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Summary record of the 425th meeting

Topic:
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ranks of diplomatic agents adopted by the Congress of Vienna, which the Commission had agreed to follow.

The text of article 10 was adopted.

ARTICLES 11 AND 12

The text of articles 11 and 12 was adopted.

ARTICLE 13

66. The CHAIRMAN stated that the French text of the article would be brought into line with the wording of the corresponding provision in the Regulation of the Congress of Vienna.

The text of article 13 was adopted.

COMMENTARY ON ARTICLES 10 TO 13

67. The CHAIRMAN said that it was proposed to redraft the beginning of paragraph 1 of the commentary as follows:

"Articles 10, 12 and 13 are intended to incorporate in the draft, with slight modifications, the provisions of the Vienna Regulation concerning the rank of diplomats, and article 11 provides . . ."

The proposal was adopted.

Paragraph 1, as amended, was adopted.

The meeting rose at 6.5 p.m.

425th MEETING

Tuesday, 25 June 1957, at 9.30 a.m.

Chairman: Mr. Jaroslav ZOUREK.

Consideration of the Commission's draft report covering the work of its ninth session

(A/CN.4/L.70 and Add.1 to 3) (continued)

CHAPTER II: DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/CN.4/L.70/ADD.1) (continued)

II. DRAFT ARTICLES CONCERNING DIPLOMATIC INTERCOURSE AND IMMUNITIES (continued)

SECTION I. DIPLOMATIC INTERCOURSE IN GENERAL (continued)

COMMENTARY ON ARTICLES 10 TO 13 (continued)

1. Mr. HSU proposed the deletion from paragraph 2 of the words "such a reform being justified by the principle of equality between States".

2. The use of the word "reform" gave the impression that the distinction in rank between the two classes of envoy had acutally reflected a difference in standing between States. That was not the case, and any assumption that the distinction implied inequality of standing was merely an abuse. As a result of frequent criticism in recent years of such an assumption, the fact had been generally recognized that no inequality between States was implied. The existence of two different classes was of advantage to States and need not be subjected to further disparagement, since it enabled them to economize on missions to States with which their relations were not important enough to justify an exchange of ambassadors.

3. Mr. SANDSTRÖM, Special Rapporteur, said that, though he could not fully agree with Mr. Hsu, he would have no objection to deleting the clause.

4. Mr. BARTOS was not in favour of deleting the clause. He regarded equality of rank among envoys as symbolic of equality among States.

It was agreed to delete the final clause of paragraph 2.

Paragraph 2, as amended, was adopted.

5. Mr. LIANG, Secretary to the Commission, pointed out that paragraph 3 would need to be amended accordingly. He suggested substituting the words "for the abolition of any difference in title" for the words "for a reform designed to abolish at least any difference in rank".

6. Mr. SANDSTRÖM, Special Rapporteur, suggested using the word "change" instead of the word "reform" and deleting the words "at least".

It was so agreed.

Paragraph 3, as amended, was adopted.

7. Mr. HSU observed that the Commission's decision with regard to paragraphs 2 and 3 raised the question whether paragraph 4 need be retained. The reference to "the problem" at the end of the paragraph was open to the same objection as the previous reference to "reform". In his opinion, no problem existed.

8. Mr. SANDSTRÖM, Special Rapporteur, was in favour of retaining the paragraph.

9. Sir Gerald FITZMAURICE, Rapporteur of the Commission, said that he failed to see why Mr. Hsu should be so concerned. However, to accommodate him, he proposed that only the first part of paragraph 4, as far as the words "Vienna Regulation", be retained and added to the end of the previous paragraph.

10. Mr. FRANÇOIS, while acknowledging that Mr. Hsu's remarks were partly justified, was in favour of retaining the paragraph. The existing state of affairs was undoubtedly unsatisfactory, and the only way of improving it was to raise all envoys accredited to Heads of States to the rank of ambassador.

11. Mr. HSU pointed out that the existing tendency to give heads of mission the title of ambassador might be reversed, once it was realized that difference in rank implied no difference in the standing of States. He could accept the Rapporteur's suggestion.

12. The CHAIRMAN put to the vote the Rapporteur's proposal that the remainder of the paragraph, after the words "Vienna Regulation", be deleted.

The proposal was rejected by 9 votes to 3, with 6 abstentions.

13. Mr. MATINE-DAFTARY urged that reference be made at an appropriate point in the commentary to the fact that there had been some difference of opinion in the Commission regarding the advisability of retaining the classification established by the Regulation adopted by the Congress of Vienna. Although the spirit in which that Regulation had been established no longer prevailed, and the representatives of all States were nominally equal, some States were in favour of retaining the two classes in order to be able to appoint ambassadors only to those States with which they had very close relations.

14. Mr. SPIROPOULOS pointed out that Mr. Matine-Daftary's views would emerge clearly from the summary record of the discussion.

15. The CHAIRMAN invited Mr. Matine-Daftary to draft a text on the point for inclusion in the commentary.

Paragraph 4 was adopted on that understanding.

Paragraphs 5, 6, and 7 were adopted.

16. With regards to paragraph 8, Mr. BARTOS observed that the Commission had not considered the question of the validity of credentials in the event of a radical change in the régime of the receiving State. In such cases, the new Government of the receiving State often stipulated that the credentials of accredited agents must be renewed within a certain period. If they were renewed within that period, the rank of the head of the mission was unaffected. If they were not, the receiving State regarded the mission as terminated. Case law furnished a number of cases where sending States had refused, on political grounds, to renew their letters of credence and had argued that the old ones were still valid.

17. The CHAIRMAN observed that the question could be considered when the draft was reviewed at the Commission's next session.

18. Mr. LIANG, Secretary to the Commission, and Mr. KHOMAN pointed out that the last clause of the paragraph, "with the obvious exception of promotion to a higher class", related to a matter that had no real connexion with the subject of the paragraph.

It was agreed to delete the clause in question.

Paragraph 8, as amended, was adopted.

Paragraph 9 was adopted with minor drafting changes.

19. Concerning paragraph 10, Mr. AMADO said that, since the Commission was codifying the subject of diplomatic intercourse and immunities in the light of all the rules and doctrine on the question, and not just some of them, he saw no reason for it to explain why it had omitted certain provisions of the Vienna Regulation. The paragraph seemed unnecessary.

20. Sir Gerald FITZMAURICE said he was in favour of retaining the paragraph. The Commission made considerable reference to the Vienna Regulation in its report, and it would be of some interest to Governments to know why it had retained certain provisions of the Regulation and not others.

After "article VIII" had been corrected to read "article VII", paragraph 10 was adopted.

ARTICLE 14

21. The CHAIRMAN pointed out that article 14 was a new article drafted by the Drafting Committee.

The text of article 14 was adopted by 15 votes to 1 with one abstention.

22. Mr. EL-ERIAN, supported by Mr. KHOMAN, urged that the word "protocol" be substituted for the words "precedence and etiquette".

It was agreed that no action could be taken on that proposal at the current session.

COMMENTARY ON ARTICLE 14

23. Mr. LIANG, Secretary to the Commission, pointed out that the principle of the equality of representatives of States applied to other matters than privileges and

immunities. He accordingly suggested either omitting the relative clause in the second sentence or substituting the words "*inter alia*" for the words "which is what this article states".

24. Mr. YOKOTA suggested inserting the word "functions", before the words "privileges and immunities."

25. Mr. TUNKIN said that he had misgivings regarding the commentary as a whole and, in particular, the last sentence. Since it did not shed much light on the article, it might well be deleted.

26. Mr. SANDSTRÖM, Special Rapporteur, said he had no objection to Mr. Tunkin's proposal.

After further discussion it was agreed to replace the commentary by the statement "This article calls for no comment".

SECTION II. DIPLOMATIC PRIVILEGES AND IMMUNITIES

Paragraphs 1 to 3

27. Mr. TUNKIN said that he was in favour of omitting the first three introductory paragraphs. The description of the various theories regarding the basis of privileges and immunities was not necessary, and, being very concise, was open to the criticism that it did not do them full justice.

28. Mr. SANDSTRÖM, Special Rapporteur, explained that, after some hesitation, he had decided to include a theoretical introduction because, the Commission having settled certain problems in the light of the theory of "functional necessity", some reference to that theory, at least, seemed to be called for.

29. Sir Gerald FITZMAURICE observed that the Commission was showing a tendency to omit from the commentary everything which might be of the slightest interest to the reader. He would like to retain the introductory paragraphs, although paragraph 3 might be amended, or even deleted, if that was the part to which some members of the Commission objected.

30. Mr. SPIROPOULOS doubted the wisdom of including too much theory in a document addressed to Governments. Paragraphs 1 and 2 should be deleted, but it might be better to retain paragraph 3 with its reference to the theory of "functional necessity".

31. Mr. YOKOTA was in favour of retaining the whole text, especially as the Commission had discussed the possibility of including an article on the subject. Paragraph 3 was clearly necessary, since it appeared to be the Commission's view that, when disputes regarding privileges and immunities arose, they should be settled in the light of the needs of the functions. However, paragraph 3 would not be clear by itself.

32. Mr. EL-ERIAN recalled that he had proposed the inclusion of an article dealing with the basis of privileges and immunities with special reference to the "demands of the office" theory (383rd meeting, para. 31; 393rd meeting, para. 63), but had not pressed his proposal pending the preparation of an article defining the diplomatic function. It was not necessary to retain the first two paragraphs, but he was strongly in favour of retaining paragraph 3.

33. Mr. BARTOS considered it essential to retain the text as it stood in order to indicate that all three theo-

ries had been discussed, and to explain what the view of the majority of the Commission was.

34. Mr. MATINE-DAFTARY thought that the paragraphs could be retained in the draft to be submitted to Governments. Once the observations of Governments had been received the Commission could then reconsider whether their retention was necessary.

35. Mr. SPIROPOULOS considered that the text dealt too much with matters of remote historical interest, the question of the "dignity of the prince", for example. Moreover, he doubted whether the "representative character" theory had ever been invoked as a basis for the grant of immunities.

36. The CHAIRMAN put to the vote the question whether the first three paragraphs should be retained, subject to possible redrafting.

The question was decided in the affirmative by 14 votes to none, with 5 abstentions.

37. Mr. SPIROPOULOS explained that he had abstained because, although in favour of retaining paragraph 3, he wished to see the other two paragraphs deleted.

38. Mr. VERDROSS suggested that all that was needed was a simple statement that various theories had been formulated concerning the basis of privileges and immunities, but that the theory of "functional necessity" now prevailed.

39. The CHAIRMAN said that, if the theory of "extritoriality" were mentioned, it should be made clear that it had been abandoned.

40. Sir Gerald FITZMAURICE said that, though not opposed to asking the Special Rapporteur to redraft the paragraphs, he saw no real objection to the text as it stood. He could not agree that the theory of "extritoriality" had been entirely superseded. Though nobody supported the theory in its extreme form, certain elements of it still survived, particularly in connexion with the concept of *franchise de l'hôtel*. The method adopted by the Special Rapporteur was therefore a good one; he indicated that the theories of "extritoriality" and of "representative character" had been superseded but were not completely obsolete.

41. Mr. TUNKIN said that, since the three paragraphs were to be retained, it was essential to point out that privileges and immunities were based not only on "functional necessity" but also on the "representative character" of the mission.

42. Mr. SANDSTRÖM, Special Rapporteur, agreed with Mr. Tunkin on the latter point, but observed that the only privileges and immunities affected by the concept of the "representative character" of the mission were precisely those on which general practice gave some guidance. Paragraph 3, moreover, made it clear that the other two theories had had some influence on the formation of law on the subject.

43. Mr. AGO remarked that the last sentence in paragraph 1, which only mentioned the fact of a similarity of the situation in this respect among all countries, might give the impression that the privileges and immunities were entirely in the gift of the receiving State. He was in favour of deleting it and of inserting the word "customarily" between the words "have" and "enjoyed" in the preceding sentence.

44. With reference to paragraph 3, he did not think that the Commission had taken the theory of "functional necessity" as its basis only in seeking solutions to those problems on which practice gave no guidance. He was also in favour of deleting the word "uniform".

45. Mr. LIANG, Secretary to the Commission, agreed on the advisability of deleting the last sentence in paragraph 1, especially as the statement did not necessarily reflect the true position.

46. Referring to paragraph 2, he pointed out that it was an important part of the theory of "extritoriality" that the mission must be regarded not only as being outside the territory of the receiving State but also as constituting an extension of the territory of the sending State. Some reference to that fact should, he thought, be included.

47. He agreed with Mr. Spiropoulos that the safeguarding of the "dignity of the prince" had ceased to be a relevant consideration. Perhaps rather less space could be devoted to the "representative character" theory, since it was even less defensible than the theory of "extritoriality". On the other hand, more might be made of the theory of "functional necessity". If the text did not give a convincing exposition of the various theories, it would be better not to include it at all. Incidentally, a better term than "functional necessity" might be found to describe the theory in question.

48. The CHAIRMAN proposed that the Special Rapporteur be requested to redraft the three paragraphs in the light of the discussion, and more particularly of the points made by Mr. Ago and the Secretary.

49. Speaking as a member of the Commission, Mr. Zourek said that he could not agree with Sir Gerald Fitzmaurice regarding the theory of "extritoriality". *Franchise de l'hôtel* was based on the other two theories as well, as could be seen from certain national regulations.

It was agreed that the three paragraphs be redrafted on the lines indicated.

Paragraph 4

50. Mr. SANDSTRÖM, Special Rapporteur, suggested that the third group of privileges and immunities should be described as "personal privileges and immunities", instead of "those relating to the staff of the mission".

51. Mr. TUNKIN, proposed that the number of groups listed be reduced to two, namely:

"(i) those relating to the premises and archives of the mission and to its work,

"(ii) those relating to the staff of the mission."

52. The CHAIRMAN remarked that such had been the original arrangement of the articles, but the division into three groups had developed in the course of the discussion (383rd and 384th meetings).

53. Sir Gerald FITZMAURICE said he was in favour of retaining the three distinct groups. Although only two groups, i.e. premises and persons, were required for the question of immunity from jurisdiction, there were a number of privileges and immunities, such as freedom of communication, which related specifically to the work of the mission and involved considerations of quite a different order.

54. Mr. YOKOTA supported Sir Gerald Fitzmaurice and pointed out that a reduction to two groups would involve changing the entire presentation of section II.

55. Mr. TUNKIN said that he would not press his proposal.

Paragraph 4 was adopted.

Sub-section A. Mission premises and archives

ARTICLE 15

56. Mr. KHOMAN observed that the precise implication of the words "ensure adequate accommodation" was not clear. It was hardly the duty of the sending State actually to provide accommodation. Perhaps it would be better to say "provide facilities for the mission to obtain adequate accommodation".

57. Mr. FRANÇOIS said that he had some misgivings regarding both the article and the commentary. The only time when it was obligatory for the receiving State to ensure accommodation for the mission was when the receiving State's own laws and regulations prevented the mission from acquiring the necessary premises. But apart from that extreme case, there was the more important question of what was to be done when a housing shortage made it practically impossible for a mission to obtain suitable premises. It would be going rather far to say that it was obligatory for the receiving State to ensure accommodation in such cases; it was merely bound to lend its good offices to see that the mission obtained premises. Perhaps an addition to the commentary on those lines would meet Mr. Khoman's point.

58. The CHAIRMAN pointed out that article 15 was a new article drafted by the Special Rapporteur in the light of the Commission's discussion.

The text of article 15 was unanimously adopted.

COMMENTARY ON ARTICLE 15

59. Mr. VERDROSS said that it was insufficient to say that the laws and regulations of the receiving State "may place difficulties" in the way of a mission. In the case envisaged they made it actually impossible for a mission to acquire the necessary premises.

It was agreed that the commentary should be redrafted.

ARTICLE 16

60. Mr. LIANG, Secretary to the Commission, wondered if it was really necessary to refer in paragraph 1 to the "agents and authorities" of the receiving State; he suggested that the words "and authorities" be deleted.

It was so agreed.

The text of article 16, as amended, was adopted.

COMMENTARY ON ARTICLE 16

Paragraph 1 was adopted.

Paragraph 2 was adopted, subject to a number of minor drafting changes.

61. Regarding a point raised by Mr. SANDSTRÖM, Special Rapporteur, concerning the English text of paragraph 3, Mr. LIANG, Secretary to the Commission, suggested that the paragraph should be amended so as to avoid any implication that the sending State might wish to prevent the receiving State from using,

for the purposes indicated, the land on which the premises of the mission were situated.

62. Mr. SPIROPOULOS suggested that that could be done by replacing the words "gives the sending State the right" by "could have as a result".

63. Mr. PAL, Chairman of the Drafting Committee, thought it should be made perfectly clear that the case referred to did not constitute an exception to the principle of inviolability of mission premises.

64. Mr. LIANG, Secretary to the Commission, suggested that Mr. Pal's point could be met, at least in part, if at the beginning of the second sentence some indication were provided that what followed did not relate to immunity from search, attachment or execution, but only to immunity from requisition.

It was agreed that the Special Rapporteur should submit a redraft of paragraph 3 in the light of the discussion.

65. Mr. SANDSTRÖM, Special Rapporteur, proposed that the following paragraph be added to the commentary on article 16:

"4. In connexion with the 'franchise de l'hôtel' of the head of the mission, it is sometimes stated that 'the head of the mission may have in his residence a chapel of the faith to which he belongs'.* The inviolability of the premises of the mission undoubtedly includes freedom of private worship, and nowadays it can hardly be disputed that the head of the mission and his family, together with all members of the staff of the mission and their families, may exercise this right, and that the premises may contain a chapel for the purpose. It was not thought necessary to insert a provision to this effect in the draft.

The proposal was adopted.

ARTICLE 17

The text of article 17 was adopted.

COMMENTARY ON ARTICLE 17

66. Mr. SANDSTRÖM, Special Rapporteur, proposed that the text of the commentary be replaced by the following: "This article requires no commentary".

It was so agreed.

ARTICLE 18

The text of article 18 was adopted.

COMMENTARY ON ARTICLE 18

The commentary was adopted.

Sub-section B. Facilitation of the work of the mission, freedom of movement and communication

ARTICLE 19

67. With reference to an observation by the CHAIRMAN regarding the heading of article 19, Mr. BAR-TOS suggested that the article be divided into two, one relating to the facilities for the performance of the mission's functions, and the other to freedom of movement.

It was so agreed.

*Article 8 of the resolution adopted in 1929 by the *Institut de droit international* [Harvard Law School, *Research in International Law, I. Diplomatic Privileges and Immunities* (Cambridge, Mass., 1932), pp. 186 and 187.]

68. Regarding the provisions relating to freedom of movement, Mr. EL-ERIAN thought that the Commission's intention had been rather to say that the receiving State should ensure to all the members of the mission such freedom of movement and travel in its territory as was compatible not only with national security but also with its laws. He recalled that he had pointed out that national security was not the only consideration involved (400th meeting, para. 57); a State might, for example, wish to prohibit access to certain sacred places.

69. Sir Gerald FITZMAURICE feared that if the provision were amended as suggested by Mr. El-Erian, the receiving State would be able to whittle away all freedom of movement by enacting laws deliberately framed to that effect.

70. Mr. EL-ERIAN said that, though he was not convinced, he would not press the point.

The text of article 19 was adopted.

COMMENTARY ON ARTICLE 19

71. Mr. TUNKIN proposed that in order to bring them more into line with the text of the article, the last three sentences should be amended to read as follows:

"This freedom of movement is subject to the laws and regulations of the receiving State concerning zones entry into which is prohibited or regulated for reasons of national security."

72. Sir Gerald FITZMAURICE said he had no objection to the substitution of that text for the penultimate and ante-penultimate sentences, provided the last sentence was retained.

73. Mr. TUNKIN said that in his view the last sentence was not necessary, for the reasons he had given previously (400th meeting, paras. 38-41, and 49 and 50).

74. Mr. SCALLE said that he agreed with Sir Gerald Fitzmaurice that the last sentence expressed exactly what the Commission had had in mind.

75. The CHAIRMAN put to the vote the proposal to retain the last sentence in addition to the text proposed by Mr. Tunkin.

The proposal was adopted by 14 votes to 1, with 2 abstentions.

Subject to the substitution of the text proposed by Mr. Tunkin for the penultimate and ante-penultimate sentences, the commentary on article 19 was adopted.

ARTICLE 20

The text of article 20 was adopted.

COMMENTARY ON ARTICLE 20

76. In the penultimate sentence of paragraph 1, Mr. KHOMAN suggested that the term "wireless broadcasting station" be replaced by "wireless transmitter" or whatever term was used in the International Telecommunication Convention.

It was so agreed.

77. With regard to a point raised by Sir Gerald FITZMAURICE concerning the last sentence of the same paragraph, Mr. EDMONDS proposed that the sen-

tence be amended to read: "If the regulations applicable to all users of such communications are observed, such permission should not be refused."

78. Mr. EL-ERIAN proposed that the whole sentence be deleted, since it did not correspond to any decision reached by the Commission.

79. Sir Gerald FITZMAURICE said he must oppose Mr. El-Erian's proposal, since the use of wireless was nowadays an essential part of diplomatic communications. Even if the Commission had not formally agreed to the principle laid down in the last sentence, he did not see how it could deny it, seeing that almost every mission had a wireless transmitter.

80. Mr. SANDSTRÖM, Special Rapporteur, agreeing, said that the only reason why it was necessary for the mission to apply to the receiving State was in order to be allocated a wave-length which did not clash with that used by other transmitters.

81. Mr. EL-ERIAN said he was by no means sure that the great majority of diplomatic missions really used wireless transmitters.

82. He recalled that when the Commission had agreed to insert the words "all appropriate means" in paragraph 1 of article 20, he and various other members of the Commission had made certain reservations (398th meeting, paras. 62-83). There had been no agreement to the effect that permission for the operation of a wireless transmitter should not be refused, subject only to observance of certain technical conditions.

Mr. El-Erian's proposal for deletion of the last sentence of paragraph 1 was rejected by 6 votes to 5 with 7 abstentions.

Paragraph 1 was adopted by 15 votes to none with 4 abstentions, subject to the last sentence being amended as proposed by Mr. Edmonds (para. 77 above).

83. Mr. TUNKIN proposed that the last sentence of paragraph 2 should also be deleted, because it was unnecessary in view of the preceding sentence and was not in accordance with the general form of the draft, which concerned the obligations of States, not of individuals.

Mr. Tunkin's proposal was adopted.

Paragraph 2, as amended, was adopted.

84. Mr. LIANG, Secretary to the Commission, suggested that the words "in certain countries" be deleted from the first sentence of paragraph 3.

It was so agreed.

85. Mr. TUNKIN felt that the whole paragraph was not in harmony with the general trend of the Commission's discussion, nor with the basic concepts that were manifest in the commentaries on the other articles. The inviolability of the diplomatic bag should not be made conditional on its containing only diplomatic documents or articles intended for official use. If difficulties arose as a result of the bag being used for improper purposes, they should be settled through diplomatic channels and not used as a pretext for opening the bag.

86. Sir Gerald FITZMAURICE suggested that Mr. Tunkin's perfectly valid objection might be met by amending the second sentence to read: "While recognizing that States have been led to take such measures in exceptional cases where there were serious grounds...".

87. Mr. TUNKIN said that that suggestion certainly improved the text, but that he was still sceptical about the intent of the paragraph as a whole.

88. Mr. BARTOS recalled that the whole question had been discussed at length, and that the Commission had finally adopted a proposal that it should be referred to in the commentary (399th meeting, para. 56). It could not now delete paragraph 3 without going back on that decision.

89. Sir Gerald FITZMAURICE agreed that it was desirable to retain some reference to a question on which public opinion in many countries felt very strongly.

90. The CHAIRMAN suggested that the Rapporteur of the Commission and the Special Rapporteur submit a redraft of paragraph 3.

It was so agreed.

91. The CHAIRMAN suggested that the words "normally, courier's papers" be inserted after the words "a document testifying to his status" in paragraph 4.

It was so agreed.

Paragraph 4 was adopted.

Sub-section C. Personal privileges and immunities

1. Diplomatic agents other than those having local nationality

92. Mr. SANDSTRÖM, Special Rapporteur, proposed that the following sentence be inserted immediately after the heading "Diplomatic agents other than those having local nationality":

"For the purposes of the present draft articles, the term 'diplomatic agent' shall denote the head of the mission and members of the diplomatic staff of the mission (article 21, paragraph 2)".

That was the text of article 21, paragraph 2, which had not yet been approved by the Commission, but, for clarity's sake, he thought it desirable that it should also be inserted in the introductory comments on sub-section C.

It was so agreed.

93. Mr. TUNKIN felt that the heading "Diplomatic agents other than those having local nationality" gave the impression that diplomatic agents having local nationality were of at least equal, if not greater, importance, instead of being an insignificant minority. There was no reason for the heading at all, for if it were deleted, articles 21 to 28 would be understood to lay down the rules applicable to diplomatic agents generally, while article 29 would be understood as being in the nature of *lex specialis*, an exception to the general rule.

94. Mr. EL-ERIAN and Mr. AMADO associated themselves with Mr. Tunkin's remarks.

The meeting rose at 1.5 p.m.

426th MEETING

Tuesday, 25 June 1957, at 3.30 p.m.

Chairman: Mr. Jaroslav ZOUREK.

Consideration of the Commission's draft report covering the work of its ninth session (A/CN.4/L.70 and Add.1 to 3) (continued)

CHAPTER II: DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/CN.4/L.70/ADD.1) (continued)

II. DRAFT ARTICLES CONCERNING DIPLOMATIC INTERCOURSE AND IMMUNITIES (continued)

SECTION II. DIPLOMATIC PRIVILEGES AND IMMUNITIES (continued)

Sub-section C. Personal privileges and immunities (continued)

1. Diplomatic agents other than those having local nationality (continued)

1. The CHAIRMAN recalled that at the previous meeting Mr. Tunkin had suggested that the heading "Diplomatic agents other than those having local nationality" could well be deleted.

2. Mr. LIANG, Secretary to the Commission, suggested that it be replaced by the heading "Foreign diplomatic agents".

3. Mr. SANDSTRÖM, Special Rapporteur, observed that, though that wording was not ideal, it was convenient and might well be adopted.

4. Mr. BARTOS said the term "Foreign diplomatic agents", in its French rendering at least, was ambiguous, for it could apply equally to agents of foreign nationality and to agents in the service of a foreign State.

5. Mr. AGO said that, as already pointed out by Mr. Tunkin, there was a special article, article 29, dealing with diplomatic agents who were nationals of the receiving State, and he thought it could therefore be assumed without explanation that the provisions of articles 21 to 28 applied to foreign diplomatic agents.

6. He therefore suggested that both the first heading under sub-section C and the introductory paragraph which followed it should be deleted.

It was so agreed.

7. Sir Gerald FITZMAURICE, Rapporteur, suggested that the remaining headings in sub-section C corresponding to that just deleted should be made the headings for the relevant articles.

It was so agreed.

ARTICLE 21

Paragraph 1 was adopted.

Paragraph 2 was adopted.

COMMENTARY ON ARTICLE 21

8. Mr. VERDROSS, referring to the last sentence, suggested that it was inappropriate to describe inviolability as an "abstract principle". The principle of inviolability was generally accepted and applied in prac-