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Summary record of the 467th meeting

Topic:
Diplomatic intercourse and immunities

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suggest, in order to take the action envisaged in the first paragraph. He would therefore suggest that the article might be redrafted so that the normal functions of the diplomatic corps be given precedence over its extraordinary ones. The third paragraph should, in his opinion, come first and the first and second paragraphs should be somewhat attenuated.

62. He could recall a pertinent case where many years before a Minister of Foreign Affairs of an oriental country had refused to receive the doyen acting on behalf of the accredited diplomatic representatives in a body in connexion with a protest over his country's denunciation of a treaty of extra-territoriality, on the ground that the treaties between his country and theirs made no provision for recognition of the diplomatic corps as an independent legal entity. Strictly speaking, that attitude might be justifiable, since the relations between the countries concerned were defined in bilateral treaties and not in a multilateral treaty.

63. Sir Gerald FITZMAURICE said that, although he did not altogether share the Secretary's views, he had been on the point of making a similar suggestion as to the redrafting. The interpretation placed on the article by some speakers seemed to him somewhat exaggerated. He agreed with the principle of the article. The institutions of the diplomatic corps and its doyen and the role they played in the matter of diplomatic privileges and immunities were, he thought, perfectly well known. There seemed, however, to be some confusion between a joint *démarche* by Governments and joint action by the diplomatic corps in matters affecting its status, privileges and immunities. The two had nothing in common. Whereas diplomatic representatives making a joint *démarche* required instructions from their Governments for the purpose, the diplomatic corps could make representations on matters of a protocolary character or affecting its status and privileges and immunities even in the absence of instructions from Governments.

64. Though the order of the paragraphs could be changed as the Secretary suggested, he regarded the precaution as somewhat exaggerated. The normal functions of the diplomatic corps were clearly defined in article 2 and there was no danger that article 12 A, which would come in a different section, would be misinterpreted. To meet the objections raised, he suggested replacing the words " any event or circumstance which affects the corps as a whole " by the words " any matter of an administrative, technical or protocolary character or affecting the status or privileges and immunities of the diplomatic corps ".

65. Mr. AMADO proposed the following abbreviated version of the article :

> " The doyen, acting on behalf of the diplomatic corps, may bring to the notice of the Government of the receiving State any fact or circumstance which concerns the diplomatic corps as a whole."

66. Mr. AGO welcomed Mr. Amado's proposal. He thought that the proposals submitted by Sir Gerald Fitzmaurice and Mr. Amado could be referred to the Drafting Committee.

67. Mr. ALFARO observed that Sir Gerald Fitzmaurice's remarks, in which he had succinctly defined the field of action of the diplomatic corps, were very much to the point and, in conjunction with Mr. Amado's proposal, should enable the Commission to draft an appropriate text. It was not enough, however, to state that the diplomatic corps should bring matters to the notice of the Government of the receiving State. It should also be able to make representations with a view to protecting the interests of the diplomatic corps as a whole.

The meeting rose at 1.5 p.m.

467th MEETING

Thursday, 19 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)*

ADDITIONAL ARTICLE 12 A *(continued)*

1. The CHAIRMAN invited the Commission to take a decision on the additional article proposed at the preceding meeting.

2. Speaking as a member of the Commission, he said that there seemed to be no need to include in the draft a provision on the subject of the diplomatic corps. The question was hardly one between States.

3. Mr. ZOUREK agreed. Quite apart from the fact that the term " diplomatic corps " had two connotations, one broad (all the diplomatic staff of all the diplomatic missions accredited in a given State) and one restrictive (all the heads of missions), there was the important consideration that it represented a simple grouping of interests, a *de facto* grouping with no legal function, which exercised certain activities of a protocol nature and a *droit de regard* over the observance of diplomatic privileges and immunities by the receiving State. In that respect it bore a certain similarity to the consular corps. The proposed article tended, on the other hand, to transform the diplomatic corps into a legal institution with definite functions, and that he thought was neither necessary nor desirable. Such an article would even be harmful, as it would establish a legal basis for the unwarrantable intereference of the diplomatic corps into the affairs of the receiving State. Moreover, the

defence of the interests of the diplomatic corps belonged more to the political field than to the legal field.

4. The CHAIRMAN put to the vote the proposal that no provision on the subject of the diplomatic corps be included in the draft.

The proposal was adopted by 7 votes to 6.

5. Mr. SCELLE, explaining his vote, said that he was not opposed to the principle of the article. On the contrary, he considered some such provision necessary. It would be impossible for the Commission to include in the article the provisions which it really should contain. In his opinion the diplomatic corps should have a *droit de regard* over the general policy of the Government to which its members were accredited, but, because the concept of sovereignty was more dominant than ever throughout the world, a provision on such lines would stand no chance of acceptance. He had therefore preferred no article at all to one which merely touched on the truth.

ADDITIONAL ARTICLES ON RECIPROCITY AND NON-DISCRIMINATION

6. Mr. SANDSTRÖM, Special Rapporteur, proposed the following additional articles. The first, on the principle of reciprocity, would read as follows:

> " If a State applies restrictively a rule of this draft which is capable of being applied liberally or restrictively, then the other States shall not be bound, *vis-à-vis* that State, to apply it liberally."

The second, on non-discrimination, would read as follows:

> " In the regulations setting forth the conditions governing diplomatic missions accredited to it or the diplomatic privileges and immunities, the receiving State shall not discriminate as between States. A provision stipulating that the application of the regulations is subject to reciprocity shall not be deemed to be discriminatory."

7. Mr. MATINE-DAFTARY observed that the article on reciprocity was limited to one case only — the one in which a State applied a rule restrictively — and did not provide for cases where the State failed to apply the rule altogether.

8. Mr. YOKOTA said that, while appreciating the Special Rapporteur's efforts to frame a provision on reciprocity in response to the observations of Governments, he did not find the proposed article entirely satisfactory. Since it was, in fact, nothing more than an enunciation of a general rule of interpretation valid for any branch of law, he doubted whether it was either necessary or advisable to include it in a draft convention. If it were included, then logically every convention should have such a clause. It was perfectly true that some provisions in the draft were capable of being interpreted and applied with varying degrees of liberality or restrictiveness, owing to the deliberately general or even vague formulation adopted. But other draft conventions and draft articles elaborated by the Commission were equally open to different interpretations.

9. In his observations on the suggestion of the Netherlands Government concerning the principle of reciprocity, the Special Rapporteur had stated that reciprocity " may be conceived of as a condition governing the grant of advantages more extensive than the minimum laid down as obligatory " (A/CN.4/116). It was in that sense, and in that sense only, that a provision on the principle of reciprocity would be admissible in the draft. But not all States had understood reciprocity in that sense. The United States Government, in its observations on the draft articles (A/CN.4/114), for instance, considered that the principle of reciprocity should apply in article 7, paragraph 2, which dealt with the right of the receiving State to refuse to accept officials of a particular category on a non-discriminatory basis. The principle of reciprocity could not, however, apply in that case. The duty of non-discrimination was not optional but obligatory. If a State refused to accept officials of a particular category from a second State but not from other States, it was violating a rule of international law and the second State was then entitled to take similar action. In that case, however, it was not the principle of reciprocity which was involved but the right of reprisal.

10. He was therefore opposed to the proposal on the twofold ground that as a general rule of interpretation it was unnecessary and that the formulation it gave of the principle of reciprocity was inappropriate. He would, however, be in favour of including, either in a preamble to the draft or in a commentary, the Special Rapporteur's statement which he had just quoted.

11. Mr. SANDSTRÖM, Special Rapporteur, said that he had drafted the article in response to various observations by Governments and to suggestions by members of the Commission. He thought it would be an advantage to include a rule on those lines in the draft. Many national regulations on the subject of diplomatic privileges and immunities contained such a provision on reciprocity.

12. Replying to Mr. Matine-Daftary, he said he had refrained from referring to the non-application of rules, because it came under the heading of reprisals rather than of reciprocity. When drafting the article he had had in mind a liberal or restrictive interpretation of such texts as article 26 or 27, or article 7, which was drafted in general terms.

13. Mr. TUNKIN inquired what the relation was between the article on reciprocity and the reference to reciprocity in the second sentence of the article on non-discrimination.

14. Mr. SANDSTRÖM, Special Rapporteur, recalled that he had been requested by members of the Commission to draft an article on the principle of non-discrimination. In so doing, he had thought it wise to refer to the rule of reciprocity.

15. Mr. TUNKIN observed that there appeared to be a very close relation between the two articles but he was not quite sure what it was meant to be.

16. Sir Gerald FITZMAURICE considered that the Special Rapporteur had been quite right in drafting an article on what was rather a special case. When a Government provided for the grant of diplomatic privileges and immunities as part of international law and practice, its interpretation of its duties in that respect might be either liberal or restrictive and, if restrictive, might come very close to infringing international law without actually doing so. If the draft contained no clause on the principle of reciprocity, a country which applied the rules restrictively could claim that other countries were not entitled to do likewise in its regard.

17. Referring to Mr. Tunkin's inquiry, he said that there was neither relation nor conflict between the article on reciprocity and that on non-discrimination. They dealt with different subjects. The second article implied that if a State applied a rule of the draft restrictively, it must do so with respect to all States indiscriminately. The second sentence in the article was quite logical. It merely meant that if a State applied a rule restrictively to a second State, the action of the second State in according the other State like treatment would not be regarded as discriminatory but merely as an application of the principle of reciprocity.

18. Mr. LIANG, Secretary to the Commission, said that the principle of the second of the two articles was sound although he had some reservations as to its formulation. It envisaged the case where a State, in taking a restrictive view of the treatment to be accorded to diplomatic agents, did not violate any legal rule. According to the old text-books on international law, for example, those written at the beginning of the century, when a State acted in an unfriendly manner towards a second State without violating international law, the second State was entitled to have recourse to retortion. When, on the other hand, the first State violated international law, the second State could take reprisals. He was not sure, however, whether that terminology was still being used in contemporary international law.

19. In his view, the article was not concerned with the question of liberal or restrictive application of the rules so much as with that of according liberal or strict treatment within the framework of the rules. If a dispute on the subject were brought before an arbitral tribunal or the International Court of Justice, it would not be presented as a question of application. If the matter was governed by convention, it would be a question of liberal or restrictive interpretation of the provisions of that convention. He thought that it would be rather difficult to ascertain whether a rule was being applied liberally or restrictively. In view of those considerations he would suggest that the Drafting Committee consider the possibility of replacing the concept of " application " by the concept of according treatment in varying degrees within the framework of the rules.

20. Mr. BARTOS observed that the article dealt with the comparatively new concept of reciprocity in practice as opposed to the reciprocity implied in any treaty. He believed that it was Anglo-Saxon case-law which had first authorized courts to verify whether treaties were being effectively applied. In recent years there had been an increasing number of cases of non-application of treaties, due to differences in conditions and institutions in the various States, and these had had as a counterpart an increased demand on the part of States for the same rules to be observed by all States. The general view now was that if a State did not apply a rule when it was in a position to do so it was guilty of discrimination against those to whom it did not apply the rule.

21. He was convinced that, in the matter of diplomatic privileges and immunities, no State could expect better treatment than it accorded to other States. Since such privileges and immunities were accorded to ensure the proper working of diplomatic missions, it would be intolerable if some States hampered the proper working of missions while others did not. He accordingly considered it necessary to have a provision on reciprocity which would, so to speak, provide for a unilateral sanction, giving States a kind of right of self-defence or of reprisal.

22. The CHAIRMAN, speaking as a member of the Commission, said that Sir Gerald Fitzmaurice had effectively convinced him that there was no conflict between the two articles. The article on non-discrimination struck him, however, as the better draft and its second sentence gave a pointer to a more suitable wording of the other article.

23. The first article as drafted was concerned with the according of treatment under the rules in accordance with the treatment received under them. But the question was whether the restrictive application of a rule by a second State in response to like treatment by another State was a matter of reciprocity at all ; it was rather in the nature of reprisal. For him, the principle of reciprocity came into play when two States accepted the draft as governing their mutual relations, for then the implication was that at least legally both would accord like treatment to each other's missions. To indicate how a State was to behave when treated in a certain manner by another State, which was what the first of the two articles really did, would be going beyond the scope of the draft and providing, in effect, an article on reprisals. He therefore felt that the first article needed redrafting.

24. Mr. TUNKIN said that there was a close connexion between the two additional articles proposed by the Special Rapporteur. The first of the two articles concerned a specific case of the operation of the reciprocity principle which was expressed in general terms in the second. That relationship between the two articles should, he thought, be made clear.

25. It had always been understood that there were too kinds of reciprocity: first, reciprocity or non-discrimination in the sense that States gave each other

equal treatment on a non-discriminatory basis in relation to treatment accorded to other States; and secondly, reciprocity in the sense that in its territory State A should give to State B exactly the same rights as State B gave to State A in its territory. The first of the two articles was concerned with reciprocity in the second sense.

26. Many rules could be interpreted liberally or restrictively. He agreed with Mr. Yokota that if such an article was included in the draft, there was no reason why a similar article should not be included in every draft which the Commission prepared. He therefore doubted whether a specific provision on the lines of that proposed should be included in the draft.

27. Mr. YOKOTA said that, despite Sir Gerald Fitzmaurice's observations, he still doubted the advisability of including in the draft so general a rule as was contained in the first of the two additional articles.

28. The second article contained an express reference to reciprocity. The Commission should have a clear idea of what was meant by reciprocity in that connexion. In the relationships which were the subject of the draft, the principle of reciprocity could properly operate only in cases where States were prepared to grant more than the minimum of privileges and immunities laid down in the draft. For example, under article 26 (*e*) the receiving State was not under a duty to exempt the diplomatic agent from charges levied for specific services rendered. The Japanese Government, however, exempted the premises of diplomatic missions from the payment of charges for electricity and gas, which came within the meaning of " services rendered ". That was a case in which the principle of reciprocity might operate. Article 20, on the other hand, stipulated that States should not restrict freedom of movement and travel by members of diplomatic missions. There, the principle of reciprocity could not be applied, for if in violation of article 20 a State restricted freedom of movement and travel such action might call for the application, not of the principle of reciprocity, but of reprisals.

29. He was not quite sure whether, in the second sentence of the second additional article, the word " reciprocity " was intended to bear the meaning he had attached to it. If therefore the article was adopted, the uncertainty on that point should be removed.

30. Sir Gerald FITZMAURICE said that the discussion had shown that provisions of the kind included in the two additional articles proposed by the Special Rapporteur were necessary and desirable, but also that those texts needed redrafting.

31. According to the distinction drawn by the Chairman and Mr. Yokota between reciprocity and reprisals, it was reprisals which might be resorted to in situations of the kind described in the first article, whereas the other additional article was more concerned with reciprocity. A further distinction between the two kinds of reciprocity had been drawn by Mr. Tunkin.

32. Mr. Tunkin's remarks had shown how necessary it was to make provision for both kinds of reciprocity. It would not be enough to provide that if State A did not in its territory discriminate against State B, then State B should not discriminate against State A in its territory. A situation might occur in which a receiving State, without discriminating against any particular sending State, might accord to all sending States less favourable treatment than was accorded to diplomatic missions by other States. Would, in that case, the States whose missions received the less favourable treatment be entitled, without being accused of discrimination, to treat the mission of the State in question less favourably than all the other missions accredited to them? That was really the question at issue in the first of the two proposed additional articles.

33. Consequently, it could not be said that either of the two additional articles proposed by the Special Rapporteur was superfluous, for they dealt with different situations. The Drafting Committee might be asked to see whether the texts could be improved. For example, it should perhaps be made clear that the last sentence of the second article applied to cases in which States accorded more favourable treatment than they were bound to accord under international law.

34. Mr. ZOUREK said the Special Rapporteur's proposals regarding reciprocity were much too general and exceeded the scope of the Commission's draft. Diplomatic relations were of course based on reciprocity of treatment, but the Commission was preparing a draft convention, and by virtue of that convention reciprocity would be largely assured by the application of the rules of the convention. It would always be open to States which held that the terms of the convention were not being correctly applied to resort to the machinery of peaceful settlement provided for in the treaties to which they were parties.

35. Moreover, the principle of reciprocity could not be applied in an absolutely general way because there were some articles which were not based on reciprocity. For example, it would be difficult to apply the principle of reciprocity in the case of article 7, which referred to the particular conditions prevailing in individual receiving States.

36. Even if the application of the reciprocity principle should be confined only to the articles dealing with diplomatic privileges and immunities, serious difficulties might arise. For example, if a court in State A refused to grant to a diplomatic agent of State B immunity from jurisdiction in a specific case, it was doubtful whether, on the basis of the principle of reciprocity, the courts of State B would be entitled to refuse immunity from jurisdiction, in similar cases, to the diplomatic agents of State A.

37. The principle of reciprocity could most appropriately be applied in such matters as immunity from taxation and exemption from customs duties. Where the treatment given in those respects was more liberal than was strictly required under the rules of international law, it could properly be made subject to reciprocity, but the principle of reciprocity could not be regarded as applicable to the whole draft.

38. Mr. TUNKIN agreed with Mr. Zourek that the proposed article relating to non-discrimination and reciprocity was too general. Perhaps it should speak of non-discrimination and reciprocity in relation only to diplomatic privileges and immunities, but though that would be an improvement, he was not sure even then the text would be entirely satisfactory.

39. The Chairman and Mr. Yokota had rightly drawn attention to the distinction between reciprocity and reprisals. The Commission should be clear as to what it was dealing with. Reciprocity was the principle underlying the treatment to be accorded to each other by the parties to a specific bilateral or multilateral agreement ; but the Commission was codifying rules of general international law, and the provisions of the convention which it was preparing for acceptance by a mapority of States, if not by all, would be specific rules of general international law. How, then, was the second sentence of the proposed additional article on non-discrimination to be construed ? It might be interpreted to mean that if a State did not comply with a specific rule of general international law in its relations with another State, that other State might also be entitled not to comply with that rule. In that case, however, he agreed with Mr. Yokota that the action of the first State would be a contravention of international law and that the action taken by the second State would be a kind of reprisal.

40. Mr. ALFARO agreed with the Special Rapporteur and other members of the Commission as to the desirability of including the two proposed additional articles in the draft. It might perhaps be said that when, in cases of the kind referred to in the first of the two articles, State A applied a rule of the draft restrictively and State B retaliated by also applying that rule restrictively *vis-à-vis* State A, the action taken by State B was in the nature of a reprisal ; but that was a subsidiary aspect, and the article could certainly not be said to sanction a whole system of reprisals.

41. The second of the two proposed additional articles was concerned not so much with reciprocity as with non-discrimination ; and the reference to reciprocity in the second sentence was incidental, the main purpose of the sentence being to provide an example to illustrate what kind of action could not be deemed discriminatory.

42. It was imperative that in a draft relating to diplomatic intercourse and immunities situations of that kind should be regulated, for many of the articles related to immunities such as exemption from payment of customs duties on goods which the diplomatic agent imported for his own use or the use of his family. While some States applied that rule very liberally and allowed the diplomatic agent to import almost unlimited quantities of goods, other States applied it more restrictively. If State B adopted different policies in respect of such a rule towards States A and C on the grounds that State A applied the rule less restrictively, *vis-à-vis* State B, than did State C, the action of State B could not be regarded as discriminatory.

43. He was in favour of the two proposed additional articles, subject to such improvements and amendments as might meet with the ommission's approval.

44. Mr. SANDSTRÖM, Special Rapporteur, said that his intention in drafting the first of the two proposed additional articles had been to exclude the question of reprisals and to refer only to those rules in the application of which a certain latitude was possible. The draft referred specifically to a rule . . . which is capable of being applied liberally or restrictively ". That would include many of the rules in the draft, for example, the rule relating to inviolability. If there was any difficulty in connexion with the use of the word " applies ", the Drafting Committee might be asked to find a better term.

45. He regretted that the second article had been dealt with at the same time as the first, for it was concerned with a different subject. Perhaps the second sentence need not be retained, since what it said was self-evident.

46. Mr. HSU said he shared the misgivings expressed by Mr. Tunkin and others regarding the first of the two articles. He doubted whether it was adequate as a definition of reciprocity. He also doubted whether a definition of reciprocity was needed. The second article did not define discrimination and there was no reason why the first should include a definition of reciprocity. The article had presumably been proposed to meet the wishes of some Governments, but he suspected that what they wanted was not so much a definition by the Commission as its abstention from regulating questions which could best be left to the parties concerned to work out on the basis of reciprocity. Governments would not wish the Commission to attempt to define a word of which the meaning was self-evident.

47. Mr. LIANG, Secretary of the Commission, said that a State which went beyond the requirements of the rules and treated a foreign mission liberally could not insist that another State give the same liberal treatment to its diplomatic agents. If a State accorded treatment which fell short of what was required by the article, it failed to discharge its obligation and the question of reprisals might arise, but the subject of reprisal was beyond the scope of the rules under consideration. An additional article on reciprocity proposed by the Special Rapporteur covered only one aspect of that problem. He suggested, therefore, that the proposed article concerning liberal or restrictive application should be combined with the article on reciprocity ; the combined text would then read :

> " In carrying out the provisions of the rules governing diplomatic missions accredited to it or the diplomatic privileges and immunities, the receiving State shall not discriminate as between States. The granting of certain privileges and immunities subject to reciprocity shall not be deemed to be discriminatory."

It was unnecessary to refer to legislations or regulations ; indeed, many States had no written rules on the subject, but merely observed established practice.

The second sentence of his suggested amendment would cover all aspects of the subject.

48. Mr. AMADO said he was opposed to a reference to principles which were not clear-cut and intelligible. Reciprocity was a matter of practice, and in any case, was a concept that embraced a great divesity of things. The discussion had made it clear that there was no agreement on the subject, which was so unintelligible that he personally was unable to grasp the meaning of the second sentence of the French version of the Special Rapporteur's proposal on non-discrimination, which seemed more obscure than the English. As the subject was covered by diplomatic practice, there seemed to be no need to frame any rules.

49. Mr. VERDROSS said that, having followed attentively the Special Rapporteur's explanation of his proposal on reciprocity, he thought that the Drafting Committee, when it considered the wording of that proposal, should refer to principles rather than rules.

50. Faris Bey EL-KHOURI said that the second sentence of the proposed article on non-discrimination seemed to him to imply that if a State made a concession to another on a reciprocal basis it would be obliged to make the same concession to any other State claiming it. If that was the meaning, he would vote against the proposal.

51. The CHAIRMAN said that it was generally agreed that the two proposed articles were unsatisfactory in the form in which they were drafted. He suggested, therefore, that the Commission leave it to the Drafting Committee to consider them and attempt to frame a more acceptable text, avoiding provisions of the character of reprisals. A final decision on the articles could be taken when the Drafting Committee had submitted its revised version.

It was so agreed.

ADDITIONAL ARTICLE ON EXEMPTION FROM SOCIAL SECURITY LEGISLATION

52. Mr. SANDSTRÖM, Special Rapporteur, said that his proposed additional article (A/CN.4/116/Add.1) was based on a proposal by the Luxembourg Government (A/CN.4/114). The subject had been considered at the ninth session, and the Commission had decided that there should be no such article, but since then he had studied the legislations and come to the conclusion that it was advisable to include an article dealing with the subject.

53. The second paragraph of the article, however, dealt with what was in reality a private concern and its utility was questionable. In order to avoid discussion, therefore, he withdrew that paragraph.

54. Mr. TUNKIN said he had no specific objection to the proposal. On the other hand, social security was only one of many fields dealt with by national legislation, and if there was an article relating to social security, why should there not also be articles relating to other fields ?

55. Mr. SANDSTRÖM, Special Rapporteur, said that in framing his proposal he had had in mind contributions to old age pensions and accident insurance schemes, for example. He did not know what other fields of legislation Mr. Tunkin had in mind.

56. The CHAIRMAN put to the vote the draft additional article on exemption from social legislation (the first paragraph of the article as drafted by the Special Rapporteur).

The additional article was adopted by 16 votes to none, with 1 abstention.

57. Mr. MATINE-DAFTARY said that he had voted in favour of the article on the assumption that members of the mission and members of their families could contribute towards health insurance and sickness benefit if they so desired.

58. Mr. SANDSTRÖM pointed out that in many cases there was legislation permitting members of the mission to do so if they wished.

DEFINITIONS CLAUSE (*continued*) [1]

59. Mr. SANDSTRÖM, Special Rapporteur, said that the Netherlands Government had proposed (A/CN.4/114/Add.1) that the draft should contain a definitions clause. He thought the proposal reasonable, but considered the Netherlands Government's proposed text hardly comprehensive enough.

60. The CHAIRMAN said that the definitions would depend on the terms of the final version of the articles to be prepared by the Drafting Committee. He suggested, therefore, that the Commission should decide whether the draft should contain a definitions clause, and, if it agreed that it should, leave it to the Drafting Committee to work out the text.

61. Mr. YOKOTA said he had no objection in principle to the insertion of a definitions clause. The Netherlands Government's proposed definitions did not make it clear, however, what members of a mission make up the service staff and what ones the administrative and technical staff ; for example, it was not clear to which group a typist or an interpreter belonged. The definitions should therefore be clarified by examples in the commentary.

62. Mr. SANDSTRÖM, Special Rapporteur, said that examples could be given in the text of the clause. He had suggested (A/CN.4/116) adding " including military, naval and air attachés and other specialized attachés " at the end of sub-paragraph (*d*), and counsellors and secretaries might be added in the same category.

63. Mr. ZOUREK hoped that the meaning of the expression " members of the family " which had been discussed at length in connexion with article 28, would be defined.

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[1] Resumed from 449th meeting.

64. Mr. BARTOS thought that in drafting the passage relating to domestic servants, the Drafting Committee should take into account the terminology used by the International Labour Organisation.

65. Mr. TUNKIN said that there was no shortage of terms which could be defined, such as " diplomatic intercourse ", " privileges ", " immunities ", etc. It was essential, however, that only those definitions should be set down which were really necessary for the understanding and application of the draft articles. He agreed that there should be an article containing definitions, but it should be closely scrutinized by the Drafting Committee.

65. The CHAIRMAN proposed that the draft articles should contain a definitions clause, the terms of which were to be worked out by the Drafting Committee.

It was so decided.

FINAL FORM OF THE DRAFT (*continued*) [2]

67. The CHAIRMAN said that the Special Rapporteur had proposed (448th meeting, para. 64) that consideration of the form to be given to the draft be deferred until the articles had been examined, and that proposal had been adopted. He requested the Commission to decide in what form the draft should be recommended to the General Assembly.

68. Mr. SANDSTRÖM, Special Rapporteur, proposed that the draft articles be submitted to the General Assembly in the form of a draft convention with a recommendation for action under either paragraph 1 (*c*) or paragraph 1 (*d*), of article 23 of the Commission's statute.

69. Mr. ALFARO agreed that the draft article should be submitted to the Assembly in the form of a convention, ready for signature. In his view, however, it was unnecessary to recommend, as one of the possible courses of action, that the General Assembly convoke a conference, as it might decide that the draft convention was suitable for immediate signature by States Members.

70. The CHAIRMAN expressed the view that a recommendation in conformity with article 23, paragraph 1 (*c*), of the Commission's statute would be the most suitable.

71. Mr. GARCIA AMADOR said that many conferences were held under the auspices of the United Nations. Some, such as the United Nations Conference on the Law of the Sea, had been very technical, but in the case of the draft articles before the Commission, no specialist knowledge was required. He therefore agreed with Mr. Alfaro ; because of the need to reduce the number of conferences to a minimum, and because the subject was straightforward, the General Assembly might well, after discussion, submit the draft convention to Members for signature.

72. Sir Gerald FITZMAURICE said that he would not vote against the submission of the draft articles as a convention, but he deprecated the idea that all the Commission's codifications of international law should be recommended to the General Assembly in the form of conventions. Some parts of international law did not readily lend themselves to presentation in such form. In others, as in the case of consular intercourse and immunities, there was not much customary international law, and in such a case, an international conference to agree upon a convention was desirable. In the case of diplomatic privileges and immunities, however, no new ground had been broken ; nor was there any obscurity such as had justified recommending the convocation of a conference on the law of the sea. He therefore thought that the Commission's recommendation should be made under article 23, paragraph 1 (*b*), of its statute, not 1 (*c*).

73. If the majority preferred to submit the text in the form of a convention, a recommendation should be made under article 23, paragraph 1 (*c*) rather than 1 (*d*). For if the General Assembly desired a conference, it would convoke one ; there was no reason why the Commission should recommend one.

74. Mr. ZOUREK agreed with Mr. Sandström that the draft articles should be recommended in the form of a convention. In framing the articles, the Commission had assumed throughout that they would form a convention, and there was no reason to suspect that the adoption of a convention would occasion much difficulty to States.

75. The question whether the recommendation should be made under paragraph 1 (*c*) or under paragraph 1 (*d*) of artilce 23 was of secondary importance. A conference to deal with diplomatic intercourse, if convoked, would not necessarily be as big as the United Nations Conference on the Law of the Sea ; if there were no conference, the draft convention would take up a lot of the General Assembly's time. Moreover, the draft articles dealt with general international law, and States outside the United Nations might wish to sign. A conference, then, appeared to be the most suitable place for consideration of the draft articles ; but the General Assembly would decide for itself.

76. Mr. LIANG, Secretary to the Commission, said that the General Assembly would undoubtedly call a conference if it so desired, whether the Commission made its recommendation under paragraph 1 (*c*) or under paragraph 1 (*d*) of article 23 of the Commission's statute. Except for the Convention on Genocide, he could recall no case in which the General Assembly had examined a draft convention in detail, article by article, and recommended it forthwith to States. He thought that it was unlikely that the General Assembly would itself examine the draft and commend it to Members for signature. The Assembly had a heavy agenda each year ; furthermore many of the delegations did not contain more than a small number of lawyers.

The meeting rose at 1.5 p.m.

[2] Resumed from 448th meeting.