

Document:-  
**A/CN.4/SR.429**

**Summary record of the 429th meeting**

Topic:  
**Other topics**

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83. Sir Gerald FITZMAURICE agreed that the right to grant asylum was not necessarily dependent upon agreements between States. He did not think, however, that there was any danger of the sentence in question being interpreted in that sense; it merely mentioned certain treaties as examples of the special agreements referred to in the article.

84. Mr. SCELLE said he appreciated the point of Mr. François's objection. It should be made clear that the treaties governing the right to asylum were mentioned merely as examples.

85. Mr. AMADO saw no reason to quote the particular example of treaties on asylum, thereby drawing attention to a matter which the Commission had agreed to avoid. He supported Mr. François's proposal.

86. Mr. LIANG, Secretary to the Commission, agreed with Mr. Amado on the undesirability of making explicit reference to the subject of asylum. Other special agreements existed on such subjects as, for instance, refraining from subversive propaganda.

87. Mr. GARCÍA AMADOR agreed with Mr. François that the right to grant asylum existed independently of any convention. He was inclined to agree with those who favoured deleting the sentence.

88. The CHAIRMAN pointed out that the whole purpose of the last few words in paragraph 3 of the article was to enable a reference to be made to the example of treaties governing the right to grant asylum. There should be no danger of misunderstanding if it were made clear that the agreements were cited merely as examples.

89. Mr. SANDSTRÖM, Special Rapporteur, agreed that the reference to "special agreements" in the article would look rather mysterious if no examples were quoted in the commentary.

90. Mr. SCELLE was in favour of retaining the reference to the practice of granting asylum, which was an essential, traditional, and, in his opinion, praiseworthy, function of missions.

91. Mr. LIANG, Secretary to the Commission, remarked that the right of asylum, in the sense in which Mr. Scelle understood it, was really already covered by the words in paragraph 3 of the article, "by other rules of general international law".

92. Mr. HSU thought it unnecessary to give any examples. But if the Commission wished to do so, it should quote examples of agreements permitting practices which would otherwise not be legitimate. An agreement permitting propaganda, if such existed, would be a good example. If no good example could be found, it would be better to delete the last part of paragraph 3 of the article.

93. He agreed with Mr. François that the right to grant asylum was not dependent on the existence of a treaty.

*It was agreed to redraft the second sentence of paragraph 4 on the lines indicated by Mr. Scelle. Paragraph 4 was adopted on that understanding.*

#### SECTION IV. END OF THE MISSION

##### ARTICLE 33

94. The CHAIRMAN suggested the substitution of the word "function" for the somewhat misleading term "mission" at the beginning of the article.

95. Mr. LIANG, Secretary to the Commission, thought it advisable to combine sub-paragraphs 3 and 4, since otherwise the mistaken impression might prevail that each circumstance by itself could mark the end of the mission. Sub-paragraph 3 conveyed the false idea that the mission would be terminated even if the receiving State did not act on the diplomatic agent's request, although he could not recall any instance of a receiving State having refused to deliver his passport to a diplomatic agent in such circumstances. Sub-paragraph 4 by itself would not make much sense; before the receiving State could return the passport to a diplomatic agent, the sending State must have indicated that his mission had come to an end.

96. Sir Gerald FITZMAURICE, Rapporteur, said that he could not entirely agree with the Secretary. Sub-paragraph 3 might be deleted but sub-paragraph 4 could stand on its own, and it would be inadvisable to combine them. There were two distinct cases to be dealt with: termination of a mission at the request of the sending State and its termination at the request of a receiving State. Paragraph 4 would cover both.

97. Mr. LIANG, Secretary to the Commission, said that he was satisfied by Sir Gerald's explanation.

98. Mr. SPIROPOULOS said he was puzzled by the reference to "delivery of his passports" in sub-paragraphs 3 and 4. He wondered whether it was the current practice for the receiving State to hold the passports of diplomatic agents accredited to it. So far as he was aware, it was customary for a diplomatic agent wishing to leave to ask for the return of his letters of credence.

99. The CHAIRMAN observed that "to ask for his passports" was the phrase usually employed in that connexion. He had, however, failed to find a single instance where the former practice of holding a diplomatic agent's passports was still followed.

100. Mr. BARTOS said that even until the First World War it had been the practice for diplomatic agents to hand in their passports to the ministry of foreign affairs and ask for them only when they left the country. The practice had, however, ceased, and there was no point in reviving it.

101. Mr. LIANG, Secretary to the Commission, doubted whether it was the diplomatic agent's passport that was meant. He thought the term referred to a pass, or safe conduct, issued by the receiving State to the diplomatic agent to ensure that he was not molested on his journey home.

The meeting rose at 1.10 p.m.

### 429th MEETING

Thursday, 27 June 1957, at 4 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 IV. END OF THE MISSION (continued)

ARTICLE 33 (continued)

1. Mr. SANDSTRÖM, Special Rapporteur, pointed out that sub-paragraphs 3 and 4 were based on similar

clauses in the Havana Convention<sup>1</sup> and used almost the identical wording. He had taken the view that it was impossible to depart from current practice, but if it were true, as Mr. Bartos assured them (428th meeting, para 100), that there had been a change in practice, then the wording of the article must also be changed, and he was prepared to submit an alternative text.

2. Mr. LIANG, Secretary to the Commission, stated that, after reflection, he had come to the conclusion that there were a number of other anomalies in the article, to which attention had not yet been drawn.

3. In the first place it was clear that the phrase "diplomatic agent" at the beginning signified the head of the mission alone. On the other hand, article 21, paragraph 2, stated that the phrase "diplomatic agent" included not only the head of the mission but also members of the diplomatic staff. It was essential, therefore, to make clear that in the present case that definition of "diplomatic agent" did not apply.

4. Secondly, in his view, there was some duplication or even inconsistency between the text of article 33 and that of article 6. Paragraph 2 of article 6 stated that "the receiving State may declare the functions of the person concerned to have been terminated" if the sending State had refused or failed within a reasonable time to recall a diplomatic agent whom the receiving State considered as *persona non grata*. That was surely another circumstance in which the mission of a diplomatic agent might come to an end, and he urged that mention of it be made in article 33, or at least that the article be in some way related to article 6.

5. Sir Gerald FITZMAURICE feared that, if the two articles were related to one another, there was a danger of two separate ideas being confused. While article 6 dealt with a case in which a mission might be terminated, article 33 described the "mechanics" of the termination, and the moment in time at which it came to an end. There was not, in his view, any inconsistency between the two articles, and he was not therefore in favour of relating them to one another.

6. Mr. VERDROSS suggested that the words "of a diplomatic agent" be deleted from the opening phrase of the article, which should thus read simply, "The mission comes to an end".

7. The CHAIRMAN, recalling the suggestion at the previous meeting to replace the word "mission" at the beginning of the article by the word "functions", said it was desirable to distinguish between the end of diplomatic relations on the one hand and the end of the functions of a given agent on the other.

8. Mr. LIANG, Secretary to the Commission, reverting to the phrase "delivery of his passports", said that that denoted an extraordinarily drastic step, to which recourse was had only in the event of war. It was more common simply for the Government of a receiving State to declare that it considered the mission of a diplomatic agent terminated.

9. Sir Gerald FITZMAURICE said that the term "delivery of his passports" was acceptable, even if the occasions on which the receiving State handed a diplomatic agent his passports were extremely rare. In any

case, whenever a receiving State wished a diplomatic agent to leave its country, it invariably handed him a *congé*, *laissez-passer*, or other similar document.

10. Mr. BARTOS, referring to the suggestion made at the 428th meeting to replace the word "mission" by the word "functions" at the beginning of the article, said that, although there was undoubtedly no time at the current session, it might be desirable at the next session to draft two articles, one dealing with the termination of the mission and the other with the termination of the functions of a diplomatic agent.

11. Mr. SPIROPOULOS agreed that it was too late to draft a new article, and suggested that the word "mission" should be retained for the current session.

12. With reference to the use of the phrase "delivery of his passports" in sub-paragraphs 3 and 4, he agreed with Mr. Bartos and the Secretary that it would be more satisfactory in that case to speak of "notification by the Government of the receiving State that it considers the mission of the diplomatic agent to be terminated".

13. He further suggested that the words "*inter alia*" should be added at the end of the introductory phrase of the article.

14. The CHAIRMAN supported Mr. Spiropoulos's last suggestion on the grounds that otherwise it might be assumed that the list of circumstances in which the mission came to an end was exhaustive.

*It was agreed to add the words "inter alia" at the end of the introductory phrase.*

15. Mr. TUNKIN recalled that there had been some discussion in the Drafting Committee on the possibility of speaking of a "termination of functions" rather than a "termination of the mission" and, for his part, he would support the replacement of the word "mission" by the word "functions" in the introductory phrase.

16. The CHAIRMAN pointed out that that amendment would have the further advantage that it would extend the provisions of the article to the whole of the diplomatic staff, and not just to the head of the mission.

*It was agreed that the word "mission" in the introductory phrase be replaced by the word "functions".*

17. After further discussion, the CHAIRMAN proposed that:

(i) Sub-paragraph 3 be deleted;

(ii) Sub-paragraph 4 be reworded as follows: "On notification to the diplomatic agent by the receiving State that it considers his functions to be terminated";

*The proposal was adopted.*

*The text of article 33, as amended, was adopted by 14 votes to none, with 1 abstention.*

#### COMMENTARY ON ARTICLE 33

*It was agreed that the Special Rapporteur be asked to revise the commentary to bring it into line with the amended text of the article.*

#### ARTICLE 34

18. Mr. KHOMAN thought the wording of the beginning of the article was not sufficiently clear, and proposed the following redraft:

<sup>1</sup> Convention regarding Diplomatic Officers, signed at Havana on 20 February 1928. See League of Nations, *Treaty Series*, Vol. CLV, 1934-1935, No. 3581.

“The receiving State must grant facilities, even in case of armed conflict, to make it possible for persons enjoying privileges and immunities to leave at the earliest possible moment, and particularly must place at their disposal etc.”

*The proposal was adopted.*

19. Sir Gerald FITZMAURICE and Mr. FRANÇOIS suggested that the word “communication” be replaced by the word “transport”.

*It was so agreed.*

*The text of article 34, as amended, was approved.*

#### COMMENTARY ON ARTICLE 34

20. Mr. LIANG, Secretary to the Commission, suggested that the commentary might well be deleted, since it simply reproduced the sense of the article itself.

*It was so agreed.*

21. The CHAIRMAN proposed that the commentary be replaced by the note “This article does not require any commentary”.

*It was so decided.*

#### ARTICLE 35

22. Mr. VERDROSS proposed that in sub-paragraph (iii) the words “acceptable to” be replaced by the words “accepted by”.

23. Mr. SANDSTRÖM, Special Rapporteur, said that, when the article had been discussed in the Drafting Committee, Mr. Padilla Nervo had proposed the use of the word “acceptable” instead of the word “accepted” in sub-paragraph (ii), and that his proposal had been adopted both for sub-paragraph (ii) and for sub-paragraph (iii).

24. Mr. VERDROSS asked who would decide whether the third State entrusted with the protection of the interests of the sending State was acceptable to the receiving State or not.

25. Sir Gerald FITZMAURICE, Mr. FRANÇOIS and Mr. LIANG, Secretary to the Commission, pointed out that the choice of a third State to assume the protection of the interests of the sending State was fundamentally the concern of the sending State, and that it was not the practice for the sending State to consult the receiving State in advance.

26. Mr. VERDROSS said he did not dispute that that was the customary procedure, but, since the receiving State could nevertheless interpose its veto, he still felt that the word “accepted” was more suitable than the word “acceptable”.

27. Mr. KHOMAN suggested that the phrase “acceptable to the receiving State” be replaced by the phrase “to which the receiving State has no objection”.

28. The CHAIRMAN put to the vote Mr. Verdross’s proposal that the words “acceptable to” in sub-paragraph (iii) be replaced by the word “accepted by”.

*The proposal was rejected by 4 votes to 3, with 8 abstentions.*

*The text of article 35 was adopted.*

#### COMMENTARY ON ARTICLE 35

29. Mr. AMADO proposed that the commentary be deleted. In his view, it was inappropriate to refer to

protection of the interests of the sending State after protection of the premises and the archives, since it was obviously the interests that were of primary importance.

*It was so agreed.*

30. The CHAIRMAN proposed that the commentary be replaced by the note “This article requires no commentary”.

*It was so decided.*

#### SECTION V. SETTLEMENT OF DISPUTES

##### ARTICLE 36

31. Mr. TUNKIN said that it was inadvisable to include the article in the draft at all, since it might make the draft as a whole less acceptable to States.

32. Mr. GARCÍA AMADOR agreed with Mr. Tunkin that some States might object to the article as it was then drafted, with its rigid provision that any dispute between States should be referred to either conciliation or arbitration or, failing that, to the International Court of Justice. It would be preferable to replace it by the clause customarily inserted in treaties, which called upon States to settle any dispute arising between them by good offices, mediation, or other pacific means, and did not require them to resort at once to conciliation, arbitration or the International Court of Justice.

33. Mr. VERDROSS observed that, if it were proposed to amend the article in order to make the draft as a whole more acceptable to States, that was a tactical and not a juridical question.

34. Mr. YOKOTA said he doubted whether the article could be amended, since it had already been adopted by the Commission.

35. The CHAIRMAN pointed out that, while the Commission had indeed decided in principle that the draft should contain an article on the settlement of disputes, it had not yet approved the text of that article.

36. He invited the Commission to vote on the text of article 36.

*The text of article 36 was adopted by 11 votes to 2, with 3 abstentions.*

#### COMMENTARY ON ARTICLE 36

37. The CHAIRMAN proposed that the commentary be replaced by the note “This article requires no commentary”.

*It was so decided.*

#### CHAPTER III: PROGRESS OF WORK ON OTHER SUBJECTS UNDER STUDY BY THE COMMISSION (A/CN.4/L.70/Add.2)

##### Paragraph 1

*Paragraph 1 was adopted.*

##### Paragraph 2

*Paragraph 2 was adopted.*

##### Paragraph 3

38. Mr. AMADO suggested the deletion from the first phrase of the words “held two meetings and”, and the replacement of the words “before any” by the words “in order that”.

*It was so agreed.*

39. The CHAIRMAN suggested that the words "account of", in the penultimate sentence be replaced by "into consideration", a less positive expression.

*It was so agreed.*

40. Mr. TUNKIN thought that the wording of the first sentence gave the impression that the General Assembly had decided in advance on the form the set of rules should take. He suggested that the first sentence should end with the words "or simply a set of rules", the remainder being deleted.

41. Sir Gerald FITZMAURICE agreed that the words "in the language of the Assembly resolution above-mentioned" could well be deleted, but felt it was necessary to explain the purpose of the proposed set of rules.

*It was agreed that the phrase quoted by Sir Gerald Fitzmaurice, together with the quotation marks before "inspire" and after "agreements", should be deleted.*

*Paragraph 3, as amended, was adopted.*

#### *Paragraph 4*

42. The CHAIRMAN suggested that the word "tenth" in the penultimate sentence should be deleted.

*It was so agreed.*

*Paragraph 4, as amended, was adopted.*

### CHAPTER IV: OTHER DECISIONS OF THE COMMISSION (A/CN.4/L.70/Add.3)

#### *Paragraph 1*

*Paragraph 1 was adopted.*

#### *Paragraph 2*

43. Mr. LIANG, Secretary to the Commission, suggested that the phrase "commenting on this request" (at the beginning of the paragraph) should be deleted.

*It was so agreed.*

*Paragraph 2, as amended, was adopted.*

#### *Paragraphs 3 and 4*

*Paragraphs 3 and 4 were adopted.*

#### *Paragraph 5*

44. Mr. FRANÇOIS suggested that the words "en tenant compte" in the French text of sub-paragraph (ii) should be replaced by a less positive expression.

45. Sir Gerald FITZMAURICE observed that the expression "after reviewing it in the light of" in the English version, which was the original text, appeared to him to be sufficiently neutral.

46. The CHAIRMAN suggested that the words "étudiée à nouveau en tenant compte" be replaced by "réexaminée à la lumière".

*It was so agreed.*

*Paragraph 5, as amended in the French text, was adopted.*

#### *Paragraph 6*

47. Mr. FRANÇOIS felt that the word "quotidiennes" in the third sentence of the French text was inappropriate; it had not the same connotation as "day-to-day" in the English text.

48. Sir Gerald FITZMAURICE agreed that, while the English expression was unobjectionable, it was not quite correctly rendered in French by "quotidiennes".

49. Mr. AGO suggested that all adjectives qualifying the word "instructions" should be omitted.

*After further discussion, paragraph 6 was adopted subject to amendment in the light of members' observations.*

#### *Paragraph 7*

50. Mr. AGO felt that the expression "les rapporteurs n'interrompent jamais leur tâche", in the second sentence of paragraph 7, should be brought more closely into line with the English original, which read "the rapporteurs were continually at work."

*It was so agreed.*

*On that understanding, paragraph 7 was adopted.*

#### *Paragraph 8*

51. Mr. KHOMAN suggested that it might be as well to delete the final part of the paragraph beginning "and the Commission" since it appeared to insist too much on the Commission's own views.

52. Sir Gerald FITZMAURICE said that there seemed to be a growing tendency on the part of the General Assembly to consider only the quantity rather than the quality of work done. It was for that reason that he had felt it desirable to lay stress on the view expressed in the second part of the paragraph.

53. Mr. AGO and Mr. SANDSTRÖM supported Sir Gerald Fitzmaurice.

*Paragraph 8 was adopted.*

The meeting rose at 6.5 p.m.

## 430th MEETING

*Friday, 28 June 1957, at 9 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 IV: OTHER DECISIONS OF THE COMMISSION (A/CN.4/L.70/Add.3) (continued)

#### *Paragraph 9*

*Paragraph 9 was adopted.*

#### *Paragraphs 10 and 11*

*Paragraphs 10 and 11 were adopted.*

#### *Paragraph 12*

1. Mr. TUNKIN suggested that it would be better to omit the words "and bearing in mind also that a number of members of the Commission would not have been able to accept or continue in office except on the basis of the present allowance".

*It was so agreed.*

*Paragraph 12, as amended, was adopted.*

#### *Paragraphs 13 and 14*

*Paragraphs 13 and 14 were adopted with one minor drafting change.*

*Paragraph 15 was adopted.*