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**Summary record of the 808th meeting**

Topic:  
**Special missions**

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in the commentary. It might then however, be stated that the Commission had preferred to follow the example of the Vienna Convention on Diplomatic Relations and use the broader formulation, although it would, of course, be open to States to adopt the other arrangement by bilateral agreement.

The meeting rose at 6.5 p.m.

## 808th MEETING

Tuesday, 22 June 1965, at 10 a.m.

Chairman : Mr. Milan BARTOŠ

Present : Mr. Ago, Mr. Amado, Mr. Briggs, Mr. Elias, Mr. Jiménez de Aréchaga, Mr. Pal, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Tunkin, Mr. Verdross, Sir Humphrey Waldoock, Mr. Yasseen.

### Special Missions

(A/CN.4/179)

(continued)

[Item 3 of the agenda]

#### ARTICLE 28 (Exemption from social security legislation) [28]

##### Article 28 [28]

###### *Exemption from social security legislation*

1. The head and members of the special mission and the members of its staff shall be exempt, while in the territory of the receiving State for the purpose of carrying out the tasks of the special mission, from the application of the social security provisions of that State.

2. The provisions of paragraph 1 of this article shall not apply to nationals or permanent residents of the receiving State regardless of the position they may hold in the special mission.

3. Locally recruited temporary staff of the special mission, irrespective of nationality, shall be subject to the provisions of social security legislation.

1. The CHAIRMAN, speaking as Special Rapporteur, said that article 28 of his draft was based on article 33 of the Vienna Convention on Diplomatic Relations but had been abridged because of the temporary nature of special missions. What remained was the provision in paragraph 1, under which the members of the special mission and its staff were exempt, while in the receiving State, from the social security provisions of that State.

2. Paragraph 2 provided that the provisions of paragraph 1 should not apply to nationals or permanent residents of the receiving State, from among whom many persons employed by special missions, and not only service staff, were recruited. Since the task of a special

mission was very often dangerous and might result in death or disability, the application of social security provisions was more important in that case than in the case of permanent missions.

3. The question of temporary staff, referred to in paragraph 3, was different from that arising in connexion with permanent missions, since the special mission generally engaged such staff for a few days only. He had drafted paragraph 3 with that consideration in mind and in conformity with the general trends of international labour legislation.

4. Mr. ROSENNE said that the divergence from the Vienna Conventions was justifiable and he could accept the Special Rapporteur's formula for article 28.

5. Mr. TUNKIN said he agreed that some deviation from the Vienna Conventions was inevitable. The Drafting Committee would need to consider whether paragraph 3 was necessary at all. Locally recruited temporary staff would be covered by the provision in paragraph 2 that nationals or permanent residents of the receiving State were not exempt from social security legislation.

6. Mr. ELIAS said that either paragraphs 2 and 3 could be amalgamated or the former could be redrafted so as to cover locally recruited temporary staff, possibly by substituting the words "persons ordinarily resident in" for the words "permanent residents of".

7. The CHAIRMAN, speaking as Special Rapporteur, said there was some doubt as to the meaning of the term "ordinarily resident". International law distinguished between temporary residents and permanent residents, and France and the United Kingdom, for example, made a distinction between permanent residents and privileged residents.

8. Mr. ELIAS pointed out that the phrase "ordinarily resident in" often appeared in legislative enactments of many common law countries and the context would indicate what it meant. Alternatively, the phrase "or persons permanently or temporarily resident in the receiving State" could be used in paragraph 2, and paragraph 3 would then be unnecessary.

9. The CHAIRMAN, speaking as Special Rapporteur, said that the reference to permanent residence had been introduced into the Vienna Convention on Diplomatic Relations at the request of the Commonwealth countries.

10. Mr. ROSENNE said that both the Vienna Conventions contained the phrase "nationals of or permanently resident in the receiving State"; its meaning was well-known, and there was no reason for using another form of words to express the same idea.

11. The CHAIRMAN, speaking as Special Rapporteur, said that the question which expression was the more usual had been considered at both Vienna Conferences. The expression "permanent residents" or a similar one had been used in the Convention relating to the Status of Stateless Persons<sup>1</sup> and in the Convention relating to the Status of Refugees.<sup>2</sup>

<sup>1</sup> United Nations Treaty Series, Vol. 360, p. 130.

<sup>2</sup> *Ibid.*, Vol. 189, p. 137.

12. He suggested that article 28, together with the comments made during the meeting, be referred to the Drafting Committee.

*It was so agreed.*<sup>3</sup>

ARTICLE 29 (Exemption from personal services and contributions) [30]

Article 29 [30]

*Exemption from personal services and contributions*

1. The head and members of the special mission and the members of its staff shall be exempt from personal services and contributions of any kind, from any compulsory participation in public works and from all military obligations relating to requisitioning, military contributions or the billeting of troops on premises which are in their possession or which they use.

2. The receiving State may not require the personal services or contributions mentioned in the preceding paragraph even of its own nationals while they are taking part in the activities of the special mission.

13. The CHAIRMAN, speaking as Special Rapporteur, said that paragraph 1 of article 29 of his draft followed fairly closely article 35 of the Vienna Convention on Diplomatic Relations.

14. He had added a paragraph 2, as he had thought it necessary to make it clear that the receiving State could not require any personal services, even if that provision to some extent curtailed its sovereignty. In some countries, citizens could be employed by special missions of foreign States with the authorization of the receiving State, but the mission's work would suffer if they were liable at any moment to have to leave their employment. In other countries, nationals were debarred from entering a foreign mission's employ or else were so strictly bound by personal service obligations that they could not take part in the mission's activities. The situation sometimes reached a point where the mission could no longer perform its task. In the light of those considerations he had inserted a rule which did not occur in article 35 of the Vienna Convention on Diplomatic Relations.

15. The question whether the members and staff of special missions had an obligation to furnish personal services dictated by humanitarian considerations was discussed in paragraph (3) of his commentary.

16. Mr. YASSEEN said that article 29 was really necessary; members of special missions should be exempt from all personal services and from participation in public works. In order to avoid difficulties of interpretation, however, the provision exempting them from such services should be modelled very precisely on article 35 of the Vienna Convention on Diplomatic Relations.

17. He agreed that the persons eligible for the exemption should include all the members of the mission and even the administrative and technical staff, but he could not agree that the exemption should be extended to nationals of the receiving State, especially if it involved exemption from military service. It was true that the exemption would be for a brief period only, but it was a

material derogation from principle and it was better not to admit it.

18. Humanitarian obligations were not enforceable. There was, of course, a moral sanction, but that was not a matter within the competence of the Commission.

19. The CHAIRMAN, speaking as Special Rapporteur, said that the Commission was agreed that members of the special mission should enjoy immunity from criminal jurisdiction. He had mentioned humanitarian obligations in the commentary only, and had had no intention of introducing the idea into the body of the article.

20. Mr. TUNKIN said he agreed with the principle set out in the article, but considered that the wording should follow more closely that of article 35 of the Vienna Convention on Diplomatic Relations.

21. He could accept the Special Rapporteur's proposal that the exemption should extend even to service staff, but only on condition that the persons concerned were not nationals of the receiving State; the same condition must apply to the members of the technical and administrative staff of the special mission.

22. The CHAIRMAN, speaking as Special Rapporteur, said that the difference lay in paragraph 2, which he proposed tentatively in order to deal with the case where the regulations of the receiving State were so stringent as to hamper the work of the special mission, which could not employ anyone without receiving the State's consent.

23. Mr. VERDROSS said that he hesitated to endorse paragraph 2, which was not only superfluous but a derogation from the general principle. If the receiving State requested its nationals to participate in the activities of a special mission, it was in its own interest to exempt them from personal services; there was no need to protect the individual when his interests coincided with those of the State.

24. The CHAIRMAN, speaking as Special Rapporteur, said that he had come across many instances where the receiving State, even after accepting the special mission, had done everything in its power to prevent the mission from functioning.

25. Sir Humphrey WALDOCK said that practice showed that there would be no chance of States accepting the extension of the exemption to nationals of the receiving State, however desirable that might seem in theory. Otherwise the Special Rapporteur's draft was on the right lines.

26. Mr. ROSENNE said that he was not altogether convinced that paragraph 2 should be dropped; it might be desirable to obtain the views of governments before reaching the conclusion that they would necessarily in that case reject the extension of the exemption to nationals of the receiving State.

27. Article 29 should be read in conjunction with the provisions of article 14, which gave some measure of control to the receiving State. Despite what was said in the last sentence of paragraph 2 (b) of the commentary, special missions could last quite a long time and the size of their staff might be not inconsiderable. If paragraph 2 was retained, it should refer not only to nationals of but also to permanent residents in the receiving State. If

<sup>3</sup> For resumption of discussion, see 817th meeting, para. 85.

paragraph 2 was not retained, the point should be mentioned in the commentary so as to find out what attitude would be taken by governments.

28. Mr. REUTER said that the approach to paragraph 2 would depend also on the Commission's general approach to article 40. The question of article 40 had already been raised, but remained obscure. Was the Commission drafting rules from which there could be no derogation—in which case they would be few in number—or was it drafting residual rules? If the proposal contained in article 40 was maintained, no such rule as that contained in paragraph 2 could be laid down. But if the Commission wanted to adopt the more flexible formula, closer to that contained in the Vienna Convention on Diplomatic Relations than to that used in the Vienna Convention on Consular Relations, the question might remain open for discussion.

29. The CHAIRMAN said it was evident that most members wished to retain paragraph 1 and to enlarge the category of persons entitled to the benefit of the exemptions specified in it, so that an article similar to article 35 of the Vienna Convention on Diplomatic Relations would result.

30. Most members thought that paragraph 2 should be omitted but did not object to the idea being mentioned in the commentary, in order to indicate that the receiving State should not hinder the work of the special mission by imposing excessive obligations on those members of the mission who were its own citizens or permanent residents.

31. The question of humanitarian obligations would be mentioned in the commentary.

32. He suggested that the article should be referred to the Drafting Committee, with directions along those lines.

*It was so agreed.*<sup>4</sup>

#### POSSIBLE INCLUSION OF AN ARTICLE ON THE LINES OF ARTICLE 34 OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS

33. The CHAIRMAN, speaking as Special Rapporteur, said that article 34 of the Vienna Convention on Diplomatic Relations dealt with certain exemptions from taxation; there was no corresponding provision in his draft on special missions. He was undecided whether exceptions should be made in favour of members of special missions or whether a provision like article 23 of his draft would be better. There was a material difference between article 23, to paragraph 3 of which the Commission had made reservations, and article 34 of the Vienna Convention on Diplomatic Relations, which related only to the diplomatic agent. As special missions stayed only temporarily in the territory of the receiving State, the same considerations did not apply. He would be glad to hear the views of the Commission.

34. Mr. TUNKIN said that a special mission, one dealing with frontier problems, for example, might stay in a country for as long as a year, and the question could then arise whether its members were liable to taxation in the receiving State. It might be wiser to insert a provision

covering the point on the basis of article 34 of the Vienna Convention on Diplomatic Relations.

35. The CHAIRMAN, speaking as Special Rapporteur, said that sometimes special missions, although temporary, became almost permanent. He suggested that he should draft a provision based on article 34 of the Vienna Convention on Diplomatic Relations for inclusion in the draft articles.

*It was so agreed.*<sup>5</sup>

#### ARTICLE 30 (Exemption from customs duties and inspection) [31]

##### Article 30 [31]

##### *Exemption from customs duties and inspection*

The receiving State shall grant exemption from the payment of all customs duties, all taxes and other duties—with the exception of loading, unloading and handling charges and charges for other special services—connected with the import and export and permit the free import and export of the following articles :

(a) Articles for the official use of the special mission;

(b) Articles for the personal use of the head and members of the special mission and of the members of its staff which constitute their personal baggage, as well as articles serving the needs of family members accompanying the head, the members and the staff of the special mission, unless restrictions have been specified or notified in advance on the entry of such persons into the territory of the receiving State.

36. The CHAIRMAN, speaking as Special Rapporteur, said that he had based his draft for article 30 on article 36 of the Vienna Convention on Diplomatic Relations but had not followed it in its entirety, because members of special missions did not settle and hence did not need exemption from customs duties as did members of the permanent diplomatic mission.

37. He had not drafted a provision corresponding to paragraph 2 of article 36 of the Convention, though he was ready to do so. A further question to be decided was whether the family of members of the special mission enjoyed the same customs privileges as the members themselves did.

38. Mr. ROSENNE said that article 30 was acceptable except that sub-paragraph (b) should not apply to nationals of or permanent residents in the receiving State. The point was not a theoretical one, as permanent residents in the receiving State could form part of a special mission by agreement between the two States concerned, and such persons should certainly not be given any excuse to claim exemption from customs duties solely because they had been accepted as members of a special mission.

39. Mr. TUNKIN said that article 30 was acceptable but should follow as closely as possible the wording of the Vienna Convention on Diplomatic Relations, since the scope of the privileges to be accorded should be much the same as for diplomatic missions. He was prepared to accept the Special Rapporteur's proposal that customs exemptions should be extended even to the service staff of

<sup>4</sup> For resumption of discussion, see 817th meeting, para. 90.

<sup>5</sup> Draft provision later discussed as article 28 *bis*; see 817th meeting, para. 86-89.

a special mission—even though no such privilege existed for the service staff of a diplomatic mission under the terms of article 37, paragraph 3, of the Vienna Convention on Diplomatic Relations—provided that they were not nationals of or permanent residents in the receiving State.

40. It was, of course, imperative to insert in the text after the words “ the receiving State shall ” the words “ in accordance with such laws and regulations as it may adopt ”, which appeared in article 36 of the Vienna Convention on Diplomatic Relations.

41. The CHAIRMAN, speaking as Special Rapporteur, said that the question of furniture and installation did not arise in the case of the special mission. He thought it should be provided that the head and members of the special mission were exempt from inspection of their personal baggage “ unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 ” (paragraph 2 of article 36 of the Vienna Convention on Diplomatic Relations).

42. Mr. PESSOU said that the Commission should perhaps be a little more severe, in order not to add to the difficulties being experienced in many African countries, for instance, where increasing quantities of cigarettes and alcohol were being imported duty-free. A proviso should be added to the article on the lines of that in the Vienna Convention on Diplomatic Relations, or else a qualifying phrase like “ according to the facilities available at the place of residence ”.

43. The CHAIRMAN, speaking as Special Rapporteur, said that the question raised by Mr. Pessou was dealt with in paragraphs (8) and (9) of his commentary. He knew of cases where disputes had lasted for months and others where the Foreign Ministry of the receiving State had had to warn the Embassy of a sending State, but other countries were more tolerant. The common practice was to import such goods for the use of the special mission through the permanent diplomatic mission. The question was important but he had not considered it advisable to draft a precise rule on the point.

44. Mr. ROSENNE said that Mr. Pessou had raised a serious point which would in part be met by Mr. Tunkin's proposed amendment.

45. The CHAIRMAN, speaking as Special Rapporteur, said that possibly the provision should be qualified by a reference to the laws and regulations of the receiving State; but in some cases such a qualification might have the effect of destroying the custom. Even if it were stipulated that only articles other than articles for the official use of the mission, or other than personal baggage, were subject to the laws and regulations of the receiving State, that State would be given a great deal of discretionary power and one would have to trust it to use that power with moderation. Would it agree that alcohol and cigarettes were essential for the performance of the mission's tasks?

46. Mr. PESSOU said that the difficulties to which he had referred were particularly acute where relations between two States were strained; restrictions could then serve as a means of pressure. The Commission should, he

thought, model the provision as closely as possible on the Vienna Convention on Diplomatic Relations.

47. The CHAIRMAN, speaking as Special Rapporteur, suggested that the Commission should authorize him to prepare a generally acceptable redraft of article 30.

*It was so agreed.*<sup>6</sup>

#### ARTICLE 31 (Status of family members) [35]

##### *Article 31*

[35]

##### *Status of family members*

1. The receiving State may restrict the entry of members of the families of the head, members and members of the staff of the special mission. If such restriction has not been agreed upon between the States concerned, it must be notified in due time to the sending State. The restriction may be general (applying to the entire mission) or individual (some members are exempt from restriction), or it may relate only to certain periods of the special mission's visit or to access to certain parts of the country.

2. If such restriction has not been agreed upon or notified, it shall be deemed to be non-existent.

3. If the special mission performs its task in military or prohibited zones, family members must be in possession of a special permit from the receiving State authorizing them to enter such zones.

4. If the entry of members of the families of the head, members or members of the staff of the special mission is not subject to restrictions, and in areas where restrictions on entry do not apply, family members accompanying the head, members or members of the staff of the special mission shall enjoy privileges and immunities as specified below :

(a) The members of the families of the head and members of the special mission and of those members of its staff who belong to the category of diplomatic staff (article 6, paragraph 2, of these articles) shall enjoy the privileges and immunities which are guaranteed by these articles to the persons whom they are accompanying;

(b) Members of the families of the administrative and technical staff shall be entitled to the privileges and immunities which are guaranteed by these articles to the persons whom they are accompanying.

5. Family members shall enjoy the above-mentioned privileges and immunities only if the provisions of these articles do not limit their right of enjoyment and if they are not nationals of or permanently resident in the receiving State.

48. The CHAIRMAN, speaking as Special Rapporteur, said that in drafting article 31 he had proceeded on the premise that in practice, so far as family members were concerned, the case of special missions was very different from that of permanent missions. Without conflicting with paragraph 1 of article 37 of the Vienna Convention on Diplomatic Relations, article 31 of the draft accordingly reflected the specific character of special missions. In the case of special missions, the receiving State was often anxious to restrict the entry of family members; that was why paragraphs 1, 2 and 3 of the article dealt with possible restrictions. But he had to admit that he had only drafted the article after a good deal of hesitation.

<sup>6</sup> For resumption of discussion, see 817th meeting, paras. 91 and 92.

49. Mr. JIMÉNEZ de ARÉCHAGA suggested that article 31 should be confined to the provisions on the privileges of family members; the provisions on restrictions on the entry of such persons, a totally extraneous matter, should be dropped.

50. The article had been drafted on the assumption that special missions were always of short duration, which was not necessarily true in all cases.

51. Mr. VERDROSS said that he had no criticisms of paragraphs 1, 2 and 3, but thought that paragraph 4 went too far. In that respect, the position of special missions was analogous to that of delegations to the United Nations—which distinguished between members of permanent missions, whose privileges were extended to their families, and representatives to conferences, whose privileges were strictly personal. Before it could settle the problem, the Commission would first have to know whether the Special Rapporteur still proposed to draw up special rules for “high-level” special missions. Under general international law, a Head of State enjoyed complete immunity, together with the members of his family. That privilege had sometimes been extended, particularly by the United Kingdom during the last war, to Heads of government and ministers.

52. He would accept the proposed rule as applicable to a Head of State, a Head of government or a minister when on an official mission, but could not accept it for other special missions.

53. The CHAIRMAN, speaking as Special Rapporteur, said that he might first have stated a general rule granting all privileges and immunities to family members and then added another rule providing that the receiving State could attach certain restrictions to the admission of family members to its territory. Attitudes varied greatly in that respect; for example, the local idea of the family unit varied, even in countries where equality of the sexes was recognized in law.

54. Mr. REUTER suggested that, in the French text of paragraph (3) of the commentary, the word “*habituellement*” be substituted for “*régulièrement*”.

55. The CHAIRMAN, speaking as Special Rapporteur, said that a slight difference of meaning was involved which had been discussed at the Vienna Conferences.

56. Mr. ROSENNE said that the opening proviso of paragraph 4 fully covered the matters dealt with in paragraphs 1, 2 and 3; he therefore suggested that the article be limited to the contents of paragraphs 4 and 5.

57. Mr. TUNKIN, supporting that suggestion, said that paragraphs 1, 2 and 3 went into unnecessary detail. In paragraph 4, an effort should be made to find a more dignified expression than “restriction of entry”. He found acceptable the concluding portion in paragraph 5, which related to nationals of the receiving State and persons permanently resident in its territory, but failed to see the purpose of the first portion.

58. Mr. ELIAS suggested that the final decision on the retention or deletion of paragraphs 1, 2 and 3 be left to the Drafting Committee.

59. Sir Humphrey WALDOCK, supporting that suggestion, said that if paragraphs 1, 2 and 3 were

ultimately dropped, the language of paragraph 4 would have to be adjusted.

60. The CHAIRMAN, speaking as Special Rapporteur, said he could accept Mr. Rosenne’s suggestion that paragraphs 1, 2 and 3 should be deleted and their substance incorporated in the commentary. In that case, the opening passage of paragraph 4 became unnecessary.

61. Since that seemed to be the Commission’s wish, he suggested that he should prepare a redraft of article 31 along those lines.

*It was so agreed.*<sup>7</sup>

#### ARTICLE 32 (Status of service staff and personal servants) [33 and 34]

##### Article 32 [33 and 34]

##### *Status of service staff and personal servants*

1. Members of the service staff of the special mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and exemption from the social security provisions of the receiving State.

2. Personal servants of the head, members and members of the staff of the special mission may be received in that capacity in the territory of the receiving State, provided that they are not subject to any restrictions in this connexion as a result of decisions, prior notifications or measures by the receiving State.

3. If personal servants are admitted to the territory of the receiving State and are not nationals of that State or permanently domiciled in its territory, they shall be exempt from payment of dues and taxes on the emoluments they receive by reason of their employment.

4. The receiving State shall have the right to decide whether, and to what extent, personal servants shall enjoy privileges and immunities. However, the receiving State must exercise its jurisdiction over such persons in such a manner as not to interfere unduly with the performance of the functions of the special mission.

62. The CHAIRMAN, speaking as Special Rapporteur, said that his aim in article 32 had been to set out in an orderly manner the rules relating to service staff. The provisions of paragraph 1 were the same as those of article 37, paragraph 3, of the Vienna Convention on Diplomatic Relations, with the addition of a provision concerning exemption from social security legislation, a point already decided by the Commission. The rule stated in paragraph 2 was broader than that in article 37, paragraph 4, of the Vienna Convention on Diplomatic Relations. In the French text he had avoided the use of the term *domestiques*, which had been criticized at the second Vienna Conference as inconsistent with the terminology used by the International Labour Organisation and as reminiscent of an obsolete institution.

63. Mr. AMADO said that he was glad to see that the term *domestique* had been dropped as obsolete. He proposed that in the French text the words *service personnel* should be replaced by the words *service privé*.

<sup>7</sup> For resumption of discussion, see 819th meeting, para. 93.

64. Mr. ROSENNE said that the use of the word "status" in the title of articles 31 and 32 was inappropriate; those articles really dealt with the privileges and immunities of the persons concerned rather than with their status.

65. He suggested that the Drafting Committee should consider dividing article 32 into two separate articles; the first would embody the provisions of paragraph 1 on service staff and the second the remaining provisions, which dealt with personal staff.

66. He failed to see the meaning of the proviso in paragraph 2, which should be amalgamated with paragraph 3.

67. The CHAIRMAN, speaking as Special Rapporteur, said that in his view the provision was in fact concerned with the "status" of the persons in question; but that was a point that could be settled by the Drafting Committee.

68. Mr. Rosenne's suggestion that the substance of article 32 should be divided into two separate articles was in line with his own decision to deal separately with family members and service staff; the Vienna Convention on Diplomatic Relations, however, dealt with both categories in article 37.

69. Mr. TUNKIN said that he was in general agreement with the contents of article 32. Certain provisions concerning the service staff were, however, included in articles that had already been approved; the question of concordance should therefore be carefully examined.

70. Paragraph 2 could be dropped; its contents were covered by the opening words of paragraph 3.

71. He supported Mr. Rosenne's suggestion that article 32 should be divided into two separate articles, one dealing with service staff, which belonged to the mission, and the other with persons in the personal service of members of the mission.

72. The wording of paragraphs 3 and 4 should be brought closer into line with that of paragraph 4 of article 37 of the Vienna Convention on Diplomatic Relations; there was no difference in substance between the two sets of provisions.

73. The CHAIRMAN, speaking as Special Rapporteur, said that he agreed with Mr. Tunkin. The Drafting Committee should, nevertheless, consider whether certain parts of paragraph 2 should not be retained in the new article on personal staff. The crux of the matter was whether members of a special mission had the right to bring personal staff with them. Some States refused to grant visas to such persons, while others interpreted the term very narrowly.

74. He suggested that he should redraft article 32 in the light of the discussion.

*It was so agreed.*<sup>8</sup>

ARTICLE 33 (Privileges and immunities of nationals of the receiving State and of persons permanently resident in the territory of the receiving State) [36]

*Article 33*

[36]

*Privileges and immunities of nationals of the receiving State and of persons permanently resident in the territory of the receiving State*

1. Nationals of the receiving State and persons permanently resident in its territory who are admitted by the receiving State as the head, as members or as members of the staff of the special mission shall enjoy in the receiving State only immunities from jurisdiction and inviolability, in respect of official acts performed in the exercise of the functions of the special mission.

2. Certain other privileges and immunities may also be granted to such persons by mutual agreement or by a decision of the receiving State.

3. The receiving State shall itself determine the nature and extent of the privileges and immunities granted to any personal servants of the head, the members and the members of the staff of the special mission who are its own nationals or are permanently resident in its territory.

4. Jurisdiction over the persons mentioned in this article must in all cases be exercised by the receiving State in such a manner as not to interfere unduly with the performance of the functions of the special mission.

75. The CHAIRMAN, speaking as Special Rapporteur, said that article 33 of his draft was based on article 38 of the Vienna Convention on Diplomatic Relations with certain changes of form and substance necessitated by the particular requirements of special missions.

76. Mr. REUTER said that article 33, paragraph 2, raised a question which the Commission had discussed on several earlier occasions but had not yet decided; it would arise in still more acute form in article 39 and especially in article 40. If paragraph 2 was retained, a like provision would be necessary in many other articles. Alternatively, the paragraph might be omitted, and article 40, paragraph 2, amended to say that additional privileges could be granted either by international agreement or by decision of the receiving State.

77. The CHAIRMAN, speaking as Special Rapporteur, pointed out that at its previous session the Commission had wished to insert in a number of articles a reference to the possibility of mutual agreement. Moreover, draft article 40 was based on article 73 of the Vienna Convention on Consular Relations.

78. Mr. TUNKIN said that, although he had no strong views on the matter, he doubted the need to include in the draft articles on special missions an article on the question of nationals of the receiving State and persons permanently resident therein.

79. The CHAIRMAN, speaking as Special Rapporteur, said that he could not agree with Mr. Tunkin. Since the risk of a special mission's being unable to carry out its duties was greater, it needed additional guarantees; consequently, the persons referred to in article 33 should at least enjoy immunity in respect of acts performed in the course of their official duties.

80. Mr. ROSENNE said that apart from paragraph 2, on which a question had been raised by Mr. Reuter, the

<sup>8</sup> For resumption of discussion, see 817th meeting, paras. 94-96.

rest of the article appeared to be already covered by other provisions of the draft. For example, paragraph 3 laid down a rule for nationals of the receiving State and persons permanently resident in its territory which was already laid down for all personal servants by paragraph 4 of article 32.

81. Mr. AMADO said that the Drafting Committee should consider carefully whether the word "unduly" should be retained in paragraph 4.

82. The CHAIRMAN, speaking as Special Rapporteur, said that the word was used in article 38 of the Vienna Convention on Diplomatic Relations and in article 71 of the Vienna Convention on Consular Relations. The participants in the Vienna Conferences had thought that some interference would have to be tolerated, and that too many difficulties might be raised if States were required not to interfere at all in the performance of the functions of the mission.

83. Mr. AMADO said that he always deferred to the decision of States and would therefore withdraw his suggestion.

84. Mr. TUNKIN said that article 33 of the draft went much further than article 38 of the Vienna Convention on Diplomatic Relations, which covered only diplomatic agents; article 33 applied not only to the head of the mission but also to members of the special mission and even to members of the staff, and he doubted whether States would be prepared to go so far as that.

85. Sir Humphrey WALDOCK said he was convinced that the only way to ensure acceptance of the draft articles by governments was to restrict the privileges and immunities of persons who were nationals of the receiving State, or permanently resident therein, as had been done in the Vienna Convention on Diplomatic Relations.

86. The CHAIRMAN, speaking as Special Rapporteur, said that his general approach, as reflected in several of the draft articles, had been that the entire staff of the special mission should enjoy the same protection as the head and members of that mission. The question to be decided was whether to recommend that States adopt that rule, or whether to confine such protection to the diplomatic staff. If the Commission chose the latter course, he would add the word "diplomatic" before the word "staff" in paragraph 1.

87. He agreed to the deletion of paragraph 2, as Mr. Reuter had suggested. Paragraph 3 should be retained, for in substance it reproduced the first sentence of paragraph 2 of article 38 of the Vienna Convention on Diplomatic Relations. The question of privileges granted by a decision of the receiving State would come up again in connexion with article 39 (Non-discrimination) of his draft.

88. As his intention had been that the entire staff of special missions should be in the same position, he had not reproduced paragraph 2 of article 37 of the Vienna Convention on Diplomatic Relations, which extended to administrative and technical staff certain privileges which the earlier articles of the Convention accorded to diplomatic staff only. If the Commission decided not to follow his idea and wished to reproduce exactly the provisions of the Vienna Convention on Diplomatic Relations, an

article covering administrative and technical staff would have to be added, possibly immediately before the article referring to the status of family members.

89. He suggested that he should redraft article 33 along the lines he had just indicated.

*It was so agreed.*<sup>9</sup>

The meeting rose at 1.10 p.m.

<sup>9</sup> For resumption of discussion, see 817th meeting, para. 93, and 819th meeting, paras. 94-96.

## 809th MEETING

*Wednesday, 23 June 1965, at 10 a.m.*

*Chairman* : Mr. Milan BARTOŠ

*Present* : Mr. Ago, Mr. Amado, Mr. Elias, Mr. Jiménez de Aréchaga, Mr. Pal, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Tunkin, Mr. Verdross, Sir Humphrey Waldock, Mr. Yasseen.

### Special Missions

(A/CN.4/179)

(continued)

[Item 3 of the agenda]

ARTICLES 34 (Duration of privileges and immunities) [37] and 35 (Death of the head or of a member of the special mission or of a member of its staff) [38]

#### Article 34

[37]

##### *Duration of privileges and immunities*

1. The head and members of the special mission, and the members of its staff and members of their families, shall enjoy facilities, privileges and immunities in the territory of the receiving State from the moment when they enter the territory of the receiving State for the purpose of performing the tasks of the special mission or, if they are already in its territory, from the moment when their appointment as members of the special mission is notified to the Ministry of Foreign Affairs.

2. The enjoyment of facilities, privileges and immunities shall cease at the moment when they leave the territory of the receiving State, upon the cessation of their functions with the special mission or upon the cessation of the activities of the special mission (article 12 of these rules).

#### Article 35

[38]

*Death of the head or of a member of the special mission or of a member of its staff*

1. In the event of the death of the head or of a member of the special mission or of a member of its staff who is not a national of or permanently resident in the receiving State, the receiving State shall be obliged to permit the removal of his remains to the sending State or decent burial in its own territory, at the option of the family