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Summary record of the 576th meeting

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68. Mr. YASSEEN said that since an honorary consul might both be a national of the receiving State and engage in a gainful private activity, there was no need for article 56 *g*, which concerned ethical conduct.

69. Mr. ŽOUREK, Special Rapporteur, emphasizing the very explicit terms of article 46, pointed out that the obligation laid down in the first sentence of article 46, paragraph 1, was self-evident as far as nationals of the receiving State were concerned, but it was equally applicable to honorary consuls who were nationals of the sending State or of a third State.

70. The obligation laid down in article 56 *g* was a legal and not a moral one.

71. Mr. SCELLE maintained his view that there was no connexion between article 46, which was concerned with respect for the laws of the receiving State, and article 56 *g* which purported to lay down rules of conduct.

72. Sir Gerald FITZMAURICE observed that the Commission had decided (574th meeting, paragraph 13) that, since honorary consuls were in most cases nationals of the receiving State, the wording of the obligation laid down in the second sentence of article 46, paragraph 1 was inappropriate to such consuls, and had to be framed differently for purposes of the present article, which as it now stood should be acceptable.

73. The CHAIRMAN said that in the absence of any objection, he presumed that Mr. Yokota's amendment adding the words "in the receiving State" after the words "official position" was acceptable.

It was so agreed.

Article 56 g, as amended, was approved by 13 votes to 1, with 2 abstentions.

ARTICLE 57 (*Precedence*)

74. Mr. TUNKIN asked the Special Rapporteur whether in practice honorary consuls ranked in each class after career consuls. In other words, would an honorary consul-general have precedence over a career consul?

75. Mr. ŽOUREK, Special Rapporteur, confirmed that that was the practice of a number of States.

76. The CHAIRMAN said that although the text of article 57 had been approved earlier he would put it to the vote to comply with the wishes of Mr. Edmonds.

Article 57 was adopted by 14 votes to none, with 2 abstentions.

ARTICLE 57 bis (*Optional character of the use and admission of honorary consuls*)

77. Mr. SCELLE considered that article 57 bis was too absolute and arbitrary since it might imply that a State could refuse to accept all

honorary consuls, whereas in fact it could only refuse the appointments of its own nationals as honorary consuls by the sending State. That hypothetical case was perhaps far-fetched but it was not inconceivable, and such a refusal would certainly be contrary to international law and to the interests of the international community, for which consular relations were indispensable.

78. Mr. ERIM, emphasizing that the rule set forth in the article had been discussed at considerable length, said that its adoption had enabled certain members to support other articles. If article 57 bis were now to be modified, the discussion on other articles might have to be reopened.

79. Mr. LIANG, Secretary to the Commission, criticized the wording both of the title and of the text of the article. The words "use" and "admission" were quite inappropriate.

80. After some discussion, the CHAIRMAN suggested that the article might be amended to read:

"Each State is free to decide whether it will appoint or receive honorary consuls."

That text was adopted by 14 votes to none, with 2 abstentions.

The meeting rose at 1.10 p.m.

576th MEETING

Wednesday, 29 June 1960, at 3.30 p.m.

Chairman: Mr. Luis PADILLA NERVO

Consular intercourse and immunities (A/CN.4/L.86, A/CN.4/L.90 and Add.1) [*concluded*]

[Agenda item 2]

PROVISIONAL DRAFT ARTICLES (A/CN.4/L.90 and Add. 1) (*concluded*)

1. The CHAIRMAN invited the Commission to continue its debate on the draft concerning consular intercourse and immunities prepared by the Drafting Committee (A/CN.4/L.90/Add.1).

ARTICLE 59 (*Relationship between these articles and bilateral conventions*)

2. Mr. YOKOTA, Chairman of the Drafting Committee, said that the Committee had found it impossible to reconcile the two different points of view which had been expressed during the Commission's discussion of article 59 (560th meeting, paragraphs 8 to 69, and 561st meeting, paragraphs 1 to 40). It had, therefore, put forward alternative texts for the article (A/CN.4/L.90/Add.1), and wished to propose that both should be submitted to governments for their comments.

3. Mr. EDMONDS said that he favoured the second alternative because its provisions would be self-executing. The provisions of the first alternative would require some action by the States concerned in order to maintain in force existing conventions.

4. Mr. AGO recalled that the first alternative embodied a proposal which he had made during the protracted discussion of article 59 in the Commission (561st meeting, paragraph 1). The second alternative was a simplified version of the Special Rapporteur's proposal for article 59 (A/CN.4/L.86).

5. In view of the absence of several members and the lack of time, he thought it would not be appropriate for the Commission to make a choice between those two texts and he supported the proposal of the Drafting Committee that both should be submitted to governments.

6. Mr. TUNKIN said that he preferred the second alternative, but would support the proposal that both should be submitted to governments.

7. Mr. YASSEEN pointed out that a third view had been expressed during the discussion of article 59 (560th meeting, paragraphs 18, 19, 20, 26 and 36 and 561st meeting, paragraphs 14, 18 and 19) — *viz.*, that the proposed multilateral convention contained a number of fundamental principles and that bilateral agreements, whether concluded previously or subsequently, should not infringe those principles. He requested that the commentary to article 59 should mention that third point of view, so as to reflect faithfully the discussions of the Commission.

8. The CHAIRMAN said that, if there was no objection, he would take it that the Commission accepted the proposal of the Drafting Committee that both alternatives for article 59 should be submitted to governments; the commentary to article 59 would mention the point of view put forward by Mr. Yasseen.

It was so agreed.

ARTICLE 2, PARAGRAPH 2 (*Establishment of consular relations*) (A/CN.4/L.86)

9. The CHAIRMAN recalled that the Commission had, at its previous session,¹ reserved its decision on article 2, paragraph 2 (A/CN.4/L.86). At the present session, the Commission had adopted article 50 (A/CN.4/L.90), which might be combined with the provision of article 2, paragraph 2, if the Commission approved the latter.

10. Mr. AGO said that the prolonged discussion on article 2, paragraph 2, at the previous session had shown that those who favoured a provision

to the effect that the establishment of diplomatic relations included that of consular relations were thinking in terms of a very limited form of consular relations. Indeed, those members considered that only where a diplomatic mission was established that mission could also exercise certain consular functions. Limited in that manner, the provision could perhaps be accepted by other members as well, on the condition that an explanation to that effect should be included in the commentary.

11. Unfortunately, the inclusion of article 50 involved an additional difficulty. If two countries established diplomatic relations, but only limited consular relations in the charge of the diplomatic mission itself, a serious problem would arise in the event of the severance of diplomatic relations. Under the provisions of article 50, consular relations were not *ipso facto* broken off because of the severance of diplomatic relations between the two countries. However, the closure of the diplomatic mission would, in the circumstances alluded to, in fact mean that the existing limited consular relations would also be broken off. He for one could not accept the idea that the consular section of the diplomatic mission could remain open if diplomatic relations were severed.

12. Mr. TUNKIN said that, inasmuch as diplomatic relations were the more important or broader form of relations between States, they should be held to include the lesser; namely, consular relations. He drew attention, in that connexion, to the USSR practice: when diplomatic relations had been established with a number of countries, no special mention had been made of the establishment of consular relations, but consular sections and consulates had nevertheless been set up subsequently to the establishment of diplomatic relations.

13. With reference to article 50, he said it was in the general interests of peaceful relations between States that, unless the States concerned decided otherwise, the severance of diplomatic relations should not necessarily involve that of consular relations.

14. Mr. LIANG, Secretary to the Commission, drew attention to commentary 3 to article 2 in the Commission's report on its eleventh session.² According to that paragraph, the Commission was called upon to take a decision on the provision in question.

15. Mr. Tunkin's statement that the establishment of diplomatic relations included that of consular relations by virtue of the principle that the larger included the smaller was not perhaps absolutely true. The establishment of diplomatic relations between two States was usually effected by a very simple procedure which often took the form of an exchange of messages between the two States concerned. The establishment of consu-

¹ *Yearbook of the International Law Commission*, 1959, vol. I, 498th meeting, paragraph 13 (the provision then numbered article 1, paragraph 2).

² *Official Records of the General Assembly, Fourteenth Session, Supplement No. 9 (A/4169)*, chapter III.

lar relations, on the other hand, could either be a simple or an extensive matter. The two States concerned might wish to enter into a long and thorough examination of the consular functions, more or less on the pattern of the Consular Convention of 1952 between the United Kingdom and Sweden : in that event, there would necessarily be a period during which the establishment of diplomatic relations was not simultaneous with that of consular relations.

16. The statement that the establishment of diplomatic relations included that of consular relations contained an element of ambiguity and might be open to more than one interpretation. It could be held to mean (as suggested by the use in the French text of the word "comporte") that the establishment of diplomatic relations carried with it the duty to establish consular relations as well. On the other hand, it could also be held to mean that the establishment of diplomatic relations automatically produced a situation in which consular relations were presumed to exist.

17. Article 2, paragraph 2, in the form in which it had been drafted, could represent the reflection of a state of affairs — *viz.*, that the establishment of diplomatic relations was sooner or later usually followed by the establishment of consular relations. If, however, it were meant as a statement of the law on the subject, it would be necessary to consider the substance of the question and to draft a provision in more precise terms.

18. As to the provision contained in article 50, he doubted the wisdom of combining it with the provision in article 2, paragraph 2. Perhaps governments could make suggestions regarding the placing of the provision of article 50.

19. Mr. YOKOTA said that, during the discussion at the previous session, the majority of the Commission had been of the opinion that diplomatic relations did not necessarily include consular relations.³ He for one could not accept the theory that consular relations were automatically established as a result of the establishment of diplomatic relations. It was true that certain functions of protection and supervision of nationals could be performed by diplomatic agents, but if they were, the functions in question would be diplomatic functions and not consular functions. He drew attention in that connexion to the provisions of article 3 of the draft on diplomatic intercourse and immunities. When a diplomatic officer performed the function of protecting the nationals of the sending State he was discharging his own diplomatic function and acting in his own capacity as a diplomatic agent. The exercise of that function could therefore not be held to represent the establishment of consular relations as such.

20. It was, of course, possible for two States which established diplomatic relations to establish consular relations at the same time. But it was equally possible for two States to establish only diplomatic relations, at least for a time. It would, therefore, be going too far to say that the establishment of diplomatic relations always included that of consular relations.

21. For those reasons, he thought it would be preferable if the Commission did not adopt article 2, paragraph 2, as a text but merely stated in a commentary that where diplomatic relations were established, diplomatic agents could perform some of the functions normally performed by consular officials.

22. Sir Gerald FITZMAURICE, referring to the remarks of the Secretary, said that the establishment of consular relations was independent of the conclusion of consular conventions. Even if negotiations were in course with a view to the conclusion of a consular convention, that fact did not mean that consular relations were not already in existence between the negotiating parties. In the case of the United Kingdom, numerous consular conventions had been signed with countries with which consular relations had been maintained for a long time previously.

23. He for his part had grave doubts regarding the provisions of article 2, paragraph 2. Although there was a considerable affinity between diplomatic relations and consular relations, the former could not properly be said to be the greater of the two or, hence, be said to include the latter. There was in fact no reason why one type of relations should imply the other.

24. Two countries which established diplomatic relations needed to make a separate arrangement, even if it were usually a simultaneous one, for the establishment of consular relations. He had known of several cases, some of them quite recent, in which diplomatic relations having been broken off and subsequently re-established, consular relations — which had also been broken off — had not been re-established at the same time. Consequently, it was a fact that consular relations were not *ipso facto* re-established because of the re-establishment of diplomatic relations. The proposed provision was therefore not an expression of the existing practice. It could of course be adopted as a rule for the future, but he doubted whether that course was advisable.

25. In any event, if the Commission should decide that in general terms the establishment of diplomatic relations entailed that of consular relations, it would be necessary to state, either in the article itself or in the commentary to it, what that statement actually implied. The establishment of consular relations could not in itself necessarily mean that, as a matter of course, diplomatic missions could perform all consular functions. The missions could take such action as the renewal of passports or the issuance of visas, which did not involve any relations with the local authorities, but any action which in-

³ Yearbook of the International Law Commission, 1959, vol. I, 496th and 497th meetings, *passim*.

volved such relations would require an exequatur. It was therefore necessary to state that the consular section of a diplomatic mission could only exercise those consular functions for which no exequatur was required and which did not necessitate relations with the local authorities.

26. As to the difficulty mentioned by Mr. Ago, he (Sir Gerald) considered that, where no separate consulate existed, consular relations depended on the existence of diplomatic relations and the severance of the one would necessarily entail the severance of the other. If it were admitted that, in that case, the consular section of the embassy could remain open, a situation of inequality might result if the other State kept its consulates separate from its diplomatic missions: the latter State would not be able to maintain open any part of its embassy, while the former would be able to do so.

27. In conclusion, he said he would prefer a draft which stated that, in all cases, the establishment of consular relations was an act separate from that of diplomatic relations.

28. Mr. ŽOUREK, Special Rapporteur, said that by the end of the discussion on article 2, paragraph 2, at the previous session, the opposing views had moved much closer together. General agreement appeared to have been reached on the proposition that a diplomatic mission could, in principle, exercise all consular functions, but, wherever those functions required it to deal with a local authority, it was required (except as otherwise agreed) to deal with them through the Ministry of Foreign Affairs.

29. There was no support in state practice for the view that the establishment of consular relations, when once diplomatic relations had been established, necessitated separate action. State practice was based on the premise that the establishment of diplomatic relations included that of consular relations. In that connexion, he cited the example of Czechoslovakia, which had very few consulates separate from its diplomatic missions. In practically all countries of Europe, America and Asia, Czechoslovak diplomatic missions performed consular functions without any special agreement to that effect and without any exequatur being required for the head of mission.

30. As to the provisions of article 50, he said it was generally admitted that where two States broke off diplomatic relations, consular relations subsisted if separate consulates existed. Difficulties arose only if one or both of the two States did not have consulates separate from the diplomatic missions; in that event, he did not see any reason why the consular section of the diplomatic mission or missions concerned should not remain open. In that regard, he cited Article 41 of the Charter of the United Nations, which mentioned the severance of diplomatic relations as one of the non-military sanctions. For this part, he could not accept the idea that the severance of diplomatic relations under that provision of the Charter

should necessarily involve the severance of consular relations as well.

31. He could not agree with Mr. Yokota's statement that certain functions, if performed by diplomatic agents, ceased to be consular functions and became diplomatic functions. If an embassy issued a passport, that fact did not mean that the issuance of passports became a diplomatic function.

32. With reference to Sir Gerald Fitzmaurice's remarks, he agreed that diplomatic agents could not, in the absence of an exequatur, exercise consular functions which involved relations with the local authorities.

33. Mr. BARTOŠ said that opinion on the question raised by article 2, paragraph 2, was undergoing a transformation; accordingly, there was much to be said in favour of both Sir Gerald Fitzmaurice's and Mr. Tunkin's arguments. Recently, several States had collectively required the exequatur for members of the consular sections of the Yugoslav embassies, and the Yugoslav authorities had had occasion to investigate international practice in the matter. They had discerned two distinct trends, one towards recognizing officials of the consular sections of diplomatic missions as consuls, quite freely and without any exequatur, with the consequence that such persons exercised both diplomatic and consular functions; and the other towards regarding consular sections as auxiliary offices of the embassy, the officials concerned not being recognized as consuls, with the consequence that the exequatur was needed for them. The practices could not be regarded as contradictory, but in fact they were totally different.

34. He could not agree with the Special Rapporteur that the consular sections of diplomatic missions were obliged to conduct their dealings with the local authorities of the receiving State through the Ministry of Foreign Affairs of that State. In many cases, a ministry receiving such an application simply referred the consular section to the competent local authorities, and in such cases it might be said that the establishment of diplomatic relations entailed the establishment of consular relations.

35. There were arguments in favour both of the exercise of consular functions by diplomatic agents and of the traditional rules of the separation of those functions. The Commission might favour the more liberal system, but it could not be certain that in so doing it would be following the practice of certain States. The theoretical distinction between the establishment of consular relations and the exercise of consular functions was bound to be reflected in the practice.

36. In that connexion, he mentioned that, whereas diplomatic relations between Yugoslavia and the Federal Republic of Germany had been broken off, consular relations were actively maintained, and, indeed, certain functions usually vested in diplomatic missions were performed by the consulates concerned.

37. The traditional and the liberal systems were

so fundamentally divided that the Commission must choose between them in formulating article 2, paragraph 2. The facile expedient of merely stating that both systems were acceptable would not serve the common cause.

38. Mr. LIANG, Secretary to the Commission, referring to the statement of Sir Gerald Fitzmaurice in connexion with one of the points which he (Mr. Liang) had made, said he had not meant to contend that consular conventions must be concluded before consular relations could be established. He had merely pointed out that, in certain circumstances, a State might wish to conclude a convention before establishing consular relations. For example, China had established diplomatic relations with certain newly independent States, but might decide to conclude conventions before entering into consular relations with them, in order to settle the protection and facilities which would be offered to its consular officers. Similarly, after the First World War, China had re-established diplomatic relations with some former enemy States. But it had taken time to conclude consular conventions with these States, by virtue of which "consular jurisdiction" had been abolished. Until such conventions had been concluded, consular relations had not been resumed.

39. He also believed that article 2, paragraph 2, as worded by the Special Rapporteur, conveyed the idea of an automatic relationship between the establishment of diplomatic relations and the establishment of consular relations, and could not be regarded as a true description of international practice.

40. Mr. TUNKIN, speaking on a point of order, observed that the Commission did not have enough time to discuss the question before it thoroughly. He therefore moved that the Commission should defer its decision on article 2, paragraph 2, and should forward the text to governments for comment, without any recommendation. That procedure had been followed in the case of article 59 (see paragraph 8, above).

41. Mr. YOKOTA could not agree with Mr. Tunkin's proposal. The question involved was a purely legal one: it could be settled only by jurists, and not by governments. Article 59 involved a question of policy and practice, and it had therefore been quite correct to refer it to governments; but if the Commission were to follow that procedure in the case of article 2, paragraph 2, it would in effect be shirking its obvious duty.

42. The CHAIRMAN pointed out that paragraph 2 of article 2 had been reserved at the previous session pending a final decision on article 4 (*Consular functions*).

43. Mr. TUNKIN thought that the procedure he had proposed should be followed if the Commission were to complete its work in time. Furthermore, in the absence of many members of the Commission

a decision on such an important point could not properly be taken. In reply to Mr. Yokota, he observed that the eighty-two States Members of the United Nations also had eminent jurists at their disposal.

44. The CHAIRMAN called for a vote on Mr. Tunkin's motion that a decision on article 2, paragraph 2, should be deferred until the next session.

The motion was carried by 7 votes to 5.

45. Mr. YOKOTA observed that the draft text of paragraph 2 of article 2 should not appear in the Commission's report.

46. Mr. ŽOUREK, Special Rapporteur, said he could see no reason why the paragraph should not be included in the report, with a note stating that it had been reserved.

47. Sir Gerald FITZMAURICE suggested to the Special Rapporteur that he should bear in mind that the paragraph as now drafted was too categorical, but that it might be acceptable if it were qualified in some way. The paragraph might state that the establishment of diplomatic relations included the establishment of consular relations, provided that the receiving State made no objection.

48. Mr. AGO thought that the whole of article 2 should be reserved, including the provision (article 50) concerning the maintenance of consular relations in the event of the severance of diplomatic relations, which was to be included in that article.

49. Mr. ŽOUREK, Special Rapporteur, observed that no decision had yet been taken on the insertion of that provision in article 2. Pending the receipt of the observations of governments on the matter, the clause should remain in section IV of chapter I.

50. The CHAIRMAN drew attention to the draft articles on special diplomatic missions (A/CN.4/L.92/Add.1). He invited the Special Rapporteur to introduce the draft.

Ad hoc diplomacy (A/CN.4/L.92/Add.1)
(resumed from the 569th meeting)

[Agenda item 5]

51. Mr. SANDSTRÖM, Special Rapporteur, explained that he had considerably altered the form of his report on *ad hoc* diplomacy. He had originally (cf. A/CN.4/129) regarded only two of the articles in section I of the 1958 draft on diplomatic intercourse and immunities as applicable to special missions. The debate had shown, however, that the Commission considered that a number of other articles in the section were also applicable to special missions, if only partially. It had also emerged from the debate that there was no need for some special articles that he had envisaged, and that small drafting changes would suffice to

make certain articles of a 1958 draft applicable to special missions.

52. He had been prompted to make that radical change in his report by the lack of time that the Commission had at its disposal and also by Mr. Jiménez de Aréchaga's proposals (A/CN.4/L.87 and L.88) for simplifying the matter by including the provisions on *ad hoc* diplomacy in the 1958 draft, for the convenience of the 1961 conference on diplomatic intercourse and immunities.

53. Mr. TUNKIN observed that the wording of article 2 of the new draft on special missions did not correspond with the Commission's decision that section I of the 1958 draft, with the exception of fourteen articles, should be regarded as applicable to special missions. The language of article 2 was much too vague, particularly the reference to the "principles underlying the provisions of section I".

54. Mr. YOKOTA, Chairman of the Drafting Committee, explained that the members of the Drafting Committee had not been present at the meetings at which the question had been discussed. The Committee had worked on the basis of two papers corresponding to the Special Rapporteur's second alternative proposal (A/CN.4/L.89) and on the basis of Mr. Jiménez de Aréchaga's text (A/CN.4/L.87). The absence of those members during the discussion might explain why the new draft articles were not quite in line with the Commission's views.

55. Mr. SANDSTRÖM, Special Rapporteur, said he was not sure that the Commission had in fact taken a decision on the applicability of every article of the 1958 draft to special missions, although argument for and against the applicability of the provisions in question had been presented.

56. Mr. PAL said that, although the Commission had been working without the members of the Drafting Committee, it had examined twenty-five articles of the 1958 draft and had reached decisions concerning their applicability to special missions. It had also, on a suggestion by Sir Gerald Fitzmaurice, agreed to state in its draft that all the articles of section I, with the exception of those regarded as inapplicable, should be applicable to special missions. Accordingly, article 2 should be revised in accordance with those decisions.

57. The CHAIRMAN suggested that the Special Rapporteur should draft a new article 2 along the lines proposed by Mr. Tunkin and Mr. Pal.

58. He invited the Committee to consider article 1 (*Definitions*) of the draft concerning special missions.

59. Mr. AGO suggested that the word "diplomatic" in the first sentence of paragraph 1 should be replaced by "official" and that the word "diplomatic" should be omitted from the second sentence of that paragraph.

60. Mr. SANDSTRÖM, Special Rapporteur, said that, while he had no strong objection to Mr. Ago's suggestion, he had included the word "diplomatic" because the whole topic was entitled "*ad hoc* diplomacy".

61. Mr. LIANG, Secretary to the Commission, said that, in his opinion, paragraph 2 of article 1 was not really a definition. It could more accurately be called a reference, and could be placed either in the commentary or in the body of the report.

62. Sir Gerald FITZMAURICE did not agree with the Secretary that paragraph 2 should be omitted from the article. It represented a perfectly adequate definition of the expression "1958 draft".

63. Mr. YOKOTA, referring to Mr. Ago's suggestion, thought that the omission of the word "diplomatic" from the second sentence would mean that any commercial or cultural envoy would be regarded as a diplomat.

64. Mr. SANDSTRÖM, Special Rapporteur, agreed that the effect of Mr. Ago's amendment would be that the articles would cover a number of missions having nothing to do with diplomacy as such.

65. Mr. AGO thought that the whole purpose of the definition was to cover all the missions which were sent by States to conclude agreements on a wide variety of subjects.

66. Mr. SANDSTRÖM, Special Rapporteur, said that he had used the adjective "diplomatic" in order to convey the idea that the negotiations to be conducted by the special mission would be at a high level.

67. Mr. AGO did not think that the word "diplomatic" was used quite accurately in the article; even the head of a special mission was usually not a diplomatic agent.

68. Mr. TUNKIN thought that Mr. Ago's suggestion for replacing the word "diplomatic" in the first sentence by "official" was sound, because a mission sent to conclude a convention was a delegation, but not a diplomatic mission. An official mission implied representation of the State at the governmental level.

69. Mr. SANDSTRÖM, Special Rapporteur, thought that the words "sent by one State to another" also conveyed the idea that the mission represented the government.

70. Mr. ERIM did not think that the situation was clear enough. The meaning of the articles would be considerably affected according to whether the word "diplomacy" was taken in its broad sense or whether the intention was to cover only missions consisting of career diplomats. He thought the Commission should specify what type of mission the draft was intended to cover. He

personally had no particular preference for the one or other interpretation.

71. Mr. YASSEEN did not think it necessary to use the word "official", for any mission sent by a State was official.

72. The CHAIRMAN, speaking as a member of the Commission, shared Mr. Erim's doubts concerning the scope of the word "diplomatic". The privileges and immunities granted to special missions would certainly depend upon the interpretation of that word.

73. Mr. YOKOTA said that, for example, a group of business men sent by the government to investigate the trade situation in another country might be regarded as an official mission, but not as one enjoying diplomatic privileges and immunities.

74. Mr. AGO observed that business men were not usually sent by governments, although governmental consent might be required for such delegations. The vital point was that, in order to qualify for the benefit of diplomatic prerogatives, a special mission had to represent the State; direct relations between administrative branches of governments were constantly expanding, and official missions could consist of a great variety of persons. The article might be amended to make it clear that the mission must consist of representatives of States.

75. Mr. ERIM asked whether, for example, the director-general of sports of a particular country would, when discussing official business with the corresponding authority in another country, enjoy the privileges and immunities conferred by the draft.

76. Mr. YASSEEN and Mr. AGO considered that the director of sports would in that case be acting as a representative of the State. The representative character of special missions should be stressed in the article.

77. Sir Gerald FITZMAURICE suggested that the phrase might read "an official mission consisting of state representatives".

78. Mr. YASSEEN thought that the suggested phrase could be interpreted to mean that all the members of the mission should be state representatives, whereas that might not be the case.

79. Sir Gerald FITZMAURICE pointed out that all the members of a delegation were representatives of the State for the purposes of the mission. For example, the United Kingdom delegation to the Conferences on the Law of the Sea had comprised experts and members of the fishing industry, who had represented the United Kingdom for the purposes of the Conferences.

80. The CHAIRMAN suggested that Mr. Ago's amendments to article 1 should be approved.

It was so agreed.

The meeting rose at 6 p.m.

577th MEETING

Thursday, 30 June 1960, at 9.30 a.m.

Chairman: Mr. Luis PADILLA NERVO

Ad hoc diplomacy (A/CN.4/L.92/Add.1) [continued]

[Agenda item 5]

1. The CHAIRMAN, inviting the Commission to continue the debate on the draft on *ad hoc* diplomacy (A/CN.4/L.92/Add.1), drew attention to the revised version of article 2 proposed by the Special Rapporteur in the following terms:

"1. Of the provisions of section I of the 1958 draft, articles 8, 9 and 18 shall apply also to special missions.

"2. Articles 12 and 13 shall apply where appropriate in the circumstances."

2. Mr. AGO proposed the omission of paragraph 2 of draft article 2. Article 13 of the 1958 draft dealt with the classes of heads of permanent missions and was wholly inapplicable to special missions. As to article 12, who would decide whether its application was appropriate?

3. Mr. BARTOŠ said that he would abstain from the vote on paragraph 2. He adhered to the view he had expressed at an earlier meeting that a mere reference to certain articles of the 1958 draft was inadequate, although he fully realized that the time spent by the Commission on the topic of consular intercourse and immunities during the current session had made it impossible to prepare a more elaborate text on the subject of *ad hoc* diplomacy.

4. In the case of special missions, the credentials might take the form of full powers if the mission was headed by an ambassador, a procurator embodied in an exchange of letters, or simply a letter of introduction.

5. Mr. TUNKIN agreed with Mr. Ago and Mr. Bartoš that the Commission should not try to squeeze the great variety of special missions into the framework of the provisions regarding credentials and classes of heads of permanent missions. In practice, there were sometimes no written credentials at all, the "credentials" taking the form of a telephone call from the embassy or legation concerned.

6. Mr. SANDSTRÖM, Special Rapporteur, and Mr. PAL pointed out that paragraph 2 had been prepared in conformity with directives of the Commission (569th meeting, paragraphs 5, 6, 7, 30 and 31).

7. The CHAIRMAN, speaking in his personal capacity, observed that articles 12 and 13 of the 1958 draft might in certain cases serve as a useful guide in the matter of precedence and etiquette, especially when a number of special missions