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Summary record of the 461st meeting

Topic:
Diplomatic intercourse and immunities

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82. The CHAIRMAN, speaking as a member of the Commission, said that Sir Gerald Fitzmaurice's suggestion (para. 68) would improve the drafting of the article. As it stood, the repetition in paragraph 2 of the words "by the Government of the sending State" after it had already been stated in paragraph 1 that immunity may be waived by the sending State, gave the impression that the Commission was indirectly including in paragraph 2 a rule of evidence, requiring proof that the waiver really emanated from the Government of the sending State. The deletion of the words "by the sending State" in paragraph 1 would dispose of that possible misunderstanding, and the resulting text would then make it clear that the Commission was simply laying emphasis on the authority which could effect a waiver. Mr. Yokota's suggestion, based on the Italian Government's proposal, could also be included in the text with appropriate drafting changes to make it clear that the authority of the head of the mission was to convey waiver in certain cases.

83. Sir Gerald FITZMAURICE said that after hearing the proposals of Mr. Matine-Daftary and Mr. Padilla Nervo, he thought that either of them achieved more efficiently the same purpose as his own suggestion.

84. Mr. TUNKIN pointed out that much of the difficulty arose from a discrepancy between the English and the French text of paragraph 2.

The meeting rose at 1.10 p.m.

461st MEETING

Wednesday, 11 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 CONCERNING DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/3623, PARA. 16; A/CN.4/116/ADD.1-2) (continued)

ARTICLE 25 (continued)

1. The CHAIRMAN, after recalling the proposals made at the 460th meeting by Mr. Matine-Daftary (para. 81) and Mr. Padilla Nervo (para. 82), invited the Commission to vote on article 25 paragraph by paragraph, as drafted at the ninth session (A/3623, para. 16).

2. Mr. ALFARO thought it would be very difficult to vote on each paragraph separately without prior agreement on the article as a whole. The chief cause of confusion was the patent contradiction between paragraph 1, under which only the sending State could waive

immunity, and paragraph 3, which referred to implied waivers. For the purpose of overcoming the difficulty, he would prefer the words "by the sending State" in paragraph 1 to be deleted and paragraph 2 to read simply "In criminal proceedings, waiver must always be express." Several members of the Commission had made it perfectly clear that when the head of a mission communicated a waiver of immunity it must be taken as emanating from his Government. Yet, although it was undoubtedly incorrect to state, as did the existing text of paragraph 2, that the communication of a decision to waive immunity must always come from the Government and never from the head of the mission, it was true that the words "effected expressly by the Government of the sending State" gave rise to some misunderstanding.

3. Mr. SANDSTRÖM, Special Rapporteur, said that he could accept Mr. Padilla Nervo's proposal which would have the effect of omitting from the article all reference to the procedure of waiving immunity. He was anxious to retain paragraph 1 in full, though whether its sense was expressed in the active form or, as Mr. Padilla Nervo preferred, in the passive form was of no great importance. The principle, to which many speakers had referred, that immunity from jurisdiction was a prerogative of the State which could be waived only by the State was of considerable theoretical significance and he would prefer it to be stated explicitly.

4. Mr. MATINE-DAFTARY pointed out that Mr. Padilla Nervo's proposal was substantially the same as his own, except that in paragraph 1 the latter had used the passive form, as in the English text, which would not be suitable in the French text.

5. The CHAIRMAN observed that the choice between the active and passive form could be left to the Drafting Committee. On that understanding, he put to the vote paragraph 1 of article 25 as drafted at the ninth session.

Paragraph 1 was adopted by 11 votes to 1, with 2 abstentions.

6. The CHAIRMAN put to the vote paragraph 2 as proposed by Mr. Padilla Nervo: "In criminal proceedings, waiver must always be express."

Paragraph 2 was adopted by 13 votes to none, with 1 abstention.

7. The CHAIRMAN put to the vote paragraphs 3 and 4 as drafted at the ninth session.

Paragraph 3 was adopted by 13 votes to none, with 1 abstention.

Paragraph 4 was adopted unanimously.

Article 25 as a whole, as amended, was adopted unanimously.

8. Mr. ALFARO explained that he had abstained from voting on paragraph 3 because he considered it to be in conflict with paragraph 1 as just adopted.

ARTICLE 26

9. Mr. SANDSTRÖM, Special Rapporteur, drew attention to the general observations of the Swiss, United States and Belgian Governments on the article, to the observations of the Governments of Luxembourg, Japan, Belgium, the Netherlands, the United Kingdom and Chile on the various exceptions listed in sub-paragraphs (a) to (e), and to his own conclusions (A/CN.4/116). He proposed the following amendments to the text adopted by the Commission at its ninth session. The words "national or local" in the introductory clause should be amended to read "national, regional or local", in response to a proposal by the Belgian Government. Sub-paragraph (a) should be amended to read "indirect taxes incorporated in the price of goods", in response to an observation of the Government of Luxembourg. In response to observations by the Governments of Luxembourg and the Netherlands, the words "subject to the provisions of article 31 concerning estates left by members of the family of the diplomatic agent" should be added to sub-paragraph (c). The provisions referred to occurred in article 31, paragraph 3, of the revised text proposed by the Special Rapporteur (A/CN.4/116/Add.1).

10. Finally, in response to an observation of the Belgian Government he proposed the addition of a sub-paragraph (f) reading as follows: "Registration, court or record fees, mortgage dues and stamp duty". He decided not to propose the other amendments appearing in the revised text of article 26 (A/CN.4/116/Add.1).

11. Mr. YOKOTA suggested that since the Drafting Committee had been requested to consider replacing the words "and not on behalf of his Government for the purposes of the mission" in article 24, paragraph 1 (a), by the words "unless he holds it on behalf of his Government for the purposes of the mission", it should be asked to consider a similar change in article 26, sub-paragraph (b).

It was so decided.

12. Mr. YOKOTA, referring to sub-paragraph (a), observed that indirect taxes were incorporated in the charges for other things than goods. In Japan, for instance, railway fares included a travel tax, while the price of admission to places of public entertainment included an entertainment tax. He would therefore prefer the simple reference to "indirect taxes" in sub-paragraph (a) to stand.

13. Mr. ZOUREK remarked that Mr. Yokota's point could be met by simply adding the words "or services" after the words "in the price of goods".

14. The CHAIRMAN proposed that Mr. Zourek's suggestion be referred to the Drafting Committee.

It was so decided.

15. The CHAIRMAN observed that sub-paragraph (c) could not really be finally adopted by the Commission until it had taken a decision on article 31, paragraph 3.

16. Faris Bey EL-KHOURI considered that a number

of matters were not covered by article 26 as it stood. To what extent, for instance, was the diplomat liable for taxes charged on hunting permits or dog licences? It would perhaps be advisable to add a provision either enunciating a general exemption from dues and taxes or else stating that diplomatic agents were not exempt from any dues and taxes other than those mentioned.

17. Mr. SANDSTRÖM, Special Rapporteur, explained that, unless the taxes mentioned by Faris Bey El-Khoury were regarded as charges levied for services rendered, diplomatic agents would enjoy exemption from them, since they were not mentioned in any of the six exceptions.

18. The CHAIRMAN put to the vote article 26 as amended by the Special Rapporteur (paras. 9 and 10 above), subject to drafting changes.

Article 26 was adopted by 14 votes to none, with 1 abstention.

ADDITIONAL ARTICLE (ARTICLE 26 A)

19. Mr. SANDSTRÖM, Special Rapporteur, proposed the adoption of the following additional article based on an observation of the Soviet Union Government (A/CN.4/116):

"The diplomatic agent shall be exempt from all personal contributions in money or in kind."

20. The services and contributions envisaged in the article were many and varied, ranging from compulsory military service to the obligation on the public in general under Swedish law, for instance, to help fight forest fires. The new article should, he thought, be placed in proximity to article 26, but it was for the Drafting Committee to decide on its exact position.

21. Mr. ZOUREK considered the article a very necessary one. Almost all countries had legislation making it compulsory for all able-bodied members of the community to lend a hand in the event of public disasters. Apart from the services mentioned by the Special Rapporteur, there were also such duties as jury service or lay judge service. Though it could not be claimed that such legislation was meant to apply to diplomatic agents, there might be cases in which that fact was not expressly stated in the relevant legislative measure, and in which difficulties might therefore arise if the proposed rule were not adopted.

22. Mr. VERDROSS also regarded the provision as absolutely essential.

23. Mr. EDMONDS said that the phrase "personal contributions" was inappropriate. The aim was presumably to exempt diplomatic agents from the obligation to perform certain emergency services. He did not see how the word "contributions" would serve that purpose.

24. Mr. SANDSTRÖM, Special Rapporteur, said it was a question of translation. The French text, which used the words "*toute prestation personnelle en nature ou en espèces*" was quite clear, since services were *prestations en nature*.

25. Sir Gerald FITZMAURICE agreed that it was a question of translation but was not sure whether even the French word *prestation* was correct. He would have thought the word "services" should certainly be used. Perhaps it would be better to say "all personal services and contributions in money or in kind".

26. Mr. ZOUREK also thought it was a matter of drafting. The difficulty might perhaps be overcome by saying "all personal contributions and all public services", or "all personal or public services".

27. Mr. SANDSTRÖM thought the word *prestation* covered the situation. The same word was used in Swedish.

28. The CHAIRMAN put to the vote article 26 A as proposed by the Special Rapporteur (A/CN.4/116/Add.1) subject to drafting changes.

Article 26 A was adopted unanimously.

ARTICLE 27

29. Mr. SANDSTRÖM, Special Rapporteur, said he had decided to withdraw the revised text he had prepared for article 27 and to revert to the 1957 text, except for the introductory passage of paragraph 1, which was based on an observation made by the Belgian Government and which, he proposed, should read: "The receiving State shall, in accordance with such regulations as it shall prescribe, grant exemption from customs duties on".

30. He drew attention to the observations made by the Government of Belgium (A/CN.4/116) and, on paragraph 1, by the Governments of Japan, Switzerland, the United States of America, the Netherlands, Chile (*Ibid.*) and Italy (A/CN.4/114/Add.5). The points raised by the Governments he had mentioned, and particularly in the Japanese Government's second observation and in the observations of the Governments of Switzerland, Chile and Italy were, he thought, adequately met by the amendment he had proposed to paragraph 1. The Swiss Government's observations reflected ideas expressed in paragraph 3 of the commentary to article 27. He was not sure what were the implications of the observation of the Government of the Netherlands.

31. He drew attention to the observations on paragraph 2 made by the Governments of Belgium, Japan, Switzerland, the United States of America and the Netherlands (A/CN.4/116).

32. He had at first thought of adopting the drafting changes embodied in the text proposed for paragraph 2 by the Government of Belgium, but had subsequently come to the conclusion that they would make the text ambiguous, especially in relation to the inspection of a diplomatic agent's personal baggage. In view of the Commission's discussions at its preceding session, he had thought it better not to introduce any change along the lines suggested by the Government of Japan.

33. Mr. MATINE-DAFTARY said that if paragraph 1 were adopted in the form proposed by the Special

Rapporteur, the effect might be to destroy altogether the right of diplomatic agents to exemption from customs duties; the phrase "in accordance with such regulations as it shall prescribe" was much too broad in meaning. Furthermore, he questioned whether it was for the receiving State to "grant" exemption: the exemption was a right of diplomatic agents under international law.

34. Mr. SANDSTRÖM, Special Rapporteur, observed that the regulations differed greatly from country to country. The purpose of the proposed new text was to give Governments some discretion in the matter without jeopardizing the substance of the right. Such restrictions as were imposed would relate only to such matters as the quantity of goods which could be imported duty-free and the period within which they must be imported to qualify for exemption. The amended paragraph was in keeping with the terms of paragraph (3) of the commentary to the 1957 text.

35. Mr. MATINE-DAFTARY asked the Special Rapporteur whether it was his intention to suggest the deletion of paragraph (3) of the commentary.

36. Mr. SANDSTRÖM, Special Rapporteur, replied in the negative. His purpose had merely been to include provision for restrictions in the text itself.

37. Mr. AGO agreed with the Special Rapporteur that some clause to provide for the possibility of restrictions on the right to exemption from customs duties should be included. All States were aware of the manner in which the right of diplomatic agents to import goods free of duty could be abused and most of them had enacted restrictive legislation. The phrase suggested by the Special Rapporteur was therefore, he thought, the least that could be accepted, especially in view of the indication also given in the commentary that restrictions were allowable.

38. Mr. TUNKIN said that, though he had his doubts concerning the proposed new wording of the preamble, he had no specific objection to it.

39. Mr. MATINE-DAFTARY said he had not meant to disagree with the desire of the Special Rapporteur and Governments to prevent abuses. If, however, that was the purpose of the proposed new text, it should be stated more clearly, and the expression "in accordance with such regulations as it shall prescribe" should be qualified by the addition of some such phrase as "subject to reciprocity". In addition, it should be stated the regulations should be general in scope. As it stood the expression proposed by the Special Rapporteur was rather arbitrary and might lead to misunderstanding. Perhaps the best solution would be to express the idea in a separate paragraph.

40. Mr. AGO asked the Special Rapporteur whether, in view of Mr. Matine-Daftary's remarks, he wished to retain the words "in accordance with such regulations as it shall prescribe" in paragraph 1, or, as suggested by Mr. Matine-Daftary and also by the Italian Government, to express the idea in a separate clause. The

latter, he thought, would be the better course and would avoid all the ambiguities and misunderstandings to which the Special Rapporteur's text as it stood might give rise.

41. Mr. ZOUREK suggested that the Special Rapporteur should provide, at least in the commentary, a definition of customs duties as suggested by the Government of Belgium and as given in paragraph 3 of the text proposed by the Special Rapporteur (A/CN.4/116/Add.1).

42. Mr. SANDSTRÖM, Special Rapporteur, said the proper context for the definition would probably be the commentary.

43. He had no serious objection to Mr. Ago's suggestion that the provision authorizing restrictions on the right to import goods free of duty should be embodied in a separate clause. He would, however, be unable to accept without additions the wording suggested by the Italian Government, for it referred only to the number of articles and said nothing about the quantity or the time within which they would have to be imported in order to qualify for exemption.

44. Mr. TUNKIN said he thought Mr. Ago's suggestion was unnecessary and probably somewhat dangerous. It was unnecessary because the right to import goods free of duty was already limited by sub-paragraphs (a) and (b) of paragraph 1 to goods intended for the use of a diplomatic mission or for the personal use of a diplomatic agent or members of his family. Mr. Ago's suggestion was dangerous because, by drawing attention to the possibility of restrictions it might induce States to go further in that direction than they would have done otherwise.

45. Mr. ALFARO thought that Mr. Matine-Daftary's views were reasonable and well founded. It was desirable to specify that the regulations should have been duly enacted and should not be *ad hoc* enactments. He therefore proposed that the article begin with the words "The receiving State shall, in accordance with such regulations as are established by its legislation, grant exemption..." He felt that such an amendment would satisfy both Mr. Ago and Mr. Matine-Daftary.

46. Mr. SANDSTRÖM, Special Rapporteur, said that he had understood his own proposal to mean that the regulations would be enacted by the State legislature. He had no objection to Mr. Alfaro's amendment, but perhaps the Drafting Committee could settle the final wording.

47. Mr. YOKOTA agreed with Mr. Tunkin that the limitations set out in sub-paragraphs (a) and (b) of paragraph 1 were sufficient and that the additional clause proposed by the Italian Government was unnecessary. It was, on the whole, undesirable to place any restrictions on the number of articles imported.

48. The French text of the Special Rapporteur's proposal used the word *modalités*, which meant something different from the English word "regulations". Regulations were rules of substance which any State

could enact to create restrictions, and altogether the word was too strong for the purpose and did not perhaps express the meaning of the French word adequately. Whatever the position, however, it should be stated in full detail in the commentary what the Commission had in mind.

49. Mr. EDMONDS recalled that at the ninth session the Commission had decided that diplomatic agents should be completely exempt from customs duties in respect of the articles mentioned in sub-paragraphs (a) and (b). If it was now decided that they should be exempt only in accordance with regulations prescribed by the receiving State, that would be a substantive departure from the previous decision, and it would become necessary to lay down limitations on the right of a receiving State to deprive diplomatic agents of the exemption. As far as he could see, the opening words of the Special Rapporteur's proposed new version would permit receiving States to abolish all exemptions of every kind. He proposed therefore that the Commission should adhere to the 1957 text, or else should so redraft the Special Rapporteur's proposal that the receiving State would not be given the power to take away all exemptions.

50. Mr. AGO said that any restriction on the right of exemption should be put in the article itself and not in the commentary, which was intended only to clarify the article and not to deal with matters of substance.

51. As for the addition suggested by the Special Rapporteur, there was, as Mr. Yokota had said, a perceptible difference between the English and French texts, and he preferred the English word "regulations", which implied the possibility of restrictions, to the French word *modalités*, which did not necessarily imply any. It seemed to him that, if the Special Rapporteur's suggestion were followed, a French word closer in meaning to the English should be used.

52. If, on the other hand, his suggestion were followed, a sub-paragraph could be added at the end of paragraph 1 reading: "The receiving State may nevertheless place reasonable restrictions on articles imported for the uses specified in (a) and (b)."

53. Sir Gerald FITZMAURICE agreed with those members of the Commission who held that sub-paragraphs (a) and (b) implied certain limitations on the right of a mission or a diplomatic agent to be exempt from customs duties. There had been, and still were, abuses of that right, but paragraph 2 provided a means of curbing them. The Special Rapporteur's new proposal could not achieve anything more than did the 1957 text in dealing with such abuses, which could not really be checked by limitations laid down by law. He therefore preferred the 1957 text.

54. Mr. AGO wondered if Sir Gerald Fitzmaurice had to some extent misunderstood the situation. The abuses which Mr. Ago meant to check did not concern the abusive import of certain articles in the baggage of a diplomatic agent, but the extra import of articles allegedly for personal use which in reality went well

beyond the requirements of such use. Sub-paragraphs (a) and (b) did indeed place restrictions on the diplomatic agent's right to exemption, but they did not cover the situation he had referred to, which could be dealt with only by restrictions placed by the receiving State on the import of certain articles.

55. Mr. HSU agreed that something should be done to prevent the import of articles to be disposed of on the black market, but he could not accept the sentence proposed by the Special Rapporteur, which could be interpreted to mean anything, and was open to abuse by the Government of the receiving State. On the other hand he had no objection to an article restricting the import by a diplomatic agent of a specific article or articles.

56. Mr. BARTOS said that the question was an extremely difficult one. By reason of a diplomatic agent's immunity whatever he imported could not be confiscated, and if he abused his right to exemption from customs duties and the receiving State decided to declare him *persona non grata*, a diplomatic incident might be precipitated. There was something to be said for a quota system whereby the quantity imported duty-free on any articles could be kept at a reasonable figure, and perhaps it should be stated in the commentary that the receiving State was not obliged to grant exemption to more than a reasonable quantity of any articles.

57. Mr. SANDSTRÖM, Special Rapporteur, observed that from the provisions cited in the publication *Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities*⁴ it was clear that in many countries restrictions had been laid down in respect of the exemption from customs duties of diplomatic agents and in respect of the time within which they were entitled to claim exemption. A State was justified in imposing such restrictions, and he therefore preferred the text of his proposal, if no more appropriate form could be found. The Italian Government's proposal did not seem to be comprehensive enough.

58. He had no objection to the use of some word other than "*modalités*", for he had not contemplated a situation where junior customs officials could decide what exemptions should be made. It was a drafting question, however, and could be dealt with by the Drafting Committee.

59. Mr. AGO had no objection to the Special Rapporteur's proposal, provided that the English text, which was clearer, was taken as the basis of the vote.

60. In reply to Mr. Ago, the CHAIRMAN said that the Commission would vote on the English text of the Special Rapporteur's proposal.

61. He put to the vote Mr. Ago's proposed additional clause (para. 52 above) to be added at the end of paragraph 1.

62. The CHAIRMAN put to the vote the Special Rapporteur's proposal concerning paragraph 1

(para. 29, above), as amended by Mr. Alfaro's proposal (para. 45 above), subject to drafting changes.

The proposal thus amended was adopted by 8 votes to 7, with 1 abstention.

63. Mr. TUNKIN, referring to the first sentence of paragraph 2, said that at the Commission's preceding session it had been understood that the personal baggage to be exempt from inspection meant only such baggage as accompanied the diplomatic agent. The regulations on that point differed, however, from country to country, and diplomatic agents often had a great deal of unaccompanied baggage. He proposed therefore that the phrase "personal baggage" should be qualified by words indicating that only accompanied baggage was meant.

64. Mr. SANDSTRÖM, Special Rapporteur, said that to him "personal baggage" meant accompanied baggage, but he would have no objection to the addition of an explicit phrase to that effect.

65. Mr. ALFARO said it would be dangerous to restrict or qualify the meaning of the phrase "personal baggage". It often happened, especially when a diplomatic agent travelled by air, that a great deal of his baggage had to be sent separately by sea or land, and the whole purpose of the paragraph would be defeated if such unaccompanied baggage was not exempt from inspection. In this opinion the phrase "personal baggage" would include unaccompanied baggage.

66. Mr. HSU agreed with Mr. Alfaro. The exemption from inspection should be extended to baggage following by sea, for example, in cases where a diplomatic agent travelled by air. A large part of such unaccompanied baggage might consist of documents which the diplomatic agent could not possibly take with him.

67. There was not much danger of abuse, since if the authorities of the receiving State were suspicious the baggage could be inspected. It would be unwise to be too strict in the matter.

68. Mr. TUNKIN said that if the members of the Commission were of the opinion that the phrase "personal baggage" was sufficiently clear, he would not press his proposal.

69. The CHAIRMAN put to the vote article 27 as a whole, as amended.

Article 27, as amended, was adopted by 14 votes to none, with 2 abstentions.

ARTICLE 28

Paragraphs 1 and 2

70. Mr. SANDSTRÖM, Special Rapporteur, introducing his proposed new version of article 28 (A/CN.4/116/Add.1), said that in paragraph 1 he had dealt with the family of the diplomatic agent only; the provisions concerning technical and administrative staff had been transferred to paragraph 2. He was not sure that the

¹ United Nations publication, Sales No.: 1958.V.3.

proper context for the second sentence of paragraph 1 was not the commentary rather than the article.

71. Observations on the members of the family of the diplomatic agent had been made by the Swiss (A/CN.4/114), Belgian (*ibid.*), and Italian Governments (A/CN.4/114/Add.3), and he had nothing to add to his written comment (A/CN.4/116) on those observations.

72. Mr. VERDROSS said that paragraph 1 of both the original text and the Special Rapporteur's version went beyond international practice, which entitled only the diplomat's wife and minor children to privileges and immunities. Various Governments had objected to a formulation in such wide terms, and he felt that their objection was justified.

73. Sir Gerald FITZMAURICE said that the status of the members of the family had been fully discussed at the ninth session, and it had been decided that if only the wife and minor children were included the article would be too restrictive, as it would not cover, for example, the case of a sister keeping house for a bachelor or widowed diplomatic agent. The Special Rapporteur's version did not change the substance of the 1957 text, and he had no objection to it.

The meeting rose at 1 p.m.

462nd MEETING

Thursday, 12 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 CONCERNING DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/3623, PARA. 16; A/CN.4/116/ADD.1-2) (continued)

ARTICLE 28 (continued)

Paragraphs 1 and 2 (continued)

11. Mr. SANDSTRÖM, Special Rapporteur, said that observations had been received from the Governments of Belgium (A/CN.2/114) and Finland (A/CN.4/114/Add.2) on the subject of members of the family of a diplomatic agent who were nationals of the receiving State. In his view, although the matter was debatable, it was necessary to change the article, as the situation would be very difficult if a member of the diplomat's family was subject to the jurisdiction of the receiving State. That was the reason for his redraft of paragraph 1 (A/CN.4/116/Add.1).

2. In reply to a question by Sir Gerald Fitzmaurice,

he said that administrative and technical staff were the subject of paragraph 2 of his redraft. He referred to the observations of the Governments of Belgium, Switzerland, the United States of America, Argentina (A/CN.4/114), USSR (A/CN.4/114/Add.1), Italy (A/CN.4/114/Add.3), China (A/CN.4/114/Add.4), Yugoslavia (A/CN.4/114/Add.5), Czechoslovakia (A/CN.4/114/Add.1), and Pakistan (A/CN.4/114/Add.6) and to their objections to article 28 as drafted at the previous session (A/3623, para. 16) which granted diplomatic privileges and immunities to a mission's administrative and technical staff. While he did not consider the reasons for those objections convincing, the opposition was so strong that the Commission's entire draft might be in danger if the objections were not taken into account.

3. Mr. VERDROSS recalled that one reason for the decision at the ninth session to grant privileges and immunities to the administrative and technical staff had been that small States frequently maintained small diplomatic missions with only one or two persons on the diplomatic staff and one or two on the administrative and technical staff, so that it was difficult to make a distinction between the two kinds of staff. The opposition of Governments to the 1957 text was great, however; perhaps with the addition of some such phrase as "on a reciprocal basis" the article might be generally acceptable.

4. He realized that, according to current practice, only the wife and minor children of a diplomatic agent were entitled to privileges and immunities. As the Commission, however, had established its rule in paragraph 1 in the knowledge that it was a step towards the progressive development of international law, he would be quite prepared to vote for that paragraph as drafted at the ninth session. But since the provisions of the paragraph as drafted in 1957 had encountered opposition, he suggested that in deference to the objections it might be revised to read: "Apart from the diplomatic agent, his wife and minor children forming part of his household in all cases shall, and, subject to reciprocity, other members of his family may..." The addition of the words "who are in the diplomatic list" after "members of the family" might also help to remove opposition.

5. Mr. TUNKIN said that the observations by Governments showed that it was not the rule in existing international law to grant privileges and immunities to persons who were not members of the diplomatic staff in the strict sense of the term. That had been recognized at the ninth session, but the Commission had intended to introduce an innovation which was manifestly not acceptable to Governments. It should therefore be abandoned. The first sentence of the Special Rapporteur's redraft of paragraph 1 was satisfactory in that respect.

6. As far as the administrative, technical and service staff was concerned, he said that diplomatic privileges and immunities could, naturally, be conferred on such personnel by virtue of bilateral or even multilateral