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Summary record of the 565th meeting

Topic:
Special missions

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Mr. François that the new version was still unacceptable. It was true that with some drafting changes paragraph 1 would be relatively innocuous; even so, it would not serve any useful purpose, for it was obvious that the powers of either career or honorary consuls were determined by the sending State. The only concern of the receiving State was that those powers should conform to international law. A stronger objection to paragraph 1 was that it wrongly implied that in the matter of the delimitation of powers honorary consuls were in a special position. But the functions of career consuls might also on occasions be subject to limitation.

65. Paragraph 2, even if amended in the sense suggested by Mr. François, would cause unnecessary inconvenience. The sending State might easily find that the functions of a particular consular post had to be modified to meet practical needs and there was no precedent whatever to justify imposing an obligation on the sending State to inform the receiving State of any such changes. He also thought that there was an inconsistency between the second sentence in paragraph 1 and paragraph 2.

66. Mr. SANDSTRÖM suggested that the objections raised by Mr. François, which he shared, might be overcome by re-drafting article 55. The new text might state the requirement contained in paragraph 2 and then stipulate that if no such communication was received the honorary consul should be regarded as possessing the same powers as a career consul.

67. Mr. AGO endorsed the views expressed by Mr. François and Sir Gerald Fitzmaurice and considered, in the light of those views, that it would probably be better to reject article 55. Article 4 already enumerated, though not exhaustively, the functions exercised by consuls, and it was commonly accepted that the sending State determined the competence of any particular consul, whether career or honorary. Accordingly, the statement in paragraph 1 was as true of career as of honorary consuls. The second sentence of paragraph 1 was open to the serious objection that if the powers of an honorary consul were not expressly delimited he might be assumed to have wider competence than a particular career consul whose powers were delimited.

68. He saw no reason for the requirement contained in paragraph 2.

69. Mr. ŽOUREK, Special Rapporteur, pointed out that the practice of States in regard to honorary consuls varied greatly and the position of such persons was not wholly covered by other articles in the draft. In some cases, honorary consuls had really purely honorary functions. There was some utility therefore in requiring the sending State to inform the receiving State of the functions of honorary consuls, though they might be few in number.

70. He could not agree that the question of the delimitation of powers was solely a matter for the sending State, for those powers were exercised in the receiving State and there was therefore a two-sided relationship. There migh tbe administrative reasons why the receiving State should know what the powers were so that it could address itself to the appropriate consulate in some particular matter. With the amendment suggested by Mr. François such a requirement would not be onerous, and in any case the provision could always be modified after the observations of governments had been received. It was true that the requirement could be regarded as a development of international law; if it met with strong criticism from governments it could be abandoned.

71. Mr. BARTOŠ considered that the requirement in paragraph 2 was not customary and might detract from the dignity of an honorary consul. If a particular consul was not competent, for example, to deal with applications for passports or visas the applications were usually passed on to the appropriate consulate : that was a purely internal matter regulated by the sending State. The receiving State could only intervene if an honorary consul exceeded the functions attributable to him under international law or violated the municipal law.

72. The CHAIRMAN invited the Commission to vote on Mr. François's suggestion that article 55 should be omitted.

The suggestion was adopted by 10 votes to 2, with 5 abstentions.

73. The CHAIRMAN announced that the Commission had now concluded its first reading of the draft on consular intercourse and immunities.

The meeting rose at 6.30 p.m.

565th MEETING

Friday, 17 June 1960, at 9.30 a.m.

Chairman: Mr. Luis PADILLA NERVO

Ad hoc diplomacy (A/CN.4/129, A/CN.4/87, A/CN.4/L.88)

[Agenda item 5]

1. The CHAIRMAN invited the Commission to begin its discussion of item 5 of the agenda and asked Mr. Sandström, the Special Rapporteur on the subject, to introduce his report (A/CN.4/129).

2. Mr. SANDSTRÖM, Special Rapporteur, said that, in formulating rules on *ad hoc* diplomacy, the Commission would obviously have to refer constantly to the draft articles on diplomatic intercourse and immunities prepared at its tenth session [1] (the "1958 draft"). Accordingly, the

[1] *Official Records of the General Assembly, Thirteenth Session, Supplement No. 9* (A/3859, chapter III).

best method to follow was to determine the analogies and dissimilarities between special diplomatic missions and permanent diplomatic missions. The Commission could consider from that point of view which of the articles of the 1958 draft were applicable to *ad hoc* diplomacy. In general, the difference between the two lay in the fact that diplomatic missions properly so called were permanently established, whereas the topic of *ad hoc* diplomacy was concerned with more transitory institutions. The similarity, on the other hand, lay in the functions of the two types of mission, which were all diplomatic. He would suggest that the Commission should consider the 1958 draft article by article to see which provisions applied to *ad hoc* diplomacy.

3. Mr. PAL observed that the provisions on *ad hoc* diplomacy proposed by Mr. Jiménez de Aréchaga for insertion in the 1958 draft (A/CN.4/L.87) and his explanatory memorandum on that proposal (A/CN.4/L.88) amounted to an amendment of the Special Rapporteur's text. The main difference between those proposals and the Special Rapporteur's report lay in the fact that Mr. Jiménez de Aréchaga regarded all the articles of the 1958 draft as applicable to *ad hoc* diplomacy, while the Special Rapporteur made a number of exceptions. Before deciding on the method to be followed, therefore, the Commission might wish to hear an explanation of those proposed amendments.

4. Mr. JIMÉNEZ DE ARÉCHAGA explained that his proposals were not in fact amendments to the Special Rapporteur's text, but largely coincided with the latter's intentions. In submitting the proposals, he had been motivated by the need for rapid action, in order that the Commission might adopt a text in time for consideration by the General Assembly and subsequently by the plenipotentiary conference scheduled at Vienna for the spring of 1961.

5. He observed that the Special Rapporteur's proposals covered three forms of *ad hoc* diplomacy-namely, delegates to congresses and conferences, itinerant envoys and special missions. The Special Rapporteur himself suggested in his report (A/CN.4/129, paragraph 40) that the category of delegates to congresses and conferences should not be dealt with for the time being, and he (the speaker) agreed wholly with that view, as the Commission did not have the necessary time. Furthermore, he agreed with the Special Rapporteur (paragraph 28) that itinerant envoys might be regarded as persons carrying out a series of special missions for whom no special rules apart from those applicable to a special mission were needed. Accordingly, the Commission would only be concerned with the question of special missions.

6. The Special Rapporteur considered that all except twenty-five of the articles of the 1958 draft should be applicable to special missions; in his (the speaker's) own memorandum (A/CN.4/L.88), however, he had analysed the reasons why those twenty-five articles should be applicable to such missions. The Special Rapporteur's reason for not making the articles in question applicable to special missions was not that they were incapable of being applied but that they were irrelevant to a special mission. He (the speaker) believed, however, that it might be undesirable to exclude special missions from the application of those provisions, for to do so might invite the inference that, in accordance with the principle *inclusio unius est exclusio alterius*, special missions might, for example under articles 10 *(Size of staff)* and 11 *(Offices away from the seat of the mission)*, claim to have an unlimited staff or to open offices in any part of the territory of the receiving State (A/CN.4/L.88, paragraph 10). Moreover, in certain cases where the Special Rapporteur considered that some articles of the 1958 draft had no bearing on special missions, the articles might relate to such missions in a few specific cases, which it would be unwise to exclude.

7. In his opinion, all the articles of the 1958 draft were applicable to special missions and the Commission only needed to insert in that draft the three provisions he had set forth in his proposal (A/CN.4/L.87). The object of the first was to include a definition of " special mission " in article 1; the second would provide in article 41 for the special method of termination of the special mission; and under the third, the provisions of the 1958 draft would be made fully applicable to special missions. He had based his proposals, and the method of carrying them into effect, on the Havana Convention regarding Diplomatic Officers which made provision for special missions in articles 2, 9 and 25. Those were the minimum provisions on *ad hoc* diplomacy that should be included in the 1958 draft, which would be incomplete without them.

8. Mr. TUNKIN said, that though he had no objections to the Special Rapporteur's text, Mr. Jiménez de Aréchaga's proposals might greatly simplify the Commission's work. He could accept the proposition that the whole 1958 draft was in principle applicable to *ad hoc* diplomacy, since from the point of view of functions and representative character special missions were comparable to permanent missions, but believed that the Commission might consider whether any of those articles did not apply to *ad hoc* diplomacy.

9. He also agreed with the Special Rapporteur and Mr. Jiménez de Aréchaga that it was unnecessary to distinguish between itinerant envoys and special missions, because an itinerant envoy was merely conducting special missions in several countries. Furthermore, the term " itinerant envoy " was not generally accepted by all countries. The Commission could save much time if it confined its attention to special missions.

10. Finally, he agreed that the Commission should not in its draft deal with the position of delegates to congresses and conferences. So broad a topic deserved special study and, possibly, a special convention. Moreover, many conventions, on the

subject were already in force, and if the Commission produced a new text the earlier conventions might have to be reconsidered, possibly by the General Assembly, since many such instruments had been concluded under the auspices of the United Nations. He considered that the Commission should decide forthwith the question whether or not it would deal with delegates to conferences at the present stage: for his part, he did not believe that it would be wise to discuss the subject of conferences and congresses.

11. Mr. AGO agreed with previous speakers that it would be undesirable for the Commission to deal with the question of delegates to congresses and conferences under the heading of *ad hoc* diplomacy. The subject was largely covered by existing multilateral conventions, and particularly by the Convention of 1946 on the Privileges and Immunities of the United Nations[2] and the Convention of 1947 on the Privileges and Immunities of the Specialized Agencies.[3] European international organizations had adopted similar conventions. Accordingly, the field which remained to be covered concerning the position of such delegates was very small and the question was by no means urgent.

12. Mr. LIANG, Secretary to the Commission, supported Mr. Jiménez de Aréchaga's proposals, to the effect that the Commission's work on *ad hoc* diplomacy should be confined to special missions, in order that the subject might be submitted to the General Assembly in time for forwarding the draft to the Vienna conference.

13. He also agreed with Mr. Ago that the subject of the privileges and immunities of delegates to congresses and conferences was already covered by a wide network of agreements. Special agreements were entered into with the governments of countries where conferences were regularly held; thus, there was an agreement between United Nations and the Swiss Government on conferences held at Geneva. In 1947, the United Nations had entered into an agreement with the United States of America in respect of headquarters,[4] although the United States had not yet acceded to the Convention on Privileges and Immunities adopted by the General Assembly in Feburary 1946. When United Nations conferences were held away from Headquarters, special agreements, such as those concluded with the French Government in 1948 and 1951,[5] were entered into with the governments concerned. Full information on the matter would be given in a volume concerning the relations of international organizations with States to be published in 1960 in the *Legislative Series* in two parts, one referring to the United Nations and the other to specialized agencies. The Commission would undoubtedly take up the question when it considered the topic of relations between States and inter-governmental organizations under General Assembly resolution 1289 (XIII); meanwhile, there was no need to consider the position of delegates to congresses and conferences in connexion with *ad hoc* diplomacy.

14. Mr. HSU considered that the Commission and the General Assembly owed a great debt to the Special Rapporteur for his thorough examination of *ad hoc* diplomacy. As was pointed out in paragraph 1 of the Special Rapporteur's report (A/CN.4./129), the situation had been by no means clear when the Special Rapporteur had undertaken the work; with the addition of Mr. Jiménez de Aréchaga's proposals, however, all that the Commission would have to do would be to include some references to special missions in the 1958 draft, on the understanding that itinerant envoys were covered by the expression " special mission ". Members might simply refer to any of the articles of the 1958 draft which might seem to them not to be applicable to special missions.

15. Sir Gerald FITZMAURICE congratulated the Special Rapporteur on his report, which provided a useful analysis of the subject and guided the discussion into the right channels. Mr. Jiménez de Aréchaga's proposals did not differ from the Special Rapporteur's in substance, but merely provided for a different method, which, if adopted, would have two great advantages. In the first place, it would enable the Commission to proceed much more rapidly and to complete the draft during the current session; secondly, it would enable the 1961 conference to deal with the subject of special missions virtually as a part of the 1958 draft.

16. He would, however, suggest a slight drafting amendment to the third of Mr. Jiménez de Aréchaga's proposals (A/CN.4/L.87), in order to render the proposed article 43 *a* somewhat more flexible. The last phrase might be altered to read " the provisions of this convention shall apply, *mutatis mutandis*, to such mission, in so far as they may be applicable to the given case ". That phrase would indicate that the provisions of the convention would not apply literally to all special missions; a large number of the articles would be fully applicable to special missions, but it would be wise to insert the additional phrase to give some flexibility. Of course, the Commission might find that a few articles would in no case apply to special missions; in that case, it might modify the proposed article 43 *a* to read " . . . the provisions of this convention (with the exception of articles . . .) shall apply . . . ".

17. He quite agreed that the Commission should not at that stage discuss the question of delegates to international congresses and conferences and similar bodies. Mr. Ago had rightly pointed out that the great majority of conferences were covered by agreements in privileges and immunities concluded under the auspices of international organizations. The essential element of such agreements was, in his opinion, immunity from personal arrest and detention, which was more important

[2] United Nations *Treaty Series*, vol. 1, p. 15.
[3] *Ibid.*, vol. 33, p. 261.
[4] *Ibid.*, vol. 11, p. 11.
[5] *Ibid.*, vol. 122, p. 191.

than immunity from jurisdiction, because its purpose was to prevent a delegate from being hindered in the performance of his functions during the conference. Of course, a few important conferences were not held under the auspices of any international organization, and a certain area still remained to be covered by general rules, but the matter was not so urgent as to require immediate consideration.

18. Mr. GARCÍA AMADOR thought that the Commission was in a position to decide forthwith not to discuss the position of delegates to congresses and conferences. It would thus be able to avoid discussion on any matter other than the privileges and immunitities of special missions.

19. Mr. YOKOTA agree that the question of delegates to congresses and conferences should not be considered at the current session and also that there was no substantial difference between itinerant envoys and special missions. Furthermore, because in his opinion most of the provisions of the 1958 draft were applicable to special missions, he could accept Mr. Jiménez de Aréchaga's proposals. The only point that he wished to raise concerned the functions of special missions. If all the articles of the 1958 draft were regarded as applicable to special missions, presumably article 3, which enumerated the functions of the diplomatic mission, would be treated as so applicable. The implication would be that a special mission would have the function, under paragraph (*b*), of protecting in the receiving State the interests of the sending State and of its nationals, and under paragraph (*e*), that of promoting friendly relations between the sending State and the receiving State and developing their economic, cultural and scientific relations. In order to make it absolutely clear that the activities of a special mission should be limited to the scope of its assignment, it might be wise to add a provision reading " the functions of the special mission shall be confined to the assignment for which it has been sent ".

20. Mr. SANDSTRÖM, Special Rapporteur, said that he himself had doubted the advisability of dealing with the privileges and immunities of delegates to congresses and conferences at the current session, and had expressed those doubts in his report. He would therefore have no objection to following the course on which the Commission seemed to be agreed. He had also in his report assimilated itinerant envoys to special missions and would not object if the idea of studying that category of envoys separately were dropped. Nevertheless, itinerant envoys were referred to in his terms of reference, and it might therefore be advisable to define those envoys in the article on definitions and to state explicitly that they should be placed on a par with special mission.

21. He agreed that the procedure proposed by Mr. Jiménez de Aréchaga would greatly simplify the Commission's work, and he hoped that Sir Gerald Fitzmaurice's amendment would be acceptable. The Commission could then proceed to consider which of the articles of the diplomatic draft were applicable to special missions; he was sure that that task would not take up much time.

22. Mr. PAL hoped that Mr. Jiménez de Aréchaga would accept Sir Gerald Fitzmaurice's amendment, since the Special Rapporteur obviously considered that twenty-five of the articles of the 1958 draft did not apply to *ad hoc* diplomacy. The Commission's best course would be to scrutinize and decide whether any of the twenty-five articles concerned were applicable to special missions; it could thus avoid going through the whole of the 1958 draft. He then mentioned the articles to be examined in that way.

23. Mr. FRANÇOIS paid a tribute to the Special Rapporteur for his valuable work and agreed that the question of the privileges and immunities of delegates to congress and conferences should be left aside, since the majority of such conferences were regulated by existing conventions.

24. He could not, however, support Sir Gerald Fitzmaurice's amendment to Mr. Jiménez de Arechaga's third provision. In his opinion, it would be extremely dangerous to insert the phrase " in so far as they may be applicable to the given case ", since the article would then lose all its value. He hoped that Sir Gerald would reconsider his amendment.

25. The CHAIRMAN suggested that the Commission should decide not to consider the privileges and immunities of delegates to congresses and conferences at the current session.

It was so agreed.

26. The CHAIRMAN suggested that the Commission should decide not to distinguish between itinerant envoys and special missions, but should follow the Special Rapporteur's suggestion and add a passage concerning itinerant envoys in the article on definitions, specifying that they were assimilated to special missions.

It was so agreed.

27. The CHAIRMAN drew attention to the suggestion made by the Special Rapporteur and Mr. Pal that the twenty-five articles of the 1958 draft which in the Special Rapporteur's opinion were not applicable to *ad hoc* diplomacy should be considered *seriatim* from the point of view of their applicability to special missions. The Commission's consideration of the articles might be followed by a discussion on the wording of Mr. Jiménez de Aréchaga's proposed article 43 *a*, and Sir Gerald Fitzmaurice's amendment might then be examined in the light of the remarks of Mr. François.

28. Mr. GARCÍA AMADOR thought that the Commission could gain time by following Mr. Hsu's suggestion that members should refer only to the articles of the 1958 draft which in their opinion did not apply to special missions.

29. Mr. YOKOTA thought that it would not be advisable simply to decide whether certain articles of the 1958 draft were applicable to special mis-

sions, since some of them might be applicable with certain modifications. The method outlined by the Chairman, would however, be acceptable to him on that understanding.

30. The CHAIRMAN pointed out to Mr. García Amador that there was no contradiction between the proposed method and Mr. Hsu's suggestion, since the Special Rapporteur had raised doubts concerning the applicability of twenty-five articles to special missions.

31. He suggested that the Commission should decide to follow the procedure he had outlined.

It was so agreed.

32. Mr. SANDSTRÖM, Special Rapporteur, said that article 1 *(Definitions)* of the diplomatic draft could apply to special missions provided, of course, that a definition of those missions was added. He had proposed such a definition in sub-paragraph (*b*) of alternative II of his article 1 (A/CN.4/129, p. 20). That definition would, of course, have to be amended so as to cover itinerant envoys.

33. Mr. JIMÉNEZ DE ARÉCHAGA introduced his proposal for a new sub-paragraph (*e bis*) (A/CN.4/L.87) to be inserted in article 1. In substance, his definition coincided with that proposed by the Special Rapporteur.

34. Accordingly, he proposed that both texts should be referred to the Drafting Committee with instructions to prepare an acceptable definition of special missions.

35. Mr. TUNKIN stressed that it was desirable to deal with special missions in a distinct set of provisions, commencing with a definition of the special mission and including those embodied in article 43 *a* as proposed by Mr. Jiménez de Aréchaga.

36. In that manner, article 1 would be left unamended and would deal only with permanent missions.

37. Mr. PAL said that, although article 1 might have to be supplemented with a definition of special missions, it could be said to apply to those missions for the simple reason that the articles admittedly applicable would be controlled by those definitions. For his part, he thought that article 1 should remain unamended and that the definition of special missions should be embodied in a separate provision. It would be dangerous now to amend any of the articles of the 1958 draft so as to make them suitable for the present purpose. If occasion arose, it would be better to make separate provision for *ad hoc* purposes.

38. Mr. YOKOTA supported the method of dealing with special missions in a separate part of the draft. The difference between special missions and permanent missions was far greater than that between honorary consuls and career consuls. Separate treatment was therefore even more justified in the case of special missions than in that of honorary consuls.

39. The CHAIRMAN said that, if there were no objection, he would take it that the Commission considered that article 1 of the 1958 draft was applicable to special missions and agreed to refer the two proposed definitions to the Drafting Committee, with instructions to prepare a definition which would cover itinerant envoys.

It was so agreed.

40. Mr. SANDSTRÖM, Special Rapporteur, said that he had proposed in his report (A/CN.4/129, p. 20) a text of article 2 for special missions. Article 2 *(Establishment of diplomatic relations and missions)* of the 1958 draft dealt explicitly with permanent missions and could not be applied to special missions.

41. Mr. JIMÉNEZ DE ARÉCHAGA said he saw no harm in leaving article 2 applicable to special missions. From the point of view of legal drafting, it was not necessary to state that the article did not apply to special missions.

42. Sir Gerald FITZMAURICE drew a distinction between form and substance. In the form in which it was drafted, article 2 of the 1958 draft clearly did not apply to special missions but to permanent missions. The substance, however, was applicable, because there was an element of mutual consent in the sending and receiving of special missions, as in the establishment of permanent missions. If a separate article was included to deal with the sending and receiving of special missions, a reference could be made therein to that mutual consent.

43. Mr. AMADO said that the word " establishment " in article 2 of the 1958 draft clearly indicated that its provisions concerned permanent missions and not special missions and still less itinerant envoys.

44. The only idea expressed in article 2 that extended to special missions was the idea of mutual consent, and that idea was contained in article 43 *a* as proposed by Mr. Jiménez de Aréchaga (A/CN.4/L.87). The Commission could therefore decide without disadvantage that article 2 did not apply to special missions.

45. Mr. TUNKIN, agreeing with Mr. Amado, said that article 2 of the 1958 draft clearly applied to the exchange of permanent missions and not to the sending of a special mission, which was usually sent in one direction only.

46. Mr. YOKOTA drew attention to the fact that certain writers, including Oppenheim, maintained that if a State had a question to discuss with another, the latter could not refuse to negotiate with a special mission sent for the purpose. For his part, he did not necessarily endorse that view. However, since it was held by some authorities on international law, it was necessary to state that a special mission, like a permanent mission, could not be sent to a country without the latter's consent.

47. Mr. LIANG, Secretary to the Commission, said that the terms of article 2 of the 1958 draft

were clearly not applicable to special missions. The words " establishment ", " diplomatic relations " and " permanent diplomatic missions " all clearly referred to permanent missions. The only expression in article 2 which could apply to special missions was " mutual consent ".

48. Mr. SANDSTRÖM, Special Rapporteur, urged that the Commission should direct its attention to the question whether the substance of each article applied to special missions. The form could be dealt with at a later stage.

49. Mr. JIMÉNEZ DE ARÉCHAGA said that there was general agreement on substance. A special mission could only be sent by the mutual consent of the States concerned. The form in which that idea would be expressed could be left to the Drafting Committee.

50. Mr. PAL said that no distinction could be drawn in that respect between substance and form. The Commission had to investigate whether the various articles, as they stood, were applicable to special missions. If one of those articles was not applicable, the Commission should say so, even if it had to adopt a substitute provision relating to special missions.

51. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed that article 2 of the 1958 draft, as it stood, was not applicable to special missions; that decision did not imply that the mutual consent of the States concerned was not necessary for the sending of a special mission.

It was so agreed.

52. Mr. SANDSTRÖM, Special Rapporteur, said that article 3 of the 1958 draft was not suited to special missions because it consisted of an enumeration of the functions of permanent diplomatic missions. Special missions were entrusted with a special assignment and not with the general functions set forth in article 3.

53. Mr. YOKOTA supported the Special Rapporteur and said that, for example, the function specified in sub-paragraph (*b*) of article 3 was clearly not vested in special missions sent for ceremonial functions, such as weddings or funerals. While setting aside the application of article 3, the Commission might adopt a provision to the effect that special missions must confine themselves to the assignment for which they were sent. He did not, however, believe that a special provision along those lines was absolutely necessary, because the idea was contained already in the actual definition of special missions.

54. Mr. JIMÉNEZ DE ARÉCHAGA drew attention to paragraph 18 of his memorandum (A/CN.4/L.88). From the point of view of legal drafting, it would be a very serious matter to declare article 3 expressly not applicable to special missions. Such a declaration might well be interpreted as signifying that a special mission could not, for example, represent the sending State, or negotiate with the government of the receiving State.

55. He urged that it was necessary to find some way of saying that, within the scope of the specific task assigned to the special mission, article 3 would apply to such a mission.

56. Mr. GARCÍA AMADOR said he failed to see how any of the sub-paragraphs of article 3 of the 1958 draft could be regarded as not applicable to special missions.

57. With regard to the function of representing the sending State in the receiving State, set forth in sub-paragraph (*a*), he said that there were two forms of representation: permanent representation and the sporadic form of representation afforded by special missions. The representative character of a special mission could not possibly be denied.

58. Another example was provided by sub-paragraph (*c*). The very purpose of most special missions was to negotiate with the government of the receiving State — the function referred to in sub-paragraph (*c*).

59. With regard to the method adopted by the Commission, he said that the discussion of the applicability of each individual article of the 1958 draft to special missions would lead to a prolonged discussion for which the Commission had not sufficient time. It was imperative that the Commission should prepare at the current session a draft, or at least some basis of discussion, for use at the Vienna conference. The only manner in which that practical result could be achieved was to adopt the formula proposed by Mr. Jiménez de Aréchaga in his article 43 *a*, as amended by Sir Gerald Fitzmaurice, the observations of Mr. François being taken into account.

60. Mr. TUNKIN expressed misgivings regarding the proposal that article 3 should not apply to special missions. He would not, however, oppose the proposal, provided that the question of substance would be considered anew when the Commission came to deal with the article 43 *a* proposed by Mr. Jiménez de Aréchaga. A reference to article 3 would have to be included in that article, since any of the provisions of that article could apply to special missions, but taken together they constituted a description characteristic of the status of permanent missions.

61. Mr. ERIM expressed strong support for Mr. García Amador's suggestion. The Commission should reconsider the procedure, for it had no time to engage on a discussion of all the articles of the 1958 draft. Many of those articles might, in appropriate circumstances, be applicable *mutatis mutandis* to diplomats sent on *ad hoc* missions. Therefore, the only practical course open to the Commission was to adopt an article stating in general terms that all the provisions of the 1958 draft would apply, as appropriate, to special missions.

62. With specific reference to article 3, he said that, on reflection, he thought all the sub-para-

graphs of that article were applicable to special missions. Shortly after the end of the Second World War, there had been special missions which had performed for a time even the function of protecting in the receiving State the interests of the nationals of the sending State. It was now an international practice to send " roving ambassadors " who could negotiate, act in a representative capacity and, if necessary, even protect nationals. That being so, it could not be said that any one of the provisions of the article was inapplicable to special missions.

63. The CHAIRMAN said that no matter what procedure the Commission followed, if there was a difference of opinion among members regarding the applicability of a particular article to special missions, the question of the applicability of that article would have to be discussed.

64. With regard to article 3 of the 1958 draft, he said that a decision by the Commission that it did not apply as it stood to special missions did not, of course, mean that such a mission could not be sent, for example, to negotiate and conclude a treaty with the government of the receiving State or even to examine the situation of the nationals of the sending State in the receiving State. However, the functions to be performed by a special mission were those conferred upon it by the sending State and agreed to by the receiving State.

65. On the other hand, if the Commission decided that article 3 applied to special missions, it was clear that the decision would have to be qualified in such a manner that the provisions of article 3 would apply only within the scope of the specific task assigned to the special mission.

66. Lastly, with regard to the question of method, he said that few articles would give rise to the same difficulties as article 3. In most cases, it would be easy for the Commission to decide whether the provisions of a particular article of the 1958 draft applied to special missions or not.

67. Mr. LIANG, Secretary to the Commission, said that the task on which the Commission had embarked was much more difficult than that of trying to determine which provisions of the consular draft were applicable to honorary consuls. In the matter of special missions, the Commission was trying to reconcile two opposites. The diplomatic missions envisaged in the 1958 draft were permanent missions, and special missions constituted the opposite of permanent missions.

68. If it were asked whether article 3 of the 1958 draft was applicable to special missions, the answer could be either in the affirmative or in the negative, depending on the point of view from which it was considered.

69. The actual position was that article 3 was not applicable in its entirety to special missions. A special mission represented the sending State for a limited purpose and therefore sub-paragraph (*a*) was to that extent applicable to such missions. The theoretical formulation contained in sub-paragraph (*b*) was similarly applicable to special missions. As to sub-paragraphs (*c*), (*d*) and (*e*), he said it was clear that the functions mentioned therein could be given to a special mission. At the same time, however, it was apparent that the whole philosophy of article 3 was not applicable to special missions.

70. For those reasons, he felt that resort to some general formulation offered the only practical solution. An examination of the individual articles could be useful, but would be time-consuming. Accordingly, he was inclined to favour the suggested formula; " the provisions of this convention shall apply *mutatis mutandis*, to special missions."

71. Mr. YASSEEN said he did not think that article 3 could be considered as being applicable to special missions, since such missions could not discharge all the functions enumerated in it. By definition, special missions were appointed to accomplish a specific task. It would therefore be necessary to draw up a separate article stating that their functions were limited and were defined by mutual agreement between the two States.

72. Mr. PAL considered that the remarks of Mr. García Amador, Mr. Erim and the Secretary had confused the problem of method. The Commission had already decided to follow the procedure of examining the articles which the Special Rapporteur held to be inapplicable to special missions; indeed it was difficult to see what other method the Commission could have adopted since there was clearly no avoiding an individual examination of the articles concerned. Obviously, there would be no need to discuss those provisions which it was generally agreed were applicable.

73. With reference to the argument that special missions must be held to represent the sending State in the receiving State and that therefore at least article 3, paragraph (*a*), was applicable to them, he pointed out that they represented the sending State for a limited purpose only. In any case, article 3 as it stood did not apply to *ad hoc* missions, and that was all the Commission was concerned with at the moment.

74. Mr. VERDROSS said that, as the Commission had settled its procedure, he would address his remarks solely to the substantive question at issue. In his opinion article 3 could not apply to special missions whose functions were strictly limited : a permanent diplomatic mission represented the sending State in respect of all matters that might arise in the day-to-day relations between the two States. The cases mentioned in article 3 were only examples of that activity. Accordingly, the article was not applicable to special missions.

75. Mr. SANDSTRÖM, Special Rapporteur, said that, if his definition of special missions were adopted, there would be no need for any further provision concerning their functions.

76. Mr. YOKOTA pointed out that if special

missions were sometimes appointed to carry out purely ceremonial functions, as indicated by the Special Rapporteur in paragraph 4 of his report, article 3 in its present form could certainly not apply to them.

77. Mr. SCELLE agreed with Mr. García Amador that the Commission had embarked upon a hazardous venture since it would take a great deal of time to decide which elements in each article of the 1958 draft were applicable to special missions. Such missions had a precise purpose and were appointed by mutual consent between States; since their functions could be extended by agreement, the definition of " special mission " had to be extremely flexible. He favoured the formula suggested by Sir Gerald Fitzmaurice which would obviate the need for a detailed examination of each of the articles.

78. Sir Gerald FITZMAURICE explained that his suggestion had been designed to further the purpose of Mr. Jiménez de Aréchaga's memorandum, which was to save the Commission from having to carry out a detailed analysis for which it had not time. The *mutatis mutandis* formula would have covered those instances where an article of the 1958 draft was applicable in principle but could not in its actual language be applied literally to special missions.

79. He had suggested that the Commission examine which articles of the 1958 draft were inapplicable to special missions in the belief that it could carry out the examination rapidly.

80. After a procedural discussion, the CHAIRMAN put to the vote the proposal that the Commission should modify its earlier decision concerning the method to be followed and that it should cease to examine *seriatim* the articles of the 1958 draft which in the Special Rapporteur's opinion were not applicable to special missions.

The proposal was rejected by 13 votes to 6, with 1 abstention.

The meeting rose at 1.5 p.m.

566th MEETING

Monday, 20 June 1960, at 3 p.m.

Chairman: Mr. Luis PADILLA NERVO

State responsibility (A/CN.4/96, A/CN.4/106, A/CN.4/111, A/CN.4/119, A/CN.4/125)

[Agenda item 3]

1. The CHAIRMAN invited the observer for the Inter-American Juridical Committee to address the Commission.

2. Mr. GÓMEZ ROBLEDO, observer for the Inter-American Juridical Committee, thanked the Commission for giving him the opportunity of addressing it. He wished it to be understood that he did not claim to act as spokesman on the present occasion for all his colleagues on the Inter-American Juridical Committee.

3. It was significant that, until the Tenth Inter-American Conference held at Caracas in 1954, the Inter-American Juridical Committee had not been entrusted with the codification of the principles of international law governing State responsibility, nor had any of its members suggested that it should undertake that task. That reluctance to deal with the subject was certainly not due to any lack of material nor to any lack of interest in codification as such; it was due purely and simply to the difficulties inherent in the topic itself.

4. There was an obvious connexion between General Assembly resolution 799 (VIII) of 7 December 1953, which requested the International Law Commission to undertake the codification of the principles of international law governing State responsiblity, and resolution CIV of the Tenth Inter-American Conference of 1954, which recommended to the Inter-American Council of Jurists, and hence to its permanent committee, the Inter-American Juridical Committee of Rio de Janeiro, " the preparation of a study or report on the contribution the American continent has made to the development and to the codification of the principles of international law that govern the responsibility of the State " (cited in A/CN.4/124, paragraph 101). The purpose of that resolution, as rightly indicated in the secretariat memorandum on co-operation with other bodies (*ibid.*, paragraph 102) was to transmit to the International Law Commission, for its use, material describing the contribution made by the American continent to that field of international law.

5. It had soon become apparent to the Inter-American Juridical Committee that the resolution in question narrowed down its terms of reference and at the same time entrusted it with a task of immense scope and difficulty.

6. The Committee's terms of reference under resolution CIV were limited to the study of the contribution that the American continent had made in the past to the development and codification of the principles governing state responsibility. Those terms of reference did not enable the Committee to make a constructive or creative contribution of its own.

7. At the same time, the Committee considered that the study in question, which was to be limited to the past, should take into account all the existing material on the subject in the American continent, and that material was particularly vast in regard to the law of claims.

8. Faced with those difficulties, the Committee had hoped that either the International Law Commission or the competent inter-American organs would limit its task, possibly to the law of claims, the field in which the contribution of the American continent had been particularly original. If so, the question arose whether the