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Ad hoc Diplomacy - Report by A.E.F. Sandström, Special Rapporteur

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AD HOC DIPLOMACY

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Report by A. E. F. Sandström, Special Rapporteur

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Introduction

1. When, at its tenth session in 1958, the International Law Commission elaborated a text of draft articles on diplomatic intercourse and immunities, the Commission dealt only with permanent diplomatic missions. As the Commission pointed out in its introductory remarks,¹ diplomatic relations between States may also "assume other forms that might be placed under the heading of 'ad hoc diplomacy', covering itinerant envoys, diplomatic conferences and special missions sent to States for limited purposes".

2. The Commission, considering that these forms of diplomacy should also be studied in order to bring out the rules of law governing them, requested the writer, as Special Rapporteur, to make such a study and to submit his report at a future session. Dealing at its eleventh session in 1959 with its future work, the Commission decided to place on the agenda of its twelfth session in 1960, among other subjects, that of *ad hoc* diplomacy. The Special Rapporteur had already declared his intention to submit his report to the Commission before the twelfth session in case the Commission should definitely decide to take up the matter.

3. In presenting his report, the Special Rapporteur, for reasons of convenience, first takes up the question of special missions, which perhaps most closely resemble the permanent missions.

I. Special missions

4. Sometimes a State entrusts the carrying out of a special diplomatic assignment in a foreign State to a

diplomatic officer who does not belong to its permanent mission accredited to the country. This may be done for ceremonial functions, such as coronations, weddings, funerals, jubilees, the announcement of an accession to the throne, and the like.² It may also be done for negotiating and concluding an agreement on some special diplomatic matter concerning the relations between the States. The reason might be to emphasize the importance of the act, or, without increasing or changing the personnel of the permanent mission, to employ in the diplomatic action personal resources (e.g., a special competence) which the permanent mission could not provide.

5. In any case, a special mission can be characterized as performing temporarily an act which ordinarily is taken care of by the permanent mission. The head of a special mission is also generally, but not always, a diplomatic officer by profession.

6. The similarity between a special mission's activities and aims and those of a permanent mission raises the questions of whether, and to what extent, the rules concerning diplomatic intercourse and immunities ought to apply in respect of the special mission.

7. Broadly speaking, it seems natural that rules relating to special features of a permanent mission which do not obtain in respect of special missions should not apply, whereas rules inspired by considerations of the similar nature and aims of the functions in question should be applied.

8. Applying this criterion, the dividing line between the applicable and non-applicable provisions of the 1958

¹ *Yearbook of the International Law Commission, 1958*, (United Nations Publication, Sales No.: 58.V.1, Vol.II), p. 89.

² See L. Oppenheim, *International Law: A Treatise*, vol. I, *Peace*, 8th ed., ed. H. Lauterpacht (London, Longmans, Green and Co, 1955) pp. 775 and 776.

draft will fall between Section I, which contains, for the most part, articles having in view the special conditions of permanent missions, and Sections II, III and IV, which refer directly or indirectly to the privileges and immunities based essentially on the requirements of the diplomatic function. Sections V and VI refer to the draft agreement as such, and ought, therefore, to have a general application.

A. GENERAL PROVISIONS OF THE 1958 DRAFT (SECTION I)

9. Examining in detail the applicability of the various rules of the 1958 draft to special missions, the definitions in article 1 might well apply also to a special mission, although its staff generally is neither so numerous nor so differentiated as that of a permanent mission. It will, however, be necessary to define a special mission.

10. Articles 2 and 3 of the 1958 draft, which deal with the establishment of a permanent mission and its functions, naturally find no application in respect of a special mission. The establishment of a permanent mission is the subject of a special agreement, distinct from the appointment of the persons which it may comprise. A special mission is also based on an agreement, but one which is *ad hoc*, and in connexion with which the person to whom the mission is entrusted is usually mentioned. To the Special Rapporteur it seems sufficient only to mention the *ad hoc* agreement in the new draft (article 2).

11. As to the functions of a special mission, it is only with one or more distinct aspects of the general diplomatic functions referred to in article 3 of the 1958 draft that a special mission is charged, and it will be enough to mention in the definition the special nature of the assignment without attempting to enumerate the possible functions involved.

12. A rule corresponding to article 4 of the 1958 draft, concerning appointment after *agrément*, is not required, since the head of the mission is no doubt mentioned in the communications preliminary to the agreement on the special mission. For the same reason, a rule like article 7 of the 1958 draft does not seem to be required. The question covered by article 5 of the 1958 draft does not arise.

13. There is no reason for the application of the rule stated in the first part of article 6 of the 1958 draft; and the second part of that article can have no application in respect of a special mission.

14. On the other hand, provisions corresponding to those of article 8 of the 1958 draft seem to be equally desirable in the case of a special mission, as the success of the mission will largely depend on the acceptability of the person or persons entrusted with the mission. In the interests of orderly administration, and with a view to enabling the receiving State to observe its duties in respect of the special mission and its members, provisions similar to those in article 9 of the 1958 draft ought to be formulated with regard to special missions.

15. The rules laid down in articles 10 and 11 of the 1958 draft do not seem to have any relevance to special missions.

16. As to the questions dealt with in articles 12 to 16 of the 1958 draft, the practice of special missions with regard to different points is not uniform.

17. To take as an example the question of the presentation of credentials, it sometimes happens that credentials are formally presented; and this practice is particularly common in the case of missions for ceremonial purposes, with regard to which the question of precedence plays a certain role. On the other hand, when negotiations are conducted by a special mission, generally only a record showing the powers to negotiate is presented.

18. With regard to the question of precedence, it is to be observed that the Regulation of Vienna of 19 March 1815, which is at the basis of article 15 of the 1958 draft, contains a provision (article 3) which reads as follows:

“Diplomatic officials on extraordinary missions shall not by this fact be entitled to any superiority of rank.”³

This rule seems not always to have been followed. Genet⁴ gives the following explanation:

“D’une manière générale, la personne chargée de mission spéciale n’a pas de rang diplomatique proprement dit à raison de la mission spéciale, tout en ayant cependant le caractère diplomatique.

“Tout agent accrédité a donc en principe le pas sur elle; en pratique pourtant et comme par une faveur insigne, le pas leur est généralement cédé et on témoigne des égards tout particuliers aux envoyés de cette catégorie. ‘Ils ne prennent pas la préséance, ils la reçoivent.’ *Inter se*, ils se classent suivant le grade réel; à grade égal, c’est l’ordre de la remise des lettres de créances qui leur donne le rang.”⁵

Whatever the value of this reasoning, article 3 of the Regulation of Vienna states only that an extraordinary mission does not give any superiority in rank. Later practice has given the heads of special ceremonial missions rank, at least among themselves, according to the order of the presentation of their credentials.⁶ Finally, it is to be observed that more and more persons who are not diplomats by profession are used for special diplomatic missions, for example, to negotiate matters of a highly technical character. They do not belong to any generally recognized diplomatic category and cannot be placed in the classification contained in article 13 of the 1958 draft.

19. In the circumstances described, the Special Rapporteur finds it justifiable to insert in the draft on

³ *Yearbook of the International Law Commission, 1958* (United Nations Publication, Sales No.: 58.V.1, Vol. II), p. 93, footnote 29.

⁴ Raoul Genet, *Traité de Diplomatie et de Droit Diplomatique*, (Paris, A Pédonc, 1931) vol. I, p. 86.

⁵ *Ibid.*, pp. 86.

⁶ See Sir Ernest Satow, *A Guide to Diplomatic Practice* (4th edition edited by Sir Neville Bland, 1957), London, Longmans, Green & Co., 1957), pp. 41–43.

special missions a provision (article 10) reproducing the sense of article 3 of the Regulation of Vienna.

20. A second paragraph might be included in that article which would formulate, with regard to special envoys for ceremonial purposes, a rule corresponding to the rule in paragraph 1 of article 15 of the 1958 draft. Since, however, the practice does not appear to be quite certain, the Special Rapporteur is of the opinion that at this stage no proposal ought to be made.

21. Article 17 in the 1958 draft does not seem to have any bearing on the circumstances of a special mission.

22. A provision might be included, similar to that in article 18 of the 1958 draft, authorizing the use of the flag and emblem of the sending State on the automobile of the head of a ceremonial mission. However, in view of the difficulty of making such a distinction, and since the absence of a rule does not mean the prohibition of a practice, it is perhaps preferable not to have an express provision on the matter.

B. PRIVILEGES AND IMMUNITIES

23. Turning now to the applicability of the provisions of Section II of the 1958 draft, dealing with diplomatic privileges and immunities, it has been suggested above in Paragraph 8 that this part of the draft would, in the main, be applicable to special missions. The activities of a special mission are part of what are usually functions of a permanent mission, and since privileges and immunities are granted in the interest of these functions and for promoting good relations between the States, it is natural that these advantages be granted also to special missions unless they are based on circumstances which apply only to permanent missions.

24. To this latter category belong the provisions of articles 19, 21, 24 and 26 of the 1958 draft. The need of premises for a special mission is not such as to warrant a provision of the kind laid down in article 19 of the 1958 draft. If there is such a need, it seems more natural that the matter be settled in connexion with the agreement on the mission. Further, it scarcely seems necessary to include a provision of the kind appearing in article 21 of the 1958 draft. An additional reason for omitting such a provision in this instance is the generally short duration of a special mission. Article 24 of the 1958 draft is based on considerations relating to functions of a permanent mission which could hardly be entrusted to a special mission: and as to article 26 of the 1958 draft, it is not likely that fees and charges would be levied by a special mission.

25. On the other hand, there seems to be no reason to exclude the remaining articles of Section II of the 1958 draft from application to special missions. The same is true for article 35 of the 1958 draft, concerning acquisition of nationality, even if such cases as there envisaged are not very likely to occur.

26. Publicists seem to agree that diplomatic immunities apply also to special missions, although they do

not discuss the matter in detail. The Havana Convention of 1928 sanctions the same rule.⁷

II. Itinerant envoys

27. An itinerant envoy is an envoy sent by a State to several other States in succession, without being accredited to any of them, charged with a special diplomatic task which, for its performance in the different States, generally requires some special co-ordination.

28. In relation to each receiving State, the itinerant envoy's mission seems to be a special mission, and, seen as a whole, it can also be said to be a sequence of special missions to different countries. The common aim that keeps these consecutive missions together does not seem to justify any special rules apart from the rules applicable to a special mission.

III. Congresses and conferences

29. A congress or conference is a meeting between representatives of several States for discussing and settling questions concerning the relations between the States, either political questions, questions of social, economic, cultural order, or other matters.

30. The term "congress" was, in the past, usually employed for a meeting of plenipotentiaries assembled in order to settle a dispute, and especially to conclude a peace treaty. Nowadays, the terms "congress" and "conference" are used indifferently.

31. Generally, after a preliminary discussion between the States concerned, one of them—as a rule the State where the conference is to be held—invites the others to the meeting.

32. Those entitled to speak for a State are called plenipotentiaries or delegates. They can be of two kinds, those who take part in the proceedings, and those who are present only as observers. They can have at their disposal a staff of experts and technicians. The plenipotentiaries and the auxiliary staff together are described as a delegation.

33. In the relations between the State where the congress or conference takes place and any one of the participating States, the situation appears to be in the main the same as in the case of a special mission negotiating with the host State, even if the negotiations are carried on between all the participating States. The plenipotentiaries need not be diplomatists by profession, but the nature of their task gives the delegation the character of an essentially diplomatic mission.

34. A first consequence of this similarity is that what has been said above in paragraphs 7 and following about the applicability of the general provisions (Section I) of the 1958 draft to special missions is valid also in respect of congresses and conferences.

⁷ Convention on the Status of Aliens, signed at Havana on 20 February 1928 (League of Nations, *Treaty Series*, Vol. CXXXII, 1932-1933, No. 3045).

35. But there are certain other subjects which have to be dealt with in the draft.

36. One is a special question of precedence peculiar to congresses and conferences. In what order ought the delegations to be seated? Nowadays, it seems to be generally accepted that States, on account of their equality in international law, are to be seated in the alphabetical order of their English (or French) names, unless otherwise agreed. A different order may be decided if, for instance, there is a valid reason for having the participants divided into groups—a case which can occur, for example, at a peace conference.⁸ A provision to this effect ought to be inserted in the draft.

37. Apart from this question, it seems appropriate that the draft should also contain an article on how the scope and the organization of the conference or congress should be determined (e.g., election of officers, bureau and commissions, secretariat, voting order, etc.). The scope is fixed by previous agreement between the parties; and the organization, if not fixed by previous agreement or by reference to a règlement, is arranged by the congress or conference itself at the outset of the meeting.⁹

38. As to privileges and immunities, authors generally agree that the plenipotentiaries and their auxiliary staff enjoy full diplomatic privileges. Sometimes the foundation of this opinion is given as being the diplomatic character of the delegation's mission.¹⁰ Satow stated that "some doubt might perhaps be felt, in the absence of cases arising for settlement, as to the extent of the immunities to which they and the members of their suites are entitled".¹¹ In this context, he added: "Formerly international congresses and conferences were for the most part attended by personages of high ministerial rank, or by resident diplomatic agents who already possessed diplomatic privilege; now the plenipotentiaries appointed are often officials or persons chosen for their special knowledge of the subject to be discussed, who with their retinues constitute the delegations to the conference."¹²

39. To the Special Rapporteur the facts referred to do not in themselves seem sufficient to deny to the members of a delegation full diplomatic privileges, as long as one considers the basis of the privileges to be the "interest of the function". But some hesitation is prompted by the provisions of the Convention on the Privileges and Immunities of the United Nations, approved by the General Assembly on 13 February 1946 by its resolution 22 A (I) and the Interim Arrangement on Privileges and Immunities of the United Nations between the Swiss Federal Council and the Secretary-General of the United Nations, signed on 11 June and 1 July 1946.¹³ Article IV of these instruments relates to the privileges and immunities to be

accorded to representatives of Members of the United Nations on its principal and subsidiary organs and at conferences convened by the United Nations; and, among these privileges and immunities, immunity from jurisdiction is limited to "words spoken or written and all acts done by them in their capacity as representatives", whereas a member of a permanent mission, according to the 1958 draft of the Commission, enjoys a more complete immunity from the jurisdiction of the receiving State.

40. The question dealt with here is so closely connected with that of the privileges and immunities of conferences convened by the United Nations and other international organizations—which is to be taken up at a later stage of the work of the Commission—that it ought to be considered whether the question of privileges and immunities in respect of congresses and conferences ought not to be postponed and undertaken in that context.

41. It is possible, however, to make a distinction between, on the one hand, a conference in general, and on the other, a conference convened by the United Nations. The latter is, in a way, a prolongation of the United Nations Organization, and it can be argued that such a conference ought to be regulated in the same way as the meeting of an organ of the United Nations and not as an ordinary congress or conference. Thus, the provisions referred to in paragraph 39 above do not necessarily express the law regulating congresses and conferences generally.

42. On the other hand, it would be rather a quaint arrangement to have different rules governing the two types of conference and to have the group which is, or may become, the more important surrounded with less protection than the other.

43. Awaiting the discussion in the Commission, the Special Rapporteur inserts in the draft a rule which, in conformity with the 1958 draft for permanent missions, gives full privileges, with reservation, however, for conferences governed by special agreements.

IV. Place and form of the draft articles

44. In the opinion of the Special Rapporteur, the draft articles on the subjects dealt with in this report have their natural place as a continuation of the draft articles of 1958, more precisely as chapters following a first chapter containing the 1958 draft articles.

45. A difficulty connected with such an arrangement is that the General Assembly of the United Nations decided on 7 December 1959 by its resolution 1450 (XIV) that an international conference should be convened to deal with the 1958 draft, and that this conference should be convoked at the latest in the spring of 1961.

46. If the report is dealt with at the Commission's session this year, fixed to begin on 25 April 1960, the Commission should normally, according to article 21

⁸ See Genet, *op. cit.*, vol. III, pp. 226 ff. And see Satow, *op. cit.*, p. 310.

⁹ See Genet, *op. cit.*, Vol. III, pp. 133, 149, 176 ff. And see Satow, *op. cit.*, pp. 305, 306 and 310.

¹⁰ See Satow, *op. cit.*, pp. 207 and 208, and references cited therein.

¹¹ *Ibid.*, p. 207.

¹² *Ibid.*, pp. 207 and 208.

¹³ *Official Records of the General Assembly, First Part of First Session*, document A/175, annex 17.

of its Statute, prepare a preliminary draft and ask Governments to submit comments on this draft, and thereafter, according to article 22, take such comments into consideration and prepare a final draft and explanatory report which it should submit with its recommendation through the Secretary-General to the General Assembly. This procedure could not be completed before the contemplated conference in the spring of 1961.

47. Whether the General Assembly will postpone the conference, or dispense with the rule of article 22 and deal with the draft that might emerge from the Commission's deliberations this year, or deal later and separately with this draft after the Commission has made a final draft, has, of course, to be left entirely to the Assembly.

48. Even the second procedure mentioned above seems possible, since the draft articles mainly concern the field of application of previously drafted articles.

49. As to the form of the articles, it does not seem necessary to repeat the wording of the articles in the 1958 draft. That wording can, to a very large extent, be incorporated by reference. Two drafts have been prepared, one in a more detailed form and the other in a more contracted form.

50. The Special Rapporteur recommends the first one, which seems to be the clearer.

51. If the present draft articles and the 1958 draft articles are to be integrated in one draft, it would be advisable to bring together all the definitions in an initial article (art. 1); to make articles 2-43 of the 1958 draft, Chapter I, under the heading "Diplomatic relations by permanent missions"; to continue with the Chapters of the present draft as Chapters II and III; and to add a fourth Chapter containing articles 44 and 45 of the 1958 draft, which would be applicable to the whole new draft.

V. Text of draft articles

A. ALTERNATIVE I

CHAPTER I. DIPLOMATIC RELATIONS BY MEANS OF ITINERANT ENVOYS AND SPECIAL MISSIONS

Definitions

Article 1

For the purpose of this chapter the following expressions shall have the meanings hereunder assigned to them:

(a) An "itinerant envoy" is a diplomatic mission headed by an envoy who represents the sending State in several other States in a certain area or at large without being accredited to any of these States;

(b) A "special mission" is a diplomatic mission sent by one State to another for a special diplomatic assignment;

(c) The "1958 draft" means the draft articles on

the diplomatic intercourse and immunities which the International Law Commission elaborated at its tenth session and recommended to the General Assembly with a view to the conclusion of a convention;

(d) The definitions in article 1 of the 1958 draft shall apply also to the members of the staff of an itinerant envoy's mission or of a special mission.

Scope of Chapter I

Article 2

If a State has agreed to receive an itinerant envoy or a special mission from another State the following rules shall apply.

Persons declared *personae non gratae*

Article 3

Even if the receiving State has given formal *agrément* for an itinerant envoy or the head of a special mission or a member of their missions, the rules laid down in article 8 of the 1958 draft shall receive application in respect of them.

Facilities and freedom of communication

Article 4

1. The receiving State shall accord full facilities for the performance of the functions of the itinerant envoy's mission or the special mission.

2. Concerning communication for official purposes on the part of the itinerant envoy or the special mission, the same rules shall apply as laid down in paragraph 1 of article 25 of the 1958 draft.

3. In respect of the official correspondence of the itinerant envoy or the special mission, and diplomatic bags and couriers used by them, the same rules as provided for in paragraphs 2-5 of article 25 of the 1958 draft shall equally apply.

Inviolability of mission premises and archives

Article 5

The official premises of an itinerant envoy or a special mission and the archives and documents pertaining thereto shall enjoy the same inviolability as provided in articles 20 and 22 of the 1958 draft.

Inviolability as to person, private residence and property

Article 6

An itinerant envoy or the head of a special mission shall enjoy the same personal inviolability and inviolability of private residence and property as provided in articles 27 and 28 of the 1958 draft in respect of a diplomatic agent.

Immunity from jurisdiction and other exemptions from legislation

Article 7

1. An itinerant envoy or the head of a special mission shall, if he is not a national of the receiving State, enjoy the same immunity from the jurisdiction of the

receiving State and the same exemptions from its other legislation as are accorded to a diplomatic agent by article 29 and articles 31-35 of the 1958 draft.

2. As to waiver of jurisdiction, the same rules as provided in article 30 of the said draft shall apply.

Persons entitled to privileges and immunities

Article 8

1. Apart from the itinerant envoy and the head of a special mission, the members of their families forming part of their households and likewise the members of the diplomatic, administrative and technical staff of the missions and the members of their families forming part of their households shall, if they are not nationals of the receiving State, enjoy the privileges and immunities referred to in articles 6 and 7.

2. Members of the service staff of a mission and private servants of members of a mission shall, if they are not nationals of the receiving State, receive the same treatment as corresponding groups in a permanent mission according to paragraphs 2 and 3 article 36 of the 1958 draft.

Persons who are nationals of the receiving State

Article 9

An itinerant envoy and the head of a special mission, the members of their staffs, and their private servants, shall be treated as corresponding groups of persons in a permanent mission according to article 37 of the 1958 draft.

Precedence

Article 10

An itinerant envoy or the head of a special mission shall not by such position only be entitled to any superiority of rank.

Duration of privileges and immunities

Article 11

As to the duration of privileges and immunities, article 38 of the 1958 draft shall have analogous application.

Notification of arrival and departure

Article 12

The arrival and departure of the members of the staff of an itinerant envoy's mission or of a special mission shall be notified to the Ministry for Foreign Affairs of the receiving State. A similar notification shall be given whenever members of the mission and private servants are locally engaged or discharged.

Duties of third States

Article 13

In respect of the members of an itinerant envoy's mission or of a special mission, their official correspondence and other official communications, and couriers used by them, the provisions of article 39 of the 1958 draft shall be applied.

Conduct towards the receiving State

Article 14

The provisions of article 40 of the 1958 draft shall apply also to an itinerant envoy's mission, a special mission, the members of the mission, and all other persons connected with such missions who enjoy diplomatic privileges and immunities.

End of the function of an itinerant envoy or the head of a special mission

Article 15

The function of an itinerant envoy or the head of a special mission comes to an end, *inter alia*:

(a) When the transactions which have been the aim of the itinerant envoy or the mission have been brought to an end, or are interrupted;

(b) On notification by the Government of the sending State to the Government of the receiving State that the function of the itinerant envoy or the head of the mission has come to an end (recall);

(c) On notification by the receiving State, given in accordance with article 3, that it considers the function of the itinerant envoy or the head of the mission to be terminated.

Facilitation of departure and protection of premises and archives

Article 16

The provisions of article 42 and paragraphs (a) and (b) of article 43 of the 1958 draft shall be applied also in respect of an itinerant envoy's mission and a special mission.

CHAPTER II. CONGRESSES AND CONFERENCES

Definitions

Article 1

In this chapter the following expression shall have the meanings hereunder assigned to them:

(a) A congress or conference is a meeting of representatives of two or more States, not forming a federative State, for negotiating and/or concluding an agreement on matters concerning the relations between the States;

(b) A State or an international organization which is represented only for observation purposes is considered as participating in the congress or conference;

(c) A "delegation" is the person or body of persons representing, at the congress or conference, a State or an organization having international status, taking part in the congress or conference, and the auxiliary staff of such person or body of persons;

(d) "Delegates" are the head of the delegation and those who, with him, represent their State at the congress or conference, and their alternates;

(e) The "auxiliary staff" of a delegation consists of the persons who are appointed to assist the delegation;

(f) "Members of delegation" are delegates and members of the auxiliary staff;

(g) The premises where the meetings of the congress or conference or its committees take place, and the premises of the Secretariat, are considered as premises of the congress or conference.

Field of application of Chapter II

Article 2

If a State has convened a congress or conference to take place on its territory the following provisions shall apply, provided that, in respect of the congress or conference, no special international agreement is in force.

Persons declared *personae non gratae*

Article 3

The provisions of article 8 of the 1958 draft shall receive application also in respect of members of a delegation to a Congress or Conference.

Scope of the congress or conference

Article 4

The programme (subject) of the congress or conference is determined by agreement between the interested parties in connexion with the discussions preliminary to the invitation.

Organization

Article 5

The details of the organization of the congress or conference, for example, the election of officers, arrangements relating to the Bureau and Commissions, Secretariat, voting order and other matters, are fixed by the congress or conference itself at the outset of the meeting, if not fixed by previous agreement.

Precedence

Article 6

At the sessions of the congress or conference the delegations are seated in the alphabetical order of the English (or French) names of the participating countries, unless there are special reasons for dividing the participants into different groups.

Premises of the congress or conference

Article 7

The premises of the congress or conference and its archives and documents shall enjoy the same inviolability as the official premises and archives of a permanent diplomatic mission according to articles 20 and 22 of the 1958 draft.

Delegation premises, residences of delegates and staff, privileges and immunities

Article 8

The provisions of articles 4-16 of chapter I of

this draft shall receive analogous application in respect of the delegation's premises, archives, documents and correspondence, the privileges and immunities of the delegates and the auxiliary staff and the members of their families, the treatment of their private servants, the duties of third States and, in general, all other matters treated in those articles.

In the application of this article the head of the delegation shall be considered to be in the same category as the head of a mission, the other delegates in the same category as diplomatic agents, and the different groups of the auxiliary staff in the same categories as the groups of staff belonging to a mission to which they most closely correspond.

B. ALTERNATIVE II

CHAPTER I. DIPLOMATIC RELATIONS BY ITINERANT ENVOYS AND SPECIAL MISSIONS

Definitions

Article 1

For the purpose of this chapter of the present draft articles the following expressions shall have the meanings hereunder assigned to them:

(a) An "itinerant envoy" is a diplomatic mission headed by an envoy who represents the sending State in several other States in a certain area or at large without being accredited to any of these States;

(b) A "special mission" is a diplomatic mission sent by one State to another for a special diplomatic assignment.

(c) The "1958 draft" means the draft articles on diplomatic intercourse and immunities which the International Law Commission elaborated at its tenth session and recommended to the General Assembly with a view to the conclusion of a convention.

(d) The definitions in article 1 of the 1958 draft shall apply also to the members of the staff of an itinerant envoy's mission or of a special mission.

Conditions of the mission and its members

Article 2

If a State has agreed to receive an itinerant envoy, or a special mission, from another State the provisions of the following articles of Chapter I of the 1958 draft, namely articles 8, 9, 20, 22, 23, 25, 27-40, 42 and 43 (a) and (b), shall apply also to the conditions of such a mission, its members, the members of their households and their private servants, the duties of the privileged persons towards the receiving State, the duties of third States, and the other matters covered by the said articles.

Precedence

Article 3

An itinerant envoy or the head of a special mission shall not by such position only be entitled to any superiority of rank.

Modes of termination of the function of an itinerant envoy or the head of special mission

Article 4

The function of an itinerant envoy or the head of a special mission comes to an end in respect of a receiving country, *inter alia*:

(a) When the transactions which have been the aim of the itinerant envoy or the mission have been brought to an end or have been interrupted;

(b) On notification by the Government of the sending State to the Government of the receiving State that the function of the itinerant envoy or the head of the mission has come to an end (recall);

(c) On notification by the receiving State, given in accordance with article 8 of the 1958 draft, that it considers the functions of the itinerant envoy or the head of the special mission to be terminated.

CHAPTER II. DIPLOMATIC CONGRESSES AND CONFERENCES
Articles 1-7 the same as in alternative I.

Delegation premises, residences of delegates and staff, privileges and immunities

Article 8

The provisions referred to in article 8 of Chapter I shall receive analogous application in respect of the delegation's premises, archives, documents and correspondence, the privileges and immunities of the delegates and the auxiliary staff and the members of their families, the treatment of their private servants, the duties of third States, and in general all other matters treated in that article.

In the application of this article the head of the delegation shall be considered to be in the same category as the head of a mission, the other delegates in the same category as diplomatic agents, and the different groups of the auxiliary staff in the same categories as the groups of staff belonging to a mission to which they most closely correspond.

DOCUMENT A/CN.4/L.87

Provisions proposed by Mr. Jiménez de Aréchaga for insertion in the draft articles on diplomatic intercourse and immunities prepared by the International Law Commission at its tenth session¹

[Original text : English]
[15 June 1960]

1. In article 1, insert after sub-paragraph (e) the following :

"(e bis) A 'special mission' is a diplomatic mission sent by one State to another State or States for a specific assignment."

2. In article 41, insert after subparagraph (c) the following :

"(d) In the case of a special mission, when the functions which have been the aim of the mission have come to an end."

3. After article 43, section IV, insert the following :

"SECTION IVa. DIPLOMATIC RELATIONS BY SPECIAL MISSIONS

Article 43a

If a State has agreed to receive a special mission from another State, the provisions of this Convention shall apply to such mission."

¹ *Yearbook of the International Law Commission, Volume II* (United Nations publication, Sales No.: 58.V.1, vol.II) document A/3859, chap III.

DOCUMENT A/CN.4/L.88

Memorandum by Mr. Jiménez de Aréchaga in explanation of his proposal concerning *ad hoc* diplomacy (A/CN.4/L.87)

[Original text : English]
[15 June 1960]

1. The submission of new provisions on *ad hoc* diplomacy (A/CN.4/L.87) has been prompted by certain observations and suggestions made by the Special Rapporteur in his report on the subject (A/CN.4./129).

2. In paragraphs 46, 47 and 48 of his report, the Special Rapporteur suggested that the General Assembly might dispense with the application of article 22

of the Statute of the International Law Commission in order to deal with the draft which might emerge from the Commission's deliberations at the present session.

3. This procedure might be acceptable for the General Assembly, provided that the draft articles on *ad hoc* diplomacy approved by the International Law Commission constitute a short and uncontroversial addendum to the 1958 Draft on Diplomatic Intercourse