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Summary record of the 391st meeting

Topic:
Diplomatic intercourse and immunities

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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.

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)*

ARTICLES 6 TO 11 *(continued)*

3. The CHAIRMAN requested the Special Rapporteur to inform the Commission of the results of the study he had promised to undertake at the close of the 390th meeting.

4. Mr. SANDSTRÖM, Special Rapporteur, recalled that he had then suggested that one possible way of avoiding the difficulties that had arisen during the discussions regarding the classification of heads of missions would be to abide by the Regulation adopted on 19 March 1815 by the Congress of Vienna (A/CN.4/98, para. 22) as far as the titles of heads of missions were concerned, and to concentrate on the question of precedence. To give effect to that idea he had drafted the following text to replace articles 6 to 9:

"*Article 6*

"The sending and receiving States shall agree on the title to be conferred on the heads of their missions.

"*Article 7*

"1. Ambassadors, (legates or) nuncios, envoys ministers, resident ministers or other agents accredited to Heads of States shall take precedence over *chargés d'affaires* accredited to ministers of foreign affairs and shall rank among themselves according to the date on which their arrival was officially notified.

"2. Any change in the credentials of an agent through some circumstance or other shall not affect the order thus established.

"3. The present regulations shall not occasion any change respecting the representatives of the Pope.

"4. Ties of consanguinity or family alliances between Courts shall confer no rank on their diplomatic agents. The same shall apply to political alliances."

5. That text was not, however, to be regarded as in any way a proposal, since it, too, raised various doubts: in particular, article 7, paragraph 1, appeared to present almost greater disadvantages than the articles it was designed to replace. It would bring into being a new system alongside the old, and States would proceed differently depending on whether they accepted the new system or not. The Vienna Regulation had the advantage of uniformity.

6. In those circumstances, it seemed preferable to retain the text adopted by the Congress of Vienna and simply to express the hope, in the commentary, that future years would see a strengthening of the already marked tendency to do away with ministers plenipotentiary and legations, and that the question of the classification of heads of missions would thereby be automatically solved.

7. Mr. FRANÇOIS agreed that by removing the last remaining difference between ministers and ambassadors, but retaining both terms as though they were distinguishable, the alternative text suggested by the Special Rapporteur would be a fruitful source of confusion and difficulties in practice, particularly if the Commission's draft was to take the form of a convention. For States which had not adhered to the convention would continue to regard ambassadors and ministers as two distinct classes, the former taking precedence over the latter, while States which had adhered to it would regard them as equal in rank. It would therefore be preferable to maintain the classification laid down by the Congress of Vienna in 1815, and use the commentary to express the hope that ministers would be increasingly replaced by ambassadors.

8. Mr. VERDROSS said it had been his intention to propose that the words "Heads of missions" at the beginning of article 7 of the Special Rapporteur's original draft be replaced by "Diplomatic agents". Since those words did not appear in the alternative text, his amendment was unnecessary. For the same reason, the reference to "Legates" could be retained.

9. With regard to the second sentence of article 7, paragraph 4, of the alternative text, he pointed out that the 1936 Treaty of Alliance between Egypt and the United Kingdom had provided that the British Ambassador in Cairo should have precedence over all others. A similar provision was to be found in a Treaty between France and Morocco. While he had no objection to the sentence as it stood, the Commission should be clear that it did not entirely reflect past practice.

10. Mr. TUNKIN asked whether the Special Rapporteur knew of any instance since the Second World War of the appointment of permanent *chargés d'affaires* or resident ministers.

11. Mr. SANDSTRÖM, Special Rapporteur, said that, if his memory served him right, Sweden had on occasion appointed *chargés d'affaires* to the Governments of States with which it had no intimate relations. He also thought that Sweden was represented in one country by a minister resident.

12. With regard to the question as a whole, he felt that, unless it accepted the reform he had proposed, the Commission need not deal with the classification of heads of missions at all in its draft; it could simply leave things as they stood, in other words, keep the Vienna Regulation unchanged.

13. Mr. EL-ERIAN said he had some doubts about the Special Rapporteur's alternative text for article 6. The Commission was, he thought, in general agreement that it would be desirable for all heads of missions to form a single class. In certain cases and for certain reasons, constitutional or other, it might be necessary for States to designate their heads of missions by particular titles, but such cases were altogether exceptional and merited, at most, a brief mention in the commentary. The Commission's articles should reflect not the exception but the rule.

14. Regarding article 7 he agreed in general with Mr. François.

15. He was doubtful about the desirability of referring to political alliances in article 9, paragraph 4, of the Special Rapporteur's original draft (article 7, paragraph 4, of his alternative text). It was even held by some that such alliances were not in harmony with the collective security system established by the United Nations Charter.

16. The 1936 Treaty between Egypt and the United Kingdom, which was referred to by Mr. Verdross, had since been abrogated. In any case, the provision referred to by Mr. Verdross had in practice applied only to the ambassador in office at the time the treaty had been signed; his successors had been on precisely the same footing as the ambassadors of other countries.

17. Mr. PAL pointed out that, in providing for special precedence, the Treaty between Egypt and the United Kingdom and that between France and Morocco appeared to have been in violation of article IV of the Vienna Regulation. In his view, the question of precedence could not be left to States to decide by agreement between themselves; it must be settled by some rule of international law.

18. Sir Gerald FITZMAURICE expressed his agreement with what had been said by Mr. François.

19. Mr. EL-ERIAN had stated the position correctly with regard to the 1936 Treaty between Egypt and the United Kingdom. Provisions of the sort referred to by Mr. Verdross were becoming increasingly rare and could be disregarded in the Commission's draft. He therefore saw no objection to saying that political alliances should confer no rank on the diplomatic agents of allied States.

20. Mr. BARTOS said that in Moscow the Austrian representative, who was termed a political representative, and the Italian representative, who was termed a diplomatic representative, had at one time been regarded as *chargés d'affaires;* the Soviet Union Government had also recognized heads of missions who held the title of ambassador or minister on a personal basis. He had been unable to discover any other cases of heads of diplomatic missions who were resident ministers or permanent *chargés d'affaires* in Moscow.

21. Mr. MATINE-DAFTARY said that, like Sir Gerald Fitzmaurice, he found himself in complete agreement with Mr. François.

22. Mr. KHOMAN supported the Special Rapporteur's alternative text for article 6. The word "class" in the original text was inappropriate, since there was no difference in class between States, and there should, therefore, be none between their diplomatic representatives. In his view "title" was the appropriate word, but if it gave rise to difficulties some such words as "category" might be used.

23. He noted that in the alternative text for article 7 the Special Rapporteur referred not only to ministers but also to envoys and resident ministers. As far as he was aware, no member of the Commission had urged that reference be made to either of those categories. Resident ministers were not mentioned in the Vienna Regulation, and the distinction between envoys and ministers was now negligible.

24. In general, he felt that the Commission, whose current task was one of codification, should not attempt to go beyond the existing practice of States, unless all States were in general agreement that it should do so. In the present instance it should ascertain whether States were, in fact, willing to abolish the distinction between ministers and ambassadors; once it had their views it should have no difficulty in drafting a suitable text.

25. Mr. TUNKIN said he sympathized with the aim of the alternative text for article 7, since he personally agreed that it would be desirable for all heads of diplomatic missions to be placed on the same footing, in accordance with the principle of the equality of States. As he had already pointed out, however, any proposal to abolish the current distinction between ambassadors and ministers would inevitably arouse opposition from a considerable number of States. It would therefore be preferable to abide by the Vienna Regulation, in other words to retain the text of articles 6 and 7, given in the Special Rapporteur's original draft (A/CN.4/91), subject to the addition to article 7 of the class of ministers accredited to heads of States.

26. Mr. AMADO supported Mr. Tunkin's view, and formally proposed that article 7 be worded as follows:

"Heads of missions shall be divided into three classes:

"(*a*) That of ambassadors, legates or nuncios accredited to heads of States;

"(*b*) That of ministers accredited to heads of States;

"(*c*) That of *chargés d'affaires* accredited to ministers of foreign affairs."

That wording was an exact reflection of the true situation. Attention could then be drawn in the commentary to the current tendency to replace ministers by ambassadors.

27. Mr. YOKOTA supported Mr. Amado's proposal. In his view, though, the Commission's draft articles should be confined to dealing with the ordinary, normal, established practice in which the three classes mentioned by Mr. Amado were generally recognized. Rare cases and exceptional categories could be referred to in the commentary. For that reason, he felt it was unnecessary for article 7 to mention resident ministers who were few, if any, at present and would disappear totally in the future.

28. Mr. SPIROPOULOS, after expressing his regret at his inability to attend the earlier meetings of the Commission's current session, said that, in his view, article 7 was of no legal importance, provided all heads of missions enjoyed the same rights. Although he personally was in favour of the reform proposed by the Special Rapporteur, he agreed with Mr. Amado that the Commission should abide by the Vienna Regulation, at any rate in its initial draft. Only in the light of the comments from Governments would it be able to take a final decision.

29. No action was needed on the part of the Commission to encourage the tendency to replace ministers by ambassadors.

30. Mr. AGO felt that in certain cases there were good reasons for retaining both classes. For that reason the Commission, in its commentary, should not lay too much stress on the desirability of combining them in a single class.

31. In substance, therefore, he agreed to the proposal made by Mr. Amado, but suggested the following drafting changes in order to meet points raised by Mr. Verdross and others: the words "the heads of their missions" in article 6 and "Heads of missions" in article 7 could be replaced by "their diplomatic agents" and "Diplomatic agents" respectively, since legates, for example, were not heads of missions; under (*b*) in article 7 the word "ministers" should be replaced by "envoys, ministers or others," which would be wider and would correspond to

the Vienna Regulation; and under (*a*) and (*b*) the words "accredited to heads of States" should be replaced by "accredited to the supreme organs of States", since such organs were not always individuals but sometimes collective bodies.

32. Finally, he proposed the deletion of article 8, which was not in acordance with accepted doctrine.

33. Mr. SANDSTRÖM, Special Rapporteur, said he had no objection to deleting article 8, which he had only retained in his draft for the reason that it appeared in the Vienna Regulation.

34. If the Commission preferred not to revise the classification of heads of missions in the manner recommended in his report, and urged by various States, it need not include any provision on the subject, which was purely one of etiquette. In other words it could delete articles 6 to 11 of his original draft (A/CN.4/91).

35. The Vienna Regulation had not given rise to great difficulties in practice. On the other hand, there would be no point in the Commission's conferring its *imprimatur* on distinctions that were doomed to disappear.

36. Mr. SCELLE supported Mr. Amado's proposal, which did no more than reflect the current situation and was in harmony with the tendency to claim theoretical equality for all States.

37. He agreed that article 8 should be deleted, since it ran directly counter to article 7.

38. Mr. AMADO said, with regard to the amendments suggested by Mr. Ago, that he preferred the words "heads of missions" as being more in accordance with modern conceptions; that addition of the words "or others" needlessly complicated the text; and that the words "heads of States" could, if necessary, cover collective organs as well as individuals.

39. Mr. LIANG (Secretary to the Commission), referring to Mr. Ago's first amendment, pointed out that the term "diplomatic agents" was used in articles 27 and 28 of the Special Rapporteur's draft to cover all members of a mission.

40. Sir Gerald FITZMAURICE said he personally saw no reason why the text of articles 6 and 7 should not be made a little more flexible, for example by qualifying the reference to heads of missions by the words "or other chief diplomatic agents", and the reference to heads of States by the words "or the other supreme organ of the State".

41. Mr. KHOMAN proposed that the words "classes" be replaced by "categories".

42. Mr. AMADO suggested that all those points should be left to the Drafting Committee.

It was so agreed.

43. Mr. BARTOS said that, in his view, it followed logically from the principle of the equality of States—which was a principle of positive law hallowed by the United Nations Charter and by practice—that the diplomatic representatives of all States should have the same title. He recognized, however, that it was impossible to disregard a survival of the days when States had been unequal before the law. They could, however, be referred to in the commentary.

44. He asked that a vote be taken on the principle that all heads of missions should have the same title. Once the Commission had decided that question it would be freer to take up questions of detail. If the principle was rejected, he would vote for Mr. Amado's proposal, which was the least far removed from it.

45. The CHAIRMAN pointed out that, since the Commission had a specific proposal before it, it was bound to vote on it.

46. Mr. TUNKIN emphasized, in connexion with Mr. Bartos's remarks, that if the Commission voted in favour of three classes, that in no way meant that it was voting against the principle of the equality of States.

47. The CHAIRMAN put to the vote the text proposed by Mr. Amado (para. 26 above), subject to further consideration by the Drafting Committee of points of detail.

The text was adopted by 17 votes to none, with 2 abstentions.

48. Mr. BARTOS said he had abstained from voting because he considered that the principle of the equality of States required that the heads of missions accredited to the heads of States should all form a single class.

49. Mr. MATINE-DAFTARY said he would never have voted in favour of any provision which ran counter to the principle of the equality of States. That principle, however, had nothing whatever to do with the fact that States were free to choose whichever mode of diplomatic representation they preferred, depending on the closeness of the relations between them.

50. The CHAIRMAN, after recalling that the vote on article 6 had been deferred pending a decision as to the classification of heads of missions (390th meeting), invited the Commission to vote on article 6, on the understanding that the question of an alternative for the term "class" would be referred to the Drafting Committee.

Article 6 was unanimously adopted.

51. The CHAIRMAN, after observing that article 8 had been withdrawn by the Special Rapporteur (para. 33 above), invited the Commission to consider the article 9 of the Special Rapporteur's draft.

52. He said that Mr. Tunkin had proposed that the words "or to the date of remitting their letters of credence" should be added at the end of paragraph 1.

53. Mr. SANDSTRÖM, Special Rapporteur, pointed out that the text of article 9 was closely modelled on articles IV and VI of the Regulation of the Congress of Vienna.

54. Mr. EL ERIAN, referring to paragraph 4 of the article, said that the provision that ties of consanguinity or family alliances between Courts should confer no rank on their diplomatic agents, though perhaps necessary at the time of the Congress of Vienna, was irrelevant to present-day conditions. The question of precedence being already regulated by article 7 and the first paragraph of article 9, there was no need to retain such a provision.

55. Mr. AMADO, referring to paragraph 1 of the article, thought the term "heads of missions" more appropriate than "diplomatic agents", a term which also covered subordinate members of missions with whom the question of precedence did not arise.

56. He wondered how Mr. Tunkin's amendment would apply in the case of *chargés d'affaires*, who did not present letters of credence to the head of State.

57. Mr. MATINE-DAFTARY agreed with Mr. Amado in prefering the term "heads of missions". In his opinion it would be preferable for precedence to be decided according to the date of official notification of arrival. The arrival of a head of mission was something which he himself could time, whereas the date of presentation of his letters of credence was a matter outside his control.

58. Mr. TUNKIN, referring to his amendment, said that, to the best of his knowledge, it was the practice of States for heads of missions to rank in their respective classes according to the date on which they presented their letters of credence.

59. He agreed with Mr. Amado on the desirability of substituting "heads of missions" for "diplomatic agents", and with Mr. El-Erian on the superfluity of the first sentence in paragraph 4 of article 9.

60. Mr. VERDROSS, referring to Mr. Tunkin's amendment, said that it was impossible to have two alternative criteria for fixing the precedence of heads of missions. The Commission must adopt either one or the other, and he regarded the criterion given in the Special Rapporteur's draft as preferable. The presentation of letters of credence might be delayed by sickness or some other eventuality.

61. Mr. YOKOTA, observing that the four paragraphs of article 9 dealt with different matters, urged that they be discussed in turn.

It was so agreed.

62. Mr. SANDSTRÖM, Special Rapporteur, pointed out that, if paragraph 1 was amended, States would be faced with two different systems, that of the Congress of Vienna and that advocated by the Commission, and it was difficult to tell which they would choose.

63. Mr. BARTOS declared himself in favour of Mr. Tunkin's amendment. All kinds of problems arose in connexion with the fixing of the precedence of heads of missions. If two heads of mission arrived in the receiving State by the same airplane, which was to take precedence over the other? France had adopted the ingenious solution in that case of calling on the older of the two to present his letters of credence first. Was an ambassador who was unable to present his letters of credence at the appropriate time, because he had not received them, to lose precedence because of that fact? Or again, if an ambassador, after arriving in the receiving State, returned home on private business before presenting his letters of credence, were other heads of mission arriving after him to be forced to await his return before presenting their letters of credence? The presentation of letters of credence might also be deliberately delayed by the receiving State, as had happened in one case where a receiving State, after giving its *agrément* to the appointment of the head of mission, had changed its mind and, rather than withdraw its *agrément,* had several times postponed the date of presentation of his letters of credence in the hope that the sending State would ask for an explanation, and thus give it an opportunity of intimating that the chief of mission in question was *persona non grata.*

64. Another problem had arisen when the Yugoslav Protocol Department had noticed in the copy of an ambassador's letters of credence that the titles of the head of State included a reference to a country which had acquired independence and been recognized by Yugoslavia. The necessary correction was ultimately made, but the question then arose of the time from which precedence should date; from the submission of the original or of the corrected letters of credence?

65. Such problems did not, however, alter the fact that, in general practice, precedence was reckoned from the date on which the head of mission officially took up his duties, i.e., on which he presented his letters of credence. Though it was customary for heads of missions to be called upon to present their letters of credence in the order in which their arrival had been officially or semi-officially notified, that was purely a matter of courtesy on the part of the receiving State.

66. Mr. LIANG (Secretary to the Commission) recalled two cases in his own experience where ambassadors had been unable to present their letters of credence soon after arrival. Such delays were particularly likely to occur in monarchies, where ambassadors could present their credentials only when the monarch was holding court.

67. It was difficult to say which practice was correct, that of basing precedence on date of arrival or that of basing precedence on date of presentation of letters of credence. One school of thought held that the presentation of credentials was a pure formality, and not an essential act indicating the acceptance of the ambassador by the receiving State. In any case, it was rather a matter of standardizing protocol than of codifying a rule of law, and he doubted whether the Commission could properly make a recommendation on the subject.

68. Mr. KHOMAN said that the problem was not so much one of choosing between two practices as of finding a formula which would embrace them both. Though heads of missions might have unofficial conversations with the officials of the receiving State before presenting their letters of credence, they did not officially take up their duties until they had performed that act. He thought that the Congress of Vienna in framing its Regulation had had in mind the date of official assumption of office rather than the actual time of arrival of diplomatic officials. There was no need to be too precise on the matter, and he would suggest the adoption of a general formula such as "the date on which they officially take up their respective duties". If the suggestion met with the Commission's approval, he would submit it as a formal amendment.

69. He agreed with previous speakers on the preferability of the term "heads of mission".

70. Mr. SPIROPOULOS agreed with Mr. Amado's observations and with those of Mr. El-Erian. The question of precedence was no longer the subject of bitter dispute that it once had been, and the point before the Commission was not of great importance. It was obvious, however, that there should be only one criterion. He was not in favour of revising so long-established a text as that of the Regulation of the Congress of Vienna unless there was a sound reason for doing so, but if it had become the general practice to base precedence on the date of presenting letters of credence, he would have no objection to altering the provision accordingly.

71. Mr. AMADO agreed with Mr. Spiropoulos on the inadvisability of changing long-established provisions unnecessarily. Incidentally, the date of notification of arrival referred to in the Regulation of the Congress of Vienna was the date of arrival of the diplomatic official in the capital.

72. Mr. YOKOTA doubted whether there were strong enough grounds for changing the provision. Exceptional cases, for instance where ambassadors arrived by the same airplane, could be settled between the States concerned as they arose.

73. Mr. TUNKIN wondered whether the Commission was not discussing the provision from a rather too abstract standpoint. All the members of the Commission presumably knew what was the practice in their respective countries. In the Soviet Union, the date of official notification of arrival was interpreted as the date on which the head of the mission presented his letters of credence.

74. Mr. PAL said that if the provision had worked satisfactorily hitherto, with States putting their own interpretation on it, there seemed to be no point in changing it.

75. Mr. TUNKIN replied that it was not so much a point of changing the provision as of making its exact meaning clear.

76. Mr. BARTOS remarked that about two-thirds of the sovereign States of the world followed the practice advocated in Mr. Tunkin's amendment.

77. The CHAIRMAN, speaking as a member of the Commission, said that, while the Regulation of Vienna selected the date of official notification of arrival as the criterion for establishing precedence in each category of diplomatic representative, the practice in most countries, and more particularly in Czechoslovakia, appeared to be based on the date of the official presentation of letters of credence, which was the easiest to establish. He wondered whether the Commission, taking account of the established practice, might not adopt the date of presenting letters of credence to the head of State as the main criterion, and the official notification of arrival as the secondary criterion to cover the case where two or more diplomatic representatives had presented their credentials on the same day.

The meeting rose at 6.5 p.m.

392nd MEETING

Tuesday, 7 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)*

ARTICLES 6 TO 11 *(continued)*

1. The CHAIRMAN recalled that the Commission had still to come to a decision regarding article 9, paragraph 1, of the Special Rapporteur's draft. A possible solution would be for precedence to be based on the date of presentation of letters of credence, with the date of official notification of arrival as a subsidiary criterion. The question was of no great importance, and the provision would be submitted to Governments for their comments.

2. The Chairman said that Mr. Matine-Daftary had submitted the following amendment:

"1. Heads of missions shall take precedence in their respective classes according either to the date of the official notification of their arrival or to the date of presentation of their letters of credence, according to the protocol rules in the capital concerned, that shall be applied consistently and without discrimination."

3. Mr. SANDSTRÖM, Special Rapporteur, quoted Genet[1] in support of the view that diplomatic envoys took precedence within each class according to the date on which official notification of their arrival, accompanied by a copy of their letters of credence, was sent to the ministry of foreign affairs of the receiving State. The author added, however, that, by convenient custom, receiving States draw up a list of heads of missions giving the date of presentation of their letters of credence, thereby placing the emphasis on the presentation of the original letters rather than on the transmission of copies.

4. Mr. Sandström, at all events, had preferred to reproduce the text of the Regulation of the Congress of Vienna (A/CN.4/98, para. 22), considering it pointless to change a rule which had proved convenient for nearly a century and a half.

5. Mr. EL-ERIAN agreed with the Secretary to the Commission that the paragraph dealt with a matter of protocol rather than with a rule of law (391st meeting, para. 67). That did not, however mean that the provision was unnecessary. In resolution 685 (VII) the General Assembly appeared to be concerned at the possibility of controversy due to ambiguity both in the law and in the practice concerning diplomatic intercourse and immunities, and the same attitude was stated at greater length in the explanatory memorandum submitted by the Yugoslav delegation,[2] the original sponsor of the resolution. There was, therefore, room in the draft for a provision of the kind, if it could help to remove a possible source of friction.

6. As for the actual text of the paragraph, it was essential to realize that the criterion for deciding the question of precedence was quite distinct from the criterion for determining when entitlement to diplomatic privileges and immunities began. He noted in that connexion that both the Havana Convention[3] and the Harvard Law School draft[4] included a provision fixing the time at which entitlement to diplomatic privileges and immunities began, but that neither contained any reference to a criterion for establishing precedence. The Commission had the option of reaffirming the practice based on the Regulation of the Congress of Vienna or of introducing a new system. As Mr. Bartos had pointed out (391st meeting), there were drawbacks to either system. He suggested that the Commission first settle the question of principle as to whether the matter should be dealt with in the draft at all, and then, if it decided that it should, submit the alternatives to Governments, and frame a provision in the light of their comments.

7. Mr. PAL remarked that the question of precedence among diplomatic representatives had been of importance only so long as the order in which they were placed was an indication of the standing of the States that sent

[1] Raoul Genet, *Traité de diplomatie et de droit diplomatique* (Paris, A. Pedone, 1931), vol., 1 para. 376.

[2] *Official Records of the General Assembly, Seventh Session, Annexes,* agenda item 58, document A/2144/Add.1.

[3] Convention regarding Diplomatic Officers, signed at Havana on 20 February 1928. See League of Nations, *Treaty Series,* vol. CLV, 1934-1935, No. 3581.

[4] Harvard Law School, *Research in International Law, I, Diplomatic Privileges and Immunities* (Cambridge, Mass., 1932), pp. 19-25.