Document:-
A/CN.4/SR.390

Summary record of the 390th meeting

Topic:
Diplomatic intercourse and immunities

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disapproval of the international community. It would be by no means the only case where fear of incurring such disapproval was the only curb on the discretion of States.

75. Mr. YOKOTA enquired whether Mr. Ago would agree to preface his amendment by the opening words of Sir Gerald Fitzmaurice's text: "In the absence of any specific agreement". Although there was no established rule that the size of missions should be fixed by agreement between the States concerned, he felt that the desirability of such agreement should be stressed.

76. Mr. FRANÇOIS said that, had Mr. Verdross's amendment or the compromise solution suggested in its place been accepted, he would have been prepared to withdraw the text he had taken over from Sir Gerald Fitzmaurice, since the receiving State would always have had the right to curtail the size of a mission by refusing to accept certain appointments.

77. The amendment had not been adopted, however, and he was not sure that the replacement of the words "no longer *persona grata*" in article 4(*a*) by the words *"persona non grata"* would meet the point, since it was by no means certain that the excessive size of a mission would be regarded as adequate ground for declaring a member of it *persona non grata.*

78. He was accordingly obliged to maintain the text he had sponsored, as Mr. Ago's text did not provide adequate safeguards for the interests of the receiving State.

79. Mr. AGO, replying to an enquiry from Mr. MATINE-DAFTARY, said that the words *"conditions du pays accréditaire"* in his amendment referred to the conditions "prevailing in" the country and not to any conditions "imposed by" that State.

80. The whole purpose of his amendment was to avoid according the receiving State power to fix unilaterally the size of foreign missions—a power unknown to international law currently in force and somewhat contrary to the principle that a State freely appoints its own agents to represent it. What was wanted was not to provide the receiving State with the right to fix or even to cut, the size of a foreign mission, but to establish that the sending State was under the obligation to keep its mission within reasonable bounds when fixing its size.

81. He did not wish to exclude altogether the idea of agreement, but was anxious to avoid giving the impression that the size of a mission should, on principle, be fixed by agreement between the sending State and the receiving State. Like Sir Gerald Fitzmaurice, he was in favour of pointing out in the commentary that when a difference occurred, between two States concerning the size of the mission of one of them, it would be advisable to settle that difference by agreement.

82. He was willing to accept the Special Rapporteur's more neutral wording of the opening words of his amendment, no substantial change being involved.

83. The CHAIRMAN, replying to Mr. BARTOS, agreed that Mr. Ago's amendment, as the furthest removed from the original proposal, should be put to the vote first.

84. Mr. MATINE-DAFTARY said that voting in that order would place some members of the Commission in a quandary. He, for instance, would prefer the text sponsored by Mr. François, but would rather have Mr. Ago's text than nothing at all. He would, therefore, be obliged to vote for the latter and perhaps contribute to its adoption, because he would have no opportunity of reviving it, were Mr. François's text subsequently rejected. He therefore moved that Mr. François's text be voted upon first.

85. After discussion, the CHAIRMAN put to the vote the proposal that Mr. François's text be voted upon first.

The proposal was adopted by 9 votes to 5 with 3 abstentions.

86. Mr. FRANÇOIS, replying to Mr. EL-ERIAN, said that he accepted his proposal (388th meeting, para. 31) to replace the words "current circumstances" by the phrase "the circumstances and conditions in the receiving State".

87. The CHAIRMAN put the following amended version of Mr. François's proposal to the vote:

> "In the absence of any specific agreement as to the size of the mission, the receiving State may effect such a limitation only within the bounds of what is reasonable and customary, having regard to the circumstances and conditions in the receiving State and to the needs of the particular mission."

The Proposal was adopted as paragraph 1 of article 5 by 10 votes to 5 with 3 abstentions.

The meeting rose at 1 p.m.

390th MEETING

Friday, 3 May 1957, at 9.45 a.m.

Chairman: Mr. Jaroslav ZOUREK.

Diplomatic intercourse and immunities (A/CN.4/91, A/CN.4/98) *(continued)*

[Agenda item 3]

CONSIDERATION OF THE DRAFT FOR THE CODIFICATION OF THE LAW RELATING TO DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/CN.4/91) *(continued)*

ARTICLE 5 *(continued)*

1. The CHAIRMAN invited the Commission to take a decision on the second principle contained in the Special Rapporteur's article 5 (A/CN.4/91), concerning which Sir Gerald Fitzmaurice had submitted an amendment (387th meeting, para. 66).

2. Mr. SANDSTRÖM, Special Rapporteur, recalled that he had already accepted, in principle, the views of Mr. Bartos concerning the right of the receiving State to refuse to receive officials of certain categories without its previous consent.

3. Mr. HSU restated the objection he had made at the 387th meeting to the inclusion of the phrase "and on a non-discriminatory basis" in Sir Gerald's amendment. In his opinion, the words "within similar bounds', i.e., within the bounds of what was reasonable and customary having regard to the circumstances and conditions in the receiving State and to the needs of the particular mission, provided adequate safeguards.

4. The CHAIRMAN, speaking as a member of the Commission, enquired whether Mr. Hsu did not recognize it as an established practice of international law that a receiving State could not accept officials of a par-

ticular category in the case of certain missions accredited to it and refuse to accept them in the case of others.

5. Mr. HSU said that he did not wish to propose any change in established practice. The practices must, however, be flexible enough to cover a state of affairs which actually existed.

6. Mr. GARCIA AMADOR said that, although prepared to accept a proposal reflecting the views of Mr. Bartos that a State might, for security reasons, refuse to accept service attachés, he was not in favour of the very general proposal before the Commission, which extended the right of refusal to any category of official. Sir Gerald's amendment accorded the receiving State what was tantamount to the right of dictating to the sending State the composition of its mission. Such a provision would open the door to all kinds of abuse. The composition of a mission should be decided not by the receiving State but by the sending State, with due regard to the former's interests.

7. Mr. PAL agreed with Mr. Garcia Amador's comments on Sir Gerald's amendment. His further objection to the amendment was the vagueness of the conditions proposed. The words "within similar bounds", namely, "within the bounds of what is reasonable and customary having regard to current circumstances", would, instead of eliminating the possibility of discrimination, only supply a convenient pretext for arbitrary action in that respect. The Commission, however, had already accorded its sanction to the phrase by accepting paragraph 1 of the amendment.

8. Mr. KHOMAN agreed that it was beyond dispute that the principle of non-discrimination should govern international relations in general. He noted, however, that the first paragraph of Sir Gerald Fitzmaurice's text, which had later been sponsored by Mr. François and adopted at the 389th meeting, contained no reference to that principle. While he had no objection to its inclusion in paragraph 2, he thought that it would be more logical under the circumstances for it to be omitted.

9. Mr. BARTOS recalled that he had first raised the question of the appointment of service attachés to diplomatic missions (386th meeting, para. 42). It was the general practice for the sending State, after nominating them, to seek the approval of the receiving State, such approval being assumed when no objections were raised. The attaché then presented himself to the intelligence department of the general staff of the receiving country, and only when that *démarche* had been completed was he entitled to take up his duties. In Sir Gerald's text, such an approval procedure was extended to other categories of officials of missions. He would not oppose that generalization, but must point out that he had originally had in mind only service attachés.

10. He approved of the inclusion in Sir Gerald's text of the proviso "and on a non-discriminatory basis", but must emphasize the difference between discrimination and reciprocity. The refusal of one State to accept a certain category of official, because the other State had already refused to accept the same category of official in the former's mission, did not constitute discrimination, but was merely an application of the principle of reciprocity.

11. In the absence of a clearly established international rule, States had the right to grant or refuse diplomatic status to special categories of diplomatic official.

12. Sir Gerald FITZMAURICE observed, with reference to Mr. García Amador's remarks, that there were two different points in the part of his amendment under consideration. It was only the second point, that of the right of the State to refuse to receive officials without previous consent, that was inspired by Mr. Bartos's observations. The first point, namely, the right to refuse to receive officials of a particular category, was based on the original provision in the Special Rapporteur's article 5, and was designed to qualify the rather sweeping statement of principle in that text.

13. Referring to Mr. Khoman's remarks on non-discrimination, he said that paragraphs 1 and 2 of his amendment could not be compared in that respect. The question of the right to limit the size of a mission, dealt with in the first paragraph, must obviously depend on circumstances peculiar to the particular mission. To have introduced the principle of non-discrimination in that paragraph would have been to imply that all missions in a given capital must be of the same size, which was absurd. The principle of non-discrimination must, however, be applied in the matter of refusing to receive officials of a particular category. Were a receiving State to refuse to receive officials of a particular category at all, its conduct might be abnormal, but at least there would be no discrimination.

14. As for the idea of appointment only with previous consent, there had appeared to be general agreement in principle with Mr. Bartos's views, but the idea had widened somewhat in the course of the discussion. The views of Mr. Bartos and Mr. García Amador were, however, largely met by his text, since it gave the receiving State the right to refuse to receive officials of a particular category without previous consent only in cases where that was compatible with what had been customary.

15. Mr. TUNKIN remarked that the type of provision favoured by Mr. García Amador and that contained in Sir Gerald Fitzmaurice's amendment both contradicted article 3, as adopted, which stated that "the sending State may freely choose the other officials which it appoints to the mission".

16. He would prefer to limit the application of the second part of article 5 to service attachés.

17. Mr. HSU said that the important point was not that there should be no discrimination between missions in the same capital but that there should be reciprocity between States.

18. He agreed with Mr. Khoman that it was illogical to mention the principle of non-discrimination in paragraph 2 of Sir Gerald's text and not in paragraph 1. But to mention it in paragraph 2 was undesirable as well. A State might, for instance, wish to exclude such press attachés as those sent by the former national socialist régimes, who indulged in undesirable propaganda, yet might regard press attachés in general as legitimate members of diplomatic missions. Under the principle of non-discrimination, however, it would have to exclude all or none. The reference to non-discrimination in the text was unnecessary and might even be dangerous, and he wished formally to propose its deletion.

19. Mr. SANDSTRÖM, Special Rapporteur, remarked that the Commission might have to consider the general question of non-discrimination when it came to examine the application of the principle of reciprocity and the most-favoured-nation clause. Be that as it might,

the limitations placed on the powers of the receiving State, and the proviso regarding non-discrimination in particular, were essential in order to prevent abuse.

20. The CHAIRMAN put to the vote Mr. Hsu's proposal that the words "and on a non-discriminatory basis" be deleted from Sir Gerald Fitzmaurice's text.

The proposal was rejected by 11 votes to 1 with 5 abstentions.

21. The CHAIRMAN proposed that Sir Gerald Fitzmaurice's text be put to the vote.

22. Mr. MATINE-DAFTARY asked to be allowed time to prepare an amendment to it in concert with Mr. García Amador, in view of the apparent desire of several members of the Commission to render the text more specific.

23. Mr. GARCIA AMADOR said that, on reflection, he could not see how the text could be amended. After hearing Sir Gerald Fitzmaurice's statement, he would be satisfied with a clear explanation of the scope of the provision in the commentary, assuming the text was adopted.

24. Mr. TUNKIN asked for separate votes on the words "the receiving State may also, within similar bounds and on a non-discriminatory basis, refuse to receive officials of a special category", and on the words "or to receive them without previous consent", which should be applied only to service attachés.

It was so agreed.

25. The CHAIRMAN put the first part of Sir Gerald Fitzmaurice's text to the vote.

The first part of the text was adopted by 15 votes to none with 3 abstentions.

26. Mr. AGO pointed out that Mr. Tunkin had used the words "special category" whereas the actual text said "particular category". There was a difference between the two terms, and the drafting committee might well consider which was preferable.

It was so agreed.

27. The CHAIRMAN put to the vote the remaining words of Sir Gerald Fitzmaurice's text, "or to receive them without previous consent", subject to reference to the drafting committee with a view to confining the provision to naval, military and air attachés.

On that understanding, the text was adopted by 7 votes to 5 with 5 abstentions.

28. The CHAIRMAN, replying to Mr. KHOMAN and Mr. SANDSTRÖM, said that since the text had been adopted in two parts, one at least of which was subject to redrafting, the Commission would have an opportunity to decide at a later stage whether it approved the final text as a whole.

ARTICLES 6 TO 11

29. Mr. SANDSTRÖM, Special Rapporteur, introducing articles 6 to 11 of his draft, expressed the view that the Commission should consider them together, and first settle the general question of principle: whether to revise the classification of diplomatic agents, in three classes, established by the Regulation adopted at the Congress of Vienna and later supplemented by the Protocol of the Conference of Aix-la-Chapelle, which had added a new class, that of "ministers resident" (A/CN.4/98, paras. 21-26).

30. The question of revising the classification of diplomatic agents had already been raised in the course of the work of codification undertaken by the League of Nations, when a negative conclusion had been reached (*Ibid.*, paras. 105-112).

31. Various considerations had prompted Mr. SANDSTRÖM to re-open the question. In the first place, the reasons given in 1927 in favour of such revision by the Sub-Committee set up by the Committee of Experts for the Progressive Codification of International Law (*Ibid.*, paras. 107-110) seemed still to hold good, whereas the arguments against revision (*Ibid.*, para. 112) were not very convincing. There did not, for instance, appear to be any need for States wishing to mark special bonds between them to do so by according a higher rank to their diplomatic representatives.

32. Furthermore, the existence of two classes of representative heads of missions, namely, ambassadors and ministers plenipotentiary, was contrary to the principle of the formal equality of States. Such a distincton might have been justified when the sending of ambassadors was a prerogative of the great Powers, or even at the time of the League of Nations. Since then, however, the practice of exchanging ambassadors had been considerably extended, and the distinction was no longer justified. It also had the disadvantage of not being conducive to the stability of the diplomatic corps in small capitals.

33. The question of the classification of diplomatic representatives had been raised at the tenth session of the General Assembly, when the representative of Sweden had stated in the Sixth Committee on 3 November 1955 that "the Committee should bear in mind the urgent need of revising the classification of diplomatic agents . . . In view of the growing tendency on the part of States to appoint ambassadors, the old distinction between embassies and legations was no longer justified. The resulting situation caused irritation and inconvenience to a number of States. The remaining anomalies should therefore be eliminated . . . It was to be hoped the International Law Commission would . . . submit to the General Assembly a set of proposals designed to dispose of the classification question. There might, indeed, be some advantage in having that question treated as a wholly separate item".[1] The Norwegian representative had also expressed the view that "the existing system of classification had sometimes caused inconvenience, and a speedy remedy of the situation would be welcomed by everyone".[2]

34. The Commission would, of course, appreciate that there had been no collusion between him and the Scandinavian representatives on the Sixth Committee. Their Governments had raised the question without consulting him.

35. The discussion had been summed up in the following terms in the Sixth Committee's report: "Some representatives recalled the urgent need of revising the classification of diplomatic agents, and expressed the hope that the Commission, at its eighth session, could frame a proposal on the topic for transmission to the General Assembly, treating the problem of classification, if need be, as a separate matter."[3]

[1] *Official Records of the General Assembly, Tenth Session, Sixth Committee,* 453rd meeting, paras. 12-14.

[2] *Ibid.*, para. 18.

[3] *Ibid., Tenth Session, Annexes,* agenda item 50, document A/3028, para. 5.

36. The CHAIRMAN invited the Commission to take a decision regarding article 6, which did not appear to contain anything controversial.

37. Mr. AGO pointed out that, should the Commission decide to have only one class of head of mission, article 6, as worded, would no longer be relevant.

38. Mr. SANDSTRÖM, Special Rapporteur, agreed that the article might need redrafting.

39. The CHAIRMAN pointed out that, even if the Commission decided to advocate the abolition of the intermediate class of ministers plenipotentiary, there still remained the third class of *chargés d'affaires.*

40. Mr. YOKOTA was in favour of discussing the articles and even the paragraphs, one by one, in accordance with the procedure already decided upon by the Commission.

41. Mr. KHOMAN thought it would be more logical to discuss articles 6 to 11 together. He agreed with Mr. Ago's point. Incidentally, he would prefer article 6 to speak of "status" rather than "class".

42. He did not think that *chargés d'affaires* really constituted a definite class; though temporary *chargés d'affaires* were not uncommon, accredited *chargés d'affaires* were very rare.

43. Mr. AMADO observed that there were cases of *chargés d'affaires* accredited as such. If he was not mistaken, the United Kingdom was represented at Pekin by a *chargé d'affaires.*

It was agreed to defer further consideration of article 6 until the question of classification of heads of missions had been settled.

44. Mr. VERDROSS, referring to article 7, said that some redrafting appeared advisable, since legates were never heads of permanent missions but were sent for individual special affairs, and were not normally accredited to heads of States.

45. He wondered whether it would be possible to abolish the category of ministers plenipotentiary recognized by the Congress of Vienna.

46. Mr. BARTOS said that the idea of abolishing the intermediate category of ministers plenipotentiary and other ministers was entirely in accordance with the trend of modern international law, and he fully supported it. The category was a relic from the days when ambassadors were regarded as having the right to treat directly with the sovereign, whereas ministers were not. That right being long defunct, the subsidiary category had become an obsolete institution.

47. The whole trend of modern international law sanctioned its abolition. The United Nations, under Article 2 of its Charter, was based on the principle of the sovereign equality of all its Members, and it was an obvious corollary of that principle that the diplomatic representatives of States should also be equal in status.

48. As early as 1918, an abortive attempt to abolish the distinctions between diplomatic envoys had been made by the Soviet Union, when it had established a single class of "plenipotentiary representatives". As, however, other States had classed such representatives along with *chargés d'affaires,* the Soviet Union had been obliged to conform to tradition.

49. Since then the move towards general representation by ambassadors had steadily gained ground. Quite apart from those States, such as Poland and Spain, which claimed the right to such representation on historical or legal grounds, there was the case of the Latin-American States which had decided before the Second World War to exchange only envoys of ambassador status. In 1942, the States allied against the Axis Powers had come to the same decision. Switzerland, where there was only one embassy, the French embassy (Swiss missions in other capitals being merely legations) had recently fallen into line with other countries in the matter of exchange of ambassadors.

50. The distinction between ambassadors and ministers plenipotentiary was a purely theoretical one, at any rate so far as the privileges and immunities granted in the receiving State were concerned. Thus, after the First World War, the Romanian, Turkish and Yugoslav Governments had agreed to exchange ambassadors rather than ministers as in the past, but at the same time had made it clear that the ambassadors should enjoy no privileges not enjoyed by the ministers of other States in their respective capitals. Moreover, certain countries, such as Belgium, did not for internal purposes recognize the rank of ambassador at all, but nevertheless gave the title of ambassador to their diplomatic representatives to certain other countries.

51. In order to help get rid of what he had thus shown to be no more than a vestige from the past, he would be glad to vote for the reform proposed by the Special Rapporteur.

52. Mr. MATINE-DAFTARY said that, before agreeing to what would be a very important innovation, he would like to hear more about the difficulties to which the current system gave rise in practice. It had been said that, in conformity with the principle of the equality of States, the diplomatic representatives of States should all be in one class. However, the fact that all men were equal before the law did not mean that the relations between them all must be on precisely the same footing. It was inevitable that a man's relations with some of his fellow men were closer and of more consequence to him than his relations with others, and the same would appear to be true of States.

53. If the Commission agreed that the sovereign no longer represented the apex of power, it should logically get rid of the term "ambassador", since the ambassador, having been up to now the sovereign's personal representative, conjured up the idea of the Congress of Vienna. The term "plenipotentiary representative" could be adopted for all States, if it was decided to have only one class.

54. *Chargés d'affaires* were simply interim heads of missions, and he was inclined to agree that they should not be made a class apart.

55. Mr. AMADO pointed out that there were *chargés d'affaires* on a quasi-permanent basis, for example, in the case where an ambassador was withdrawn as a result of a deterioration in relations between the two States concerned. He agreed, however, that *chargés d'affaires* could not be said to constitute a distinct class, since there were almost as many different types of *chargé d'affaires* as there were *chargés d'affaires.*

56. Mr. FRANÇOIS agreed that ministers plenipotentiary as a class should be abolished. The present division of heads of missions into two main classes, am-

bassadors and ministers plenipotentiary, resulted in discrimination against certain States. At the time of the Congress of Vienna, the distinction between them had been justified by the special position which the Great Powers then enjoyed, in law as well as in fact. Even after the First World War, when Belgium had favoured retention of the system, it had been possible to argue that there were cases in which a State might wish to place a mark of distinction on its relations with certain other States. Nowadays, however, the appointment of an ambassador in no way signified that relations between the two States in question were specially close or of special importance. More and more, ambassadors had been appointed where they were nothing of the kind; as a result, the ministers plenipotentiary now found themselves in an inferior position, ill-befitting their dignity. For example, they might rank below the representatives of States whose relations with the receiving State were much less close and of much less consequence to it, simply because the latter called their representatives ambassadors.

57. It might be argued that if two States wanted to go on exchanging ministers plenipotentiary rather than ambassadors, there was no reason why the Commission should prevent them from doing so; but the commoner case was where one State was willing to raise its representative to the rank of ambassador and the other State was not.

58. While he was accordingly in full agreement with the Special Rapporteur that ministers plenipotentiary as a class should be abolished, he pointed out that article 7 would not necessarily achieve that purpose. If the Commission's draft was to be the basis for a draft convention, the States which ratified it would thereby undertake to make all their ministers plenipotentiary into ambassadors. But if the Commission's draft was to be merely a kind of model code, its promulgation would not cause the class of ministers plenipotentiary to disappear; and, in that case, it would be preferable to retain mention of them in article 7 and refer to the abolition of that class only in the commentary.

59. Mr. TUNKIN said there was no doubt that great changes in practice had occurred since the Congress of Vienna and the Conference of Aix-la-Chapelle, and it would theoretically be desirable for them to be reflected in the Commission's draft. He appreciated the fact that the Special Rapporteur's proposal was based on the principle of the equality of States. It was on the same principle that, as Mr. Bartos had already remarked, a decree had been issued in the Soviet Union in 1918 according to which all diplomatic representatives of the Soviet State were named plenipotentiary representatives. There was no doubt that the general tendency, especially since the Second World War, was towards the disappearance of ministers plenipotentiary as a separate class. Moreover, in most, if not all, countries, ambassadors and ministers were accorded the same status.

60. The fact, however, remained that some States continued to appoint ministers plenipotentiary, and he was not sure that the Commission should attempt to outrun events. Omission of any reference to ministers plenipotentiary would certainly arouse objections from a number of States. Regardless of the form the Commission's draft was to take, it seemed wise not to court such objections unnecessarily, and it was unnecessary in the present instance since, if ministers plenipotentiary were treated on the same footing as ambassadors, and States were free to appoint either ambassadors or ministers, the question of classes was of no importance and in no way infringed the principle of equality of States.

61. Mr. EL-ERIAN agreed that the Commission must take into account the realities of international life, in particular the general acceptance of the principle of the equality of States. Provided the current system recognized the equal right of all States to appoint ministers plenipotentiary or ambassadors as they thought fit, and provided it made no distinction between the duties and the privileges of ministers plenipotentiary and ambassadors respectively, he felt the Commission should not be in too much of a hurry to change it. Before it took a final decision, it would, in any case, have the comments of Governments on its initial draft.

62. He was doubtful about Mr. Khoman's suggestion for replacing the word "class" by "status" in article 6, since the status of heads of diplomatic missions was governed by international law. It was in very fact the class to which they were to belong that was decided by agreement between States.

63. Mr. HSU agreed with Mr. Tunkin that there was no harm in retaining ministers plenipotentiary as a separate class. The current system of classification had been criticized on the ground that it was contrary to the principle of the equality of States, but that criticism would never have been heard if the system had not been abused. Such abuse of it as there had been was now, fortunately, largely a matter of past history, though, of course, it would be very desirable if the Commission could secure the removal of the few remaining abuses, which centred on the question of reciprocity.

64. It was, in fact, convenient for certain States, particularly the smaller States, to retain two classes of foreign diplomatic mission, both for financial reasons and owing to the scarcity of suitable personnel.

65. If the majority of the Commission favoured Mr. Sandström's proposal, however, he would have no objection.

66. Mr. AGO said that, even if it was true nowadays that there was a tendency to make all heads of missions ambassadors, he wondered whether it was politically desirable for the Commission to precipitate matters. Mr. François had clearly listed the arguments in favour of the Special Rapporteur's proposal. On the other hand, Mr. Matine-Daftary had rightly pointed out that the equality of States was not the only relevant factor, and the fact that a State was not entertaining the same closeness of relations with every other State had also to be taken into account. The maintenance of different classes of diplomatic missions was therefore to be recommended.

67. Moreover, the Commission could not disregard the fact that some States had agreed between themselves to exchange only ministers, while the laws in force in other States did not provide for the appointment of ambassadors. In his view, therefore, the Commission had no choice but to refer to ministers plenipotentiary in article 7, although it could say, in the commentary, that it would be desirable for all heads of missions to be ambassadors if it really felt that to be the case.

68. Sir Gerald FITZMAURICE agreed with Mr. Ago and Mr. Tunkin that the Commission must refer to ministers plenipotentiary, although it might, in the commentary, draw the attention of Governments to the desirability of changing the current system of classifica-

tion. If it did so, however, it should make it clear that two questions were involved: first, whether to continue to use both terms, "ambassadors" and "ministers plenipotentiary"; and secondly, whether to make what might appear to be an invidious distinction in treatment corresponding to the difference in terms. Several States which had, for external purposes, raised their foreign legations to the status of embassies, continued to distinguish between first class and second class ambassadors for internal purposes, especially for questions of finance. It was, therefore, perfectly possible to abolish all distinction between ambassadors and ministers plenipotentiary in a receiving State, while retaining a distinction in the sending State. The Commission could, however, do no more than draw attention to those points in the commentary.

69. Mr. KHOMAN pointed out that it was a fairly common practice for States which had just entered into diplomatic relations with each other to begin by exchanging ministers, and, later, as relations between them developed, to raise them to the status of ambassadors. He agreed, therefore, that the Commission, engaged as it was on a task of codification, could not completely ignore the existence of ministers plenipotentiary. The difference between them and ambassadors was, in any case, very slight; so far as the United Nations was concerned, it was merely that the latter were entitled to the form of address "His Excellency". The Commission's efforts should be directed to getting rid of such differences as remained. As Sir Gerald Fitzmaurice had pointed out, the question of the continued use of two different terms or appellations was another matter.

70. Mr. YOKOTA agreed that the principle of the equality of States was a fundamental rule of international law, but it was not an absolute principle. It admitted of many exceptions, even in the United Nations where certain States occupied a permanent seat in the Security Council and enjoyed the right of veto. With regard to the matter under discussion, the principle, in his view, entailed no more than the equal right of all States to agree what class of diplomatic agent they wished.

71. As to the classes of diplomatic agents, there were, in practice, no real differences between ambassadors and ministers plenipotentiary as regards either privileges and immunities, the form of their appointment or their functions. The difference was purely nominal. He was, therefore, inclined to support the Special Rapporteur's proposal.

72. *Chargés d'affaires,* on the other hand, formed a different class, since they were appointed by and accredited to ministers of foreign affairs.

73. Mr. AMADO agreed that, in general, the only difference between ambassadors and ministers plenipotentiary was in respect of precedence. It might be that there was a tendency to combine them in a single class, but it was no part of the Commission's task to encourage any more than to discourage that tendency.

74. The CHAIRMAN, speaking as a member of the Commission, said that he agreed that ministers plenipotentiary still existed as a class, a class which met a real need, unlike that of ministers resident, which had almost disappeared and retention of which had not been urged by any member of the Commission.

75. It was true that the only difference between an ambassador and a minister plenipotentiary was in respect of precedence. There was undoubtedly a tendency to group heads of missions in a single class, but as the General Assembly had given the Commission the task of codifying international law in the field of diplomatic intercourse and immunities, it would be difficult for it not to mention the class of ministers plenipotentiary. It should, however, state in the commentary that, in practice, there was a tendency to group in one class of diplomatic agent the first two classes established by the Regulation adopted in 1815 at the Congress of Vienna. (A/CN.4/98, para. 22)

76. The Commission would be able to take a final decision at its next session when it had before it the comments of Governments on its draft. If Governments were in favour of abolishing the class of ministers plenipotentiary, it could modify its draft accordingly.

77. Mr. SANDSTRÖM, Special Rapporteur, said he had been impressed by the arguments of Mr. François, who had been supported by other members of the Commission. Ministers plenipotentiary existed and would continue to exist for a number of years. That made him think that, instead of following in his draft the work of the League of Nations, he might have recommended, not the abolition of a class, but the abolition of any distinction in precedence between classes.

78. He would endeavour to present a new text along those lines to the Commission at its next meeting.

79. Mr. EDMONDS thought that all members of the Commission agreed that the differences between ambassadors and ministers plenipotentiary could not be disregarded, and that there were good reasons for them, at least as far as the internal arrangements of the sending State were concerned. He was not convinced that the powers and duties of the two classes were identical. At any rate, the Commission should not go so far as to delete all reference to one of those classes.

80. Mr. GARCIA AMADOR said that the Latin countries had replaced many of their ministers plenipotentiary by ambassadors, in accordance with the general trend, but that by doing so they had created all manner of difficulties for themselves. To generalize the practice would lead to still greater difficulties. The Commission should therefore be realistic and agree to the retention of ministers plenipotentiary as a separate class.

The meeting rose at 1 p.m.

391st MEETING

Monday, 6 May 1957, at 3 p.m.

Chairman: Mr. Jaroslav ZOUREK.

Appointment of a drafting committee

1. The CHAIRMAN proposed that the Drafting Committee which the Commission had already agreed in principle to set up should be constituted as follows: Mr. Pal as Chairman, Sir Gerald Fitzmaurice, Mr. García Amador, Mr. François, Mr. Sandström and Mr. Tunkin.

It was so agreed.

2. The Chairman thought that it would be desirable for the Drafting Committee to begin work as soon as possible.