplomatic mission is not a special mission and does not possess the characteristics of a special mission. Example of permanent specialized missions are the United States missions for economic co-operation and assistance to certain countries, the Australian immigration missions, the industrial co-operation missions of the socialist countries, and commercial missions or delegations which are of a diplomatic nature, etc.

(3) The sending and reception of special missions may—and most frequently does—occur between States which maintain regular diplomatic or consular relations with each other, but the existence of such relations is not an essential pre-requisite. Where such relations do exist and the regular diplomatic mission is functioning, the special mission's particular task may be one which would have been within the competence of the ordinary mission if there had been no special mission. During the existence of the special mission, however, States are entitled to conduct through the special mission relations which are within the competence of the general mission. The Commission deemed it advisable to stress that the existence of diplomatic or consular relations between the States in question is not a pre-requisite for the sending and reception of special missions. The Commission considered that special missions can be even more useful where such relations do not exist. The question whether special missions can be used between States or Governments which do not recognize each other was also raised. The Commission considered

that, even in those cases, special missions could be helpful in improving relations between States, but it did not consider it necessary to add a clause to that effect to article 1.

(4) The manner in which the agreement for sending and receiving a special mission is concluded is a separate question. In practice, there are a number of ways of doing so, namely:

(a) An informal diplomatic agreement providing that a special mission will be sent and received;

(b) A formal treaty providing that certain questions will be discussed and settled through a special mission;

(c) An offer by one State to send a special mission for a specific purpose, and the acceptance, even tacit, of such a mission by the other State;

(d) An invitation from one party to the other to send a special mission for a specific purpose, and the acceptance of the invitation by the other party.

(5) Where regular diplomatic relations are not in existence between the States concerned—whether because such relations have been broken off or because armed hostilities are in progress between the States—the sending and reception of special missions are subject to the same rules cited above. Experience shows that special missions are often used for the settlement of preliminary questions with a view to the establishment of regular diplomatic relations.

(6) The fact that a special mission is sent and received does not mean that both States must entrust the settlement of the problem in question to special missions appointed by the two parties. Negotiations with a delegation sent by a State for a specific purpose may also be conducted by the regular organs of the receiving State without a special mission being appointed. Both these practices are considered to be usual, and in the second case the special mission acts on the one side and the Ministry (or some other permanent organ) on the other. The Commission did not deem it necessary to refer to this concept in the text.

(7) Cases also arise in practice in which a specific delegation, composed of the head or of members of the regular permanent diplomatic mission accredited to the country in which the negotiations are taking place, appears in the capacity of a special mission. Practice provides no clear-cut answer to the question whether this is a special mission in the proper sense or an activity of the permanent mission.

Article 2²⁷

The task of a special mission

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

Commentary

(1) The text of this article differs from the corresponding article (article 4) of the Vienna Convention on Diplomatic Relations.

(2) The scope and content of the task of a special mission are determined by mutual consent. Such consent may be expressed by any of the means indicated in paragraph (4) of the commentary on article 1. In practice, however, the agreement to the sending and

²⁷ Introduced as article 2 of Special Rapporteur's first report (A/CN.4/166). Discussed at the 758th meeting of the Commission. Drafting Committee's text discussed and adopted at the 768th meeting. Commentary adopted at the 772nd meeting.

²⁶ See article 12.

reception of special missions is usually of an informal nature, often merely stating the purpose of the mission. In most cases, the exact scope of the task becomes clear only during the negotiations, and it frequently depends on the full powers or the authority conferred on the representatives of the negotiating parties.

(3) Diplomatic history records a number of cases where special missions have exceeded the task for which they were sent and received. The customary comment is that this is done to take advantage of the opportunity, and that any good diplomat makes use of such opportunities. There are also a number of cases showing that special missions for ceremonial and formal purposes have taken advantage of propitious circumstances to conduct negotiations on other matters. The limits of the capacity of a special mission to transact business are normally determined by full powers, given in good and due form, but in practice the legal validity of acts by special missions which exceed the missions' powers often depends upon their acceptance by the respective governments. Though the Commission considered this question to be of importance to the stability of relations between States, it did not deem it necessary to propose an article dealing with it and considered that its solution was closely related to section II (Conclusion of treaties by States) of part I of the draft articles on the law of treaties.²⁸

(4) The tasks of a special mission are sometimes determined by a prior treaty. In this case, the special mission's task and the extent of its powers depend on the treaty. This is so, for instance, in the case of commissions appointed to draw up trading plans for a specific period under a trade treaty. However, these cases must be regarded as exceptional. In most cases, on the contrary, the task is determined by informal, *ad hoc* mutual agreement.

(5) In connexion with the task and the extent of the powers of a special mission, the question also arises whether its existence encroaches upon the competence of the regular diplomatic mission of the sending State accredited to the other party. It is generally agreed that the permanent mission retains its competence, even during the existence of the special mission, to transmit to the other contracting party, to which it is accredited, communications from its Government concerning, *inter alia*, the limit of the special mission's powers and, if need be, the complete or partial revocation of the full powers given to it or the decision to break off or suspend the negotiations; but all such actions can apply only to future acts of the special mission. The question of the parallel existence of permanent and special missions, and the problem of overlapping authority, are of considerable importance for the validity of acts performed by special missions. Some members of the Commission held that, during the existence of the special mission, its task is assumed to be excluded from the competence of the permanent diplomatic mission. The Commission decided to draw the attention of Governments to this point and to ask them to decide whether or not a rule on the matter should be included in the final text of the articles, and if so to what effect.

(6) If the special mission's activity or existence comes to an end, the full competence of the permanent diplomatic mission is usually restored, even with respect to matters relating to the special mission's task, except

in cases where special missions have been given exclusive competence, by treaty, to regulate relations in respect of certain matters between the States concerned.

Article 3²⁹

Appointment of the head and members of the special mission or of members of its staff

Except as otherwise agreed, the sending State may freely appoint the head of the special mission and its members as well as its staff. Such appointments do not require the prior consent of the receiving State.

Commentary

(1) In regard to the head of the special mission, the text of article 3 differs from the rule in article 4 of the Vienna Convention on Diplomatic Relations. Whereas the head of a permanent diplomatic mission must receive the *agrément* of the receiving State, as a general rule no *agrément* is required for the appointment of the head of a special mission. In regard to the members and staff of the special mission, article 3 is based on the idea expressed in the first sentence of article 7 of the Vienna Convention on Diplomatic Relations: that the sending State may freely appoint them.

(2) The Commission notes that, in State practice, consent to the sending and receiving of a special mission does not ordinarily imply acceptance of its head, members or staff. The Commission does not share the view that the declaration of acceptance of the persons forming the special mission should be included in the actual agreement to receive the mission; it considered that consent to receive a special mission and consent to the persons forming it are two distinct matters.³⁰

(3) The proposition that no *agrément* or prior consent shall be required for the head, members or staff of a special mission in no way infringes the sovereign rights of the receiving State. Its sovereign rights and interests are safeguarded by article 4 (persons declared *non grata* or not acceptable).

(4) In practice, there are several ways in which, in the absence of prior agreement, the receiving State can limit the sending State's freedom of choice. The following instances may be quoted:

(a) Consent can be given in the form of a visa issued in response to a request from the sending State indicating the purpose of the journey, or in the form of acceptance of the notice of the arrival of a specific person on a special mission.

(b) The receiving State can express its wishes with regard to the level of the delegations.

(c) In practice the formal or informal agreement concerning the sending and reception of a special mission sometimes includes a clause specifically designating the person or persons who will form the special mission. In this case the sending State cannot make any changes in the composition of the special mission without the prior consent of the State to which it is being sent. In practice all that is done is to send notice of the change in good time, and in the absence of any reaction, the other party is presumed to have accepted the notice without any reservation.

²⁹ Introduced as article 3 of Special Rapporteur's first report (A/CN.4/166). Discussed at the 760th meeting of the Commission. Drafting Committee's text discussed and adopted at the 768th meeting. Commentary adopted at the 773rd meeting.

³⁰ For the contrary view, see *Yearbook of the International Law Commission, 1960*, vol. II, pp. 112-117.

²⁸ *Official Records of the General Assembly, Seventeenth Session, Supplement No. 9 (A/5209)*, articles 4 and 5 (pp. 7-9).

(5) In some cases, although less frequently, it is stipulated in a prior agreement that the receiving State must give its consent. This occurs primarily where important and delicate subjects are to be dealt with through the special mission, and especially in cases where the head of the mission and its members must be eminent politicians.

(6) The question arises whether the receiving State is recognized as having the right to make acceptance of the person appointed conditional upon its own consent. In this case it sometimes happens that the State which raises the objection asks to be consulted on the selection of the person. Its refusal does not mean that it considers the person proposed *persona non grata*, being of an objective and procedural rather than a personal nature, although it is difficult to separate these two aspects in practice. The Commission considers that this is not the general practice and that provision for such a situation should be made in a special agreement.

(7) The head of the special mission and its members are not in practice designated by name in the prior agreement, but in certain cases an indication is given of the qualifications they should possess. This applies either to meetings at a specific level (e.g., meetings of Ministers for Foreign Affairs or of other eminent persons) or to missions which must be composed of specially qualified experts (e.g., meetings of hydraulic engineers or other experts). In such cases, the special mission is regularly composed if its head and its members possess certain qualifications or hold certain posts, and thus the sending State is subject to certain restrictions with respect to the selection and the composition of its special mission. Even though this is a widespread practice, the Commission considered that there was no need to include a rule to that effect in article 3, but that the situation was already covered by the proviso "except as otherwise agreed".

(8) The Commission also took into consideration the practice whereby certain States (by analogy with the provision contained in the last sentence of article 7 of the Vienna Convention on Diplomatic Relations) require prior consent in the case of members of the armed forces and persons of similar standing. The Commission considers that this rule is out of date and not universally applied.

Article 4⁸¹

Persons declared non grata or not acceptable

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

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

Commentary

(1) The text of article 4 follows article 9 of the Vienna Convention on Diplomatic Relations.

⁸¹ Introduced as article 4 of Special Rapporteur's first report (A/CN.4/166). Discussed at the 760th meeting of the Commission. Drafting Committee's text discussed and adopted at the 768th meeting. Commentary adopted at the 773rd meeting.

(2) Whether or not the receiving State has accepted the mission, it unquestionably has the right to declare the head or a member of a special mission or a member of the mission's staff *persona non grata* or not acceptable at any time. It is not obliged to state its reasons for this decision.⁸²

(3) It may be added that, in practice, a person is seldom declared *persona non grata* or not acceptable if the receiving State has already signified its acceptance of a particular person; but the majority of the Commission takes the view that even in that case the receiving State is entitled to make such a declaration. Nevertheless, the receiving State very rarely takes advantage of this prerogative; but in practice it may sometimes inform the sending State, through the regular diplomatic channel, that the head or a certain member of the special mission, even though consent has already been given to his appointment, represents an obstacle to the fulfilment of the mission's task.

(4) In practice, the right of the receiving State to declare the head or a member of the special mission *persona non grata* or not acceptable is not often exercised inasmuch as such missions are of short duration and have specific tasks. Nevertheless, instances do occur. In one case, the head of a special mission sent the minister of the receiving State a letter considered offensive by that State, which therefore announced that it would have no further relations with the writer. As a result, the activities of the special mission were virtually paralysed, and the sending State was obliged to recall the head of the special mission and to replace him.

(5) Where the meetings with the special mission are to be held at a specific level, or where the head or the members of the mission are required to possess certain specific qualifications and no other person in the sending State possesses such qualifications, it must be presumed that in practice the person concerned cannot be declared *persona non grata* or not acceptable, and that the only course is to break off the conversations, since the sending State is not in a position to choose among several persons with the necessary qualifications. The receiving State cannot, for instance, ask the sending State to change its Minister for Foreign Affairs because he is regarded as *persona non grata*, for that would constitute interference in the domestic affairs of the sending State. Nevertheless, it is under no obligation to enter into contact with an undesirable person, if it considers that refusal to do so is more advantageous to it than the actual contact with the other State. This, however, is not a juridical question, and the Commission therefore decided not to deal with this situation or to regulate it in the text of the article.

Article 5⁸³

Sending the same special mission to more than one State

A State may send the same special mission to more than one State. In that case the sending State shall give the States concerned prior notice of the

⁸² This was also the opinion of the International Law Commission in 1960. See *Yearbook of the International Law Commission, 1960*, vol. II, pp. 112-115 and p. 180.

⁸³ Introduced as article 5 of Special Rapporteur's first report (A/CN.4/166). Discussed at the 761st meeting of the Commission. Drafting Committee's text discussed and adopted at the 768th meeting. Commentary adopted at the 773rd meeting.

sending of that mission. Each of those States may refuse to receive such a mission.

Commentary

(1) There is no corresponding provision in the Vienna Convention on Diplomatic Relations.

(2) The International Law Commission scarcely considered this question in 1960, and it has been given scant attention in the literature. At that time the majority of the Commission took the view that it was completely unnecessary to make provision for the matter, and the previous Special Rapporteur, Mr. Sandström, believed that the question did not arise at all.⁸⁴ Mr. Jiménez de Aréchaga, however, expressed the view on that occasion that the situation envisaged was by no means unusual. He pointed out that special missions were sent to a number of neighbouring States when changes of government took place in the sending States and on ceremonial occasions.⁸⁵ Subsequently studies have shown that cases of special missions being sent to more than one State occur in practice.

(3) Observations of practice indicate that there are two cases in which the problem of the appointment of a special mission to more than one State clearly arises. They are the following:

(a) Where the same special mission, with the same membership and the same task, is sent to several States, which are usually neighbours or situated in the same geographical region. In the case of political missions (e.g., goodwill missions), there have been instances of States refusing to enter into contact with a mission appointed to several other States with which they did not enjoy good relations. Thus the question is not simply one of relations between the sending and receiving States, but also of relations between the States to which the special mission is sent. Although this raises a political issue, it is tantamount, from the juridical standpoint, to a proviso that where special missions are sent to more than one State, simultaneously or successively, consent must be obtained from each of the States concerned.

(b) Although, according to the strict rule, a special mission is appointed individually, either simultaneously or successively, to each of the States with which contacts are desired, certain exceptions arise in practice. One custom is that known as circular appointment, which—rightly, in the view of the Commission—is considered discourteous by experts in diplomatic protocol. In this case a special mission or an itinerant envoy is given full powers to visit more than one country, or a circular note is sent to more than one State informing them of the intention to send a special mission of this kind. If the special mission is an important one, the general practice is to lodge a protest against this breach of courtesy. If the special mission is sent to obtain information regarding future technical negotiations, the matter is usually overlooked, although it may be observed that such special missions are placed on the level of a commercial traveller with general powers of agency. A distinction must be made between this practice of so-called circular appointment and the case of a special mission authorized to conduct negotiations for the conclusion of a multilateral convention which is not of general concern. In this case its full powers may consist of a single document accrediting it to all the States

with which the convention is to be concluded (e.g., the Bulgarian-Greek-Yugoslav negotiations for a settlement of certain questions connected with their common frontier).

(4) It should also be mentioned that, in practice, a special mission of the kind referred to in paragraph 3 (a) above, having been accepted in principle, sometimes finds itself in the position of being requested, because of the position it has adopted during its contacts with the representatives of the first State visited, to make no contact with another specific State to which it is being sent. This occurs particularly in cases where it is announced that the special mission has granted the first State certain advantages which are contrary to the interests of the second State. The latter may consider that the matter to be dealt with has been prejudged, and may announce that the special mission which it had already accepted has become pointless. This is not the same as declaring the head and members of the mission *persona non grata*, since in this case the refusal to accept them is based not on their subjective qualities but on the objective political situation created by the special mission's actions and the position taken by the sending State. It is, as it were, a restriction of diplomatic relations expressed solely in the revocation of the consent of the receiving State to accept the special mission. This clearly demonstrates the delicacy of the situation created by the practice of sending the same special mission to more than one State.

(5) The Commission found that in this case the sending State is required to give prior notice to the States concerned of its intention to send such a special mission to more than one State. This prior notice is needed in order to inform the States concerned in due time not only of the task of a special mission but also of its itinerary. This information is deemed necessary in order to enable the States concerned to decide in advance whether they will receive the proposed special mission. The Commission stressed that it was essential that the States so notified should be entitled only to state their position on the receivability of the special mission, and not to request that such a mission should not be sent to another State as well.

Article 6³⁶

Composition of the special mission

1. The special mission may consist of a single representative or of a delegation composed of a head and other members.

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

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

Commentary

(1) The text of article 6, paragraphs (2) and (3), adopted by the Commission is based on article 1 (c)

³⁶ Introduced as article 6, paragraph (1) and (4) of Special Rapporteur's first report (A/CN.4/166). Discussed at the 761st meeting of the Commission. Drafting Committee's text discussed and adopted at the 768th meeting. Commentary adopted at the 773rd meeting.

⁸⁴ *Yearbook of the International Law Commission, 1960*, vol. II, p. 109 and p. 180.

⁸⁵ *Ibid.*, p. 116.

and article 11, paragraph 1, of the Vienna Convention on Diplomatic Relations. The text of paragraph 1 of article 6 reflects the special features of the institution of special missions.

(2) In practice, a special mission may be composed of only one member or of several members. If the special mission is entrusted to only one member, the latter is then a special delegate, described by the Commission in article 6 as a "representative". If it has two members, the sending State decides which of the two will be the head or first delegate. If the special mission consists of three or more members, the rule observed in practice is that a head of the mission (chairman of the delegation) should be designated.

(3) Precedence within the delegation is fixed, according to general practice, by the sending State, and is communicated to the receiving State or published in the manner normally adopted with respect to multi-lateral meetings. Neither the rank of the delegates according to the protocol of the sending State nor the title or function of the individual delegates authorizes *ex jure* any automatic change in the order of precedence established in the list communicated, without subsequent communication of an official rectification to the receiving State. However, according to international custom, a member of the Government takes precedence over other officials, and the head of delegation must not have lower diplomatic rank than the members of the delegation; but, as this custom is not observed in all cases and is not regarded as obligatory, it is not reflected in the text.

(4) In practice a special mission may include, in addition to the head, his deputy, the other titular members and their deputies. The Commission considered that the composition of the special mission and the titles of its members were a matter exclusively within the competence of the sending State and that in the absence of an agreement on it by the parties it was not governed by any international rule. Accordingly, the Commission did not think it necessary to include a rule on it in the article.

(5) Whether a special mission is composed of a single representative or of a delegation, it may be accompanied by the necessary staff. The Commission accepted the designation of the staff set out in article 1 (c) of the Vienna Convention on Diplomatic Relations, but pointed out that the staff of special missions often includes specific categories such as advisers and experts. The Commission considered that these were included in the category of diplomatic staff.

(6) In practice, even in special missions the problem of limiting the size of the mission arises. The rule relating to permanent missions is contained in article 11 of the Vienna Convention on Diplomatic Relations and the text of article 6, paragraph 3, proposed by the Commission is based on that rule.

(7) With regard to the limitation of the size of the special mission, attention should be drawn not only to the general rule, but also to certain particular cases which occur in practice. On this point:

(a) It is customary for the receiving State to notify the sending State that it wishes the size of the mission to be restricted because, for example, the housing, transport and other facilities it can offer are limited.

(b) Less frequently, in practice, the agreement on the establishment or reception of the special mission limits the size of the mission; in some cases the agreement specifies a minimum number of members (joint

meetings) and even calls for a mission specifically composed of members having stated qualifications (generally according to the problems to be treated).

(c) With respect to the size of the mission, attention should also be drawn to the practice of "balancing rank". It is customary, during preliminary conversations and negotiations on the sending and receiving of a mission, to designate the rank and status of the head and members of the special mission, so that the other party may act accordingly and thus avoid any disparity, for if representatives were received by a person of lower rank than their own, it might be considered an affront to their country. This, however, is a question of protocol rather than of law.

Article 7⁸⁷

Authority to act on behalf of the special mission

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

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

Commentary

(1) Article 7 is not derived directly from the Vienna Convention on Diplomatic Relations. Its text was drawn up on the basis of contemporary international practice.

(2) The main question from the legal point of view is to determine the rules concerning authority to act on behalf of the special mission. Only the head of a special mission is normally authorized to act on behalf of the special mission and to address communications to the receiving State. The Commission laid stress on the word "normally", as the parties may also make provision for other persons than its head to act on behalf of a special mission. These other possibilities are, however, exceptional.⁸⁸

(3) *Head of the special mission.* As explained in the commentary on the preceding article, if the mission is composed of three or more members, it must as a general rule have a head. If it is composed of only two members, the sending State decides whether one shall bear the title of first delegate or head of the special mission. Whether he is called first delegate or head of mission, he will be regarded as the head of the special mission by the receiving State, which will communicate with him and receive from him statements on behalf of the special mission. For this reason, the question of the existence of a head of mission is one of great importance, notwithstanding the fact that the International Law Commission did not deal with it in 1960. Mr. Jiménez de Aréchaga, on the other hand, considers that in practice a special mission has a head, but he does

⁸⁷ Introduced as article 6, paragraphs (2) and (3) of Special Rapporteur's first report (A/CN.4/166). Discussed at the 761st meeting of the Commission. Drafting Committee's text, numbered 6A, discussed and adopted at the 768th meeting. Commentary adopted at the 773rd meeting.

⁸⁸ See paragraphs 4-11 of this commentary.

not go further into the question.³⁰ In the Commission's opinion, as expressed at its sixteenth session, the matter of the appointment of a head of the special mission is important from the legal standpoint.

(4) In article 7, paragraph 1, the Commission established a mere presumption that the head of the special mission is the person who gives any authorizations that may be required, but the sending State may in addition authorize the other members of the special mission to act on its behalf by giving them full powers. There are in practice instances of special missions whose members are delegates with equal rights under collective letters of credence for performing the tasks assigned to the special mission. Practice is not, however, uniform. Some States hold that the person mentioned first in the letters of credence issued to the special mission is its head. Others, particularly States which send delegations, claim equal rights for all members of such delegations. A common example is a mission composed of several members of a coalition government or of members of parliament representing various political groups. The advocates of the *in corpore* concept of equal rank argue that the composition of the delegation is a manifestation of the common outlook and the equal standing of the members of the delegation. The practice is not uniform.

(5) There are also instances in practice where the right to act on behalf of a special mission is held to vest only in some of its members who possess a collective authority (for the head and certain members of the mission to act collectively on its behalf) or a subsidiary authority (for a member of a mission to act on its behalf if the head of the mission is unable to perform his functions or if he authorizes him to do so). The Commission considers that these are exceptional cases falling outside normal practice and are determined by the practice of the sending State. It considered that there was no need to include rules covering such cases in the body of the article.

(6) The Commission did not cover in article 7, paragraph 1, the problem of the limits of the authority given to special missions. That is a question governed by the general rules.

(7) *Deputy head of special mission.* In speaking of the composition of the special mission, it was said that sometimes a deputy head of mission was also appointed. The deputy's function is indicated by the fact that he is designated by the organ of the sending State which also appointed the head of the special mission, and that as a general rule the deputy head (who in practice is often called the vice-chairman of the delegation) acts without special appointment as head of the special mission whenever and wherever the head of mission is absent, unable to carry out his functions or recalled (in the last case, until the appointment of a new head has been notified to the other party). From the international standpoint, the rank of the deputy head in the special mission is considered to be next below that of the head of the mission. However, the deputy head does not take precedence of the members of the missions of other States with which his delegation enters into contact. His status as deputy head is effective only when he acts as head. The position of the deputy head of a special mission is referred to in article 7, paragraph 2.

(8) From the technical standpoint, a member of the special mission whom the head of the mission him-

self has designated as his deputy (i.e., the administrator of the mission) is not in practice regarded as the deputy head. The Commission did not, however, differentiate between these two classes of deputy head; it regarded them both as having the same status.

(9) *Chargé d'affaires ad interim of a special mission.* Very frequently the special mission arrives without its head or deputy head, that is to say, before them, since contact must be established and affairs conducted before their arrival. There may also be occasions when both its head and deputy head are absent during the course of its activities. In this case, a member of the mission provisionally assumes the duties of head of mission, acting on behalf of the head if the latter has so provided. The International Law Commission did not study this problem in 1960 and did not suggest that the rules of diplomatic law relating to *chargés d'affaires ad interim* should apply, in this connexion, to special missions.⁴⁰

(10) When a member of the mission is designated as *chargé d'affaires ad interim*, the rule in practice is for the appointment of the person to be entrusted with this function to be notified by the regular diplomatic mission of the sending State. This often occurs if the head of the mission is recalled "tacitly", if he leaves his post suddenly (as frequently happens when he returns to his country to get new instructions and remains there for some time) or if the mission arrives at its destination without its head and without his having given authorization in writing to the presumptive *chargé d'affaires*. The Commission regarded the position of such a person as comparable to that of an acting deputy and it provided that authority for him to carry out his duties could be given either by the sending State or by the head of the special mission.

(11) In the case of special missions dealing with a complex task, certain members of the special mission or of its staff are in practice given power to carry out specific acts on behalf of the special mission. The Commission considered this practice to be important from the legal point of view and it included a rule on the subject in the text (paragraph 2, *in fine*).

(12) The Commission takes the view that the rules applicable to the head of the special mission also apply to a single delegate, described in the text of article 6 as the "representative".

Article 8⁴¹

Notification

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

(a) The composition of the special mission and of its staff, and any subsequent changes;

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

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

(d) The engagement and discharge of persons residing in the receiving State as members of the

⁴⁰ *Ibid.*, pp. 110 and 179-180. Mr. Sandström, the Special Rapporteur, was even of the opinion that this had no bearing on special missions.

⁴¹ Introduced as article 7 of Special Rapporteur's first report (A/CN.4/166). Discussed at the 762nd meeting of the Commission. Drafting Committee's text discussed and adopted at the 768th meeting. Commentary adopted at the 773rd meeting.

³⁰ *Yearbook of the International Law Commission, 1960*, vol. II, pp. 116 and 179-180.

mission or as private servants of the head or of a member of the mission or of a member of the mission's staff.

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

Commentary

(1) Article 8 is modelled on article 10, paragraph 1, of the Vienna Convention on Diplomatic Relations, with the changes required by the special features of the institution of special missions.

(2) In the case of special missions, too, the question arises to what extent the sending State is obliged to notify the composition of the special mission and the arrival and departure of its head, members and staff. As early as 1960, the International Law Commission adopted the position that in this respect the general rules on notification relating to permanent diplomatic missions are valid for special missions.⁴²

(3) In practice, however, the notification is not identical with that effected in the case of permanent diplomatic missions. In the first place, notification of the composition of a special mission usually takes place in two stages. The first is the preliminary notice, i.e., an announcement of arrival. This preliminary notice of the composition of the special mission should contain brief information concerning the persons arriving in the special mission and should be remitted in good time, so that the competent authorities of the receiving State (and the persons who, on its behalf, will maintain contact) are kept informed. The preliminary notice may in practice be remitted to the Ministry of Foreign Affairs of the receiving State or to its permanent diplomatic mission in the sending State. The second stage is the regular notification given through the diplomatic channel, i.e., through the permanent mission in the receiving State (in practice, the special mission itself gives this notification directly only if the sending State has no permanent mission in the receiving State and there is no mission there of a third State to which the sending State has entrusted the protection of its interests). The Commission has not indicated these two stages of notification in the text, but has merely laid down the duty of the sending State to give the notification.

(4) Consequently, there are in practice certain special rules for notification of the composition and arrival of a special mission. They arise from the need to inform the receiving State in a manner different from that used for permanent missions. The International Law Commission did not refer to this fact in 1960.

(5) On the other hand, it is not customary to give separate notifications of the special mission's departure. It is presumed that the mission will leave the receiving State after its task has been fulfilled. However, it is customary for the head and members of the special mission to inform the representatives of the receiving State with whom they are in contact verbally, either during the course of their work or at the end of their mission, of the date and hour of their departure and the means of transport they propose to use. The Commission took the view that even in this case a regular notification should be given.

⁴² *Yearbook of the International Law Commission, 1960*, vol. II, pp. 113 and 179-180.

(6) A separate question is whether a head or member of a special mission who remains in the territory of the receiving State after his official mission has ended but while his visa is still valid should give notice of his extended stay. Opinion is divided on this question, and the answer depends on the receiving State's general laws governing aliens. If an extended stay of this kind does occur, however, it is an open question at what point of time the official stay becomes a private stay. Courtesy demands that the situation should be treated with some degree of tolerance. The Commission considers it unnecessary to include provisions governing this case in the text of the article.

(7) The right to recruit auxiliary staff for special missions locally is in practice limited to the recruitment of auxiliary staff without diplomatic rank or expert status, persons performing strictly technical functions (e.g., chauffeurs), and service staff. The rule observed in practice is that the receiving State should ensure the availability of such services, for the performance of the functions of the special mission is often dependent on them. In 1960 the International Law Commission inclined to the view that the availability of these services to special missions should be regarded as part of their general privileges. However, the receiving State is entitled to information on any local recruitment by special missions and, in the Commission's view, the latter must see that the authorities of the receiving State are kept regularly informed concerning the engagement and discharge of such staff, although all engagements of this kind, like the special mission itself, are of limited duration.

(8) In order to make notification easy and flexible in practice, the special mission, as soon as it begins to discharge its functions, effects notification direct, and not necessarily through the permanent diplomatic mission. The Commission has found this a sensible custom and has included a rule to that effect in the text of article 8, paragraph 2.

Article 9⁴³

General rules concerning precedence

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

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

Commentary

(1) The question of precedence among the heads of special missions arises only when several special missions meet, or when two missions meet on the territory of a third State. In practice, the rules of precedence among the heads of permanent diplomatic missions are not applied. The Commission did not consider that precedence among the heads of special missions should be governed by the provisions of the Vienna Convention, which are based on the presentation of credentials or on the date of arrival and on classes

⁴³ Introduced as article 8 of Special Rapporteur's first report (A/CN.4/166). Discussed at the 762nd meeting of the Commission. Drafting Committee's text discussed and adopted at the 768th meeting. Commentary adopted at the 773rd meeting.

of heads of permanent missions institutions irrelevant to special missions.

(2) The question of rank does not arise when a special mission meets with a delegation or organ of the receiving State. In practice, the rules of courtesy apply. The organ or delegation of the receiving State pays its compliments to the foreign special mission and the mission pays its respects to its hosts, but there is no question of precedence, properly so-called. The Commission has not dealt with this situation in the text of the articles, since it considers the rules of courtesy sufficient.

(3) The Commission believes that it would be wrong to include a rule that the order of precedence of heads of special missions should be determined by the diplomatic rank to which their titles would assign them under the general rules on classes of heads of permanent missions.

(4) Of particular significance is the fact that many heads of special missions have no diplomatic rank, and that heads of special missions are often personalities standing above all diplomatic rank. Some States make provision for such cases in their domestic law and in their practice, and give precedence to ministers who are members of the cabinet and to certain other high officials.

(5) The Commission wishes to stress that the rules of article 9 are not valid with respect to special missions having ceremonial or formal functions. This question is dealt with in article 10.

(6) The Commission considers that the rank of heads of special missions should be determined on the basis of the following considerations. Although in the case of *ad hoc* ceremonial diplomacy the heads of special missions are still divided into diplomatic classes (e.g., special ambassador, special envoy), the current practice is not to assign them any special diplomatic title. All heads of special missions represent their States and are equal among themselves in accordance with the principle of the equality of States.

(7) The International Law Commission did not take up this question in 1960. During the Commission's debates in 1960, however, Mr. Jiménez de Aréchaga expressed the view that the rules on classes of heads of missions applied equally to special missions, and he did not restrict that conclusion to ceremonial missions.⁴⁴

(8) The practice developed in relations between States since the formation of the United Nations ignores the division of heads of special missions into classes according to their ranks, except in the case of ceremonial missions.

(9) There are two views concerning precedence among heads of special missions. According to the first, the question of rank does not arise with special missions. This follows from the legal rule laid down by article 3 of the Regulation of Vienna of 19 March 1815. This provides that diplomatic agents on special mission shall not by this fact be entitled to any superiority of rank. Genet⁴⁵ deduces from this rule that they have no special rank by virtue of their mission, although they do have diplomatic status. However, Satow⁴⁶ takes a different view. Although the heads of special

missions are not ranked in the same order as the heads of the permanent diplomatic missions, there does exist an order by which their precedence can be established. This, says Satow, is an order *inter se*. It is based on their actual diplomatic rank; and where they perform identical functions, precedence among them is determined on the basis of the order of presentation of their credentials or full powers.

(10) In his 1960 proposal,⁴⁷ Mr. A. E. F. Sandström, Special Rapporteur of the International Law Commission, took the view that although, under the Regulation of Vienna, a special mission enjoys no superiority of rank, the heads of special missions, at least ceremonial missions, nevertheless rank among themselves according to the order of the presentation of their credentials. Yet while advancing this opinion in the preliminary part of his report, he limited himself in his operative proposal (alternative I, article 10, and alternative II, article 3) to inserting the negative provision that the head of a special mission should not, by such position only, be entitled to any superiority of rank.

(11) Mr. Sandström took as his starting point the idea that rank was defined by membership in the diplomatic service or by diplomatic category. He therefore made a distinction between diplomatic missions, missions regarded as being diplomatic, and technical missions, which were not of a diplomatic character.

(12) In the first place, the Commission, at its sixteenth session, held that it is not true that the person heading a special diplomatic mission of a political character will necessarily be a member of the diplomatic service and have diplomatic rank. Such missions may be headed by other persons, so that diplomatic rank is a very unreliable criterion. Why should a high official of the State (for example, a member of the Government) necessarily be ranked lower than a person bearing the title of ambassador? This would be incompatible with the current functional conception of diplomacy. On the other hand, it is considered that it would be erroneous to classify heads of mission having diplomatic rank according to their titles (for example, ambassador and minister plenipotentiary). They are all heads of diplomatic missions and have the same authority to represent their sovereign States, which, under Article 2 of the United Nations Charter, enjoy the right to sovereign equality. It follows that precedence *inter se* cannot be determined on the basis of diplomatic rank, at least in so far as juridical treatment is concerned (this does not affect the matter of courtesy towards the head of the special mission).

(13) Secondly, the Commission discarded the idea that different principles apply to so-called technical missions. Such missions are today usually headed by a career diplomat, and the task of every technical mission includes some political and representative elements.

(14) Again, precedence can hardly be established according to the order of the presentation of credentials by the heads of special missions. At most meetings of special missions the presumption, consistent with the facts, is that they arrive simultaneously,⁴⁸ and the individual and ceremonial presentation of credentials is a distinct rarity. For this reason, the date of presentation is without significance in practice.

⁴⁴ *Yearbook of the International Law Commission, 1960*, vol. II, p. 116.

⁴⁵ Raoul Genet, *Traité de diplomatie et de droit diplomatique*, Paris, 1931, vol. I, p. 86.

⁴⁶ Sir Ernest Satow, *A Guide to Diplomatic Practice*, 4th edition, London, 1957, p. 41.

⁴⁷ *Yearbook of the International Law Commission, 1960*, vol. II, p. 109.

⁴⁸ Thus, Jiménez de Aréchaga; see *Yearbook of the International Law Commission, 1960*, vol. II, p. 116, para. 13.

(15) Precedence among heads of special missions, limited as it is in its effect to their relations *inter se*, is important only in the case of a multilateral meeting or of contacts among two or three States, not counting the receiving State. In contacts between the special mission and the representatives of the receiving State alone, the question of precedence does not arise: as a matter of courtesy the host treats its guest with high consideration, and the latter is obliged to act in the same manner towards its host.

(16) The Commission considers that as a result, first, of the change which has taken place in the conception of the character of diplomacy, especially the abandonment of the theory of the exclusively representative character of diplomacy and the adoption of the functional theory,⁴⁹ and secondly, of the acceptance of the principle of the sovereign equality of States, the legal rules relating to precedence among heads of special missions have undergone a complete transformation. The principles of the Regulation of Vienna (1815) are no longer applicable. No general principle can be inferred, on the basis of analogy, from the rules of precedence governing permanent missions. For this reason, more and more use is being made of an automatic method of determining the precedence of heads of special missions, namely, the classification of delegates and delegations according to the alphabetical order of the names of the participating States. In view of the linguistic differences in the names of States, the custom is also to state the language in which the classification will be made.⁵⁰ This is the only procedure which offers an order capable of replacing that based on rank, while at the same time ensuring the application of the rules on the sovereign equality of States.⁵¹

(17) The International Law Commission did not go into the question of precedence within a special mission. It believes that each State must itself determine the internal order of precedence among the members of the special mission and that this is a matter of protocol only, the order of precedence being sent to the receiving State by the head of the special mission either direct or through the permanent diplomatic mission. This rule forms the subject of article 9, paragraph 2.

(18) The Commission also believes that there are no universal legal rules determining the order of precedence as between members of different special missions, or as between them and members of permanent diplomatic missions, or as between them and the administrative officials of the receiving State.

(19) It frequently happens that special missions meet in the territory of a third State which is not involved in their work. In this case it is important to the receiving State that the precedence of the heads of the special missions, or rather of the missions themselves, should be fixed, so that it does not, as host,

⁴⁹ This cumulation of the functional and the representative character is confirmed by the fourth paragraph of the Preamble and by article 3 of the Vienna Convention on Diplomatic Relations.

⁵⁰ Mr. Sandström too used this method in dealing with the question of the participation of *ad hoc* diplomats in congresses and conferences (chap. II, art. 6).

⁵¹ In order to bring the practice further into line with the principle of equality, it is now customary for lots to be drawn, the initial letter of the name of the State thus chosen indicating the beginning of the *ad hoc* alphabetical order. At United Nations meetings and meetings organized by the United Nations, lots are drawn at the opening of the session, to assign seats to the participating States for the duration of the session and whenever a roll-call vote is taken.

run the risk of favouring one of them or of being guided by subjective considerations in determining their precedence.

(20) A brief comment must be made on the question of the use of the alphabetical order of names of States as a basis for determining the order of precedence of special missions. At the present time, the rule in the United Nations and in all the specialized agencies, in accordance with the principle of the sovereign equality of States, is to follow this method. While considering it to be the most correct one, the Commission concedes that the rule need not be strictly interpreted as requiring the use of the alphabetical order of the names of States in a specified language—English, for example. Some experts have drawn attention to the possibility of applying the same method but on the basis of the alphabetical order of names of States used in the official diplomatic list of the receiving State. The important thing is that the system applied should be objective and consistent with the principle of the sovereign equality of States. For this reason, the Commission adopted the principle of the alphabetical order of the names of States. The members of the Commission were divided on the question whether the order adopted should be that used by the United Nations or that used in the official diplomatic list of the receiving State.

(21) The Commission considers that everything stated in this article with regard to heads of special missions is also applicable to single representatives.

Article 10⁵²

Precedence among special ceremonial and formal missions

Precedence among 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.

Commentary

(1) The Vienna Convention on Diplomatic Relations confines itself to provisions concerning permanent diplomatic missions and does not take into account either special missions or diplomatic ceremonial and formal missions, which have continued to exist in practice even after the establishment of permanent resident diplomacy, and continue to exist to this day.

(2) The Commission observed that the rules governing special ceremonial and formal missions vary from State to State. The question arises whether a selection should be made among the different customs, or whether the rule universally observed in practice should be adopted, namely, that the receiving State is competent to settle the order of precedence among special missions meeting on its territory on the occasion of a ceremony or a formal manifestation. The Commission favoured the second proposal.

(3) The different customs practiced include the following:

(a) On such occasions the representatives of States customarily bear the title of special ambassadors extraordinary. Even a regularly accredited ambassador, when assigned to represent his country on a ceremonial occa-

⁵² Introduced as article 9 of Special Rapporteur's first report (A/CN.4/166). Discussed at the 762nd meeting of the Commission. Drafting Committee's text discussed and adopted at the 768th meeting. Commentary adopted at the 773rd meeting.

sion, is given the title of *ad hoc* ambassador. This is regarded as a point of international courtesy.

(b) In accordance with the established interpretation of article 3 of the Regulation of Vienna of 1815, the *prior tempore* rule is held to apply even to these ambassadors, who should take precedence in the order of the time of presentation of the letters of credence issued for the *ad hoc* occasion. In practice, however, it has proved almost impossible to implement this rule. The funeral of King George VI of Great Britain was a case in point. A number of special missions were unable, for lack of time, to present their letters of credence, or even copies of them, to the new Queen before the funeral ceremony. Moreover, several missions arrived in London simultaneously, so that the rule providing for the determination of precedence according to the order of arrival was also inapplicable. For this reason, it was maintained that it would be preferable to select another criterion, more objective and closer to the principle of the sovereign equality of States, while retaining the division of heads of special missions into classes.

(c) It is becoming an increasingly frequent practice to send special delegates of higher rank than ambassador to be present on ceremonial occasions. Some countries consider that to give them the title of *ad hoc* ambassador would be to lower their status, for it is increasingly recognized that Heads of Government and ministers rank above all officials, including ambassadors. In practice, the domestic laws of a number of countries give such persons absolute precedence over diplomats.

(d) However, persons who do not belong to the groups mentioned in subparagraph (a) above are also sent as special *ad hoc* ambassadors, but are not given diplomatic titles because they do not want them. Very often these are distinguished persons in their own right. In practice there has been some uncertainty as to the rules applicable to their situation. One school of thought opposes the idea that such persons also take precedence over *ad hoc* ambassadors; and there are some who agree with the arguments in favour of this viewpoint, which are based on the fact that, if the State sending an emissary of this kind wishes to ensure that both the head of the special mission and itself are given preference, it should appoint him *ad hoc* ambassador. Any loss of precedence is the fault of the sending State.

(e) In such cases, the diplomatic status of the head of the special mission is determined *ad hoc*, irrespective of what is called (in the French texts) the *rang diplomatique réel*. The title of *ad hoc* ambassador is very often given, for a particular occasion, either to persons who do not belong to the diplomatic career service or to heads of permanent missions who belong to the second class. This fact should be explicitly mentioned in the special letters of credence for ceremonial or formal occasions.

(f) The issuance of special letters of credence covering a specific function of this kind is a customary practice. They should be in good and due form, like those of permanent ambassadors, but they differ from the latter in their terms, since the mission's task is strictly limited to a particular ceremonial or formal function. The issuance of such letters of credence is regarded as an international courtesy, and that is why heads of permanent diplomatic missions are expected to have such special letters of credence.

(g) Great difficulties are caused by the uncertainty of the rules of law concerning the relative rank of the head of a special mission for a ceremonial and

formal function and the head of the mission regularly accredited to the Government of the country in which the ceremonial occasion takes place. Under the protocol instructions of the Court of St. James, the heads of special missions have precedence, the heads of regularly accredited diplomatic missions occupying the rank immediately below them, unless they are themselves acting in both capacities on the specific occasion in question. This solution is manifestly correct and is dictated by the very nature of the function, since otherwise it would be utterly pointless to send a special mission.

(h) The situation of the members of a special mission of a ceremonial or formal nature in cases where the members are designated as equals and are given collective letters of credence for the performance of the ceremonial or formal function in question is not precisely known. As stated in paragraph (4) of the commentary on article 7, practice in this matter is not uniform.

(4) Some members of the Commission requested that, despite the Commission's unanimous decision to accept the rule incorporated in article 10, the Special Rapporteur's original text should also be included in the present report for purposes of information.⁵⁸ This text is as follows:

"1. Where two or more special missions meet on a formal or ceremonial occasion (for example, a marriage, christening, coronation, installation of Head of State, funeral, etc.), precedence among the heads of missions shall be determined in accordance with the class to which each head of mission belongs by virtue of his diplomatic title, and within each class in accordance with the alphabetical order of the names of the States.

"2. Heads of State, members of ruling families, chairmen of councils and ministers who are members of the Government represent special classes having precedence over the class of ambassadors.

"3. Heads of special missions who do not possess the diplomatic rank of ambassador or minister plenipotentiary and who do not belong to the groups specified in paragraph 2 of this article shall constitute, irrespective of the functions they perform, a special group next following that of heads of special missions having the rank of minister plenipotentiary.

"4. The diplomatic title used in determining precedence for the purposes of this article, except in the case of persons mentioned in paragraph 2, shall be that indicated in the credentials issued for the performance of the ceremonial or protocol function.

"5. Heads of regular diplomatic missions shall not be considered to be heads of special missions for ceremonial or formal functions unless they have presented credentials issued specially for this particular purpose.

"6. The rank of the staff of special ceremonial and formal missions shall be determined in accordance with the rank of the heads of mission.

"7. When they appear at the ceremony to which their formal or ceremonial function relates, heads of special missions shall take precedence over the heads of regular diplomatic missions."

This text was communicated to the Commission, but the Commission did not consider it in detail be-

⁵⁸ A/CN.4/166, article 9.

cause it had decided in principle to regulate the matter by reference rather than by substantive provisions.

Article 11⁵⁴

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.

Commentary

(1) The Vienna Convention on Diplomatic Relations contains no express provisions on the commencement of the functions of permanent diplomatic missions.

(2) The International Law Commission takes the view that, where the commencement of the functions of a special mission is concerned, the rules applicable to permanent diplomatic missions do not apply.⁵⁵

(3) In practice, this matter is governed by a special usage. The functions of the special mission which have been the subject of prior notice and acknowledgement begin when the special mission arrives in the territory of the receiving State, unless it arrives prematurely—a situation which depends on the circumstances and on the notion of what constitutes a reasonable interval of time. If there has been no prior notice, the functions are deemed to begin when contact is made with the organs of the receiving State. A further point is that, in the case of special missions, the commencement of the function need not be deemed to take place only when copies of the letters of credence or full powers are presented, although this is taken into account in the case of *ad hoc* ambassadors. Heads of special missions in general, even in cases where they must have full powers, do not now present either the original or a copy in advance, but only when the time comes to prove their authority to assume obligations on behalf of the sending State. Thus there is a legal difference with respect to determining when the function commences, as compared with the case of the heads of permanent missions.

(4) Almost all the instructions by States concerning the exercise of functions related to diplomatic protocol are found to contain more rules on the procedure for welcoming a ceremonial *ad hoc* mission when it arrives and escorting it when it leaves than on its reception, which consists of an audience with the Minister for Foreign Affairs to introduce the mission, or the presentation of letters of introduction or copies of credentials. There are even fewer rules on audiences by Heads of State for the presentation of letters of credence. Even if the head of a special mission arrives with special letters of credence addressed to the Head of State, the practice is to present them more expeditiously—i.e., through the Chief of Protocol—and the functions of the mission commence immediately. An

example of this custom is the case of an *ad hoc* mission sent to present the condolences of its own Head of State to the Head of State of another country upon the death of his predecessor or of a member of the royal family. In such a case, formal receptions are hardly in order; besides, there is usually little time. Nevertheless, missions of special importance are treated according to the general rules of protocol, both on arrival and when they leave.

(5) Contacts between special missions appointed to conduct political negotiations also generally take place immediately following the so-called protocol visit to the competent official with whom the negotiations are to be held.

(6) In the case of special missions appointed to conduct technical negotiations, it is not the practice to have either a ceremonial reception or a ceremonial presentation of credentials. It is customary, however, to make an introductory visit or, if the parties already know each other, a visit for the purpose of establishing contact. There is a growing tendency to abandon the custom whereby the head of the special mission is accompanied on his first visit by the head of the diplomatic mission permanently accredited to the receiving State, or by some member of that mission, if the head of the special mission or his opposite number who is to receive him is of lower rank than the head of the permanent mission. In practice, however, this formality of introduction is becoming obsolete, and the Commission does not deem it essential.

(7) It should be noted that there is an essential difference between the reception of the head of a special mission and the presentation of his letters of credence or full powers on the one hand and the reception of the heads of permanent mission and the presentation of their credentials on the other. This difference relates, first of all, to the person from whom the full powers emanate, in cases other than that of a special ambassador or an *ad hoc* ceremonial mission. A special ambassador and the head of an *ad hoc* ceremonial mission receive their letters of credence from the Head of State, as do the regular heads of diplomatic missions of the first and second classes, and they are addressed to the Head of the State to which the persons concerned are being sent. This procedure is not necessarily followed in the case of other special missions. In accordance with a recently established custom, and by analogy to the rules concerning the regularity of credentials in the United Nations, full powers are issued either by the Head of State or of Government or by the Minister of Foreign Affairs, regardless of the rank of the delegate or of the head of the special mission.

(8) Again, this difference is seen in the fact that the letters of credence of the head of a permanent diplomatic mission are always in his name, while this is not so in the case of special missions, where even for a ceremonial mission, the letters of credence may be collective, in the sense that not only the head of the mission, but the other members also are appointed to exercise certain functions (a situation which could not occur in the case of regular missions, where there is no collective accreditation). Full powers may be either individual or collective, or possibly supplementary (granting authority only to the head of the mission, or stipulating that declarations on behalf of the State will be made by the head of the mission and by certain members or by one or more persons named in the full powers, irrespective of their position in the

⁵⁴ Introduced as article 10 of Special Rapporteur's first report (A/CN.4/166). Discussed at the 762nd meeting of the Commission. Drafting Committee's text discussed and adopted at the 768th meeting. Commentary adopted at the 774th meeting.

⁵⁵ *Yearbook of the International Law Commission, 1960*, vol. II, pp. 116 and 180.

mission). It has recently become increasingly common to provide special missions with supplementary collective full powers for the head of the mission or a particular member. This is a practical solution (in case the head of the mission should be unable to be present throughout the negotiations).

(9) In practice, the members and staff of a special mission are deemed to commence their function at the same time as the head of the mission, provided that they arrived together when the mission began its activities. If they arrived later, their function is deemed to commence on the day of their arrival, duly notified to the receiving State.

(10) It is becoming increasingly rare to accord a formal welcome to special missions when they arrive at their destination, i.e., at the place where the negotiations are to be held. In the case of important political missions, however, the rules concerning reception are strictly observed but this is of significance only from the standpoint of formal courtesy and has no legal effect.

(11) Members of permanent diplomatic missions who become members of a special mission are considered, despite their work with the special mission, to retain their capacity as permanent diplomats; consequently, the question of the commencement of their functions in the special mission is of secondary importance.

(12) In practice States complain of discrimination by the receiving State in the reception of special missions and the way in which they are permitted to begin to function even among special missions of the same character. The Commission believes that any such discrimination is contrary to the general principles governing international relations. It believes that the principle of non-discrimination should operate in this case too; and it requests Governments to advise it whether an appropriate rule should be included in the article. The reason why the Commission has refrained from drafting a provision on this subject is that very often differences in treatment are due to the varying degree of cordiality of relations between States.

Article 12⁵⁶

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.

Commentary

(1) The Vienna Convention on Diplomatic Relations contains no rules dealing directly with the end of the functions of permanent diplomatic missions. Its treatment of the subject is limited to one provision on the end of the function of a diplomatic agent (article 43) and the provision concerning the case of the

⁵⁶ Introduced as article 11 of Special Rapporteur's first report (A/CN.4/166). Discussed at the 763rd meeting of the Commission. Drafting Committee's text discussed and adopted at the 769th meeting. Commentary adopted at the 774th meeting.

breaking off of diplomatic relations or the recall of the mission (article 45).

(2) In its deliberations in 1960,⁵⁷ the International Law Commission accepted the view that a special mission came to an end for the same reasons as those terminating the functions of diplomatic agents belonging to permanent missions. However, the accomplishment of a special mission's task was added, as a special reason for the termination of its functions.⁵⁸

(3) The Commission accepted the view of the majority of authors that the task of a special mission sent for a ceremony or for a formal occasion should be regarded as accomplished when the ceremony or occasion is over.

(4) In the first proposal he submitted in 1960 as the Commission's Special Rapporteur, Mr. Sandström expressed the opinion that it was desirable also to consider the functions of the special mission ended when the transactions which had been its aim were interrupted. A resumption of negotiations would then be regarded as the commencement of the functions of another special mission. Some authors adopt the same view and consider that in such cases it is unnecessary for the special mission to be formally recalled. The Commission regarded as well-founded the argument that the functions of a special mission are ended, to all practical purposes, by the interruption or suspension *sine die* of negotiations or other deliberations. It considered it preferable, however, to leave it to the sending and receiving States to decide whether they deemed it necessary in such cases to bring the mission to an end by application of the provisions of article 12 (c) and (d).

Article 13⁵⁹

Seat of the special mission

1. In the absence of prior agreement, a special mission shall have its seat at the place proposed by the receiving State and approved by the sending State.
2. If the special mission's tasks involve travel or are performed by different sections or groups, the special mission may have more than one seat.

Commentary

(1) The provision of article 13 is not identical to that contained in the Vienna Convention on Diplomatic Relations (article 12). In the first place, permanent missions must have their seats in the same locality as the seat of the Government. The permanent mission is attached to the capital of the State to which it is accredited, whereas the special mission is usually sent to the locality in which it is to carry out its task. Only in exceptional cases does a permanent mission set up offices in another locality, whereas it frequently occurs that, for the performance of its task, a special mission has to move from place to place and its functions have to be carried out simultaneously by a number of groups or sections. Each group or section must have its own seat.

⁵⁷ *Yearbook of the International Law Commission, 1960*, vol. II, pp. 179-180.

⁵⁸ This addition was proposed by Mr. Jiménez de Aréchaga; see *ibid.*, p. 115.

⁵⁹ Introduced as article 12 of Special Rapporteur's first report (A/CN.4/166). Discussed at the 763rd meeting of the Commission. Drafting Committee's text discussed and adopted at the 770th meeting. Commentary adopted at the 774th meeting.

(2) Very little has been written on this question, and in 1960 the Commission did not consider it necessary to deal with it at length. Its basic thought was that the rules applicable to permanent missions in this connexion were not relevant to special missions and that no special rules on the subject were needed. Some members of the Commission did not entirely agree, however, because the absence of rules on the subject might encourage special missions to claim the right to choose their seat at will and to "open offices in any part of the territory of the receiving State".⁶⁰

(3) In practice, special missions normally remain at the place designated by mutual agreement, which, in most cases, is not formally established by the sending State and the receiving State. Under that agreement the special mission generally establishes its offices near the locality where its functions are to be performed. If the place in question is the capital city of the receiving State and there are regular diplomatic relations between the two States, the official offices of the special mission are usually on the premises of the sending State's regular diplomatic mission, which (unless otherwise indicated) is its official address for communication purposes. Even in this case, however, the special mission may have a seat other than the embassy premises.

(4) It is very rare, in practice, for the seat of a special mission not to be chosen by prior agreement. In the exceptional case where the special mission's seat is not established in advance by agreement between the States concerned, the practice is that the receiving State proposes a suitable locality for the special mission's seat, chosen in the light of all the circumstances affecting the mission's efficient functioning. Opinion is divided on whether the sending State is required to accept the place chosen by the receiving State. It has been held that such a requirement would conflict with the principle of the United Nations Charter concerning the sovereign equality of States if the receiving State were to impose the choice of the seat. The Commission has suggested a compromise, namely, that the receiving State should have the right to propose the locality, but that in order to become effective, that choice should be accepted by the sending State. That solution would have certain shortcomings in cases where the proposal was not accepted. The Commission has left the question open.

(5) The Commission did not go into the details of rules to determine the difference between the main seat and other seats where the special mission's task makes it necessary for it to have more than one seat. Usage varies in practice. One solution proposed to the Commission was that the main seat should be in the locality in which the seat of the Ministry of Foreign Affairs of the receiving State is situated, or in some other locality chosen by mutual agreement, and that the other seats should be established with a view to facilitating the work of the sections or teams. However, the Commission preferred to leave this question to be settled by agreement of the parties.

Article 14⁶¹

Nationality of the head and the members of the special mission and of members of its staff

1. The head and members of a special mission

⁶⁰ Yearbook of the International Law Commission, 1960, vol. II, p. 116 and pp. 179-180.

⁶¹ Introduced as article 13 of Special Rapporteur's first report (A/CN.4/166). Discussed at the 763rd meeting of the Commission. Drafting Committee's text discussed and adopted at the 770th meeting. Commentary adopted at the 774th meeting.

and the members of its staff should in principle be of the nationality of the sending State.

2. Nationals of the receiving State may not be appointed to a special mission except with the consent of that State, which may be withdrawn at any time.

3. The receiving State may reserve the right provided for in paragraph 2 with regard to the nationals of a third State who are not also nationals of the sending State.

Commentary

(1) Article 14 corresponds to article 8 of the Vienna Convention on Diplomatic Relations.

(2) In 1960 the International Law Commission did not consider it necessary to express an opinion on the question whether the rules concerning the nationality of diplomatic agents of permanent missions should also apply to special missions. It even formulated the rule that the relevant article of its 1958 draft—article 7—did not apply directly to special missions.⁶²

(3) The relevant literature, on the other hand, does not consider it impossible for nationals of a country to be admitted by that country as members of special missions, but stresses that the problem has been dealt with differently by various countries at various times.⁶³

(4) In the Commission's view, there is no reason why nationals of the receiving State should not be employed as *ad hoc* diplomats of another State, but for that purpose, the consent of the receiving State has to be obtained.

(5) Apart from the question whether a national of the receiving State can perform the functions of *ad hoc* diplomat of another State, the problem arises whether an *ad hoc* diplomat must possess the nationality of the State on whose behalf he carries out his mission. Here again, the International Law Commission expressed no opinion in 1960. Recent practice shows that nationals of third States, and even stateless persons, may act as *ad hoc* diplomats of a State, although some members of the Commission held it to be undesirable that they should do so. Practical reasons sometimes make it necessary to adopt this expedient, and in practice it is for the receiving State alone to decide whether or not such persons should be recognized as *ad hoc* diplomats.

(6) The Commission has not specifically referred in the text to the possibility that the head of a special mission or one of its members or staff might have dual nationality. It believes that, in the case of a person who also possesses the nationality of the receiving State, that State has the right, in accordance with the existing rules on nationality in international law and with the practice of some countries, to consider such a person on the basis of the characterization theory, exclusively as one of its own nationals. In most States, the idea still prevails that nationality of the receiving State excludes any other nationality, and the argument that effective nationality excludes nominal nationality is not accepted in this case. The case of a person possessing more than one foreign nationality is juridically irrelevant, since it would be covered by paragraph 3 of this article.

(7) The Commission has also not considered whether persons possessing refugee status who are not natives

⁶² Yearbook of the International Law Commission, 1960, vol. II, pp. 179-180.

⁶³ Sir Ernest Satow, *A Guide to Diplomatic Practice*, 4th edition, London, 1957, pp. 138-141.

of the receiving State can be employed, without the special approval of the receiving State, as heads or members of special missions or of their staffs.

(8) As regards nationals of the receiving State engaged locally by the special mission as auxiliary staff, and persons having a permanent domicile in its territory, the Special Rapporteur believes that they should not be subject to the provisions of this article, but rather to the régime applicable in this respect under the domestic law of the receiving State. The Commission did not deem it necessary to adopt a special rule on the subject.

(9) Nor did the Commission express any views on the question whether, in this respect, aliens and stateless persons having a permanent domicile in the territory of the receiving State should be treated in the same way as nationals of that State.

Article 15⁶⁴

Right of special missions to use the flag and emblem of the sending State

A special mission shall have the right to display the flag and emblem of the sending State on the premises of the mission, on the residence of the head of the mission and on the means of transport of the mission.

Commentary

(1) Article 15 is modelled on article 20 of the Vienna Convention on Diplomatic Relations.

(2) The Commission reserves the right to decide at a later stage whether article 15 should be placed in the section of the draft dealing with general matters or in the special section concerning facilities, privileges and immunities.

(3) In 1960, the International Law Commission recognized the right of special missions to use the national flag of the sending State upon the same conditions as permanent diplomatic missions.⁶⁵ In practice, the conditions are not identical, but nevertheless there are some instances where this is possible. The Commission's Special Rapporteur, Mr. Sandström, cited the case of the flying of the flag on the motor vehicle of the head of a ceremonial mission. During the discussion which took place in the Commission in 1960, Mr. Jiménez de Aréchaga expressed the view that all special missions (and not only ceremonial missions) have the right to use such flags on the ceremonial occasions where their use would be particularly appropriate.⁶⁶

(4) Current practice should be based on both a wider and a narrower approach: wider, because this right is not restricted to ceremonial missions but depends on the general circumstances (e.g., special missions of a technical nature moving in a frontier zone and all special missions on certain formal occasions); and narrower, because this usage is now limited in fact to the most formal occasions or to circumstances which warrant it, in the judgement of the mission. In practice, however, such cases are held within reasonable limits, and the tendency is towards restriction.

⁶⁴ Introduced as article 15 of Special Rapporteur's first report (A/CN.4/166). Discussed at the 763rd meeting of the Commission. Drafting Committee's text, numbered 14, discussed and adopted at the 770th meeting. Commentary adopted at the 774th meeting.

⁶⁵ *Yearbook of the International Law Commission, 1960*, vol. II, p. 108, p. 180.

⁶⁶ *Ibid.*, p. 116.

(5) All the rules applicable to the use of the national flag apply equally to the use of the national emblem, both in practice and in the opinion of the International Law Commission.

(6) In practice, some receiving States assert that they have the right to require that the flag of the sending State should be flown on all means of transport used by the special mission when it is travelling in a particular area. It is claimed in support of this requirement that measures to protect the special mission itself will be easier to carry out if the attention of the authorities of the receiving State is drawn by an external distinguishing mark, particularly in frontier security zones and military zones and in special circumstances. Some States, however, object to this practice on the grounds that it very often causes difficulties and exposes the special mission to discrimination. The Commission holds that this practice is not universally recognized and it has therefore not included a rule regarding it in the text of article 15.

Article 16⁶⁷

Activities of special missions in the territory of a third State

1. Special missions may not perform their functions in the territory of a third State without its consent.

2. The third State may impose conditions which must be observed by the sending State.

Commentary

(1) There is no corresponding rule in the Vienna Convention on Diplomatic Relations, but article 7 of the Vienna Convention on Consular Relations of 1963 provides that a consular post established in a particular State may not exercise consular functions in another State if the latter objects.

(2) Very often, special missions from different States meet and carry on their activities in the territory of a third State. This is a very ancient practice, particularly in the case of meetings between *ad hoc* missions or diplomats belonging to States which are in armed conflict. The International Law Commission did not take note of this circumstance in 1960; nor have writers paid much attention to it, but some of them do mention it, particularly where the contact takes place through the third State. Whether or not the third State engages in mediation or extends its good offices, courtesy undoubtedly requires that it should be informed, and it is entitled to object to such meetings in its territory.

(3) Thus, the States concerned are not entitled to make arbitrary use of the territory of a third State for meetings of their special missions, if this is contrary to the wishes of that State. However, if the third State has been duly informed and does not express any objection (its formal consent is not necessary), it has a duty to treat special missions sent in these circumstances with every consideration, to assure them the necessary conditions to carry on their activities, and to offer them every facility, while the parties concerned, for their part, must refrain from any action

⁶⁷ Introduced as article 14 of Special Rapporteur's first report (A/CN.4/166). Discussed at the 763rd meeting of the Commission. Drafting Committee's text, numbered 15, discussed and adopted at the 770th meeting. Commentary adopted at the 774th meeting.

which might harm the interests of the third State in whose territory they carry on their activities.

(4) In practice, the prior approval of the third State is often simply a matter of taking note of the intention to send a special mission to its territory (such intention may even be notified orally). If the third State makes no objection to the notification and allows the special mission to arrive in its territory, approval is considered to have been given.

(5) The Commission regards as correct the practice of some States—for example, Switzerland during the war—in imposing certain conditions which must be observed by parties sending special missions. The duty to comply with these conditions is without prejudice to the question whether, objectively, the mission's activities are considered to be prejudicial to the interests of the third State in whose territory they are carried on.

(6) A question which arises in practice is whether the third State must not only behave correctly and impartially towards the States whose missions meet in its territory by according them equal treatment, but must also respect any declarations it may itself have made in giving its prior approval. Since such approval can be given implicitly, it must be considered that a third State which goes even further by taking note, without objection, of a request for permission to use its territory is, in accordance with the theory of unilateral juridical acts in international law, bound by the request of the parties concerned, unless it has made certain reservations.

(7) Intercourse between a special mission of one State and the permanent diplomatic mission of another State accredited to the receiving State must be accorded the same treatment as the intercourse and activities of special missions in the territory of the third State. Such contacts are frequent, and they are referred to by legal writers as irregular means of diplomatic communication. They make direct intercourse possible between States which do not maintain mutual diplomatic relations, even when the States concerned are in armed conflict.

(8) The right of the third State, at any time and without being obliged to give any reason, to withdraw its hospitality from special missions in its territory and to prohibit them from engaging in any activity is recognized. In such cases, the sending States are obliged to recall their special missions immediately, and the missions themselves are required to cease their activities as soon as they learn that hospitality has been withdrawn. The exercise of this right by the third State does not mean that diplomatic relations with the States in question are broken off or that the head of the mission or its members are declared *persona non grata*. It merely means that the third State's consent to the activities of special missions in its territory has been revoked. The Commission held that article 16, paragraph 1, was sufficient and that the word "consent" means that the consent of the third State continues to be required throughout the period during which the activities of the special missions of the other States are taking place.

Part II

FACILITIES, PRIVILEGES AND IMMUNITIES⁶⁸

Article 17⁶⁹

General facilities

The receiving State shall accord to the special mission full facilities for the performance of its functions, having regard to the nature and task of the special mission.

Commentary

(1) This article is based on article 25 of the Vienna Convention on Diplomatic Relations.

(2) Proceeding from the fundamental idea that the facilities due to special missions depend on the nature, task and level of the special mission in question, the Commission considers that what must be ensured is the regular functioning of special missions with due regard to their nature and task. The Commission has not adopted the view expressed in 1960 that, in this respect, all the provisions applicable to permanent diplomatic missions should be applied to special missions. It was inclined to follow the fundamental idea underlying the resolution adopted by the Vienna Conference on Diplomatic Intercourse and Immunities, namely, that the problem of the application of the rules governing permanent missions to special missions deserves detailed study. This means that the application of these rules cannot be uniform and that each case must be considered separately.

(3) It is undeniable that the receiving State has a legal obligation to provide a special mission with all facilities necessary for the performance of its functions. In the literature, this rule is generally criticized on the ground that it is vague. The Commission is convinced that its content changes according to the task of the mission in question, and that the facilities to be provided by the receiving State vary. Consequently, the assessment of the extent and content of the above-mentioned obligation is not a question of fact; the obligation is an *ex jure* obligation, whose extent must be determined in the light of the special mission's needs, which depend on the circumstances, nature, level and task of the specific special mission. There remains the legal question whether the extent is determined fairly by the receiving State and thus matches what is due.

(4) The Commission is of the opinion that the difficulties which arise in practice are due to the fact that some special missions consider the receiving State obliged to provide them with all the facilities normally accorded to permanent diplomatic missions. The right approach is that of the States which offer to special missions only such facilities as are necessary, or at least useful, according to some objective criterion, for the performance of their task, whether or not they correspond to the list of facilities granted to permanent

⁶⁸ Title adopted at 819th meeting.

⁶⁹ Introduced as article 17 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 804th meeting of the Commission. Drafting Committee's text discussed and adopted at the 817th meeting. Commentary adopted at the 820th meeting.

Inviolability of the premises

diplomatic missions as set forth in the Vienna Convention on Diplomatic Relations. Special missions may, however, in some exceptional cases, enjoy more facilities than permanent diplomatic missions, when this is necessary for the performance of their particular tasks, for example in the case of high-level special missions or frontier-demarkation special missions. This approach is consistent with the resolution on special missions adopted by the Vienna Conference on Diplomatic Intercourse and Immunities.

*Article 18⁷⁰**Accommodation of the special mission and its members*

The receiving State shall assist the special mission in obtaining appropriate premises and suitable accommodation for its members and staff and, if necessary, ensure that such premises and accommodation are at their disposal.

Commentary

(1) This article is based on article 21 of the Vienna Convention on Diplomatic Relations.

(2) However, article 18 is not identical with the said article 21. The Commission is of the opinion that it is not necessary to provide that the State sending a special mission has in all cases the right to acquire land for the construction of accommodation for the special mission or to acquire the premises required for accommodating it, as is provided for by the corresponding provisions of the Vienna Convention in regard to regular, permanent diplomatic missions. The Commission considers that in this connexion it is sufficient to ensure the provision of accommodation for special missions, which are temporary in character.

(3) Special missions should, however, have their accommodation guaranteed, and the accommodation should be adequate for the special mission in question. On this point, the same rules should in principle apply as in the case of permanent diplomatic missions. But it is held that there is no obligation upon the receiving State to permit the acquisition of the necessary premises in its territory, a proposition which does not rule out the possibility—though this is an exceptional case—of some States purchasing or leasing the premises necessary for the accommodation of successive special missions which they send to the same country.

(4) The task of special missions may be such that they need more than one seat. This is clear from paragraph (5) of the commentary to article 13. In particular, cases occur in practice where either the special mission as a whole or a section or group of the mission has to travel frequently in the territory of the receiving State. Such travel often involves a swift change in the seat of the special mission or the arrival of groups of the special mission at specific places, and the mission's or group's stay in a particular locality is often very brief. These circumstances sometimes make it impossible for the sending State itself to arrange accommodation for its special mission or a section thereof. In this case, it is the authorities of the receiving State which arrange accommodation.

⁷⁰ Introduced as article 18 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 804th meeting of the Commission. Drafting Committee's text discussed and adopted at the 817th meeting. Commentary adopted at the 820th meeting.

1. The premises of a special mission shall be inviolable. The agents of the receiving State may not enter the premises of the special mission, except with the consent of the head of the special mission or of the head of the permanent diplomatic mission of the sending State accredited to the receiving State.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the special mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the special mission, their furnishings, other property used in the operation of the special mission and its means of transport shall be immune from search, requisition, attachment or execution by the organs of the receiving State.

Commentary

(1) This article is based on article 22 of the Vienna Convention on Diplomatic Relations. However, the text has had to be adapted to the requirements imposed by the nature and practice of special missions.

(2) In 1960 the Commission considered that in this matter the rules applicable to permanent diplomatic missions should also apply to special missions. The previous Special Rapporteur, in his first draft, had held that "the official premises of... a special mission... shall enjoy... inviolability...".⁷²

(3) In 1965 the Commission took the view that the provisions of the Vienna Convention on Diplomatic Relations concerning accommodation should be applied to special missions, with due regard for the circumstances of such missions. It should also be noted that the premises of a special mission are often combined with the living quarters of the members and staff of the special mission.

(4) The offices of special missions are often located in premises which already enjoy the privilege of inviolability. That is so if they are located in the premises of the permanent diplomatic mission of the sending State, if there is one at the place. If, however, the special mission occupies private premises, it must equally enjoy the inviolability of its premises, in order that it may perform its functions without hindrance and in privacy.

(5) The Commission discussed the situation which may arise in certain exceptional cases where the head of a special mission refuses to allow representatives of the authorities of the receiving State to enter the premises of the special mission. It has provided that in such cases the Ministry of Foreign Affairs of the receiving State may appeal to the head of the per-

⁷¹ Paragraphs 1 and 2 introduced as article 19 of the Special Rapporteur's second report (A/CN.4/179). Discussed at the 804th and 805th meetings of the Commission. Drafting Committee's text discussed and adopted at the 817th meeting. Paragraph 3 introduced as article 24 of the Special Rapporteur's second report. Discussed at the 806th meeting of the Commission. Drafting Committee's text discussed and referred back to Drafting Committee at the 817th meeting. Re-submitted and adopted at the 820th meeting. Commentary adopted at the 820th meeting.

⁷² *Yearbook of the International Law Commission, 1960, vol. II, p. 112.*

manent diplomatic mission of the sending State, asking for permission to enter the premises occupied by the special mission.

(6) As regards the property used by the special mission, the Commission considers that special protection should be accorded to such property, and accordingly it has drafted paragraph 3 of this article in terms granting such protection to all property, by whomsoever owned, which is used by the special mission.

Article 20⁷³

Inviolability of archives and documents

The archives and documents of the special mission shall be inviolable at any time and wherever they may be.

Commentary

(1) This article reproduces *mutatis mutandis* article 24 of the Vienna Convention on Diplomatic Relations and article 33 of the Vienna Convention on Consular Relations.

(2) Here, too, the Commission took the view in 1960 that the rules applicable to permanent diplomatic missions apply also to special missions, which otherwise would scarcely be able to function normally.

(3) Because of the controversies which arise in practice, the Commission considers it necessary to stress the point concerning documents in the possession of the members or of the staff of a special mission, especially in the case of a special mission which does not have premises of its own and in cases where the special mission or a section or group of the special mission is itinerant. In such cases, the documents transported from place to place in the performance of the special mission's task are mobile archives rather than part of the baggage of the persons concerned.

Article 21⁷⁴

Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the special mission such freedom of movement and travel on its territory as is necessary for the performance of its functions, unless otherwise agreed.

Commentary

(1) This article is based on article 26 of the Vienna Convention on Diplomatic Relations and article 34 of the Vienna Convention on Consular Relations. However, changes have been made in the text to take account of the special circumstances in which the task of special missions is performed. The article thus includes certain provisions which apply neither to permanent diplomatic missions nor to consulates.

⁷³ Introduced as article 20 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 805th meeting of the Commission. Drafting Committee's text discussed and adopted at the 817th meeting. Commentary adopted at the 821st meeting.

⁷⁴ Introduced as article 21 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 805th meeting of the Commission. Drafting Committee's text discussed and adopted at the 816th meeting. Commentary adopted at the 821st meeting.

(2) Special missions have limited tasks. It follows that they should be guaranteed freedom of movement only to the extent necessary for the performance of these tasks (this does not mean that they cannot go also to other parts of the territory of the receiving State, subject to the normal conditions applicable to other aliens).

(3) Guaranteed freedom for special missions to proceed to the seat of the sending State's permanent diplomatic mission to the receiving State or to a consular post of the sending State and to return to the place where the special mission performs its task is in practice not only a daily occurrence but also a necessity.

(4) One of the peculiarities of special missions is that they may operate through persons or teams situated in different places or responsible for specific tasks in the field. Because of the need for constant liaison between the different sections of a special mission there should be wide freedom of movement.

Article 22⁷⁵

Freedom of communication

1. The receiving State shall permit and protect free communication on the part of the special mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the special mission may employ all appropriate means, including couriers and messages in code or cipher. However, the special mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the special mission shall be inviolable. Official correspondence means all correspondence relating to the special mission and its functions.

3. The bag of the special mission shall not be opened or detained.

4. The packages constituting the bag of the special mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the special mission.

5. The courier of the special mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the special mission may designate couriers *ad hoc* of the special mission. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier *ad hoc* has delivered to the consignee the special mission's bag in his charge.

7. The bag of the special mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port

⁷⁵ Introduced as article 22 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 805th and 806th meetings of the Commission. Drafting Committee's text discussed and adopted at the 817th meeting. Commentary adopted at the 821st meeting.

of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the special mission. By arrangement with the appropriate authorities, the special mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Commentary

(1) This article is based on article 27 of the Vienna Convention on Diplomatic Relations.

(2) In 1960 the Commission took the position that special missions enjoy the same rights as permanent diplomatic missions in this respect.

(3) It should be noted, however, that in practice special missions are not always granted the right to use messages in code or cipher. The Commission considered that special missions should be granted this right, since the use of messages in code or cipher is often necessary for the proper functioning of such missions.

(4) The Commission did not think that it should depart from the practice whereby special missions are not allowed to use wireless transmitters, unless there is a special agreement or a permit is given by the receiving State.

(5) The Vienna Convention on Diplomatic Relations (article 27, paragraph 3) lays down the principle of the absolute inviolability of the diplomatic bag. Under that provision, the diplomatic bag may not be opened or detained by the receiving State. The Vienna Convention on Consular Relations, on the other hand, confers limited protection on the consular bag (article 35, paragraph 3). It allows the consular bag to be detained if there are serious reasons for doing so and provides for a procedure for the opening of the bag. The question arises whether absolute inviolability of the special mission's bag should be guaranteed for all categories of special missions. The Commission considered this question and decided to recognize the absolute inviolability of the special mission's bag.

(6) The Commission adopted the rule that the special mission's bag may be entrusted to the captain of a commercial aircraft (article 27, paragraph 7, of the Vienna Convention on Diplomatic Relations; article 35, paragraph 7, of the Vienna Convention on Consular Relations) or to the captain of a ship (article 35, paragraph 7, of the Vienna Convention on Consular Relations). It has been observed recently that in exceptional cases special missions use the services of such persons for the transport of the bag. The Commission considers that the captains of commercial inland waterway vessels may also be used for this purpose.

Article 23⁷⁶

Exemption of the mission from taxation

1. The sending State and the head of the special mission and the members of its staff shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the

⁷⁶ Introduced as article 23 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 806th meeting of the Commission. Drafting Committee's text discussed and adopted at the 817th meeting. Commentary adopted at the 821st meeting.

special mission, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the special mission.

Commentary

(1) This article reproduces *mutatis mutandis* article 23 of the Vienna Convention on Diplomatic Relations.

(2) In 1960 the Commission expressed the view that in this respect the legal rules applicable to permanent diplomatic missions should be applied to special missions. At its seventeenth session, the Commission reaffirmed that view.

(3) On the other hand, the Commission is of the opinion that article 28 of the Vienna Convention on Diplomatic Relations cannot be applied to special missions. It is the rule that special missions have no authority to levy any fees, dues or charges in foreign territory except in the cases specially provided for by international agreements. This does not, however, rule out the possibility that in certain exceptional cases provided for in international agreements special missions may be authorized to charge such dues. The Commission therefore decided not to include in the article any rule of law concerning the levying by special missions of fees, dues or charges in the territory of the receiving State, and to refer to the matter only in the commentary.

Article 24⁷⁷

Personal inviolability

The person of the head and members of the special mission and of the members of its diplomatic staff shall be inviolable. They shall not be liable to any form of arrest or detention. The receiving State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

Commentary

(1) This article reproduces *mutatis mutandis* article 29 of the Vienna Convention on Diplomatic Relations.

(2) The Commission discussed the advisability of a provision granting to the members of special missions only a personal inviolability limited to the performance of their functions. The majority of the Commission did not consider such a provision acceptable.

Article 25⁷⁸

Inviolability of the private accommodation

1. The private accommodation of the head and members of the special mission and of the members of its diplomatic staff shall enjoy the same inviolability and protection as the premises of the special mission.

⁷⁷ Introduced as article 25 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 806th and 807th meetings of the Commission. Drafting Committee's text discussed and adopted at the 817th meeting. Commentary adopted at the 821st meeting.

⁷⁸ Introduced as article 26 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 807th meeting of the Commission. Drafting Committee's text discussed and adopted at the 817th meeting. Commentary adopted at the 821st meeting.

2. The papers, correspondence and property of the persons referred to in paragraph 1 shall likewise enjoy inviolability.

Commentary

(1) This article reproduces *mutatis mutandis* article 30 of the Vienna Convention on Diplomatic Relations.

(2) The word "residence" used in the Vienna Convention on Diplomatic Relations has been replaced by the word "accommodation" because of the temporary nature of special missions.

(3) The inviolability of the accommodation of the members of special missions should be guaranteed, regardless of whether they live in a separate building or in parts of another building, or even in a hotel. It was considered necessary to add this paragraph of the commentary because some States do not recognize this protection in cases where the mission is accommodated in a building accessible to the public.

Article 26⁷⁰

Immunity from jurisdiction

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

2. Unless otherwise agreed, 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 head or member of the special mission or the member of its diplomatic staff holds it on behalf of the sending State for the purposes of the mission;

(b) An action relating to succession in which the person referred to in sub-paragraph (a) is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) An action relating to any professional or commercial activity exercised by the person referred to in sub-paragraph (a) in the receiving State outside his official functions.

3. The head and members of the special mission and the members of its diplomatic staff are not obliged to give evidence as witnesses.

4. No measures of execution may be taken in respect of the head or of a member of the special mission or of a member of its diplomatic staff except in the cases coming under sub-paragraphs (a), (b) and (c) of paragraph 2 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

5. The immunity of the head and members of the special mission and of the members of its diplomatic staff from the jurisdiction of the receiving State does not exempt them from the jurisdiction of the sending State.

⁷⁰ Introduced as article 27 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 807th meeting of the Commission. Drafting Committee's text discussed and adopted at the 817th meeting. Commentary adopted at the 821st meeting.

Commentary

(1) This article is based on article 31 of the Vienna Convention on Diplomatic Relations.

(2) The Commission discussed the question whether members of special missions should or should not be granted complete and unlimited immunity from criminal, civil and administrative jurisdiction. Some members of the Commission took the view that, in principle, only functional immunity should be granted to all special missions. There should be no deviation from this rule, except in the matter of immunity from criminal jurisdiction; for any limitation of the liberty of the person prevents the free accomplishment of the special mission's tasks. Disagreeing with that opinion, the majority of the Commission decided that full immunity from the jurisdiction of the receiving State in all matters (criminal, civil and administrative) should be granted to the members of special missions.

(3) However, the Commission added in paragraph 2 the phrase "Unless otherwise agreed" to indicate that it is open to the States concerned to limit the immunity from *civil and administrative* jurisdiction. In short, the ordinary rule proposed by the Commission is complete immunity from civil and administrative jurisdiction, the States concerned being at liberty to agree on a limited form of immunity in this respect.

Article 27⁸⁰

Waiver of immunity

1. The immunity from jurisdiction of the head and members of the special mission, of the members of its staff and of the members of their families, may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by one of the persons referred to in paragraph 1 of this article shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

Commentary

(1) This article reproduces *mutatis mutandis* article 32 of the Vienna Convention on Diplomatic Relations.

(2) The Commission considers that the purpose of immunity is to protect the interests of the sending State, not those of the person enjoying the immunity.

Article 28⁸¹

Exemption from social security legislation

1. The head and members of the special mission and the members of its staff shall be exempt, while in the territory of the receiving State for the purpose of carrying out the tasks of the special

⁸⁰ Introduced by the Drafting Committee as article 27 bis. Discussed and adopted at the 817th meeting. Commentary adopted at the 821st meeting.

⁸¹ Introduced as article 28 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 808th meeting of the Commission. Drafting Committee's text discussed and adopted at the 817th meeting. Commentary adopted at the 821st meeting.

mission, from the social security provisions of that State.

2. The provisions of paragraph 1 of this article shall not apply:

(a) To nationals or permanent residents of the receiving State regardless of the position they may hold in the special mission;

(b) To locally recruited temporary staff of the special mission, irrespective of nationality.

3. The head and members of the special mission and the members of its staff who employ persons to whom the exemption provided for in paragraph 1 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

Commentary

(1) This article is based on article 33 of the Vienna Convention on Diplomatic Relations.

(2) In practice, it is found necessary not to exempt from the social security system of the receiving State persons locally employed for the work of the special mission, for a number of reasons: the short duration of the special mission; the risk to life and health presented by the difficulty of the special mission's tasks in certain cases, especially in the case of special missions working in the field; and the still unsettled question of insurance after the termination of the special mission's task, if the employee was not engaged through and on the responsibility of the permanent diplomatic mission.

Article 29⁸²

Exemption from dues and taxes

The head and members of the special mission and the members of its diplomatic staff shall be exempt from all dues and taxes, national, regional or municipal, in the receiving State on all income attaching to their functions with the special mission and in respect of all acts performed for the purposes of the special mission.

Commentary

(1) This article is based on article 34 of the Vienna Convention on Diplomatic Relations.

(2) The Commission was of the opinion that the exemption of the members of special missions from dues and taxes should apply only to income attaching to their functions with the mission and in respect of all acts performed for the purposes of the mission. Accordingly, the Commission decided to omit from article 29 all the exceptions enumerated in the said article 34.

Article 30⁸³

Exemption from personal services and contributions

The receiving State shall exempt the head and members of the special mission and the members

⁸² The proposal to introduce this article was made by the Special Rapporteur at the 808th meeting. Drafting Committee's text, numbered 28 bis, submitted and adopted at the 817th meeting. Commentary adopted at the 821st meeting.

⁸³ Introduced as article 29 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 808th meeting of the Commission. Drafting Committee's text discussed and adopted at the 817th meeting. Commentary adopted at the 821st meeting.

of its diplomatic staff from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Commentary

(1) This article reproduces *mutatis mutandis* article 35 of the Vienna Convention on Diplomatic Relations.

(2) In drafting article 30 the Special Rapporteur had started with the ideas underlying the said article 35, but had expanded the article in the following way:

(a) He had extended these exemptions to the entire staff and not merely to the head and members of the special mission. In his view, it was not possible otherwise to ensure the special mission's smooth operation;

(b) It was also his view that exemption from personal services and contributions ought to be accorded to locally recruited staff regardless of nationality and domicile. Otherwise, the special mission would be placed in a difficult position and would not be able to carry out its task until it succeeded in finding other staff exempt from such services and contributions. Calling on such locally recruited staff to render such services or contributions could be used as a powerful weapon by the receiving State to harass the special mission. On the other hand, the receiving State would not be imperilled by these exemptions, special missions generally being of very short duration and their staff very small.

(3) The Commission considered that the rules of law corresponding to these needs of the special mission would involve an excessive derogation from the sovereign rights of the receiving State, but it decided to mention in the commentary the arguments put forward by the Special Rapporteur.

Article 31⁸⁴

Exemption from customs duties and inspection

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(a) Articles for the official use of the special mission;

(b) Articles for the personal use of the head and members of the special mission, of the members of its diplomatic staff, or of the members of their family who accompany them.

2. The personal baggage of the head and members of the special mission and of the members of its diplomatic staff shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the person concerned, of his authorized

⁸⁴ Introduced as article 30 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 808th meeting of the Commission. Drafting Committee's text discussed and adopted at the 817th meeting. Commentary adopted at the 821st meeting.

representative, or of a representative of the permanent diplomatic mission of the sending State.

Commentary

(1) This article is based on article 36 of the Vienna Convention on Diplomatic Relations.

(2) The question of applying to special missions the rules exempting permanent diplomatic missions and their members from the payment of customs duties on articles imported for the establishment of the mission, its members or its staff seldom arises, although it may do so. In view of the rarity of such cases, the Commission considers that a special provision on this point should not be included in the text but that this eventuality should be mentioned in the commentary, in order to inform Governments that such situations occur and that they ought to settle them by specific decisions in individual cases.

(3) The claims of certain special missions, for themselves or for their members, to exemption from the payment of customs duties on the importation of consumer goods, have been challenged in practice. The Commission has refrained from proposing a solution for this case.

Article 32⁸⁵

Administrative and technical staff

Members of the administrative and technical staff of the special mission shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in articles 24 to 31, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 2 of article 26 shall not extend to acts performed outside the course of their duties.

Commentary

(1) This article is based on article 37, paragraph 2, of the Vienna Convention on Diplomatic Relations.

(2) The two texts differ in that article 32 omits two clauses which appear in the said article 37, paragraph 2:

(a) It omits any mention of members of the family, for these are dealt with in a separate article (article 35);

(b) It does not provide for customs exemption in respect of articles imported at the time of first installation, as the Commission considered that this privilege should not be granted to the members of special missions (see article 31, paragraph (2) of the commentary).

Article 33⁸⁶

Members of the service staff

Members of the service staff of the special mission who are not nationals of or permanently

⁸⁵ Introduced as article 32 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 808th meeting of the Commission. Drafting Committee's text, numbered 31, discussed and adopted at the 817th meeting. Commentary adopted at the 821st meeting.

⁸⁶ Introduced as article 32 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 808th meeting of the Commission. Drafting Committee's text, numbered 32, discussed and adopted at the 817th meeting. Commentary adopted at the 821st meeting.

resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, and exemption from duties and taxes on the emoluments they receive by reason of their employment.

Commentary

(1) This article is based on article 37, paragraph 3, of the Vienna Convention on Diplomatic Relations.

(2) The Commission considers that the text adopted is sufficient to provide the guarantees necessary for the members of the service staff of special missions.

(3) The Special Rapporteur suggested that the Commission should provide for the grant of the following additional privileges to members of the service staff:

(a) Exemption from personal services and contributions, for he is convinced that, unless members of the service staff are guaranteed this exemption, the authorities of the receiving State could paralyse the proper functioning of the special mission;

(b) Full immunity from the criminal jurisdiction of the receiving State, for the exercise of that jurisdiction in respect of members of the service staff could paralyse the functioning of the special mission entirely—a possibility which does not arise in the case of permanent diplomatic missions.

(4) The Commission did not accept the Special Rapporteur's suggestions, and it decided not to go further than the Vienna Convention on Diplomatic Relations in the matter. It decided to draw attention in the commentary to the Special Rapporteur's suggestions set out in paragraph (3) above.

Article 34⁸⁷

Private staff

Private staff of the head and members of the special mission and of members of its staff who are authorized by the receiving State to accompany them in the territory of the receiving State shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In all other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the special mission.

Commentary

(1) This article is based on article 37, paragraph 4, of the Vienna Convention on Diplomatic Relations.

(2) In 1960 the Commission took as the premise the proposition that the head, members and members of the staff of the special mission should be allowed to bring private staff with them, for such staff might be essential to their health or personal comfort.

(3) However, it is a moot point whether there is a right *de jure* to bring such staff. This matter is

⁸⁷ Introduced as article 32 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 808th meeting of the Commission. Drafting Committee's text, numbered 33, discussed and adopted at the 817th meeting. Commentary adopted at the 821st meeting.

thought to lie within the discretionary power of the receiving State, which may therefore impose restrictions. However, where there are no restrictions or where the receiving State grants permission, the question arises in practice whether the privileges and immunities extend to private staff.

(4) The Special Rapporteur is of the opinion that this staff should be guaranteed functional immunity from criminal jurisdiction in respect of acts performed in the course of the duties they normally carry out on the orders of their employers. The Commission did not wish to go further than the Vienna Convention on this point.

Article 35⁸⁸

Members of the family

1. The members of the families of the head and members of the special mission and of its diplomatic staff who are authorized by the receiving State to accompany them shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 24 to 31.

2. Members of the families of the administrative and technical staff of the special mission who are authorized by the receiving State to accompany them shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in article 31.

Commentary

(1) This article is based on article 37 of the Vienna Convention on Diplomatic Relations, but some major changes were necessary to make it applicable to special missions.

(2) In practice, the question arises whether privileges and immunities also attach to family members accompanying the head and members of the special mission or members of its staff. One school of thought maintains that there can be no grounds for limiting privileges exclusively to the head and members of the special mission and members of its staff unless, owing to the nature of the work to be performed or by prior arrangement, the presence of family members in the territory of the receiving State is ruled out in advance.

(3) The Commission realized that the attempt to specify what persons are covered by the expression "members of the family" had at both the Vienna Conferences (in 1961 and 1963) ended in failure, but it believes that in the case of special missions the number of such persons should be limited. However, in the case of temporary residence it is a matter of no great consequence whether the relative concerned is a regular member of the household of the person whom he or she is accompanying.

(4) In practice, restrictions are sometimes general, sometimes limited in the sense that they except a specified number of family members, or else they may apply to certain periods of the special mission's visit or to access to certain parts of the territory. The Commission merely recognized, without going into

details, that it is within the receiving State's power to impose restrictions in this respect.

Article 36⁸⁹

Nationals of the receiving State and persons permanently resident in the territory of the receiving State

1. Except in so far as additional privileges and immunities may be recognized by special agreement or by decision of the receiving State, the head and members of the special mission and the members of its diplomatic staff who are nationals of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of their functions.

2. Other members of the staff of the special mission and private staff who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the special mission.

Commentary

(1) This article is based on article 38 of the Vienna Convention on Diplomatic Relations, but the two texts are not identical. The starting-point is the idea that the receiving State is not obliged to admit, as head, member or member of the staff of the special mission, its own nationals or persons permanently resident in its own territory. This idea is set forth in article 14 concerning the nationality of the head and members of the special mission and of members of its staff.

(2) The difference between the aforesaid article 14 and the present article is that, in the latter, persons permanently resident in the territory of the receiving State are treated in the same manner as nationals of the receiving State.

(3) During the discussion of article 14, the Commission did not adopt the view that nationals of the receiving State and persons permanently resident in its territory should be treated in identical fashion. In adopting that decision, the Commission took account of the fact that article 8 of the Vienna Convention on Diplomatic Relations does not treat these persons in identical fashion. However, in regard to the enjoyment of privileges and immunities, the Vienna Convention on Diplomatic Relations accepts identical treatment of these two groups in article 38. The Commission considers that the same course should be adopted in the present article. It accepts the argument that the rules on special missions should not reduce the staff of special missions to a status lower than that resulting from the provisions of the Vienna Convention on Diplomatic Relations. However, it was also argued in the Commission that in settling the status of special missions the Commission should take care not to establish any further limitations on the sovereignty of receiving States. It is held that it would not be logical

⁸⁸ Introduced as article 31 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 808th meeting of the Commission. Drafting Committee's text, numbered 34, discussed and adopted at the 819th meeting. Commentary adopted at the 821st meeting.

⁸⁹ Introduced as article 33 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 808th meeting of the Commission. Drafting Committee's text, numbered 35, discussed and adopted at the 819th meeting. Commentary adopted at the 821st meeting.

for certain members of special missions or of their staff to be favoured to the detriment of the interests of the receiving State.

(4) The Commission stresses that, in its view, it is better that this question should be settled by mutual agreements rather than that general international rules should be laid down on the subject.

Article 37⁹⁰

Duration of privileges and immunities

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State for the purpose of performing his functions in a special mission, or, if already in its territory, from the moment when his appointment is notified to the competent organ of that State.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in the case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the special mission, immunity shall continue to subsist.

Commentary

(1) This article reproduces *mutatis mutandis* article 39, paragraphs 1 and 2, of the Vienna Convention on Diplomatic Relations. In the present draft the subject matter of the other two paragraphs (3 and 4) of the said article 39 is dealt with in a separate article (article 38).

(2) In adopting article 37 the Commission based itself on the same reasons as determined the adoption of article 39 of the Vienna Convention on Diplomatic Relations.

Article 38⁹¹

Case of death

1. In the event of the death of the head or of a member of the special mission or of a member of its staff, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

2. In the event of the death of the head or of a member of the special mission or of a member of its staff, or of a member of their families, if those persons are not nationals of or permanently resident in the receiving State, the receiving State shall facilitate the collection and permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death.

⁹⁰ Introduced as article 34 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 809th meeting of the Commission. Drafting Committee's text, numbered 36, discussed and adopted at the 819th meeting. Commentary adopted at the 821st meeting.

⁹¹ Introduced as article 35 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 809th meeting of the Commission. Drafting Committee's text, numbered 37, discussed and adopted at the 819th meeting. Commentary adopted at the 821st meeting.

3. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as the head or member of the special mission or member of its staff, or as a member of their families.

Commentary

(1) This article is based on paragraphs 3 and 4 of article 39 of the Vienna Convention on Diplomatic Relations. It contains no more than is needed in the case of special missions, which are not of the same nature as permanent diplomatic missions.

(2) The Commission takes the view that in addition to the provisions applicable to permanent diplomatic missions an obligation should be placed on the receiving State to take whatever measures of protection are necessary with regard to the movable property of members of special missions. It may be that members of special missions and their families are far from the seat of the sending State's permanent mission when death occurs, and the assistance of the local authorities is then necessary for the purpose of collecting and protecting the deceased's movable property. This situation does not arise in the case of the staff of diplomatic and consular missions.

Article 39⁹²

Transit through the territory of a third State

1. Subject to the provisions of paragraph 4, if the head or a member of the special mission or a member of its diplomatic staff passes through or is in the territory of a third State, while proceeding to take up his functions in a special mission performing its task in a foreign State, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the person referred to in this paragraph, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the transit of members of the administrative and technical or service staff of the special mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communication in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. Subject to the provisions of paragraph 4, they shall accord to the couriers and bags of the special mission in transit the same inviolability and protection as the receiving State is bound to accord.

4. The third State shall be bound to comply with the obligations mentioned in the foregoing three paragraphs only if it has been informed in advance, either in the visa application or by noti-

⁹² Introduced as article 36 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 809th meeting of the Commission. Drafting Committee's text, numbered 38, discussed and adopted at the 819th meeting. Commentary adopted at the 821st meeting.

fiction, of the transit of the special mission, and has raised no objection to it.

5. The obligation of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in these paragraphs, and to the official communications and bags of the special mission, whose presence in the territory of the third State is due to *force majeure*.

Commentary

(1) This article is based on article 40 of the Vienna Convention on Diplomatic Relations. The difference is that, whereas facilities, privileges and immunities must be granted to the head and the staff of the permanent diplomatic mission in all circumstances, in the case of special missions the duty of the third State is restricted to cases where it does not object to the transit through its own territory of the special mission.

(2) The Commission considers that a third State is not bound to accord to its nationals who form part of a foreign special mission passing through its territory the privileges and immunities which the receiving State is not bound to guarantee to its nationals who are members of a foreign special mission (see article 36 of the draft).

Article 40⁹³

Obligation to respect the laws and regulations of the receiving State

1. Without prejudice to their privileges and immunities, it is the duty of all persons belonging to special missions and enjoying these privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. The premises of the special mission must not be used in any manner incompatible with the functions of the special mission as laid down in these articles or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

Commentary

(1) Paragraph 1 of this article reproduces *mutatis mutandis* paragraph 1 of article 41 of the Vienna Convention on Diplomatic Relations and of article 55 of the Vienna Convention on Consular Relations. The rule in question is at present a general rule of international law. The Special Rapporteur considered, furthermore, that this rule should be amplified by a proviso stating that the laws and regulations of the receiving State are not mandatory for the organs of the sending State if they are contrary to the general rules of international law or to the contractual rules which exist between the States. Such a proviso was discussed at both the Vienna Conferences (1961 and 1963) but was not inserted in the relevant articles, for it was presumed that as a general rule the receiving State would observe its general international obligations and its duties arising out of international agreements. In addition, it was pointed out that it would be

⁹³ Introduced as article 38, paragraphs (1) and (4) of Special Rapporteur's second report (A/CN.4/179). Discussed at the 809th meeting of the Commission. Drafting Committee's text, numbered 39, discussed and adopted at the 819th meeting. Commentary adopted at the 821st meeting.

undesirable to refer the diplomatic or consular organs to the general rules of international law and that in each specific case they had the right to enter into discussions with the Government of the receiving State about the conformity of its internal law with the rules of international law. Accordingly, the Commission adopted the rule in question for special missions, but omitted the proviso mentioned above.

(2) Paragraph 2 of this article reproduces *mutatis mutandis* paragraph 3 of article 41 of the Vienna Convention on Diplomatic Relations.

Article 41⁹⁴

Organ of the receiving State with which official business is conducted

All official business with the receiving State entrusted to the special mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other organ, delegation or representative as may be agreed.

Commentary

(1) This article is based on paragraph 2 of article 41 of the Vienna Convention on Diplomatic Relations. No such provision appears in the Vienna Convention on Consular Relations for the simple reason that consuls are allowed in principle to communicate direct with all the organs of the receiving State with which they have dealings in the performance of their tasks. Special missions are in a special position. As a general rule, they communicate with the Ministry of Foreign Affairs of the receiving State, but frequently the nature of their tasks makes it necessary for them to communicate direct with the competent special organs of the receiving State in regard to the business entrusted to them. These organs are often but not always local technical organs. It is also the practice for the receiving State to designate a special delegation or representative who establishes contact with the special mission of the sending State. The question is generally settled by mutual agreement between the States concerned, or else the Ministry of Foreign Affairs of the receiving State informs the organs of the sending State with which organ or organs the special mission should get in touch. A partial solution to this problem has already been provided in the commentary on article 11 of the draft. Consequently, the article as adopted is merely an adaptation of article 41, paragraph 2, of the Vienna Convention on Diplomatic Relations.

(2) Although the range of organs of the receiving State with which the special mission may establish contact in the conduct of its business has been widened in the article as adopted, special missions are not being placed in a position analogous to that of consuls. The relations of special missions are confined to those with the organs which have been specified by agreement or to which they are referred by the Ministry of Foreign Affairs of the receiving State. It should be noted that the term "organ" also applies to liaison officers.

⁹⁴ Introduced as article 38, paragraphs (2) and (3) of Special Rapporteur's second report (A/CN.4/179). Discussed at the 809th meeting of the Commission. Drafting Committee's text, numbered 40, discussed and adopted at the 819th meeting. Commentary adopted at the 821st meeting.

Article 42⁹⁵

Professional activity

The head and members of the special mission and the members of its diplomatic staff shall not practise for personal profit any professional or commercial activity in the receiving State.

Commentary

(1) This article reproduces *mutatis mutandis* article 42 of the Vienna Convention on Diplomatic Relations.

(2) With regard to the possibility of including in the article a clause stating that the right of the persons concerned to carry on a professional or commercial activity in the receiving State on behalf of the sending State is subject to the prior consent of the receiving State, some members contested the validity of the argument that prior consent should not be required in the case of special missions because it is not required in the case of permanent diplomatic missions. The other members took the view that such activity was permitted if in conformity with the law of the receiving State and that the question was settled by article 40, paragraph 1, of the draft (Obligation to respect the laws and regulations of the receiving State). The Commission decided not to include a clause on this question in the text, but to mention this difference of opinion in the commentary.

Article 43⁹⁶

Right to leave the territory of the receiving State

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

Commentary

(1) This article reproduces *mutatis mutandis* article 44 of the Vienna Convention on Diplomatic Relations.

(2) The Commission considered that persons who had entered the receiving State's territory in order to form part of a special mission (other than nationals of the receiving State) had the right to leave that territory. The receiving State would be contravening the principle of personal inviolability if it prevented them from leaving.

Article 44⁹⁷

Cessation of the functions of the special mission

1. When a special mission ceases to function, the receiving State must respect and protect its

⁹⁵ Introduced as article 37 of Special Rapporteur's second report (A/CN.4/179). Discussed at the 809th meeting of the Commission. Drafting Committee's text, numbered 41, discussed and adopted at the 819th meeting. Commentary adopted at the 821st meeting.

⁹⁶ Text, numbered 42, submitted by Drafting Committee and adopted at the 819th meeting. Commentary adopted at the 821st meeting.

⁹⁷ Text, numbered 43, submitted by Drafting Committee and adopted at the 819th meeting. Commentary adopted at the 821st meeting.

property and archives, and must allow the permanent diplomatic mission or the competent consular post of the sending State to take possession thereof.

2. 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.

3. In case of absence or breach of diplomatic or consular relations between the sending State and the receiving State and if the special mission has ceased to function,

(a) The receiving State must, even in case of armed conflict, respect and protect the property and archives of the special mission;

(b) The sending State may entrust the custody of the property and archives of the mission to a third State acceptable to the receiving State.

Commentary

(1) This article is based on article 45 of the Vienna Convention on Diplomatic Relations, but it was necessary to take into account the fact that the cessation of a special mission's functions does not always coincide with the severance of diplomatic or consular relations between the sending State and the receiving State.

(2) Paragraph 1 covers the case in which the functions of a special mission cease while diplomatic or consular relations exist between the States concerned. In this case, the diplomatic mission or consular posts of the sending State are authorized to take possession of the property and archives of the special mission; they are responsible for the protection of the property of the sending State, including that of the special mission.

(3) Paragraph 2 provides, first, that the severance of diplomatic relations between the sending State and the receiving State does not automatically have the effect of terminating special missions existing at the time of the severance. This is consequential on the rule in article 1, paragraph 2, of the draft that the existence of diplomatic or consular relations between the States is not necessary for the sending and reception of special missions (see also paragraph (5) of the commentary on article 1). If the existence of diplomatic or consular relations is not necessary for the sending or reception of special missions, then, *a fortiori*, the severance of such relations does not automatically have the effect of terminating special missions.

(4) Secondly, in conformity with practice, the Commission has recognized in paragraph 2 the right of each of the States concerned to terminate by unilateral act special missions existing at the time when diplomatic relations are severed.

(5) Where diplomatic or consular relations between the two States concerned are non-existent or are severed, the property and archives of the special mission which has ceased its functions are governed, in conformity with practice, by the rules of diplomatic law relating to the severance of diplomatic relations (article 45 of the Vienna Convention on Diplomatic Relations).

C. Other decisions, suggestions and observations by the Commission

46. The Commission instructed the Special Rapporteur to prepare and submit to the Commission an introductory article on the use of terms in the draft, in order that the text may be simplified and condensed.

47. The Commission decided that it would review the articles provisionally adopted during its sixteenth and seventeenth sessions after receiving the observations and comments of the Governments.

48. The Commission considered whether special rules of law should or should not be drafted for so-called "high-level" special missions, whose heads hold high office in their States. It would appreciate the opinion of Governments on this matter and hopes that their suggestions will be as specific as possible. The Special Rapporteur prepared a draft on such

missions. This draft, which the Commission did not discuss, is reproduced as an annex to this chapter.

49. The Special Rapporteur suggested to the Commission that a provision on non-discrimination (article 47 of the Vienna Convention on Diplomatic Relations and article 72 of the Vienna Convention on Consular Relations) should be included among the draft articles. The Commission did not accept that suggestion, on the ground that the nature and tasks of special missions are so diverse that in practice such missions have inevitably to be differentiated *inter se*.

50. Nor did the Commission accept for the time being the Special Rapporteur's proposal that the draft should contain a provision on the relationship between the articles on special missions and other international agreements (article 73 of the Vienna Convention on Consular Relations).

ANNEX

Draft provisions concerning so-called high-level special missions, prepared by the Special Rapporteur

(not discussed by the Commission)

[Original: French]

At its sixteenth session the International Law Commission decided to ask its Special Rapporteur to submit at its succeeding session articles dealing with the legal status of so-called high-level special missions, in particular special missions led by heads of States, heads of Governments, Ministers for Foreign Affairs and Cabinet Ministers.

Despite all his efforts to establish what are the rules specially applicable to missions of this kind, the Special Rapporteur has not succeeded in discovering them either in the practice or in the literature. The only rules he has found are those relating to the treatment of these distinguished persons in their own State, not only as regards the courtesy accorded to them but also as regards the scope of the privileges and immunities. Accordingly, the Special Rapporteur is prepared to propose the following rules:

Rule 1

Except as otherwise provided hereinafter, the rules contained in the foregoing articles are likewise applicable to special missions led by heads of State, heads of Government, Ministers for Foreign Affairs and Cabinet Ministers.

Rule 2

A special mission which is led by a head of State shall be governed by the provisions of the said articles, subject to the following exceptions:

(a) In giving its approval to the special mission being led by the head of State, the receiving State admits in advance that such a mission may perform the tasks to be agreed upon by the two States concerned in the course of their contacts (exception to article 2 as adopted);

(b) The head of State, as head of the special mission, cannot be declared *persona non grata* or not acceptable (exception to article 4);

(c) The members of the staff of a special mission which is led by a head of State may also be members of his personal suite. Such persons shall be treated as diplomatic staff (supplement to article 6);

(d) In the case of the simultaneous presence of several special missions, heads of State who lead special missions shall have precedence over the other heads of special missions who are not heads of State. Nevertheless, in the case of the simultaneous presence of several special missions led by heads of State, precedence shall be determined according to the

alphabetical order of the names of the States (supplement to article 9);

(e) In cases where a head of State acts as head of a special mission, the function of the mission is deemed to commence at the time when he arrives in the territory of the receiving State (special rule replacing article 11);

(f) The function of a special mission which is led by a head of State comes to an end at the time when he leaves the territory of the receiving State, but the special mission may, if the sending State and the receiving State so agree, continue in being after his departure; in this case, however, the level of the special mission changes, and its level shall be determined according to the rank of the person who becomes head of the special mission (supplement to article 12);

(g) A special mission which is led by a head of State shall have the right to display, in addition to the flag and emblem of the sending State, the flag and emblem peculiar to the head of State under the law of the sending State (supplement to article 15);

(h) The receiving State has the duty to provide a head of State who leads a special mission with accommodation that is suitable and worthy of him;

(i) The freedom of movement of a head of State who leads a special mission is limited in the territory of the receiving State in that an agreement on this matter is necessary with the receiving State (guarantee of the personal safety of the head of State);

(j) A head of State who leads a special mission enjoys complete inviolability as to his person, property and residence and full immunity from the jurisdiction of the receiving State;

(k) A head of State who leads a special mission enjoys full Customs exemption and exemption from Customs inspection by an agency of the receiving State;

(l) A head of State who leads a special mission has the right to bring with him members of his family and persons attached to his personal service, who shall, for so long as they form part of his suite, be entitled to the same immunities as the head of State;

(m) On his arrival in the territory of the receiving State and on his departure, a head of State who leads a special mission shall receive all the honours due to him as head of State according to the rules of international law;

(n) If a head of State who leads a special mission should die in the territory of the receiving State, then the receiving State has the duty to make arrangements in conformity with the rules of protocol for the transport of the body or for burial in its territory.

Rule 3

A special mission which is led by a head of Government shall be governed by the provisions of the said articles, subject to the following exceptions:

(a) In giving its approval to the special mission being led by the head of Government, the receiving State admits in advance that such a mission may perform the tasks to be agreed upon by the two States concerned in the course of their contacts (exception to article 2 as adopted);

(b) The head of Government, as head of the special mission, cannot be declared *persona non grata* or not acceptable (exception to article 4);

(c) In cases where a head of Government acts as head of a special mission, the function of the mission is deemed to commence at the time when he arrives in the territory of the receiving State (special rule replacing article 11);

(d) The function of a special mission which is led by a head of Government comes to an end at the time when he leaves the territory of the receiving State, but the mission may, if the sending State and the receiving State so agree, continue in being after his departure; in this case, however, the level of the special mission changes, and its level shall be determined according to the rank of the person who becomes head of the special mission (supplement to article 12);

(e) A head of Government who leads a special mission enjoys complete inviolability as to his person, property and residence and full immunity from the jurisdiction of the receiving State;

(f) A head of Government who leads a special mission enjoys full customs exemption and exemption from Customs inspection by an agency of the receiving State;

(g) A head of Government who leads a special mission has the right to bring with him members of his family and persons attached to his personal service, who shall, for so long as they form part of his suite, be entitled to the same immunities as the head of Government.

Rule 4

A special mission which is led by a Minister for Foreign Affairs shall be governed by the provisions of the said articles, subject to the following exceptions:

(a) In giving its approval to the special mission being led by the Minister for Foreign Affairs, the receiving State admits in advance that such a mission may perform the tasks to be agreed upon by the two States concerned in the course of their contacts (exception to article 2 as adopted);

(b) The Minister for Foreign Affairs, as head of the special mission, cannot be declared *persona non grata* or not acceptable (exception to article 4);

(c) The members of the staff of a special mission which is led by a Minister for Foreign Affairs may also be members of his personal suite. Such persons shall be treated as diplomatic staff (supplement to article 6);

(d) In cases where a Minister for Foreign Affairs acts as head of a special mission, the function of the mission is deemed to commence at the time when he arrives in the territory of the receiving State (special rule replacing article 11);

(e) The function of a special mission which is led by a Minister for Foreign Affairs comes to an end at the time

when he leaves the territory of the receiving State, but the mission may, if the sending State and the receiving State so agree, continue in being after his departure; in this case, however, the level of the mission changes, and its level shall be determined according to the rank of the person who becomes head of the special mission (supplement to article 12);

(f) A Minister for Foreign Affairs who leads a special mission enjoys complete inviolability as to his person, property and residence and full immunity from the jurisdiction of the receiving State;

(g) A Minister for Foreign Affairs who leads a special mission enjoys full Customs exemption and exemption from Customs inspection by an agency of the receiving State;

(h) A Minister for Foreign Affairs who leads a special mission has the right to bring with him members of his family and persons attached to his personal service, who shall, for so long as they form part of his suite, be entitled to the same immunities as the Minister for Foreign Affairs.

Rule 5

A special mission which is led by a Cabinet Minister other than the Minister for Foreign Affairs shall be governed by the provisions of the said articles, subject to the following exceptions:

(a) The members of the staff of a special mission which is led by a Cabinet Minister may also be members of his personal suite. Such persons shall be treated as diplomatic staff (supplement to article 6);

(b) In cases where a Cabinet Minister acts as head of a special mission, the function of the mission is deemed to commence at the time when he arrives in the territory of the receiving State (special rule replacing article 11);

(c) The function of a special mission which is led by a Cabinet Minister comes to an end at the time when he leaves the territory of the receiving State, but the special mission may, if the sending State and the receiving State so agree, continue in being after his departure; in this case, however, the level of the special mission changes, and its level shall be determined according to the rank of the person who becomes head of the special mission (supplement to article 12);

(d) A Cabinet Minister who leads a special mission enjoys complete inviolability as to his person, property and residence and full immunity from the jurisdiction of the receiving State;

(e) A Cabinet Minister who leads a special mission enjoys full Customs exemption and exemption from Customs inspection by an agency of the receiving State;

(f) A Cabinet Minister who leads a special mission has the right to bring with him members of his family and persons attached to his personal service, who shall, for so long as they form part of his suite, be entitled to the same immunities as the Cabinet Minister.

Rule 6

The sending State and the receiving State may, by mutual agreement, determine more particularly the status of the special missions referred to in rule 1 and, especially, may make provision for more favourable treatment for special missions at this level.

The Special Rapporteur is putting forward the foregoing rules as a suggestion only, in order that the Commission may express its opinion on the exceptions enumerated above. In the light of the Commission's decision he will submit a final proposal; he thinks he will be able to do so during the Commission's seventeenth session.

Chapter IV

PROGRAMME OF WORK AND ORGANIZATION OF FUTURE SESSIONS

51. The Commission considered questions relating to its programme of work and the organization of future sessions at four private meetings held on 18 and 31 May and 2 and 4 June 1965. These questions were also considered by the officers of the Commission and the Special Rapporteurs, whose proposals were adopted by the Commission at its 799th meeting on 10 June 1965.

52. At its sixteenth session in 1964, the Commission decided to complete the study of the law of treaties and of special missions before the end of 1966, that is, before the end of the term of office of the present members of the Commission. For the accomplishment of this aim, the Commission believed it essential to hold a four-week winter session in 1966.⁹⁸ At its present session the Commission was even more firmly convinced that a considerable number of additional meetings would be necessary to complete the work programme it had adopted, even if, as seemed necessary, all items but the law of treaties and special missions were for the present left aside. The Commission considered the question whether the proposed winter session could be replaced by extensions of the regular summer sessions of 1965 and 1966, but concluded that an extension in 1965 was not possible, and that an extension in 1966 would not by itself permit the completion of even the draft on the law of treaties.

53. The Commission, therefore, reaffirmed its recommendation of 1964 to the General Assembly that arrangements should be made for the Commission to meet for four weeks from 3-28 January 1966. These meetings would constitute the second part of the seventeenth session of the Commission.⁹⁹ The report on the work of the second part of the seventeenth session would be submitted to the General Assembly at its twenty-first regular session in 1966. The records and documents of the January meetings would be published in the *Yearbook of the International Law Commission, 1966*.

54. The Commission cannot at the present stage of its work be certain that even the meetings of January 1966 would be sufficient to enable it to complete its programme, and hence wishes to reserve the possibility

of a two-week extension of its 1966 summer session. In the course of the winter meetings the Commission would decide, in the light of the progress made up to that time, whether an extension of the summer session will be necessary or not.

55. The meetings of January 1966 will be entirely devoted to reviewing certain portions of the Commission's draft on the law of treaties in the light of the comments of Governments. The remainder of the draft will be completed at the regular summer session of 1966. Moreover, the Commission, pursuant to articles 16 and 21 of its Statute, has requested the Secretary-General to send its draft articles on special missions, completed at the present session, to Governments for their comments, and has requested that such comments be submitted by 1 April 1966. At the summer session, the draft will be reviewed and a text adopted in the light of those comments.

56. The Government of the Principality of Monaco has kindly invited the Commission to hold its meetings of January 1966 in Monaco. Article 12 of the Commission's Statute provides:

"The Commission shall sit at the European Office of the United Nations at Geneva. The Commission shall, however, have the right to hold meetings at other places after consultation with the Secretary-General."

In accordance with this provision, the Commission consulted the Secretary-General, who replied that, if the General Assembly at its twentieth session provided funds for a winter session in Geneva and if the Government of Monaco undertook to pay all expenses over and above such appropriation, there would be no objection to holding the meetings in Monaco. On these understandings, the Commission decided in principle to accept the invitation of the Government of Monaco, and requested the Secretary-General to make the necessary arrangements in accordance with General Assembly resolution 1202 (XII) of 13 December 1957, which provides in operative paragraph 2 (e):

"Meetings may be held away from the established headquarters of any body in other cases where a Government issuing an invitation for a meeting to be held within its territory has agreed to defray, after consultation with the Secretary-General as to their nature and possible extent, the additional costs involved."

⁹⁸ *Official Records of the General Assembly, Nineteenth Session, Supplement No. 9 (A/5809)*, chapter IV, paras. 36-38.

⁹⁹ The decision on this point was taken on an *ad hoc* basis, without prejudice to the question of the numbering of sessions if winter meetings are held in years after 1966.

Chapter V

OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

A. Co-operation with other bodies

57. At its 801st and 819th meetings on 14 June and 7 July 1965, the Commission considered the item concerning co-operation with other bodies. In this connexion, it desired to stress the importance which it attaches to consultation with the bodies with which it co-operates under article 26 of its Statute.

INTER-AMERICAN COUNCIL OF JURISTS

58. The Commission took note of the report by Mr. Eduardo Jiménez de Aréchaga (A/CN.4/176) on the work of the fifth meeting of the Inter-American Council of Jurists, held at San Salvador from 25 January to 5 February 1965, which he had attended as an observer on behalf of the Commission.

59. The Inter-American Juridical Committee, the standing organ of the Inter-American Council of Jurists, was represented by Mr. Elbano Provenzali Heredia, who addressed the Commission.

60. A standing invitation has been extended to the Commission to send an observer to the Inter-American Council of Jurists. The Commission took note that the next meeting of the Council would be held in Caracas, Venezuela, but that the date had not yet been set. If the meeting is held before the next session of the Commission, the Commission requested its Chairman, Mr. Milan Bartoš, to attend it, or, if he were unable to do so, to appoint another member of the Commission or its Secretary to represent the Commission.

ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

61. The Commission took note of the report by Mr. Roberto Ago (A/CN.4/180) on the work of the seventh session of the Asian-African Legal Consultative Committee held at Baghdad from 22 March to 1 April 1965, which he had attended as an observer on behalf of the Commission.

62. The Asian-African Legal Consultative Committee was represented by Mr. Hasan Zakariya, who addressed the Commission.

63. The Commission considered the standing invitation addressed to it to attend the sessions of the Asian-African Legal Consultative Committee. The Commission considered it useful to send an observer to the eighth session of the Committee in 1966, at which comments on the Commission's draft articles on the law of treaties will be prepared. It therefore requested its Chairman, Mr. Milan Bartoš, to attend that session, or, if he were unable to do so, to appoint another member of the Commission or its Secretary to represent the Commission.

B. Exchange and distribution of documents of the Commission

64. At its 819th meeting on 7 July 1965, the Commission approved the report (A/CN.4/L.110) of a

committee which it had established¹⁰⁰ to study the exchange and distribution of the documents of the Commission. The conclusions of the report were as follows:

(a) All the mimeographed and printed documents and records of the Commission should be distributed to all members of the Commission, and to all of the former members of the Commission and members and former members of the International Court of Justice who so request. The Commission desired to stress the need of its members to receive volume II, as well as volume I, of the printed *Yearbooks of the International Law Commission*, for the purposes of study and research in connexion with their functions.

(b) Apart from the above-mentioned persons, the *Yearbooks* and documents should not normally be sent to individuals by name, but should rather be confined to organizations, institutes and libraries, in particular, law school libraries, which should be placed on the mailing list at the request of members of the Commission or of permanent missions to the United Nations; the Secretariat should review the present list in the light of these principles.

(c) When scientific institutions such as the *Institut de Droit international* and the International Law Association are studying questions related to those before the International Law Commission, a limited number of the relevant documents and records of the Commission should be placed at their disposal if their Secretariats so request; they should be asked in exchange to supply a limited number of their documents and records for the use of the Commission.

(d) While it was recognized that the sending of review copies of the Commission's publications is the responsibility of the Secretariat in connexion with the promotion of sales, nevertheless it is desirable that the number of review copies sent out should be increased to a minimum of 100, so as to allow one copy for each of the principal legal periodicals of the world, and thus, by making the work of the Commission better known, to serve the basic objectives of General Assembly resolution 1968 (XVIII) on Technical Assistance to promote the teaching, study, dissemination and wider appreciation of international law.

(e) When bodies with which the Commission co-operates in pursuance of article 26 of its Statute are working on topics related to those before the Commission, it is desirable in principle that sufficient copies of the documents and reports of the Commission and of the other body should be exchanged to permit distribution of one copy to each member of the Commission and to each member of the other body; the Secretariat was requested to explore the possibility of making such arrangements with those bodies.

¹⁰⁰ See chapter I, para. 7 of the present report.

C. Dates and places of next meetings

65. As stated in the preceding chapter of this report, the Commission finds it necessary to hold a four-week series of meetings from 3 to 28 January 1966, and has decided in principle to accept the invitation of the Government of the Principality of Monaco to hold those meetings in Monaco.

66. The Commission further decided to hold its next regular session at the European Office of the United Nations from 4 May to 8 July 1966, but wishes, for the reasons explained in the preceding chapter, to reserve the possibility of a two-week extension of the session until 22 July 1966, the question of extension to be decided during the January meetings.

D. Representation at the twentieth session of the General Assembly

67. The report of the Commission on the work of its sixteenth session recorded its decision¹⁰¹ that it would be represented at the nineteenth session of the General Assembly by Mr. Roberto Ago, Chairman of the Commission at the sixteenth session. The 1964 report of the Commission was not discussed at the nineteenth session of the General Assembly but will presumably be discussed at the twentieth session. At its present session the Commission continued to consider it important that it be represented, at the discussion by the General Assembly of its work in 1964, by Mr. Ago.

68. The Commission further decided that it would be represented, in respect of the work of its seventeenth session, by Mr. Milan Bartoš, its Chairman, at the twentieth session of the General Assembly.

E. Yearbook of the International Law Commission

69. The Commission examined certain suggestions concerning the presentation of its records in the *Yearbooks* of the *International Law Commission*, made for the purpose of facilitating the use of the *Yearbooks*. A number of suggestions were adopted and will be reflected in the volumes for 1965.

¹⁰¹ *Official Records of the General Assembly, Nineteenth Session, Supplement No. 9 (A/5809)*, para. 51.

F. Seminar on International Law

70. The European Office of the United Nations organized a Seminar on International Law for advanced students of the subject and young government officials responsible in their respective countries for dealing with questions of international law, to take place during the present session of the Commission. The general subject of the discussions was the law of treaties. The Seminar, which held ten meetings between 10 and 21 May 1965, was attended by sixteen students from thirteen different nationalities. They heard lectures by seven members of the Commission, two members of the Secretariat and one professor from the Geneva University, held discussions with the lecturers, and attended meetings of the Commission. The Seminar was held without cost to the United Nations, which undertook no responsibility for the travel or living expenses of the participants.

71. The Commission considers that the Seminar was well organized and well administered. The excellent qualifications of the participants made it possible to maintain a high level of discussion. The course turned out to be a useful experience for those who attended it. The Commission recommends that further Seminars should be organized in conjunction with its future sessions. In setting the dates for future Seminars, the work programme of the Commission is the primary consideration; but so far as possible, the dates should be co-ordinated with those of other international law activities in Europe, so that participants coming from distant countries can profit by those activities as well.

72. Several members of the Commission stressed the desirability of including among the participants in the Seminar a reasonable proportion of nationals of the developing countries. To achieve this, the General Assembly may wish to consider the possibility of granting fellowships, which might cover travel and subsistence expenses, to enable the nationals of such countries to attend. Such a measure would be in accord with the aims of General Assembly resolution 1968 (XVIII) on technical assistance to promote the teaching, study, dissemination and wider appreciation of international law.

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