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Summary record of the 451st meeting

Topic:
Diplomatic intercourse and immunities

Extract from the Yearbook of the International Law Commission:-
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57. The CHAIRMAN put to the vote Mr. Sandström's proposal (para. 52 above) that the words "in whole or in part" should be inserted after the words "to declare the nullity of the award" in paragraph 1.

The proposal was adopted by 11 votes to none, with 5 abstentions.

58. The CHAIRMAN put to the vote Mr. Yokota's proposal (para. 46 above) that the words "within three months" should be inserted after the words "if the parties have not" in paragraph 1.

The proposal was adopted by 12 votes to none, with 2 abstentions.

Paragraph 1, as amended, was adopted by 12 votes to 2, with 2 abstentions.

59. The CHAIRMAN put to the vote Mr. François' proposal (para. 53 above) that the words "of the discovery of the corruption and in any case within ten years of the rendering of the award" should be added at the end of paragraph 2.

The proposal was adopted by 14 votes to none, with 2 abstentions.

60. The CHAIRMAN proposed that, in paragraph 3, the words "Notwithstanding the provisions of article 32" should be added to meet the point raised by Mr. Matine-Daftary.

It was so decided.

Paragraph 3, as so amended, was adopted by 12 votes to 2, with 2 abstentions.

61. Mr. HSU said that although he had voted in favour of the articles relating to the annulment and revision of arbitral awards, he still had some doubts whether they should be retained as they seemed to have gone somewhat beyond the fundamental aim of the draft, which was to hold the parties to their undertaking to arbitrate and prevent them from frustrating the proceedings. Moreover, by providing for annulment and revision the Commission had been obliged to provide for recourse to the International Court of Justice in more cases than would otherwise have been necessary, and had thus laid the draft open to more criticism from States than it need otherwise have done. In his view the very rare cases where occasion for applications for annulment or revision arose should be treated as new disputes, and referred to arbitration as such.

62. The CHAIRMAN observed that the Commission had completed its consideration of the draft articles in the Special Rapporteur's model draft. Further consideration of item 2 of the Commission's agenda would therefore be deferred pending receipt of the Drafting Committee's report.

The meeting rose at 5.50 p.m.

451st MEETING

Wednesday, 28 May 1958, at 9.45 a.m.

Chairman: Mr. Radhabinod PAL.

Diplomatic intercourse and immunities (A/3623, A/CN.4/114 and Add.1-6, A/CN.4/116 and Add.1-2, A/CN.4/L.72) *(continued)* [1]

[Agenda item 3]

DRAFT ARTICLES CONCERNING DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/3623, PARA. 16; A/CN.4/116/ADD.1-2) *(continued)*

ARTICLE 3

1. Mr. SANDSTRÖM, Special Rapporteur, said that he proposed no changes in article 3. He drew attention, however, to the view expressed by the Governments of Chile (A/CN.4/114/Add.1) and Finland (A/CN.4/114/Add.2) to the effect that the *agrément* was only required in the case of ambassadors and ministers. In his view the *agrément* should always be obtained for the head of a mission, even if he was only a *chargé d'affaires.*

2. He also drew attention to the fact that in the General Assembly the Philippine delegation had proposed the addition of a second paragraph stating that the receiving State could not refuse to give the *agrément* except on reasonable grounds (see A/CN.4/L.72); that point had, however, been debated at length at the ninth session of the Commission.

3. Sir Gerald FITZMAURICE said that while it was true that the *agrément* was not sought for a *chargé d'affaires ad interim,* the situation was otherwise with *chargés d'affaires ad hoc,* appointed, for example, pending the establishment of formal diplomatic relations between two States. It was, he thought, inconceivable that in such a case the *chargé d'affaires* would be sent to the receiving State unless his name had been submitted in advance and something at least very similar to the *agrément* procedure completed. He was therefore in favour of retaining article 3 as it stood, except that the word "accredit" might be replaced by the word "send", in order to cover the case of *chargés d'affaires.*

4. Mr. HSU, Mr. VERDROSS and Mr. ZOUREK agreed that article 3 should be retained as it stood.

Article 3 was adopted, subject to any changes proposed by the Drafting Committee.

ADDITIONAL ARTICLE (ARTICLE 3 A)

5. Mr. SANDSTRÖM, Special Rapporteur, drew attention to his proposal (A/CN.4/116/Add.1) for a new article designed to meet a point raised by the United States Government in its observations on article 1 (A/CN.4/116).

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[1] Resumed from 449th meeting.

6. Mr. HSU thought that the proposal was not in keeping with existing practice and was unnecessary. He himself was his country's ambassador to two foreign States, but the first had not been asked to give its consent before he had been accredited to the second.

7. Mr. MATINE-DAFTARY agreed that the proposal was unnecessary. So far as he knew, only the Holy See had ever objected to multiple accreditation, because it was unwilling that an ambassador accredited to it should also be accredited as ambassador to Italy. For other States multiple accreditation was not desirable; nevertheless certain sending States were unable to avoid it.

8. Mr. BARTOS said that other similar cases had occurred. For example, up to 1929 the Netherlands Government had been unwilling to agree that one and the same person should be accredited as Serbian ambassador to both Belgium and the Netherlands. In his view, the Commission could not disregard existing practice, particularly when there were good reasons for it; the system of dual or multiple accreditation could give rise to difficulties in the case of tension between the States to which the ambassador in question was accredited.

9. Sir Gerald FITZMAURICE agreed that the receiving State to which an ambassador was accredited no doubt had a right to object to receiving him if he was accredited to one or more other States in addition. The Special Rapporteur's proposed text, however, gave the impression that its explicit consent to his being so accredited was required, which was not the case. He therefore proposed that the article be amended to read along the following lines:

> "Unless objection is offered by any of the receiving States concerned, the head of a mission to one State may be appointed head of a mission to one or more other States."

10. Mr. ALFARO said that, quite apart from the cases cited, many other countries had their own reasons for objecting to multiple accreditation. For the sake of illustration, he referred to the situation as between Spain and Portugal and as between Israel and the Arab States. The provision first proposed by the United States Government should therefore appear in the draft, though he agreed with Sir Garald Fitzmaurice that it should be worded in negative form.

11. Mr. EL-ERIAN agreed that it would be desirable to include some such provision. It would have been desirable to do so even if it had not been in accordance with current practice. For the Commission should endeavour to adopt rules which would help to reduce differences between States such as might well arise if the receiving States were not at liberty to object to multiple accreditation.

12. Mr. SANDSTRÖM, Special Rapporteur, accepted Sir Gerald Fitzmaurice's proposal.

13. Mr. HSU pointed out that all the cases which had been referred to were special cases. In the matter under discussion, as in all matters of diplomatic intercourse, he thought it was unnecessary to stress that the agreement of the States concerned was required.

14. The CHAIRMAN put to the vote the new article in the amended form proposed by Sir Gerald Fitzmaurice (para. 9 above).

The article was adopted by 14 votes to none, with 1 abstention.

ARTICLE 4

15. Mr. SANDSTRÖM, Special Rapporteur, drew attention to his proposal (A/CN.4/116/Add.1) that the word "other" should be omitted from what had been the text of article 4 (A/3623, para. 16), in accordance with a suggestion made by the Netherlands Government (A/CN.4/116).

16. He also drew attention to the observations of the United States Government and his comments thereon (A/CN.4/116), and to the somewhat similar observation of the Yugoslav Government (A/CN.4/114/Add.5). As far as the alleged lack of clarity was concerned, he thought the proposed inclusion of a definitions clause would meet the point raised by the two Governments.

17. Mr. YOKOTA said he shared the Netherlands Government's view that a definitions clause would be desirable. Even if no such clause was included, however, he was in favour of omitting the word "other" in what had been the text of article 4, for it was clear from article 6, paragraph 1, that the head of the mission was not included among the members of the mission's staff.

18. Mr. LIANG, Secretary to the Commission, recalled that at the ninth session some doubts had been expressed regarding the precise meaning of the words "freely appoint". It had, he thought, been agreed that article 4 meant no more than that the *agrément* procedure was not required in respect of members of the mission staff other than the head of the mission. The observations of the United States Government showed that the wording adopted at the ninth session was open to misunderstanding, and it might therefore be advisable to make the scope of the article clear.

19. Mr. ZOUREK agreed. However, it should perhaps be made clear in the commentary that the fact that no *agrément* was required in the case of members of the mission staff other than the head of the mission did not mean that the receiving State was obliged to accept them, since it could always refuse an entry visa to a particular member or declare him *persona non grata* after his arrival.

20. After further discussion, Mr. AMADO suggested that the Drafting Committee might consider it possible to dispense with article 4 altogether since it was agreed that the article did no more than refer back, by implication, to article 3 and forward to articles 5, 6 and 7.

21. The CHAIRMAN put to the vote the text of paragraph 1, as proposed by the Special Rapporteur (A/CN.4/116/Add.1).

Paragraph 1 was adopted unanimously, subject to any changes proposed by the Drafting Committee.

22. Mr. SANDSTRÖM, Special Rapporteur, drew attention to the text he proposed as article 4, paragraph 2, in accordance with a proposal by the Netherlands Government (A/CN.4/116). A somewhat similar proposal had been made by the Italian Government (A/CN.4/114/Add.3).

23. Mr. LIANG, Secretary to the Commission, pointed out that articles 3 to 5 dealt with the question of appointments. The question raised by the Netherlands and Italian Governments was somewhat different, and if the Commission wished to refer to it, it should perhaps do so at some later stage in the draft, possibly in connexion with article 8.

24. Sir Gerald FITZMAURICE said that, quite apart from sharing the Secretary's doubts as to the place of the provision in the draft, he was not at all sure that the provision itself was either necessary or desirable. The matter had been amply discussed at the ninth session and it had been established that it was the invariable practice of diplomatic missions to notify at least the initial arrival of their members to ensure that their names were placed on the diplomatic list. That they were certain to do in their own interest.

25. The new provision would nevertheless be acceptable provided that it were strictly confined to the initial arrival, or appointment, and the final departure of members of missions. As it stood, it could be interpreted as requiring every departure and arrival of a member of a mission, even on leave, for instance, to be notified, which was not the practice at all. Similarly, the second sentence might be taken to imply that private servants could not be engaged and discharged in the receiving State unless the Government of that State was notified. Although such notification was frequently made for the purpose of securing for the servants whatever privileges and immunities they were entitled to by law, the recruitment and discharge of private servants in the receiving State were not subject to the condition of notification.

26. The CHAIRMAN recalled that at the Commission's ninth session Mr. Khoman had suggested adding to the text submitted by Mr. Tunkin, which had subsequently become article 4, the words: "whose names shall be notified to the receiving State before they take up their duties". Mr. Khoman had not pressed the amendment and the matter had been dealt with in another context.[2]

27. Mr. FRANÇOIS said that he was sure that the Netherlands Government, when making the proposal now sponsored by the Special Rapporteur, had never intended to imply that notification of arrival and departure was necessary whenever a member of a mission returned from leave and went on leave. The purpose of the proposal was clearly to enable Governments to establish an accurate list of all persons entitled to diplomatic privileges and immunities. He could not agree with Sir Gerald Fitzmaurice that it was not necessary for missions to make any notification of the recruitment and discharge of private servants in the receiving State. Since such servants could claim special status it was most desirable the their engagement be notified and *a fortiori* that their discharge should be notified, in order to prevent their continuing to enjoy special status when no longer employed by a diplomatic mission.

28. Mr. SANDSTRÖM, Special Rapporteur, agreed with Mr. François and drew attention to article 28, paragraph 4, and to paragraph 9 of the commentary on that article.

29. Mr. BARTOS said that he was in favour of including the new proposal but felt that it needed some clarification. For example, the text should also cover members of missions who did not leave the territory of the receiving State on terminating their appointment. Such cases were by no means rare and were of considerable legal, and even political, importance. Furthermore, whereas private servants engaged and discharged in the receiving State were mentioned in the second sentence, there was no corresponding mention of the arrival and departure of servants brought into the receiving State, although, according to article 28, such servants were not regarded as members of the mission. In that connexion, he felt bound to point out, with reference to Sir Gerald Fitzmaurice's remarks, that the practice of the United Kingdom Ministry of Labour of requiring domestic staff brought in by the Yugoslav mission to satisfy all the formalities applicable to ordinary foreign workers had caused considerable difficulty, and Yugoslavia had been obliged, as a counter-measure, to stipulate that the United Kingdom mission could not bring domestic staff into Yugoslavia without previous permission. It was a matter that required regulating one way or the other, and he was in favour of complete freedom for missions to bring in domestic staff.

30. Mr. LIANG, Secretary to the Commission, said that the new proposal would do no harm, especially as it had been made clear that it entailed no obligation to notify casual departures or arrivals. There was a danger, however, that it might be taken as somehow connected with the question of the duration of privileges and immunities, which was dealt with in article 31. Perhaps the Drafting Committee might be requested to find an innocuous place in the draft for the proposal, indicating its connexion with the question of the diplomatic list and the list of servants of diplomatic missions.

31. Sir Gerald FITZMAURICE said that he did not wish to press his objection to the proposal and was prepared to accept it subject to drafting changes and reconsideration of its context in the draft.

32. Referring to Mr. Bartos' remarks, he said that he (Sir Gerald Fitzmaurice) was speaking without know-

[2] *Yearbook of the International Law Commission, 1957*, vol. I (United Nations publication, Sales No.: 1957.V.5, vol. I), 389th meeting, paras. 20 and 59.

ledge of the facts but that, on the face of it, the practice of the Ministry of Labour, if exactly as Mr. Bartos had described, would seem to go beyond what was permissible in international law. Servants brought in by diplomatic missions were of course subject to the ordinary laws governing the employment of aliens. This might mean that they could not accept any other employment while in the country. Perhaps it was something of the kind that accounted for the state of affairs mentioned by Mr. Bartos. Subject to the right of the receiving State to declare the persons concerned *non grata,* foreign diplomatic missions certainly had the right to employ servants who were not locally engaged. The Special Rapporteur's proposal, however, only referred specifically to locally recruited servants.

33. Mr. ZOUREK agreed with those speakers who were opposed to including the proposal in section I of the draft. The text had nothing to do with the substantive rules dealt with in the early articles and was perhaps more closely connected with article 28.

34. Mr. SANDSTRÖM, Special Rapporteur, agreed that the text might be referred to the Drafting Committee with the request that it should make certain drafting changes and reconsider the placing of the proposal in the draft.

On that understanding, paragraph 2, as proposed by the Special Rapporteur (A/CN.4/116/Add.1), was adopted unanimously.

ARTICLE 5

35. Mr. SANDSTRÖM, Special Rapporteur, referred to the new text proposed for article 5 (A/CN.4/116/Add.1).

36. The proviso at the end of the article, which was the only major change, had been introduced in view of the United Kingdom Government's observation that it was not its normal practice to grant such express consent (A/CN.4/114/Add.1). The United States Government, in its observations, had pointed out that it declined to recognize one of its own nationals as a diplomatic officer of an embassy or legation in Washington but ordinarily had no objection to the inclusion in the mission's staff of American citizens employed in other capacities (A/CN.4/114).

37. Mr. BARTOS, after recalling that he was opposed to the whole idea of appointing nationals of the receiving State as members of foreign diplomatic missions,[3] said that, in view of the Commission's decision on article 5 at its previous session, he was prepared to accept an article regulating the question, provided that it stipulated that the express consent of the Government of the receiving State was required in all cases. Furthermore, in view of the difficulties experienced by newly established States in staffing their missions, he was prepared to accept the principle that nationals of third States might be appointed to diplomatic missions, on the express understanding that the fact that the person concerned was not of the nationality of the sending State must be explicitly stated when the *agrément* was sought.

38. Mr. HSU said that he found the Special Rapporteur's addition acceptable since without it receiving States would be bound to go through the formality of giving express consent even when they considered it unnecessary.

39. Mr. EL-ERIAN said he had some difficulty in understanding the effect of the qualification added to article 5. How could a receiving State waive in advance its right to consent to what was in any case a rare practice, and what form would that waiver take? The waiver of a right could not be inferred from the mere failure to exercise it. Perhaps the intended purpose would be achieved by leaving out the last phrase and merely stating "... only with the express or tacit consent of that State".

40. Mr. SANDSTRÖM, Special Rapporteur, said that the qualification simply meant that when a receiving State did not insist on its consent being sought, it would not be necessary for sending States to apply for that consent in every case.

41. Mr. ZOUREK agreed that the fact that a receiving State raised no objection in certain cases could not be interpreted as a general waiver of its right. The amendment suggested by Mr. El-Erian would avoid the difficulty.

42. In his opinion, the text did not take sufficient account of the purely exceptional nature of cases of appointment of nationals of the receiving State to foreign diplomatic missions. Recalling that he had not supported the article at the previous session,[4] he added that such appointments might involve the person concerned in an embarrassing conflict of loyalties. Preferably, therefore, the article should open with the statement that diplomatic agents should, as a rule, be chosen from among the nationals of the sending State.

43. Mr. TUNKIN remarked that he could not see much reason for the new addition to the article. Such appointments were so rare that he did not think there could be any objection to a rule requiring the sending State to obtain the express consent of the receiving State to the appointment of one of the latter's nationals. The new formula proposed could only lead to some degree of uncertainty. He would prefer the original wording of article 5. Countries such as the United Kingdom, which did not insist on such consent being obtained, could always reply to that effect when their consent was sought.

44. Mr. YOKOTA said that the objections formulated by the Governments of the United Kingdom and the United States could be met by deleting the word "express", so as to cover the case of the implied consent of the receiving State.

[3] *Ibid.*, 403rd meeting, paras. 56-62.

[4] *Ibid.*, 389th meeting, para. 64.

45. Sir Gerald FITZMAURICE said that the Government of the United Kingdom had not formulated any objection to article 5; it had merely made a statement of individual practice.

46. He had no formal proposal to make, but suggested that the purpose of the Special Rapporteur in adding the words "unless it has waived that condition" could perhaps be better served by introducing a phrase along the following lines at the beginning of the sentence; "Except where a country does not insist on that condition..."

47. Mr. MATINE-DAFTARY said that he agreed with those members who opposed the insertion of the additional words proposed by the Special Rapporteur.

48. He asked the Special Rapporteur the reason for introducing the term "A diplomatic agent" in place of the words "Members of the diplomatic staff of the mission" which appeared in the draft adopted by the Commission at its previous session (A/3623, para. 16). For his part, he preferred the earlier text.

49. Mr. SANDSTRÖM, Special Rapporteur, withdrew his proposal for the insertion of the words "unless it had waived that condition".

50. The term "A diplomatic agent" had been introduced because it was the one appearing in the definitions clause proposed by him (A/CN.4/116/Add.1). When those definitions were adopted, the question whether that term should be retained in article 5 would be a matter of drafting.

51. Mr. ZOUREK said that since the Commission had no yet accepted the definitions clause proposed by the Special Rapporteur, it was better to vote on the original text.

52. Mr. SANDSTRÖM, Special Rapporteur, said that he had no objection to that procedure. The Commission could revert to the original text of article 5 (A/3623, para. 16) which he now proposed without amendment.

53. Mr. HSU drew attention to the case where the sending State wished to choose as a member of the diplomatic staff a person who was a national of both the receiving State and the sending State, a case to which reference was made in paragraph (6) of the commentary.

54. In cases of dual nationality, the consent of the receiving State should be required only if the dual national was a resident of the receiving State. It would be unfair to require such consent if the dual national was a resident of the sending State.

55. Mr. SANDSTRÖM, Special Rapporteur, said that the Government of China had made a proposal for an additional paragraph in article 5 stating that dual nationality should not constitute grounds for declaring a diplomatic agent *persona non grata* (A/CN.4/114/Add.4).

56. He did not propose a provision along those lines because he did not consider that the receiving State could be placed virtually under an obligation to observe foreign nationality laws.

57. He had also not considered it advisable to introduce a provision along the lines suggested by the Government of the United States of America (A/CN.4/116) because to do so would be to enter into excessive detail.

58. Sir Gerald FITZMAURICE said that there was a certain logic in the United States observation that, once it had issued a visa to a member of a diplomatic mission on a passport issued by the sending State, the receiving State was precluded from thereafter claiming that person as its national. The State issuing such a visa could be held thereby to have waived its special right, under the rule of "master nationality", to assert its own nationality in its relations with the dual national.

59. The CHAIRMAN put to the vote article 5 as drafted at the ninth session (A/3623, para. 16).

Article 5 was adopted by 16 votes to 1, with 1 abstention.

60. Mr. TUNKIN proposed the insertion of an additional paragraph in the following terms:

> "Such consent shall also be necessary for the appointment of nationals of the receiving State to administrative, technical and service staff posts where it is so required by the regulations in force or by the practice of the receiving State."

61. Article 5 dealt only with the appointment to diplomatic posts of nationals of the receiving State. Some provision had also to be made for the appointment of such nationals to non-diplomatic posts.

62. Mr. SANDSTRÖM, Special Rapporteur, said that he could not support Mr. Tunkin's proposal, which was not consistent with existing practice. As pointed out by the Swiss Government (A/CN.4/116), for the sake of the proper functioning of its mission a State had to be free to appoint nationals of the receiving State to the non-diplomatic staff of the mission without prior authorization. Any lack of co-operation in that respect by the receiving State would be contrary to the provision in article 19 that the receiving State should accord full facilities for the performance of the mission's functions.

63. Mr. MATINE-DAFTARY said that he was in general agreement with Mr. Tunkin's proposal. A national of the receiving State appointed to the staff of a diplomatic mission would enjoy certain privileges; it would be undesirable if those privileges were granted to him without the consent of the State to which he belonged.

64. Mr. PADILLA NERVO said that it was not the general practice of States to insist on their consent being obtained in the cases contemplated by Mr. Tunkin's proposal. If, however, the legislation of the receiving State stipulated that such consent was necessary, it would not be possible for a diplomatic mission to contravene that legislation. Article 33 of the draft specifically laid down the duty of all members of a diplomatic mission to respect the laws and regulations of the receiving State.

65. Sir Gerald FITZMAURICE said that the work of

a diplomatic mission would become more difficult, or might even be paralysed, if that mission was unable to engage such local personnel as interpreters, stenographers and messengers familiar with the local language and conditions. In accepting diplomatic representation, the receiving State agreed in principle that the mission could recruit such local staff.

66. The fact that express consent was not required prior to the appointment of such staff did not deprive the authorities of the receiving State of all control over such appointments. It was always open to the receiving State to declare *persona non grata* any member of the staff of a diplomatic mission, including a member of the local staff, thereby causing the termination of his functions with the mission in accordance with article 6, paragraph 1.

67. Mr. YOKOTA said that he could not support Mr. Tunkin's proposal which would make it impossible for a diplomatic mission to engage even a junior member of its staff without the consent of the receiving State.

68. Some States appeared to require such consent but their practice was contrary to a long-standing international usage regarding the recruitment of local staff. A diplomatic mission might, of course, be obliged to comply with local legislation which was at variance with general international practice, but the Commission should not by endorsing such departures from international law accept them as the expression of a valid general principle. On the contrary, in order to avoid any misunderstanding, a provision along the lines of the last paragraph of the comment by the Swiss Government (A/CN.4/116) should be inserted in the commentary.

69. Mr. VERDROSS said that he supported Mr. Tunkin's proposal. The receiving State was free to declare *persona non grata* a member of the local staff of a diplomatic mission; if, under its legislation, its nationals could not be employed as local staff without permission, it was clearly preferable that the mission should apply for the receiving State's consent before making any such appointment rather than run the risk of seeing the person concerned declared *persona non grata* and have to dismiss him.

70. Sir Gerald FITZMAURICE said that there was a very great difference between appointments to the diplomatic staff and appointments to the non-diplomatic staff of a mission. The refusal of the receiving State to permit the employment of one of its own nationals as a member of the diplomatic staff would not cause a serious impediment to the diplomatic mission because the sending State could always send one of its own nationals instead. The refusal, however, to allow the employment of local staff could well make it impossible for the diplomatic mission to carry on its work.

71. The receiving State could always declare a particular individual *persona non grata,* but it had no general right to prevent the employment of its own nationals. It had to accept the fact that some of its nationals would have to be employed in that capacity and could not object to the employment of a person by a diplomatic mission merely because of his nationality.

72. Mr. ZOUREK said that the practice of States was not uniform with regard to the appointment of nationals of the receiving State to non-diplomatic posts. The purpose of the provision proposed by Mr. Tunkin was to ensure the respect of the legislation of the receiving State where that State had enacted laws or regulations on the subject.

73. It was clear that the receiving State would not systematically withhold its consent to the employment of its nationals by a diplomatic mission in non-diplomatic posts. Such a systematic refusal would not be in its own interest, since it would hamper its relations with the sending State.

74. Mr. TUNKIN said that a realistic approach was necessary. If the legislation of the receiving State required that State's consent to the appointment, a diplomatic mission could not very well disregard that legislation.

75. The paragraph which the Commission had adopted as article 5 covered the case of the appointment of nationals of the receiving State to diplomatic posts. Silence on the subject of the appointment of such nationals to non-diplomatic posts would suggest that that consent might also be required for such an appointment. It was, however, preferable to include an explicit provision to that effect in order to avoid any misunderstanding.

76. Mr. MATINE-DAFTARY suggested to Mr. Tunkin a compromise formula which would recognize the right of the receiving State, on being notified of the appointment of one of its nationals to a non-diplomatic post by a foreign diplomatic mission, to object to such an appointment. A provision requiring prior consent would give rise to practical difficulties. The absence of objection would amount to consent.

The meeting rose at 1 p.m.

452nd MEETING

Thursday, 29 May 1958, at 9.45 a.m.

Chairman: Mr. Radhabinod PAL.

Diplomatic intercourse and immunities (A/3623, A/CN.4/114 and Add.1-6, A/CN.4/116 and Add.1-2, A/CN.4/L.72, A/CN.4/L.75) *(continued)*

DRAFT ARTICLES CONCERNING DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/3623, PARA. 16; A/CN.4/116/ADD.1-2) *(continued)*

ARTICLE 5 *(continued)*

1. Mr. HSU said that any decision on the proposal submitted by Mr. Tunkin at the previous meeting (451st meeting, para. 60) must be taken on the clear