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Summary record of the 459th meeting

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required to seek any special permission or even to obtain a licence to operate such installations. He hoped that the United Kingdom's extremely liberal practice in the matter would come to be adopted by other countries.

34. Mr. ALFARO suggested that article 21 was incomplete as it stood. Much diplomatic correspondence was not sent in a diplomatic bag or carried by courier but conducted through the post. He, therefore, considered it essential to enunciate the inviolability of diplomatic correspondence in general, and for that purpose proposed adding to paragraph 2 of the article the words "The official correspondence of the mission is inviolable". The use of the word "official" should dispose of any objection to extending the inviolability to private correspondence directed to the mission. The phrase "official correspondence of the mission" meant correspondence from the mission, that sent to the mission by its chancellery or other authorities of the sending State, and correspondence between the mission and consulates situated in the receiving State.

35. Mr. SANDSTRÖM, Special Rapporteur, said that he had no objection to the proposal, on the understanding that "official correspondence" applied only to mail emanating from the mission.

Mr. Alfaro's proposal was adopted unanimously.

Article 21 as a whole, as amended, was adopted unanimously.

The meeting rose at 11.30 a.m.

459th MEETING

Monday, 9 June 1958, at 3 p.m.

Chairman: Mr. Radhabinod PAL.

Filling of casual vacancy in the Commission (article 11 of the Statute)

[Agenda item 1]

1. The CHAIRMAN announced that at a private meeting held on Friday, 6 June 1958, the Commission had considered the question of filling the casual vacancy which had occurred in consequence of the resignation of Mr. El-Erian; it had been decided that the election to fill the vacancy would be postponed until the Commission's eleventh session.

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)*

ADDITIONAL ARTICLE (ARTICLE 21 A)

2. Mr. SANDSTRÖM, Special Rapporteur, referred to the proposed additional article 21 B (A/CN.4/116/Add.1), drafted in response to an observation of the Netherlands Government (A/CN.4/114/Add.1). He thought that such an article should appear in subsection B of the draft article (A/3623, para. 16) rather than in subsection A, which dealt only with mission premises and archives.

3. Mr. LIANG, Secretary to the Commission, said that the word "recovered" in the English text should be replaced by "levied".

4. Furthermore, he considered that it would be appropriate to use the term "mission" instead of "sending State"; the former was more generally used throughout the draft articles.

5. Mr. SANDSTRÖM, Special Rapporteur, said he had no objection to the changes suggested.

6. Mr. BARTOS said that a mission was entitled to charge fees in respect of visas, for example, and obviously it would be exempt in the receiving State from taxes on such fees. There seemed to be little reason for inserting a new article covering what was self-evident.

7. Mr. ZOUREK agreed with Mr. Bartos that the article was unnecessary; he had never heard of any case where the receiving State taxed fees charged by a mission in the course of its official duties. He had no objection to the substance of the article, but it seemed to him that a reference in the commentary would suffice.

8. Mr. ALFARO considered that the new article, which dealt with exemptions from taxation, should either precede or follow article 26 which was mainly concerned with taxation. He was in favour of the new article, for the draft should above all be unambiguous, and the article dealt with a matter not covered elsewhere in the draft provisions.

9. Mr. TUNKIN did not object to the article, but doubted whether such a small matter required an article to itself. He agreed with Mr. Zourek that it would be more appropriate to mention it in the commentary.

10. The CHAIRMAN drew Mr. Liang's attention to the fact that article 17 referred to the exemption of the sending State from taxation in respect of mission premises. The term "mission" was not used in the draft articles to designate the beneficiary of exemptions and privileges. He suggested that the terminology of the new article, as also its context, should be left to be settled by the Drafting Committee.

11. The CHAIRMAN put to the vote the proposal that the substance of the Special Rapporteur's proposal should be embodied in an article.

By 8 votes to 6, with 4 abstentions, it was so decided.

12. The CHAIRMAN put to the vote article 21 A as proposed by the Special Rapporteur, subject to drafting changes.

Article 21 A was adopted by 10 votes to none, with 5 abstentions.

ARTICLE 22

13. Mr. SANDSTRÖM, Special Rapporteur, said that the Commission had decided to postpone consideration of definitions until a later stage; at that time, article 22, paragraph 2, would also come under consideration. Paragraph 2 had been the subject of observations on terminology by the Governments of Chile, the United Kingdom, and the Netherlands (A/CN.4/114/Add.1). The observations on paragraph 1 by the Swiss and United States Governments required no particular comment.

14. Mr. ZOUREK considered paragraph 2 an integral part of article 22; a vote could hardly be taken on the article unless it included paragraph 2. As the article on definitions had not yet been adopted, he thought that the Commission should at that stage take a decision on article 22 in its 1957 form, with the reservation that amendments might later be necessary if the article on definitions was adopted.

15. The CHAIRMAN thought that paragraph 2 was somewhat out of place in article 22 because the definition it contained applied not only to article 22 but to all the draft articles. For that reason he felt that the Commission should vote on the substantive article and leave the definition and the place of the article in the text to be considered by the Drafting Committee.

16. He suggested that the Commission should vote on article 22 as drafted, on the understanding that a decision concerning paragraph 2 would be taken later in the light of the Drafting Committee's deliberations.

It was so agreed.

On that understanding, article 22 as drafted at the ninth session was adopted unanimously.

ARTICLE 23

17. Mr. SANDSTRÖM, Special Rapporteur, said that he had proposed the insertion of the word "official" before the word "premises" in paragraph 1 (A/CN.4/116/Add.1). In view of the discussion on article 16 (455th and 456th meeting), however, he withdrew that proposal.

18. In the light of an observation of the Netherlands Government (A/CN.4/114/Add.1), he proposed a redraft of paragraph 2 (A/CN.4/116/Add.1).

19. He said he had commented on the observations of other Governments, and had nothing to add except that he was not quite clear as to the meaning of the Japanese Government's observation on paragraph 1.

20. Mr. VERDROSS said that if the term "diplomatic agent" was meant to include a national of the receiving State who did not enjoy immunity except in respect of official acts, the language of article 23, paragraph 1, was too sweeping. Accordingly, he proposed that after the words "diplomatic agent" the words "who enjoys diplomatic privileges and immunities" should be added.

21. Mr. YOKOTA observed that there was special provision in article 30 for diplomatic agents who were nationals of the receiving State, so that Mr. Verdross' proposal seemed to be unnecessary.

22. In article 23, paragraph 1, the term "premises of the mission" seemed to mean the official premises of the mission, including the dwelling place of the head of the mission. At least, that was the impression he had gathered from the discussion of article 16, and he took it that the remarks then made applied equally to article 23. "Residence" therefore meant the residences of the other members of the diplomatic staff. But the word "private" did not seem to be appropriate, for the sending State often provided houses for the diplomatic staff and in that case the residences were State property and therefore not private. In order that there should be no misunderstanding, it was desirable to delete the word "private"; in that way all members of the diplomatic staff would be protected.

23. The CHAIRMAN thought that Mr. Verdross' proposal should be dealt with when the Commission discussed article 30 concerning the status of members of the diplomatic staff who were nationals of the receiving State.

24. With regard to Mr. Yokota's observation, he said that the inviolability of a residence was the consequence of the inviolability of the diplomatic agent, so that any house, even if used for recreation, would become inviolable if a diplomatic agent was living in it.

25. Mr. VERDROSS pointed out that article 30 dealt only with immunity from jurisdiction in respect of official acts performed in the exercise of his functions by a diplomatic agent who was a national of the receiving State. He had no objection to the question of the inviolability of such an agent's residence being dealt with under some article other than article 23, but it seemed to him necessary that it should be treated at some point. On the understanding that the question would be considered in another context, he had no objection to article 23, as revised by the Special Rapporteur.

26. Mr. TUNKIN said that the word "private" was not used in article 23 to mean "privately owned" but to denote the place where the diplomatic agent happened to be living, whether a room in a hotel, a house or an apartment. If the word "private" were deleted, the article might be interpreted to refer only to an official residence. He was therefore opposed to Mr. Yokota's proposal.

27. Mr. AMADO, agreeing with Mr. Tunkin, pointed out that a sending State could in any case provide a private residence for its diplomatic agent. Merely because it had purchased or leased the residence, the residence did not thereby become State property that could not be used as a private dwelling.

28. Mr. YOKOTA said he would not insist on the deletion of the word "private", but thought that the point he had made should be made clear in the commentary. In some cases sending States bought residences and then insisted that they should be exempt from

taxation. All residences of diplomatic agents, no matter who had purchased or leased them, should be on the same footing, and there should be no ambiguity because of the word "private".

29. Mr. TUNKIN observed that the problem of taxation of mission premises was dealt with in article 17. Article 23 concerned the inviolability of the residence of the diplomatic agent, and nothing more.

30. The CHAIRMAN put to the vote paragraph 1 of article 23 as adopted at the ninth session and paragraph 2 as amended by the Special Rapporteur.

Paragraph 1 was adopted unanimously.

Paragraph 2 was adopted unanimously.

Article 23 as a whole, as amended, was adopted unanimously.

31. Mr. SANDSTRÖM, Special Rapporteur, drew attention to the United Kingdom Government's observation on the reference, in the commentary on article 23, to the bank accounts of diplomatic agents and to his own comments on the subject (A/CN.4/116).

32. Mr. BARTOS said that the provision proposed by the United Kingdom raised complicated questions of banking technique. The funds in diplomatic accounts could come from a great variety of sources. The normal practice was for accounts in free currencies to be non-transferable in the receiving State but transferable internationally, so that payments made abroad by a diplomatic agent would not be subject to control. Mixed accounts were quite a different question.

33. Of the forty diplomatic missions in Yugoslavia, twenty-eight had never imported any funds through official financial channels, although their expenses in Yugoslavia were often very heavy and sometimes included the publishing of newspapers. Many of the dinars used were bought on the "free" market in Trieste and brought in in the diplomatic bag. To proclaim the complete freedom of diplomatic accounts from exchange control would merely make matters worse and would be at variance with the stipulation in article 33, paragraph 1, that it was the duty of all persons enjoying diplomatic privileges and immunities to respect the laws and regulations of the receiving State. The funds of the United Nations were admittedly exempt from all exchange control under article II of the Convention on the Privileges and Immunities of the United Nations.[1] But in the Member States concerned, the accounts of United Nations currency transactions were subject to outside audit, an arrangement which would of course be quite improper in the case of accounts of diplomatic missions. In view of what he had said he would abstain from voting for any provision or comment which implied that diplomatic accounts were entirely free of control.

34. Mr. ALFARO, referring to the United Kingdom Government's comment, said that article 16 did not seem to be the proper place for the provision under consideration. The funds in bank accounts would seem to be covered by the word "property" in article 23, paragraph 2, while the accounts themselves, as an element of accounting could either be regarded as covered by the word "papers" or could form the subject of an addendum to the paragraph. On the other hand, the Commission wished to enunciate the principle that the bank accounts of diplomatic agents were exempt from control, the best place for the provision would be in article 24 which dealt with immunity from jurisdiction. In his opinion, save in the exceptions provided for in that article, immunity from control and jurisdiction should be total.

35. Mr. TUNKIN said that it was his impression that the Commission had adopted article 23, paragraph 2, at its ninth session with the idea in mind that the property of a diplomatic agent must be inviolable but not that the agent should be free to make whatever financial transactions he wished, regardless of the laws of the receiving State. He would welcome further explanation by the Special Rapporteur of the exact scope of the proposed addition.

36. Mr. ZOUREK said that the special question under consideration was not connected with the principle of inviolability. Bank accounts could be inviolable and at the same time subject to exchange control measures. As Mr. Bartos had pointed out, diplomatic accounts might be in the currency of the receiving State as well as in foreign currencies.

37. The proposed provision would go too far and would be contrary to the stipulation in article 33, paragraph 1. From the little knowledge he had of the question, he was convinced that the proposal was far from reflecting existing practice, which was that diplomatic agents, though accorded by courtesy certain special facilities in the matter of banking and exchange transactions, were nonetheless subject to the laws and regulations of the receiving State.

38. Mr. SANDSTRÖM, Special Rapporteur, said that he had not expressed any definite view as to the context of the proposed provision. Article 16 had merely been mentioned because it established the principle of inviolability. In taking up the United Kingdom suggestion, he had been thinking in terms of private accounts in which diplomatic agents would deposit their salaries or remittances from abroad and not accounts in any way connected with commercial activities. Private accounts of the type he had just mentioned should, he had considered, naturally be exempt from exchange control. In view, however, of the complications referred to by Mr. Bartos in particular, it would be wisest to say nothing at all on the subject.

39. Mr. MATINE-DAFTARY considered that article 23 as just adopted already covered the point. The private accounts of diplomatic agents were undoubtedly free of control, but if the agent engaged in stock exchange transactions and the like, those transactions would come under exchange control.

[1] United Nations, *Treaty Series*, Vol. 1, 1946-1947, p. 15.

40. Sir Gerald FITZMAURICE agreed that the inviolability of banking accounts and their immunity from exchange control were quite distinct questions. However, it would, he thought, be generally agreed that within certain limits diplomatic agents ought to enjoy some freedom from exchange control, at least as far as the remittance of funds to their home countries was concerned. It was a matter that should be dealt with in a separate article or commentary. Exchange control had come to be of great importance in recent years and it might well be a handicap for missions not to enjoy certain facilities and immunities in the matter of currency regulations.

41. The CHAIRMAN observed that, since the Special Rapporteur had withdrawn his suggestion for the addition of a provision on the lines proposed, no decision by the Commission was required.

ARTICLE 24

Paragraph 1

42. Mr. SANDSTRÖM, Special Rapporteur, suggested that article 24 be dealt with paragraph by paragraph. He drew attention to the view expressed by the Luxembourg Government (A/CN.4/116) that the enumeration of the types of jurisdiction in the introductory sentences of paragraph 1 was superfluous, and even undesirable, since it did not include commercial courts, and labour and social security jurisdictions. As could be seen from his own observations, he proposed that that part of the text should remain unchanged.

43. Mr. VERDROSS entirely agreed with the Special Rapporteur. The text was quite clear as it stood. In any case, commercial courts were a specialized branch of civil jurisdiction, while labour courts and social security courts were branches of administrative jurisdiction.

44. Mr. SANDSTRÖM, Special Rapporteur, drew attention to the observations of the Japanese Government of paragraph 1 (*a*) and to those of the Netherlands Government, which proposed two drafting changes, one affecting the English text only (A/CN.4/116). He had no objection to the proposed new wording which would also meet the point raised by the Japanese Government.

45. The United States Government considered that the exceptions covered by sub-paragraphs (*b*) and (*c*) were not at present recognized under international law. The Special Rapporteur proposed no change in the text on those grounds, for the reasons indicated in his conclusions (A/CN.4/116). The criticism by Luxembourg of the drafting of sub-paragraph (*b*) was sound (*ibid.*) and he accordingly proposed inserting the words "arising in the receiving country" after the words "an action relating to a succession".

46. A reference in a commentary would seem to be sufficient to meet the desire of the Government of Australia that some definition of the expression "commercial activity" should be given in paragraph 1 (*c*). Both the Chilean Government in its comments (A/CN.4/116) and through its delegation at the twelfth session of the General Assembly[2] and the Colombian delegation at the same session[3] had expressed the view that it was very unusual and, in fact, inadmissible for diplomatic agents to engage in the professional or commercial activities envisaged in the sub-paragraph.

47. Mr. VERDROSS fully agreed with the Special Rapporteur. The intention of the Japanese Government's comment was not at all clear, since it appeared to say the same as what was stated in paragraph 1 (*a*). Though it was true, as the United States Government had pointed out, that the exception covered by paragraph 1 (*b*) was not yet recognized in international law, it should be borne in mind that it was the Commission's task to promote the progressive development of international law and not merely to codify it.

48. The point made by the Chilean and Colombian Governments was perfectly sound. It would, however, be recalled that the Commission, after ample discussion at its ninth session, had come to the conclusion that provision had to be made for a practice which existed and which was also the subject of provisions in earlier draft codifications.[4]

49. Mr. ALFARO said that in some countries the administrative jurisdiction was defined more restrictively than in others. Consequently, it was desirable that a precise meaning should be attached to the term, either by including a definition in the text or by inserting a note in the commentary. In his opinion, it was most convenient to regard the administrative jurisdiction as comprising the judicial powers exercised by all the executive authorities of the State. As thus defined, the administrative jurisdiction would include the jurisdiction exercised by such executive authorities as the fiscal authority, and the traffic and social security authorities. It would be an all-inclusive concept covering every jurisdiction other than that of the ordinary civil and criminal courts.

50. Mr. SANDSTRÖM, Special Rapporteur, said he would have no objection to the inclusion in the commentary of a definition of administrative jurisdiction on the lines proposed by Mr. Alfaro.

51. Mr. AMADO observed that all the points arising in connexion with paragraph 1 had been thoroughly discussed at the Commission's preceding session. If Mr. Alfaro's suggestion were accepted, the Commission could regard its consideration of the matter as concluded.

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[2] *Official Records of the General Assembly, Twelfth Session, Sixth Committee*, 509th meeting, para. 18.

[3] *Ibid.*, para. 39.

[4] *Yearbook of the International Law Commission, 1957*, vol. I (United Nations publication, Sales No.: 1957.V.5, Vol. I), 402nd meeting, paras. 70-81.

52. Sir Gerald FITZMAURICE supported Mr. Alfaro's point of view, but thought it would be enough to refer to the matter in the commentary. What the Commission was concerned with was the kind of jurisdiction which resulted in court proceedings. He could not imagine a proceeding which would not fall under one of the three jurisdictions — criminal, civil and administrative.

53. The CHAIRMAN observed that the changes which the Special Rapporteur had proposed in sub-paragraphs (*a*) and (*b*) were drafting changes which did not affect the substance. He put to the vote paragraph 1 of article 24 as revised by the Special Rapporteur (A/CN.4/116/Add.1), subject to drafting changes.

Paragraph 1 was adopted unanimously.

Paragraph 2

54. Mr. SANDSTRÖM, Special Rapporteur, referred to the observations of the Governments of Belgium and the Netherlands (A/CN.4/116).

55. With reference to the amendment proposed by the Italian Government (A/CN.4/114/Add.3), he had reached the conclusion that that Government's amendment was not satisfactory, for it was a half-measure. In his opinion the Commission should state unequivocally the rule of the diplomatic agent's immunity, subject to such exceptions as it considered admissible.

56. He proposed that paragraph 2 should be redrafted (A/CN.4/116/Add.1) to take into account the Netherlands Government's suggestion.

57. Mr. TUNKIN said he was not clear as to the implications of the Special Rapporteur's proposed redraft. For example, if a diplomatic agent was involved in a succession case of the kind referred to in sub-paragraph (*b*) of paragraph 1, would other diplomatic agents belonging to the mission be under an obligation to give evidence?

58. Mr. AGO observed that at its preceding session the Commission had adopted a rather strict attitude towards diplomatic agents with respect to the limitations by which their immunity from jurisdiction might be qualified. Their immunity from the obligation to give evidence had, on the other hand, been left absolute. He thought there was some inconsistency there, since a diplomatic agent's refusal to give evidence might hinder the settlement of a case, for example, just as much as a claim to immunity from jurisdiction. It was for that reason that the Italian Government had proposed that a diplomatic agent's immunity from the obligation to give evidence should be confined to cases involving the official business of the diplomatic agent, and that in other cases a special procedure should be applied to obtain evidence from the agent.

59. Sir Gerald FITZMAURICE said he differed from Mr. AGO on that point and considered that Mr. Tunkin had been right in raising the question whether, if one diplomatic agent was involved in litigation in a case of the kind mentioned in sub-paragraphs (*a*), (*b*) and (*c*) of paragraph 1, another diplomatic agent belonging to the same mission could, under the terms of the proposed new text, be compelled to give evidence.

60. Paragraph 2 had been designed to cover not that kind of situation, but situations in which a diplomatic agent was called upon to give evidence in a case in which he was himself involved. He did not think, however, that a diplomatic agent could be compelled to give evidence even in such cases. His personal immunity was involved, and consequently no measure of compulsion could be exercised against his person.

61. He therefore thought that paragraph 2 should stand as drafted at the previous session. While the Italian Government's proposal contained an interesting suggestion, he noted that that Government had not queried the idea that a diplomatic agent could not be compelled to give evidence. It had merely suggested that in certain cases a special procedure should be applied. In some countries, however, and particularly in the common law countries, that suggestion would not be feasible, for if evidence was given at all it must be given in court. A diplomatic agent was not obliged to appear in court, but if he did so he must, subject to his right to refuse to answer particular questions affecting the public intered of his State, give his evidence in accordance with the forms required by the local procedure.

62. Mr. FRANÇOIS said that though everyone agreed that a diplomatic agent could not be compelled to give evidence in court, it was not enough merely to say that he was not obliged to give evidence. In some cases, there might be an obligation to give evidence, even though there was no way of enforcing it if the diplomatic agent refused. In cases of the kind referred to in sub-paragraphs 1 (*a*), (*b*) and (*c*) of paragraph 1, a diplomatic agent was under an obligation to give evidence. As had been pointed out, evidence could not be accepted in writing in some countries, and in such cases the diplomatic agent was obliged to give evidence in court unless there was a valid reason for refusal. Refusal to accept that obligation might lead to action at the diplomatic level between the two countries concerned, as the practice showed.

63. Merely to insert in paragraph 2 the words "except in cases coming under sub-paragraphs (*a*), (*b*) and (*c*) of paragraph 1" might be confusing, because it would leave open the question whether in such cases a diplomatic agent belonging to a mission other than that of the diplomatic agent directly involved was also under obligation to give evidence, or whether he might be excused from doing so.

64. Mr. AMADO said that in paragraph 2 a sacred principle of international law was involved. He could not admit that a diplomatic agent should in any circumstances be under an obligation to give evidence in court. The principle should be maintained in the form in which it had been formulated at the preceding session.

65. Mr. EDMONDS supported the suggestion of the Netherlands Government that the exceptions provided for in paragraph 1 should also be incorporated in paragraph 2. Sub-paragraphs (*a*), (*b*) and (*c*) of paragraph 1, all related to litigation in which a diplomatic agent was involved in his private, as distinct from his diplomatic, capacity. It would be very undesirable if in such cases the diplomatic agent was not under an obligation to give evidence.

66. Mr. SCELLE thought that paragraph 2 might with advantage be drafted in a different way. There were cases in which a diplomatic agent was under an obligation to give evidence, if not by virtue of a precise rule of law, at least morally. Since, however, diplomatic agents were not subject to the criminal jurisdiction and no compulsion could be exercised against them, paragraph 2 should provide that a diplomatic agent could refuse to give evidence. His refusal might be dictated by considerations involving his position *vis-à-vis* his own Government, or by other considerations, but provision for his right to refuse should be made in the text.

67. Sir Gerald FITZMAURICE admitted that the existing text might be confusing. He had always understood paragraph 2 to mean that a diplomatic agent could not be compelled to appear in court and give evidence, but he agreed that a diplomatic agent might, in fact, be under a certain obligation to do so. At the Commission's preceding session, attention had been directed rather to the question of compulsion, as opposed to an unenforceable obligation. He suggested that perhaps paragraph 2 might be amended to read: "A diplomatic agent cannot be compelled to give evidence". A terse statement on those lines would correctly express the rule; at the same time, it would leave it to be inferred that in certain cases (e.g., those mentioned in sub-paragraphs (*a*), (*b*) and (*c*) of paragraph 1) the diplomatic agent, though never a compellable witness, ought to give evidence.

68. Mr. TUNKIN said there were cases in which a diplomatic agent was under a legal obligation to do, or to refrain from doing, certain things. For example, he was under an obligation not to interfere in the internal affairs of the receiving State. Though no judicial sanction could be applied against him, there was a legal obligation, and a diplomatic agent who did not observe that obligation might be declared *persona non grata*. Merely to say that no compulsion could be applied against him left the question of obligation open.

69. Under existing international law, it might be said that a diplomatic agent was under no juridical obligation to give evidence.

70. Mr. AGO was of the view that Mr. Scelle's remarks had done much to clarify the situation. If it was clear that a diplomatic agent could in no case be forced to give evidence, it was nonetheless true that there might still be cases in which he was under an obligation to do so. Mr. Tunkin was right in saying that such cases should be defined. The existing text was therefore unacceptable.

71. Mr. BARTOS said that two principles were involved: the principle of the diplomat's freedom to carry out his functions and the principle of establishing the truth before the court. The question was which of those two principles needed the stronger guarantee. In some cases the requirements of both could be met without difficulty, while in others an indirect form of compulsion had sometimes to be applied. It was very difficult, however, to maintain that a diplomatic agent was under any obligation to give evidence. He could give evidence with his Government's consent, but such evidence could not be demanded.

72. In many countries, the practice of requesting diplomatic agents to give evidence in writing was, he thought, derived from the canon law under which in former times bishops, for example, had been invited to present their evidence in writing before the court. With the establishment of the principle of the equality of all men before the law, the privileges of the clergy had been abolished, but it was still the practice in many countries for the Ministry of Foreign Affairs to inform a diplomatic mission that in some particular case the court would be interested to have the evidence of a member of the mission either in writing or in some other form.

73. If, however, a diplomatic agent were requested to give evidence on a matter falling within the sphere of his official functions, it should be remembered that he could give such evidence only with the consent of his Government, just as, in cases concerning matters falling within the sphere of a civil servant's official duties, any evidence which the civil servant gave must be given with the consent of his superiors in the service. It would be unreasonable to draft a rule of international law which required more of diplomatic agents than was required of civil servants under their national law.

74. In conclusion, he said that while the diplomatic agent could be requested to give evidence there could be no question of his being under obligation to do so, and in all cases he had an indefeasible right to refuse to give evidence.

75. Mr. AMADO said he was not convinced by the arguments which sought to establish that a diplomatic agent was under obligation to give evidence. The immunity of the sending State was involved, and that immunity must be respected unless it was waived in accordance with the provisions of article 25.

76. He was in favour of retaining the existing text.

The meeting rose at 6.5 p.m.