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Summary record of the 1864th meeting

Topic:
**Status of the diplomatic courier and the diplomatic bag not accompanied by the
diplomatic courier**

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diplomatic courier did not have the status of a diplomat, he was treated as equivalent. From that standpoint, paragraph 1 of article 23 was obviously logical. But there was another logic, deriving from the existence of four conventions on diplomatic law, two of which had come into force. Some speakers had even said that it was because abuses could not be prevented that the privileges and immunities should be extended, an argument which he could not accept. He could agree to a compromise, but hoped the day would never come when it would be proposed to extend immunity from criminal jurisdiction to the diplomatic courier's family, on the grounds that they might be subjected to pressure.

41. From the outset, he had argued in favour of texts which took into account the difference, first, between the receiving State and the transit State and, secondly, between the diplomatic bag, regarded as the essential element, and the diplomatic courier, regarded as subsidiary. The Commission had preferred another logic, to which he would bow, but which now prevented him from agreeing to paragraph 1 of article 23.

42. Mr. MALEK said that he had been wrong on an earlier occasion to support the idea of a vote. He now realized that it would be very difficult for him to take a position on the present issue. He therefore supported Mr. Francis's proposal.

43. Chief AKINJIDE opposed the idea of passing on the problem to the Sixth Committee of the General Assembly, without any conclusion having been reached by the Commission. The outcome could well be to destroy all the valuable work done by the Special Rapporteur on the present topic, simply because of the controversy over paragraph 1 of article 23. For his part, he was convinced that, if paragraph 1 of article 23 were included in the draft, the effect would be to deter a great many States from ratifying the final instrument. For that reason, he favoured the views expressed by Mr. Reuter and Mr. Quentin-Baxter, which would have the effect of setting the matter aside for the time being, thereby providing an opportunity to arrive at a compromise.

44. Mr. RIPHAGEN said that, if a vote was taken on paragraph 1 of article 23, he would have to vote against it. He believed, however, that there was still room for compromise. The best course would therefore be to refer article 23 back to the Drafting Committee, in the hope that it might come up with a solution by the next session.

45. Sir Ian SINCLAIR said that paragraph 1 was not the only controversial element in article 23. Paragraph 4 had also had to be placed between square brackets, and several members had expressed reservations on parts of paragraphs 2, 3 and 5 as well. Some members had even suggested the deletion of article 23 altogether. In the circumstances, he suggested that the Commission should not at the present stage adopt any part of article 23, but should set aside the whole of the article. The text would be reproduced in the Commission's report with the statement that it would examine it again in 1985 in the light of the discussion in the Sixth Committee. If that course of action were adopted, the article would not necessarily go back to the Drafting Committee.

46. Mr. McCAFFREY joined those speakers who had supported the idea of exercising some restraint with regard to paragraph 1, or indeed the whole of article 23, so as to avoid a vote if possible. Action on the article should be postponed because it was not ripe even for provisional adoption. In the mean time, the Special Rapporteur might well put forward a compromise which would result in a generally acceptable text. In conclusion, he supported the suggestion to delay a decision on the whole of article 23, on the understanding that the debate would be fully recorded in the Commission's report to the General Assembly.

47. Mr. STAVROPOULOS said it would not serve any useful purpose to refer article 23 to the Sixth Committee. The result would only be a report to the effect that a number of delegations had supported paragraph 1 and that a number of other delegations had opposed it; that customary formula would not give the Commission much guidance. He favoured setting aside article 23 until the next session.

48. The CHAIRMAN, speaking as a member of the Commission, said that the Commission should perhaps examine whether there was any likelihood of the diplomatic courier being defined as a diplomatic agent. It was worth noting that, in a matter of civil and administrative jurisdiction, paragraph 2 of article 23 gave only functional immunity to the diplomatic courier. No immunity *ratione personae* existed in those matters. With regard to criminal jurisdiction, however, paragraph 1 of the article purported to give the courier an immunity *ratione personae*. Lastly, there was an important difference between a diplomatic courier and a member of a diplomatic mission. The courier was not appointed for a fixed period of time, like a member of a mission. He was constantly entering a particular country and leaving it, completing one mission at a time.

The meeting rose at 1.05 p.m.

1864th MEETING

Wednesday, 18 July 1984, at 10 a.m.

Chairman: Mr. Sompong SUCHARITKUL

Present: Chief Akinjide, Mr. Balanda, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Francis, Mr. Jacovides, Mr. Koroma, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Ogiso, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (concluded)
(A/CN.4/L.378, ILC (XXXVI)/Conf. Room Doc.3)

[Agenda item 4]

DRAFT ARTICLES PROPOSED BY THE
DRAFTING COMMITTEE (*concluded*)

ARTICLES 23 (*concluded*) to 27

ARTICLE 23 [18] (Immunity from jurisdiction) (*concluded*)

1. The CHAIRMAN invited the Commission to continue its discussion of article 23 [18]¹ proposed by the Drafting Committee.

2. Mr. YANKOV (Special Rapporteur) said that the questions raised in regard to article 23, paragraph 1, belonged in three main areas. The first was that of the nature and significance of the functions of the diplomatic courier, and his legal status. Some members had suggested that the draft articles tended to confer on the diplomatic courier a status comparable with, or even higher than, that of a diplomatic agent. For his part, he had always been careful not to draw any analogy between the status of the courier and that of any established category of diplomatic staff. He had merely drawn attention in his reports to certain similarities of functions. The main consideration was that the diplomatic courier was an official of the sending State, entrusted with its official communications. Of course, the diplomatic courier had no representative functions such as those exercised by a diplomatic agent; but he was entrusted with a confidential mission on behalf of the sending State, and he performed a task which was absolutely indispensable for the normal operation of diplomatic communications.

3. In past centuries, the professional courier had been known as the messenger of his sovereign. His tasks had included the transmission of oral messages, but in view of the technical development of communications, it had not been found necessary to refer to oral messages in the draft articles.

4. The regulations enacted by the Swiss Federal Government before 1961 listed four categories of diplomatic staff. The fourth category, mentioned by the Special Rapporteur in his fourth report (A/CN.4/374 and Add.1-4, para. 61), comprised persons who did not have diplomatic rank, but nevertheless enjoyed diplomatic privileges and immunities, and the diplomatic courier had been placed in that category. It should be noted that that decision could not have been affected by the entry into force of the 1961 Vienna Convention on Diplomatic Relations.

5. One of the characteristic features of the diplomatic courier's functions was that he stayed only a short time in the receiving or transit State; his activity there was comparatively limited, and so were his legal relations, but that did not necessarily mean that he should have less legal protection than a member of a mission or delegation. The duration of his stay did not affect either the nature of the courier's mission or the need for proper legal protection and adequate facilities for safe and speedy delivery of the diplomatic bag. Hence the need to grant him inviolability and jurisdictional immunities. The courier

needed that protection even more than a member of a diplomatic mission, who was backed by all the resources of the mission, which had the visible protection of the flag above it.

6. The diplomatic courier was often faced with unexpected problems which he had to solve by himself, without any assistance from the sending State or its missions abroad. In his fourth report, he had recalled the discussions at the 1963 United Nations Conference on Consular Relations regarding the scope of facilities, exemptions and immunities to be accorded to the consular courier (*ibid.*, para. 53). There had been a Japanese proposal that the consular courier should be treated on a par with consular officers, with all the limitations of their status. That proposal had not been accepted by the Conference, which had adopted instead a United Kingdom proposal to treat the consular courier in the same way as a diplomatic courier, giving him complete inviolability, not the limited measure of inviolability granted to consular officers. Since 1963, an impressive number of bilateral consular conventions had included clauses conferring on the consular courier the same status as a diplomatic courier.

7. The immunity from arrest or detention provided for in article 20 was, of course, separate from the immunity from criminal jurisdiction provided for in article 23, paragraph 1. There was, however, a connection between the two provisions, in that the violation of any of those immunities would have the effect of impeding the freedom of communication of the sending State. In fact, a violation of the immunity from criminal jurisdiction could constitute an even greater impediment than arrest or detention. A diplomatic courier was often entrusted with the delivery of bags at two or three capitals in succession; if, at the first stop, he was delayed by having to appear in court, he would be unable to deliver the remaining diplomatic bags on time.

8. The nature and scope of the immunities of the diplomatic courier, including immunity from criminal jurisdiction, had to be considered in the light of the sending State's sovereign right to official communication. They had also to be viewed as legal protection of that function of the State which was exercised through the diplomatic bag entrusted to the courier.

9. The second area touched on by the questions raised during the discussion was that of the existing law on the subject. It was, of course, the task of the Commission to fill any gaps in the existing law and to promote its progressive development. An examination of general State practice before 1961, and the studies he had carried out with the aid of the Secretariat, had shown that the rule of inviolability, with all its consequences—including immunity from criminal jurisdiction—formed part of traditional international law. In 1893, a French diplomatic courier had been arrested for 24 hours in Spain; following a protest by France, Spain had apologized and the officer responsible for the arrest had been dismissed (*ibid.*, para. 64). The literature on the subject provided many other examples of that kind. Since 1961, the Vienna Convention on Diplomatic Relations had provided, in article 27, paragraph 5, for the

¹ For the text, see 1862nd meeting, para. 93.

complete personal inviolability of the diplomatic courier.

10. There were very few relevant judicial decisions. Indeed, everything showed that diplomatic couriers were particularly careful to avoid anything which might lead to their being delayed in the performance of their duties. Reference had been made during the discussion to reports in the British press of the numerous cases in recent years of alleged offences by persons enjoying diplomatic immunity; it was very significant that not a single one of those cases had concerned a diplomatic courier. The information received from Governments (A/CN.4/379 and Add.1) had also shown that there were no reported cases of any diplomatic courier being involved in criminal proceedings. In any case, it was the Commission's duty to examine the problem dispassionately, without being unduly impressed by transient events that were being over-dramatized by public opinion. To sum up the position, it could be said that practice so far might be interpreted as providing legal protection to the diplomatic courier, including inviolability and the immunities necessary for the performance of his functions.

11. The third group of questions raised during the discussion concerned the issue whether legal protection was given to the bag or to the courier. Some members had even suggested that only the bag was protected. As he saw it, however, it was not possible to dissociate the diplomatic bag from the courier who carried it.

12. It had been asserted that once the diplomatic courier had delivered the bag, his task was completed and he required no further protection. Yet in practice, the diplomatic courier, after delivering one bag, usually picked up another for delivery on his onward journey in another capital, or on his return journey in the sending State. Other situations could also arise. A diplomatic courier who had delivered a bag in Bern might have to travel to Geneva to pick up a bag there. It would be unacceptable to suggest that he should be deprived of legal protection on his journey from Bern to Geneva because he was not carrying a bag between those two cities. The only reasonable system was to give the diplomatic courier the same protection until he returned to the sending State. Those remarks applied, of course, to the ordinary courier, not to the courier *ad hoc*. In that connection, it was worth recalling the provisions of article 5, provisionally adopted by the Commission, on the duty of a diplomatic courier to respect the laws and regulations of the receiving State and the transit State. That article was particularly important for the prevention of abuses, and in an international community which respected the rule of law it was not a mere declaration of good intentions.

13. In an attempt to arrive at a compromise formula, it had been suggested that the diplomatic courier's immunity from criminal jurisdiction should be limited to the scope of his official functions. Another suggestion had been that grave crimes should be excluded from the operation of the immunity. But neither of those suggestions was practicable. The application of such limitations would require judicial investigation of the nature of the act of which the courier was accused. Limitations of that kind had been considered in other contexts and had al-

ways had to be discarded: immunity from criminal jurisdiction had accordingly always been specified in unrestricted terms.

14. Speaking as a number of the Commission, he expressed the hope that an article along the lines of article 23 could be referred to the General Assembly for consideration. It would be most unfortunate if no provision on immunity from jurisdiction was put before the Assembly: the Commission would be leaving a serious gap in the draft articles. The fact that the Commission was divided on the subject of the content of article 23 made it all the more necessary for the matter to be considered by the Sixth Committee of the General Assembly. The Commission's report should, of course, contain a full account of the discussion.

15. Mr. STAVROPOULOS said that he was not satisfied with the suggestion that a diplomatic courier should enjoy immunity from criminal jurisdiction when he had completed his task and was no longer carrying a diplomatic bag. If that proposition were accepted, it could mean granting immunity from jurisdiction to a diplomatic courier who, after delivering a diplomatic bag, took a consignment of prohibited drugs to another city where he was due to collect another bag.

16. The CHAIRMAN noted that those members who had asked for a vote on paragraph 1 of article 23 were no longer pressing for a vote. It had been generally agreed that the Commission and the Sixth Committee of the General Assembly should be allowed more time to consider the important provisions in paragraph 1. The Commission's report should indicate that it had not been possible to adopt the paragraph, and should also contain a very detailed account of the discussion.

17. Mr. DÍAZ GONZÁLEZ said he was willing to accept the Special Rapporteur's recommendation, but would like to know exactly what was to be referred to the General Assembly. Normally, the Commission referred to the Assembly the draft articles it had adopted provisionally. In the present case, it should not refer draft article 23 to the Assembly, but inform it that the article had been the subject of a substantive discussion in the Commission, which had been unable to agree on how to state the principle of immunity from criminal jurisdiction. It should be noted, however, that in doing so the Commission would be admitting that, on a specific point, it had been unable to perform the task which the General Assembly had entrusted to it.

18. Sir Ian SINCLAIR said that the Commission should try to reach a practical solution which would accommodate all the divided views. He suggested that the Commission's report to the General Assembly should indicate that, after consideration of article 23, a text had been proposed by the Drafting Committee; that text would be given in a footnote. The Commission's report would indicate that there had been a lengthy debate on paragraph 1 of article 23, in the course of which reference had been made to other paragraphs of that article. Lastly, it would state that the Commission had been unable to reach a final conclusion with regard to the acceptance of any part of article 23 and

that it would consider the article further at its next session.

19. Mr. FRANCIS said that he would have no objection to including article 23 in a footnote. It was important, however, to refer a complete text of the article to the General Assembly, together with a full account of the Commission's debate thereon.

20. Mr. REUTER said he seemed to remember that, when the Commission had transmitted to the General Assembly, after consideration on first reading, the draft articles on treaties concluded between States and international organizations or between international organizations, it had not confined itself to inserting a footnote containing the text of article 36 *bis*, which had been strongly criticized in the Commission.² If that was so, he proposed that the Commission should treat the draft article under consideration in the same way. Before taking a final decision on article 23, the Commission should perhaps quickly consider paragraphs 2 to 5.

21. Mr. USHAKOV said that, when the Commission had been in a similar situation before, its practice had been to place the contested provisions in square brackets and to indicate in a footnote that a decision would be taken on them later.

22. The CHAIRMAN suggested that draft article 23 should be referred to the General Assembly in the form in which it had been adopted by the Drafting Committee, together with a detailed account of the Commission's discussion.

It was so agreed.

ARTICLE 24 [19] (Exemption from personal examination, customs duties and inspection)

23. Mr. MAHIU (Chairman of the Drafting Committee) presented the text of article 24 [19] as proposed by the Drafting Committee, which read as follows:

Article 24 [19]. Exemption from personal examination, customs duties and inspection

1. The diplomatic courier shall be exempt from personal examination.

2. The receiving State or, as the case may be, the transit State shall, in accordance with such laws and regulations as it may adopt, permit entry of articles for the personal use of the diplomatic courier imported in his personal baggage and shall grant exemption from all customs duties, taxes and related charges on such articles other than charges levied for specific services rendered.

3. The personal baggage of the diplomatic courier shall be exempt from inspection, unless there are serious grounds for believing that it contains articles not for the personal use of the diplomatic courier or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State or, as the case may be, of the transit State. Such inspection shall be conducted only in the presence of the diplomatic courier.

24. He said that the Committee had tried to propose a text which took account of the various objections and suggestions made during the consideration in plenary of

the text submitted by the Special Rapporteur.³ The title of the article remained unchanged.

25. In paragraph 1, the phrase "including examination carried out at a distance by means of electronic or other mechanical devices" had been deleted, as the Special Rapporteur had suggested (1829th meeting) after the discussion in plenary. Thus paragraph 1 provided only that the diplomatic courier would be exempt from personal examination.

26. In paragraph 2, a few minor drafting changes had been made to bring the text into line with that of the corresponding provisions of the relevant conventions on diplomatic law. Two other changes required special mention. First, the Committee had considered it desirable to limit the exemption provided for in paragraph 2 to articles for the personal use of the diplomatic courier imported in his personal baggage. That formula was used in article 65 of the 1975 Vienna Convention on the Representation of States and had been considered appropriate for the diplomatic courier, who did not usually need exemption from customs duties, taxes and related charges on articles other than those carried in his personal baggage. Secondly, the Committee had thought it unnecessary to follow the text of the relevant conventions in regard to "charges for storage, cartage and similar services". Such charges would have to be taken into consideration in the case of a long stay in the receiving State or the transit State, but they hardly concerned the diplomatic courier, who did not normally have to pay them during his brief stay in the State concerned. It had been considered preferable to use the simple formula "charges levied for specific services rendered", which covered the incidental expenses the courier might have to meet.

27. Paragraph 3 had been modelled on article 36 of the 1961 Vienna Convention on Diplomatic Relations. Another change that should be mentioned was the introduction of the phrase "articles not for the personal use of the diplomatic courier", which had been preferred to the wording originally proposed, "articles not covered by the exemptions referred to in paragraph 2 of this article".

28. Mr. DÍAZ GONZÁLEZ, referring to paragraph 2 of article 24, said that in Spanish the expression *que promulguen* ("may adopt") gave the impression that, in each case, the receiving State or the transit State was required to enact laws or regulations. Yet that should not be the object of the provision; it should be made clear that the reference was to laws and regulations that were *vigentes* ("in force"). He appreciated that the expression *que promulguen* had been used in other codification conventions on diplomatic and consular law, but nevertheless believed that if a mistake had been made it should not be repeated.

29. Mr. YANKOV (Special Rapporteur) said that the language of draft article 24 had been aligned with that of article 36 of the Vienna Convention on Diplomatic Relations, article 50 of the Vienna Convention on Consular

² See *Yearbook ... 1979*, vol. II (Part Two), p. 144.

³ See 1826th meeting, para. 1. See also 1862nd meeting, footnote 1 (d).

Relations, article 35 of the Convention on Special Missions and article 35 of the Vienna Convention on the Representation of States. He would therefore suggest that the phrase “such laws and regulations as it may adopt” should be retained, though it could perhaps be explained in the commentary that it referred to laws and regulations in force at the time.

30. Mr. MAHIU (Chairman of the Drafting Committee) said that Mr. Díaz González had put his finger on a problem which had caused the Drafting Committee constant concern. It had indeed wondered what to do when faced with a provision which appeared in a codification convention, and must therefore act as a guide for the Committee, but which was not drafted satisfactorily. The Committee had taken the view that it was better to leave the wording of the earlier provision unchanged; otherwise the new wording might give rise to discussions about its interpretation.

31. Chief AKINJIDE said that, in his view, “such laws and regulations as it may adopt” and “such laws and regulations as may be in force” meant much the same thing. Since all the codification conventions used the former phrase, he would suggest that it be retained.

32. Mr. DÍAZ GONZÁLEZ urged the necessity of amending the Spanish text of paragraph 2 in order not to refer to the future, but to the past. The words to which he had objected could be replaced by *promulgados*. It would be remembered that in the past the Drafting Committee had not adopted the wording of a provision which offered a precedent when the wording itself was unsatisfactory.

33. Mr. McCAFFREY said that, so far as the English text was concerned, the phrase in question could be interpreted to refer to laws and regulations that were either currently in force or might enter into force in the future. However, the point raised by Mr. Díaz González concerned a number of different articles which had already been adopted. He therefore suggested that at the present stage the Commission should take note of the point and decide to consider on second reading whether the policy of adhering as closely as possible to the codification conventions should be changed.

It was so agreed.

34. Mr. RIPHAGEN asked whether, under the terms of paragraph 1 of draft article 24, the diplomatic courier would be subjected to personal examination if an electronic device through which he had to pass prior to boarding an aircraft was triggered. It was unlikely that the courier would be allowed to board the aircraft if, in that case, he did not undergo such an examination. He would also like to know what was covered by the term “personal baggage” in paragraph 3.

35. Mr. YANKOV (Special Rapporteur) said his original proposal had been that the diplomatic courier and the bag should be exempt from any examination of that kind, and in practice the diplomatic bag had not usually been subject to such scrutiny. However, it seemed that the practical solution would be to settle the matter on the spot; if a diplomatic courier had serious reason to believe

that an examination of that type would affect the content of the diplomatic bag or his personal inviolability, he could always decide not to board the aircraft. He did not think, however, that it was possible to elaborate any further on the provision in question.

36. So far as personal baggage was concerned, the diplomatic courier was required to comply with the local laws and regulations in force. However, under draft article 20, the diplomatic courier enjoyed personal inviolability and was entitled to the protection of the receiving and transit States in the performance of his functions, and that had been interpreted to mean that those States should take appropriate measures to prevent any infringement of the courier’s freedom or dignity.

37. The CHAIRMAN said that, if there were no further comments, he would take it that article 24 [19] was provisionally adopted.

Article 24 [19] was adopted.

ARTICLE 25 [20] (Exemption from dues and taxes)

38. Mr. MAHIU (Chairman of the Drafting Committee) presented the text of article 25 [20] as proposed by the Drafting Committee, which read as follows:

Article 25 [20]. Exemption from dues and taxes

The diplomatic courier shall, in the performance of his functions, be exempt in the receiving State or, as the case may be, in the transit State from all those dues and taxes, national, regional or municipal, for which he might otherwise be liable, except for indirect taxes of a kind which are normally incorporated in the price of goods or services and charges levied for specific services rendered.

39. He said that, in the form in which it was being submitted to the Commission and in keeping with the new proposal made by the Special Rapporteur in the Committee, article 25 [20] differed from the original text⁴ and somewhat modified its scope, although the title remained unchanged. In order to make it clear that exemption from dues and taxes must relate to the functions of the courier, the Committee had added the words “in the performance of his functions”, thus making it even more unlikely that the courier would ever need to be exempt from “personal or real” taxes, to which a person was usually liable only after a stay of some time that was normally longer than the courier’s. For that reason, the words “personal or real” had been deleted.

40. Similarly, the Committee had taken the view that, so far as exemption from dues and taxes was concerned, the case of the courier was quite different from that of diplomatic agents, consular officials and members of permanent missions, who would be liable to certain dues and taxes in view of the length of their stay. Normally, however, the courier would not be liable to them because he spent little time in the territory of the receiving or transit State. It had therefore been deemed advisable to specify that the exemption from dues and taxes applied only to those to which he might otherwise be liable. The

⁴ *Idem.*

dues and taxes in question would be mentioned in greater detail in the commentary and would include, in particular, hotel and airport taxes. Some members of the Drafting Committee had questioned the need to include an article on the matters covered by article 25 and had expressed reservations regarding the text adopted by the Committee.

41. In addition, the Committee had retained the exceptions to exemption from dues and taxes proposed by the Special Rapporteur in the original text. Lastly, the Committee had taken note of the Special Rapporteur's intention to draft at a later stage a supplementary article concerning the situation of a courier of the nationality of the receiving State or the transit State or a courier who was permanently resident therein and, in particular, was not exempt from the dues and taxes mentioned in article 25.

42. Sir Ian SINCLAIR said that if article 25 were interpreted as being confined to exemption from hotel or airport taxes it would be acceptable; if it went beyond that, problems could arise. He asked for his reservation to be reflected in the report of the Commission.

43. Mr. McCaffrey associated himself with Sir Ian Sinclair's remarks and also asked for his reservation to be reflected in the Commission's report.

44. Mr. DÍAZ GONZÁLEZ pointed out that the word "all" before the words "those dues and taxes" was redundant in view of the phrase "for which he might otherwise be liable", which could well be deleted. However, he would not press that point.

45. Mr. KOROMA said that a little more thought should be given to how the provision would operate in practice. In his experience, a diplomatic passport or identification card was not always sufficient to gain exemption from such dues and taxes and, in many cases, an additional tax exemption card was required.

46. Mr. YANKOV (Special Rapporteur) said that the requirements obviously varied from country to country and article 25 should therefore be understood to apply subject to local legislation. The practical aspects of the matter could, however, perhaps be considered when the Commission came to its second reading of the draft.

47. The CHAIRMAN said that, if there were no further comments, he would take it that article 25 [20] was provisionally adopted, subject to the reservations expressed.

It was so agreed.

Article 25 [20] was adopted.

ARTICLE 26

48. Mr. MAHIU (Chairman of the Drafting Committee) said that the Drafting Committee had not recommended any text for article 26 (Exemption from personal and public services) submitted originally by the Special Rapporteur.⁵ In the Committee, the Special Rapporteur

had proposed that article 26 should be deleted since, as many members of the Commission had pointed out in plenary, it related to an unlikely eventuality and was covered by other articles in the draft. A suitable note in the commentary should suffice.

49. The CHAIRMAN said that, if there were no comments, he would take it that article 26 was deleted.

Article 26 was deleted.

ARTICLE 27

50. Mr. MAHIU (Chairman of the Drafting Committee) recalled that, at the 1829th meeting, the Special Rapporteur had said he was prepared to delete article 27 (Exemption from social security provisions), for the same reasons as applied in the case of article 26. The Drafting Committee had accepted that proposal and had therefore refrained from submitting a text for article 27 submitted originally by the Special Rapporteur,⁶ taking the view that a note could be inserted at a suitable place in the commentary.

51. The CHAIRMAN said that, if there were no comments, he would take it that article 27 was deleted.

Article 27 was deleted.

52. Mr. MAHIU (Chairman of the Drafting Committee), concluding his report on the work of the Drafting Committee, said it should be noted, with reference to Mr. McCaffrey's remarks (1862nd meeting) regarding article 21, that the article had been discussed at length, although less than article 23, and that, out of a total of 10 members in the Drafting Committee, three had expressed reservations regarding paragraph 1 and one regarding paragraph 3. Consequently, like the other articles, article 21 had been adopted by the Drafting Committee in the light of the reservations expressed by the members concerned. He hoped that those clarifications would dispel any misunderstanding about article 21.

53. Finally, he thanked the members of the Drafting Committee, who would be right to claim that he had taken advantage of their good will and patience; he also wished to express his gratitude to the Special Rapporteur, whose willingness, initiatives and endeavours had facilitated the Committee's task, and also to the members of the secretariat who had participated in the work of the Committee.

54. Mr. McCaffrey explained that his point regarding article 21 was that it was difficult to say that a majority in the Drafting Committee supported the whole of the article when some members had supported paragraph 1 but rejected paragraph 3, while others had supported paragraph 3 but rejected paragraph 1.

55. The CHAIRMAN thanked the Drafting Committee, whose objectivity was to be commended, and paid tribute to its Chairman for his tireless efforts.

The meeting rose at 1 p.m.

⁵ *Idem.*

⁶ *Idem.*