Document:-
A/CN.4/SR.396

Summary record of the 396th meeting

Topic:
Diplomatic intercourse and immunities

Extract from the Yearbook of the International Law Commission:-
1957 , **vol. I**

Downloaded from the web site of the International Law Commission
(http://www.un.org/law/ilc/index.htm)

Copyright © United Nations

State under international law must be the exercise of the right of occupation.

83. The CHAIRMAN observed that the only text on the subject before the Commission was that of Mr. Verdross (para. 67 above), to which various drafting changes had been suggested.

84. He proposed that the Commission defer its vote on the question until the Drafting Committee had prepared a text in the light of the discussion.

It was so agreed.

The meeting rose at 12.45 p.m.

396th MEETING

Monday, 13 May 1957, at 3 p.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 12 *(continued)*

1. The CHAIRMAN, inviting the Commission to consider paragraph 2 of article 12, pointed out that Sir Gerald Fitzmaurice had submitted two amendments relating to it. The first was to make the present paragraphs 2 and 3 into a separate article 12(*a*), and the second to substitute for the opening words of paragraph 2 "The receiving State shall take . . ." the words "The receiving State is under a special duty to take . . . ".

2. He suggested that the first amendment be referred direct to the Drafting Committee.

It was so agreed.

3. Sir Gerald FITZMAURICE explained that his second amendment was largely a drafting change. Since it was already an established principle of international law that States were always under a duty to protect the premises of foreign nationals, he felt that the paragraph should make clear that the State's duty to protect the premises of foreign missions came in a special category.

4. Mr. SANDSTRÖM, Special Rapporteur, said that he saw the point of Sir Gerald's amendment. However, while a reference to the special nature of the duty involved would be perfectly comprehensible in a paragraph following one enunciating a general duty, he thought it might cause some misunderstanding if it followed a paragraph enunciating another duty of equal importance. The problem was one which might well be settled by the Drafting Committee.

5. Mr. SPIROPOULOS recalled that the Special Commission of Jurists appointed by the Council of the League of Nations after the Janina-Corfu affair had stated that "the recognised public character of a foreigner . . . entail(s) upon the State a corresponding duty of special vigilance on his behalf".[1] There was some analogy between that case and the matter raised by Sir Gerald Fitzmaurice.

6. Mr. LIANG (Secretary to the Commission) suggested that the question was more than a mere matter of drafting. In many countries the penalties for inflicting an injury on a diplomat were more severe than in the case of injury to a private citizen. It would be preferable for the Commission to take a decision on the question instead of simply referring it to the Drafting Committee.

7. Mr. SCELLE thought it would be sufficient to refer the amendment to the Drafting Committee. Nothing would be gained by adding a reference to a "special" duty, since the Commission was not for the moment concerned with the general duty of States to protect the property of aliens.

8. Mr. GARCIA AMADOR observed that the amendment had considerable bearing on the subject of international responsibility, for which he was Special Rapporteur. Some of the drafts on the subject prepared for the Conference for the Codification of International Law held at The Hague in 1930 had referred to the rule that the State is bound to exercise "due diligence" in preventing injuries to aliens, and Basis for Discussion No. 10 drawn up by the Preparatory Committee of the Conference stated that "The fact that a foreigner is invested with a recognized public status imposes on the State a special duty of vigilance".[2]

9. Although the present amendment related to the protection of the premises of missions from invasion or damage and not to the protection of diplomatic agents from injury, the same principle, of a special duty to protect, was involved. The amendment proposed by Sir Gerald Fitzmaurice was perfectly in place in an article dealing with a subject which might involve the responsibility of States. It would, moreover, strengthen the claim of the aggrieved State to reparation in the event of damage to the premises of its mission.

10. Mr. AMADO said that he attached great importance to the principle enunciated in the last part of the paragraph, that the receiving State must prevent any detraction from the dignity of a mission. He would, therefore, support Sir Gerald Fitzmaurice's amendment, which emphasized the special nature of the State's duty in that connexion.

11. Mr. EL-ERIAN agreed with the Secretary that a principle was involved, and not a mere matter of drafting. The question was whether in the case of missions it was sufficient for the State to exercise due diligence, or whether more elaborate precautions were required. In the answer given by the Commission of Jurists appointed by the Council of the League of Nations after the Janina-Corfu affair in 1923, it had been pointed out that in the case of foreigners of recognized public character, the State was under a special obligation to protect them. He supported the amendment, which was in harmony with the position taken by the Commission in the earlier articles of the draft.

12. The CHAIRMAN put Sir Gerald Fitzmaurice's second amendment (para. 1 above) to the vote.

The amendment was adopted by 16 votes to 1 with 2 abstentions.

Paragraph 2, as amended, was adopted unanimously.

13. The CHAIRMAN, inviting the Commission to consider paragraph 3 of article 12, suggested that it would

[1] League of Nations, *Official Journal*, 5th year No. 4 (April 1924), p. 524.

[2] League of Nations publication, *V.Legal, 1929.V.3* (document C.75.M.69.1929.V), p. 67.

be advisable to discuss, at the same time, Sir Gerald Fitzmaurice's proposal to add to article 13 a new paragraph 3, reproducing the text of article 4, paragraph 2, of the Harvard Law School draft,[3] namely:

> "A receiving State shall exempt from any form of attachment or execution the interest of a sending State in movable or immovable property owned, leased or possessed by the sending State for the purposes of its mission".

14. Replying to Mr. PAL, he explained that Sir Gerald's amendment to article 13 dealt with a similar subject, and if it was not considered at the same time as article 12, paragraph 3, there was a danger that its fate might be prejudged by the Commission's decision on article 12, paragraph 3.

15. Sir Gerald FITZMAURICE said that he had submitted his amendment largely in order to discover why what he considered a useful point had not been included in the Special Rapporteur's draft. The question dealt with in article 4, paragraph 2, of the Harvard draft was not quite the same as that covered by paragraph 3 of article 12, since an "interest" in property was rather less than full ownership. The point could, however, be covered by simply adding the words "or any interest therein" after the words "the premises and their furnishings" in paragraph 3. If the Commission did not consider the matter important enough to warrant amending the draft, he would not press it.

16. Mr. SANDSTRÖM, Special Rapporteur, felt that the idea of interest was covered by the wording of article 12. Were Sir Gerald Fitzmaurice's amendment adopted and inserted before article 13, it might give the impression that the interests of the sending State were not immune from seizure for non-payment of taxes. To avoid such a misunderstanding, the provision might be inserted elsewhere.

17. Mr. AMADO noted that the Harvard draft referred to property owned, leased, or possessed by the sending State "for the purposes of its mission". That was an important qualification which he thought should be made in the Commission's draft as well.

18. Mr. BARTOS recalled that a civil action involving property purchased by the Yugoslav Government to house members of its mission in Italy had raised the question whether the quarters of members of missions were exempt from search, requisition, attachment or execution in the same way as the official premises of the mission. The dispute having been settled by friendly negotiations between the two Governments, the question was never decided by the court to which the suit had been referred. The problem of defining what premises were essential to the mission for the fulfilment of its purpose might be considered by the Drafting Committee when it discussed the final wording of the article.

19. Mr. SCELLE remarked that, to judge from the French translation of paragraph 2 of article 4 of the Harvard draft, the text which Sir Gerald Fitzmaurice proposed for insertion in article 13 was inadequate, since it merely stated that the receiving State *"déclarera insaisissables"* the property of the mission. It was essential to refer to "search, requisition, attachment or execution" in full.

20. Mr. AGO agreed with Mr. Scelle. The expression *"déclarera insaisissables"* was inadequate because the duties of the receiving State in the matter were essentially duties of abstention—obligations assumed by the State not to perform certain specific acts—whereas the French text seemed to imply that the State had a positive obligation to issue a statement with respect to the property of the mission, which was not what was actually needed.

21. The point made by Mr. Bartos was a good one. However, the arrangement of the Harvard draft was different from that of the Special Rapporteur's draft. In the former, the premises of the mission and those occupied by members of the mission were covered by the same article, whereas in the latter they were dealt with separately in articles 12 and 18. Therefore, it would be better to deal with that point when article 18 was examined.

22. Referring to Mr. Amado's proposal, he pointed out that the Commission could not very well abruptly introduce the qualification "required for the purposes of the mission" in paragraph 3 of article 12. It was essential to refer to exactly the same premises throughout the article, and to use the same expression in every paragraph of that article.

23. Mr. SANDSTRÖM, Special Rapporteur, observed that the original text of article 4, paragraph 2, of the Harvard draft appeared to cover all the measures mentioned by Mr. Scelle.

24. By "premises of the mission" in his own article 12, he understood only the official premises and not those used for dwelling purposes, even if owned or leased by the sending State.

25. Mr. AMADO said that he did not wish to press his proposal.

26. Sir Gerald FITZMAURICE said that, after hearing the discussion to which his amendment had given rise, he wished to withdraw it.

27. The CHAIRMAN put paragraph 3 of article 12 (A/CN.4/91) to the vote.

Paragraph 3 was adopted by 18 votes to none with 1 abstention.

28. The CHAIRMAN invited the Commission to consider Mr. François's amendment to add the following sentence as paragraph 4 of the article:

"No process may be served at the premises of the mission".

29. Mr. FRANÇOIS said he had submitted his amendment because he thought it would be useful to include a provision dealing with a subject that had given rise, and was still giving rise, to difficulties in various countries. Sir Cecil Hurst, in his course of lectures on diplomatic immunities,[4] quoted various cases in which courts and authorities in Prussia (as early as 1723), France (1834) and the United Kingdom had condemned the serving of writs at the premises of diplomatic missions as an act contrary to international law. There appeared, in fact, to be almost unanimous agreement on the point.

30. Mr. MATINE-DAFTARY, although not opposed to the principle of Mr. François's amendment, wondered

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

[4] *International Law: The Collected Papers of Sir Cecil Hurst* (London, Stevens and Sons Limited, 1950), part four.

whether the idea was not already covered by the word "execution" in article 12, paragraph 3.

31. Mr. SANDSTRÖM, Special Rapporteur, suggested that the point was covered by paragraph 1 of article 12 rather than by paragraph 3. A specific reference could however be made to the point in the article, if Mr. François wished.

32. Mr. BARTOS pointed out that the civil codes of some countries contained provisions governing the serving of writs on missions and heads of missions, despite the fact that any such act was contrary to international law. He supported Mr. François's amendment, and did not consider that the point was covered by article 12, paragraph 3.

33. Mr. AMADO also found the amendment acceptable.

34. Mr. TUNKIN agreed with the Special Rapporteur. Though no harm would be done by adding the provision to article 12, he felt that the point was already covered by the positive rule stated in the first paragraph of the article, since a writ could not be served without entering the premises of the mission. One objection to mentioning such a specific case in the article was that it might leave some doubt as to whether other specific cases were also covered.

35. Mr. FRANÇOIS said he could not agree with Mr. Matine-Daftary that his point was already covered by paragraph 3. The case of a writ served on a national of the receiving State living in the premises of the mission was not covered by the provisions regarding execution.

36. Nor could he agree with Mr. Tunkin that the prohibition on entry without consent in paragraph 1 covered his point. If the article were left as it stood, it would not be clear whether it was permitted to serve writs without crossing the threshold of the mission. The fact that the question had given rise to difficulties in practice, and had been the subject of court judgements in a number of countries, was, he thought, adequate justification for mentioning it specifically in the article. He would not, however, press for it to be mentioned in the draft itself, and would be satisfied with a reference in the commentary.

37. Mr. SCELLE, in support of Mr. François's amendment, cited a decision[5] by the Administrative Tribunal of the International Labour Office (ILO) that a summons served on a UNESCO staff member by a United States court ought not to have been served on him at the headquarters of that Organization.

38. It would be desirable to include in the draft a provision to the effect that any summons served on a member of the mission staff, or on anyone living under the same roof as the head of the mission, should be sent to the head of the mission in order that he might decide whether or not to pass it on to the person concerned. In that way his prerogatives would be left intact.

39. Mr. SANDSTRÖM, Special Rapporteur, said that the laws of many countries laid down the way in which the notice of a summons was to be communicated to diplomatic missions. He had decided to omit that question from his draft, but he had not thought of the case where a summons was put in the post outside the mission's premises. He was, on balance, in favour of Mr. François's proposal.

[5] International Labour Office, *Official Bulletin*, vol. XXXVII, No. 7, 31 December 1954, p. 285.

40. Mr. SPIROPOULOS said that, in his view, paragraph 1 of the Special Rapporteur's text did not cover the case in point, and supported Mr. François's amendment, which was in harmony with paragraph 3.

41. Mr. PAL felt that the proposed amendment was either superfluous, having been covered by the provisions already adopted, or out of place in article 12, not being related to the principle of inviolability. If the object of the amendment was to prevent violation of the premises or of the dignity of the mission, the mischief was already covered by paragraphs 1 and 2 of the article. There were, indeed, many different ways of serving a process provided for in the various national systems. If the process could not be served without entering the diplomatic premises, paragraph 1 was sufficient; if it could be served without entering the premises, the principle of inviolability was only involved, perhaps to the extent that the dignity of the mission was affected, and paragraph 2 should suffice. If the object was to invalidate the service, the amendment would be altogether out of place in the draft.

42. Mr. MATINE-DAFTARY said that, although the purpose of the amendment was clear, it was still not clear what would happen in the event of its being necessary, for example, to serve a summons on someone who was staying with the ambassador but did not enjoy diplomatic privileges.

43. Mr. FRANÇOIS said that the answer to Mr. Pal and Mr. Matine-Daftary was the same, namely, that the purpose of his amendment was to make it unlawful to serve a process at the door of the mission. It was therefore a special application of the principle laid down in the Special Rapporteur's paragraph 1, since, even though the premises were not actually entered, the dignity attaching to the mission was at stake.

44. Mr. SCELLE said that, in his view, Mr. François's amendment was useful for two reasons: it ensured the inviolability of diplomatic premises and it avoided the risk of incidents.

45. Mr. PADILLA NERVO said he could accept Mr. François's amendment. That did not mean that there were no cases where diplomatic officials could not be legally summoned, as, for example, when the official concerned voluntarily waived his immunity. Even in such cases the process should not be served directly, but normally through the ministry of foreign affairs. What the Commission was concerned with preventing was the serving of writs on diplomatic premises by an act of authority.

46. Sir Gerald FITZMAURICE said he also supported Mr. François's amendment, the aim of which was to prevent an "act of authority" from being performed on diplomatic premises. The inviolability of the premises would not *per se* prevent that, since the process-server might enter quite normally and peaceably.

47. With regard to the English text of the amendment, he felt that the words "No process may be served" were too wide in scope, since they would also prevent the serving of a process through the post, which was not, he thought, Mr. François's aim. He suggested that they be replaced by "No personal service of process may be carried out".

48. The CHAIRMAN put to the vote Mr. François's amendment (para. 28 above), subject to a decision by the Drafting Committee as to whether it should be placed in article 12 or in the commentary and as to the wording of the English text.

The amendment was adopted by 17 votes to none with 4 abstentions.

49. Mr. FRANÇOIS said that on a number of occasions it had been necessary for the receiving State to expropriate all or part of a foreign diplomatic mission's premises, in order, for example, to widen a road, but the head of the mission had resisted, invoking the principle of extra-territoriality. The purpose of extra-territoriality, however, was merely to enable the staff of a diplomatic mission to do their work without interference from the nationals or the authorities of the receiving State. In his view, it could not be invoked in order to resist a claim for expropriation which was in the genuine public interest of the receiving State. He accordingly proposed the insertion in article 12 of a further additional paragraph, reading as follows:

> "The inviolability referred to in paragraph 1 above shall not prevent expropriation in the public interest by the receiving State."

It went without saying that the receiving State must pay fair compensation for any property expropriated.

50. Mr. YOKOTA said that the amendment referred to what were extremely rare cases, which could well be left out of account. Moreover, it necessarily raised the question of compensation for property expropriated in the public interest, on which there was no general agreement. In his view, it would be difficult to lay down a rule regarding compensation without studying the whole question; and if the Commission did not mention it at all, disputes would be bound to occur. He therefore felt it would be wiser to omit the provision altogether. But if the majority of the Commission was in favour of inserting it, it was absolutely necessary that the words "with fair compensation" should be added.

51. Mr. KHOMAN said that the Commission, which had refused to mention exceptions to the principle of inviolability in the event of a grave and imminent danger to human life or the security of the receiving State, was now being asked to mention exceptions which were simply "in the public interest". In his experience, the cases referred to by Mr. François were always settled by negotiation between the two States concerned, and he could not agree to giving the receiving State the right to expropriate property belonging to a foreign diplomatic mission.

52. Mr. EDMONDS said he, too, was not in favour of the proposed amendment. In particular, the reference to expropriation was inappropriate. What Mr. François surely had in mind was the right of eminent domain, which entailed the compulsory transfer of property to the public authorities, but for a specified purpose and subject to fair compensation. Even if the text of the amendment were modified in order to make that clear, however, he would be obliged to vote against it, since in those cases where the right of eminent domain had been claimed in order to oblige a foreign mission to transfer mission property to the local authorities, the matter had usually been settled by negotiation between the two States concerned, and not by ordinary legal processes.

53. Mr. EL-ERIAN expressed himself in favour of the amendment, not only for the practical reasons instanced by Mr. François but also because when a foreign diplomatic mission purchased premises for diplomatic use it only acquired private property rights, which were subject to the right of *imperium* or eminent domain, which rested with the State in whose territory the premises were located.

54. It had been suggested that the receiving State's right to expropriate mission premises in the public interest was incompatible with the principle of inviolability, but in his view the question of inviolability did not arise in that connexion, since there was no question of forcibly entering the premises or interfering with whatever work was being done there.

55. The point was of more practical importance than some members of the Commission had suggested. In 1952 the Egyptian Government had been obliged to ask the British Embassy in Cairo to give up a few metres of its outer yard in order to make room for the new Nile River Road. Fortunately, the matter had been settled amicably, but that might not always be the case, and it was therefore essential to remove any doubts as to the receiving State's rights. Mr. Pal's suggestion for inclusion of the words "in accordance with the law of the receiving State" in the text that was to be inserted at the beginning of article 12 (395th meeting, para. 53) might be held to cover the point, but it was better to make it absolutely clear.

56. Mr. MATINE-DAFTARY associated himself with what had been said by Mr. El-Erian. In his view, the term "expropriation in the public interest" was not likely to give rise to any misunderstanding. The domestic laws of most civilised countries recognized such a restriction on private property rights, and formulated it in terms which would make it impossible for the receiving State to abuse its rights in the matter. He agreed with Mr. François that it went without saying that fair compensation must be paid in advance.

57. Mr. SPIROPOULOS doubted whether the amendment was of much importance in practice. Certainly it expressed what was no more than the receiving State's right, but if the concept of *possessio* rather than ownership was introduced into the new paragraph 1 of the article, as suggested by Mr. Padilla Nervo (395th meeting, para. 77), the Commission's draft would contain nothing to suggest that a foreign diplomatic mission which owned property was not in exactly the same position as regards expropriation as any other private property owner.

58. There was, of course, the possibility that the receiving State might abuse its right, but any dispute on that score was a matter for settlement by the ordinary procedures applicable to disputes.

59. Mr. HSU agreed that the amendment was unnecessary. Mr. François had said it was necessary in order to rebut arguments based on the theory of extra-territoriality, but that theory was now generally discredited.

60. Mr. SCELLE thought that Mr. François's amendment might give rise to serious difficulties. No precautions could prevent the body responsible for the decision to expropriate (in France, the *jury d'expropriation*) from being sometimes swayed by nationalist fervour or political considerations. Consequently, he could not accept Mr. François's amendment, unless the Commission included in the draft a provision to the effect that any disputes that might arise between States concerning the exercise of diplomatic functions should be referred to an impartial judicial authority. He would submit an amendment along those lines in due course.

61. Mr. PADILLA NERVO pointed out that normally diplomatic missions would not object to being dispossessed when the Government so requested, even when

they did not consider it to be obviously in the public interest. The cases covered by the amendment were therefore very exceptional, but the disputes to which they might give rise were not easy to settle, since questions of national prestige were involved. He agreed that in the last resort international law gave the receiving State the right of expropriation, subject to payment of fair compensation, but in order to avoid disputes it was perhaps better to make that clear, as suggested by Mr. François.

The meeting rose at 6.5 p.m.

397th MEETING

Tuesday, 14 May 1957, at 9.30 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 12 (*continued*)

1. The CHAIRMAN invited the Commission to continue its consideration of Mr. François's proposal for the insertion in article 12 of a further additional paragraph relating to the receiving State's right to expropriate diplomatic premises in the public interest (396th meeting, para. 49).

2. Mr. TUNKIN said that Mr. François's proposal raised a number of questions without answering any of them; nor had satisfactory answers been given in the course of the discussion. One thing was clear—that the property of the sending State could not be treated in the same way as private property. Furthermore, the fact that such cases as arose in practice were settled by negotiation between the sending and the receiving State seemed to show that the latter had not the right to expropriate the whole or part of a mission's premises unilaterally. The cases which arose in practice were few and far between, and it should, in his view, be left to the States concerned to settle them by agreement between themselves, as in the past.

3. Sir Gerald FITZMAURICE said that he fully appreciated the considerations that had inspired Mr. François's proposal. It was, however, couched in the form of an exception to the principle of the inviolability of diplomatic premises; it could therefore be inferred that if the mission refused to vacate the premises, the local authorities would be entitled to force an entry and evict the mission staff. And that was clearly inadmissible. The mission premises must be immune against enforcement measures if their inviolability was to be respected.

4. Nor could he agree that a foreign diplomatic mission was under an obligation to comply with local laws expropriating its property or interest—which was that of its State—even if those laws could not be enforced against it. It had always been recognized that one State was not in such matters subject to the governmental power of another (*par in parem non habet imperium*). State-owned ships could not be requisitioned while in foreign ports; no more, in his view, could mission premises, which were usually owned by the sending State, be requisitioned by the Government of the receiving State. Even if the sending State did not own them, it had some legal title to them.

5. As regards the actual wording of Mr. François's proposal, he agreed with Mr. Edmonds that the term "expropriation" had connotations which made its use undesirable; it might be better to speak of "acquisition". Moreover, the words "in the public interest" could be made to serve purposes quite other than those he understood Mr. François to have in mind.

6. Mr. Yokota had already pointed out (396th meeting, para. 50) that the text contained no mention of compensation; unless compensation was paid in advance on a sufficiently generous scale for the mission to be able to secure suitable alternative premises, there was an obligation on the receiving State to provide it with alternative premises itself.

7. He suggested that it would meet Mr. François's point if the Commission pointed out, in its commentary, that disputes would be found to arise if a foreign diplomatic mission refused to co-operate with the local authorities in the event of part, or all, of the area occupied by its premises being genuinely required in connexion with town planning projects, and that, while it was not subject to any legal obligation in that respect, the sending State had a moral duty to be as co-operative as possible.

8. Mr. AMADO fully agreed with Mr. Khoman that it would be illogical to make the exception to the principle of inviolability that was now proposed by Mr. François, after refusing to make an exception for the purpose of safeguarding human life. He appreciated, however, the practical considerations that had led Mr. François to submit his proposal. The problem was one which arose in practice, but the only way of settling it was by negotiation between the States concerned. Mr. François's proposal, in the terms in which it had been formulated, was not, and could not be, a rule of international law, and the Commission could not insert it in its draft. All it could do was to insert in section III, relating to the duties of a diplomatic agent, a statement along the lines suggested by Sir Gerald Fitzmaurice.

9. Mr. AGO said that he too was well aware of the considerations underlying Mr. François's proposal. And he was bound to say that some of the fears which had been expressed with regard to it seemed exaggerated. There could, he felt, be no misunderstanding of the term "expropriation in the public interest", well known by the public law of many States, and it was so generally recognized that that involved the payment of compensation as to go without saying.

10. Since, however, it was widely agreed that foreign diplomatic missions were subject to the local laws, if those laws provided for expropriation in the public interest, as was the case in almost all countries, Mr. François's proposal was unnecessary; first of all it could even be dangerous, since reference to the question of expropriation alone might be held to imply that diplomatic missions were not, after all, subject to the local laws in other respects. Moreover, he also agreed with Sir Gerald Fitzmaurice that the reference to that matter in the article dealing with inviolability suggested that the receiving State could, if occasion arose, resort to enforcement procedures, which was quite unthinkable.

11. A possible solution would be to refer to the matter under section III, as suggested by Sir Gerald Fitzmaurice and Mr. Amado, but in the commentary rather than in the articles themselves.