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Summary record of the 567th meeting

Topic:
Special missions

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failed to grant the rights concerned, an individual might be affected or injured, but the real cause of action would be the breach of treaty, not international responsibility for injuries to aliens. If a treaty between two States was violated by one State, the rights of the other State and, hence, those of its subjects and citizens, were impaired, and in such a case the injury to the alien was an indirect consideration.

55. He believed that the new texts of articles 6 (*Denial of access to a tribunal or an administrative authority*) and 8 (*Adverse decisions and judgements*) constituted an improvement over the corresponding articles of the Harvard Draft of 1959 in that the words "and discriminatory" had been introduced ("if it [i.e., the denial of access or the adverse decision] is a clear and discriminatory violation of the law of the State"); that wording, in his opinion, came close to attaching international responsibility to a State for a decision which was merely incorrect. National courts were not infallible, and the nationals of the State concerned might also fall victim to wrong decisions; the key point was that there should be no animus against the alien as such and the important word in the provision as now drafted was "discriminatory". To take the point further, there seemed to be no reason why discrimination should not be made the test; there seemed to be no reason to refer to violation of the law of the State concerned, since a denial of justice would exist in the event of discrimination.

56. Apart from the introduction of the notion of discrimination, he did not think that the new articles 6 and 8 were in fact an improvement over the corresponding articles of the 1959 Harvard Draft. The earlier articles had gone into greater detail, but the present article 8 was open to criticism on the grounds that paragraph (a) should be essentially confined to the notion of discrimination, that paragraph (c) contained the reference to international law and treaties and that paragraph (b) was incomplete. A number of other causes could result in denial of justice and involve the State's responsibility. The cause of corruption, for instance, mentioned in the 1959 draft, had been omitted from the present article 8; but discrimination and corruption could not be regarded as the same concept. Furthermore, the earlier Draft had referred to judgements clearly departing from the standards of justice generally recognized by civilized States; while that somewhat variable concept might be said to be covered by the phrase "principles of justice generally recognized by municipal legal systems", he thought that the earlier wording was preferable. The phrase used in the 1959 text "if it [the judgement] clearly departs from the standards of justice generally recognized by civilized States" had been criticized mainly on the grounds that the word "civilized" was equivocal; he personally preferred the words "generally recognized standards of justice". When the matter had been discussed at the previous session, Mr. Žourek had suggested the phrase "rules common to the principal legal systems of

the world",⁹ and that phrase seemed to be preferable to the reference to "municipal legal systems".

57. In conclusion, he reiterated that those and other criticisms of the new draft should not be ascribed to any lack of appreciation of the improvements that had been made over the 1929 draft.

The meeting rose at 6.10 p.m.

⁹ *Yearbook of the International Law Commission, 1959, vol. I, 513th meeting, para. 6.*

567th MEETING

Tuesday, 21 June 1960, at 9.30 a.m.

Chairman: Mr. Luis PADILLA NERVO

Ad hoc diplomacy (A/CN.4/129, A/CN.4/L.87, A/CN.4/L.88, A/CN.4/L.89) (resumed from the 565th meeting)

[Agenda item 5]

1. The CHAIRMAN invited the Commission to resume its discussion on the question whether article 3 (*Functions of a diplomatic mission*) of the 1958 draft on diplomatic intercourse and immunities¹ was applicable to special missions and recalled that the Special Rapporteur had proposed the exclusion of that article from the provisions applicable to special missions.

2. Mr. JIMÉNEZ DE ARÉCHAGA said that the provisions of article 3 applied to special missions, although only within the scope of the specific tasks assigned to such missions.

3. Mr. MATINE-DAFTARY said that he agreed with the idea put forward by Mr. Jiménez de Aréchaga but considered that it should be incorporated in a special article, since article 3 could not be amended. The Commission should agree on a provision to the effect that the functions of a special mission were determined in each case by agreement between the two States concerned.

4. Mr. ERIM said that it was essential to find some formula which would make it possible to apply the various provisions of the 1958 draft to special missions. In his opinion, any of the functions described in the sub-paragraphs of article 3 could be entrusted to a special mission. Those sub-paragraphs gave a description of diplomatic duties in general, and provided the cornerstone of the whole diplomatic function, whether *ad hoc* or permanent.

5. Mr. TUNKIN suggested that it should be left to the two States concerned to determine the

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

extent of the functions of the special mission. Article 3 described the characteristic features of a permanent mission and could not be applied as it stood to special missions.

6. Mr. YASSEEN pointed out that article 3 stated that the functions of a diplomatic mission “consist *inter alia*” of those enumerated in sub-paragraphs (a) to (e). So far as special missions were concerned the position was totally different: a special mission might have the one or other of the functions enumerated in sub-paragraphs (a) to (e), or even one not mentioned therein. That fact was an additional argument for not making article 3 applicable to special missions.

7. Mr. PAL said that even with the limitations suggested by Mr. Jiménez de Aréchaga article 3 as it stood would not apply to *ad hoc* missions. At the most, sub-paragraphs (a) and (c) might be moulded into a form making them applicable to such missions. That would also involve the redrafting of those sub-paragraphs. The other provisions of article 3, however, did not express appropriately the functions of a special mission even with the qualification proposed by Mr. Jiménez de Aréchaga. As it stood, article 3 was certainly not applicable to special missions, and that was all the Commission was concerned with for its present purpose.

8. Mr. BARTOŠ said that it was essential to include in the draft articles on *ad hoc* diplomacy a provision specifying that the functions of a special mission would be those stated by the sending State and agreed to by the receiving State.

9. Furthermore, a reference should be made in the commentary to the question of the relationship between the powers of a special mission and those of the permanent diplomatic mission. It might happen, for example, that a special mission was sent to negotiate on a particular question and that the permanent ambassador of the sending State concerned settled the question at a time when the special mission was present in the receiving State.

10. Mr. SANDSTRÖM, Special Rapporteur, said that a special mission was entrusted with a specific task and not with the various functions set forth in article 3, although of course some of those functions might be relevant to its special task.

11. For his part, he felt that it was unnecessary to do more than refer, in the definition of the special mission, to the agreement between the two States concerned on the functions to be performed by the special mission.

12. The CHAIRMAN, speaking as a member of the Commission, said that article 3 made it clear that the functions of a diplomatic mission consisted at all times of those set forth in sub-paragraphs (a) to (e), as well as of other functions, as indicated by the term “*inter alia*”. The same was

obviously not true of special missions, and therefore article 3, as it stood, did not apply to such missions. The exclusion of article 3 from the provisions applicable to special missions would not, of course, imply that a special mission could not be entrusted with any or all of the functions in question; the two States concerned, in their agreement concerning the sending and the receiving of the mission would specify the mission's tasks.

13. Speaking as Chairman, he said that if there were no objection, he would take it that the Commission agreed that article 3 of the 1958 draft did not, as it stood, apply to special missions. The reservations expressed by certain members would be referred to the Drafting Committee.

It was so agreed.

14. Mr. SANDSTRÖM, Special Rapporteur, said that article 4 (*Appointment of the head of the mission: agrément*) of the 1958 draft did not apply to special missions. It laid down strict rules concerning the agrément of the head of a permanent mission. The composition of a special mission might be the subject of some informal discussion in the correspondence preceding the sending of the mission, but there did not appear to be anything resembling a formal agrément.

15. Mr. JIMÉNEZ DE ARÉCHAGA said that, though it might be true in some cases that the acceptance of a special mission would constitute acceptance of its composition, that might not always be the case. Where the composition of a mission was not agreed upon at the time when consent was given to its being sent, the agrément would be necessary subsequently.

16. If the Commission stated that article 4 was not applicable to special missions, it would be inferred that in no case was the agrément necessary in respect of the composition of a special mission.

17. The CHAIRMAN, speaking as a member of the Commission, said that that was not his interpretation. The Commission's decision that article 4 was not applicable to special missions would simply mean that the procedure for the acceptance of the composition of a special mission was not necessarily the same as that of obtaining the agrément to the appointment of the head of a permanent mission.

18. In practice, the formal procedure of agrément was not followed in the case of all special missions. The receiving State was informed, of course, of the composition of the special mission by the sending State — and the receiving State might object to the composition — but the actual procedure of agrément was not followed.

19. Mr. TUNKIN said that the practice of States was to ask for a visa for the members of a special mission, but never for a special agrément. A decision to declare article 4 applicable to special missions would create unnecessary complications and would be unacceptable to most States.

20. He urged the Commission to declare article 4 not applicable to special missions. That decision would confirm the existing practice in the matter.

21. Mr. SANDSTRÖM, Special Rapporteur, explained that he had sought to draft article 3 in alternative I of his draft (A/CN.4/129) in such a way as to avoid making a formal *agrément* obligatory for an itinerant envoy or members of a special mission: the wording should not therefore give rise to the practical objections mentioned by certain members.

22. The Commission's slow progress had prompted him to submit a new alternative proposal (A/CN.4/L.89). Members would note that under article 2 of that new proposal the provisions in the 1958 draft relating to diplomatic privileges and immunities (sections II, III and IV) would be declared applicable to special missions; the applicability of the provisions of section I would be dealt with in sub-paragraph (a) of the comment to the new article 2. If, as he did not believe was the case, it could be inferred from the new article 2 that the provisions of section I of the 1958 draft did not apply to special missions, an alternative method might be to insert an additional article stipulating that the provisions of that section were, *mutatis mutandis*, applicable to special missions in like circumstances.

23. Mr. TUNKIN, referring to the Special Rapporteur's new alternative proposal, said that although the provisions of sections II, III and IV of the 1958 draft might be considered as applicable without need for indicating exceptions, he doubted whether a general statement about the applicability of the provisions in section I of the kind outlined by the Special Rapporteur would serve the purpose.

24. Mr. BARTOŠ said that he was inclined to share Mr. Tunkin's view. The *mutatis mutandis* formula was by no means entirely satisfactory.

25. For example, it might be preferable to state that the provisions of article 4 of the 1958 draft would similarly apply to itinerant envoys and special missions: that would take into account the fact that the *agrément* was usually tacit. In the new text, the *mutatis mutandis* formula would mean that a formal *agrément* would be indispensable. Again, there was no need in the case of special missions for a formal ceremonial presentation of credentials.

26. He would be averse to an "umbrella" provision of the kind suggested by the Special Rapporteur, since it would give no precise indication of the manner in which the provisions of section I would apply to special missions. Of course, the Commission should codify the rules concerning *ad hoc* diplomacy in the light of those regulating ordinary diplomatic relations, but the distinction between the two should be clearly maintained and he feared that the *mutatis mutandis* formula would only help to provoke disputes about interpretation. He could not therefore support article 2 in the Special Rapporteur's

new alternative proposal, and warned the Commission against confusing form with substance.

27. Mr. JIMÉNEZ DE ARÉCHAGA agreed that the procedure of accreditation was less formal for special than for permanent missions, but emphasized that on no account should there be any suggestion that for special missions the consent of the receiving State was not required. An explanation stressing that point in the commentary would not suffice because experience had shown that governments often ignored commentaries to drafts prepared by the Commission.

28. Mr. ERIM said that the wording of article 2 in the Special Rapporteur's new alternative proposal might create uncertainty because it did not stipulate that the sending State must inform the receiving State of the name or names of the itinerant envoy or members of a special mission.

29. The CHAIRMAN noted that with regard to the applicability of article 4 of the 1958 draft to special missions there seemed to be general agreement in the Commission that the procedure of acceptance by the receiving State of an itinerant envoy or members of a special mission was not always the same as the regular procedure for obtaining an *agrément*, but that the consent of the receiving State was always necessary and that it could be withheld.

30. He then invited the Commission to consider whether article 5 (*Appointment to more than one State*) of the 1958 draft was applicable to special missions.

31. Mr. SANDSTRÖM, Special Rapporteur, pointed out that he had not considered that article 5 was directly applicable to heads of special missions, though a receiving State might be entitled to object if informed by a sending State that an itinerant envoy or special mission might also be sent to another country.

32. The CHAIRMAN, speaking as a member of the Commission, said that in so far as article 5 applied to the head of a permanent diplomatic mission it was a sound provision, for some States were reluctant to receive as head of a permanent mission a person who was also accredited to another State. But surely a receiving State could not object to an itinerant envoy or head of a special mission being sent to other States as well.

33. Mr. JIMÉNEZ DE ARÉCHAGA said that it would be wrong if article 5, as applied to special missions, could be interpreted to mean that the head of a special mission could not be accredited to more than one State, for the practice of accrediting heads of special missions to several States was quite a general one.

34. The CHAIRMAN, speaking as a member of the Commission, said that he had not, of course, wished to suggest that a sending State could not accredit a head of a special mission to more

than one State, but only to point out that the proviso contained in article 5 could not apply to special missions because a receiving State had no right to object to that mission's being accredited to other States as well, and indeed might not be informed of the fact.

35. Mr. BARTOŠ pointed out that in practice there had been cases, recognized as justified, in which a receiving State had refused to accept a special mission that was to be accredited to other States as well, for example where the same special mission was to have been accredited both to Israel and to Arab States. Again, certain Latin American States were only ready to receive good will missions on condition that they could stipulate the sequence in which such missions would visit the various countries to which they were accredited. Such political situations should be taken into account as they were not exceptional. The circumstances of accrediting special missions were not identical with those governing the accreditation of permanent diplomatic missions.

36. Mr. SCELLE urged the Commission not to embark upon a detailed consideration of practice, the variations of which were infinite. He would have thought that by the simple insertion of the word "special" before the word "mission" in article 5, it could be regarded as applicable to special mission. The same held true of nearly all the other articles in the draft.

37. Mr. TUNKIN said that, although there might not be a rule of international law allowing a receiving State to object to a special mission's being accredited to other States as well (because by definition the assignment of that special mission was limited to the territory of the receiving State), in practice the Commission might make a concession to political realities and by way of a new development allow for such objections to be raised by the receiving State: that provision could then be submitted to the diplomatic conference for consideration.

38. Mr. BARTOŠ said that, with all due respect to the authority of Mr. Scelle, he maintained that from the legal point of view the issue arising out of article 5 was not the same for permanent and special missions.

39. Mr. MATINE-DAFTARY said that if article 5 in its present form were made applicable to special missions, the very institution of *ad hoc* diplomacy would become meaningless, for that provision would enable one receiving State to frustrate the plans of a sending State to appoint a special mission to explore, for example, the prospects of trade with different countries. The Commission could not derive a rule from exceptional cases such as those which had arisen owing to the state of war between Israel and Arab countries.

40. The CHAIRMAN observed that the Commission seemed to be agreed that the question of the acceptance of a special mission would be settled at the time of the negotiations between

the two States concerning the sending of such a mission. Nevertheless, Mr. Tunkin had said that it might be advisable to make explicit provision for cases where a State sent the same special mission to several countries.

41. Mr. TUNKIN said that, whether or not an express provision to that effect was added to article 5, any government had the right at any time to decline to receive a special mission.

42. Mr. SANDSTRÖM, Special Rapporteur, thought there was no need to render the article applicable to special missions in order to regulate the situations to which Mr. Tunkin had referred; as Mr. Tunkin himself had pointed out, governments would be entitled to refuse to receive a special mission at any given time.

43. The CHAIRMAN considered that, with that interpretation of the situation with regard to article 5, the Commission could proceed to consider the applicability of article 6 (*Appointment of the staff of the mission*) of the 1958 draft to *ad hoc* diplomacy.

44. Mr. SANDSTRÖM, Special Rapporteur, commenting in the first place on the first sentence of article 6, recalled that the phrase "may freely appoint members of the staff of a mission" had been inserted in view of the existence of an article on the appointment of the head of the mission, which was not applicable to members of the mission staff. He therefore did not think that the first sentence was applicable to special missions, since it was self-evident that the members of the staff of a special mission would be freely appointed by the sending State.

45. Mr. ERIM considered that a question of principle was involved. Some members of the Commission had pointed out in connexion with article 5 that the prospective receiving State was entitled to refuse to receive a special mission, sent to more than one country. Likewise, if a person who had been declared *persona non grata* as a member of a permanent mission were proposed as a member of a special mission, the receiving State should be in a position to refuse him. That was one example. There might be many other reasons why a receiving State might refuse to receive a particular member of the special mission. The question was one of relations between States, which were based on mutual consent. If the Commission decided that article 6 was not applicable to special missions, its decision might be construed to mean that so far as the appointment of the staff of such a mission was concerned the receiving State's consent was not necessary.

46. Mr. SANDSTRÖM, Special Rapporteur, observed that the point raised by Mr. Erim was fully covered by article 3 of his draft (A/CN.4/129, alternative I), under which a State had the right to declare a head or member of a special mission *persona non grata* or not acceptable even if it had given its formal agrément for such a person.

47. The Chairman, speaking as a member of

the Commission, agreed that Mr. Erim's point was covered by the Special Rapporteur's article 3. Moreover, the Commission had agreed that the sending State must make certain that the agreement of the receiving State had been given for the proposed head of a special mission. *A fortiori*, the receiving State could decline to receive a particular member of a special mission.

48. Mr. SANDSTRÖM, Special Rapporteur, referring to the second sentence of article 6 of the 1958 draft, said that sentence was not, in his opinion, applicable to special missions, because military, naval or air attachés were not usually assigned to special missions.

49. Mr. TUNKIN thought that Mr. Erim's objections were met by article 8 (*Persons declared persona non grata*) which the Special Rapporteur regarded as applicable to *ad hoc* diplomacy.

50. Mr. ERIM could not agree with Mr. Tunkin, since article 8 related to cases where persons might be declared *persona non grata* after the mission had been appointed, and not at the time of its appointment. In his opinion, the receiving State must have the right during the negotiations preceding the sending of the special mission, to declare certain persons undesirable as members of that mission. The same objection applied to the Special Rapporteur's article 3, which would enter into operation after the event. The real issue was whether the composition of the special mission was to be governed by mutual consent.

51. Mr. SANDSTRÖM, Special Rapporteur, said it was obvious that the sending State would communicate to the receiving State the names of the persons intended to be appointed to the special mission, and at that stage the receiving State could raise objections.

52. Mr. PAL thought that the Commission was deviating from its purpose. In adopting article 6 of the 1958 draft it had provided, rightly or wrongly, that no prior agreement was needed for the appointment of the members of the staff of a diplomatic mission; it had been considered that article 8 would constitute a sufficient safeguard in that respect in relation to the appointment of such members. The question now before the Commission was not whether those articles adequately provided for all the possible cases but whether, as they stood, they were applicable to *ad hoc* missions. Members who doubted the wisdom of the provisions of article 6 presumably regarded the article as unacceptable in the case of special missions also. Personally, however, he agreed with Mr. Tunkin that article 8 sufficed and that the question to which Mr. Erim had referred did not arise, since the words "not acceptable" were comprehensive enough to relate also to refusal before the person concerned had been appointed. Furthermore, it should be borne in mind that both the Special Rapporteur and Mr. Jiménez de Aréchaga regarded article 8 as applicable to *ad hoc* diplomacy and none objected to its appli-

cability. The question was not, therefore, before the Commission at the moment.

53. Mr. ERIM said that his intention had not been to discuss the substance of article 6 of the 1958 draft, but merely to eliminate certain difficulties which arose in connexion with special missions. The Commission's task was to fill in gaps in the draft on *ad hoc* diplomacy, and there was no article in that draft corresponding to article 6. The Special Rapporteur had given a verbal assurance that the receiving State was entitled to object to the composition of a special mission. That assurance should be included in the commentary or in a special article.

54. With regard to the Special Rapporteur's statement concerning the second sentence of article 6, he thought that, although members of a special mission who were concerned with military, naval or air matters might not be attachés properly so-called, certain special missions, such as those concerned with defence matters, might be composed mainly of military personnel. It would therefore be advisable to refer to such persons in the draft.

55. Mr. JIMÉNEZ DE ARÉCHAGA said that article 6 of the 1958 draft contained two main provisions, first, that the sending State might freely appoint members of the staff of the mission and, secondly, that the names of military, naval or air attachés should be submitted beforehand for the approval of the receiving State. If the Commission declared the article not applicable to special missions, the implications of such a decision might be that a sending State could not freely appoint members of the staff of a special mission and that the receiving State was not entitled to require the names of the military staff of such mission to be submitted beforehand; and yet the Commission's debates showed that such an interpretation was contrary to the opinion of all members. Furthermore, he pointed out that the special missions of many American States were accompanied by military, naval or air attachés properly so-called.

56. Mr. BARTOŠ agreed with Mr. Erim that, although special missions might not normally comprise military, naval or air attachés, military, naval or air experts might be attached to some special missions, such as those dealing with questions of frontier delimitation and various naval matters. For practical reasons, it was advisable to give the receiving State the right to require the names of such experts to be submitted beforehand for its approval. For example, some of the Balkan States made a practice of declaring military personnel unacceptable on special missions for tracing the whereabouts of the war dead. The reasons for that practice were not only strategic; for example, at a time when Yugoslavia had maintained diplomatic relations with the Federal Republic of Germany, it had accepted such a mission, but had refused to accept as its members persons who had participated in the fighting on the battlegrounds which were to be searched. The

Yugoslav Government had suggested that on those missions doctors and other specialists should be substituted for military personnel. That action had been mainly prompted by consideration for the feelings of the local population.

57. His country had also had a dispute with Turkey with regard to the composition of a mission concerned with negotiations about the property of Turkish nationals in Yugoslavia. The Turkish Government had appointed former Yugoslav citizens to that mission as experts; the Yugoslav Government had agreed to accept those persons, but only on the condition that no direct negotiations would be conducted with them.

58. In his opinion, the provisions of article 8, under which any member of a mission could be declared not acceptable, sufficed to cover the situations referred to by Mr. Erim.

59. Mr. SANDSTRÖM, Special Rapporteur, likewise considered that the question of the acceptability of persons who were to form part of special missions was fully covered by article 8, and hence that article 6 should not be declared applicable to such missions.

60. The CHAIRMAN, summing up the debate, thought that the Commission was generally agreed that article 6 of the 1958 draft was not applicable to special missions. The anxiety expressed by some members seemed to have been met by the Special Rapporteur's statement that the names of the prospective members of the special mission were communicated in advance to the receiving State and that the latter was entitled to object and to declare any member of a special mission not acceptable. In any case, article 8, which the Special Rapporteur regarded as applicable to *ad hoc* diplomacy, covered both non-acceptance of a member of the mission and the declaration, after acceptance, that such a person was *persona non grata*.

61. He invited the Commission to consider the applicability of article 7 (*Appointment of nationals of the receiving State*) of the 1958 draft to special missions.

62. Mr. SANDSTRÖM, Special Rapporteur, considered that there was no need to make article 7 applicable to special missions, because the number of cases where a member of a special mission was a national of the receiving State was negligible.

63. The CHAIRMAN, speaking as a member of the Commission, pointed out that the acceptance of a special mission depended on the consent of the receiving State and that the provision of article 7 of the 1958 draft would be covered by the general acceptance of the special mission.

64. Mr. ERIM considered that article 7 should be made applicable to special missions, since the receiving State was entitled not to accept one of its own nationals as a member of such a mission. There could be no inherent difference be-

tween the two types of mission so far as consent was concerned.

65. Mr. YASSEEN pointed out that there was an inherent difference between the position of a permanent and that of a special mission. Because special missions were sent to the receiving State for a limited period, it was unnecessary to make them subject to an administrative restriction of the kind laid down in article 7.

66. The CHAIRMAN observed that the majority of the Commission did not seem to regard article 7 of the 1958 draft as applicable to special missions, since the situation of the latter was covered by articles 8 and 4.

67. Mr. JIMÉNEZ DE ARÉCHAGA suggested that the Commission should consider the applicability of article 8 of the 1958 draft to *ad hoc* diplomacy, since the Special Rapporteur had not mentioned section I of that draft in article 2 of his new alternative proposal (A/CN.4/L.89).

68. Mr. SANDSTRÖM, Special Rapporteur, drew attention to his statement that he might draft a special additional article providing for the applicability of section 1 of the diplomatic draft to special missions, *mutatis mutandis*. Alternatively, it might be stated in the commentary that article 8 and article 9 (*Notification of arrival and departure*) of the 1958 draft were applicable to special missions.

69. The CHAIRMAN considered that, whatever final text might be adopted, the opinion of the Commission on the question would be known to the Drafting Committee. At the present stage, articles 8 and 9 should be regarded as applicable to special missions as contemplated in the Special Rapporteur's report (A/CN.4/129, paragraph 14). The Commission should therefore proceed to consider the applicability of article 10 of the 1958 draft to *ad hoc* diplomacy.

70. Mr. SANDSTRÖM, Special Rapporteur, observed that article 10 (*Size of staff*) had been formulated expressly for permanent missions and was scarcely applicable to special missions. Moreover, in that case also the faculty of the receiving State to impose its will was wide enough to safeguard its interests and it was unnecessary to make special provision for the size of special missions. Furthermore, it would be extremely difficult to decide upon "a size exceeding what is reasonable and normal" in the case of special missions.

71. Mr. JIMÉNEZ DE ARÉCHAGA said that article 10 introduced an important restriction on the powers of the sending State. Although he agreed with the Special Rapporteur that the provision would in most cases be irrelevant to special missions, it might be undesirable to rule out its applicability to such missions altogether, for such a decision might be interpreted to mean

that special missions could have an unlimited number of staff.

72. Mr. ERIM, agreeing with Mr. Jiménez de Aréchaga, said that a formula should be found which would preclude that interpretation.

73. Mr. TUNKIN thought it was impossible, unnecessary and even dangerous to try to formulate a legal rule to cover every case. The acceptance of a special mission was the result of consent between the sending and receiving States, and the question of the size of the staff would be settled by the States concerned, if it was raised at all. The provisions of article 10 were appropriate in the case of permanent missions, but the implication of specific consent concerning the size of the staff would unnecessarily complicate arrangements for special missions.

74. Mr. ŽOUREK, supporting the Special Rapporteur's view, pointed out that paragraph 5 of the commentary to article 10 specifically stated that in the opinion of some members that clause did not express a recognized rule of international law. The Commission had included the article as a practical measure for permanent missions; but neither from the technical nor the practical point of view should the provision be regarded as applicable to a special mission sent to the receiving State for a limited period.

75. Mr. BARTOŠ, while agreeing that no special rule concerning the size of staff of special missions was needed, observed that in practice States were sometimes obliged to agree that special missions should not exceed a certain number. Countries which received many delegations might be faced with practical difficulties in such matters as hotel accommodation, particularly at certain seasons; nevertheless, since the matter was governed by mutual consent, there was no need to make specific provisions on the subject.

76. Mr. YASSEEN thought that a decision to render the article applicable to special missions might upset the differentiation between permanent and special missions. In connexion with article 10, the difference lay in the fact that a special mission would usually comprise a large number of experts, because it would be unable to keep in touch with the home government throughout the period of its assignment, whereas a permanent mission could avail itself of the services of local experts or send for experts from the sending State.

77. The CHAIRMAN noted that the majority of the Commission considered that article 10 of the 1958 draft was not applicable to *ad hoc* diplomacy and that the principle of consent underlying the acceptance of the special mission would cover all practical considerations relating to its size.

568th MEETING

Tuesday, 21 June 1960, at 3.30 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) (resumed from the 566th meeting)

[Agenda item 3]

1. Mr. VERDROSS commended the work done on the subject of state responsibility by the Inter-American Juridical Committee and the Harvard Law School. The new revised Harvard Draft would be of great assistance to the Commission when it came to consider the Special Rapporteur's draft, article by article.

2. At the present stage, he would confine himself to a few general remarks, elaborating upon his brief comments on the subject at the eleventh session.¹

3. In the first place, as had been stressed by Sir Gerald Fitzmaurice (566th meeting, paragraph 52), the old-established principle that international responsibility operated as between States and not as between a State and an individual was not based on an obsolete doctrine; it formed part of the general international law as recognized by the highest judicial authority in the world, the International Court of Justice. The new tendency to admit that individuals could have rights at the international level was merely an exception to that rule, an exception based on certain conventions such as the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950.²

4. A State which presented a claim in respect of an injury sustained by one of its nationals was not acting "on behalf of a person who is its national", as was stated in paragraph 2(b) of article 20 of the new Harvard Draft. The State making the claim asserted its own right. As had been stated on several occasions both by the former Permanent Court and by its successor, the International Court of Justice, it was the rights of that State under international law which had been violated in the person of one of its nationals.

5. The formula thus accepted by the International Court was not of purely academic interest; it produced certain important practical consequences. In the first place, a State was not obliged to present a claim at the request of its injured national. For example, the Swiss Foreign Office (Political Department) had repeatedly stressed that Switzerland was under no obligation to submit a claim at the request of one of its injured

The meeting rose at 1.10 p.m.

¹ *Yearbook of the International Law Commission*, 1959, vol. I, 512th meeting, paragraph 32.

² *United Nations Treaty Series*, vol. 213, p. 221.