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Summary record of the 457th meeting

Topic:
Diplomatic intercourse and immunities

Extract from the Yearbook of the International Law Commission:-
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59. Mr. ALFARO said that it was universally recognized that where expropriation of mission premises was necessary for the purpose of public works it was admissible. But the formulation of a rule such as that proposed by the Special Rapporteur gave rise to serious difficulty. For example, the proposed paragraph imposed upon sending States the duty to co-operate; such terminology was rather too vague for a rule of international law.

60. The Special Rapporteur's draft suffered from other faults. The example of public works given—the widening of roads—should not be mentioned, because it might give rise to difficulties of interpretation; indeed, he thought, no illustrative examples should be given. Nor should compensation be mentioned, for it was a rule in all municipal law that expropriation gave rise to a claim for compensation. In any case, he thought it would be very difficult to frame a rule limiting the inviolability of mission premises in clear and unmistakable terms. In the circumstances, therefore, he would prefer the substance of the limitation to be referred to in the commentary only.

61. Mr. AMADO said that if the Special Rapporteur's proposal was adopted, article 16 would have a paragraph which in effect merely gave advice to States. It was true that public works were of importance and had to be carried out, but the international community was based on the idea of co-operation, and it was surely sufficient to leave in the commentary suggestions that would be adopted by all countries in a co-operative spirit.

62. Mr. PADILLA NERVO said that questions involving public works affecting mission premises would automatically be the subject of negotiation and agreement between the sending State and the receiving State, and the adoption of the Special Rapporteur's proposal would not only not change the existing situation but would also break the general harmony of the draft articles. A similar question had arisen in connexion with the inviolability of the diplomatic bag, and the Commission had rightly decided to deal with it in the commentary to article 21 rather than in the article itself. He therefore opposed the Special Rapporteur's proposal.

63. Sir Gerald FITZMAURICE agreed with Mr. Hsu that there was no reason to insert the substance of paragraph 4 of the commentary in the text of the article merely because a conference of plenipotentiaries would do so. The Commission should adhere to the principle that only essentials—in other words, concrete obligations—should be dealt with in the articles.

64. He did not deny the obligation of the sending State to co-operate with the receiving State in the carrying out of public works, but he was anxious that it should not be so expressed as to appear as a qualification of the principle of the inviolability of mission premises. If the Commission decided that it was desirable to make such a provision in an article, it would be more appropriately made in article 33, which dealt with the conduct of the mission towards the receiving State,

rather than in an article concerned with the inviolability of mission premises. But he did not think that it was necessary to insert any such provision in an article, for obviously a receiving State would not expropriate mission premises without preliminary negotiation and agreement with the head of the mission or with the sending State. No known case existed of an expropriation having taken place without agreement on both sides. In any case, the receiving State was not helpless in such a matter; if the sending State was unreasonable, the receiving State could in many ways make life uncomfortable for the mission. Accordingly, there was no good reason for accepting the Special Rapporteur's proposal.

65. The CHAIRMAN put to the vote the question whether a paragraph on public works affecting mission premises should be inserted in the text of the article.

It was decided, by 9 votes to 6, with 1 abstention, that a paragraph on public works affecting mission premises should not be inserted in the article.

Article 16 as a whole, as drafted at the ninth session (A/3623, para. 16) was adopted unanimously.

The meeting rose at 1 p.m.

457th MEETING

Thursday, 5 June 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)

[Agenda item 3]

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

ARTICLE 17

1. Mr. SANDSTRÖM, Special Rapporteur, said that in his redraft of article 17 (A/CN.4/116/Add.1) he had taken into account observations made by the Governments of the United States of America, Belgium, Chile and Luxembourg (A/CN.4/114 and Add.1). The Italian Government had suggested an amendment (A/CN.4/114/Add.3) which omitted the important point that the mission premises would be exempt from tax by reason of the sending State's ownership or lease of the premises, and for that reason the Italian amendment was unsatisfactory. The United States Government's proposal seemed merely to complicate the text, and he felt that the proper context for the amplifications and definitions proposed by that Government was the commentary rather than the article itself. Some observations, such as that of the Luxembourg Government (that the term "specific services rendered" was

more suitable than the term "services actually rendered"), and that of the Belgian Government (concerning the use of the French word *locaux*), seemed well justified, but would entail only drafting changes.

2. On reconsideration of his proposed redraft of article 17, he had reached the conclusion that it was in no way superior to the text adopted by the Commission at its ninth session (A/3623, para. 16) and he accordingly withdrew the redraft. As he had suggested, a few drafting changes might be made.

3. Mr. YOKOTA noted that the Commission's version of article 17 did not specifically refer to "direct" dues or taxes. The Convention on the Privileges and Immunities of the United Nations, 1946, referred in its article II to "direct taxes", and accordingly he considered there was a case for adding the word "direct" to the text of the article or for making the matter clear in the commentary. The Special Rapporteur had in any case stated his opinion in his conclusions (A/CN.4/116) that the article related to direct dues and taxes only.

4. Mr. SANDSTRÖM, Special Rapporteur, thought that the provision in the Convention cited by Mr. Yokota was different in scope from the article the Commission was discussing. In any case, he would be glad to hear of any indirect taxes on premises.

5. Mr. YOKOTA said he would not insist that the word "direct" should be in the text of the article, but he still considered that it should be made clear in the commentary that article 17 related to direct taxes and dues only.

6. The CHAIRMAN thought that the question might be considered when drafting changes to the text came under discussion; on that understanding, he put to the vote article 17 as drafted at the ninth session, subject to drafting changes.

Article 17 was adopted unanimously.

ARTICLE 18

7. Mr. SANDSTRÖM, Special Rapporteur, noted that the United States Government suggested (A/CN.4/114) that the words "and documents" should be omitted, as being confusing and unnecessary; the same Government objected to the remark in the commentary that inviolability applied regardless of the premises in which the archives and documents might be. It seemed to him that the archives and documents were part of the property of the mission and therefore should everywhere be inviolable, as, for example, in the case of a sealed letter sent by ordinary post.

8. The Italian Government proposed (A/CN.4/114/Add.3) the addition of the words "wheresoever they may be" at the end of the sentence, but those words merely added to the text of the article words in the commentary that were explanatory of the text. As neither Government had introduced any fresh concept which added to the substance of article 18, he had suggested no change.

9. Mr. AMADO noted that the words "and documents", objected to by the United States Government, had been added at the suggestion of the Secretary.¹

10. The archives and documents of the mission did not necessarily have to be on the premises of the mission, as the ambassador might well have them, or some of them, with him anywhere in the State to which he was accredited. The Harvard draft on diplomatic privileges and immunities,² in article 5, also said that the archives were inviolable "wherever such archives may be located within the territory of the receiving State". In the circumstances, he thought the Italian Government's proposed addition reasonable.

11. Mr. ALFARO thought that the term "archives" included documents. Article 18 did not, however, seem to deal with the correspondence of the mission, which might be in the hands of messengers or in the post. Article 21 dealt with the inviolability of the diplomatic bag, but not with correspondence that was not in the diplomatic bag. For the sake of completeness, therefore, he proposed that the unnecessary word "documents" be deleted and the word "correspondence" inserted.

12. Mr. LIANG, Secretary to the Commission, explaining why he had suggested the introduction of the words "and documents", said that archives appeared to him to consist of those documents the safe custody of which was of prime importance. But some documents, such as memoranda in process of being drafted by the counsellors of the embassy, were not necessarily, and might never become, part of the archives. Hence his suggestion, which had been intended to complete the text.

13. Sir Gerald FITZMAURICE said that article 21 had the effect that documents and correspondence would be inviolable when they were in the diplomatic bag, while article 16 had the effect that they would be inviolable when they were on the premises of the mission. They were, so to speak, covered by the inviolability of the bag and the mission premises respectively. There remained documents and correspondence other than those on the premises of the mission or in the diplomatic bag, and it was these in particular which would be covered by article 18.

14. The difficulty, however, was to decide at what point correspondence became the correspondence of the mission. In some cases letters were addressed to the embassy from official sources and were recognizable as such because they were officially sealed or franked, but in other cases letters were not of this kind and were from private persons and bodies.

15. None the less, he felt that the difficulty of deciding

¹ *Yearbook of the International Law Commission, 1957*, vol. I (United Nations publication, Sales No.: 1957.V.5, vol. I), 399th meeting, paras. 29 *et seq.*

² Harvard Law School, *Research in International Law, I. Diplomatic Privileges and Immunities* (Cambridge, Mass., 1932), p. 61.

should not deter the Commission from recognizing the general principle of the inviolability of all documents of the mission. He therefore supported the proposal that the text remain as adopted by the Commission at its ninth session, with the addition of the words "and correspondence".

16. Mr. ZOUREK agreed with the Secretary that the expression "archives", even if the words "and correspondence" were added, did not cover all the written matter of the mission and felt that it was therefore necessary to maintain the words "and documents". There were, in addition to archives, other types of documents, such as draft memoranda and preparatory texts used for negotiation, which were equally inviolable.

17. He had no objection to the mention of the correspondence of the mission in the draft articles, but felt that it ought to be made in subsection B, which concerned facilitation of the work of the mission, freedom of movement and communication, rather than in subsection A, which concerned the mission premises and archives. Article 21 might be a suitable context.

18. Mr. AMADO said that the characteristic of archives was that they were relatively immovable, and confined to one place. To add "and correspondence" in article 18 would be to introduce a reference to something of a very different nature; for that reason he could not approve of the addition.

19. Mr. BARTOS said that in Yugoslavia the inviolability of a mission's archives and of correspondence conducted by diplomatic pouch was guaranteed. But a mission's correspondence not carried by diplomatic pouch did not enjoy a similar guarantee. Furthermore, the rules governing freedom of communication varied from country to country. Accordingly, he could not agree to the insertion of the words "and correspondence" in article 18.

20. Mr. SANDSTRÖM, Special Rapporteur, agreed with Mr. Bartos that it would be undesirable to add the words "and correspondence"; for one thing, it would be difficult to define the meaning of "correspondence". It seemed to him, too, that the word "documents" included official letters, so that nothing would be gained by the suggested addition, which he therefore opposed.

21. Mr. ALFARO said that, in view of the criticisms expressed, he would withdraw his proposal that the words "and correspondence" be inserted in article 18; similarly, he would not press for the deletion of the words "and documents". He still felt that the question of correspondence should be considered somewhere in the draft articles, for example in article 21.

Article 18 as drafted at the ninth session was adopted unanimously.

ARTICLE 19

22. Mr. SANDSTRÖM, Special Rapporteur, drew attention to the observations of the United States

Government and to his own comments thereon (A/CN.4/116), and he called attention to his proposed additional paragraph 2 (A/CN.4/116/Add.1), which he had drafted in response to a general observation of the Netherlands Government concerning subsections A and B under the heading "proposed additional articles" (A/CN.4/116). He also referred to the opinion expressed by the Philippine delegation on the subject at the General Assembly.³

23. Mr. TUNKIN said that he could see no justification for the somewhat surprising addition proposed by the Special Rapporteur. Though it would be perfectly in order to lay down the principle of non-discrimination in the matter of rates of exchange, he could not see why diplomatic missions should necessarily enjoy the most favourable rate. Some such rates, for example rates for tourists, might be established for special reasons and diplomatic missions might not be eligible to enjoy them.

24. Mr. ZOUREK considered that the proposed new paragraph went far beyond the scope of the draft. All States regarded their own currency regulations as a matter strictly within their domestic competence, and to make such an innovation might well render the draft unacceptable to many countries. Differences in exchange facilities were dictated by the economic needs and interests of the countries concerned and diplomatic missions might not fulfil the conditions required for the enjoyment of the most favourable rate, if it were a tourist rate for instance.

25. Sir Gerald FITZMAURICE supported the Special Rapporteur's proposal with respect to paragraph 1; and though there was, theoretically speaking, a good deal of truth in what the two previous speakers had said he likewise supported his proposed paragraph 2 of the article. One feature of modern international life was the practice of some countries of maintaining artificial rates of exchange which did not correspond to the real international value of their currencies. The establishment of other more favourable rates was in itself evidence of the unreality of the official rate. From his own experience he knew that diplomatic missions, whose local expenses were very heavy, were most severely handicapped by the artificial rates of exchange applied. While admitting that States were acting within their rights in establishing whatever rate of exchange they thought appropriate, he considered it only equitable that, where more favourable rates existed, diplomatic missions should benefit from them. Were the principle accepted, the text could be so worded as to exclude such exceptional rates as those offered to tourists.

26. Mr. BARTOS said that his own country, Yugoslavia, had experienced some difficulties in the matter of exchange rates. In response to a general request, all missions accredited to Yugoslavia had been accorded the preferential tourist rate instead of the official rate.

³ Official Records of the General Assembly, Twelfth Session, Sixth Committee, 509th meeting, para. 48.

Since then, however, some missions had pressed to be accorded the special premium rate offered to Yugoslav nationals who brought into the country funds which they had earned, saved or inherited abroad and which they were not legally bound to transfer to Yugoslavia. His Government was naturally unwilling to grant to missions a rate of exchange which was really a reward for patriotism and to which the missions were, accordingly, in no way entitled. He was afraid that the Special Rapporteur's proposal might encourage such excessive demands.

27. Mr. AMADO considered that the transition from a paragraph containing the original text of article 19, which one naturally associated with all the diplomatic and political functions of missions, the exercise of the sovereign rights of the sending State in its relations with the receiving State, and the whole machinery of diplomatic representation, to a paragraph dealing with a matter of detail such as exchange rates would be altogether too abrupt. If the Commission desired to introduce a provision on the lines of that proposed by the Special Rapporteur, which he was not yet prepared to oppose, but which, as Mr. Bartos had pointed out, might have serious consequences and lead to many complications, it would be more appropriate to insert it among the articles dealing with exemption from taxation and customs duty.

28. Mr. SANDSTRÖM, Special Rapporteur, said he had been in two minds whether or not to propose the additional paragraph. The proposal was in any case purely tentative and the provision in question might well be inserted among the articles relating to financial matters.

29. The proposal itself could be justified not only on the grounds cited by Sir Gerald Fitzmaurice but also by the consideration that it would not be placing diplomatic agents in a privileged position to remove the inequality in the treatment accorded to them as compared with that accorded to tourists.

30. Mr. TUNKIN wondered why, of all the questions connected with the facilities to be accorded to missions, the Commission should single out just one financial problem. The question of exchange regulations, apart from being considered by States as coming strictly within their domestic jurisdiction, was a very complicated one and already governed by many bilateral agreements. He thought it would be unwise to include a provision which might jeopardize the acceptance of the draft by States.

31. Faris Bey EL-KHOURI considered that the proposed new paragraph 2 would open the door to a great deal of abuse. Missions might tend to profit from favourable rates of exchange no matter for what purpose they had been established. He saw no reason for acceding missions special privileges in the matter and was opposed to the provision.

32. The CHAIRMAN put to the vote the principle enunciated in the Special Rapporteur's addendum to article 19 (A/CN.4/116/Add.1).

The principle was rejected by 9 votes to 6, with 2 abstentions.

33. The CHAIRMAN put to the vote the text of article 19 as drafted at the ninth session.

Article 19 was adopted unanimously.

ARTICLE 20

34. Mr. SANDSTRÖM, Special Rapporteur, referred to the observations of the Governments of Australia, the Netherlands, Switzerland and the United States of America and to his own comments thereon (A/CN.4/16). He had redrafted article 20 (A/CN.4/116/Add.1) in the light of the Netherlands Government's observations.

35. Mr. VERDROSS said that there was little to choose between the old text and the new, since the Netherlands proposal expressed the same ideas as the original article 20 in rather different words.

36. Mr. TUNKIN recalled that the question of freedom of movement had been thoroughly discussed by the Commission at its previous session and that the Drafting Committee had had some difficulty in framing a text acceptable to all members. The Netherlands proposal was in some ways reminiscent of the text originally proposed by Sir Gerald Fitzmaurice,⁴ which had been subsequently amended and amplified. He noted that of all the Governments which had commented on the draft, only two had expressed any dissatisfaction with article 20.

37. Mr. AMADO said that, unless amendment was strictly necessary, he would prefer article 20 to stand as adopted at the previous session; because it enunciated the principles in a single sentence it was technically superior to the revised text.

38. Sir Gerald FITZMAURICE said that, although he would prefer the revised text advocated by the Special Rapporteur, he realized that the 1957 text of the article constituted to some extent a compromise between conflicting points of view. Accordingly, although the text was open to improvement, he thought it wisest to leave it as it stood.

39. Mr. YOKOTA thought that the new proposal might give the impression that the receiving State could enact laws and regulations prohibiting or regulating entry into certain areas which would apply specifically to members of missions. As he understood it, the Commission, when adopting the article at its previous session had had in mind only laws and regulations on the subject applying to the general public. The original article 20 gave unambiguous expression to the principles involved and he would prefer it to stand unchanged.

40. Mr. EDMONDS observed that the difference between the old text and the proposed new text was

⁴ *Yearbook of the International Law Commission, 1957*, vol. I (United Nations publication, Sales No.: 1957.V.5, Vol. I), 400th meeting, para. 34.

one of emphasis. The 1957 text of article 20 put the accent rather on the rights of the receiving State to place certain restrictions on freedom of movement, whereas the new proposal enunciated first the principle of freedom of movement and then indicated the circumstances in which the receiving State might be justified in placing various restrictions on that freedom. Accordingly, he was in favour of the new proposal, since it was more in keeping with the spirit pervading the draft for the general rule to be enunciated first.

41. Mr. ZOUREK remarked that there was no great difference in the practical implications of the two texts. Since, however, article 20 had been thoroughly discussed at the previous session and constituted a kind of compromise, of which only two Governments had expressed any criticism, he preferred that text to stand unchanged.

42. Mr. HSU agreed with Mr. Edmonds that the new proposal was more in harmony with the spirit pervading the rest of the draft. Moreover, since two Governments had expressed quite strong criticism of the article, the Commission should try to meet their wishes as far as possible.

43. The CHAIRMAN put to the vote the proposal that article 20 as drafted by the Commission at its ninth session be kept unchanged.

The proposal was adopted by 11 votes to 5.

ARTICLE 21

Paragraph 1

44. Mr. SANDSTRÖM, Special Rapporteur, drew attention to a drafting change recommended by the Government of the Netherlands and to observations by the Governments of Switzerland, Japan and the United States of America and to his own comments thereon (A/CN.4/116). In paragraph 1 of his revised draft (A/CN.4/116/Add.1), he had attempted to take into account the point raised by the Government of Switzerland.

45. Mr. BARTOS said that for practical reasons he opposed the Swiss Government's proposal that the right of a mission to use diplomatic couriers should be restricted to communications with the Government of the sending State and with its consulates in the receiving State.

46. It had recently come to be established as general international and diplomatic practice that it was unnecessary for a courier to call at all points at which there were diplomatic missions. Instead, certain places were used as exchange centres. Paris, for example, was used as an exchange centre for communications between Yugoslavia and not only France but also the United Kingdom, Luxembourg, Belgium, the Netherlands and Denmark. On certain fixed days, couriers from the embassies of Yugoslavia in Paris and in the other countries he had named arrived in Paris to receive diplomatic bags sent from Belgrade and to deliver diplomatic bags addressed to Belgrade. Similarly, Belgrade was used by many Western countries as an

exchange centre for communications coming from or addressed to their ministries in other Balkan countries. Washington, and points in Brazil and Argentina were also used as exchange centres. That was not a unilateral practice on the part of Yugoslavia, but was found to be generally convenient. Furthermore, sometimes an ambassador was accredited to more than one State. The several missions which that ambassador headed would be handicapped if they were unable to communicate with each other by diplomatic courier. The Swiss Government's proposal would represent a retrograde step which would prevent States from making the best use of modern communications.

47. Mr. ZOUREK said that the restrictive interpretation implied in the Swiss Government's proposal did not correspond to modern practice. Arrangements of the kind described by Mr. Bartos, or arrangements whereby a courier could serve several missions lying on his route, were much more economical, convenient and efficient. If the Swiss Government's proposal were adopted, diplomatic missions in South America, for example, would have to adopt the longer and more costly procedure of communicating with each other through the respective ministries of foreign affairs. He therefore proposed that the 1957 text of paragraph 1 of article 21 should be retained.

48. Sir Gerald FITZMAURICE expressed the view that the Swiss practice was unduly restrictive in modern times, though it might formerly have been current. Diplomatic bags were commonly sent by air, and the courier often had to pass through two or three diplomatic posts where other bags would be collected in order to transmit material between one diplomatic post and another. Consequently, it would be unrealistic to restrict the use of diplomatic couriers in the manner suggested by the Swiss Government.

49. Mr. SANDSTRÖM, Special Rapporteur, said that in view of the trend of the discussion, he would withdraw the revised text of paragraph 1.

50. The CHAIRMAN put to the vote the text of paragraph 1 of article 21 as drafted at the ninth session.

Paragraph 1 was adopted unanimously.

Paragraphs 2 and 3

51. Mr. SANDSTRÖM, Special Rapporteur, drew attention to the observations made by the Governments of the Netherlands, Switzerland, Belgium, the United States of America (A/CN.4/116) and Italy (A/CN.4/114/Add.3). It was the expression "articles intended for official use", in paragraph 3, which had given rise to the most difficulty. Paragraph 2 of the revised text he had presented (A/CN.4/116/Add.1), which was intended to replace paragraphs 2 and 3 of the 1957 text, attempted to take into account the points which had been raised in connexion with that expression and also the Italian Government's suggestion that the diplomatic bag should bear a seal or external identification marks. The Italian Government's point that the bags should invariably be addressed to the head

of the mission in person could, he thought, be dealt with in the commentary.

52. Sir Gerald FITZMAURICE said he was sorry the Special Rapporteur had amalgamated paragraphs 2 and 3 of the 1957 text. At its preceding session, the Commission had found great difficulty in establishing the proper relation between the inviolability of the diplomatic bag and the obligation not to include improper material in it. After prolonged discussion, the Commission had come to the conclusion that it would be better to express those two ideas in separate paragraphs, so as to give due emphasis to the principle that the diplomatic bag should not be opened or detained. He saw no reason for reversing that decision now, though he would not object to the addition to paragraph 3 of a phrase relating to seals or external identification marks.

53. He noted with satisfaction that the Special Rapporteur had not followed the Italian Government's suggestion that diplomatic bags should be addressed invariably to the head of the mission, for that was not the normal practice.

54. Mr. TUNKIN said he also had considerable doubts as to the advisability of redrafting paragraphs 2 and 3 in the manner proposed by the Special Rapporteur. In his opinion, the new text represented a step backwards towards the text which the Special Rapporteur had originally proposed (A/CN.4/91). That original text had provided for some exceptions to the principle of inviolability, and the proposed new paragraph 2 might also be interpreted as meaning that the inviolability of the bag depended on observance of the conditions expressed in the first sentence.

55. The whole subject had been very closely studied at the preceding session and, as Sir Gerald Fitzmaurice had recalled, there had been considerable difficulty in finding any suitable form whatever. It had been agreed that the principle of inviolability was absolute — some members of the Commission had even suggested that it should be placed on a par with the inviolability of the mission premises — and that in no case was it permissible to open or detain the bags. On the other hand, there was an obligation of the sending State so far as the contents of the bag were concerned, though it was very difficult to ascertain whether that obligation was being carried out.

56. He suggested that paragraphs 2 and 3, as set forth in the 1957 draft, should be retained, perhaps with the addition in paragraph 3 of a phrase concerning seals or external identification marks.

57. Mr. SANDSTRÖM, Special Rapporteur, said it had not been his intention to ignore the discussions which had taken place at the preceding session. His reason for proposing an amalgamated text was that it might be advisable to provide a definition of the diplomatic bag, and the definition should come first. He admitted, however, that the 1957 text had been arrived at with so much difficulty that it might be better not to change it. The definition of the diplomatic bag

could be given in the commentary. He therefore withdrew his proposed draft paragraph 2.

58. Mr. ALFARO said he was very glad the proposed text had been withdrawn, for that text, which covered the principle of inviolability as well as obligation not to place improper material in the bag, violated the rule that each paragraph of an instrument should deal with only one main idea.

59. He would support the text of paragraphs 2 and 3 as drafted at the previous session.

60. Mr. ZOUREK and Mr. YOKOTA expressed the desire that the Drafting Committee should add in paragraph 3 a phrase dealing with seals and external identification marks.

61. The CHAIRMAN put to the vote paragraph 2 of article 21 as drafted at the ninth session.

Paragraph 2 was adopted unanimously.

62. The CHAIRMAN put to the vote paragraph 3 of article 21 as drafted at the ninth session, on the understanding that the requested drafting changes would be made by the Drafting Committee.

Paragraph 3 was adopted by 16 votes to none, with 1 abstention.

Paragraph 4

63. Mr. SANDSTRÖM drew attention to the observations of the Governments of Belgium, Switzerland, the United States of America, the Netherlands, Japan and Chile (A/CN.4/116).

64. In paragraph 3 of his proposed new text (A/CN.4/116/Add.1), he had adopted the Belgian proposal that the term "diplomatic courier" should be defined.

65. Mr. BARTOS drew attention to the difficulty which often arose in connexion with the courier's passport. While some States insisted that the passport should be vised by the embassy, the general practice was not to demand a visa, though States were within their rights in requiring a visa, as either a permanent or a temporary measure. It was important, however, that States should notify other States of any change in their practice.

66. Mr. AMADO doubted whether it was necessary to include a definition in the text. It might perhaps be sufficient to say "A diplomatic courier shall be furnished with a document testifying to his status."

67. He saw no reason, however, why the 1957 text of paragraph 4 should not be retained since, though its terms might be regarded by some States as going too far, an adequate, restrictive interpretation of them was given in the commentary.

The meeting rose at 1 p.m.