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Summary record of the 806th meeting

Topic:
Special missions

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with freedom of communication. However, the usefulness of paragraph 6 was questionable, for it might give the impression that there were difficulties in the way of communicating freely with the diplomatic and consular authorities of the sending State.

87. The CHAIRMAN, speaking as Special Rapporteur, agreed to delete paragraph 6.

88. Mr. TSURUOKA said that what mattered above all was that the special mission should enjoy the conditions necessary for its success. For that purpose, and in order to avoid misunderstandings, it was desirable to establish effective co-ordination at the seat of the permanent diplomatic mission in the country where the special mission performed its task. In that connexion, he found the Special Rapporteur's idea a good one, but it should be laid down that special missions were permitted to send messages in code or cipher to the embassies or consulates in question. Communications with the Government of the sending State could be routed through its diplomatic or consular agents, though the States concerned would naturally be free to conclude an agreement granting special facilities to special missions.

89. The CHAIRMAN, speaking as Special Rapporteur, said that that argument had often been used by permanent diplomatic missions in order to keep control over special missions. He agreed that it was necessary to facilitate liaison through embassies, but communications of that kind were not always possible, particularly in regions difficult of access, unless it was possible to communicate by wireless transmitter, river or ocean routes or helicopter.

90. Mr. TSURUOKA said that his suggestion had been that the States concerned should be completely free to agree on special measures when communications between the special mission and the permanent diplomatic mission and consuls of the sending State were particularly difficult.

The meeting rose at 5.55 p.m.

806th MEETING

Friday, 18 June 1965, at 10 a.m.

Chairman: Mr. Milan BARTOŠ

Present: Mr. Ago, Mr. Amado, Mr. Bedjaoui, Mr. Briggs, Mr. Castrén, Mr. Elias, Mr. Jiménez de Aréchaga, Mr. Pal, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Mr. Verdross, Sir Humphrey Waldock, Mr. Yasseen

Special Missions

(A/CN.4/179)

(continued:)

[Item 3 of the agenda]

ARTICLE 22 (Freedom of communication) [22] (*continued*)¹

1. The CHAIRMAN invited the Commission to continue its consideration of article 22.

2. Mr. YASSEEN said that, although article 22 followed the corresponding article of the Vienna Convention on Diplomatic Relations, it included a number of innovations, which the Commission should examine carefully.

3. Under paragraph 7, for example, special missions did not have the right to send messages in code or cipher unless they had been accorded that right by an international agreement or by an authorization of the receiving State. That provision was not consistent with the requirements of special missions or with the realities of international life. Everyone knew the reasons why permanent missions used codes and ciphers in communicating with the sending State; those reasons were equally valid for special missions and justified a provision granting to such missions the unrestricted right to communicate with the sending State by those means. If that practice was not already established in positive law, it should be recognized in the interest of the progressive development of international law.

4. Paragraph 6 contained another new notion, that of free communication by the special mission with the permanent mission of its State. In his opinion, that freedom of communication should be clearly guaranteed, because the special mission always used the services of the permanent mission as its link with the sending State. Moreover, the reason why some doubted the desirability of authorizing special missions to use codes and ciphers was perhaps that in reality special missions did so in any case through the permanent missions; however, there might be cases which called for a specific rule allowing special missions to communicate direct with the sending State in code or cipher.

5. On the question whether a special mission should in fact have the right to employ the captain of a commercial aircraft or of a ship as a courier, as diplomatic and consular missions were permitted to do by the Vienna Conventions, he had no strong views. There was nothing to be lost by stating that right, which should be governed by all the guarantees provided in the Vienna Conventions; nor would there be any great risk if it were not mentioned at all. The provision stipulating that the courier had to be a member of the special mission or of its staff was perhaps required by the temporary character of special missions.

6. Mr. ROSENNE said that article 22 should be brought more closely into line with the Vienna Conventions. Paragraph 1 should be drafted in more or less the same terms as the first paragraphs of the corresponding articles in those Conventions; in the second

¹ See 805th meeting, following para. 76.

sentence, the word "its" in the expression "its couriers", should be deleted. Freedom of communication must be safeguarded, and the Commission should not enter into internal questions affecting the hierarchy between special and permanent missions. Paragraph 7 should also be deleted. Another reason for not restricting absolute freedom of communication by code or cipher direct with the capital of the sending State was that there could be instances of a special mission being sent to a State where there was no permanent mission.

7. He had some difficulty in accepting paragraph 8, which should be modified so as to contain the same kind of provision about couriers and *ad hoc* couriers as appeared in the Vienna Conventions; but that was a matter that could be left to the Drafting Committee.

8. A reference to the possibility of captains of civil aircraft or merchant ships being entrusted with the bag of a special mission, on the lines of similar provisions in the Vienna Conventions, would be acceptable.

9. Mr. CASTRÉN said that he could accept article 22 with the amendments proposed by Mr. Ruda and Mr. Ago. Special missions should have a general right to use diplomatic couriers and to send messages in code or cipher. A provision should be inserted in the article corresponding to article 27, paragraph 7, of the Vienna Convention on Diplomatic Relations, which provided that a diplomatic bag could also be entrusted to the captain of a commercial aircraft or even, under the Convention on Consular Relations, to the captain of a ship.

10. The idea in paragraph 6 seemed to be already contained in paragraph 1, and hence he agreed with Mr. Ago that paragraph 6 might be omitted.

11. He doubted whether the second sentence in paragraph 2 was really necessary, since a definition of official correspondence was already given in the two Vienna Conventions.

12. Mr. VERDROSS thought that it should be possible to amalgamate paragraphs 1, 6, 7 and 8.

13. The idea in paragraph 6 that the special mission could communicate with the sending State's permanent mission and consulates in the receiving State was already stated in paragraph 1; paragraph 6 was therefore superfluous.

14. Paragraph 8 said that only members of the special mission or of its staff could act as couriers of the special mission; but the second sentence of paragraph 1 already provided that the special mission could employ its couriers. Paragraph 8 might therefore be omitted if the words "including its couriers" in paragraph 1 were replaced by the words "including the couriers belonging to the special mission".

15. The idea expressed in paragraph 7, that special missions should not have the right to send messages in code or cipher, could be covered by adding at the end of the third sentence in paragraph 1 the clause "and may send messages in code or cipher only if it has been accorded this right by an international agreement or by an authorization of the receiving State."

16. The CHAIRMAN, speaking as Special Rapporteur, said that personally he thought that special missions should have the right to use code and cipher; but receiving States did not have sufficient confidence in special missions, which included not only missions of a diplomatic character, in the proper sense of the term, but also small missions with very limited tasks. Perhaps it would be better to delete paragraph 7 and to include a provision giving special missions the right to use code and cipher. If strong opposition developed to that proposal later, there would always be time to reconsider it.

17. It was against his own personal feelings that he had included paragraph 8, concerning couriers. The fact was that most special missions operated in frontier areas; and, if they used as *ad hoc* couriers persons recruited in the area who did not belong to the mission and were not members of the diplomatic or consular staff, serious problems might arise. The Swiss Federal Political Department had issued a circular stating that, in such cases, the courier should not be regarded as having any diplomatic status. A provision permitting *ad hoc* couriers had been accepted without difficulty in the Vienna Convention on Diplomatic Relations, but had met with some opposition at the 1963 Conference on Consular Relations.² He saw no objection to introducing in article 22 of his draft a provision similar to that contained in article 35, paragraph 6, of the Vienna Convention on Consular Relations.

18. He could accept Mr. Rosenne's proposal that the words "its couriers" should be replaced by the word "couriers", though he wished to point out that his draft did not mention diplomatic or consular couriers and hence did not exclude the possibility of diplomatic or consular officers acting as couriers for the special mission.

19. He was still undecided whether it was desirable to insert a provision stating that the bag could be entrusted to the captain of an aircraft or of a ship. If the Commission decided in the affirmative, it would be better to use the wording of article 35, paragraph 7, of the Vienna Convention on Consular Relations, rather than that of the corresponding article in the Vienna Convention on Diplomatic Relations, and to use the word "ship" rather than the word "vessel", which suggested naval vessels; the provision should be drafted to cover inland waterway craft in the Danubian countries as well as lake craft in Africa.

20. He had noted that while the draft provided for freedom of movement between the different sections of the special mission, it made no provision for freedom of communication between them; the words "and between the various sections of the special mission" might therefore be added at the end of the first sentence of paragraph 1.

21. He had not included any reference to freedom of communication between the special mission and nationals of the sending State. Some special missions were sent with the specific purpose of communicating with

² See *United Nations Conference on Consular Relations, Official Records*, Vol. I, 327, paras. 34-39.

nationals of the country from which they came. For example, missions were sent by the United States Government to investigate United States nationals living abroad who were receiving social security pensions, and to inquire into double taxation problems. The United States Government had also sent missions abroad to inquire into citizenship problems and to investigate the loyalty of United States citizens. A third example was that of the missions sent by eastern European countries to get in touch with their nationals among displaced persons. Such cases were always governed by special arrangements or a general instrument, but it might be as well to mention them in the draft.

22. Mr. ROSENNE said that article 22 should not be overloaded with detail, particularly in view of the wide variety of special missions. All that was really needed was to link it more closely with article 2. The use of the phrase "for all official purposes" in paragraph 1 should suffice to ensure that freedom of communication would be accorded for the performance of the task which, under article 2, would be agreed upon between the sending and the receiving State. And for the same reason no express provision was necessary to cover the eventuality of the special mission's having to communicate with nationals of the sending State in the receiving State, if that was required for the performance of its task.

23. If for technical reasons it was found desirable to restrict in some way the freedom of communication of special missions dealing with frontier problems, that could be provided for within the framework of the agreement required under article 2.

24. The CHAIRMAN, speaking as Special Rapporteur, said that article 22 contained nothing on that subject. At the Conference which had drafted the Vienna Convention on Diplomatic Relations, it had been generally agreed that freedom of communication should apply "for all official purposes" only, to forestall abuse such as the carriage of narcotic drugs or the evasion of exchange control regulations. He did not think that special missions should enjoy greater liberties in their communications. A special mission should have freedom of communication for official purposes, and those purposes would be determined by the agreement defining the task of the special mission.

25. Mr. TSURUOKA said that he found it difficult to choose between giving the special mission almost complete freedom, and safeguarding the security and defence interests of the receiving State. No doubt, a fair balance should be struck between the two.

26. The Special Rapporteur's proposal, apart from one or two points of drafting, was sound. The last sentence of paragraph 1, for instance, provided a just and equitable solution to the problem of wireless transmitters. If special missions were given too much freedom, the receiving State might, during the negotiations preceding the sending of a special mission, announce that it would not recognize the mission as having the status of special mission as defined in the articles being drafted by the Commission, with the result that the mission would be denied the privileges attaching to that status. The Special Rapporteur had quite rightly mentioned the practice of the United Nations with regard to the

facilities granted to technical special missions of international organizations under the general Convention on Privileges and Immunities, and the Commission should base its draft on that practice.

27. As the majority of the Commission favoured almost complete freedom for special missions, some effort should be made to preserve the balance between the interests of the mission and those of the receiving State.

28. The CHAIRMAN, speaking as Special Rapporteur, pointed out that the last sentence of paragraph 1 was taken from the International Telecommunication Convention.

29. Mr. TSURUOKA said that he agreed with the Special Rapporteur on the subject of article 22, especially as article 40, paragraph 2, of the draft provided that nothing in the articles adopted by the Commission precluded States from concluding international agreements confirming, supplementing, extending or amplifying the provisions thereof. The Special Rapporteur's purpose was accordingly that the Commission should lay down minimum rules, leaving the States concerned free to grant broader facilities to special missions.

30. Mr. AGO said that the Special Rapporteur had tried admirably to make provision for all eventualities, even for freedom of communication between the different sections of the special mission. The first sentence of paragraph 1 fully covered that last point, for it contained the phrase "for all official purposes"; there was no need to add further unexpected detail. If the last sentence included the judicious amendment proposed by Mr. Verdross, article 22 would be perfect and could be referred to the Drafting Committee.

31. The CHAIRMAN, speaking as Special Rapporteur, said that the Vienna Conventions specified with whom diplomatic and consular missions could communicate freely. In the case of permanent diplomatic missions, the question of communication with different sections did not arise since they were not allowed to have any sections outside the place of their official seat without the consent of the receiving State.

32. Mr. CASTRÉN, reverting to the question of couriers *ad hoc* and messages in code or cipher, said that one reason for the difficulty was that there were so many different kinds of special missions and that it was impossible to treat them all alike. The Drafting Committee should give some thought to an intermediate solution, proceeding from the premise of a general right on the part of special missions to use couriers *ad hoc* and to send messages in code or cipher, but at the same time giving the receiving State the right to withdraw or to limit that right in special cases and for reasons of overriding importance.

33. Mr. TUNKIN said that, as far as freedom of communication by code or cipher was concerned, article 22 should follow closely the Vienna Conventions, and the provision concerning couriers should be modelled on the Vienna Convention on Diplomatic Relations.

34. While understanding the reason that had prompted Mr. Castren's suggestion for including a provision enabling the receiving State to restrict the privileges of

a special mission, he believed that such a provision would be dangerous. The definition, already approved by the Commission, of a special mission as one that represented the government of the sending State, was in itself an adequate limitation, and it would be only reasonable to regard it as being entitled, *mutatis mutandis*, to the same privileges as were accorded to permanent diplomatic missions. The possibility of unilateral limitations on the freedom of communication of a special mission by the receiving State would certainly be undesirable, as any such matter should be regulated by negotiation between the two States.

35. Mr. YASSEEN, reverting to paragraph 6, said that by their nature special missions had to be in contact with the permanent diplomatic mission. That necessity should be brought out somewhere in article 22, and he thought that the formula proposed by the Special Rapporteur, with certain drafting amendments, would suffice.

36. The CHAIRMAN, speaking as Special Rapporteur, said that he had not mentioned that special missions had to attach to the bag certain papers issued to the couriers by the diplomatic or consular missions and, in some cases, bearing the visa of the protocol department of the receiving State. It would be necessary to inquire whether and in what circumstances the special mission could have those papers issued to it; perhaps the Commission should leave the matter in suspense for the moment.

37. Speaking as CHAIRMAN, he noted that the members of the Commission seemed to be generally agreed that the special mission should be allowed as much freedom of communication as possible. In view of that general feeling, he suggested that the Commission should refer article 22 to the Drafting Committee, without mentioning the question of communication between special missions and the nationals of the sending State.

*It was so agreed.**

ARTICLE 23 (Exemption of the mission from taxation) [23]

Article 23

[23]

Exemption of the mission from taxation

1. The sending State, the special mission, the head and members of the special mission and the members of its staff shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the special mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the special mission.

3. The special mission may not, as a general rule, levy any fees, dues or charges in the territory of the receiving State, except as provided by special international agreement.

38. The CHAIRMAN, speaking as Special Rapporteur, said that paragraphs 1 and 2 of article 23 of his draft reproduced, with certain adjustments, the provisions of article 23 of the Vienna Convention on Diplomatic Relations.

39. Paragraph 3 was based on the language of, but stated in negative terms, the rule contained in article 28 of that Convention; as a general rule, in the absence of a special international agreement, special missions had no authority to levy fees, dues or charges in the territory of the receiving State.

40. Mr. ROSENNE said that paragraphs 1 and 2 were acceptable, but he suggested that paragraph 3 should be redrafted in the following terms so as to bring out its meaning more clearly and to link it more closely with articles 1 and 2:

"If for the performance of its task the special mission is entitled to levy fees and charges, such fees and charges shall be exempt from all dues and taxes."

41. The CHAIRMAN, speaking as Special Rapporteur, said that although it was clear, the formula suggested by Mr. Rosenne was incomplete, for it did not specify that the special mission required the receiving State's permission in order to levy charges. The matter was important from the standpoint of the sovereignty of the receiving State. If, in the agreement defining the special mission's task, there was no specific reference to the subject, would the mission be able to levy charges? The situation would, of course, be quite different if the two States had concluded an agreement on that point.

42. Mr. ROSENNE said that there was no real difference of opinion between himself and the Special Rapporteur. The task of a special mission was always determined by mutual consent between the receiving and the sending State. His suggestion had merely been prompted by a desire to improve the drafting.

43. Mr. PESSOU said that, if the article dealt principally with exemption from taxation, it would be better to place it near articles 27, 28 and 29.

44. Mr. TUNKIN pointed out that, under the terms of article 39 of the Vienna Convention on Consular Relations, a consular post could levy fees and charges without the specific consent of the receiving State, but of course the nature of those fees and charges was generally known; the same would not be true in the case of a special mission which, in the normal course of events, did not levy fees or charges. In his opinion, Mr. Rosenne's text went too far and might have the result that a special mission would levy fees from nationals of the sending State in the receiving State on the ground that they were indispensable for the performance of its task; that would be tantamount to levying taxes in foreign territory, in violation of the sovereign rights of the receiving State.

45. Mr. RUDA said that paragraphs 1 and 2 were acceptable, but he doubted whether paragraph 3 was required at all because, should it be necessary, exceptionally, for a special mission to levy fees, dues or charges, provision could be made for that case, under article 2, by agreement between the two States.

* For resumption of discussion, see 817th meeting, paras. 15 and 16.

46. Mr. PAL said that paragraph 3 was out of place unless it was intended to provide in it that if, by way of exception, a special mission, by agreement with the receiving State, levied fees, dues or charges, they would or would not be exempt from taxation by the receiving State.

47. The CHAIRMAN, speaking as Special Rapporteur, said that Mr. Pal's point related to a separate matter. Instead of deciding in advance that there would be exemption from taxation, it would be better to add: "In such cases, the question of exemption from taxation will be settled by the agreement".

48. Mr. TUNKIN said he agreed with Mr. Ruda that paragraph 3 should be dropped, for the reasons he had given.

49. The CHAIRMAN, speaking as Special Rapporteur, said he had come across many cases where difficulties and disputes had arisen over large sums of money collected as charges by special missions which had been sent to his country to settle questions relating to emigration, medical assistance, recruitment of labour and the like.

50. Mr. YASSEEN said that the principle that a special mission could not levy fees, dues or charges in the receiving State was a consequence of the general principle in international law that an agent of a State could not exercise executive power in the territory of another State. As paragraph 3 of article 23 would operate in very rare cases only, he was inclined to support Mr. Ruda's proposal for omitting it. Two States would, of course, be at liberty to agree, in case of need, that a special mission sent by one of them to the territory of the other could levy certain charges there; the question of the exemption from taxation of the sums thus levied would be settled in that agreement.

51. The CHAIRMAN, speaking as Special Rapporteur, said he agreed that the principle stated in paragraph 3 should be transferred to the commentary. The important point was that that principle should be mentioned, lest an analogy be drawn in that respect between special missions and consular missions as regards consular fees.

52. Mr. ROSENNE said he agreed with Mr. Pal. He was not sure whether paragraph 3 should be dropped and its content consigned to the commentary, or not. The matter could be left to the Drafting Committee.

53. Mr. YASSEEN said it would be useful to mention the principle in the commentary, though there could be no analogy in the matter of taxation.

54. The CHAIRMAN suggested that the Commission should refer article 23 to the Drafting Committee with instructions to take into account the comments made in the discussion and in particular the two proposals relating to paragraph 3, the one that the paragraph be amended along the lines indicated by Mr. Rosenne and Mr. Pal, and the other that it be deleted and its substance transferred to the commentary.

*It was so agreed.*⁴

ARTICLE 24 (Inviolability of the property of the special mission) [19, para 3]

Article 24

[19, para 3]

Inviolability of the property of the special mission

All property used in the operation of the special mission, for such time as the special mission is using it, and all means of transport used by the special mission, shall be immune from attachment, confiscation, expropriation, requisition, execution and inspection by the organs of the receiving State. This provision shall likewise apply to property belonging to the head and members of the special mission and to property belonging to the members of its staff.

55. The CHAIRMAN, speaking as Special Rapporteur, said that article 24 did not follow the provisions of article 22, paragraph 3, of the Vienna Convention on Diplomatic Relations or article 31, paragraph 4, of the Vienna Convention on Consular Relations, because so far as the property necessary for the performance of their task was concerned, special missions were in an entirely different position from that of permanent diplomatic or consular missions. Permanent missions used property which was itemized in the inventory of a fixed post—embassy, legation or consulate—whereas in practice special missions used property which belonged to other owners so that they were always liable to be deprived of its use. A case had occurred, for example, where the hotel in which a special mission was accommodated had been attached by a creditor. Consequently, it was not sufficient to copy the provisions of the Vienna Conventions; he was not sure, however, that the solution he had adopted was the best.

56. Mr. ELIAS said that, during the discussion of article 19, he had suggested that the contents of article 24 should be transferred to article 19;⁵ he wished to repeat that suggestion. The presentation which he thus suggested would be similar to that of article 31 of the Vienna Convention on Consular Relations, paragraph 4 of which dealt with the question of the inviolability of property. It was appropriate that the provision on that subject should form part of the article concerning the inviolability of the premises.

57. As far as the language of the provision was concerned, he saw no reason for adopting the broader approach suggested by the Special Rapporteur, whose draft spoke of immunity "from attachment, confiscation, expropriation, requisition, execution and inspection". It should be sufficient to provide for immunity from requisition, as in the Vienna Convention on Consular Relations. Special missions should not enjoy any greater protection in that respect than did consulates.

58. Mr. CASTRÉN said that on the whole he could accept article 24, by which the Special Rapporteur had sought to ensure greater protection for special missions than was afforded by the corresponding provisions of the two Vienna Conventions.

59. He suggested that the passage, "for such time as the special mission is using it" should be deleted, since it might be interpreted in such a way as to hinder the proper functioning of the mission.

⁴ For resumption of discussion, see 817th meeting, paras. 17-32.

⁵ See 804th meeting, para. 86.

60. He added that it might perhaps be desirable, as Mr. Elias had suggested, to transfer the substance of the article to the end of article 19.

61. Mr. VERDROSS said he supported Mr. Castrén's suggestion that the passage "for such time as the special mission is using it" should be deleted, for it added nothing useful to the preceding phrase: "All property used in the operation of the special mission".

62. The Special Rapporteur had been right to make a distinction between property used in the operation of the special mission and property belonging to the head and members of the mission.

63. Mr. TUNKIN said that the provisions of article 24 should follow as closely as possible the wording of the corresponding provision of the Vienna Convention on Diplomatic Relations.

64. He had his doubts regarding the second sentence of the article, for which no precedent was to be found in the corresponding articles of the two Vienna Conventions; its inclusion could give rise to difficulties of interpretation.

65. The suggestion that the contents of article 24 should be incorporated in article 19 should be referred to the Drafting Committee.

66. The CHAIRMAN, speaking as Special Rapporteur, said that article 27, paragraph 2, of his draft laid down a rule regarding immunity from the receiving State's civil and administrative jurisdiction that was much narrower than that embodied in the Vienna Conventions; he had taken the view that the head and members of the special mission should enjoy such immunity only in respect of acts performed in the exercise of their functions in the special mission. For that reason, he had thought it advisable to add to article 24 a provision concerning the property belonging to those persons. If the Commission decided to amend article 27, it would of course have to revise that provision of article 24.

67. Unlike Mr. Tunkin, he thought it would be wrong to extend to the head and members of special missions the complete immunity from civil and administrative jurisdiction which was granted to diplomatic agents.

68. Replying to Mr. Castrén, he said that the passage "for such time as the special mission is using it" was intended to mark the temporary character of the protection granted, but the idea was probably contained in the words "used in the operation of the special mission".

69. If the substance of the article was transferred to article 19, the title of article 19 would have to be amended by adding the words "and property" after the word "premises". The Drafting Committee would be able to deal with that point.

70. What mattered was that the "property used in the operation of the special mission" should be protected; from the point of view of the special mission, such property was the equivalent of the "furnishings and property" of the consular post, referred to in article 31 of the Vienna Convention on Consular Relations.

71. Mr. REUTER said that, as he understood it, the Special Rapporteur's intention in article 24 was to

provide certain safeguards in the case of property owned by persons unconnected with the special mission. If that was the intention, then he interpreted the expression "be immune" as meaning that the property should enjoy, not complete immunity, but a stay of execution of any measures taken against it. For example, if expropriation proceedings were instituted, they would follow their normal course, but the physical execution of any measure which would deprive the mission of property necessary to the exercise of its functions would be suspended. If his interpretation was correct, the Drafting Committee should try to find a more precise and narrower formulation.

72. The CHAIRMAN, speaking as Special Rapporteur, said he agreed with Mr. Reuter's interpretation, but pointed out that the property used by the mission might also belong to the sending State.

73. Mr. ELIAS said that all members appeared to approve the principle embodied in article 24, and the article could accordingly be referred to the Drafting Committee.

74. Mr. TSURUOKA said he was sure the Commission was agreed on the essential point, that the special mission must not be prevented from performing its functions by judicial or administrative measures taken in the receiving State.

75. The CHAIRMAN suggested that article 24, with the comments of members, should be referred to the Drafting Committee.

It was so agreed.⁶

ARTICLE 25 (Personal inviolability [24])

Article 25

[24]

Personal inviolability

The head and members of the special mission and the members of its staff shall enjoy personal inviolability. They shall not be liable to arrest or detention in any form. The receiving State shall treat them with respect and shall take appropriate steps to prevent any attack on their person, freedom or dignity.

76. The CHAIRMAN, speaking as Special Rapporteur, said that article 25 of his draft reproduced in slightly different form article 29 of the Vienna Convention on Diplomatic Relations. So far as the substance was concerned, he did not suppose that anyone would deny that the principle of the personal inviolability of members of special missions should be laid down.

77. Mr. TUNKIN asked whether article 25 was intended to accord inviolability to a greater number of persons than the corresponding provisions of the Vienna Convention.

78. The CHAIRMAN, speaking as Special Rapporteur, said that he had considered it essential to extend to all

⁶ For resumption of discussion, see 817th meeting, paras. 33-58.

members of the staff of special missions the personal inviolability which, under article 29 of the Vienna Convention on Diplomatic Relations, was accorded only to diplomatic agents.

79. Similarly, in article 27 of his draft, he proposed that immunity from criminal jurisdiction should be granted to all members of the staff of the special mission for special missions included technical experts who were indispensable; the position of a special mission was quite different from that of a permanent mission.

80. Mr. CASTRÉN asked whether the expression "the members of its staff" also covered service staff. If so, the article went much further than the Vienna Convention on Diplomatic Relations, article 37, paragraph 3 of which granted only a limited degree of immunity to service staff.

81. The CHAIRMAN, speaking as Special Rapporteur, said that when the Commission had been preparing the draft convention on diplomatic relations, he had argued that full immunity should be granted to all members of the staff of diplomatic missions; that had also been the Commission's view. But the Vienna Conference had decided to grant immunity to service staff only in respect of acts performed in the course of their duties.

82. Mr. ROSENNE said that after listening to the Special Rapporteur's explanations, he inclined to the view that it would be better to embody in the draft articles provisions similar to those of articles 29 and 37 of the Vienna Convention on Diplomatic Relations. The question was one of principle and related to the categorization of staff, as approved by the Vienna Conference of 1961.

83. Mr. AMADO said that the Commission was preparing a draft for States; at both the Vienna Conferences, States had made it clear that they were not prepared to go as far as the Commission had proposed. Admittedly, special missions, which were becoming increasingly numerous and varied, carried out very complex tasks, and special functions called for special safeguards. Nevertheless, he felt impelled to advise the Commission to follow the Vienna Conventions as closely as possible and to propose only rules that would be acceptable to States.

84. The CHAIRMAN, speaking as Special Rapporteur, said that he had thought it advisable to broaden the rule laid down in the Vienna Conventions because, in his view, it was the Commission's duty to indicate the path which States should follow. It was for the Commission to decide whether to keep to the line which it had followed in preparing those Conventions or whether to be guided by what had occurred at the Vienna Conferences.

The meeting rose at 1.5 p.m.

807th MEETING

Monday, 21 June 1965, at 3 p.m.

Chairman : Mr. Milan BARTOŠ

Present : Mr. Ago, Mr. Amado, Mr. Briggs, Mr. Casttrén, Mr. Elias, Mr. Jiménez de Aréchaga, Mr. Pal, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tunkin, Mr. Verdross, Sir Humphrey Waldock, Mr. Yasseen.

Special Missions

(A/CN.4/179)

(continued)

[Item 3 of the agenda]

ARTICLE 25 (Personal inviolability) [24] (continued)¹

1. The CHAIRMAN invited the Commission to continue its consideration of article 25.

2. Mr. PAL said that he wished to raise a general drafting point. It should be unnecessary to repeat throughout the articles the phrase "the head and members of the special mission and the members of its staff"; the possible composition of the special mission was given in article 6 with a note that definitions would be given later, presumably on the lines indicated in article 1 of the Vienna Convention on Diplomatic Relations. In most cases, the phrase "members of the special mission", which was likely to be comprehensive enough, should suffice.

3. As far as article 25 itself was concerned, he said that if the Commission considered that the rule concerning personal inviolability should be restricted to only certain members of the mission, the provision should say so expressly.

4. The CHAIRMAN, speaking as Special Rapporteur, said that in article 6 as adopted at the previous session the Commission had meant to distinguish the head and members of the special mission from the diplomatic staff, administrative and technical staff and service staff of the mission. The expression "members of the mission" did not cover the mission's staff. The members of the mission were negotiators, plenipotentiary representatives of States, whereas the staff of the mission consisted of assistants.

5. No member of the Commission seemed to dispute the idea that the members and the diplomatic staff of the special mission should enjoy personal inviolability, but very few were prepared to go further than that.

6. Mr. CASTRÉN said he thought that most members had accepted the principle of personal inviolability for technical and administrative staff as well, though not for the service staff, to whom the Vienna Convention on Diplomatic Relations granted only lesser privileges.

¹ See 806th meeting, following para. 75.