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Summary record of the 817th meeting

Topic:
Special missions

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programme, and hence wishes to reserve the possibility of a two-week extension of its 1966 summer session.”

Mr. Ago's proposal was adopted.

The fourth paragraph, as thus amended, was adopted.

Fifth paragraph

The fifth paragraph was adopted without comment.

Sixth paragraph

The sixth paragraph was adopted, subject to a drafting change.

Chapter IV, as amended, was adopted.

The meeting rose at 1 p.m.

817th MEETING

Monday, 5 July 1965, at 3 p. m.

Chairman: Mr. Milan BARTOŠ

Present: Mr. Ago, Mr. Amado, Mr. Briggs, Mr. Castrén, Mr. Elias, Mr. Jiménez de Aréchaga, Mr. Lachs, Mr. Pal, Mr. Pessou, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Mr. Verdross, Sir Humphrey Waldock, Mr. Yasseen.

Special Missions

(A/CN.4/179)

(resumed from the 809th meeting)

[Item 3 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

ARTICLE 17 (General facilities) [17]¹

1. The CHAIRMAN said that the redraft of article 17 read:

“The receiving State shall accord to the special mission full facilities for the performance of its functions, having regard to the nature and task of the special mission.”

2. Speaking as Special Rapporteur, he said that article 17 was modelled on article 25 of the Vienna Convention on Diplomatic Relations, with the addition of the final phrase.

3. Mr. CASTRÉN pointed out that several members had opposed the final phrase.

4. The CHAIRMAN, speaking as Special Rapporteur, replied that several others had supported it, first because they considered that there should be no absolute analogy with diplomatic missions, and secondly, because there were cases where a special mission should have wider facilities than the permanent mission.

Article 17 was adopted by 14 votes to none.²

¹ For earlier discussion, see 804th meeting, paras. 16-48.

² For adoption of commentary, see 820th meeting, paras. 43-51.

ARTICLE 18 (Accommodation of the special mission and its members) [18]³

5. The CHAIRMAN said that the redraft of article 18 read:

“The receiving State shall assist the special mission in obtaining appropriate premises and suitable accommodation for its members and staff and, if necessary, ensure that such premises and accommodation are at their disposal.”

6. Speaking as Special Rapporteur, he said that the article reproduced article 21 of the Vienna Convention on Diplomatic Relations, with the addition of the final phrase.

Article 18 was adopted by 14 votes to none.⁴

ARTICLE 19 (Inviolability of the premises) [19]⁵

7. The CHAIRMAN said that article 19 read:

“1. The premises of a special mission shall be inviolable. The agents of the receiving State may not enter the premises of the special mission, except with the consent of the head of the special mission or of the head of the permanent diplomatic mission of the sending State accredited to the receiving State.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the special mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.”

8. He explained that the article reproduced *mutatis mutandis* the corresponding provisions of the Vienna Convention on Diplomatic Relations and of the Vienna Convention on Consular Relations.

9. Mr. TSURUOKA asked whether the words “the peace” in paragraph 2 were entirely adequate.

10. The CHAIRMAN said that they were used both in article 22 of the Vienna Convention on Diplomatic Relations and in article 31 of the Vienna Convention on Consular Relations.

Article 19 was adopted by 16 votes to none.⁶

ARTICLE 20 (Inviolability of archives and documents) [20]⁷

11. The CHAIRMAN said that article 20 read:

“The archives and documents of the special mission shall be inviolable at any time and wherever they may be.”

12. The article reproduced textually article 24 of the Vienna Convention on Diplomatic Relations.

Article 20 was adopted by 16 votes to none.⁸

³ For earlier discussion, see 804th meeting, paras. 49-76.

⁴ For adoption of commentary, see 820th meeting, paras. 52-60.

⁵ For earlier discussion, see 804th meeting, paras. 77-105, and 805th meeting, paras. 1-28.

⁶ For further discussion, see 820th meeting, paras. 29-31.

⁷ For earlier discussion, see 805th meeting, paras. 29-57.

⁸ For adoption of commentary, see 821st meeting, para. 2.

ARTICLE 21 (Freedom of movement) [21]⁹

13. The CHAIRMAN said that article 21 read :

“ Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the special mission such freedom of movement and travel in its territory as is necessary for the performance of its functions, unless otherwise agreed. ”

14. Speaking as Special Rapporteur, he said that the revised version was shorter than his original draft and differed from article 26 of the Vienna Convention on Diplomatic Relations in that it guaranteed the freedom of travel necessary for the performance of the special mission's functions. He would explain in the commentary that, if a special mission was to perform its functions in a prohibited zone, it would be deemed to have received permission in advance to enter the zone.

*Article 21 was adopted by 16 votes to none.*¹⁰

ARTICLE 22 (Freedom of communication) [22]¹¹

15. The CHAIRMAN said that article 22 read :

“ 1. The receiving State shall permit and protect free communication on the part of the special mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the special mission may employ all appropriate means, including its couriers and messages in code or cipher. However, the special mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the special mission shall be inviolable. Official correspondence means all correspondence relating to the special mission and its functions.

3. The bag of the special mission shall not be opened or detained.

4. The packages constituting the bag of the special mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the special mission.

5. The courier of the special mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the special mission may designate couriers *ad hoc* of the special mission. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier *ad hoc* has delivered to the consignee the special mission's bag in his charge.

⁹ For earlier discussion, see 805th meeting, paras. 58-76.

¹⁰ For adoption of commentary, see 821st meeting, paras. 3-14.

¹¹ For earlier discussion, see 805th meeting, paras. 77-90, and 806th meeting, paras. 1-37.

7. The bag of the special mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the special mission. By arrangement with the appropriate authorities, the special mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft. ”

16. Speaking as Special Rapporteur, he said that the article was based on article 27 of the Vienna Convention on Diplomatic Relations, with one provision—that relating to the possibility of employing the captain of a ship or of a commercial aircraft as a courier *ad hoc*—taken from the Vienna Convention on Consular Relations. As agreed, he would mention in the commentary the Commission's opinion that the special mission should receive every facility for communication purposes.

*Article 22 was adopted by 16 votes to none.*¹²

ARTICLE 23 (Exemption of the mission from taxation) [23]¹²

17. The CHAIRMAN said that article 23 read :

“ 1. The sending State, the special mission, the head and members of the special mission and the members of its staff shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the special mission, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the special mission. ”

18. Speaking as Special Rapporteur, he said that the article covered the institutional element—the mission, and the personal element—its members. The question of the fees and charges levied by the mission would be dealt with in the commentary.

19. Mr. JIMÉNEZ de ARÉCHAGA said that the reference to the members of the staff of a special mission was unnecessary, since article 23 dealt with exemption from taxes in respect of the premises.

20. The CHAIRMAN said that the exemption from taxation referred to was “ in respect of the premises ” and not personal exemption.

21. Mr. AGO said that in article 23, and in other articles, the repetition of the words “ of the special mission ” made the text clumsy. He suggested that a definition should be given in an earlier clause of the meaning of “ member of the special mission ”.

22. The CHAIRMAN, speaking as Special Rapporteur, said that that procedure for simplifying the text had been proposed by Mr. Pal and Mr. Rosenne and had been agreed to. Although he was opposed to definitions for doctrinal reasons, he would comply with the Commis-

¹² For adoption of commentary, see 821st meeting, paras. 15-44.

¹³ For earlier discussion, see 806th meeting, paras. 38-54.

sion's decision, but preferred not to hurry over the definitions and would submit them in January.

23. Mr. ROSENNE suggested that special mention should be made in the commentary of the fact that the Special Rapporteur was reluctant to put forward hastily prepared definitions. He shared the Special Rapporteur's hesitation in that regard, and perhaps in lieu of definitions a section on the use of terms might be included in the draft.

24. Mr. JIMÉNEZ de ARÉCHAGA proposed the deletion of the words "and members" and the words "and the members of its staff", in paragraph 1; the article would then be consistent with article 23 of the Vienna Convention on Diplomatic Relations.

25. The CHAIRMAN, speaking as Special Rapporteur, said that it would then be necessary to state in the commentary that the reference was to the head of the mission acting for the State, or perhaps to say "the head of the special mission or another person acting on his behalf . . .".

26. Mr. JIMÉNEZ de ARÉCHAGA pointed out that the case was provided for, since the exemptions were accorded to the mission.

27. The CHAIRMAN, speaking as Special Rapporteur, said that the special mission was not a body corporate and consequently a person could not act on its behalf: a person could act for the individual who acted for the sending State.

28. Mr. JIMÉNEZ de ARÉCHAGA suggested that the provision should be deleted and that the question should be dealt with in the commentary, for the sake of consistency with the Vienna Convention on Diplomatic Relations, under which the question also arose.

29. The CHAIRMAN said he agreed that the question arose in connexion with the Vienna Convention on Diplomatic Relations and that it was generally settled by a note; that was one of the major defects of the Convention.

30. Speaking as Special Rapporteur, he suggested that the commentary should mention the Commission's view that a like exemption should be accorded to the members of the mission or of its staff who acted on behalf of the sending State for the purpose of obtaining premises for the special mission.

31. Mr. AGO proposed that, in paragraph 1, the words "the special mission", immediately after the words "The sending State", should be omitted; the relevant provision of the Vienna Convention on Diplomatic Relations did not contain any words corresponding to those words.

32. The CHAIRMAN, speaking as Special Rapporteur, said he could accept that proposal, since the mission was an emanation of the sending State.

Article 23, as thus amended, was adopted by 16 votes to none.¹⁴

¹⁴ For adoption of commentary, see 821st meeting, paras. 45 and 46.

ARTICLE 24 (Inviolability of the property of the special mission) [19, para. 3]¹⁵

33. The CHAIRMAN said that article 24 read:

"The premises of the special mission, their furnishings, all property used in the operation of the special mission and the means of transport used by it, shall be immune from any measure of search, requisition, attachment, execution or inspection by the organs of the receiving State."

34. Speaking as Special Rapporteur, he said that the article referred not to the property owned by the special mission, but to the property used in its work; the emphasis was not so much on acts of search, requisition, attachment, execution or inspection, as on the physical effects of those acts.

35. Mr. CASTRÉN said he noted that the Drafting Committee had added the words "the premises", whereas the title spoke only of "the property". The premises were dealt with in article 19. At the first reading, Mr. Elias and others had proposed that articles 19 and 24 should be combined,¹⁶ just as in the Vienna Convention on Diplomatic Relations article 22 covered both property and premises. He wished to revive that proposal.

36. The CHAIRMAN, speaking as Special Rapporteur, said that the Commission had left the matter in suspense. Article 19 referred to the inviolability of premises, whereas article 24 concerned immunity from certain measures. He thought it would be difficult to deal with both questions in a single article.

37. Mr. TUNKIN said that article 24 should certainly be moved to article 19 to form a new paragraph 3 as it would then be covered by paragraph 1 of the latter and no doubt could arise as to the complete inviolability of the premises of a special mission.

38. The CHAIRMAN, speaking as Special Rapporteur, said that neither during the first reading nor in the Drafting Committee had he opposed the idea that the substance of article 24 should form a paragraph 3 in article 19.

39. Mr. JIMÉNEZ de ARÉCHAGA said he agreed that article 24 should be incorporated in article 19 as a new paragraph 3. The words "any measure of" and the words "or inspection" should be deleted, for the sake of consistency with the Vienna Convention on Diplomatic Relations.

40. The CHAIRMAN, speaking as Special Rapporteur, said he was opposed to the deletion of the article, because without it there would be no safeguard for special missions which were not housed in embassies.

41. Mr. AGO said that article 22, paragraph 3, of the Vienna Convention on Diplomatic Relations referred to "property . . . on the premises of the mission", whereas article 24 of the draft on special missions referred to "property used in the operation of the special mission". Was it desirable to depart from the text of the Convention?

¹⁵ For earlier discussion, see 806th meeting, paras. 55-75.

¹⁶ See 804th meeting, para. 86 and 806th meeting, para. 56.

42. Moreover, the Vienna Convention mentioned "the means of transport of the mission", whereas the draft referred to the "means of transport used by it". Was the divergence justified?

43. The CHAIRMAN, speaking as Special Rapporteur, pointed out that there was a difference between property owned by and physically present on the premises of a permanent mission, and property used by the special mission, which was often mobile. The permanent mission had its own means of transport, whereas the special mission used borrowed means of transport. It would be dangerous to follow the texts of the Vienna Conventions too closely, to the detriment of special missions and despite the recommendations of the Vienna Conference and of the General Assembly.

44. Mr. YASSEEN said that he had no objection to the substance of the article, but thought that if the text was left as it stood, there would be obvious duplication. The draft contained several articles on inviolability—of premises, archives, property and persons. If the article was to fit into the system adopted by the Commission, the opening phrase "The premises of the special mission, their furnishings . . ." would have to be deleted; the premises were covered by article 19 and the furnishings were part of "the property used in the operation of the special mission".

45. Mr. JIMÉNEZ de ARÉCHAGA said that it was important to follow the Vienna Convention on Diplomatic Relations so as not to prejudice the application of its provisions to such diplomatic missions as had to live in hotels and rent cars. Not all permanent missions were lodged in permanent premises and owned their means of transport; that was particularly true of those of small States. It would be a very serious matter if rented cars were subject to inspection.

46. The CHAIRMAN, speaking as Special Rapporteur, said that he was totally opposed to that idea. There should be a distinction between general rules and special rules; they were not on the same footing, and general rules could not be interpreted on the same basis as special rules.

47. Sir Humphrey WALDOCK said that, although he did not disagree with the Chairman's contention, he was unable to endorse his conclusion. So far as the English text was concerned, there was no difference between search and inspection; consequently, the reference to inspection, which did not appear in article 22, paragraph 3, of the Vienna Convention on Diplomatic Relations, was unnecessary.

48. The only important departure from the Vienna Convention was the reference to property "used in the operation" of the special mission, and he was open to argument as to the need for that change.

49. The CHAIRMAN, speaking as Special Rapporteur, said that in administrative law, a search—which involved rummaging and even seizure—was very different from inspection, which might simply mean checking the water, gas or electrical installations, or machinery.

50. With regard to property and premises, he suggested that the phrase might perhaps be amended to read

"all property used in the operation of the special mission or used by it."

51. Mr. AGO said he did not think that the words "The premises of the special mission" could be omitted, for the premises above all had to be immune from search, requisition, attachment, execution and inspection, and there was nothing concerning that immunity in article 19.

52. Mr. BRIGGS said he agreed that article 24 should become paragraph 3 in article 19. The wording should be modelled as closely as possible on the corresponding provision of the Convention on Diplomatic Relations. It might be modified to read "The premises of the special mission, their furnishings and other property thereon and the means of transport of the special mission shall be immune from search, requisition, attachment or execution by the organs of the receiving State".

53. Mr. ELIAS said that the words "used by it", "any measure of", and "or inspection" should be deleted and the provision transferred to article 19. Possibly it would need to be brought into line with article 31, paragraph 4, of the Vienna Convention on Consular Relations.

54. The CHAIRMAN, speaking as Special Rapporteur, pointed out that the provision cited by Mr. Elias referred to property of the consular post. The case of the property of the special mission was quite different.

55. Mr. CASTRÉN said he supported Mr. Yasseen's proposal that the first phrase of the article should be deleted. Article 19 covered all cases, as it laid down the inviolability of the premises; as the authorities of the receiving State were not allowed to enter the premises, they could not carry out any of the acts mentioned.

56. Mr. RUDA said that article 24 was an important one and should be referred back to the Drafting Committee in the light of the numerous observations made during the discussion.

57. Mr. ROSENNE said he agreed with Mr. Ruda. The Special Rapporteur's justification for departing from the Vienna Convention on Diplomatic Relations and using the phrase "used in the operation of" was convincing. When the article had first been discussed, Mr. Reuter had explained the reason why the words "any measure of" should be retained.¹⁷

58. He had understood that the words "or inspection" had been added because there was a difference of meaning between the French terms *perquisition* and *inspection*. If that was not the case, the words "or inspection" should be dropped in both versions.

*Article 24 was referred back to the Drafting Committee.*¹⁸

ARTICLE 25 (Personal inviolability) [24]¹⁹

59. The CHAIRMAN said that article 25 read:

"The person of the head and members of the special mission and of the members of its diplomatic

¹⁷ See 806th meeting, para. 71.

¹⁸ For resumption of discussion, see 820th meeting, paras. 29-31.

¹⁹ For earlier discussion, see 806th meeting, paras. 76-84, and 807th meeting, paras. 1-33.

staff shall be inviolable. They shall not be liable to any form of arrest or detention. The receiving State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.”

60. Speaking as Special Rapporteur, he said that the article reproduced *mutatis mutandis* article 29 of the Vienna Convention on Diplomatic Relations.

61. Mr. AGO asked what was the reason for the reference to “members of its diplomatic staff”.

62. The CHAIRMAN, speaking as Special Rapporteur, said that the Vienna Convention dealt with diplomatic agents. He had used the expression “staff of the special mission” in his draft but, in view of objections, had submitted the new formula to the Drafting Committee.

*Article 25 was adopted by 16 votes to none.*²⁰

ARTICLE 26 (Inviolability of the private accommodation) [25]²¹

63. The CHAIRMAN said that article 26 read :

“1. The private accommodation of the head and members of the special mission and of the members of its diplomatic staff shall enjoy the same inviolability and protection as the premises of the special mission.

2. The papers, correspondence and property of the persons referred to in paragraph 1 shall likewise enjoy inviolability.”

*Article 26 was adopted by 17 votes to none*²²

ARTICLE 27 (Immunity from jurisdiction) [26]²³

64. The CHAIRMAN said that article 27 read :

“1. The head and members of the special mission and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the receiving State.

2. Unless otherwise agreed, they shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State, except in the case of :

(a) A real action relating to private immovable property situated in the territory of the receiving State, unless the head or member of the special mission or the member of its diplomatic staff holds it on behalf of the sending State for the purposes of the mission;

(b) An action relating to succession in which the person referred to in sub-paragraph (a) is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) An action relating to any professional or commercial activity exercised by the person referred to in sub-paragraph (a) in the receiving State outside his official functions.

3. The head and members of the special mission and the members of its diplomatic staff are not obliged to give evidence as witnesses.

²⁰ For adoption of commentary, see 821st meeting, paras. 48-55.

²¹ For earlier discussion, see 807th meeting, paras. 34-49.

²² For adoption of commentary, see 821st meeting, paras. 56-68.

²³ For earlier discussion, see 807th meeting, paras. 50-80.

4. No measures of execution may be taken in respect of the head or of a member of the special mission or of a member of its diplomatic staff except in the cases coming under sub-paragraphs (a), (b) and (c) of paragraph 2 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

5. The immunity of the head and members of the special mission and of the members of its diplomatic staff from the jurisdiction of the receiving State does not exempt them from the jurisdiction of the sending State.”

65. Speaking as Special Rapporteur, he said there were two schools of thought in the Commission : the supporters of the so-called “functional” immunity, and the supporters of complete immunity as laid down in article 31 of the Vienna Convention on Diplomatic Relations. After due reflection, the Drafting Committee had adopted the principle of complete immunity, which it had qualified by adding at the beginning of paragraph 2 the words “Unless otherwise agreed”.

66. Mr. VERDROSS said that it was going too far to give to all special missions more immunities than were accorded to missions to the United Nations. What might be understandable in the case of high-level special missions was not so in the case of technical missions.

67. The CHAIRMAN, speaking as Special Rapporteur, said that the Drafting Committee had wished to give all possible immunities to special missions, subject to the proviso he had mentioned, which left States free to come to an agreement before the arrival of the mission. In his opinion, the cases mentioned in paragraphs 2 (a), (b) and (c) were rare and should not be mentioned, but he had yielded to the majority. He would, however, mention the other school of thought in the commentary.

68. Mr. RUDA said that he was in favour of a much more restricted provision of the kind originally proposed by the Special Rapporteur.

69. Mr. JIMÉNEZ de ARÉCHAGA said the Drafting Committee’s text was acceptable. The particular danger mentioned by Mr. Verdross could be avoided by States agreeing in any given case not to confer diplomatic status on the members of a special mission.

70. He doubted the desirability of retaining the words “unless otherwise agreed” in paragraph 2, for they might be interpreted to mean that the provisions of the Vienna Convention on Diplomatic Relations constituted *jus cogens* in the matter of immunity; his doubts were strengthened by the fact that, in a recent case, the two Vienna Conventions had been examined together for the purpose of interpreting the rules laid down in one of them.

71. The CHAIRMAN, speaking as Special Rapporteur, said that he had originally proposed a provision (article 40 of his draft) reproducing article 73 of the Vienna Convention on Consular Relations, which contained a rule of *jus cogens*. The Commission had rejected that proposal and had declared itself ready to accept

Mr. Rosenne's view that all the articles should be regarded as residual rules.²⁴

72. Mr. ROSENNE said that the decision on article 27 should be postponed until the Commission had in front of it the Drafting Committee's text for article 40 which, in the form proposed by the Special Rapporteur, had not found favour. If article 40 were so framed as to render article 17 onwards residual rules, then the phrase "unless otherwise agreed" in paragraph 2 would be unnecessary.

73. The CHAIRMAN said that the majority had been ready to accept the articles as residual rules. It was therefore impossible to alter the phrase in question.

74. Mr. AGO said he hoped the Commission would consider carefully the phrase "Unless otherwise agreed". He was convinced that the rules in question were residual, but he was also convinced that other rules in which that phrase did not occur were likewise residual. He feared that confusion might ensue in the interpretation. Furthermore, even the final rule of the Vienna Convention on Consular Relations caused him much anxiety: why should it be impossible to restrict by bilateral consular conventions the privileges and immunities laid down in that Convention?

75. In his opinion, it would be better to decide, at the end of the consideration of the entire draft, what would be the best way of dealing with that delicate question.

76. Mr. TUNKIN said that there might be some inconvenience in keeping the phrase "Unless otherwise agreed".

77. The CHAIRMAN, speaking as Special Rapporteur, said that he was a supporter of functional immunity and therefore feared that, without the words "Unless otherwise agreed", it would be difficult to restrict the scope of the privileges which the Commission's draft intended to give to special missions.

78. Mr. YASSEEN said that, from the psychological point of view, it would be difficult for a conference of plenipotentiaries to accept the article without those words. The Commission was about to place special missions on the same footing as permanent missions in general. It was doubtful whether the rule, in such general terms, would be accepted without those words, for they gave States some assurance that they were free to regulate their relations in a particular manner with respect to a particular special mission.

79. Mr. TSURUOKA said that he was prepared to agree to the deletion of the words "Unless otherwise agreed" in paragraph 2 in order to ensure that the members of special missions should have minimum privileges; if they wished, the sending State and the receiving State could agree to more extensive privileges. Such a formula seemed to him preferable to the present text, which provided for maximum privileges unless otherwise agreed. States would find it easier to accept the first solution, which, being simpler and more flexible, was also more practical.

80. Mr. AGO said that the whole question turned on whether a general exceptions clause would or would not

be inserted later. The Drafting Committee's text might therefore be adopted for the time being, and the words "Unless otherwise agreed" deleted subsequently if a general exceptions clause was inserted.

81. Mr. TSURUOKA said that he would agree to that procedure.

*Article 27 was adopted by 11 votes to 2, with 3 abstentions.*²⁵

82. The CHAIRMAN said that he had voted against article 27 because he considered that minimum privileges and immunities should be provided for special missions, with the possibility of extension by agreement between the parties concerned.

83. Mr. VERDROSS said he had voted against the article for the same reasons as the Chairman.

ARTICLE 27 bis (Waiver of immunity) [27]

84. The CHAIRMAN said that article 27 bis, which was based on article 32 of the Vienna Convention on Diplomatic Relations, read:

"1. The immunity from jurisdiction of the head and members of the special mission, of the members of its staff and of the members of their families, may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by one of the persons referred to in paragraph 1 of this article shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary."

*Article 27 bis was adopted by 17 votes to none.*²⁶

ARTICLE 28 (Exemption from social security legislation) [28]²⁷

85. The CHAIRMAN said that article 28, which was based on article 33, paragraphs 1-3, of the Vienna Convention on Diplomatic Relations, read:

"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 social security provisions of that State.

2. The provisions of paragraph 1 of this article shall not apply:

(a) To nationals or permanent residents of the receiving State regardless of the position they may hold in the special mission;

(b) To locally recruited temporary staff of the special mission, irrespective of nationality.

²⁵ For adoption of commentary, see 821st meeting, paras. 69 and 70.

²⁶ For adoption of commentary, see 821st meeting, para. 70.

²⁷ For earlier discussion, see 808th meeting, paras. 1-12.

²⁴ See 809th meeting, paras. 83-93.

3. The head and members of the special mission and the members of its staff who employ persons to whom the exemption provided for in paragraph 1 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.”

*Article 28 was adopted by 17 votes to none.*²⁸

ARTICLE 28 *bis* (Exemption from dues and taxes) [29]²⁹

86. The CHAIRMAN said that article 28 *bis* read :

“The head and members of the special mission and the members of its diplomatic staff shall be exempt from all dues and taxes, personal or real, national, regional or municipal in the receiving State on all income attaching to their functions with the special mission and in respect of all acts performed for the purposes of the special mission.”

87. Speaking as Special Rapporteur, he said the text was based on article 34 of the Vienna Convention on Diplomatic Relations, of which, however, only what was essential for special missions had been retained.

88. Mr. AGO said that, if that was the case, the words “personal or real” were unnecessary and could be deleted.

89. The CHAIRMAN, speaking as Special Rapporteur, said he could accept that amendment.

*Article 28 bis, as so amended, was adopted by 17 votes to none.*³⁰

ARTICLE 29 (Exemption from personal services and contributions) [30]³¹

90. The CHAIRMAN said that article 29, which was based on article 35 of the Vienna Convention on Diplomatic Relations, read :

“The receiving State shall exempt the head and members of the special mission and the members of its diplomatic staff from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.”

*Article 29 was adopted by 17 votes to none.*³²

ARTICLE 30 (Exemption from customs duties and inspection) [31]³³

91. The CHAIRMAN said that article 30 read :

“1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on :

(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, of the members of its diplomatic staff, or of the members of their family who accompany them.

2. The personal baggage of the head and members of the special mission and of the members of its diplomatic staff shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the person concerned, of his authorized representative, or of a representative of the permanent diplomatic mission of the sending State.”

92. Speaking as Special Rapporteur, he said the text was based on article 36 of the Vienna Convention on Diplomatic Relations with slight adjustments to reflect the temporary presence of special missions in the receiving State’s territory.

*Article 30 was adopted by 17 votes to none.*³⁴

ARTICLE 31 (Administrative and technical staff) [32]³⁵

93. The CHAIRMAN said that article 31, which was based on article 37, paragraph 2, of the Vienna Convention on Diplomatic Relations, read :

“Members of the administrative and technical staff of the special mission shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in articles 25 to 30, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 2 of article 27 shall not extend to acts performed outside the course of their duties.”

*Article 31 was adopted by 17 votes to none.*³⁶

ARTICLE 32 (Members of the service staff) [33]³⁷

94. The CHAIRMAN said that article 32, which was based on article 37, paragraph 3, of the Vienna Convention on Diplomatic Relations, read :

“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, and exemption from duties and taxes on the emoluments they receive by reason of their employment.”

*Article 32 was adopted by 17 votes to none.*³⁸

²⁸ For adoption of commentary, see 821st meeting, paras. 71-73.

²⁹ For earlier discussion, see 808th meeting, paras. 33-35.

³⁰ For adoption of commentary, see 821st meeting, paras. 74 and 75.

³¹ For earlier discussion, see 808th meeting, paras. 13-32.

³² For adoption of commentary, see 821st meeting, paras. 76-79.

³³ For earlier discussion, see 808th meeting, paras. 36-47.

³⁴ For adoption of commentary, see 821st meeting, paras. 80-87.

³⁵ See 808th meeting, para. 88.

³⁶ For adoption of commentary, see 821st meeting, para. 87.

³⁷ For earlier discussion, see 808th meeting, paras. 62-74.

³⁸ For adoption of commentary, see 821st meeting, para. 87.

ARTICLE 33 (Private staff) [34]³⁹

95. The CHAIRMAN said that article 33 read :

“ Private staff of the head and members of the special mission and of members of its staff who are authorized by the receiving State to accompany them in the territory of the receiving State shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In all others respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the special mission. ”

96. Speaking as Special Rapporteur, he said the text was based on article 37 paragraph 4, of the Vienna Convention on Diplomatic Relations. The term “ servants ” had been replaced by the term “ staff ”.

*Article 33 was adopted by 17 votes to none.*⁴⁰

Organization of Work

97. The CHAIRMAN said that the Secretariat was hoping that the Commission would request the General Assembly to transmit to Governments, and request their comments on, the second part of the draft articles on special missions, together with the first part which had been adopted at the Commission's sixteenth session.

98. Mr. TUNKIN asked what would be the Special Rapporteur's opinion concerning the further course to be followed with regard to the draft articles on special missions. The Commission had still to consider at least one important article, that on definitions, and the rest of the articles had been considered by the Commission in some haste. Possibly the best course might be for the Commission to give some further consideration to the articles at the session in January 1966, so that they could be submitted to governments in February 1966.

99. The CHAIRMAN said that his personal view was that the Commission should review the draft articles once more before inviting Governments to comment on them.

100. Mr. ROSENNE said that postponement until January 1966 of consideration of the draft articles on special missions would involve two dangers. The first was that the Commission might not be able to complete its work on the law of treaties before its composition was changed. The second was that it might prove impossible for any Government to submit its comments on the draft articles on special missions between February and May 1966.

101. The January 1966 session would have to be devoted in its entirety to the law of treaties if the Commission wished to complete its work on that topic in 1966. The only possible course with regard to the articles on special

missions was, as suggested by the Secretariat, to transmit them to Governments. At the same time, the Drafting Committee could, in the remaining days of the current session, examine the suggestions in the Special Rapporteur's second report for amendments to articles 1 to 16.

102. Mr. BAGUINIAN (Secretary of the Commission) said that it would not be possible for Governments to submit their comments, and for those comments to be communicated to the Commission, in the short period between February and April, 1966.

103. Mr. TSURUOKA said he supported Mr. Tunkin's view that the Commission should give further consideration to the draft articles on special missions.

104. Mr. LACHS said that, if the Commission wished to have constructive comments from Governments, it was most desirable that it should submit a complete draft on special missions. If the Commission was unable to complete its work on special missions in 1966 with its present composition, the work could be finished later when the Commission had a different composition.

105. Mr. BRIGGS said that any postponement of consideration of the draft articles on special missions would represent a threat to the Commission's whole programme of work. He thought that no part of the January 1966 session should be devoted to any other matter than the law of treaties.

106. Mr. TUNKIN said that, in the light of the Secretary's explanations, he would agree that the draft articles on special missions should be submitted to Governments at the end of the current session although he had some hesitations with regard to their contents. The law of treaties should always have preference in the Commission's programme of work; that topic had to be completed by the Commission before its present composition was changed. If a choice had to be made of a topic to be completed after 1966, the topic to be chosen should be special missions rather than the law of treaties.

107. Mr. AGO said that the Commission was agreed that nothing should be allowed to prevent it from concluding the study of the law of treaties and that at the winter session no other topic should be dealt with. As far as the draft articles on special missions were concerned, if the Commission could complete them at the current session, it could transmit the full text to Governments, whose comments should then reach the Commission in June; if not, the Commission would complete its first reading of the draft articles in June 1966 and would not transmit them to Governments until then.

108. The CHAIRMAN suggested that, in the circumstances, the text of the draft articles should be sent to Governments either for their information or for comment, as appropriate.

It was so agreed.

The meeting rose at 6.10 p.m.

³⁹ For earlier discussion, see 808th meeting, paras. 62-74.

⁴⁰ For adoption of commentary, see 821st meeting, paras. 88-95.