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Summary record of the 402nd meeting

Topic:
Diplomatic intercourse and immunities

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402nd MEETING*Wednesday, 22 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 20**

1. The CHAIRMAN invited the Special Rapporteur to introduce article 20, after which the Commission could consider it paragraph by paragraph.

2. Mr. SANDSTRÖM, Special Rapporteur, said that the most important elements in the article, which enunciated the principle of immunity for diplomatic agents from the criminal and civil jurisdiction of the receiving State, were the exceptions to it. One of them was that a diplomatic agent who was a national of the receiving State enjoyed immunity from its criminal jurisdiction only. As would be seen from the amendments submitted, opinions differed on that point. Another exception covered real actions relating to private immovable property and actions relating to successions.

3. Mr. BARTOS said that a question to be considered in connexion with article 20 was whether diplomatic agents in transit enjoyed immunity from jurisdiction in third States. There appeared to be tacit agreement that they did. The Drafting Committee might be asked to consider inserting a reference to the problem at an appropriate point.

4. Mr. TUNKIN proposed the insertion in sub-paragraph 1 (a) of the phrase "and representing a source of income" after the words "receiving State".

5. His amendment was designed to cover cases where immovable property used for the purposes of a mission was held in the name of the head of the mission, because local law did not permit it to be acquired by a foreign State. He had in mind a case which had occurred in New York, where a property for the use of the Permanent Delegation of the Soviet Union to the United Nations had had to be acquired in the name of the head of the delegation. Some qualification of the rule was necessary in order to make diplomatic agents immune from civil jurisdiction in such cases.

6. Mr. VERDROSS, pointing out that many countries also had administrative and financial courts, proposed the addition of the words "and administrative" between the words "criminal and civil" and "jurisdiction".

7. Mr. GARCIA AMADOR said that, although he was in favour of some qualification to meet cases of the kind mentioned by Mr. Tunkin, he doubted whether the wording of his amendment was quite appropriate. A diplomatic agent might buy a piece of waste land which brought in no regular income but which might yield a large profit years later if sold for building purposes. Perhaps it would be simpler to qualify the principle in the commentary.

8. Sir Gerald FITZMAURICE remarked that, according to the existing wording of the paragraph, the exceptions mentioned applied to criminal as well as civil jurisdiction. It was a long-established practice, however,

for diplomatic agents to enjoy absolute immunity from criminal jurisdiction. In any case, it was difficult to see how a real action relating to private immovable property or an action relating to a succession could possibly be a matter for criminal courts.

9. Perhaps the Special Rapporteur would agree to reword the first part of the paragraph as follows:

"A diplomatic agent of foreign nationality shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil jurisdiction, save in the case of: . . ."

10. Mr. PADILLA NERVO doubted whether Mr. Tunkin's amendment was a suitable way of dealing with the problem he had raised. The qualification, "representing a source of income", introduced a concept which would be very difficult to define in practice. In real actions, the proceedings related to the property and not to the person owning it, so the property could be the subject of an action irrespective of whether the diplomatic agent acquired income from it or not.

11. Furthermore, as Mr. García Amador had pointed out, property, though not a source of regular income, might have been acquired as an investment with a view to an eventual profit.

12. Mr. PAL agreed with Sir Gerald Fitzmaurice on the desirability of making it clear that immunity from criminal jurisdiction was absolute.

13. While appreciating Mr. Tunkin's point, he failed to see how his addition would cover the case he had mentioned. Premises held on behalf of a Government by a diplomatic agent would not really be the private property of the holder at all; he would only be a name-lender or a trustee, his State being the beneficial owner. There was the further objection that in many countries the mere ownership of property was regarded as a form of income.

14. Mr. SPIROPOULOS also supported Sir Gerald Fitzmaurice's proposal.

15. He agreed with Mr. Padilla Nervo and Mr. Pal that Mr. Tunkin's amendment did not really solve the particular problem he had raised. In a real action, it was the property that was involved, regardless of whether the owner derived any income from it or not, and he did not see how any real action relating to such property could be prevented. In any case, the word "private" would have to be deleted, since a diplomatic agent could not own a public building.

16. Mr. AGO agreed with Sir Gerald Fitzmaurice that it was advisable to separate the references to immunity from criminal jurisdiction and to immunity from civil jurisdiction.

17. He also appreciated Mr. Tunkin's concern, but did not think that his amendment provided a solution to the problem. The question was one of private property assigned to an official service, and was quite distinct from that of private property which was not a source of income. Moreover, in many cases it would be extremely difficult to discover whether any income was derived from the property or not. A real action could well be brought regarding a villa belonging to a diplomatic agent which had been only a source of expense to him.

18. Mr. TUNKIN also agreed with Sir Gerald Fitzmaurice regarding the redrafting of the first part of the paragraph.

19. He still considered that some qualification on the lines of his amendment was necessary, for, if the text was left as it stood, a diplomatic agent would not enjoy immunity from real actions relating to property of which he was the owner only in name.

20. Mr. SANDSTRÖM, Special Rapporteur, said that it had never been his intention to imply that the actions mentioned in sub-paragraphs 1(a) and (b) might lead to criminal proceedings. The text could be redrafted by the Drafting Committee on the lines suggested by Sir Gerald Fitzmaurice.

21. He also accepted Mr. Verdross's proposal to include a reference to administrative jurisdiction.

22. The CHAIRMAN proposed that the Commission should refer to the Drafting Committee Sir Gerald Fitzmaurice's redraft of the beginning of paragraph 1, in which should be included a reference to administrative jurisdiction.

It was so decided.

23. Mr. SANDSTRÖM, Special Rapporteur, doubted whether there was sufficient justification for including Mr. Tunkin's amendment in the paragraph. The rule that the private immovable property of diplomatic agents was subject to local jurisdiction admitted of no exception.

24. Sir Gerald FITZMAURICE said that the problem raised by Mr. Tunkin was a very real one and by no means infrequent. There had been cases where States, owing to the law of the receiving State, had had no alternative but to acquire the premises for their mission in the name of the ambassador. It would be an absurd situation if property really owned by the sending State were subject to the civil jurisdiction of the receiving State merely because, as a matter of form and in accordance with local law, it was held in the name of the head of the mission.

25. Perhaps it would meet Mr. Tunkin's point if the following qualification were inserted after the word "property": "held by the agent in his private capacity and not on behalf of his Government for the purposes of a mission".

26. Mr. TUNKIN said that that was an excellent suggestion which might be referred to the Drafting Committee.

27. Mr. SANDSTRÖM, Special Rapporteur, doubted whether the text just proposed by Sir Gerald Fitzmaurice would settle the question any more than Mr. Tunkin's. In many countries the law regarding rights *in rem* was categorical. The case mentioned by Mr. Tunkin could never have arisen in Sweden, for instance, where there was a law prohibiting the acquisition of land by individuals on behalf of corporate bodies.

28. Mr. MATINE-DAFTARY thought it desirable to include some reference to the fact that personal actions, relating, for instance, to the failure of a diplomatic agent to pay his debts, were settled through diplomatic channels. He naturally did not wish to suggest that diplomatic agents should be subject to civil jurisdiction in such cases, but felt that it would create a wrong impression if the Commission maintained complete silence on the matter.

29. Mr. BARTOS recalled that in a case involving the rights of neighbours in connexion with property owned by a diplomatic agent in Canada, the Canadian court had ruled that the *lex loci rei sitae* applied.

30. He appreciated Mr. Tunkin's point. Yugoslavia had had the same problem when the acquisition of property by foreign States had been forbidden by law. Since then, however, the Yugoslav law had been amended and Yugoslavia was now able to claim reciprocity in other countries.

31. He had been asked by Yugoslav trade unions to raise a special point in connexion with immunity from jurisdiction. There were numerous examples from case law to support the claim that diplomatic agents, in entering into either a tacit or formal contract with domestic servants, thereby accepted the jurisdiction of courts competent to deal with labour questions. However, in cases where diplomats were accused of dismissing servants without just cause or due notice, the protocol department often intervened on the ground that the prestige of a foreign mission was at stake. The only remedy then open to the aggrieved servant was to bring an action in the diplomat's own country, a laborious and expensive matter seldom justified by the value of the claim involved. The problem was further complicated by the fact that many States permitted their diplomatic agents to waive their immunity from jurisdiction only with the prior consent of the ministry of foreign affairs. Thus, even if a diplomatic agent accepted the jurisdiction of labour courts in a contract with a domestic servant, that acceptance might later be shown to be invalid because he had not the prior consent of his minister of foreign affairs.

32. While it would be premature to talk of a definite rule that entry into a labour contract implied acceptance of the jurisdiction of labour courts, there certainly was a marked trend in case law in that direction. The Commission might consider whether to encourage that trend, or simply allow matters to take their course.

33. Mr. SANDSTRÖM, Special Rapporteur, agreed that diplomatic immunity from jurisdiction was often a source of inconvenience. He was not sure, however, that the inconvenience in the case cited by Mr. Bartos was so great as to warrant making an exception to the rule. Sympathetic as he was to the misfortunes of the small man, he did not think it desirable to make too many exceptions.

34. Mr. Matine-Daftary's point could be dealt with in connexion with the proposal for a new paragraph 5 that he understood Mr. François intended to make. It was, of course, the rule for proceedings against diplomatic agents to be conducted in their sending State.

35. Mr. SPIROPOULOS agreed with Mr. Sandström regarding the categorical nature of the provisions of many national laws regarding rights *in rem*. The Commission could not, however, shut its eyes to the problem mentioned by Mr. Tunkin and Sir Gerald Fitzmaurice. Clearly, if the question were regulated by an international convention, no action could be brought, since the international law would override the municipal law. One course would be for local laws to be amended to enable States to buy property in their own name.

36. Mr. YOKOTA expressed agreement with the observations made by Sir Gerald Fitzmaurice and Mr. Pal.

37. The CHAIRMAN put to the vote the amendment to paragraph 1 proposed by Sir Gerald Fitzmaurice.

The amendment was adopted by 16 votes to none with 3 abstentions.

38. Mr. SPIROPOULOS observed that the Commission had apparently adopted a text inconsistent with international law. Even Anglo-Saxon law made an exception for real actions relating to private immovable property situated on the territory of the receiving State.

39. Sir Gerald FITZMAURICE said that the essential point was that the immovable property was used for the official purposes of the mission. It was true that if a Government simply held real property in another country, that property would enjoy no immunity, but immunity would always be enjoyed if the property was held for the purposes of the diplomatic mission.

40. Mr. AGO thought that the problem fell rather under the heading of the immunity of States.

41. Mr. LIANG, Secretary to the Commission, observed that the point raised by Mr. Ago, although falling within the Commission's general programme of work, was outside the scope of the item on diplomatic intercourse and immunities.

42. He wondered why the two exceptions to immunity from jurisdiction had not been included in the Harvard Law School draft¹. The first exception, in particular, was a very well-known one. The reason might be because a real action was an action *in rem*. The authors of the Harvard draft might have omitted the reference because, taking a narrow view, they conceived only personal action as relevant.

43. The CHAIRMAN observed that views differed on the doctrine of the immunity of immovable property used for diplomatic purposes. While some authors considered that such immovable property was entirely immune from the civil jurisdiction of the receiving State, others held that the property was entitled to immunity only to the extent to which that jurisdiction affected its inviolability.

44. Mr. TUNKIN agreed that there might be divergencies of opinion on the general problem of immovable property owned by one State in the territory of another, but there was none regarding the immunity of buildings used for the official functions of a diplomatic mission. There would, therefore, be no point in reverting to a matter on which the Commission had already voted.

45. Mr. FRANÇOIS disagreed with Mr. Tunkin that the principle was accepted without question in international law. Even the situation as regards an embassy had been disputed.

46. The CHAIRMAN suggested that the point raised by Mr. Ago be further discussed when the Commission drafted its commentary on article 20.

It was so agreed.

47. Mr. GARCIA AMADOR raised the general question whether the Commission's draft ought to be as detailed as the Harvard draft, which had employed an entirely different technique based on the codification of North American law. The Commission had never used such a technique in its drafts, because it raised innumerable difficulties of detail in addition to the fact that, by avoiding general statements and enumerating cases, it ran the risk of an incomplete enumeration. That point might be pondered, in connexion either with the exceptions in article 20 or with the final draft as a whole.

48. Mr. SANDSTRÖM, Special Rapporteur, replied that it was obviously a matter for individual judgement in each case whether the general rule or also the exceptions should be stated. Very often a statement of the general rule was virtually useless, since the existence of the rule depended on the number of exceptions. The exceptions to article 20 were so important and so generally recognized that their inclusion was warranted.

49. Mr. VERDROSS thought the Commission should make its codification as full as possible; otherwise its work would have been in vain.

50. Mr. GARCIA AMADOR observed that the Havana Convention² had been drafted to state the broad general principles. It included a few hypothetical exceptions, but always in general formulation.

51. Mr. SPIROPOULOS remarked that the apparent exceptions in article 20 were, in fact, basic rules of principle, and their inclusion was therefore essential.

52. Mr. SANDSTRÖM, Special Rapporteur, said that he had not intended to depreciate the value of the Havana Convention. It had, however, been designed for an area with homogeneous conditions and laws, whereas the Commission's draft was intended to embrace all the countries of the world, and therefore required to be expressed in greater detail.

53. Mr. MATINE-DAFTARY agreed with Mr. Spiropoulos that immunity from local jurisdiction for diplomatic agents should be regarded as the exception to the general rule governing the jurisdiction of the receiving State. By specifying that exception from immunity the Commission was establishing the general rule.

54. Mr. AGO asked the Special Rapporteur why the exception relating to a succession in sub-paragraph 1(b) had been expressly included, when it did not appear either in the Harvard draft or in the 1929 resolution of the Institute of International Law.³ He believed that the considerations which the Special Rapporteur had wished to meet were already covered by the exception relating to real assets which, however, should not be limited only to immovable property. Accordingly, the matter might perhaps be better dealt with by inserting a reference to movable as well as immovable property in sub-paragraph 1(a).

55. Mr. SANDSTRÖM, Special Rapporteur, explained that the provision had been inserted because cases dealing with succession required a common court, and if that court were in the receiving State, it would be only natural that it should not be hampered by diplomatic immunity.

56. Mr. SPIROPOULOS said that, in such cases, immunity should not be accorded to diplomatic agents, who should be subject to local jurisdiction if they were involved as heirs or legatees. He agreed with Mr. Ago that a reference to movable property should be included in sub-paragraph 1(a), as it could be the subject of a real action. The Commission should not go against the clear intention of the institute of International Law unless the law itself had developed subsequently to the adoption of its resolution, which, in article 12, paragraph 1, referred to both movable and immovable property.

¹ Harvard Law School, *Research in International Law, I. Diplomatic Privileges and Immunities* (Cambridge, Mass., 1932), pp. 19-25.

² Convention regarding Diplomatic Officers, signed at Havana on 20 February 1928. See League of Nations, *Treaty Series*, Vol. CLV, 1934-1935, No. 3581.

³ Harvard Law School, *op. cit.*, pp. 186 and 187.

57. Mr. AMADO stated that he was against the exceptions mentioned in the text, and emphasized the fact that such exceptions were admitted neither by the Harvard draft nor by the International Law Institute resolution.

58. Sir Gerald FITZMAURICE shared Mr. Ago's doubts, because personal action against a diplomatic agent as an heir would be extremely unusual in many countries, including the United Kingdom. When a person died his estate was normally dealt with by executors, who were not necessarily the heirs or legatees. Any action would, therefore, lie against the executor. The paragraph was unnecessary, as the case it covered would hardly arise.

59. The CHAIRMAN thought the case might well arise where the validity of a will, under which the diplomat was an heir or legatee, was in dispute. The case referred to in article 20, sub-paragraph 1 (b) fell rather under waiving of immunity. If the diplomatic agent claimed the benefit of a will before a foreign court, he would be considered subject to the local jurisdiction.

60. Mr. MATINE-DAFTARY agreed that there were several possibilities of such cases arising. A diplomatic agent might consider himself the creditor of a succession during liquidation; he might be an heir or legatee; his right to inherit might be contested. All those cases would, however, have no connexion with his capacity as diplomatic agent, and he would therefore have to subject himself to the local jurisdiction.

61. Mr. AGO pointed out that, although in many countries the law placed great weight on unity of inheritance, there were others where the principle of distinction between movable and immovable inheritance was preponderant. The clause, which referred to "a succession coming under the jurisdiction of the receiving State", would raise considerable difficulties because of conflicts of jurisdiction and similar issues.

62. Mr. BARTOS said that the question was really what would happen if a third person concerned in a succession brought an action against an heir or legatee enjoying diplomatic immunity, who refused to appear before the courts. The question of jurisdiction in such matters was a very complicated one, and probably not a single community of States applied the same rules.

63. Unity of inheritance was more of a theoretical than a practical concept.

64. The CHAIRMAN said there was no need to bring up the question of competence, because the basic assumption in the text was that the courts of the receiving State were competent.

65. Mr. SANDSTRÖM, Special Rapporteur, agreed that many possible cases relevant to the clause might arise. That was why he had included it, although he was willing to admit that it might not be very clear as it was worded. Obviously, if a succession were contested, a court would not be able to act unless all the parties were subject to its jurisdiction.

66. Mr. EL-ERIAN observed that no objections had been raised to the principle; the discussion turned on the question whether there was a case for retaining sub-paragraph (b) of paragraph 1, or whether it was already covered by sub-paragraph (a). Sub-paragraph (b) might be accepted temporarily, and the Drafting Committee be asked to decide whether it should be retained.

67. Mr. AMADO observed that, if a diplomatic agent refused to waive his immunity, he might make a private agreement. Some members appeared to be able to accept the clause, but others were hesitant; he himself would abstain.

68. The CHAIRMAN said that the Special Rapporteur's point was worth pondering. If a diplomatic agent was a sole heir and refused to waive immunity if his inheritance was attacked in the courts of the receiving State, the case could not be settled.

69. The CHAIRMAN proposed that the vote on sub-paragraph (b) be deferred in order to give members further time for reflection.

It was so agreed.

70. Mr. VERDROSS introduced an amendment, to insert in paragraph 1 a new sub-paragraph (c) as follows: "An act relating to a professional activity outside his official duties."

71. He had based his amendment on article 13 of the 1929 resolution of the Institute of International Law, which read as follows:

"Immunity from jurisdiction may not be invoked by a diplomatic agent for acts relating to a professional activity outside his official duties."⁴

It was also akin to article 24, paragraph 2, of the Harvard draft, which read as follows:

"A receiving state may refuse to accord the privileges and immunities provided for in this convention to a member of a mission or to a member of his family who engages in a business or who practices a profession within its territory, other than that of the mission, with respect to acts done in connection with that other business or profession."⁵

72. Admittedly, cases to which the amendment related were comparatively rare, but they might arise. The International Law Commission was the first legal commission composed of representatives of various systems of law, and should, therefore, include in its drafts matters which were taken for granted in homogeneous communities in order that its codification might be as nearly complete as possible.

73. Mr. FRANÇOIS opposed the amendment as unnecessary. Diplomatic agents practically never engaged in any professional activity outside their official duties. If they did, and the receiving State objected, it could easily put an end to such activities by declaring the agent *persona non grata*. The matter might possibly arise if the diplomatic agent was a member of the board of a joint stock company, which function he could easily fulfil at the same time as his diplomatic mission. He would not, however, have to recognize the jurisdiction of the receiving State, but would be subject to that of the sending State, in accordance with the principle *ne impediatur legatio*.

74. The immunity of the diplomatic agent was maintained even in the apparently unrelated matter of divorce, because a divorce action under the local jurisdiction was incompatible with his dignity as a diplomat.

75. Mr. EL-ERIAN supported Mr. Verdross's amendment. If a diplomatic agent engaged in a professional or commercial activity—the word "commercial"

⁴ *Ibid.*, p. 187.

⁵ *Ibid.*, p. 24.

should undoubtedly be inserted in the amendment—he should enjoy no immunity, but be treated on precisely the same footing as other persons who practised the same profession or engaged in the same commercial activities. The case could not really be assimilated to that of divorce. The dignity itself of a diplomatic agent required that he should not engage in activities outside his official duties.

76. Mr. AMADO thought that Mr. Verdross's amendment did not go far enough; he preferred the fuller statement in article 24, paragraph 2, of the Harvard draft. The clause should either not be included, or be worded as precisely as possible to specify all members of the diplomatic agent's family who might engage in affairs which had nothing to do with the exercise of the agent's official duties.

77. Mr. SANDSTRÖM, Special Rapporteur, agreed by and large with Mr. François. To engage in a professional activity outside his official duties would impair the dignity not merely of the diplomatic agent himself but of the whole mission. If anything at all were to be included, therefore, he would prefer a clause on the lines of the relevant article in the Harvard draft, but he regarded the whole idea of a diplomatic agent engaging in any professional activity outside his official duties as repugnant.

78. Mr. VERDROSS accepted Mr. Amado's suggestion. The text of the Harvard draft was certainly preferable to that of the Institute of International Law; he had followed the latter only because it was briefer. The Drafting Committee would probably wish to make a separate paragraph if the longer Harvard draft text was adopted.

79. Mr. BARTOS preferred Mr. Verdross's version to the texts of either the Harvard draft or the Institute of International Law, since it was more consonant with the general feelings of Governments.

80. Mr. EL-ERIAN said he was prepared to accept Mr. Verdross's wording or any similar formulation.

81. He proposed that the Commission vote immediately that it agreed, in principle, to insert a clause to the effect that a diplomatic agent, or member of his family, should not be immune from civil jurisdiction if he engaged in a professional or commercial activity outside his official duties. The actual drafting could be left to the Drafting Committee.

The principle thus expressed was adopted by 16 votes to none with 4 abstentions, and the text was referred to the Drafting Committee.

The meeting rose at 1 p.m.

403rd MEETING

Thursday, 23 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 20 (continued)

1. The CHAIRMAN, after recalling that at the previous meeting a final decision on sub-paragraph (b) of

paragraph 1 had been deferred in order to give members further time for reflection, put the sub-paragraph to the vote.

Sub-paragraph (b) of paragraph 1 was adopted by 10 votes to 1, with 3 abstentions.

2. Sir Gerald FITZMAURICE said that he had voted against the provision because it put the matter in a form in which it would probably never arise. With some redrafting, however, the sub-paragraph could be made pertinent. He suggested wording it as follows:

“The mere fact that a person interested in an estate is a diplomatic agent shall not prevent or impede litigation.”

3. Mr. BARTOS said he had abstained from the vote, but supported Sir Gerald Fitzmaurice's proposal.

4. Faris Bey EL-KHOURI said that he had abstained because he considered that diplomatic agents should be immune from criminal jurisdiction only. It was in the interest neither of the receiving State nor of the diplomatic agent for him to be immune from civil jurisdiction

5. Mr. SPIROPOULOS said that he had voted for the principle, but agreed with Sir Gerald Fitzmaurice on the desirability of redrafting the text.

6. The CHAIRMAN said the text had been adopted subject to redrafting.

7. Inviting the Commission to consider paragraph 2, the Chairman drew attention to the following redraft submitted by Mr. Verdross:

“A diplomatic agent who is a national of the receiving State shall enjoy the privilege of immunity only in respect of acts performed in the exercise of his diplomatic functions.”

8. Mr. SANDSTRÖM, Special Rapporteur, observed that the number of amendments submitted to the paragraph bore testimony to the variety of opinions held on the advisability of according immunity from jurisdiction to diplomatic agents who were nationals of the receiving State. His own view was that, once the receiving State consented to the appointment of one of its own nationals as a member of a foreign mission, it must accord him a certain immunity from jurisdiction in order to preserve the dignity of his functions and of the mission. The amendment submitted by Mr. Verdross represented the absolute minimum that could be accorded to such diplomatic agents by way of immunity. He himself would prefer full immunity from criminal jurisdiction.

9. Mr. EL-ERIAN proposed that paragraph 2 become paragraph 4 and be worded as follows:

“A diplomatic agent who is a national of the receiving State shall not enjoy any immunities from the jurisdiction of the receiving State except those specifically granted to him by the receiving State.”

10. Since the Commission, by a majority vote, had adopted the principle that the sending State could appoint a national of the receiving State to its mission with the consent of the latter State, it was necessary to decide what status such diplomatic agents should enjoy. In the rare cases in which such persons had been appointed, there had been some controversy as to their position.

11. Indeed, the law of some countries, as pointed out in the comment on article 8 of the Harvard Law School