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Summary record of the 392nd meeting

Topic:
Diplomatic intercourse and immunities

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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.

them. Now that precedence was determined by such fortuitous circumstances as the date of arrival, the date of presenting credentials or the like, the question was only of minor interest, and was devoid of any grave consequences.

8. The difficulties to which Mr. Bartos had referred were not merely difficulties likely to arise in the future; they were inherent in the nature of the subject, and had arisen, and been settled, in the past. Since article IV of the Regulation of the Congress of Vienna did not appear to have given rise to any serious dispute in its application, he failed to see what ground there was for departing from the rule it contained. He was, therefore, in favour of adopting paragraph 1 of the Special Rapporteur's article 9, and referring in the commentary to the practices adopted by the various countries in interpreting the provision.

9. Mr. AMADO pointed out that the provision fixed precedence as between heads of missions only, and the relative standing of States did not enter into the question.

10. In Brazil, the head of a mission was recognized as such from the time he touched Brazilian soil; he quoted Oppenheim in support of that view.[5] In the matter of precedence, on the other hand, the decisive date was that of presentation of his letters of credence. He was willing, however, to accept either method of determining precedence.

11. Sir Gerald FITZMAURICE agreed with Mr. Pal and Mr. Amado that the question was merely one of precedence as between individuals and not as between States. He also agreed with Mr. El-Erian that the provision had no bearing whatever on the question of the date from which the head of mission was regarded as discharging his functions. Presentation of the original letters of credence was regarded as largely a formality, and was undoubtedly an event subject to considerable natural delays. However long that formality might be delayed, the head of mission was nonetheless considered to be officially discharging his functions in the meantime.

12. The best practice was to base precedence on the date of official notification of arrival.

13. Mr. TUNKIN agreed with previous speakers on the relative unimportance of the point. Discussion had been prolonged mainly because of uncertainty regarding the practice in the matter of precedence. Since it was not clear whether all States accepted the criterion of the date of presentation of letters of credence, although most undoubtedly did, there was nothing for it but to include both criteria.

14. He accordingly withdrew his own amendment (391st meeting, para. 52) in favour of Mr. Matine-Daftary's which left it to States to choose between the two criteria, on the understanding that whichever they adopted must be applied without discrimination.

15. Mr. MATINE-DAFTARY said that, though originally in favour of the provision as formulated in the Regulation of the Congress of Vienna, he had been convinced by the description of State practice given at the 391st meeting by Mr. Bartos and Mr. Tunkin that the practice based on a different interpretation of the provision could not be ignored. He had therefore evolved a compromise solution whereby each State could apply whichever criterion was in accordance with its practice, provided that it applied the criterion consistently and without discrimination.

16. He had also substituted the term "heads of missions" for "diplomatic agents" to bring the paragraph into line with articles 6 and 7.

17. Mr. HSU said that, although the question was of secondary importance and merely one of protocol, it was better to have a clear rule concerning it if disputes might thereby be avoided. He had been in favour of Mr. Tunkin's amendment since it gave recognition to a tendency which it was impossible to arrest. As that amendment had been withdrawn, however, he had no objection to stating the two alternatives and leaving the choice to Governments.

18. Mr. SPIROPOULOS could not agree that the question did not form part of the law concerning diplomatic intercourse. The Regulation of the Congress of Vienna had established a rule which, in the absence of any different rule in customary international law, was binding on States. He favoured the provision as stated in the Regulation. Precedence should depend on the acts of sending States and never on the receiving State, as in that way there was less danger of abuse.

19. Mr. Matine-Daftary's proposal, nonetheless, offered an acceptable solution.

20. Mr. BARTOS declared that he could not accept Mr. Amado's interpretation of the rule regarding the official assumption of their functions by heads of missions, although it might be accepted in Brazil. An ambassador was admittedly *presumed* to be such from the moment he arrived in the receiving State, but he was not officially recognized until he had presented his letters of credence.

21. The question of precedence was not so nugatory as some speakers inclined to believe. It sometimes had important implications. If two envoys sought an audience at the same time, the senior in precedence would be received first, and in times of crisis that might be of considerable importance. Order of precedence also determined the appointment of the doyen of the diplomatic corps, an officer whose functions were not always purely formal.

22. Although belonging to the group which regarded the time of presenting letters of credence as the decisive date, he was prepared to accept Mr. Matine-Daftary's proposal, not merely as a convenient way out of the problem, but as an accurate statement of the existing position.

23. Faris Bey EL-KHOURI declared that the time of presenting letters of credence was the decisive date for the recognition of diplomatic envoys. It was a date duly recorded by all ministries of foreign affairs, which kept lists of envoys classified on that basis.

24. In the matter of precedence, however, some States applied one criterion and some another, and diplomatic representatives had to accept the protocol of the State to which they were accredited. Mr. Matine-Daftary's proposal included both criteria, and was an accurate codification of current practice, leaving no door open to controversy.

25. Mr. MATINE-DAFTARY, replying to Mr. VERDROSS, agreed to change the words "in the capital" in his amendment to "in the country".

[5] L. Oppenheim, *International Law—A Treatise*, Vol. I, *Peace*, 8th ed., ed. H. Lauterpacht (New York, Longmans, 1955), para. 376.

26. The CHAIRMAN suggested that other points of wording could be referred to the Drafting Committee, and on that understanding put to the vote paragraph 1 as proposed by Mr. Matine-Daftary (para. 2 above).

Paragraph 1 was adopted by 10 votes to 1 with 8 abstentions.

27. Mr. AMADO, explaining his abstention, said that the quality of head of mission was regarded as dating not from the time of his official reception but from the time his letters of credence were handed to him by the State that sent him.

28. Mr. SPIROPOULOS said that, although in favour of the provision contained in the Regulation of the Congress of Vienna, he had abstained from voting against the proposal because it offered a convenient way out of the problem.

29. The CHAIRMAN invited the Commission to consider paragraph 2 of article 9.

30. Mr. YOKOTA said that, while having no objection to the principle enunciated in the paragraph, he was in favour of deleting the words "through some circumstance or other" which appeared to have no legal implication or meaning.

31. Mr. SPIROPOULOS agreed with Mr. Yokota that the phrase was devoid of meaning. He wondered what changes the Special Rapporteur had in mind. If, for instance, the credentials of a minister were changed because his post had been raised to ambassador status, "the order thus established" would be affected, since he would be accredited as the last ambassador to have arrived.

32. Mr. SANDSTRÖM, Special Rapporteur, said that he had had in mind such events as the death of the head of State or a change in the form of government.

33. Mr. TUNKIN said there was justification for the provision contained in paragraph 2. It would, however, require redrafting to cover the case mentioned by Mr. Spiropoulos, which did, of course, affect the order of precedence. He proposed that the Commission adopt the paragraph as it stood, subject to redrafting on the lines he had indicated.

34. The CHAIRMAN put paragraph 2 of article 9 to the vote on that understanding.

Paragraph 2 was adopted by 18 votes to none with 2 abstentions.

35. The CHAIRMAN invited the Commission to consider paragraph 3 of article 9.

36. Mr. HSU wondered whether it was necessary to take over the provision in question from the Regulation of the Congress of Vienna.

37. Mr. SANDSTRÖM, Special Rapporteur, explained that, at the time of the adoption of the Regulation, in many Roman Catholic countries the representative of the Vatican was automatically the doyen of the diplomatic corps. The provision had been inserted in the Regulation because there had been some discussion on the subject.

38. Mr. VERDROSS said that the paragraph dealt with an established practice. The representative of the Vatican still had precedence over other diplomatic representatives in many countries where he had enjoyed that right prior to the Congress of Vienna.

39. Faris Bey EL-KHOURI did not see the point of including a provision from a body of law applying a long time ago in a codification of present-day international law and practice, which might ultimately be adopted as an international convention governing diplomatic intercourse throughout the world.

40. Mr. AGO pointed out that the provision merely sanctioned a practice current in his own country and in almost all Roman Catholic countries. The provision gave rise to no difficulties. Its abolition, on the other hand, would give rise to difficulties.

41. Mr. SPIROPOULOS remarked that principally Christian States had been represented at the Congress of Vienna. A very large proportion of the countries which would be affected by the codification, however, were not Christian States and might wish to have the provision omitted. He himself was not opposed to its retention, but thought that it might be expressed a little more clearly, so that all would realize that only order of precedence was involved.

42. Mr. BARTOS said that, although the provision might appear somewhat naïve, it did have important implications. It had, in fact, given rise to difficulties when Catholic Croatia and Slovenia were merged with Greek Orthodox Serbia and Montenegro in the Kingdom of the Serbs, Croats and Slovenes. In Serbia the Papal nuncio had had no special rank. In the new kingdom, however, where Roman Catholicism and Greek Orthodoxy were on an equal footing, the nuncio had been accorded precedence, presumably because diplomatic relations with the Vatican could not have been maintained on any other basis. Though he was opposed to the provision in principle, he recognized that it was in accordance with current practice and would not therefore oppose it.

43. Sir Gerald FITZMAURICE observed that far more than a question of practice was involved. By accepting the custom in those countries where the representative of the Vatican had precedence over all other diplomatic representatives, other States had accepted it as a rule of law.

44. He agreed with Mr. Spiropoulos that it might be better drafted. Perhaps the words "in existing practices respecting the precedence of representatives of the Pope" could be substituted for the words "respecting the representatives of the Pope". Another solution would be to combine the provision with paragraph 1 of the article, prefacing the existing text of paragraph 1 by the words "Subject to existing practices respecting the precedence of representatives of the Pope,".

45. Mr. HSU said he was not opposed to the purpose of paragraph 3, but agreed with Sir Gerald Fitzmaurice that the Commission should take the opportunity offered by the drafting of a new code or convention to make its meaning clear to the present-day reader.

46. Mr. MATINE-DAFTARY said that he too had no objection to States which so desired giving precedence to the representatives of the Pope. The provision had been drafted, however, with the European States primarily in mind. Now that international law had to be world-wide in scope, its retention among the articles themselves might not appear altogether appropriate. Instead, the Commission might say in the commentary that Roman Catholic countries could, if they so wished, continue to give precedence to the representatives of the Pope, although Moslem countries had no corresponding

custom. No distinction was made in those countries between Moslem and Christian States.

47. Mr. KHOMAN said that the clause reflected a special situation which had been of some significance at a particular stage of history. The custom had not become any more wide-spread, however, and the Commission should therefore at least make clear exactly what it entailed. It might, for example, add at the end of the text the words "in countries which give such representatives precedence or a special rank".

48. Mr. SPIROPOULOS pointed out that the text of paragraph 3 could be interpreted in two ways: as meaning either that the precedence given the representatives of the Pope in each country would necessarily remain as in the past, or that all States would be free to decide what precedence to give such representatives. The Commission must choose between those two interpretations. If it decided in favour of the first, the further question would arise what rules would govern a newly created State.

49. Mr. GARCIA AMADOR pointed out that no corresponding clause was to be found in the Harvard Law School draft or the Havana Convention. In the latter case the omission was particularly significant, since the vast majority of the States that had signed the Havana Convention were Catholic States.

50. Even without paragraph 3, the Commission's draft would not, in his view, prevent States from giving precedence to the representative of the Pope, any more than the Havana Convention had done. On the other hand, now that the provision had been included in the Special Rapporteur's original draft, its omission might be misinterpreted as meaning that the Commission was opposed to the practice. If it deleted the provision, therefore, the Commission should explain in the commentary that it was not opposed to the practice, and that States were free to adopt it if they wished. He would, however, not oppose retention of the clause, possibly amended so as to make its meaning clear.

51. Mr. AGO said that the only purpose of the clause was to give a State which so desired the right to give the Papal nuncio precedence over all other heads of missions. It was not true that the practice was only a vestige of past times and that conditions had changed so much in that respect since the Congress of Vienna. Some of the States which had taken the most active part in that Congress had not been Catholic States but Orthodox or Protestant States. That had not prevented them from agreeing to special arrangements being made for the representatives of the Pope. Nowadays it could be said that the proportion of non-Catholic to Catholic Powers was not substantially different from that at the time of the Congress of Vienna; against the non-Catholic countries of Asia and the Far East must be set all the Catholic countries of Latin America, a great majority of which had adopted the practice in question.

52. He stressed that there was no question of obliging States to give precedence to Papal nuncios: it was simply a question of allowing them to do so if they so desired. He agreed with Sir Gerald Fitzmaurice that the text could be amended so as to make that clear, and felt that could be left to the Drafting Committee.

53. Mr. PAL drew Mr. García Amador's attention to the fact that neither the Havana Convention nor the Harvard Law School draft dealt with the question of precedence at all.

54. As the Commission's draft was to deal with precedence, he agreed that it could not pass over in silence the question of the special rank conferred on Papal nuncios. He suggested that the provision in question be worded as follows:

> "The present regulations shall not affect any existing practice regarding the representatives of the Pope."

55. Mr. FRANÇOIS questioned whether the Regulation of the Congress of Vienna had really given States complete freedom to grant Papal nuncios precedence or not, as they desired. In his view, its intention had been solely to enable those States which had previously given Papal nuncios precedence to continue to do so. A limitation on their freedom seemed reasonable, for it was not only relations between the State concerned and the Holy See that were involved; the rank of the representatives of other States was necessarily affected also.

56. Mr. VERDROSS drew Mr. François's attention to the fact that two treaties, that between Italy and the Holy See in 1929 and that between Germany and the Holy See in 1933, had given the Papal nuncios to those two countries a precedence which they had not, and could not have, enjoyed at the time of the Congress of Vienna, seeing that Italy and Germany had not existed as independent States in 1815.

57. Mr. SANDSTRÖM, Special Rapporteur, agreed that the meaning of the provision could be made clearer if its wording were changed. He had preferred to keep the wording of the Regulation of the Congress of Vienna unchanged, and the discussions that had taken place had shown him the danger of tampering with a text of long standing which recognized an established tradition and had given rise to no difficulties.

58. He saw no need to replace the words "respecting the representatives" by "respecting the precedence of the representatives". It was clear from the context what paragraph 3 referred to. The whole of article 9 was devoted to the question of the precedence of heads of missions.

59. Mr. SPIROPOULOS said that, unlike Mr. François, he inclined to the belief that the provision in the Regulation of the Congress of Vienna meant that a general practice had arisen that Papal nuncios should have precedence over all other heads of missions, and that that practice should remain in force, notwithstanding the other provisions of the Regulation.

60. While he agreed with the Special Rapporteur that there was a danger in changing texts which had long been in force, the Commission must be clear in its mind as to whether it was interpreting the text in the manner that Mr. Pal and Mr. François had done or in the manner that Mr. Ago had done.

61. Mr. AGO felt that the correctness of his interpretation was demonstrated not only by the examples quoted by Mr. Verdross, but also by the fact that none of the Latin-American States, which nearly all gave precedence to Papal nuncios, had existed in 1815. Moreover, the freedom afforded by the Regulation of the Congress of Vienna did not work in one direction only; a State which had previously given precedence to Papal nuncios could stop doing so, if it was not bound by a special agreement with the Holy See. If the contrary interpretation was accepted, that would be impossible, as it would likewise be impossible for new States to adopt the practice giving precedence to the nuncios.

62. Since there were apparently some doubts on the matter, it would perhaps be wise to take the opportunity of clarifying the clause.

63. Mr. BARTOS wondered whether, in the event of Tibet's becoming independent, the Buddhist States would have the right to give the Dalai Lama's representative precedence over other heads of missions.

64. The clause in the Regulation of the Congress of Vienna relating to the representatives of the Pope was a survival from the past. He would not oppose its retention, but urged that its scope be clearly defined.

65. Mr. SPIROPOULOS pointed out that the Dalai Lama was the temporal head of a State as well as the spiritual head of a religious community. The question under discussion could arise only for the representatives of the Pope.

66. Mr. BARTOS recognized the force of Mr. Spiropoulos's observation, but pointed out that at the time of the Congress of Vienna the Pope also had "his territorial States" (Romagna).

67. The CHAIRMAN agreed that there was a clear distinction between Mr. Ago's and Mr. Pal's interpretations of article 9, paragraph 3. He suggested, however, that the Commission might first decide whether it wished to deal with the matter in the articles themselves or in the commentary. Once it had done that, it could decide between the two interpretations, vote on the text submitted by the Special Rapporteur and then leave it to the Drafting Committee to make any necessary changes.

It was agreed, by 9 votes to 5 with 4 abstentions, to insert a provision relating to the representatives of the Pope in the draft articles, the drafting to be left to the Drafting Committee.

68. Mr. MATINE-DAFTARY pointed out that, as some members of the Commission believed that the Regulation of the Congress of Vienna gave States complete freedom in that respect, the draft that was to be submitted by the Drafting Committee should not make it binding on the Catholic States to continue to give precedence to the representatives of the Pope.

69. Faris Bey EL-KHOURI said he had voted in favour of retaining the provision in the articles on the understanding that the necessary explanations would be inserted in the commentary, so that the Commission's draft would be clear and self-explanatory, as the text they were discussing was not.

70. Mr. SPIROPOULOS said he had voted in favour of including among the Commission's articles, not a provision designed merely to give a retrospective interpretation of the Vienna Regulation, but a provision which would give satisfaction in the future.

71. The CHAIRMAN invited the Commission to consider paragraph 4 of article 9, and recalled Mr. El-Erian's proposal to delete that paragraph (391st meeting, para. 54).

72. Mr. HSU said he realised that the position had changed since 1815, but that, if the Commission attached so much importance to the principle of the equality of States, it was surely illogical for it to omit a provision which was clearly designed to safeguard that principle.

73. The CHAIRMAN, speaking as a member of the Commission, agreed with Mr. El-Erian that the provision in question was an anachronism. It had been only natural to deal with it at the Congress of Vienna, at a time when the principle involved had still been a matter of controversy. Today it was so generally accepted that there would be no disadvantage in not stating it.

74. Mr. SANDSTRÖM, Special Rapporteur, agreed, and accordingly withdrew article 9, paragraph 4, of his draft.

75. The CHAIRMAN invited the Commission to vote on article 10.

Article 10 was adopted unanimously, subject to any changes made by the Drafting Committee.

76. The CHAIRMAN invited the Commission to consider article 11.

77. Mr. LIANG (Secretary to the Commission) suggested that the question dealt with in article 11 related rather to the law of treaties.

78. Mr. SPIROPOULOS, Mr. FRANÇOIS and Mr. TUNKIN agreed.

79. Mr. SANDSTRÖM, Special Rapporteur, accordingly withdrew article 11, although he thought it could be argued equally well that it concerned a question of etiquette.

80. Mr. BARTOS proposed the insertion of a new article 10(*a*), worded as follows:

"1. If the post of head of the diplomatic mission is vacant or if the head of the mission is absent or unable to perform his duties, the affairs of the mission shall be handled by a *chargé d'affaires ad interim.*

"2. The *chargé d'affaires ad interim* is the member of the diplomatic mission appointed for that purpose by the sending State. In the absence of notification to the contrary, the member of the mission placed immediately after the head of the mission on the mission's diplomatic list shall be presumed to be appointed."

81. The Regulation of the Congress of Vienna did not mention interim *chargés d'affaires.* In practice, they were not always selected in the same way, and their selection could sometimes give rise to difficulties. In Europe, it was always the senior member of the mission (in rank) who was chosen as *chargé d'affaires,* except in the countries which followed the French system, for example Yugoslavia, where the *chargé d'affaires ad interim* was always a general diplomatic collaborator of the head of the mission. The post could not be held by an official with special duties; thus an economic counsellor would not be appointed *chargé d'affaires,* but the next senior official, who might be a first secretary. It could also happen that both the head of the mission and the *chargé d'affaires* were absent or unable to perform their duties.

82. Leaving those special cases aside, he had simply wished to draw the Commission's attention to the matter, in order that it might decide whether to give official recognition to a category about whose existence there could be no doubt.

83. Mr. SANDSTRÖM, Special Rapporteur, said he had not felt it necessary to mention interim *chargés d'affaires* in his draft, as he had wished to avoid excessive detail. It was true that the 1928 Havana Convention dealt with the question in article 11, which was very similar to the text proposed by Mr. Bartos. He would have no objection if the Commission decided to include a provision along those lines.

84. The CHAIRMAN suggested that the Commission first decide in principle whether to include an article on interim *chargés d'affaires.*

It was agreed to include such an article by 16 votes to 1, with 2 abstentions.

85. Mr. BARTOS proposed that the exact wording of the article be left to the Drafting Committee.

86. The CHAIRMAN agreed. He pointed out that in the practice of States the office of *chargé des affaires* was also not uncommon. By contrast with the *chargé d'affaires ad interim*—a diplomatic agent exercising general functions—the *chargé des affaires* of a diplomatic mission, who was appointed when there were no diplomatic agents on the spot, exercised strictly limited functions only.

87. Mr. SPIROPOULOS wondered whether it was really necessary for a *chargé d'affaires* to be appointed by the sending State in cases where the head of mission was absent or temporarily incapacitated.

88. Mr. BARTOS pointed out that it was usually the head of the mission who informed the receiving State's ministry of foreign affairs of his absence or inability to perform his functions, and at the same time designated a member of the embassy staff to act on his behalf. The second sentence of paragraph 2 of his proposal referred particularly to the case where the death of the head of the mission prevented him from doing so.

Article 10 (a) (para. 80 above) was adopted in principle, the exact wording being left to the Drafting Committee.

QUESTION OF INCLUDING ADDITIONAL ARTICLES IN SECTION I

89. Mr. LIANG (Secretary to the Commission) suggested that, in view of the fact that the title of the draft referred to diplomatic intercourse as well as diplomatic immunities, the Commission ought at some stage to consider whether it should not insert, possibly after article 11, an article along the lines of that contained in the Havana Convention relating to the beginning and end of diplomatic missions.

90. Mr. SANDSTRÖM, Special Rapporteur, said he had wondered whether to take up in his draft the question of extraordinary missions, which was referred to in the Vienna Regulation and was also dealt with in the 1928 Havana Convention, but eventually he had come to the view that it was sufficient to deal with permanent missions.

91. With regard to Mr. Liang's point, he felt the most important thing was to specify when diplomatic immunities should begin and end, and that question was dealt with in article 25 of his draft. He had not thought it necessary to refer to the beginning and end of a diplomatic mission.

92. Mr. SPIROPOULOS pointed out that the contents of the Commission's draft would to a great extent be determined by its form. He was becoming more and more convinced that the Commission's drafts should not be draft conventions but only re-statements of the law. That was particularly so in the present case, where the Commission was not making any important innovations, and it might be desirable for it to enter into rather more detail than would be appropriate in a convention. The questions referred to by the Special Rapporteur and the Secretary were both real problems which should be dealt with in the Commission's draft, but which could be dealt with more easily if it were in the nature of a simple restatement.

The meeting rose at 1.15 p.m.

393rd MEETING

Wednesday, 8 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)*

QUESTION OF INCLUDING ADDITIONAL ARTICLES IN SECTION I *(continued)*

1. The CHAIRMAN invited the Commission to consider the suggestions made by the Special Rapporteur and the Secretary at the close of the previous meeting that additional articles be inserted in section I of the draft, dealing with extraordinary missions and the date of commencement and termination of diplomatic functions. During the general debate many members of the Commission had expressed the view that it should deal with extraordinary missions, which nowadays formed a large and fruitful part of diplomatic intercourse.

2. Speaking as a member of the Commission, he agreed with that view. He also felt it should not prove too difficult a matter to draft a provision relating to the date of commencement and termination of diplomatic functions, as suggested by the Secretary.

3. Mr. TUNKIN doubted whether it would be so easy to draft such a provision, and also doubted whether it was necessary. As the Special Rapporteur had pointed out at the 392nd meeting, article 25 of his draft already settled the only matter which was of any practical importance in that respect, namely, the duration of privileges and immunities. On the other hand, if the majority of the Commission was in favour of including an article along the lines suggested by the Secretary, he would have no objection.

4. With regard to the other suggestion, there was no denying the fact that extraordinary missions presented a vast and difficult problem. For that very reason he felt that the Commission should for the present confine itself to diplomatic intercourse and immunities in the strict sense of the word. It would be time enough for it to take up the question of extraordinary missions once it had seen the fate of the draft under discussion.

5. Mr. YOKOTA submitted that, in practice, it was important to know the date on which a diplomatic agent began or ceased to exercise his functions, as distinct from the date on which he began or ceased to enjoy diplomatic privileges and immunities. The two dates were not necessarily the same. He was not sure what the general practice was, but the question should at least be clarified and rules laid down.

6. The CHAIRMAN said he would accordingly put to the vote the question whether to include an article on the date of commencement and termination of diplomatic missions.