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Summary record of the 577th meeting

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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

arrived simultaneously. The words "where appropriate in the circumstances" obviously meant that the articles would apply only where they could apply.

8. Mr. AGO said that there were all kinds of special missions, including frequent missions by cabinet ministers. The words cited by the Chairman would not be interpreted uniformly and could lead to different treatment in analogous circumstances.

9. Mr. YASSEEN said he failed to see how article 13, which dealt with a specific matter relating to permanent missions, could ever apply to special missions.

Mr. Ago's proposal that paragraph 2 should be omitted was adopted by 6 votes to 1, with 5 abstentions.

Article 2, as amended, was adopted, subject to drafting changes.

10. The CHAIRMAN invited debate on article 3 as contained in document A/CN.4/L.92/Add.1.

11. Mr. SANDSTRÖM, Special Rapporteur, explained that the Drafting Committee had been of the opinion that account should be taken of the proposal made by Mr. Jiménez de Aréchaga (A/CN.4/L.87) concerning the mode of termination of a special mission; that proposal was reflected in the terms of article 3, paragraph 2.

Article 3 was adopted by 12 votes to none, with 1 abstention.

12. The CHAIRMAN invited the Commission to consider the introduction to the draft on *ad hoc* diplomacy.

13. Mr. BARTOŠ said that he would refrain from taking part in the present discussion because he considered that the Commission had failed in its task of preparing draft articles on *ad hoc* diplomacy. It had not had time to examine the whole subject in detail, which was what was necessary for practical purposes since the general principles were not at issue. He accordingly reserved his position on the whole of the draft and the commentaries.

14. Mr. TUNKIN considered that Mr. Bartoš' criticism of the Commission's method of work was fully justified: he, too, was dissatisfied with the present draft on *ad hoc* diplomacy, which was by no means a simple subject. However, he believed that the Commission should try and do the best it could in the circumstances.

15. Mr. SANDSTRÖM, Special Rapporteur, suggested that in paragraph 3 of the introduction Mr. Jiménez de Aréchaga's memorandum (A/CN.4/L.88) should be mentioned.

It was so agreed.

16. Mr. TUNKIN, referring to paragraph 4, said he did not think the Commission had in fact decided to study separately at a later date the subject of "relations between States and international organizations". If his supposition was

correct, the latter part of the second sentence in paragraph 4 should be omitted.

17. Mr. LIANG, Secretary to the Commission, recalled that at the previous session the Commission had noted General Assembly resolution 1289 (XIII) and had resolved in due course to consider the matter of the relations between States and international organizations.¹ It had not explicitly decided to study the substance of the subject in the near future, and he would therefore have thought it preferable to omit the final words of paragraph 4.

18. The remainder of the second sentence in paragraph 4 could stand, but in the interests of accuracy the words "at present" should be inserted after the word "relations". During the discussion in the Sixth Committee of the General Assembly in 1958 he had had occasion, as Secretary of the Committee, to point out that, in so far as the privileges and immunities of international organizations were concerned, the relations between States and such organizations were governed by a number of multilateral instruments.² Any codification of the principles of international law in that field would have to take account of those instruments. He also had doubted whether it was opportune to codify the subject.

It was agreed to delete the words "and will form the subject of a separate study later" and to insert the words "at present" after the word "relations" in the second sentence of paragraph 4.

19. Mr. TUNKIN, referring to paragraph 5, said that it was not quite accurate: the Commission had not discussed the relationship between the two subjects mentioned in the first sentence. It would be preferable to say nothing about its future intentions regarding them.

20. Mr. SANDSTRÖM, Special Rapporteur, said that he was prepared to re-draft paragraph 5 so as to indicate simply that the Commission had decided not to deal with the question of diplomatic conferences and had confined itself to the question of special missions.

21. Sir Gerald FITZMAURICE, Rapporteur, said it would be wrong of the Commission not to give reasons for adopting a certain course of action. If the question of diplomatic conferences was bound up with the question of relations between States and international organizations, some explanation should be given of the Commission's decision.

22. Mr. TUNKIN, agreeing with Sir Gerald, suggested that the Commission might indicate that it had chosen to deal with special missions,

¹ *Official Records of the General Assembly, Fourteenth Session, Supplement No. 9 (A/4169), chapter IV, paragraph 48.*

² *Official Records of the General Assembly, Thirteenth Session, Sixth Committee, 571st meeting, paragraphs 13 and 14.*

whereas diplomatic conferences and relations between States and international organizations were somewhat different subjects.

It was decided to request the Special Rapporteur, in consultation with the Rapporteur, to prepare a new text for paragraph 5, explaining that at the present session the Commission had decided to confine itself to the question of special missions, no mention being made of the other two topics.

23. Mr. SANDSTRÖM, Special Rapporteur, said that in view of the amended text of article 1 as adopted (576th meeting, paragraphs 59 and 80), the word "diplomatic" should be replaced by the word "official" in paragraph 6 of the introduction.

24. Sir Gerald FITZMAURICE suggested that paragraph 6 should indicate that the essential characteristic of a special mission was that it represented the sending State: the commentary would then be more consistent with the text of article 1 itself.

25. Mr. SANDSTRÖM, Special Rapporteur, said that the suggestion was acceptable to him.

Sir Gerald's suggestion was adopted.

26. Mr. SANDSTRÖM, Special Rapporteur, said that, in keeping with the amended wording of article 1, the word "diplomatic" should be deleted from paragraph 7.

27. Mr. YASSEEN criticized paragraph 7 because it did not stress that an itinerant envoy might be sent to several States to carry out the same task. That was the main difference between an itinerant envoy and a special mission.

28. Sir Gerald FITZMAURICE pointed out that an itinerant envoy might have to carry out different tasks in different countries. It should not always be assumed that the task would always be the same.

29. Mr. ERIM said that paragraph 7 was not specific enough and failed to indicate that an itinerant envoy represented the sending State and was usually a prominent man. For example, in recent years, the United States had followed the practice of appointing personal representatives of the President; generals, senators and even business men had acted as such personal representatives. There was no reason why itinerant envoys should not be assimilated to heads of special missions for the purpose of eligibility for privileges and immunities.

30. Mr. LIANG, Secretary to the Commission, observing that the expression "itinerant envoys" was not in his view a technical one, said that perhaps the Commission had not had an opportunity to discuss the expression fully when it had used it in the introduction to the 1958 draft.

31. Mr. SANDSTRÖM, Special Rapporteur, said that, as the Commission could not now abandon the term, it would be best to assimilate itinerant envoys to special missions, but he was prepared

to delete the reference to a definition in paragraph 7.

32. Mr. YOKOTA suggested that, in view of the lack of time, the Special Rapporteur and the Rapporteur might be asked to re-draft paragraph 7 in such a way that it would reproduce the definition of an itinerant envoy agreed upon for inclusion in article 1.

It was so agreed.

33. Mr. LIANG, Secretary to the Commission, referring to paragraph 8, considered that the co-ordination of a State's diplomatic activities in various countries was far from being the usual object of special missions; indeed, unless they received a special mandate to carry out such a task, he imagined that it would give rise to a strong reaction in permanent missions. He would, therefore, suggest that the phrase "the necessity for some degree of co-ordination of the diplomatic activities undertaken in the different countries" should be omitted.

34. Mr. SANDSTRÖM, Special Rapporteur, said he had no objection to that amendment.

The Secretary's suggestion was adopted.

Paragraph 9 was approved with some drafting changes.

35. Mr. LIANG, Secretary to the Commission, referring to paragraph 10, suggested that the passage "the provisions of articles 21 and 22 of the Commission's statute notwithstanding" should be deleted in order not to provoke any discussion in the Sixth Committee of the General Assembly as to whether or not the Commission was rigidly adhering to the terms of its statute. The reasons for not doing so in the present instance (the limited scope of the draft and lack of time) were, in any case, explained.

36. Mr. SANDSTRÖM, Special Rapporteur, said he had no objection to the deletion of the passage, which he had inserted merely in order to indicate that the Commission had not overlooked the provisions of articles 21 and 22 of its statute.

37. Mr. BARTOŠ emphasized that the draft could be submitted to the 1961 conference on diplomatic intercourse and immunities for information only; in its present form it could serve no other purpose whatever.

Paragraph 10 was adopted, subject to the deletion of the passage "the provisions . . . notwithstanding".

The introduction to the draft on ad hoc diplomacy was adopted as amended.

38. The CHAIRMAN invited discussion on the Special Rapporteur's commentary on article 2.

39. Mr. SANDSTRÖM, Special Rapporteur, said that in the second sentence of paragraph 1 the words "generally — but not invariably —" should be replaced by the word "sometimes".

40. Mr. AGO observed that that change reduced the importance of the second sentence and that it would be better to omit it.

41. Mr. LIANG, Secretary to the Commission, expressed doubts about the first sentence of paragraph 1. Very often the task of a special mission was not normally within the competence of the permanent mission. He suggested that the first sentence too should be omitted, since its subject-matter was dealt with in article 1.

42. Mr. SANDSTRÖM, Special Rapporteur, said that he had no objection to the suggestions for the deletion of paragraph 1.

It was agreed that paragraph 1 of the commentary on article 2 should be omitted.

Paragraph 2 of the commentary on article 2 was adopted with changes consequential on the omission of paragraph 1, subject to drafting changes.

43. Mr. SANDSTRÖM, Special Rapporteur, said that the end of paragraph 3 should be changed to read :

“... it is no less true that in some respects, by virtue of the similarity referred to, the rules which, under section I of the 1958 draft, relate to permanent missions should apply also to special missions.”

The Special Rapporteur's re-draft of paragraph 3 was adopted, subject to drafting changes.

Paragraph 4 of the commentary on article 2 was adopted.

44. The CHAIRMAN pointed out that the Special Rapporteur had withdrawn paragraphs 5 and 6 of the commentary as reproduced in document A/CN.4/L.92/Add.1 and wished to replace them by the following text :

“5. After analysis of the various articles contained in section I of the 1958 draft the conclusion was reached that articles 8, 9 and 18 are generally applicable to special missions as well as to permanent missions.

“6. It should not be inferred from the proposed provisions that apart from the cases covered by the rules mentioned, cases in which the principles laid down in the provisions of section I of the 1958 draft might occasionally be applicable are inconceivable; but because special missions vary so greatly the Commission did not think that excessively rigid rules should be provided in respect of such missions. States will have no difficulty, when discussing the sending of a special mission or when the question arises, in establishing the appropriate rules, possibly on the basis of the rules relating to permanent missions.”

The Special Rapporteur's new paragraphs 5 and 6 of the commentary on article 2 were adopted.

45. The CHAIRMAN drew attention to the following new paragraph 7 prepared by the Special Rapporteur.

“7. So far as questions of precedence and etiquette are concerned, the protocol services should have no difficulty in settling such questions, possibly on the basis of the relevant rules relating to permanent missions”.

The Special Rapporteur's new paragraph 7 was adopted, subject to drafting changes.

46. The CHAIRMAN invited the Commission to consider the commentary to article 3.

47. Mr. BARTOŠ observed that as he was opposed to article 3, paragraph 1, he was likewise unable to agree to paragraph 1 of the commentary.

48. Mr. SANDSTRÖM, Special Rapporteur, said that he was beginning to have doubts about the reference, in both the article and the commentary, to article 41 of the 1958 draft since the present article dealt with a different matter.

49. Mr. AGO considered that although article 41, sub-paragraphs (b) and (c) of the 1958 draft did not apply to special missions, sub-paragraph (a) did apply to them and should be mentioned since it described another way in which the functions of a special mission might come to an end.

50. Mr. YOKOTA pointed out that the enumeration contained in article 41 of the 1958 draft was not exhaustive, being introduced by the “*inter alia*”. There could be other causes for the termination of a special mission, such as death or resignation. It was accordingly preferable to mention article 41 in article 3.

51. The CHAIRMAN observed that the commentary on article 41 clearly explained how it should be interpreted.

52. Mr. SANDSTRÖM, Special Rapporteur, pointed out to Mr. Ago that sub-paragraphs (b) and (c) of article 41 were applicable to special missions now that article 8 of the 1958 draft had been declared applicable to them. He had been convinced by the remarks of Mr. Yokota and the Chairman that the reference to article 41 should stand.

The commentary to article 3 was adopted.

Consideration of the Commission's draft report covering the work of its twelfth session (A/CN.4/L.92 and Add.1 and 3)

CHAPTER I (Organisation of the session)

Chapter I of the draft report (A/CN.4/L.92) was adopted.

CHAPTER III (Ad hoc diplomacy)

53. The CHAIRMAN suggested that the text contained in document A/CN.4/L.92/Add.1, with the draft articles and commentaries as amended in the course of discussion, should constitute chapter III of the report.

It was so agreed.

54. Sir Gerald FITZMAURICE, Rapporteur, suggested that it might be advisable to include a paragraph in the report explaining that the Commission had had to deal with the question of *ad hoc* diplomacy rather hurriedly and adding a sentence along the following lines :

“However, the Commission thinks that this scheme is one that may be useful for the work

of the Vienna conference and puts it forward in that spirit."

It was so agreed.

CHAPTER IV (*Other decisions of the Commission*)
(A/CN.4/L.92/Add.3)

Section I (*Codification of the principles and rules of international law relating to the right of asylum*)

Section I was adopted.

Section II (*Study of the juridical régime of historic waters, including historic bays*)

Section II was adopted.

Section III (*Planning of future work of the Commission*)

55. Mr. LIANG, Secretary to the Commission, suggested that it should be made clear in the text that the subject of state responsibility would be taken up at the thirteenth session.

It was so agreed.

56. Mr. BARTOŠ asked what would happen if the Vienna conference in 1961 made a recommendation regarding the Commission's future work.

57. The CHAIRMAN replied that section III simply reported the Commission's decision, based on what was known at the present session.

58. Mr. GARCÍA AMADOR observed that a recommendation from the Vienna conference would have to be addressed to the General Assembly. Naturally, the Commission would have to take into account any new instructions by the General Assembly.

Section III was adopted subject to the Secretary's suggestion.

Section IV (*Co-operation with other bodies*)

59. Mr. YOKOTA considered that section IV should report the general approval of Mr. Tunkin's observation (571st meeting, paragraphs 33 and 41) that it was of more importance that the Commission should receive the papers, summary records and other documents of conferences of international organizations interested in the development of international law than that it should send observers to such conferences for a few days.

60. Mr. TUNKIN said that the report should indicate that it was the feeling (*ibid.*, paragraphs 45 and 50), and perhaps even the decision, of the Commission that the Secretariat should arrange for the transmission to members of the documents Mr. Yokota had mentioned.

61. Mr. LIANG, Secretary to the Commission, said that he hesitated to predict the extent of the interchange envisaged. For example, if fifty

members of the Asian-African Legal Consultative Committee should request all the documents of the Commission, a serious problem would arise. Under United Nations rules, fifty sets of the Commission's *Yearbook* could not be distributed free of charge. Some quantitative parity in the exchange would have to be aimed at, and he hoped the Secretariat would be given a certain latitude in the matter.

62. The CHAIRMAN did not think that the Commission had contemplated an exchange of documents. The Secretariat was to request the bodies in question to provide the documents desired by the Commission. If counter-requests for Commission documents were received, they would have to be treated in accordance with United Nations rules.

63. The summary records would show what the Commission had intended. He suggested that a paragraph should be added to section IV, indicating the kind of help the Commission hoped to receive.

It was so agreed.

Section IV, as amended, was adopted.

Section V (*Date and place of the next session*)

Section V was adopted.

Section VI (*Representation at the fifteenth session of the General Assembly*)

Section VI was adopted.

The meeting rose at 1 p.m.

578th MEETING

Thursday, 30 June 1960, at 3.30 p.m.

Chairman: Mr. Luis PADILLA NERVO

Consideration of the Commission's draft report covering the work of its twelfth session (A/CN.4/L.92/Add.2) [continued]

CHAPTER II (*Consular intercourse and immunities*)

1. The CHAIRMAN recalled that there now remained to be considered chapter II (Consular intercourse and immunities) of the draft report (A/CN.4/L.92/Add.2). He invited debate on the commentaries to the articles.

Commentary to article 19 (Appointment of the consular staff)

2. Sir Gerald FITZMAURICE doubted whether paragraph 6 was really necessary, since in the context it might give the inaccurate impression that, although the article purported to give total freedom of choice of the consular staff to