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**A/CN.4/SR.430**

**Summary record of the 430th meeting**

Topic:  
**Other topics**

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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.*

CHAPTER II: DIPLOMATIC INTERCOURSE  
AND IMMUNITIES (*continued*)<sup>1</sup>

2. The CHAIRMAN invited the Commission to consider the various redrafts prepared in the light of its discussion of chapter II of its draft report (A/CN.4/L.70/Add.1).

I. INTRODUCTION (*continued*)<sup>2</sup>

Paragraph 6 (*continued*)<sup>3</sup>

3. Mr. SANDSTRÖM, Special Rapporteur, proposed the following text to replace paragraph 6 of the Introduction:

“The draft deals only with diplomatic missions. Diplomatic relations between States also assume other forms that might go under the heading of ‘*ad hoc* diplomacy’, which covers roving envoys, diplomatic conferences and special missions sent to a State for limited purposes. The Commission considered that these forms of diplomacy should also be studied, in order to bring out the rules of law governing them, and requested the Special Rapporteur to make a study of the question and to submit his report to it at its next session. The Commission will thus be able to discuss that part of the subject simultaneously with the present draft and any comments on it submitted by Governments.

“Apart from the diplomatic relations between States, there are also the relations between States and international organizations. There is likewise the question of the privileges and immunities of the organizations themselves. These matters are governed by special conventions. The question whether and, if so, to what extent they will be studied by the Commission will be decided later.”

4. He recalled the Commission’s decision at the 423rd meeting to merge the preface to the draft articles with the original paragraph 6 of the Introduction.

5. The CHAIRMAN urged the deletion of the last sentence of the paragraph. Though the Commission might well take a decision on the subject, there was no point in binding it to do so.

*It was agreed to delete the last sentence.*

6. Mr. BARTOS suggested adding the words “in most cases” in the sentence “These matters are governed by special conventions”. There were some international organizations whose relations with States, more particularly in the matter of privileges and immunities, were not governed by conventions, but who merely applied the provisions of conventions concluded by similar organizations where appropriate.

*It was so agreed.*

*Paragraph 6, as amended, was adopted.*

II. DRAFT ARTICLES CONCERNING DIPLOMATIC INTERCOURSE AND IMMUNITIES (*continued*)<sup>4</sup>

7. The CHAIRMAN said that the deletion of the preface to the draft articles had been proposed.

*The proposal was adopted.*

8. Sir Gerald FITZMAURICE, Rapporteur of the Commission, proposed that the following paragraph should be inserted before the text of the draft articles:

“The commentary to the draft should be regarded as provisional. It has been drafted so as to afford the minimum of necessary explanation of the articles. In the final draft which the Commission will prepare at its next session in the light of the comments of Governments, a fuller commentary will be provided.”

*The proposal was adopted.*

SECTION I. DIPLOMATIC INTERCOURSE IN GENERAL  
(*continued*)<sup>5</sup>

COMMENTARY ON ARTICLE 2 (*continued*)<sup>6</sup>

9. Mr. SANDSTRÖM, Special Rapporteur, proposed the substitution of the following text for the existing commentary:

“Without attempting to be exhaustive, this article is believed to reproduce the actual practice of States as it has existed for a very long time.”

*The proposal was adopted.*

ARTICLE 6 (*continued*)<sup>7</sup>

10. Mr. SANDSTRÖM, Special Rapporteur, proposed the following text to replace the existing text of article 6:

“(1) The receiving State may at any time notify the sending State that the head of the mission, or any member of the staff of the mission, is *persona non grata* or not acceptable. In such case, the sending State shall recall this person or terminate his functions with the mission.

“(2) If a sending State refuses or fails within a reasonable time to comply with its obligations under paragraph 1, the receiving State may refuse to recognize the person concerned as a member of the mission.”

11. In reply to an enquiry by Mr. MATINE-DAFTARY, Mr. Sandström explained that the words “or terminate his functions with the mission” had been included in paragraph 1 to cover members of missions who were nationals of the receiving State.

12. The CHAIRMAN said that the addition of the words “according to circumstances” after the word “shall” in the second sentence of paragraph 1 had been proposed.

*The proposal was adopted.*

*The text of article 6, as amended, was adopted.*

COMMENTARY ON ARTICLES 3 TO 7 (*continued*)<sup>8</sup>

Paragraphs 1 to 3

13. Mr. SANDSTRÖM, Special Rapporteur, proposed the following paragraph to replace paragraphs 1 to 3 of the commentary on articles 3 to 7:

“(1) Articles 3 to 6 deal with the appointment of the persons who compose the mission. The mission comprises a head, and assistants subordinate to him, who are normally divided into several categories: diplomatic staff, who are engaged in diplomatic activities proper; administrative and technical staff;

<sup>1</sup> Resumed from 429th meeting.

<sup>2</sup> Resumed from 423rd meeting.

<sup>3</sup> *Idem.*

<sup>4</sup> Resumed from 429th meeting.

<sup>5</sup> Resumed from 424th meeting.

<sup>6</sup> *Idem.*

<sup>7</sup> *Idem.*

<sup>8</sup> *Idem.*

and service staff. While it is the sending State which makes the appointments, the choice of the persons and, in particular, of the head of the mission, may considerably affect relations between countries, and it is naturally in the interest of both States concerned that the mission should not contain members whom the receiving State finds unacceptable. In practice the receiving State can exercise certain prerogatives to this effect."

14. Sir Gerald FITZMAURICE, Rapporteur, suggested changing the words "prerogatives to this effect" at the end of the paragraph to "powers to that end".

*It was so agreed.*

*The new paragraph 1, as amended, was adopted.*

#### Paragraph 8

15. Mr. SANDSTRÖM, Special Rapporteur, proposed the following paragraph 6 to replace the former paragraph 8 of the commentary:

"(6) Another exception is that arising out of article 5 of the draft, concerning cases where the sending State wishes to choose as a member of the diplomatic staff a national of the receiving State or a person who is a national of both the receiving State and the sending State. The Commission takes the view that this should only be done with the express consent of the receiving State. While the practice of appointing nationals of the receiving State as members of the diplomatic staff has now become fairly rare, the majority of the members of the Commission think that the case should be mentioned."

*The new paragraph 6 was adopted.*

#### Paragraphs 9 and 10

16. Mr. SANDSTRÖM, Special Rapporteur, proposed the following text as a commentary on article 7 alone, to replace paragraphs 9 and 10:

"(1) There are also questions other than the choice of the persons comprising the mission, which, though connected with the latter's composition, may cause difficulties, and which, in the Commission's view, require regulation. Article 7 deals with such questions.

"(2) Paragraph 1 of the article refers to cases where the staff of the mission is inordinately increased; experience in recent years having shown that such cases may present a problem. Such an increase may cause the receiving State real difficulties. Should the receiving State consider the staff of a mission unduly large, it should first endeavor to reach an agreement with the sending State. Failing such agreement, the receiving State should, in the view of the majority of the Commission, be given the right but not an absolute right, to limit the size of the staff. Here there are two sets of conflicting interests, and the solution must be a compromise between them. Account must be taken both of the mission's needs, and of prevailing conditions in the receiving State. Any reduction in the staff must remain within the bounds of what is reasonable and customary.

"(3) Paragraph 2 gives the receiving State the right to refuse to accept officials of a particular category. But its right to do so is circumscribed in the same manner as its right to limit the size of the staff, and must, furthermore, be exercised without discrimi-

nation between one State and another. In the case of military, naval and air attachés, the receiving State may, in accordance with what is already a fairly common practice, require their names to be submitted beforehand for its approval."

17. Sir Gerald FITZMAURICE, Rapporteur, suggested replacing the words "reduction in the staff", in the last sentence of paragraph 2, by the words "limitation of the staff".

*It was so agreed.*

18. Mr. MATINE-DAFTARY proposed the substitution of the word "consentement" for the word "agrément" at the end of the French text.

*It was so agreed.*

*The new text, as amended, was adopted.*

#### SECTION II. DIPLOMATIC PRIVILEGES AND IMMUNITIES (continued)<sup>9</sup>

19. Mr. SANDSTRÖM, Special Rapporteur, proposed that the introductory commentary be amended to read as follows:

"(1) Among the theories that have exercised an influence on the development of diplomatic privileges and immunities, the Commission wishes to mention the 'extritoriality' theory, according to which the premises of the mission represent a sort of extension of the territory of the sending State; and the 'representative character' theory, which bases such privileges and immunities on the idea that the diplomatic mission personifies the sending State.

"(2) There is nevertheless a third theory which appears to be gaining ground in modern times, namely, the 'functional necessity' theory, which justifies privileges and immunities as necessary to enable the mission to perform its functions.

"(3) The Commission was guided mainly by this third theory in solving problems on which practice gave no clear pointers."

20. Mr. SCALLE proposed that in paragraph 1 the words "wishes to mention" be replaced by "will mention"; that in paragraph 2 the word "nevertheless" be replaced by "now"; and that in paragraph 3 the word "mainly" be deleted.

*It was so agreed.*

21. In reply to a point raised by Mr. TUNKIN, Sir Gerald FITZMAURICE, Rapporteur, suggested that the following clause be inserted in paragraph 3: "Although it also bore in mind the representative character of the head of the mission and the mission itself,"

*It was so agreed.*

*The new text, as amended, was adopted.*

#### COMMENTARY ON ARTICLE 15 (continued)<sup>10</sup>

22. Mr. SANDSTRÖM, Special Rapporteur, proposed the following text to replace the existing commentary:

"The laws and regulations of a given country may make it impossible for a mission to acquire the necessary premises. For that reason the Commission has

<sup>9</sup> Resumed from 425th meeting.

<sup>10</sup> *Idem.*

inserted in the draft an article which makes it obligatory for the receiving State to provide accommodation for the mission if the latter is not permitted to acquire it. If the difficulties are due to a shortage of premises, the receiving State must facilitate the accommodation of the mission as far as possible."

23. Mr. MATINE-DAFTARY proposed the substitution of the word "*acquérir*" for the word "*obtenir*" in the first sentence of the French text.

*It was so agreed.*

24. Sir Gerald FITZMAURICE, Rapporteur, proposed the substitution of the words "ensure the provision of" for the word "provide" in the second sentence of the English text.

*It was so agreed.*

*The commentary on article 15, as amended, was adopted.*

#### COMMENTARY ON ARTICLE 16 (continued)<sup>11</sup>

##### Paragraph 3

25. Mr. SANDSTRÖM, Special Rapporteur, proposed the following two paragraphs in place of paragraph 3:

"(3) The inviolability confers on the premises and their furnishings immunity from any search, requisition, attachment or execution.

"(4) If it is thought that the inviolability of the premises gives the sending State the right to prevent the receiving State from using the land on which the premises of the mission are situated for carrying out public works of importance to the State (widening of a road, for example), then it should be recalled on the other hand that real property is subject to the laws of the country in which it is situated. In these circumstances, therefore, the sending State is under a duty to co-operate in every way in the implementation of the plan which the receiving State has in mind; and the receiving State, for its part, is obliged to provide adequate compensation or, if necessary, to place other appropriate premises at the disposal of the sending State."

26. Mr. BARTOS suggested adding the words "and fixtures" after the word "furnishings" in paragraph 3.

*It was so agreed.*

27. Sir Gerald FITZMAURICE, Rapporteur, suggested replacing the words "gives the sending State the right" by "may enable the sending State" in paragraph 4 of the English text.

*It was so agreed.*

28. Mr. EL-ERIAN recalled that certain amendments had been dropped in favour of a reference to their subject in the commentary. Since, however, the commentary was only provisional, he would not press for the inclusion of such references in the text at that stage.

29. Mr. SCELLE suggested the deletion of the words "of importance to the State" in paragraph 4.

*It was so agreed.*

*The new paragraphs 3 and 4, as amended, were adopted.*

<sup>11</sup> *Idem.*

#### COMMENTARY ON ARTICLE 20 (continued)<sup>12</sup>

##### Paragraph 3

30. Mr. SANDSTRÖM, Special Rapporteur, proposed that paragraph 3 be amended to read as follows:

"(3) The Commission has noted that the diplomatic bag has on occasion been opened with the consent of the Ministry of Foreign Affairs of the receiving State, and in the presence of a representative of the mission concerned. While recognizing that States have been led to take such measures in exceptional cases where there are serious grounds for suspecting that the diplomatic bag is being used in a manner contrary to paragraph 3 of the article and with detriment to the interests of the receiving State, the Commission wishes nevertheless to emphasize the overriding importance which it attaches to the observance of the principle of the inviolability of the diplomatic bag."

31. Mr. KHOMAN proposed that the word "consent" in the first sentence be replaced by the word "permission".

*It was so agreed.*

32. Mr. EL-ERIAN proposed that the words "are serious grounds" and "is being used" be replaced by "were serious grounds" and "was being used" respectively.

*It was so agreed.*

*Paragraph 3, as amended, was adopted.*

#### COMMENTARY ON ARTICLE 23 (continued)<sup>13</sup>

##### Paragraph 1

33. Mr. SANDSTRÖM, Special Rapporteur, proposed the following text to replace paragraph 1:

"A diplomatic agent is exempt from the receiving State's criminal jurisdiction and, with the exceptions mentioned in paragraph 1 of the article, also from its civil and administrative jurisdiction. On the other hand, it should be recalled that he has the duty to respect the laws and regulations of the receiving State as laid down in article 32 of the present draft".

*The new paragraph 1 was adopted.*

##### Paragraph 4

34. Mr. SANDSTRÖM, Special Rapporteur, proposed that paragraph 4 of the commentary be amended to read as follows:

"The second exception is based on the consideration that diplomatic immunity should not be allowed to prevent the settlement of a dispute in the receiving State regarding a succession."

35. The Commission would note that he had decided to adopt a different approach, referring to the purpose of the exception rather than attempting to define its scope.

36. The CHAIRMAN suggested that the word "dispute" was unduly restrictive.

37. Mr. SANDSTRÖM, Special Rapporteur, thought the Chairman's point would be met if the end of the paragraph were amended to read: "the settlement of a succession in the receiving State".

<sup>12</sup> *Idem.*

<sup>13</sup> Resumed from 426th meeting.

38. Mr. AGO said that the text of the commentary proposed by the Special Rapporteur was drafted in a form which gave the impression that the Commission had in mind cases other than that in which it was a question of calling a diplomatic agent as defendant in an action relating to a succession. But it was clear from sub-paragraph (b) of paragraph 1 of the article that that was the only case really considered.

39. Sir Gerald FITZMAURICE said he saw no objection to the text proposed by the Special Rapporteur, subject to the amendment that he had just suggested: it was broad enough to cover all the different types of cases that might arise.

40. Mr. AGO proposed that the paragraph be amended to read:

“The second exception is based on the consideration that diplomatic immunity cannot be invoked by a diplomatic agent in order to refuse to appear in an action relating to a succession”.

41. Sir Gerald FITZMAURICE, Rapporteur, said he could agree to the wording proposed by Mr. Ago, subject to insertion of the following words before “diplomatic immunity”: “in view of the general importance of not hindering the succession procedure”.

42. Mr. AGO accepted Sir Gerald Fitzmaurice’s suggestion.

*Mr. Ago’s proposal, as amended by Sir Gerald Fitzmaurice, was adopted.*

#### Paragraph 9

43. Mr. SANDSTRÖM, Special Rapporteur, proposed the following paragraph to replace paragraph 9:

“The first sentence of paragraph 4 states that the immunity from jurisdiction enjoyed by the diplomatic agent in the receiving State does not exempt him from the jurisdiction of his own country, on condition, however, that a court in that country is competent *ratione materiae* under its laws. To bring this jurisdiction into operation, it is not however sufficient that the case should come within the general competence of the country’s courts under its laws; these laws must also designate a local court before which the action can be brought. Where no such court exists, the second sentence provides that the competent court shall be that of the seat of the Government of the sending State. This provision would of course remove only a few of the drawbacks of the diplomatic agent’s immunity from jurisdiction. Governments should address themselves to this problem and take appropriate steps to reduce these drawbacks still further.”

44. Mr. AGO suggested deletion of the words “*ratione materiae*” from the first sentence.

*It was so agreed.*

45. Mr. TUNKIN expressed doubts as to the appropriateness of the last sentence.

46. Mr. YOKOTA proposed the deletion of the last two sentences.

47. Mr. EL-ERIAN proposed the following text for the last sentence:

“The Commission hopes to be able, in the light of the observations of Governments, to adopt other pro-

visions which will reduce these drawbacks still further.”

48. Mr. TUNKIN said that, on second thoughts, he preferred Mr. Yokota’s proposal, although he could accept Mr. El-Erian’s text. The emphasis on the drawbacks of the immunities of diplomatic agents gave the impression that the Commission regarded such immunities as something of a nuisance.

49. Mr. FRANÇOIS, referring to Mr. El-Erian’s proposal, said that it was inadvisable for the Commission to say anything in its report which might imply that it was putting on Governments the onus of taking the initiative in solving problems.

50. Mr. EL-ERIAN agreed with Mr. François that the Commission should take the initiative. There were, however, certain points on which it was necessary to have the observations of Governments in order to know what was the practice of States.

51. He had no objection to the deletion of both sentences.

*Mr. Yokota’s proposal was adopted.*

*Paragraph 9, as amended, was adopted.*

#### COMMENTARY ON ARTICLE 25 (continued)<sup>14</sup>

##### Paragraph 1

52. Mr. SANDSTRÖM, Special Rapporteur, proposed the following new text for paragraph 1:

“In all countries diplomatic agents enjoy exemption from certain dues and taxes; and although the degree of exemption varies from country to country, it may be regarded as a rule of international law that such exemption exists, subject to the exceptions listed in the article.”

53. Mr. AGO remarked that the Commission had provided for a large number of exceptions to the principle of the exemption of diplomatic agents from dues and taxes, so much so that there was hardly any difference between the treatment of foreign diplomats and that of ordinary aliens in the matter of taxation. His objection to the text as it stood was that it would be hard to say that all such exceptions were today part of an existing rule of international law.

*It was agreed to amend the final clause to read “subject to certain exceptions”.*

*Paragraph 1, as amended, was adopted.*

#### COMMENTARY ON ARTICLE 26 (continued)<sup>15</sup>

##### Paragraphs 2, 3 and 4

54. Mr. SANDSTRÖM, Special Rapporteur, proposed that paragraphs 2, 3 and 4 be replaced by the following single paragraph 2:

“As a rule, no customs duties are levied on articles for the personal use of the diplomatic agent or members of his family belonging to his household, including articles intended for his installation. This exemption has been regarded rather as based on international comity. In view of the widespread nature of this practice, the Commission considers that it should be accepted as a rule of international law.”

<sup>14</sup> Resumed from 427th meeting.

<sup>15</sup> *Idem.*

55. Mr. KHOMAN suggested that, in the French text of the first sentence, the word “*effets*” be replaced by “*objets*”.

*It was so agreed.*

56. Sir Gerald FITZMAURICE suggested that in the English text of the same paragraph the word “*installation*” be replaced by “*establishment*”.

*It was so agreed.*

*The new text, as amended, was adopted.*

#### Paragraph 7

57. Mr. SANDSTRÖM, Special Rapporteur, proposed the following new paragraph 5 to replace paragraph 7:

“In framing the exceptions, the Commission referred not only to articles exempted from customs duties but also to articles the import or export of which is prohibited by the laws of the receiving State, without wishing to interfere with the tolerance shown towards articles intended for the diplomatic agent’s personal use.”

58. Mr. FRANÇOIS thought that the words “*exempted from customs duties*” should read “*subject to customs duties*”.

59. Mr. AGO suggested replacing the words “*exempted from customs duties*” by the words “*in the case of which exemption from customs duties exceptionally does not apply*”.

*It was so agreed.*

60. Sir Gerald FITZMAURICE suggested the substitution of the words “*without wishing to suggest any interference with*” for “*without wishing to interfere with*”. The Commission could not itself interfere in such a matter.

*It was so agreed.*

61. The CHAIRMAN questioned the appropriateness of the term “*tolerance*”.

62. Mr. LIANG, Secretary of the Commission, suggested introducing the concept of international courtesy in place of the reference to tolerance.

63. Mr. FRANÇOIS doubted whether such exemption was a matter either of courtesy or of tolerance on the part of the receiving State: it was a rule of international law.

64. Mr. SCALLE agreed with Mr. François. Such exemption was an established custom and thus a rule of international law.

65. Mr. TUNKIN remarked that any considerable change in the commentary might make it necessary to amend paragraph 2 of the article.

*It was agreed to substitute the words “customary treatment accorded with respect to articles” for the words “the tolerance shown towards articles”.*

*The new paragraph 5, as amended, was adopted.*

#### COMMENTARY ON ARTICLE 27 (continued)<sup>16</sup>

66. Mr. SANDSTRÖM, Special Rapporteur, proposed the replacement of paragraphs 2, 3 and 9 by the following new texts:

<sup>16</sup> *Idem.*

“(2) The solutions adopted for this problem will differ according to whether the privileges and immunities required for the exercise of the functions are considered in relation to the individual official or to the mission as an organic whole.

“(3) In view of the differences in State practice, the Commission has had to choose between two courses: either to work on the principle of a bare minimum, and stipulate that any additional prerogatives to be accorded should be decided by bilateral agreement, or to try to establish a general and uniform rule based on what would appear to be reasonable.

“(9) With regard to private servants of the head or members of the mission, a majority of the Commission took the view that they should not enjoy privileges and immunities as of right except, in the case of those who are not nationals of the receiving State, exemption from dues and taxes on the emoluments they receive by reason of their employment. In the majority view, the mission’s interest would be adequately safeguarded if the receiving State were under a duty to exercise its jurisdiction over their persons in such a manner as will avoid undue interference with the conduct of the mission’s business.”

#### Paragraph 2

67. Mr. TUNKIN, recalling his remarks on the original text of paragraph 2 (427th meeting, para. 35), said that he found the new text equally unintelligible.

68. The CHAIRMAN suggested the deletion of the paragraph.

69. Sir Gerald FITZMAURICE, Rapporteur, said that the paragraph dealt with a subject which had been discussed at some length by the Commission and appeared to be quite clear.

70. It could be made even clearer by modifying the last part of the sentence to read “*in relation to the position of the individual official or, alternatively, to the work of the mission as an organic whole.*”

71. Mr. LIANG, Secretary to the Commission, thought that “*in relation to the work*” would be clearer than the words “*in relation to the position*”.

72. Sir Gerald FITZMAURICE, Rapporteur, agreed.

73. The CHAIRMAN put the amended text to the vote.

*Paragraph 2, as amended, was adopted by 9 votes to 3, with 4 abstentions.*

#### Paragraph 3

74. Mr. AGO wondered whether it was necessary to refer to decision by “*bilateral agreement*”. Such matters could also be settled simply by the local authorities.

75. The CHAIRMAN pointed out that even in such cases an agreement was implied.

*Paragraph 3 was adopted.*

#### Paragraph 9

*Paragraph 9 was adopted with minor drafting changes.*

#### Paragraph 10

76. Mr. SANDSTRÖM, Special Rapporteur, proposed that paragraph 10 be amended to read as follows:

"In connexion with this article, the Commission considered what value as evidence could be attached to the lists of persons enjoying privileges and immunities which are normally submitted to the ministry of foreign affairs. It took the view that such a list might constitute presumptive evidence that a person mentioned therein was entitled to privileges and immunities, but did not constitute final proof".

*The new text was adopted.*

ARTICLE 28 AND COMMENTARY (*continued*)<sup>17</sup>

77. Mr. SANDSTRÖM, Special Rapporteur, proposed that the commentary on article 28 be replaced by the following text:

"This article is based on the idea that a person enjoying diplomatic privileges and immunities shall not, by virtue of the laws of the receiving State, acquire the nationality of that State against his will. An exception is made, however, in the case of a child of a national of the receiving State."

78. Mr. TUNKIN proposed that the beginning of the second sentence be amended to read: "This rule does not apply to the case of . . ."

*It was so agreed.*

79. Mr. FRANÇOIS pointed out that, under the terms of the article, an ambassador's daughter who married a national of the receiving State would be able to refuse to accept her husband's nationality, even in countries where the wife's nationality automatically followed the husband's. However, the whole article raised so many complicated questions which could not be considered adequately at the current session that the Commission should consider it further at its next session.

80. Mr. SANDSTRÖM, Special Rapporteur, said the Commission had already agreed in connexion with other articles that it could not hope to take all exceptional cases into account. In addition to the case instanced by Mr. François, the text of the article did not cover the case of women diplomats.

81. Mr. AGO and Sir Gerald FITZMAURICE, Rapporteur, said that in their view the exception made in the article only arose when the diplomatic agent was the father.

82. Mr. BARTOS pointed out that the nationality laws of many countries now made no distinction between men and women.

83. Mr. TUNKIN thought the Commission could not properly take the view that the exception would apply only where the diplomatic agent was the father, since in that case the Commission would be setting its seal to laws which discriminated on grounds of sex.

84. Mr. AGO and Sir Gerald FITZMAURICE, disclaiming any approval of discrimination on grounds of sex, said that they only wanted to indicate which would be the cases to which, in practice, the exception would apply.

*It was agreed that the text of article 28 should be considered further at the next session.*

*On that understanding, the text of article 28 was adopted.*

*On the same understanding the new text for the commentary was adopted, as amended.*

<sup>17</sup> Resumed from 428th meeting.

COMMENTARY ON ARTICLE 29 (*continued*)<sup>18</sup>

85. Mr. SANDSTRÖM, Special Rapporteur, proposed that paragraphs 1 and 2 of the commentary be replaced by the following text:

"(1) This article deals with the privileges and immunities of a diplomatic agent who is a national of the receiving State. On this subject practice is not uniform, while the opinions of writers are also divided. Some hold the view that a diplomatic agent who is a national of the receiving State should enjoy full privileges and immunities, subject to any reservations which the receiving State may have made at the time of the *agrément*, while others are of opinion that he should enjoy only such privileges and immunities as have been expressly granted him by the receiving State.

"(2) This was a minority opinion—the majority of the Commission suggested an intermediate solution. It considered it essential for a diplomatic agent who is a national of the receiving State to enjoy at least a minimum of immunity to enable him to perform his duties satisfactorily. That minimum, it was felt, is immunity from both criminal and civil jurisdiction in respect of official acts performed in the exercise of his functions, namely, acts performed in the name of the government of the sending State."

86. Mr. MATINE-DAFTARY, Mr. EL-ERIAN and Mr. BARTOS recalled that the Special Rapporteur had been asked (428th meeting, para. 19) to include a reference to the fact that a minority of the members of the Commission held the view not only that diplomatic agents who were nationals of the receiving State should enjoy only such privileges and immunities as were expressly granted them by the receiving State, but that they should not enjoy any privileges or immunities at all, and indeed that the whole practice of appointing diplomatic agents who were nationals of the receiving State should be eliminated.

87. Mr. SANDSTRÖM, Special Rapporteur, said he saw no objection to such a reference, but it should be included under article 5 rather than under article 29.

*It was so agreed.*

88. MR. EL-ERIAN thought the words "both criminal and civil" should be deleted from paragraph 2, since their inclusion must give rise to controversy.

*It was so agreed.*

89. The CHAIRMAN suggested that as the last phrase of paragraph 2—beginning with the word "namely"—was repetitious, it should be deleted.

*It was so agreed.*

*The new text, as amended, was adopted.*

COMMENTARY ON ARTICLE 31 (*continued*)<sup>19</sup>

90. Mr. SANDSTRÖM, Special Rapporteur, proposed that paragraphs 1 and 2 of the commentary be replaced by the following text:

"In the course of diplomatic relations it may be necessary for a diplomatic agent or a diplomatic courier to pass through the territory of a third State. Several questions were raised on this subject during discussion in the Commission.

<sup>18</sup> *Idem.*

<sup>19</sup> *Idem.*



“The first problem is whether the third State is under a duty to grant free passage. The view was expressed that it is in the interest of all States belonging to the community of nations that diplomatic relations between the various States should proceed in a normal manner and that in general, therefore, the third State should grant free passage to the member of a mission or the courier carrying the diplomatic bag. It was pointed out, on the other hand, that a State is entitled to regulate access of foreigners to its territory. The Commission did not think it necessary to resolve this problem, which only arises in exceptional circumstances.”

91. Mr. LIANG, Secretary to the Commission, with reference to a point raised by Mr. SPIROPOULOS, suggested that in paragraph 2 the words “the courier carrying the diplomatic bag” be replaced by “the diplomatic courier” as in paragraph 1, and that the words, “which only arises in exceptional circumstances” be replaced by “which arises only rarely”.

*It was so agreed.*

*The new text, as amended, was adopted.*

COMMENTARY ON ARTICLE 32 (*continued*)<sup>20</sup>

92. Mr. SANDSTRÖM, Special Rapporteur, proposed the following new text for paragraph 3:

“Paragraph 2 lays down that the ministry of foreign affairs of the receiving State is the normal channel through which the diplomatic mission shall conduct all official business entrusted to it by its Government; in the event, however, of agreement (whether express or tacit) between the two States, the mission may deal directly with other authorities of the receiving State.”

*The new text was adopted.*

COMMENTARY ON ARTICLE 33 (*continued*)<sup>21</sup>

93. Mr. SANDSTRÖM, Special Rapporteur, proposed the following new text for the commentary:

“This article lists the various ways in which a diplomatic agent’s functions may come to an end. The causes which may lead to termination under points 2 and 3 are extremely varied. Termination is often due to difficulties which have arisen in relations between the two countries concerned or to the breaking-off of diplomatic relations.”

94. Mr. LIANG, Secretary to the Commission, suggested that the last sentence could be deleted as unnecessary and because point 3 also referred to the case where the receiving State declared a diplomatic agent *persona non grata*.

*It was so agreed.*

95. Mr. SPIROPOULOS suggested that in the first sentence the words “the various ways” be replaced by the words “various examples of the ways”.

*It was so agreed.*

*The new text, as amended, was adopted.*

96. The CHAIRMAN, after indicating that the Rapporteur would go through the English text with a view to making any necessary stylistic changes, put the draft

articles concerning diplomatic privileges and immunities and the commentary thereon (part II of chapter II of the draft report), as amended, to the vote as a whole.

*The draft articles and commentary, as amended, were adopted unanimously.*

97. Mr. LIANG, Secretary to the Commission, said that before he had been obliged to leave, Mr. Verdross had indicated to him that he was prepared to vote in favour of the draft articles and commentary as amended.

98. Mr. BARTOS said that he had voted for the draft articles and commentary subject to reservations he had expressed concerning certain articles and certain paragraphs.

99. Mr. TUNKIN said that, though he had voted for the draft articles and the commentary as a whole, he maintained his objections on certain points, in particular on the advisability of including article 36 on the settlement of disputes.

CHAPTER III: PROGRESS OF WORK ON OTHER SUBJECTS UNDER STUDY BY THE COMMISSION; CHAPTER IV: OTHER DECISIONS OF THE COMMISSION (*continued*)

100. The CHAIRMAN put to the vote chapters III and IV of the draft report (A/CN.4/L.70/Add. 2 and 3), as a whole, as amended.

*Chapters III and IV, as amended, were adopted unanimously.*

101. The CHAIRMAN then called for a vote on the draft report (A/CN.4/L.70 and Add. 1 to 3), as a whole, as amended.

*The draft report, as amended, was adopted unanimously.*

**Closure of the session**

102. Mr. GARCÍA AMADOR, on behalf of all its members, paid a tribute to the Chairman for his devoted service to the Commission and his wise and patient conduct of its debates which had been largely responsible for the very cordial atmosphere that had prevailed throughout the session.

103. Mr. EDMONDS associated himself with the tributes paid to the Chairman, and also expressed the Commission’s gratitude to the Drafting Committee, which had had an exceptionally heavy task.

104. Mr. SPIROPOULOS, Mr. FRANÇOIS, Mr. AMADO, Mr. HSU and Mr. PAL also paid a tribute to the Chairman, as well as to the Rapporteur, the Special Rapporteurs and the Secretariat, and congratulated the new members of the Commission on their valuable contributions to its debates.

105. Mr. MATINE-DAFTARY, Mr. KHOMAN, Mr. EL-ERIAN and Mr. AGO associated themselves with the tributes that had been paid, and expressed their gratitude to the old members of the Commission, whose friendly welcome had set them at ease from the outset.

106. Mr. LIANG, Secretary to the Commission, thanked those members of the Commission who had expressed appreciation of the Secretariat’s efforts.

107. Although it was not normal for the Secretariat

<sup>20</sup> *Idem.*

<sup>21</sup> Resumed from 429th meeting.

to congratulate United Nations organs on their work, he was sure that on the present occasion the Secretary-General would wish him to point out that it was a monumental achievement for the Commission to have completed in a single session its first draft of an entirely new subject, particularly when its increased membership was borne in mind.

108. The CHAIRMAN, after thanking members for their kind remarks, and expressing appreciation of the help he had received from the other officers, from the Special Rapporteurs and from all members of the Secretariat, said he particularly welcomed the atmosphere of cordial co-operation which had marked the current session and had contributed notably to its success. He

also welcomed the unanimous adoption of the draft rules on a question of perennial importance.

109. Last but not least, he welcomed the valuable contributions of the new members, who represented legal systems that had not previously been represented or had been under-represented in the Commission. Those contributions were welcome, not only for their own sake, but also because they increased the likelihood of approval by the General Assembly of the draft on diplomatic intercourse and immunities.

110. The Chairman declared the ninth session of the International Law Commission closed.

The meeting rose at 1.20 p.m.