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Summary record of the 453rd meeting

Topic:
Diplomatic intercourse and immunities

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453rd MEETING

Friday, 30 May 1958, at 9.45 a.m.

Chairman: Mr. Radhabinod PAL.

Diplomatic intercourse and immunities (A/3623, A/CN.4/114 and Add.1-6, A/CN.4/116 and Add.1-2, A/CN.4/L.72, A/CN.4/L.75) *(continued)*

[Agenda item 3]

DRAFT ARTICLES CONCERNING DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/3623, PARA. 16; A/CN.4/116/ADD.1-2) *(continued)*

ARTICLE 7 *(continued)*

1. Mr. SANDSTRÖM, Special Rapporteur, enlarging on his remarks at the end of the 452nd meeting, said that one of the United States Government's objections to article 7, paragraph 2, was that it failed to mention the principle of reciprocity (A/CN.4/116). He had prepared for the Commission's consideration a draft article on reciprocity (A/CN.4/116/Add.2) which would, of course, apply to the whole of the draft.

2. Mr. TUNKIN said that he doubted whether the deletion of the words "and on a non-discriminatory basis" from the first sentence of paragraph 2 would improve the text. One of two possible courses could be followed. One was to enunciate the principle of non-discrimination and the other to enunciate the positive principle of reciprocity. Yet the second course would lead in practice to discrimination as between missions accredited to the same State. In any case, as the Netherlands Government had pointed out (A/CN.4/116), the principle of non-discrimination should be implicit in every article of the draft. By contrast, the United States Government seemed to consider that the words in question should be deleted because the principle of non-discrimination did not apply in the case of paragraph 2.

3. With reference to the second sentence of paragraph 2, as revised by the Special Rapporteur, he suggested that the word "consent" would be more appropriate than "approval".

4. Sir Gerald FITZMAURICE said that, while the Netherlands Government was perfectly right in stating that the principle of non-discrimination was implicit in all articles of the draft, he was afraid that if the reference were omitted in paragraph 2, it might be read as implying that discriminatory practices were possible. In the case of paragraph 1, it was obviously impossible to have strict non-discrimination in the sense of imposing a uniform size on all missions regardless of circumstances. What was meant was that the guiding principles governing the determination of the size of missions must be the same, although the results might work out differently in different cases. By contrast, in paragraph 2 it would be desirable to mention the principle of non-discrimination for the purpose of stressing the difference between the situation contemplated in that paragraph and that contemplated in paragraph 1. The object of paragraph 2 was to provide that, so far as the exclusion of certain officials was concerned, all missions should be treated alike.

5. Mr. YOKOTA agreed with Mr. Tunkin and Sir Gerald Fitzmaurice. The United States Government's objection was based on the fear that the receiving State would have to treat all foreign missions alike "without regard to how the sending State treats representatives of the receiving State" (A/CN.4/116). Nevertheless, the fact that any State could retaliate against the mission of another State if the latter treated its mission unfavourably, thereby violating the rule, should suffice to allay the United States Government's apprehension.

6. Mr. FRANÇOIS agreed to some extent with Mr. Yokota. However, the reason for the proposal of the Netherlands Government was its fear that the enunciation of the principle of non-discrimination in one article only might convey the impression that less weight was attached to the principle in the other articles.

7. The CHAIRMAN pointed out that the particular objection of the United States Government and the objection of the Netherlands Government would be met by the adoption of a general article on reciprocity, as suggested by the Special Rapporteur.

8. Mr. SANDSTRÖM, Special Rapporteur, suggested keeping the reference to non-discrimination but pointing out in the commentary on the article that it was a principle that applied to the draft in general.

9. Mr. TUNKIN observed that it would not be sufficient to enunciate the principle of non-discrimination in the commentary on an article; it should be mentioned in a preamble to the draft or in a special article. He suggested voting on the retention of the principle enunciated in paragraph 2 and requesting the Drafting Committee to consider how best to make clear that the principle of non-discrimination applied to all articles.

10. Mr. SANDSTRÖM, Special Rapporteur, said that all the courses suggested were possible. A good solution would be to draft a special article enunciating the principles both of non-discrimination and of reciprocity.

11. The CHAIRMAN put to the vote the proposal that the principle of non-discrimination be enunciated in a substantive article.

The proposal was adopted by 12 votes to 1.

12. Mr. SANDSTRÖM, Special Rapporteur, withdrew his proposal (A/CN.4/116/Add.1) that the words "and on a non-discriminatory basis" should be deleted in article 7, paragraph 2.

13. The CHAIRMAN put to the vote the first sentence of paragraph 2, as contained in the draft adopted by the Commission at its ninth session (A/3623, para. 16).

The first sentence of paragraph 2 was adopted by 12 votes to none, with 1 abstention.

14. The CHAIRMAN put to the vote the second sentence of paragraph 2 as amended by the Special Rapporteur (A/CN.4/116/Add.1).

The second sentence of paragraph 2 was adopted by 12 votes to none, with 1 abstention.

Paragraph 2, as amended, was adopted unanimously.

15. Mr. SANDSTRÖM, Special Rapporteur, drew attention to his tentative proposal for a new paragraph 3 to be added to article 7 (A/CN.4/116/Add.1) drafted on the basis of a comment by the Netherlands Government (A/CN.4/116). The proposal itself was self-explanatory.

16. Sir Gerald FITZMAURICE said that his only criticism of the proposed text related to a matter of drafting. As it stood it made no allowance for the custom of missions in hot countries of following the Government to a summer capital.

17. Mr. MATINE-DAFTARY inquired whether the word "places" meant towns or parts of a town. He agreed with the criticism expressed by Sir Gerald Fitzmaurice. In any case, he regarded the provision as unnecessary; there was no need to go into such detail in the draft.

18. Mr. FRANÇOIS said that "place" was to be construed to mean "town". In the circumstances mentioned by Sir Gerald Fitzmaurice, there could clearly be no objection to the mission's being established in two places. What the Netherlands Government objected to was a tendency to transfer parts of diplomatic missions to Amsterdam or Rotterdam, away from The Hague. The point raised was a practical and not a theoretical one.

19. Mr. TUNKIN pointed out a few problems raised by the text. For instance, the question where the mission should be established in the first place. The only answer to that could be: at the seat of the Government. Another doubtful point was the exact meaning of the word "offices" in the text. The proposition moreover seemed self-evident; since the sending State was not sovereign in the territory of the receiving State, it clearly could not establish branches of its mission without the consent of that State. Though he was in principle opposed to the inclusion of self-evident propositions in the draft, he had no strong objection to the proposed additional paragraph.

20. Mr. BARTOS said that his practical experience of the problem made him favour the Special Rapporteur's proposal. One mission in Yugoslavia had suddenly announced that the office of its military attaché would in future be at Split, while another had established its commercial attaché at Zagreb, because most of his commercial contacts were there. Ambassadors with little diplomatic business to transact in Yugoslavia had even been known to establish themselves in watering places, arguing that if they had been accredited to two countries, they might have had to operate from Rome or Vienna, so there could be no objection to their operating from a Yugoslav watering place. A practical objection to the establishment of a mission away from the receiving State's capital was that it would make it difficult for the receiving State to ensure full enjoyment of privileges and immunities by diplomatic missions. The question of missions in summer capitals was quite another matter, since the establishment of more than one office was necessitated by the arrangements of the Government of the receiving State itself.

21. The provision could be drafted either in the negative form chosen by the Special Rapporteur or as a positive statement that diplomatic missions should be established at the seat of the Government of the receiving State. As for its position in the draft, he said the additional paragraph might equally well form part of article 16, which dealt with mission premises.

22. Mr. LIANG, Secretary to the Commission, said that it was not clear to him in what circumstances a provision such as that proposed by the Special Rapporteur would be necessary. He presumed that, normally, whenever a mission considered it essential to establish an office outside the capital, it would seek the consent of the Ministry of Foreign Affairs of the receiving State, and in the vast majority of cases would receive it. Incidentally, the question of consent, which arose in connexion with other articles too, raised a point on which he was doubtful: whether the receiving State could simply withhold consent without giving valid reasons or allowing an opportunity for negotiation, or whether it was bound to justify its refusal.

23. He wondered whether there had ever been any case of a receiving State refusing to allow the establishment of a mission office outside the capital; he did not know of any case where the establishment of such an office had assumed such political or other importance as to prove a source of embarrassment to the receiving State. Cases such as those mentioned by Mr. Bartos, where the ambassador and the mission were established outside the capital and only a branch office was kept in the capital, were far more serious and by no means theoretical. In China, for instance, although the seat of the Government during the years 1927-1937 had been at Nanking, many very important diplomatic missions had been allowed to stay on in the quite distant city of Peking, because they had large establishments there and fewer facilities were available in Nanking.

24. The Special Rapporteur did not appear to regard his tentative proposal as really necessary but it might be useful to have a positive provision on the lines suggested by Mr. Bartos.

25. Mr. TUNKIN said that the discussion had shown the provision to be of practical value. He suggested that it should be referred to the Drafting Committee with a request that it take into consideration the various suggestions, including the question whether the provision should form the subject of a separate article.

26. Mr. EL-ERIAN said that he was in favour of the provision but agreed that it needed redrafting. Difficulties had arisen in Egypt when certain missions

had wished to establish information offices at Alexandria, where the municipal authorities had been unwilling to exempt them from local taxation, etc. Problems of that kind could easily be solved, if such branch offices were established with the consent of the Government of the receiving State.

27. Mr. SANDSTRÖM, Special Rapporteur, agreed that the proposal should be referred to the Drafting Committee for redrafting.

28. Mr. MATINE-DAFTARY proposed that the latter part of the text should read "... in towns other than the towns where the mission is established."

It was so decided.

29. The CHAIRMAN put to the vote the principle enunciated in the new paragraph 3 of article 7, on the understanding that the text would be redrafted by the Drafting Committee in the light of the discussion.

The principle was adopted by 13 votes to none, with 1 abstention.

Article 7 as a whole, as amended, was adopted unanimously, subject to drafting changes.

ARTICLE 8

30. Mr. SANDSTRÖM recalled that at the ninth session the Commission had decided to present alternative formulae for the purpose of determining the time at which the head of the mission was entitled to take up his functions. As he had indicated in his summary of the observations received from Governments (A/CN.4/116), the few Governments which had commented on the question were fairly evenly divided in their preference for one or other of the alternatives. In his revised draft of article 8 (A/CN.4/116/Add.1) he now proposed, in accordance with a suggestion made by the Netherlands Government (A/CN.4/116), that it be left to the receiving State to decide which of the two methods should be adopted. In accordance with a suggestion by the Swedish Government (A/CN.4/116), he also proposed that the words "and presented a true copy of his credentials to the Ministry for Foreign Affairs" should be replaced in the first alternative by the words "and a true copy of his credentials has been accepted by the Ministry for Foreign Affairs".

31. He further drew attention, in particular, to the observations of the Government of Chile (A/CN.4/116).

32. In the observations it had just presented (A/CN.4/114/Add.6), the Government of Pakistan reserved its position on article 8, principally, it seemed, because that Government followed a special practice in respect of high commissioners from other Commonwealth countries. The question of high commissioners from other Commonwealth countries was also referred to in the same Government's observations on articles 10 and 12. He suggested that the question be left aside for the moment and taken up in conjunction with article 10.

33. Mr. BARTOS said he was in favour of retaining both alternatives in the text of the article, as a large number of States had not yet indicated which they preferred. Either a choice between them could be made by the General Assembly after all Governments had expressed their views, or the whole question could be left to be settled as a matter of protocol, as some Governments suggested.

34. He supported the Swedish Government's suggestion. On the other hand, he agreed with the Special Rapporteur that the question of high commissioners of British Commonwealth countries went beyond the scope of article 8. In his view, their status should be laid down in a separate article, which might be inserted after article 14, since they were now recognized as members of the diplomatic corps and as the normal channel for diplomatic communications, in exactly the same way as other heads of missions.

35. Mr. YOKOTA said that he had asked several of his country's ambassadors and ministers about their experience in the matter dealt with in article 8. Their experience apparently was that heads of missions did not formally take up their functions until they had presented their letters of credence; until they had done so, all communications addressed to the receiving State were signed not by them but by the *chargé d'affaires ad interim*. Although that appeared to be the normal practice, however, it seemed that some Governments were in favour of the other alternative, even if they did not clearly indicate that such was the practice followed in their countries. In the circumstances, he supported the Special Rapporteur's new proposal, which should be acceptable to all countries.

36. Sir Gerald FITZMAURICE said that in view of the divergence of practice he supposed the Commission had no choice but to leave it to the receiving State to decide the matter, as the Special Rapporteur proposed. He still felt that the first alternative was greatly to be preferred, however, owing to the practical difficulties which might arise as a result of the delay in presenting letters of credence in case of the illness or absence of the sovereign or head of the State.

37. He hoped, moreover, that the Commission would not adopt the Swedish Government's suggestion, which would make an invidious distinction between the two alternatives. Presentation of letters of credence to the sovereign or head of the State, or of a true copy thereof to the Minister of Foreign Affairs, as the case might be, had always, he thought, been deemed sufficient.

38. In his view, it would be wise not to attempt to deal with the problem of high commissioners of the Commonwealth countries in the draft under consideration. For one thing, the Governments concerned had never been asked for their explicit comments on it. For another, there were, after all, only about ten countries in which the question arose, and in none of them, so far as he knew, had it yet given rise to difficulties in practice. Lastly, he was very doubtful whether high commissioners could be regarded as strictly equivalent to the heads of diplomatic missions; for example, the

fact that the countries concerned all had a common sovereign or head of State made the whole system of accreditation entirely different. In any case, as far as article 8 was concerned, the retention of both alternatives would largely meet the Government of Pakistan's point.

39. Mr. VERDROSS supported the Special Rapporteur's proposal, but suggested the addition of a sentence along the following lines: "The protocol of the receiving State shall determine which method shall be chosen."

40. Mr. TUNKIN agreed with Sir Gerald Fitzmaurice that the question of high commissioners of Commonwealth countries should not be dealt with in the draft.

41. Commenting on the Special Rapporteur's revised draft of article 8, he said it would have been desirable for the Commission to propose a uniform rule. Unfortunately the Commission had little more information to go upon concerning current practice than it had had a year previously. It seemed that most States, like the Soviet Union, did not consider the head of a mission to have formally taken up his functions until he had presented his letters of credence; it was not until he had done so, for example, that he exchanged formal notes with the heads of other missions in the same capital, expressing the hope that cordial relations would be maintained between them. And there was good reason for that practice, for the transmittal of letters of credence signed by the head of the sending State to the head of the receiving State was an act of some importance, and it was right that its importance should be reflected in the practice. It seemed, however, that other States preferred the alternative system. In the circumstances he agreed that the best course would be to leave the choice to the receiving State, as proposed by the Special Rapporteur.

42. The Drafting Committee should, however, endeavour to make sure that the text could not be interpreted as meaning that the receiving State would be free to decide the matter anew in each particular case; the proper interpretation presumably was that whatever system the receiving State applied should be applied to all heads of mission indifferently.

43. Mr. HSU drew attention to the Chinese Government's suggestion that, in the case of delay in the presentation of letters of credence, the head of a mission should be permitted to request the Minister of Foreign Affairs of the receiving State to arrange for an earlier commencement of his diplomatic activities if he so wished (A/CN.4/114/Add.4). For his own part, however, he would see no objection to the adoption of the Special Rapporteur's revised draft. What was important was that the heads of missions should know exactly where they stood; whatever system the receiving State applied, it must ensure that the sending State was aware of it.

44. He agreed that the Commission should leave aside the question of high commissioners. In his view that question should be settled in the first instance among the Commonwealth countries themselves, which could then submit any proposals they wished.

45. Mr. SANDSTRÖM, Special Rapporteur, said that, in suggesting that the question of high commissioners should be discussed in connexion with article 10, he had meant to say that he would at that time submit a proposal along the lines advocated by Sir Gerald Fitzmaurice, to the effect that the question should not be dealt with in the draft.

46. Mr. Tunkin's interpretation of the words "shall decide" was, of course, perfectly correct, and adoption of the amendment proposed by Mr. Verdross would preclude any other. Although he had incorporated the Swedish Government's suggestion in his new text, he was prepared, in the light of what had been said, to withdraw that part of his proposal since he thought the text adopted at the ninth session really met the Swedish Government's point. "Presented" meant "presented without any objections of form being raised".

47. Mr. BARTOS said that although the question of the status of high commissioners was, as between the Commonwealth countries themselves, governed only by the practice which had grown up between those countries, it had implications for other States as well, the scope and nature of which had to be settled on the basis of the principles governing diplomatic relations between sovereign States. It would therefore be an omission if no reference at all were made to that question in the Commission's draft.

48. Mr. ZOUREK said he was not very enthusiastic about the Special Rapporteur's new proposal, which would mean that the practice governing the commencement of the functions of the head of a mission would vary not only from one capital to another but also, in certain cases, as between the sending and the receiving State. The time at which the head of a mission took up his functions was material not only for the purposes of protocol but also for the purpose of answering such important questions of substance as from what point in time his official acts were to be regarded as the acts of the sending State. He therefore thought that it would be most desirable to provide for a uniform system. In his view, the decisive moment should be the time at which the head of the mission presented his letters of credence. That was a solemn and perfectly definite act. It did not seem too much to hope that those States which had in the past applied the other system would be willing to change to one recommended by the Commission.

49. Mr. SANDSTRÖM, Special Rapporteur, said that if the Commission had already decided that the draft should form the basis of a convention, he would have been inclined to agree that a uniform rule was necessary or at least desirable. In the circumstances, however, he did not see why the Commission should not leave it to the receiving State to adopt either of the two alternatives.

50. The CHAIRMAN put to the vote the new text of article 8 proposed by the Special Rapporteur (A/CN.4/

116/Add.1), subject to the restoration of the original wording in place of that suggested by the Swedish Government and on the understanding that the text did not mean that the receiving State was to decide the matter anew in each particular case, but that it should decide to apply the same system uniformly to all foreign missions.

On that understanding, and subject to any further changes proposed by the Drafting Committee, article 8 in the new form proposed by the Special Rapporteur was adopted, as amended, by 15 votes to none, with 1 abstention.

ARTICLE 9

51. Mr. SANDSTRÖM, Special Rapporteur, introduced his revised draft of article 9 (A/CN.4/116/Add.1).

52. In accordance with the observations of certain Governments, including the Government of Switzerland (A/CN.4/116), he proposed the addition at the end of paragraph 1 of a provision indicating that the name of the *chargé d'affaires ad interim* would be notified to the Government of the receiving State by the head of the mission before his departure or otherwise by the Government of the sending State.

53. Many Governments had objected to the provisions of paragraph 2. He therefore proposed its deletion.

54. Mr. YOKOTA said that the additional words proposed by the Special Rapporteur dealt with a minor procedural matter.

55. It was important that the name of the *chargé d'affaires ad interim* should be communicated to the Ministry of Foreign Affairs of the receiving State, but the question who would be responsible for that notification was immaterial. In fact, as suggested by the delegation of Chile in the Sixth Committee,[1] that notification could well be made by the *chargé d'affaires ad interim* himself, a possibility which did not appear to be covered by the provision suggested by the Special Rapporteur.

56. Sir Gerald FITZMAURICE agreed with Mr. Yokota that it was only necessary to state that the name of the *chargé d'affaires ad interim* must be notified to the receiving State. That notification could, for example, be made by the sending State to the ambassador of the receiving State accredited at its capital.

57. Mr. BARTOS observed that the United Kingdom practice was to regard the head of a foreign diplomatic mission as remaining in charge of his mission while he was within the confines of the United Kingdom (A/CN.4/116). For his part, he preferred the Yugoslav practice, which was more realistic; if the head of a diplomatic mission was present in the country but was unable to perform his duties as a result of accident or sickness, the appointment of a *chargé d'affaires, ad interim* was considered quite appropriate.

58. The case mentioned by the Government of Denmark (A/CN.4/116), in which no diplomatic member of the mission was present in the receiving State and a non-diplomatic member of the staff was officially designated *chargé d'affaires,* had occurred at the Yugoslav Legation at Lisbon. The Portuguese Government, however, had refused to allow the Legation to continue to function in those circumstances and it had been found necessary for the two Governments concerned to agree that their relations would be conducted through the channel of their respective ambassadors in Paris.

59. He could not support the proposal of the Chilean Government (A/CN.4/116) that the words "*ad interim*" should be omitted, for there was a great difference between a *chargé d'affaires* and a *chargé d'affaires ad interim.* A *chargé d'affaires* was a permanent head of mission; a *chargé d'affaires ad interim* was merely in charge of a diplomatic mission until the arrival of the titular head of that mission.

60. He regretted the proposal to delete paragraph 2, for that paragraph set forth the useful presumption that the member of the mission placed immediately after the head of the mission on the mission's diplomatic list would take charge in the absence of his chief. If the Government concerned wished to appoint someone else, it could always do so.

61. Mr. TUNKIN said that at Moscow, it was the current practice, when an ambassador left for a holiday in the Crimea or the Caucasus, to leave a *chargé d'affaires ad interim* in charge of the embassy. That situation appeared to be covered by the text of article 9, because an ambassador who was absent from the capital, though not from the country to which he was accredited, was in fact "unable to perform his functions".

62. The case mentioned by the Government of Denmark raised an important point. If a non-diplomatic member of the staff of a mission was appointed *chargé d'affaires ad interim,* his status changed in that he would henceforth enjoy diplomatic immunity. Such a change would clearly require the consent of the receiving State. He therefore suggested the insertion in article 9, after the words "*chargé d'affaires ad interim*", of the phrase "appointed from among the members of the diplomatic staff of the mission". The effect of such an amendment would be to leave outside the scope of the provisions of article 9 the case mentioned by the Government of Denmark; the status of the *chargé d'affaires ad interim* would in that case be a matter for bilateral agreement.

63. With regard to the question of the notification of the name of the *chargé d'affaires ad interim,* he shared the views expressed by Mr. Yokota and Sir Gerald Fitzmaurice.

64. Mr. SANDSTRÖM, Special Rapporteur, withdrew his proposal to add at the end of the paragraph the words "by the head of the mission before his departure or otherwise by the Government of the sending State" (A/CN.4/116/Add.1).

[1] *Official Records of the General Assembly, Twelfth Session, Sixth Committee,* 509th meeting, para. 13.

65. Sir Gerald FITZMAURICE said that the Government of Denmark had raised a very real issue. It was by no means uncommon for a diplomatic mission to consist of only one diplomatic officer and an archivist. If the head and sole diplomatic member of the mission was away, the mission had to be left in charge of a person who was a member of the administrative staff. That person would in fact deal with the local Government, although he might do so unofficially. It was undesirable to make the provision too rigid, as suggested by Mr. Tunkin, because there might not be any other member of the diplomatic staff to replace the head of mission.

66. Mr. TUNKIN said that he did not press his suggested amendment.

67. Mr. LIANG, Secretary to the Commission, said that it was not uncommon for the sending Government to transfer temporarily an officer from its mission in a neighbouring State in order to act in the place of the head of a mission who was unable to perform his duties. It would therefore not be advisable to introduce a provision to the effect that the *chargé d'affaires ad interim* must be a member of the diplomatic mission concerned. It would be sufficient to provide that he should be a member of the diplomatic service, if it was desired to avoid the difficulties which might ensue from the appointment of a member of the non-diplomatic staff.

68. If the provisions of paragraph 1 were left as drafted at the ninth session, the natural interpretation of the provision would be that the person appointed as *chargé d'affaires ad interim* must belong to the diplomatic staff. A special provision would be necessary in order to cover the recourse to a member of the non-diplomatic staff.

69. The CHAIRMAN said that he could not agree with the Secretary's interpretation. The text did not exclude the possibility of any person being appointed *chargé d'affaires ad interim* by the sending Government.

70. Mr. ZOUREK said that in the rare cases where a diplomatic mission consisted of a single diplomatic officer, and that officer was absent or incapacitated, it was the practice for the sending Government to send another diplomatic officer to replace him or to entrust a member of the non-diplomatic staff with the task of carrying on the current administrative affairs of the mission without actually appointing him *chargé d'affaires ad interim*. Such an appointment was hardly possible, except in the case of *chanceliers* in certain capitals where those officials appeared on the diplomatic list.

71. Mr. PADILLA NERVO said that he was in favour of the provisions of paragraph 1 but objected to those of paragraph 2.

72. He agreed with Sir Gerald Fitzmaurice and Mr. Yokota that the only important question was that of the notification to the receiving State of the name of the *chargé d'affaires ad interim*. The way in which the name was notified was a secondary matter.

73. With regard to the case mentioned by the Government of Denmark, he said that the practice was for the sending Government either to entrust a *chancelier* merely with the archives of the mission, or to inform the receiving State officially that a person previously not a member of the diplomatic staff had been appointed secretary with diplomatic rank.

74. Mr. VERDROSS said that the case mentioned by the Government of Denmark was by no means very rare. The Austrian diplomatic mission to Oslo consisted of only one diplomatic officer and one *chancelier*, and the same had been true up to a year ago of the mission in Warsaw. In the absence of the diplomatic officer, all communications had to be addressed to the *chancelier*.

75. Mr. BARTOS said that the French Ministry for Foreign Affairs had advised the Government of Serbia in 1915 — at a time when Serbia had been threatened with enemy occupation — to give diplomatic rank to its *chanceliers* in those legations where there was only one Serbian diplomatic officer. It had been feared that Serbian diplomatic representation might suffer if the single diplomatic officer in charge of a mission happened to die or become incapacitated.

76. Mr. HSU supported article 9, paragraph 1, as adopted by the Commission at its ninth session.

77. He thought the provisions of paragraph 2 were unnecessary. It was self-evident that the member of a mission placed immediately after the head of the mission on the mission's diplomatic list would be presumed to be in charge in the absence of his chief.

78. Mr. ZOUREK pointed out that the fact that certain functions were entrusted to a member of the non-diplomatic staff of a mission did not make that person a *chargé d'affaires ad interim*. He did not represent the sending State.

79. If it was considered necessary to draft a provision covering the case mentioned by the Government of Denmark, a special paragraph would have to be introduced.

80. He regretted the proposal to delete paragraph 2. The presumption in that paragraph was a very useful one in practice, during the period before the notification of the name of the *chargé d'affaires ad interim*. He would have preferred paragraph 2 to be retained, the application of its provisions being restricted to cases of extreme urgency.

81. The CHAIRMAN put to the vote article 9, paragraph 1, as adopted by the Commission at its ninth session (A/3623, para. 16).

Paragraph 1 was adopted unanimously, subject to drafting changes.

82. The CHAIRMAN put to the vote the proposal (A/CN.4/116/Add.1) that paragraph 2 be deleted.

The proposal was adopted by 9 votes to 5, with 1 abstention.

Article 9 as a whole was adopted by 15 votes to none, with 1 abstention, subject to drafting changes.

The meeting rose at 1.5 p.m.

454th MEETING

Monday, 2 June 1958, at 3 p.m.

Chairman: Mr. Radhabinod PAL.

Resignation of Mr. El-Erian

1. Mr. LIANG, Secretary of the Commission, read out a letter from Mr. El-Erian, in which, having regard to the provision in article 2, paragraph 2 of the Commission's Statute that no two members of the Commission should be nationals of the same State, he tendered his resignation with deepest regret.

2. The CHAIRMAN said that in view of the circumstances, the Commission had no choice but reluctantly to accept Mr. El-Erian's resignation.

Diplomatic intercourse and immunities (A/3623, A/CN.4/114 and Add.1-6, A/CN.4/116 and Add.1-2, A/CN.4/L.72, A/CN.4/L.75) *(continued)*

[Agenda item 3]

DRAFT ARTICLES CONCERNING DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/3623, PARA. 16; A/CN.4/116/ADD.1-2) *(continued)*

ARTICLE 10

3. Mr. SANDSTRÖM, Special Rapporteur, introducing his revised draft of article 10 (A/CN.4/116/Add.1) pointed out that four Governments, those of Sweden (A/CN.4/114), Switzerland (A/CN.4/114), Finland (A/CN.4/116/Add.2) and Yugoslavia (A/CN.4/114/Add.5), had declared themselves in their comments to be in favour of dispensing with the second class of heads of missions accredited to heads of States, but had advanced few reasons not already considered by the Commission at its ninth session. The Government of Pakistan considered (A/CN.4/114/Add.6) that a fourth class of heads of mission should be recognized, namely, high commissioners, who normally carried letters of introduction to the Prime Minister.

4. The United States Government proposed that the article should begin with the words "For purposes of precedence and etiquette..." (A/CN.4/116). Although the idea was already expressed in article 14, he would have no objection to an explicit statement in article 10 for the sake of emphasis.

5. In sub-paragraph (*b*) the words "other persons", criticized by Switzerland as ambiguous, could, as proposed by Italy (A/CN.4/114/Add.3), be replaced by "internuncios", the only type of representative to which the words could conceivably refer.

6. Mr. VERDROSS, referring to sub-paragraph (*a*), pointed out that legates were not accredited to heads of State but were special envoys for particular affairs only. He proposed that the reference to legates should be omitted.

7. Mr. YOKOTA said that he was not in favour of the addition proposed by the United States Government. It was unnecessary to repeat the reference made at the beginning of article 14 and, moreover, the proposed classification of heads of mission had a certain significance for purposes other than precedence and etiquette, inasmuch as it reflected an evolution of ideas. He was in favour of substituting the word "internuncios" for the ambiguous term "other persons".

8. Mr. TUNKIN agreed with Mr. Yokota that the addition proposed by the United States was superfluous. The appointment of an ambassador rather than of a minister sometimes had political significance.

9. Mr. BARTOS said he had been consistently advocating the classification of heads of mission into two classes only: those accredited to heads of State and those accredited to Ministers of Foreign Affairs. Any differences, however minor, in the status of the two classess of heads of mission accredited to heads of State recognized in the article did violence to the principle of the equality of States established by the Charter of the United Nations.

10. Mr. PADILLA NERVO suggested that article 10 and article 14 be combined or that the principle of the equality of heads of missions be enunciated at the beginning of article 10 before the various classes were listed. Failing that, it would be better to adopt the addition proposed by the United States.

11. Since it was specified in article 14 that the equality of heads of mission was unaffected by the class to which they were assigned, it would be more logical to provide for only two classes, ambassadors and *chargés d'affaires*. Since, however, the question had been amply discussed at the ninth session, he would not press for the amendment of article 10 on those lines.

12. Mr. ZOUREK said that for drafting reasons he was opposed to the United States Government's addition for it constituted an unnecessary repetition and furthermore, although in law there was no distinction between classes (*a*) and (*b*), some political significance might attach to the choice of class. It was, for instance, the practice of countries wishing to emphasize the importance of diplomatic relations between them to raise their representation to embassy level. Though the "minister" class might disappear in time, it still formed part of existing practice.

13. He agreed with Mr. Verdross that legates came rather under the heading of "*ad hoc* diplomacy".

14. Sir Gerald FITZMAURICE suggested that the point raised by the United States Government could more satisfactorily be met by prefacing article 10 with the words "Subject to the provisions of article 14,"