

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)**

Topic:
Special missions

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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

and Immunities, consisting of a minimum core of essential provisions which would make the 1958 draft well-rounded and complete.

4. With this aim in view, it seems preferable, as the Special Rapporteur suggests in paragraph 40 of his report, to postpone consideration of the provisions on congresses and conferences and to undertake that task in the context of the privileges and immunities of delegates to conferences convened by the United Nations and the Specialized Agencies.

5. As the Special Rapporteur states in paragraph 42 of his report, it would be a somewhat incongruous 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. This would certainly be the case since, under the Charter of the United Nations and the Conventions on Privileges and Immunities approved by the General Assembly, delegates to conferences organized under the auspices of the United Nations or of the Specialized Agencies do not enjoy full jurisdictional immunity, but only immunity in connection with "words spoken or written and all acts done in their capacity as representatives"; and they do not benefit from full customs privileges or tax exemptions. Furthermore, these conventions extend such immunities and privileges only to delegates, advisers and secretaries of diplomatic rank, and not to their families or private servants or the auxiliary staff of delegations.

6. It seems unnecessary to deal specifically with the category described as "itinerant envoys" since, as the Special Rapporteur points out in paragraph 28 of his report, an itinerant mission is really a series of special missions carried out in a number of different States in succession. In view of that consideration, the provisions relating to special missions could also apply to itinerant envoys.

7. The present proposals diverge from those of the Special Rapporteur only with regard to the question of special missions. In paragraph 12 of his report the Special Rapporteur suggests that a provision such as article 4 of the 1958 draft on diplomatic intercourse and immunities (Appointment of the head of the mission: *agrément*) is not required with regard to special missions, on the ground that "the head of the mission is no doubt mentioned in the communications preliminary to the agreement on the special mission". Although in general this may be the position, it is not necessarily so in all circumstances. For example, there may be cases in which the parties have agreed respectively to send and receive a special mission before the individual entrusted with the assignment has been selected. In that event, it seems both advantageous and desirable that a provision such as article 4 of the diplomatic draft should be applicable.

8. In the same paragraph of his report the Special Rapporteur suggests that the question covered by article 5 of the diplomatic draft (Appointment to more than one State) does not arise in connexion with special missions. However, the situation envisaged by

that article is by no means unusual. For example, changes of government or other ceremonial occasions may follow each other in rapid succession in a number of neighbouring States. The extension of article 5 to special missions would take adequate account of the nature of itinerant envoys.

9. In relation to article 6 of the diplomatic draft (Appointment of the staff of the mission), it may be observed that military, naval and air attachés are often appointed as members of special missions. It would seem, therefore, advisable to retain the rule laid down in article 6 of the 1958 draft. Similarly, article 7 of the 1958 draft (Appointment of nationals of the receiving State) may in some circumstances be relevant to the case of special missions.

10. The Special Rapporteur also proposes to exclude articles 10 (Size of staff) and 11 (Offices away from the seat of the mission) of the 1958 draft. It is true that in the majority of cases these provisions would have little relevance to special missions. However, it might seem undesirable to preclude the applicability of such provisions to special missions, since to do so might invite the implication that, in accordance with the principle *inclusio unius est exclusio alterius*, special missions may claim the right to have an unlimited staff or to open offices in any part of the territory of the receiving State.

11. It would also seem that article 12 (Commencement of the functions of the head of the mission), and articles 13 and 14 (Classes of heads of missions) of the diplomatic draft should apply, since these provisions are followed in practice in the case of special missions.

12. A negative rule on precedence, as proposed in article 10 of Alternative I of the Draft presented by the Special Rapporteur, might not be desirable. The relative precedence between permanent and special diplomatic missions may give rise to difficulties between the diplomatic officers concerned of the sending State, but there is no rule of international law in this respect. This is the type of question which it might be better to leave for the sending State to determine in agreement with the receiving State.

13. On the other hand, article 15 of the 1958 draft (Precedence) seems to have a definite bearing with regard to special missions. So also does article 16 (Mode of reception), particularly when special missions from various countries are received simultaneously, as is often the case. Again, the elimination of these articles would have an undesirable consequence, in that their omission might be interpreted as meaning that these rules would not apply to special missions.

14. Equally, it would seem advisable to include article 17 (*Chargé d'affaires ad interim*) of the diplomatic draft, since this provision might be invoked in case of sickness on the part of a principal negotiator during the course of a transaction. Article 18 (Use of flag and emblem) should also be included, since its omission would carry the implication that there would be no right to use those insignia on the ceremonial occasions where their use would be particularly appropriate.

15. With regard to diplomatic privileges and immunities, the Special Rapporteur proposes to exclude special missions from the application of article 19 (Accommodation), article 21 (Exemption of mission premises from tax), article 24 (Free movement), and article 26 which provides that fees and charges levied by a mission in the course of its official duties shall be exempt from all dues and taxes.

16. The normal international practice, however, is to confer on diplomats in special missions exactly the same privileges and immunities as are granted to diplomats on permanent missions. The Havana Convention of 1928 on diplomatic officers provides with respect to "extraordinary diplomatic officers", defined in article 2 thereof as "those entrusted with a special mission", that they "enjoy the same prerogatives and immunities as ordinary ones" (art. 9).

17. It seems not to be the intention of the Special Rapporteur to propose any modification of this well-established rule. However, the above-quoted articles are excluded by the Special Rapporteur on the ground that they would not be applicable to special missions, at least in the great majority of cases. Here again, the fact that those provisions might be inapplicable in many cases, or even in the majority of cases, does not mean that they ought to be omitted from the draft, since to do so would prevent their application in the cases in which they might have a bearing on the performance of a special mission. Their omission might well be interpreted as signifying that the privileges relating to free-

dom of movement or tax exemption, for instance, could never apply to any special mission.

18. In the light of the considerations outlined above, it may safely be concluded that all the provisions of the 1958 draft are relevant to special missions and should be made applicable to them, with the proviso that article 3 of the 1958 draft (Functions of a diplomatic mission) should be interpreted as applying only within the scope of the specific task assigned to the special mission.

19. The only additional provision which seems to be required in the case of special missions is one concerning termination of the mission on fulfilment of the entrusted assignment. The relevant provision has been drafted as a sub-paragraph, on the lines of article 25 paragraph 3 of the Havana Convention of 1928 on diplomatic officers, to be inserted in article 41 of the 1958 draft (Modes of termination).

20. The draft submitted in document A/CN.4/L.87 attempts, for the reasons which have been indicated, to give expression, in a more condensed form, to the various ideas and suggestions contained in the Special Rapporteur's report, particularly his suggestions as to the form of the draft. The present proposal is intended to constitute an addendum to the 1958 draft, corresponding to the suggestion made by the Special Rapporteur in paragraph 51 of his report, where he indicates that the provisions on *ad hoc* diplomacy adopted by the Commission might appropriately form an integral part of the draft convention on diplomatic intercourse and immunities.

DOCUMENT A/CN.4/L.89

New alternative proposal submitted by the Special Rapporteur

[Original text: French]
[20 June 1960]

PRIVILEGES AND IMMUNITIES GRANTED TO SPECIAL MISSIONS

ARTICLE 1

Definition

The expression "special mission" means a mission sent by one State to another to carry out a special diplomatic task, and is also applied to a mission by an itinerant envoy who carries out special diplomatic tasks for the sending State in several other States.

ARTICLE 2

Privileges and immunities granted to special missions

The provisions of sections II, III and IV shall apply also to any special mission which a State has agreed to receive from another State.

Comments

Insert the substance of paragraphs 6, 7 and 8 of the Special Rapporteur's report (A/CN.4/129) and add:

(a) With regard to the provisions of section I of the 1958 draft, it is admitted that cases may occur where some of these articles would be applicable to special

missions. In general, however, these articles are intended to apply to permanent missions, by reason of the special features of such missions, including their permanence, their function of maintaining diplomatic relations between countries and the presence in a capital of several missions of the same character. Special missions, on the other hand, may vary considerably in composition and character and would require a different set of rules. The States concerned have encountered no difficulty in settling among themselves such general questions as have arisen on this point. In the circumstances, there would seem to be no need for separate rules on this subject. Wherever similar situations arise, States can proceed along the lines of the solutions to these questions contained in the 1958 draft.

(b) In the opinion of the Commission, an examination article by article of sections II, III and IV of the draft, which deal mainly directly or indirectly with diplomatic privileges and immunities, shows that there is no reason to exclude the application of any of these articles to special missions, although the provisions of some, such as articles 19, 21, 24 and 26, would apply to such missions only in special circumstances.