

Document:-  
**A/CN.4/SR.917**

**Summary record of the 917th meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
**1967, vol. I**

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and frequently had to carry their papers and correspondence themselves. He could illustrate that point from his own experience. On his way to the International Court of Justice at The Hague and carrying important documents, he had been ordered by a frontier official to provide those documents for inspection and only by a determined resistance and his invocation of the agreement between the Netherlands Government and the International Court of Justice had he succeeded in avoiding inspection. That example proved that the inviolability of the papers and correspondence of members of special missions must be absolute if the mission was to be able to perform its task.

91. As several members had observed, it was extremely difficult to determine whether correspondence was official or private; letters addressed to members of the special mission or received by them often concerned both their personal activities and their functions as members of the mission.

92. With regard to the property of members of the special mission, the Commission could either delete the reference to it in paragraph 2, or insert at the beginning of the paragraph the proviso suggested by the Belgian Government, or even make it the subject of a new article. He preferred not to make any recommendation.

93. Mr. JIMÉNEZ de ARÉCHAGA said that the incident described by the Special Rapporteur confirmed the view propounded by himself and other members of the Commission, that special missions in general should be accorded the privileges and immunities necessary for the exercise of their functions. The protection which the Special Rapporteur had obtained for the official papers he was carrying derived from Article 42, paragraph 3, of the Statute of the International Court of Justice, which was based on the functional theory and referred to "the privileges and immunities necessary to the independent exercise of their duties" enjoyed by "agents, counsel and advocates of parties before the Court".

94. It was clear from the Commission's comments on its drafts concerning diplomatic and consular relations that inviolability and immunity were two different things. In the system established by the Vienna Conventions, inviolability was the wider concept and included immunity.

95. The CHAIRMAN, speaking as a member of the Commission, said that he had no difficulty in accepting article 25, since, if it were amended to conform to the Vienna Convention on Consular Relations, it should be adequate. He agreed with Mr. Yasseen that it was impossible to distinguish between private and official correspondence without running counter to the principle of inviolability.

96. In his opinion, article 24 went too far and ought to have been modelled on the corresponding article in the Vienna Convention on Consular Relations. The exception to immunity from jurisdiction provided for in that Convention in respect of crimes should be applied to special missions. A member who had committed a crime would in any event cease to be useful to the mission.

97. He suggested that article 25 be referred to the Drafting Committee which should consider whether or not

the question of inviolability of property should be dealt with in a separate article.

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

The meeting rose at 12.55 p.m.

<sup>4</sup> For resumption of discussion, see 931st meeting, paras. 59-63.

## 917th MEETING

*Thursday, 8 June 1967, at 10 a.m.*

*Chairman:* Sir Humphrey WALDOCK

*Present:* Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

### Special Missions

(A/CN.4/193 and Addenda; A/CN.4/194 and Addenda)

*(continued)*

[Item 1 of the agenda]

#### ARTICLE 26 (Immunity from jurisdiction) [31]

1. *Article 26* [31]  
*Immunity from jurisdiction*

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.

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.

2. The CHAIRMAN invited the Commission to consider article 26, the Special Rapporteur's proposals for which were contained in paragraph 14 of the section on that article in his fourth report (A/CN.4/194/Add.2) and in his additional comments in document A/CN.4/194/Add.4.
3. Mr. BARTOŠ, Special Rapporteur, said that article 26 contained a series of rules based on article 31 of the Vienna Convention on Diplomatic Relations.
4. The most important rule was that set forth in paragraph 1, which granted the representatives of the special mission and the members of its diplomatic staff full immunity from criminal jurisdiction. The Drafting Committee was studying the question of the designation of the various members of the special mission.
5. The rule in paragraph 2 was of secondary importance, for members of special missions were seldom involved in questions which fell within the competence of the civil or administrative jurisdiction.
6. Paragraphs 3 and 4 reproduced the provisions of article 31, paragraphs 2 and 3, of the Vienna Convention on Diplomatic Relations.
7. Paragraph 5 was a reminder rather than a strict rule: the representatives and the diplomatic staff of a special mission continued to be subject to the jurisdiction of their country of origin. At the Vienna Conference there had even been talk of the sending State's obligation to take proceedings against any of its nationals who had committed an offence on the territory of the receiving State.
8. The article had given rise to a number of queries.
9. The United Kingdom Government considered that special missions should be accorded only "minor or functional immunity, whereas members of the Commission had decided in favour of full immunity for criminal jurisdiction, though leaving it open to States to restrict that immunity where necessary.
10. The Commission had not gone so far in the case of immunity from civil and administrative jurisdiction. The first paragraph of the United Kingdom Government's comments on that subject (A/CN.4/188/Add.1) was of a somewhat technical character, while the second advocated limiting immunity to official acts and modifying the text of the article accordingly. In his view, although the Commission accepted that there should be full personal inviolability, there was no need to lay down such absolute rules on the subject of immunity from civil and administrative jurisdiction.
11. Paragraph 4 should be more clearly worded. The object should be not to restrict immunity from measures of execution, but to provide safeguards in their execution.
12. With regard to the comments by the Canadian Government (A/CN.4/193), his view was that article 24, on personal inviolability, was very important since it provided for *habeas corpus*, but that article 26 dealt with a quite different matter. There was, however, a link between the two rules and the question of which should be applied was not so much one of substance as of degree.
13. There were a number of points which the Commission would have to decide. First, should the rule in paragraph 1, granting full immunity from criminal jurisdiction to the representatives and the members of the diplomatic staff of the special mission, as provided in article 31 of the Vienna Convention on Diplomatic Relations, be maintained? Secondly, should there be a rule granting immunity from civil and administrative jurisdiction, as in paragraph 2, that would be subject to the limitations contained in article 31 of the Vienna Convention on Diplomatic Relations, or should the immunity enjoyed by the representatives and the members of the diplomatic staff of the special mission be limited to acts performed in the exercise of their official functions, as provided in article 43 of the Vienna Convention on Consular Relations? Thirdly, should the rule in paragraph 3, which had not met with any criticism, be left as it stood? Fourthly, should the limited immunity described in paragraph 4 of the draft be retained or should the Commission decide in favour of the provisions of the Vienna Convention on Diplomatic Relations? Fifthly, should the wording of paragraph 5 be maintained, or should there be a provision that the sending State was required to take proceedings against the representative of a special mission or a member of its diplomatic staff who had committed a punishable offence on the territory of the receiving State? On that fifth question there were two points of view: one, that the sending State was obliged to take proceedings; and the other, that the receiving State, through its public prosecutor, was entitled to proceed against the official of a special mission who had committed the offence. Although he himself preferred the former view, as a jurist he considered that it was absurd to require a State to take more severe steps against its own agents than it would have done in the case of ordinary citizens. Yet that was what happened in the case of what were called "related" offences.
14. Mr. ALBÓNICO said that he was troubled by the fact that paragraph 1 provided for wider immunities than those accorded under the Vienna Convention on Diplomatic Relations by giving full privileges to the technical and administrative staff. It ran counter to the modern tendency to favour the functional theory and would cause difficulties by extending full immunity from criminal jurisdiction to persons who could not be prosecuted in the country where they had committed the crime. Under Chilean legislation they could not be prosecuted in Chile because no criminal proceedings could be instituted against a Chilean diplomat or consular official except in respect of official acts.
15. There seemed to be some inconsistency in paragraph 2 (c), since, under article 42, members of a special mission were prohibited from engaging in any professional or commercial activity.
16. There was no reason to follow the system of the Vienna Convention in paragraph 3, which should be modified so as to allow the head and members of a special mission and of its diplomatic staff to give evidence in writing. That was the practice in his country and in a number of other Latin American countries.
17. Mr. TAMMES said that he would prefer that article 26 should be modelled on article 43 of the Convention on Consular Relations, which was simple and clear. That article limited immunity from jurisdiction to acts

performed in the exercise of consular functions and provided effective protection for the free exercise of consular functions.

18. In drafting article 43, the Commission had preferred the qualification "in the exercise of consular functions" to the qualification "in respect of official acts within the limits of consular powers" and had given its reasons in paragraph (3) of the commentary to its draft, which read:

"In the opinion of some members of the Commission, the article should have provided that only official acts within the limits of the consular powers enjoy immunity from jurisdiction. The Commission was unable to accept this view. It is in fact often very difficult to draw an exact line between what is still the consular official's official act performed within the scope of the consular functions and what amounts to a private act or communication exceeding those functions. If any qualifying phrase had been added to the provision in question, the exemption from jurisdiction could always be contested, and the phrase might be used at any time to weaken the position of a member of the consulate."<sup>1</sup>

19. A formula on the lines of article 43 would obviate uncertainties due to unilateral application and interpretation or the danger of an excessively broad interpretation by the receiving State.

20. An additional safeguard lay in the independence of the courts, which had the last word in applying and interpreting international treaties. The courts of his country and probably those of many others were not likely to take any notice of a government's interpretation of its international obligations.

21. Mr. JIMÉNEZ de ARÉCHAGA said he agreed with the two previous speakers that the article should be made more restrictive, but rather than redraft it on the lines of article 43 of the Vienna Convention on Consular Relations, he would prefer a wording of the kind originally proposed by the Special Rapporteur in article 27 of his second report. Paragraph 2 of that article read: "They shall also enjoy immunity from its civil and administrative jurisdiction in respect of acts performed in the exercise of their functions in the special mission".<sup>2</sup> No better reason for adopting such a wording could be adduced than that put forward by the Special Rapporteur himself when he had said "... special missions should not be given the same immunities as diplomatic staff; their functions were not permanent and there was no reason why it should be not possible to bring a civil action against them. A member of a special mission who was domiciled in his own country could always challenge the jurisdiction of the courts of the country where he was residing temporarily. The position was quite different for a diplomat who resided permanently in the receiving State and who had to uphold his status in the diplomatic corps".<sup>3</sup>

22. Mr. AGO said that in his view the difficulties raised by article 26 were caused by the terms used. The use of the words "The head and members of the special mission" had given rise to a fear that the immunity for which it provided was wider than that accorded to diplomats by the Vienna Convention on Diplomatic Relations. It was for that reason that the Drafting Committee proposed replacing the words "the head and members of the special mission and the members of its diplomatic staff" by the words "the representatives of the State in the special mission and the members of its diplomatic staff", thus making it quite clear that the members of the technical and administrative staff of the special mission did not enjoy the same treatment as the most important members of the mission.

23. It would be inappropriate to establish too close an analogy between the provisions of the draft articles on special missions and the provisions of the Vienna Convention on Consular Relations, because consuls carried out duties which came essentially within the province of municipal law and they did not usually represent the sending State in its relations with the receiving State, whereas diplomats and members of special missions did. Moreover, in article 26 the Commission was stating a residuary rule; the States concerned were always at liberty to limit by agreement the immunities provided for in the draft.

24. A careful study of the problem made it clear that those who would benefit from the immunities would normally be the two or three most important members of the special mission—whom the Drafting Committee proposed to call "representatives"—and the members of the mission's diplomatic staff. In most cases, the latter already belonged to the permanent diplomatic mission of the sending State and, being diplomatic officials, enjoyed all the privileges and immunities attached to that status. If the Commission decided to limit immunities, it might bring about a paradoxical state of affairs in which, if the head of the special mission was a person of high rank but not a diplomat, he would have less extensive immunity than his assistants who were career diplomats.

25. He did not think that the concern about the exemption from measures of execution referred to in paragraph 4 was really justified; it was seldom that a member of a special mission—which was essentially temporary in nature—owned property on the territory of the receiving State.

26. In short, he saw no reason why the Commission should depart from the provisions of article 31 of the Vienna Convention on Diplomatic Relations, especially as article 26 stated a residuary rule and it was open to the States concerned to agree on a different arrangement.

27. Mr. USHAKOV said that he did not think that the Commission should amend article 26 to restrict the scope of the immunity from jurisdiction accorded to members of a special mission.

28. Since reference had been made to the Vienna Convention on Consular Relations, it was worth remembering that some governments had concluded agreements or bilateral treaties under which wider privileges and immu-

<sup>1</sup> *Yearbook of the International Law Commission, 1961*, vol. II, p. 117.

<sup>2</sup> *Yearbook of the International Law Commission, 1965*, vol. II, p. 132.

<sup>3</sup> *Yearbook of the International Law Commission, 1965*, vol. I, 807th meeting, para. 65.

nities were granted than those provided in the Vienna Convention. The Soviet Union, for instance, had concluded a number of such agreements with different countries.

29. As for the functional theory, it was doubtful whether all the duties that a special mission might perform could be defined. The functions of diplomatic and consular officials were easy to define and had been set out in detail in the Vienna Conventions, but special missions had an extremely wide range of activities, which might be technical, military or political, and it would be impossible to list them all.

30. Mr. KEARNEY observed that the Commission had not yet defined what were a special mission's functions; and indeed it might prove impossible to do so. Presumably they were what was essential for the mission to carry out its task. There seemed to be a fundamental cleavage of opinion in the Commission on the matter, and he could not agree with Mr. Ago's argument that the present draft had no connexion whatever with the Convention on Consular Relations. Consuls performed a wide range of functions and in special cases might be more important and influential than a minister. Mr. Ago and some other members of the Commission seemed to think that a special mission possessed full diplomatic privileges, but that was far from true at the present day when many special missions were not of high political importance and were not engaged in negotiating international agreements.

31. It was certainly worth considering the suggestion by Mr. Nagendra Singh at the previous meeting<sup>4</sup> that special missions should be classified into political and non-political missions.

32. He doubted whether the argument that liability to civil jurisdiction would interfere with the performance of a special mission's function could be sustained. He was therefore not in favour of that exemption, except in the case of high-level missions, which should be exempt from any jurisdiction of the receiving State. Ordinary everyday special missions should not be exempt from criminal jurisdiction in serious cases. That result could be achieved by inserting in draft articles some kind of a waiver clause. It would be better to proceed on the lines he had suggested rather than to adopt a dogmatic attitude and try to legislate for every type of mission.

33. Mr. CASTRÉN said that he was of the same opinion as Mr. Ago. Until the Commission had solved the questions of principle concerning the special régime of certain categories of special mission, in particular high-level missions, and the limits to derogations, it would be difficult to take a position on the subject of immunity from jurisdiction. For that reason, the only amendment to article 26 which he could accept would be to extend the reservation in paragraph 2, "Unless otherwise agreed..." to the provisions of paragraphs 1, 3 and 4.

34. Mr. NAGENDRA SINGH said that in his opinion high-level missions should enjoy complete immunity from jurisdiction, but that would not be justified in the case of the numerous missions of a minor character. An article of

the kind proposed by the Special Rapporteur in his second report might be suitable for non-political missions.

35. The difficulties which had arisen over article 26 could not be solved until the Commission had arrived at some kind of classification.

36. The CHAIRMAN, speaking as a member of the Commission, said that the Commission was reaching a stage when it would be difficult to make progress without reaching agreement on some definitions and on the classification of the members of a special mission, including the administrative and technical staff dealt with in article 32. It was important to bear in mind that certain special missions of a technical character might include high-level scientists who might be regarded by their own country as more important than diplomats themselves. What should be the position of such persons? Were they necessarily to be considered technical staff?

37. His general position, however, was that he would prefer the privileges and immunities of members of special missions to be restricted to the heads of the mission.

38. Mr. USHAKOV said he did not think that the Commission had to consider the various categories of special missions in connexion with each article. The Commission had already provided, in article 1, that States could send special missions with the consent of the receiving State, in article 2 that the task of special missions should be specified by mutual consent of the sending State and of the receiving State, and in article 8 that the sending State should notify the receiving State of the composition of the special mission; those provisions seemed sufficient. The States concerned could always decide by mutual agreement that a mission was not a special mission within the meaning of the convention and should therefore not enjoy privileges and immunities.

39. The CHAIRMAN, speaking as a member of the Commission, said that while some flexibility was necessary, all difficult problems could not be left to be resolved by special agreement between the States concerned. The Commission should try to devise standard articles that would be appropriate in normal circumstances, particularly as special missions might be sent in a hurry without time for reaching detailed agreement. Unless the articles were fairly precise and practical, States might either not ratify or make extensive reservations to the convention in order to maintain freedom of action and the convention would not be particularly useful.

40. Mr. JIMÉNEZ de ARÉCHAGA said that the Commission must formulate average rules for the usual type of special mission; high-level missions could be regulated by providing that the more generous rules on privileges and immunities established by the Vienna Convention for permanent diplomatic missions would apply in those cases. The Commission should certainly not ignore the fairly general view of governments that the rules should not be too liberal. In any particular situation, States could always agree to grant full immunity from jurisdiction.

41. Mr. AGO said that there was no difference of views so far as substance was concerned: each member was considering only one aspect of a real situation which took

<sup>4</sup> Para. 77.

many forms. The Commission should consider that real situation from all its aspects before drawing up articles which would always be better adapted to one aspect than to another.

42. With regard to definitions, it was for the Commission to prepare them; the Drafting Committee merely had to formulate them. It might seem easy to draw a distinction between important special missions on the one hand, and technical or secondary missions on the other, but it was conceivable that, if there were an eminent scientist among the members of a technical special mission, the receiving State might bring a civil or criminal action against him for the purpose of keeping him there.

43. Unless the Commission considered the problem of the composition of special missions very carefully, there was a danger that the provisions it adopted would apply only to certain situations.

44. Mr. NAGENDRA SINGH said he entirely agreed with the Chairman on the need to define terms such as "members of the diplomatic staff". If it were not for the large number of special missions of varying kinds, he would be in favour of applying the classical rules concerning the immunity of envoys, which would ensure uniform treatment. However, as special missions differed widely, the extent of the immunity granted to each must also differ. Important political missions could not be treated like mere consular missions.

45. If the Commission failed to reach agreement on a classification of special missions, article 26 would not require much alteration.

46. Mr. USTOR said that an immunity confined to acts performed in the exercise of official functions was virtually no immunity at all. In that connexion, it was worth considering a passage from the Harvard Draft relating to members of permanent diplomatic missions, which read:

"In so far as the member acts in his official capacity, his immunity confounds itself with that of the sending state itself, and depends, not upon the person of the representative, but upon the intrinsic nature of the act performed. International law imposes upon the courts of the receiving state an incompetence *ratione materiae* in the case of public acts. The incompetence of the courts in the case of official acts does not constitute a diplomatic privilege in the sense that it is imposed by international law as an exception to the competence which the courts would normally possess."<sup>5</sup>

47. If, therefore, the future convention on special missions were to grant a purely functional immunity to certain persons, those persons would in fact have no more immunity than they would enjoy in the absence of any convention.

48. Clearly, where a special mission had a genuinely representative character, its members or "representatives" —to use the term adopted recently by the Drafting Committee—should enjoy the same immunities as a diplomat in respect of both criminal and civil jurisdiction.

49. He had been much impressed by Mr. Ago's remark that it would be anomalous not to grant diplomatic immunity to the representatives of the State who headed a special mission when their assistants who were career diplomats enjoyed such immunity, since those assistants would normally be drawn from the permanent mission of the sending State or from the staff of its Ministry of Foreign Affairs.

50. Naturally, the administrative and technical staff and the service staff of the special mission would only enjoy functional immunity, in accordance with other articles of the draft.

51. For those reasons, he accepted article 26 in its present form for the purposes of regular special missions.

52. There was also the question of government officials sent on missions abroad, who, according to one writer, were apparently treated as ordinary aliens visiting the receiving State. What that writer said was:

"Neither the International Law Commission nor publicists have dealt with the question of the status of the various officials of government administrations who go abroad on mission. The practice of States provides us with hardly any information either. In our opinion, this is due to the fact that it is unnecessary to treat them differently from any other alien on the territory of the State."<sup>6</sup>

53. Perhaps the Commission should adopt language which excluded from the scope of the immunity from jurisdiction government officials travelling abroad who did not represent their State. That would allay the doubts of those members who wanted to restrict the scope of immunities.

54. The CHAIRMAN, speaking as a member of the Commission, said that he would have no difficulty in supporting the provisions of article 26 if they were to apply only to persons who should be treated as diplomats. It would be perfectly logical to give to those persons the same privileges as diplomats in respect of immunity from jurisdiction. The real problem, however, was to determine who those persons were.

55. Mr. BARTOŠ, Special Rapporteur, said that the most important question had been raised by Mr. Nagendra Singh, that of the distinction that could be drawn between different categories of special mission. It was extremely difficult to classify special missions in clearly defined categories, or even to distinguish political missions from technical special missions. Special missions seemingly of the most technical character, for example a mission for scientific co-operation or a mission sent to negotiate access for a landlocked State to a port in a foreign State, often had very delicate political aspects. Even the performance of such a matter-of-fact and apparently harmless task as the opening of an ice-bound river, could, in certain circumstances, lead to a lot of injured feelings.

56. Even special missions of an identical character were liable to be treated differently according to circumstances or according to the state of political relations and the degree of friendship between the countries concerned.

<sup>5</sup> *Research in International Law*, "I, Diplomatic Privileges and Immunities"; Supplement to the *American Journal of International Law*, vol. 26, 1932, p. 99.

<sup>6</sup> P. Cahier, *Le droit diplomatique contemporain*, Geneva, 1962, pp. 371 and 372.

Between friendly States, full privileges and immunities were unnecessary and no difficulty could arise, whereas between States whose relations were strained, even the grant of full privileges and immunities would not always prevent disputes. Consequently, the establishment of clearly defined categories would not always help much.

57. Moreover, under the terms of article 17 *ter* of the draft, States could introduce distinctions, by mutual agreement, in the extent of the facilities, privileges and immunities granted to special missions, having regard to their nature and requirements.

58. In reply to Mr. Ustor, he would point out that as early as 1964 he had noticed that Professor Philippe Cahier did not seem to be fully aware that such things as special missions existed, and in fact they did hardly exist until after the Second World War. It was because their use and numbers were steadily increasing that the Commission and the General Assembly had decided to add a draft on special missions to the draft convention on diplomatic relations and that the 1961 Vienna Conference had requested a supplementary study on that question. He did not think that the members of special missions had ever been regarded as ordinary aliens; they were at least regarded as distinguished foreigners and treated with particular respect, if not as diplomats in the strict sense.

59. He was still convinced that immunity from criminal jurisdiction, as provided for in article 26, paragraph 1, was indispensable. As to whether that immunity should be limited to acts performed in the exercise of the mission's functions, it was very difficult to determine whether an act was a part of such functions or not. If a member of a special mission entered into relations with citizens of the receiving State and tried to obtain information from them that was directly related to the work of the special mission, should such actions be considered as part of the functions of the special mission or as attempted espionage?

60. If, as Mr. Tammes wished, the Convention on Consular Relations were taken as a model in that respect, it should be remembered that that Convention prescribed a minimum number of privileges and immunities and allowed for the possibility of derogations to extend them. Many States made use of that possibility in their mutual relations. For example, the USSR and the United States had concluded an arrangement whereby both States granted the broadest immunities even to service staff and even to locally-recruited staff. The Convention on Consular Relations was the result of numerous compromises between the conflicting demands of various groups of countries: the developing countries in particular had been less willing to grant broad privileges and immunities to consular officers than to diplomats. If, in the case of special missions, the Commission limited immunity from criminal jurisdiction to acts performed in the exercise of their functions, that rule would lead to many difficulties in practice.

61. With respect to immunity from civil and administrative jurisdiction, as a general rule the members of special missions did not insist on that immunity, which was granted to diplomatic agents under article 31 of the Vienna Convention on Diplomatic Relations. After all, even a special mission which lasted a long time was essentially only a visitor in the receiving country. In his opinion,

protection against measures of execution, such as that provided in the Vienna Convention, was more important for members of special missions. On that point he shared Mr. Ago's view. Moreover, the 1961 Vienna Conference, in one of its resolutions, had recommended that sending States should do their best to facilitate the administration of justice in the receiving State.<sup>7</sup>

62. He fully understood Mr. Albónico's misgivings. According to the Anglo-American system, which had also been adopted in Latin America, municipal courts judged only acts committed in the territory under their jurisdiction, which was not the case in continental Europe.

63. In reply to the Chairman's comments, he said that article 32 defined the status of the administrative and technical staff of the special mission. For that staff, he was not averse to the idea of limiting immunities to acts performed in the exercise of their functions, which was what many States wished. That would, however, involve some danger, because, as Mr. Amado had observed at previous sessions, such subordinate staff sometimes knew more secrets than a second or third secretary of embassy and should consequently be covered by complete immunity from criminal jurisdiction.

64. The Commission could refer article 26 to the Drafting Committee and ask it to consider whether, in paragraph 2, immunity from civil and administrative jurisdiction should be limited to acts performed in the exercise of the special mission's functions or, to put it more explicitly, to acts performed in the exercise of its functions and in connexion with the exercise of its functions.

65. Mr. USTOR pointed out that the passage which he had quoted referred to government officials travelling abroad but not on a special mission. Elsewhere in his book, Mr. Cahier had dealt with special missions and had stressed the need to grant members of such missions personal inviolability and certain other privileges.

66. The CHAIRMAN said that in view of the great variety of special missions, two problems arose. The first was to determine what constituted a special mission for the purposes of the draft articles; the second was to determine what persons were to benefit from the provisions of article 26. There could be no doubt that some of the concern expressed by Governments in their comments had arisen from the fact that the Commission itself was not clear as to which persons would be covered by article 26 and article 32 respectively.

67. In the circumstances, members were bound to have some reservations on article 26 until the Commission came to a decision on the question of the various categories of special missions and on the subject of definitions.

68. Mr. BARTOŠ, Special Rapporteur, recalled that in his first report he had proposed defining diplomatic staff by stating that it included advisers, experts and secretaries;<sup>8</sup> that definition, which had been borrowed from the Convention on the Privileges and Immunities of the United

<sup>7</sup> See United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. II, p. 90, resolution II.

<sup>8</sup> *Yearbook of the International Law Commission, 1964*, vol. II, p. 93, paragraph (3) of commentary to article 6.

Nations, had the advantage of preventing any confusion between the ranks of officials in the diplomatic service, which was an internal matter for each State. It might perhaps be advisable to return to that definition, for the term "diplomatic staff" was very vague.

69. The CHAIRMAN said that, if there were no objections, he would consider that the Commission agreed to refer article 26 to the Drafting Committee for consideration in the light of the discussion, as proposed by the Special Rapporteur.

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

### Organization of Future Work

[Item 6 of the agenda]

70. The CHAIRMAN said that one of the problems with which the Commission would have to deal in the organization of its future work was the appointment of a new Special Rapporteur for the topic "Succession of States and Governments," to replace Mr. Lachs, the former Special Rapporteur, who had since been elected a Judge of the International Court of Justice.

71. He had availed himself of Mr. Lachs's recent visit to discuss with him the topic of the succession of States and Governments. Mr. Lachs had expressed the view, which he had authorized him (the Chairman) to communicate to the Commission, that it would be practicable and probably helpful, as a first step, to treat as a separate topic the question of the succession of States and Governments with respect to treaties and, if desired, to appoint a separate special rapporteur for that question. He invited the Commission to reflect on that possibility so that members could give their views when the Commission came to examine the programme of its future work at a forthcoming meeting.

The meeting rose at 1 p.m.

<sup>9</sup> For resumption of discussion, see 933rd meeting, paras. 2-13.

## 918th MEETING

*Friday, 9 June 1967, at 10 a.m.*

*Chairman:* Sir Humphrey WALDOCK

*Present:* Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

### Other Business

*(resumed from the 903rd meeting)*

[Item 8 of the agenda]

THIRD SEMINAR ON INTERNATIONAL LAW

*(resumed from the 903rd meeting)*

1. The CHAIRMAN said the Commission greatly appreciated the contribution made by the participants to the success of the Third Seminar on International Law. Members of the Commission who had given lectures during the Seminar had all been impressed by the high level of the debates and had been gratified at the results achieved. He wished particularly to thank Mr. Raton for all the work done in making the arrangements for the Seminar, which had substantially contributed to its success.

2. Mr. RATON (Secretariat), thanking the Chairman for his kind words, said it had been a pleasure for him to carry out his duties in connexion with the organization of the International Law Seminar, which would not exist were it not for the Commission and its valuable support. He wished in particular to thank Mr. Ago, Mr. Bartoš, Mr. Reuter, Mr. Tammes, Mr. Tsuruoka, Mr. Ustor, Mr. Yasseen and Sir Humphrey Waldock, from whose lectures those participating in the Seminar had derived such great benefit. He was glad to learn that Mr. Eustathiades and Mr. Castañeda had promised to lecture next year. He also wished to express his satisfaction with the work done by those participating in the Seminar; they had shown great diligence and had followed the course with close attention. He hoped that those Governments which had granted scholarships would show the same generosity next year and that other Governments would not forget to translate words into deeds and thereby enable nationals of the developing countries to take part in the Commission's work and profit from its wealth of learning.

### Special Missions

(A/CN.4/193 and Addenda; A/CN.4/194 and Addenda)

*(resumed from the previous meeting)*

[Item 1 of the agenda]

ARTICLE 27 (Waiver of immunity) [41]

3. *Article 27* [41]  
*Waiver of immunity*

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 judgement, for which a separate waiver shall be necessary.

4. The CHAIRMAN invited the Commission to consider article 27, the Special Rapporteur's proposals for which were contained in paragraph 4 of the section on that article in his fourth report (A/CN.4/194/Add.2) and in his additional comments in document A/CN.4/194/Add.4.