

Document:-
A/CN.4/SR.452

Summary record of the 452nd meeting

Topic:
Diplomatic intercourse and immunities

Extract from the Yearbook of the International Law Commission:-
1958 , vol. I

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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

understanding that it involved a new rule constituting a reversal of an existing and, in his own opinion, perfectly satisfactory practice. As the proposal stood, he found it very difficult to accept. If the need for diplomatic intercourse was accepted, diplomatic missions must be provided with the necessary facilities to perform their functions, and the missions of practically all nations depended to a great extent on auxiliary personnel drawn largely from local sources. It had been argued that the proposal should be adopted in the interests of convenience and logic. Yet the stipulation that the approval of the Government of the receiving State was necessary to every appointment, however minor, to the staff of a mission would prove most inconvenient and open to abuse. If carried to extremes, it might even render it impossible for a diplomatic mission to function at all.

2. So far as the logic of the proposal was concerned, he said the interests of one party, the receiving State, were adequately protected by the provision that that State must be notified of all appointments; and, so long as its approval was required for the appointment of diplomatic agents, it seemed unnecessary to extend the requirement to other personnel. The proposal therefore appeared to be protecting the interests of one party at the expense of those of the other, which could hardly be described as logical. Unless the proposal was amended on the lines suggested by Mr. Matine-Daftary at the previous meeting (451st meeting, para. 76), he would be obliged to vote against it.

3. Mr. GARCIA AMADOR remarked that due weight should be given both to the arguments in favour of the rights of the receiving State, which were mainly based on article 33 of the draft, and to those in favour of the right of the sending State to have its diplomatic mission accorded every facility required for the proper discharge of its functions. As far as the first group of arguments were concerned, he did not think that article 33 should be interpreted too literally. Though it laid down the duty of all persons enjoying diplomatic privileges and immunities to respect the laws and regulations of the receiving State, it prefaced that stipulation by the phrase "Without prejudice to their diplomatic privileges and immunities". The question raised in Mr. Tunkin's proposal should, he thought, be viewed in the light of the terms of article 19 and of the discussion on that article at the ninth session; the overriding consideration was that diplomatic missions should be provided with every facility to enable them to function. There could be no doubt that if the receiving State deliberately and systematically opposed the recruitment of local administrative and technical staff by a diplomatic mission, that mission would be unable to function. The whole object of the codification was to draft provisions reconciling the interests of the receiving and of the sending States, and accordingly he suggested that Mr. Tunkin's proposal should be amended to read:

"In accordance with the regulations in force or with the practice of the receiving State, that State may oppose the appointment of specified persons

having its nationality to the administrative, technical or service staff of a foreign diplomatic mission."

4. The suggested provision would give the receiving State the right to oppose the employment of certain specified individuals but not to oppose systematically or as a matter of principle the recruitment of its nationals for employment by foreign diplomatic missions.

5. Mr. SANDSTRÖM, Special Rapporteur, explained that he had included no proposal on the line of Mr. Tunkin's in his draft because he did not know of any country where such a rule was applied. Under the draft, the receiving State had other means of achieving the same end; it could, for example, declare any member of the staff of a mission to be *persona non grata* or not acceptable under article 6, or it could rely on the provisions of article 33. Accordingly, the proposal was superfluous and, indeed, undesirable, and for the same reason a compromise text, such as that suggested by Mr. García Amador, was equally unnecessary.

6. Mr. AMADO agreed with the Special Rapporteur. Countries such as his own whose nationals were forbidden by law to enter the service of a foreign power without official permission would have no difficulty in enforcing their internal legislation without the aid of any provision such as that proposed by Mr. Tunkin. He realized that some States might wish their consent to be sought to appointments of their nationals to the staff of missions but he could not see how a mission's duty to apply for permission to employ even a typist of local nationality could possibly be elevated to the level of a rule of international law.

7. Mr. TUNKIN thought that the amendment proposed by Mr. Matine-Daftary at the previous meeting went rather too far since it made the procedure advocated obligatory in all cases, even when not required by the regulations or practice of the receiving State.

8. Replying to Mr. Amado, he said the fact that Brazil required its nationals to obtain official permission before entering the service of a foreign State should, he thought, have been a reason for Mr. Amado's supporting the proposal.

9. He did not object in principle to the general lines of Mr. García Amador's suggestion and would agree to that text and his own proposal being referred to the Drafting Committee with a request to find a suitable form of words.

10. Mr. MATINE-DAFTARY explained that he had made his compromise proposal before seeing Mr. Tunkin's proposal in writing. Under his own proposal, the failure of the receiving State to object to the appointment of one of its nationals to the subordinate staff of a foreign diplomatic mission would be interpreted as tacit consent.

11. Iran had no special regulations requiring its nationals to obtain official permission before entering the service of a foreign Power. But experience had shown that certain persons sought employment with foreign missions in order to use their position for

improper purposes under the protection of the mission, and it was to enable the receiving State to take action against such persons that his proposal had been made. It would, however, be asking too much of diplomatic missions to require them to obtain the receiving State's previous consent to the employment of local persons on their staff.

12. Mr. ALFARO was in general agreement with those opposing Mr. Tunkin's proposal; the right of the receiving State to prohibit or restrict the appointment of its nationals to the auxiliary staff of diplomatic missions by requiring its previous consent to all such appointments should not be converted into a rule of international law. It was true that many American States had a clause in their constitutions forbidding their nationals to enter the service of a foreign Power without official permission, but that was a rule governing the relationship between a State and its national and hence could not form the basis of a rule of international law. If a national of such a State accepted employment with a foreign mission without applying for permission, the State would be perfectly within its rights in compelling him to apply for permission and, as a last resort, in declaring him *persona non grata* under article 6 of the draft. In a word, that article and the provision regarding notification adopted at the 451st meeting together offered a perfectly adequate solution to the problem, without the need for requiring the previous consent of the receiving State.

13. Mr. LIANG, Secretary to the Commission, drew attention to the recently published volume entitled *Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities*¹ which contained relevant source material. The contents of the volume tended to confirm the Special Rapporteur's view that the regulations in question were extremely rare. The laws and regulations relating to the employment of locally recruited staff were addressed principally to the nationals of the State or to the government departments responsible for enforcing the laws, though those laws had their repercussions on foreign diplomatic missions. There was no example of any law requiring such missions to obtain the consent of the receiving State before engaging nationals of the receiving State as members of their subordinate staff.

14. Many States, on the other hand, required their nationals to obtain permission before entering the service of a foreign State or to report such employment, but in all such cases, as Mr. Alfaro had pointed out, the regulations were concerned with the relationship between the State and its own nationals. Thus, while it was quite common for nationals of the receiving State to have to fulfil certain conditions before or upon entering the employment of a foreign mission, it was not the practice for foreign diplomatic missions to have to take active steps to obtain the consent of the receiving State. Perhaps Mr. Tunkin's proposal could be put in a form that would place the onus on the

national of the receiving State to obtain clearance from his Government and that it was the duty of the mission, as his employer, to satisfy itself that the necessary formalities had been complied with.

15. Mr. BARTOS said that until 1950 the Yugoslav Government, though viewing with disfavour the appointment of its nationals to foreign diplomatic missions, had not insisted that its consent should be sought. Since 1950, however, new regulation absolutely prohibited the appointment of Yugoslav nationals to posts of a diplomatic character in foreign missions. But they could be appointed to the technical, administrative or service staff of such missions, provided that they informed the social security and tax authorities of the fact within seven days. Consequently, the onus was entirely on the Yugoslav national and there was no question of permission or consent. The reasons for Yugoslavia's change of attitude since 1950 were outlined in the statement of the Yugoslav representative to the Sixth Committee of the General Assembly in support of its proposal to give priority to the codification of the topic "Diplomatic intercourse and immunities".² Yugoslavia had found that certain countries were forbidding their nationals not only to accept employment with Yugoslav diplomatic missions but even to render casual services, such as giving medical attention to or even cutting the hair of members of the mission, a state of affairs which the Yugoslav Government considered to be in contravention of international law.

16. The employment of locally recruited subordinate staff by foreign diplomatic missions was perfectly lawful, though it could not be described as an ideal arrangement in view of the possibility that either the receiving or the sending State might induce such staff to render services of a rather doubtful character. There were, on the other hand, many practical considerations in favour of the system. Some services, particularly in countries whose languages were little known abroad, could be rendered only by nationals of the country. Furthermore, it would greatly increase the expenses of missions if they were not allowed to recruit auxiliary staff locally, and such increased expenditure would bear heavily on the budgets of small countries anxious to extend their diplomatic relations. The interests of the receiving State were adequately protected by its power to declare one of its nationals *persona non grata*, or to request his discharge or transfer to another type of employment within the mission. He was accordingly hesitant to support Mr. Tunkin's proposal on practical grounds and because of the absence of any guarantee that there would be no discrimination between foreign diplomatic missions in the withholding of consent. If the proposal were adopted it would mean, in practice, that missions either had to accept persons designated in advance by the authorities of the receiving State or had to dispense with auxiliary staff altogether. He would, however, be willing to consider the proposal if it applied only to certain types of employment in diplomatic missions.

¹ United Nations Legislative Series, vol. VII (United Nations publication, Sales No. : 58.V.3).

² See *Official Records of the General Assembly, Seventh Session, Sixth Committee*, 313th meeting, para. 14.

17. Mr. PADILLA NERVO observed that some members of the Commission apparently overlooked the fact that the proposal was qualified by reference to the regulations in force or the practice of the receiving State. Though it was not desirable to establish a rule that the consent of the receiving State was indispensable to the appointment of its nationals to administrative, technical and service staff posts on foreign missions, it was necessary, particularly in view of the questions which would probably be asked on the point in the General Assembly, for the Commission to give some guidance to diplomatic missions accredited to a State whose nationals had to obtain official permission before entering the service of a foreign State. While agreeing with Mr. Alfaro and the Secretary that the obligation in such cases lay on the nationals themselves, he thought that, if only for reasons of international courtesy, missions in such countries should consider themselves bound to take local laws into account when making appointments; otherwise they might to some extent be encouraging or concealing a violation of the laws of the receiving State by its nationals. The obligation placed on the nationals of that State would have its counterpart in the moral duty of foreign diplomatic missions to satisfy themselves that the national in question had obtained permission before they took him into their employ. Such a precaution should not hamper the working of the mission and would be preferable to the national's being declared *persona non grata* after appointment. Some countries already took such precautions, where required. The heads of Mexican diplomatic missions, for instance, were bound, before recruiting such technical staff as interpreters, to ascertain whether there could be any objection under the laws and regulations of the receiving State to their employment, precisely in order to avoid the embarrassment of being subsequently informed that the employee in question was unacceptable because he had not obtained permission to be so employed. He suggested that the Commission should consider including a provision on the lines he had indicated either as an article or as part of the commentary.

18. Mr. EDMONDS recalled that the purpose of article 5 was to ensure that the nationals of the receiving State did not, without its consent, occupy a position in which they would be called upon to act in a diplomatic capacity on behalf of the sending State. The case of administrative, technical and service staff was quite different. There was no question of their acting in a diplomatic capacity as that term was usually understood, in other words of having to represent the purposes and policies of the sending State. He did not therefore believe that the receiving State's consent should be required before their appointment. In his view, the sending State could presume that, before taking up employment with its mission, they had complied with the relevant laws and regulations of the sending State, which were sometimes obscure or rested largely on practice.

19. He hoped that in voting on Mr. Tunkin's proposal the Commission would bear in mind the fundamental

distinction between diplomatic and non-diplomatic staff. If it did so, he thought the logical course would be to reject it.

20. Mr. FRANÇOIS said that both Mr. Tunkin and Mr. Padilla Nervo apparently assumed that there were only two categories of States—those which allowed their nationals to serve on foreign diplomatic missions and those which did not. The question was more complex, however; the Netherlands, for example, did not forbid its nationals to enter the service of a foreign diplomatic mission, but if they did so without its consent they automatically lost Netherlands nationality. In his view the question raised in Mr. Tunkin's proposal was one which did not concern the sending State at all, but only the individual and the State of which he was a national, and could therefore be left aside in the Commission's draft.

21. Mr. MATINE-DAFTARY said that, after further consideration of Mr. Tunkin's proposal, he would withdraw his own compromise proposal. He agreed with the views expressed by Mr. François and thought the Commission should go no further than making an appropriate reference in the commentary, as suggested by Mr. Padilla Nervo.

22. Mr. TUNKIN said he had not been convinced by the arguments against his proposal. There appeared, however, to be general reluctance to insert it in article 5. He also noted that no member of the Commission had denied that, if the receiving State had enacted a regulation requiring its nationals to obtain its permission before entering the service of a foreign diplomatic mission, such regulation must be observed. Moreover, the receiving State would clearly be in a position to enforce compliance with such regulation by virtue of articles 4 and 6 of the draft.

For those reasons he would not insist on his proposal being put to the vote.

24. The CHAIRMAN stated that the amendment submitted by Mr. Tunkin could therefore be considered as having been withdrawn.

25. Before passing on to article 6, Mr. SANDSTRÖM, Special Rapporteur, drew attention to the observations of the Australian Government and his comments thereon (A/CN.4/116). In the light of the observations just received from the Government of Pakistan (A/CN.4/114/Add.6), which raised much the same point, he would consider the matter further.

ARTICLE 6

26. Mr. SANDSTRÖM, Special Rapporteur, drew attention to the drafting changes he proposed in article 6 (A/CN.4/116/Add.1). He also drew attention to the Swiss Government's suggestion that in addition to the reference in paragraph 4 of the commentary on articles 3 to 6, it might be desirable to include in article 6 itself an explicit provision to the effect that the receiving State was not obliged to give reasons for its decision not to accept a diplomat, and his comments

thereon (A/CN.4/116). The Italian Government had proposed adding to paragraph 2 the words "and may make an expulsion order against him" (A/CN.4/114/Add.3), but in his view the present wording was sufficient.

27. Mr. ALFARO said that if the expressions "*persona non grata*" and "not acceptable" were to be regarded as synonyms, one of them should be deleted in order to avoid possible misunderstanding. If, on the other hand, they referred to different periods, the latter to the period before the individual concerned took up his duties and the former to the period after he had done so, the distinction should perhaps be made clear in the text itself.

28. Mr. SANDSTRÖM, Special Rapporteur, pointed out that the expression "*persona non grata*" was not normally used in connexion with subordinate staff; the expression "not acceptable" was more appropriate in references to such staff.

29. Mr. EL-ERIAN thought that it had been agreed at the ninth session that article 6 should cover the exceptional case of diplomatic agents who were nationals of the receiving State as well as the normal case of diplomatic agents who were nationals of the sending State. It was, indeed, for that reason that the words "or terminate his functions with the mission" had been added. He was therefore in favour of retaining the expression "not acceptable" not only for the reason given by the Special Rapporteur but also because the expression *persona non grata* seemed inappropriate in the case of nationals of the receiving State.

30. Mr. LIANG, Secretary to the Commission, said that if the two expressions were not to be regarded as synonymous, the words "or not acceptable" should be added to the heading of the article. If the two different expressions did not refer, as Mr. Alfaro had suggested, to different points in time but referred, rather, to different categories of mission staff, the words "not acceptable" seemed somewhat inappropriate in the case of a person who might have been working with the mission for a number of years. Unless some more appropriate term could be found, they might be replaced by "no longer acceptable".

31. Mr. TUNKIN recalled that at the ninth session article 6 had given rise to very lengthy discussion in the Drafting Committee, of which he had been a member. The Drafting Committee had been far from satisfied with the text of article 6, but had been unable to find any better alternative. So far as the period during which notification could be sent was concerned, he thought there was no possibility of misunderstanding arising out of the use of the words "not acceptable"; for even if, taken alone, those words might appear to relate only to the period before the person in question took up his duties, the context made it quite clear that that was not so, since the sentence began "The receiving State may at any time notify..." Of course, if the Drafting Committee could find some formula making it clear that the expression "*persona non grata*" applied to

diplomatic agents proper and the expression "not acceptable" to the subordinate staff, that would be an improvement of the text.

32. Sir Gerald FITZMAURICE, agreeing with Mr. Tunkin, thought that the expression might with advantage be amended to read "not or no longer acceptable". He supported the Special Rapporteur's proposal to replace the words "according to circumstances" by the words "as the case may be" in the English text.

33. Mr. ZOUREK pointed out that, as article 6 covered different categories of diplomatic agents, different categories of mission staff and different periods of time during which the receiving State could object to their activities, it would be necessary to choose between expanding the text considerably to make it more explicit and leaving it as it stood, subject to the drafting changes proposed by the Special Rapporteur. He was in favour of leaving it as it stood, and was supported in that opinion by the fact that it had given rise to very few criticisms on the part of Governments.

34. Mr. YOKOTA agreed that two expressions were necessary, one applicable to diplomatic agents proper and the other applicable to subordinate staff. It could not be denied, however, that unless some explanation were given in the commentary the use of both expressions in the same clause could only confuse someone who had not followed the Commission's discussions.

35. Mr. ALFARO said that the use of the words "not acceptable" implied the non-acceptance of some proposal. The two expressions "not acceptable" and "*persona non grata*" were, he thought, distinguishable according to the period in which the notification was sent rather than according to the category to which the person in question belonged. For example, the Government of Panama had on one occasion wished to accredit a Panamanian citizen as ambassador to a European State but the European State had objected on the ground that the person in question was the son of one of its nationals and, since it was a *jus sanguinis* country, it regarded him as one of its nationals as well. It would not have been appropriate in such a case to use the expression "*persona non grata*" and the only appropriate expression was "not acceptable".

36. He suggested that the difficulties to which reference had been made might be overcome if the article were drafted somewhat along the following lines:

"The State to which it is proposed to accredit a diplomatic mission may inform the sending State that the person proposed as diplomatic agent is not acceptable (*or: is not persona non grata*). The State to which a mission has been accredited may furthermore inform the sending State at any time that the head of the mission or any member of the mission has ceased to be *persona non grata*."

37. The CHAIRMAN invited the Commission to vote on article 6, subject to the drafting changes proposed

by the Special Rapporteur and any further changes proposed by the Drafting Committee in the light of the discussion.

Subject to such changes, article 6 was adopted unanimously.

38. Mr. SANDSTRÖM, Special Rapporteur, proposed the insertion of an additional paragraph in the commentary on articles 3 to 6, to deal with the subject of trade missions, in the following terms:

“The freedom enjoyed by the accrediting State in the choice of staff is, as stated in article 4, limited by the provisions of articles 5, 6 and 7 of the draft. There is another restriction, however, which is inherent in the purpose of such appointments—their purpose being to supply the mission with the staff to be employed in performing its functions. The accrediting State cannot appoint as a member of a mission a person unconnected with its functions and so secure for him the privileges attaching to the status of member of the mission. In practice, it is not always easy to recognize such cases. Doubts have arisen mainly because the foreign trade of certain countries is organized as a State monopoly and in consequence of the establishment of trade delegations in countries having a different economic structure. The exchange of goods between two countries is not in itself a diplomatic activity. On the other hand, the diplomatic mission does have the function of laying the groundwork for and promoting economic relations between the countries in a general way. An overlapping of functions may easily occur in the course of co-operation between the trade delegations and the diplomatic mission, which will make it difficult to determine whether the trade delegation or its members have been notified as belonging rightly to the mission. The problem is not one which can readily be solved by general provisions and it is usually dealt with in commercial treaties. This being so, the Commission did not consider that the question should be dealt with in the draft.”

39. Mr. TUNKIN proposed that the commentary should not contain any provision on the subject of trade missions.

40. The paragraph proposed by the Special Rapporteur would not be acceptable to socialist countries, in which foreign trade was conducted by the State, and it was undesirable to include in the draft a provision to which some States would strongly object.

41. The proposed paragraph did not refer to any provision in the articles themselves, but dealt with an entirely new question which was not regulated at all in the draft.

42. Questions relating to trade missions were being settled in practice quite satisfactorily by means of bilateral agreements, and the introduction of a commentary on the subject would only serve to create controversies where at present there were none.

43. Mr. ZOUREK said that it was the consistent policy of the Commission not to refer in the commentary to questions not dealt with in the articles themselves. Since the question of trade representation was not yet ripe for codification in the body of the draft, it was undesirable to mention it in the commentary.

44. Sir Gerald FITZMAURICE said that article 2, as adopted by the Commission, included a reference to the commercial activities of a diplomatic mission. It was therefore desirable to state in the commentary that only those persons concerned with commercial questions who were members of the staff of the mission were entitled to diplomatic immunity. It was useful to make it clear that members of a trade mission did not *ipso facto* qualify for diplomatic immunity.

45. Mr. AMADO said that he agreed with the views expressed by Mr. Tunkin. It was the practice of his country, Brazil, to appoint ministers-counsellors for economic affairs at its principal embassies. Those ministers-counsellors were diplomatic agents and enjoyed full diplomatic privileges and immunities; they were concerned not only with the exchange of goods but also with the search for export markets for Brazil's products and with economic questions generally.

46. The CHAIRMAN, speaking as a member of the Commission, said that he was opposed to the insertion of a commentary on the subject of trade missions. The Commission should not attempt to regulate in the commentary subjects with which it had been unable to deal in the draft articles themselves.

47. In any event, the proposed paragraph was unnecessary. If a trade mission was part of the diplomatic mission, its members would automatically enjoy diplomatic status. If, on the other hand, the trade mission was a distinct body, its members would not automatically enjoy diplomatic status; their status could, of course, be regulated by bilateral agreement.

48. The only justification for any reference to the matter in the commentary might have been the possible apprehension caused by the exception from immunity stipulated in sub-paragraph (c) of article 24, paragraph 1. That sub-paragraph, however, stated that immunity from civil and administrative jurisdiction did not extend to such commercial activities exercised by a diplomatic agent in the receiving State as were outside his official functions. If, therefore, the commercial activities in question were part of his official functions, immunity would not be excluded.

49. Mr. YOKOTA said that he was in favour of including a statement along the lines proposed by the Special Rapporteur, although the text could be improved by being shortened and simplified.

50. The proposed commentary was related to article 2 and also to the provisions on privileges and immunities; it was therefore not outside the scope of the subjects dealt with in the articles.

51. The question of trade missions was very important ; it had led to prolonged negotiations between his country, Japan, and the Soviet Union. As a result of those negotiations, diplomatic immunity had been granted only to the head of the Soviet trade mission and to his deputy.

52. Mr. VERDROSS proposed, as a compromise solution, that the additional paragraph should simply state that the question of trade missions had not been dealt with in the draft because it was normally regulated by bilateral treaties.

53. Mr. TUNKIN said that he could see no reason for including in the commentary any reference at all to trade missions.

54. The Soviet Union considered its trade missions as part of its diplomatic service in accordance with a Soviet law of 1933. There had been in practice no difficulties in relations with other countries ; all the commercial treaties concluded by the Soviet Union with foreign countries included a provision to the effect that the Soviet Union trade representation was part of the USSR's diplomatic mission and that the chief of that mission and two of his alternates enjoyed diplomatic immunity.

55. Mr. BARTOS said that commercial attachés or economic counsellors were recognized by every State as forming part of the diplomatic personnel of an embassy or legation, but those attachés or counsellors did not engage in any commercial activities ; their only function was to gather information and give advice with a view to developing economic and commercial relations between the States concerned. It was essential to draw a distinction between such commercial attachés or economic counsellors on the one hand and trade representatives on the other ; trade representatives carried on commercial operations directly, and the Commission should include in its report a statement along the lines proposed by Mr. Verdross in order not to prejudge their status. The Soviet Union, which considered such trade representatives as diplomatic agents, had had to enter into special treaties with foreign countries regarding the status of those representatives. As a result, that status was not uniform ; some countries treated them as diplomatic representatives, others granted them only some measure of immunity, whereas other countries placed them on the same footing as private persons.

56. In Yugoslavia, where foreign trade was controlled by the State, trade missions abroad formed special entities and were not part of the Yugoslav diplomatic missions.

57. A Yugoslav trade representative was debarred from pleading diplomatic immunity in connexion with the commercial activities carried on by him as part of his official functions. Yugoslavia thus drew a sharp distinction between the diplomatic functions of trade counsellors and the commercial activities of trade representatives.

58. The CHAIRMAN put to the vote Mr. Tunkin's proposal (para. 39 above) that there should be no commentary on the subject of trade missions.

The proposal was rejected by 9 votes to 5, with 4 abstentions.

59. The CHAIRMAN put to the vote the proposal made by Mr. Verdross (para. 52 above).

The proposal was adopted by 9 votes to 5, with 3 abstentions, subject to drafting changes.

60. Mr. AMADO said that he had voted against Mr. Verdross' proposal because he considered that it was superfluous to introduce a reference to trade missions in the commentary.

61. Sir Gerald FITZMAURICE said that, although he favoured the introduction in the commentary of a reference to the subject of trade relations, he had voted against Mr. Verdross' proposal because the wording was inadequate. It was necessary to make it clear that persons engaged in commercial activities as members of a trade mission did not enjoy diplomatic privileges and immunities in the absence of a special agreement.

62. Mr. PADILLA NERVO said that although he agreed with Sir Gerald, he had voted in favour of the proposal made by Mr. Verdross because he considered that some reference to trade missions was necessary.

ARTICLE 7

63. Mr. SANDSTRÖM, Special Rapporteur, introduced his revised text of article 7, paragraph 1 (A/CN.4/116/Add.1). The word "customary" had been replaced by the word "normal" in view of an observation by the Netherlands Government (A/CN.4/116).

64. He drew attention to the objections formulated by the Governments of the United States of America and Japan and to his comments thereon (A/CN.4/116).

Paragraph 1 as revised was adopted by 17 votes to none, with 1 abstention.

65. Mr. SANDSTRÖM, Special Rapporteur, introducing his revised text of paragraph 2 (A/CN.4/116/Add.1), said that he had taken into account the observations of the Governments of the Netherlands and Switzerland (A/CN.4/116).

66. The Government of the United States of America had formulated important objections to paragraph 2 (A/CN.4/116). In his report, he had stated his reasons for not making any changes in the paragraph other than those suggested by the Netherlands and Swiss Governments.

The meeting rose at 1 p.m.