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Summary record of the 918th meeting

Topic:
Special missions

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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.*⁹

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.

⁹ 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.

5. Mr. BARTOŠ, Special Rapporteur, said that the underlying idea of article 27 was the possibility for the sending State of waiving immunity from jurisdiction, an immunity which was granted not to the persons concerned but to the State as such. Waiver must be express.
6. Few comments had been received from governments. That by the Government of Israel related to form and had become less important since the Drafting Committee had decided to change the terminology used to designate the persons forming part of the special mission.
7. The Chilean Government's suggestion regarding the placing of the article was a matter connected with the arrangement of the draft and it would therefore be considered later.
8. Mr. Reuter had suggested to him that the article should include an additional provision permitting the sending State to waive immunity from jurisdiction in advance. The intention of such a provision, which was flexible, was to cover certain missions for which immunity from jurisdiction was unnecessary. The Commission might therefore consider adopting such a provision, which did not appear in the corresponding article of the Vienna Convention on Diplomatic Relations.
9. The other rules in article 27 were taken from article 32 of that Convention.
10. Mr. JIMÉNEZ de ARÉCHAGA proposed an amendment to article 27 which, he hoped, would reconcile the divergent views which had been expressed in the Commission on the subject of privileges and immunities. His amendment was to add after paragraph 1, a further paragraph to read: "The sending State shall waive the immunity specified in paragraph 1 in respect of civil claims of persons in the receiving State, when this can be done without impeding the performance of the functions of the special mission". That wording was taken from resolution II adopted by the 1961 Vienna Conference which had adopted the Vienna Convention on Diplomatic Relations.¹
11. The addition of a clause of that type would strengthen the functional aspects of the draft articles, while leaving the sending State in control of the situation.
12. Mr. CASTRÉN said that, in general, he accepted the text of article 27. He would, however, suggest that the words "and of the members of their families" in paragraph 1 be deleted, since there was another draft article—article 35—entitled "Members of the family" which contained a reference to articles 24 to 31 in connexion with privileges and immunities. The words "and of the members of their families" did not appear in the corresponding article in the Vienna Convention.
13. It was possible that he might have something to say later on the amendments proposed by Mr. Reuter and Mr. Jiménez de Aréchaga.
14. Mr. TAMMES said he strongly supported the amendment proposed by Mr. Jiménez de Aréchaga.
15. In its debate on article 24 and 25, the Commission had discussed possible ways of bridging the gap between the restrictive tendencies expressed in government comments and the protective tendencies of the draft articles. It was significant that the Governments which had expressed opposition to the philosophy of the draft articles included those of States great and small, old and new, developed and developing and represented different social and economic systems.
16. One of the possible means of bridging the gap would be to limit the number of persons to whom privileges and immunities would normally apply. Another was offered by the proposal by Mr. Jiménez de Aréchaga to amend article 27, a proposal which was based upon the language of a recommendation unanimously adopted by the 1961 Vienna Conference. That Conference enjoyed a high authority and the very strong language which it had used in resolution II could be taken as expressing world legal opinion in the matter.
17. The proposed amendment would make the whole system of immunities less rigid and would introduce a rather more compulsory element into the practice of waiver.
18. It was important to remember that waiver of immunity was standard practice in international organizations. In the case of United Nations officials, the relevant provision was contained in section 20 of the Convention on the Privileges and Immunities of the United Nations, adopted by General Assembly resolution on 13 February 1946, which read:
- "Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity."²
19. A similar clause was to be found in a great many treaties relating to the privileges of international organizations and their officials, in particular the agreements between certain organizations and the host countries regarding the headquarters of those organizations.
20. Lastly, he would ask the Special Rapporteur whether it might not be possible to extend the system of waiver to personal inviolability, dealt with in article 24, and to the giving of evidence, dealt with in article 26, paragraph 3. From the technical point of view, waiver normally applied to immunity of jurisdiction, but the possibility should perhaps be considered of extending it to questions of inviolability and the giving of evidence, as was done in article 45 of the 1963 Vienna Convention on Consular Relations. He was not, of course, suggesting that there was an analogy between special missions and consulates, but merely drawing attention to a legal technique that might prove useful in connexion with article 27.

¹ United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. II, p. 90.

² United Nations, *Treaty Series*, vol. 1, p. 26.

21. Mr. KEARNEY said he also strongly supported the proposal by Mr. Jiménez de Aréchaga, which would provide an acceptable means of reconciling the different views expressed in the Commission on the extent of privileges and immunities. The adoption of that proposal would make the whole set of articles much more attractive to States in general; if the draft were overloaded with privileges for special missions and their staff, it was unlikely to be accepted by Governments.

22. Mr. USHAKOV, referring to Mr. Reuter's proposal,³ pointed out that the possibility of waiving immunity in advance was implied in the existing text of paragraph 1.

23. With regard to Mr. Jiménez de Aréchaga's proposal, he thought that, however much one might discuss what privileges and immunities should be granted, it was impossible to change the meaning of article 27 without altering the contents of article 26. If it were decided to provide in article 26 for minor or functional immunity, the Commission must say so explicitly. But it was completely illogical to extend the immunities in article 26 and to provide in article 27 that the State would waive them.

24. Article 27 should therefore be retained as it stood. It enunciated the rule of the sovereignty of the State, which was well-established in modern international law: the immunity was accorded to the State and only the State could waive it.

25. Mr. BARTOŠ, Special Rapporteur, said he wished first to point out to Mr. Castrén that paragraph 1 of article 32 of the Vienna Convention—in which, it was true, the phrase "and of the members of their families" did not appear—referred to article 37, which began with the words "The members of the family of a diplomatic agent... shall... enjoy the privileges and immunities specified in articles 29 to 36". The Commission could also use the cross-reference method, of course, but it seemed to be falling out of favour in modern drafting.

26. The idea underlying Mr. Jiménez de Aréchaga's amendment was contained in resolution II of the 1961 Vienna Conference. He agreed with Mr. Ushakov that that amendment raised a question of substance which should be dealt with in article 26. Article 26 could limit immunity from jurisdiction to acts performed in the exercise of functions, but it was not possible to provide for immunity and then immediately afterwards call upon States to waive it. The sending State might have reasons such as fear of publicity from which its dignity would suffer, for preferring that a case should not be brought before the courts of the receiving State, but in that case it would try to reach a compromise. That was the meaning of resolution II of the Vienna Conference, which recommended that the sending State should waive immunity or use its best endeavours to bring about a just settlement of the claim.

27. The provision of the Convention on the Privileges and Immunities of the United Nations to which Mr. Tammes had referred was to be applied by the Secretary-General and was concerned only with the organization's

officials; in no circumstances could the Secretary-General waive the immunity of members of delegations. He did not think that the Commission could adopt a United Nations disciplinary rule and require States to apply it to their representatives. Resolution II of the 1961 Vienna Conference might and in fact did have some authority even with regard to special missions, but it contained merely a recommendation, not a rule binding on States. Of course, at large conferences and even at the United Nations—for example at United Nations Headquarters in New York—the receiving State could convey a warning to delegations through the Secretary-General. For the members of special missions, however, there was no need for such a procedure, since the receiving State could declare the person *non grata* or not acceptable.

28. Mr. Tammes had also suggested that for the purpose of immunity from jurisdiction, members of special missions should be treated on the same footing as consular officers, but leaving aside the question whether that assimilation would be justified, he must point out that, generally speaking, the Commission had decided to take the Vienna Convention on Diplomatic Relations as the model for its draft.

29. His reply to Mr. Tammes' comments also applied to those by Mr. Kearney. The Commission should try to find a balance and adopt a practical approach. The big States always had adequate safeguards because of their power; their ordinary citizens were sometimes better protected than the officials of smaller States. It was particularly the small and medium-sized States which needed the safeguards provided in the draft. The problem was a very real one.

30. He acknowledged the force of Mr. Ushakov's arguments, and accordingly withdrew his support for Mr. Reuter's suggestion. States would have other means of waiving or limiting privileges and immunities, such as that provided in article 17 *ter*.

31. He therefore considered that article 27 should be retained and that it could be referred to the Drafting Committee for final editing.

32. Mr. NAGENDRA SINGH said he agreed with Mr. Ushakov that there would be some contradiction between the amendment proposed by Mr. Jiménez de Aréchaga and the wording used in the present text of the article. Consideration should therefore be given to the possibility of diluting the language of the proposed amendment, and couching it in the form of a recommendation rather than a mandatory rule.

33. Mr. CASTRÉN said that, though he concurred with the Special Rapporteur with regard to the substance, he still thought that the reference to "members of their families", in article 27, was ill-advised. Since the situation of members of the family was not dealt with until article 35 and since that category of persons had not been mentioned in any of the preceding articles, even in article 26, it was illogical to mention it in article 27. The Vienna Convention on Diplomatic Relations contained a drafting error in that respect which the Commission was not obliged to repeat.

³ See paragraph 8.

34. Mr. AGO, commenting on Mr. Jiménez de Aréchaga's proposal, suggested that the Commission should adopt, in addition to its draft articles, a resolution containing a recommendation modelled on that contained in resolution II of the 1961 Vienna Conference. A resolution of that kind might serve a useful purpose and dispel the misgivings of certain Governments. On the other hand, he would be reluctant to see such a recommendation incorporated in a draft article, for articles could state rights or obligations, but not make recommendations. And the Commission could not make that recommendation an actual obligation to waive the privileges and amenities provided for in the preceding articles, since that would mean contradicting itself.

35. The CHAIRMAN, speaking as a member of the Commission, said that Mr. Ago's suggestion would provide a useful solution if the Commission definitely rejected Mr. Jiménez de Aréchaga's amendment.

36. He was not very convinced by some of the technical objections put forward against that amendment. For instance, the waiver provisions of the Convention on the Privileges and Immunities of the United Nations which related to representatives were very similar to those which related to international officials. Section 14, which was part of article IV, dealing with the representatives of Member States, was couched in similar terms to section 20 and specified that "a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded".⁴

37. When the Commission came to deal with the topic of relations between States and intergovernmental organizations, it would no doubt find that there was a considerable number of international organizations for which similar provisions existed on the waiver of immunity of representatives of Member States. It was for the Commission to decide whether it wished to equate special missions with permanent diplomatic missions and adopt the same approach as the 1961 Vienna Conference, or whether it wished to treat members of special missions in a manner closer to the system in force for representatives of States to international organizations.

38. Mr. BARTOŠ, Special Rapporteur, said he agreed with Mr. Ago. The Drafting Committee, in dealing with article 27, could consider the possibility of drawing up a recommendation on the lines of that contained in resolution II of the 1961 Vienna Conference. At the same time, he must point out that resolution II offered States two alternatives: they could either waive immunity or use their best endeavours to bring about a just settlement. The Commission could not just choose one of those alternatives.

39. Mr. JIMÉNEZ de ARÉCHAGA said that it was not the practice of the Commission to adopt resolutions: its duty was to codify international law and to contribute to its progressive development, not to make recommendations to States like the one suggested.

40. The system embodied in the 1961 Vienna Convention on Diplomatic Relations and in resolution II had been adopted with the needs of permanent diplomatic missions in mind. Special missions needed a different system which would impose on the sending State the legal obligation to waive immunity in certain circumstances.

41. He was not impressed by the argument that in some cases the threat to expose in court details of the private life of an official might be detrimental to the interests of the sending State; should that in fact happen, it was always open to the sending State not to waive the immunity of the official.

42. Under his amendment, the sending State would always retain control of the situation. The experience acquired with the operation of the Convention on the Privileges and Immunities of the United Nations had shown the great usefulness in practice of placing a duty to waive the immunity on the authority that controlled the official; the existence of that duty gave that authority great powers of persuasion over the official, and was used to serve the ends of justice and the prompt settlement of claims.

43. He was prepared to substitute for the wording he had proposed a wording on the lines of the second sentence of section 14 of the Convention on the Privileges and Immunities of the United Nations.

44. Mr. USHAKOV asked Mr. Jiménez de Aréchaga who, in his opinion, was to judge that waiver of immunity would not hamper the special mission in the performance of its functions. If it was to be the sending State, such a provision would add nothing new to the article; if it was to be the receiving State or the two States together, the position was quite different.

45. Mr. JIMÉNEZ de ARÉCHAGA replied that the decision would rest with the sending State.

46. The CHAIRMAN, speaking as a member of the Commission, said that the United Kingdom practice illustrated the fact that both the sending State and the receiving State had possibilities of action in the matter. The usual approach was to suggest to the authorities of the sending State that they should either waive the immunity or make arrangements for a confidential arbitration of the claim; if the sending State did not adopt either of those two courses, the receiving State would declare the official concerned *persona non grata*.

47. Speaking as Chairman, he suggested that article 27 be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*⁵

Mr. Ustor, Second Vice-Chairman, took the Chair.

ARTICLE 28 (Exemption from social security legislation) [32]

48. *Article 28* [32]
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

⁴ United Nations, *Treaty Series*, vol. 1, p. 22.

⁵ For resumption of discussion, see 933rd meeting, paras. 14-56.

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.

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.

49. The CHAIRMAN invited the Commission to consider article 28, the Special Rapporteur's proposals for which were contained in paragraph 7 of the section dealing with 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.

50. Mr. BARTOŠ, Special Rapporteur, said that article 28 corresponded to article 33 of the Vienna Convention on Diplomatic Relations. At the first reading, the Commission had not considered it necessary to retain paragraphs 4 and 5 since, on the whole, the system adopted in the draft was favourable to derogations.

51. The Drafting Committee would deal with the question of terminology raised in the comment by the Government of Israel, in the light of the solutions contemplated for other articles.

52. The United Kingdom Government proposed the deletion of paragraph 2(a) which, in its opinion, overlapped with article 36. That question could be considered by the Drafting Committee.

53. The Netherlands Government proposed the deletion of the entire article; he thought that would be going too far. The proposed rule was useful, since the members of the special mission might fall ill or have an accident during their stay in the receiving State.

54. The Chilean Government proposed that paragraph 2(a) be worded to read "To nationals or permanent residents of the receiving State, unless the latter are members of the diplomatic staff of the mission", a wording which would radically alter that provision.

55. Lastly, the Greek Government requested that the privileges and immunities granted by the article should be restricted.

56. Mr. CASTRÉN said he approved of the provisions contained in article 28 but wondered whether it really served a useful purpose to retain in paragraph 1 the phrase "while in the territory of the receiving State for the purpose of carrying out the tasks of the special mission", since it was obvious that exemption from social security legislation, like most of the privileges and immunities, was granted for the duration of the stay of the members of the special mission in the territory of the receiving State. No corresponding phrase was to be found in article 33 of the Vienna Convention on Diplomatic Relations.

57. Mr. JIMÉNEZ de ARÉCHAGA asked why articles 23, 28 and 34 referred to members of the staff

of a special mission whereas articles 25 and 26 referred to members of its diplomatic staff. If the difference was inadvertent, it would be preferable to use the same expression throughout.

58. There might be a case for inserting a provision on the lines of the one included in the two Vienna Conventions allowing for voluntary participation in social security arrangements of the receiving State.

59. Mr. BARTOŠ, Special Rapporteur, said that the Drafting Committee had decided to replace the words "the head and members of the special mission and the members of its staff" by "the representatives on the special mission and the members of its diplomatic staff". Social security legislation was applicable to everyone, and the exemption provided for in article 28 was not a privilege reserved exclusively for diplomats; it should extend to all members of the special mission, subject to the provisions of paragraph 2.

60. If the Commission agreed with Mr. Jiménez de Aréchaga, he saw no objection to adding a provision analogous to that of article 33, paragraph 4, of the Vienna Convention on Diplomatic Relations, to the effect that the exemption provided for in paragraph 1 did not preclude voluntary participation in the social security system of the receiving State. If the Commission saw fit it could also add the text of article 33, paragraph 5, of the Vienna Convention.

61. With regard to the phrase mentioned by Mr. Castrén, while he did not regard it as entirely superfluous, he could agree to its deletion in order to bring the text into line with that of article 33 of the Vienna Convention.

62. Mr. RAMANGASOAVINA said that article 28 raised no difficulty; it was normal that the members of a special mission should not participate in the social security system of the receiving State, since such participation involved not only paying contributions but also receiving benefits. The text of the article was sufficiently clear; it definitely stated that the exemption applied to all the members of the mission, including service staff, but that the system became applicable to them as soon as they left the special mission, if they remained in the territory of the receiving State.

63. There was no reason why the Commission should add to the article paragraphs 4 and 5 of article 33 of the Vienna Convention on Diplomatic Relations, since those two paragraphs referred to persons permanently resident in the receiving State.

64. Mr. CASTAÑEDA said that on the whole he approved of article 28. He saw no need to mention "private servants", as was done in paragraph 2 of article 33 of the Vienna Convention, since what was involved there was an exception, and the Commission had to establish a general rule.

65. The Commission might perhaps provide, as was done in article 33, paragraph 4, of the Vienna Convention, for voluntary participation of the members of special missions in the social security system of the receiving State, but it seemed superfluous to add paragraph 5 of article 33, since it was obvious that the States

concerned could conclude bilateral or multilateral agreements concerning social security.

66. Mr. ALBÓNICO asked whether article 28 referred only to social security legislation or to all labour legislation including laws about contracts and benefits.

67. Mr. BARTOŠ, Special Rapporteur, said that the States that ratified the convention on special missions would be members of the International Labour Organisation and, as such, would be bound to extend the benefits of the social security system to any person working in their territory. The conventions concluded under the auspices of the International Labour Organisation formed what might be termed a body of international legislation, and the Commission had provided in its draft articles on the law of treaties that States could not derogate from general international law.

68. Mr. ALBÓNICO said that he was not satisfied with the Special Rapporteur's reply; article 28 should apply to all the labour legislation of the receiving State.

69. Mr. BARTOŠ, Special Rapporteur, pointed out that the International Labour Office did not confine itself to the study of labour legislation; about a third of its activities were devoted to social security problems.

70. Mr. AGO emphasized that article 28 referred exclusively to social security legislation; labour legislation was not mentioned. Paragraph 1 provided for exemption from social security provisions and paragraph 2 provided for an exception to that exemption, in other words, for the application of the social security system of the receiving State to certain members of special missions.

71. Mr. BARTOŠ, Special Rapporteur, said that the purpose of the Chilean Government's proposal was to exempt all members of the special mission, even if they were nationals of the receiving State, from social security provisions.

72. The CHAIRMAN, speaking as a member of the Commission, said that the corresponding provisions in the Vienna Conventions were clearly confined to social security legislation; they contained no special provisions concerning labour legislation in general.

73. Mr. CASTAÑEDA said he thought that Mr. Albónico's observation was calculated to bring out more clearly the obligation on special missions to respect certain rules of labour legislation.

74. Mr. JIMÉNEZ de ARÉCHAGA said that it was probably unnecessary to extend the scope of article 28 so as to include labour legislation in general because of the provision in article 40, paragraph 1, concerning the obligation to respect the laws and regulations of the receiving State.

75. Mr. ALBÓNICO said that he did not wish to press his point, but wished the Commission to realize that a national of the receiving State or a person permanently resident there, if employed in a special mission, must respect the labour legislation of the country. He could not

be treated on a different footing from persons employed elsewhere.

76. Mr. AGO said he considered that the provisions of article 28 met all the points raised by members of the Commission. When the special mission employed a national of the receiving State, the question of the labour legislation to be applied must be settled on the basis of the rules of private international law. Normally, such labour relationships were governed by local law. On the other hand, the laws of the sending State would apply in the case of labour relationships established in that State between the sending State and its nationals. But, even in the case of relationships governed by foreign law, the question of compliance with local social security laws might arise, as it could be considered a matter of public order. That was why provision had had to be made in article 28 for exemption.

77. Mr. BARTOŠ, Special Rapporteur, said that the Chilean Government had proposed amending paragraph 2(a) to open with the words "... to nationals of the receiving State or aliens domiciled there".* The Commission had preferred the wording "or permanent residents", for the Vienna Conference on Diplomatic Relations had drawn a distinction between domicile, which could be temporary, and permanent residence.

78. For the end of paragraph 2(a) the Chilean Government had proposed the wording "unless the latter are members of the diplomatic staff of the mission", but he preferred the wording of the Vienna Convention, which had been used in article 28, as it seemed less restrictive.

79. Mr. ALBÓNICO said he considered that paragraph 2 should also apply to nationals of the sending State resident in the receiving State.

80. Mr. TAMMES said that article 28 was acceptable.

81. The CHAIRMAN suggested that article 28 be referred to the Drafting Committee.

*It was so agreed.*⁶

The meeting rose at 1 p.m.

* Literal translation. The English translation of the Chilean Government's proposal in document A/CN.4/193/Add.1 already uses the expression "permanent residents" adopted at the Vienna Conference (see para. 54 above).

⁶ For resumption of discussion, see 933rd meeting, paras. 57-62.

919th MEETING

Monday, 12 June 1967, at 3 p.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.