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Summary record of the 920th meeting

Topic:
Special missions

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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.

80. The CHAIRMAN invited the Commission to consider article 31, the Special Rapporteur's proposals for which were contained in paragraph 12 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.

81. Mr. BARTOŠ, Special Rapporteur, said that he had based article 31 on article 36 of the Vienna Convention on Diplomatic Relations, although he had not copied the text exactly. For instance, in sub-paragraph (b), the phrase "including articles intended for his establishment" had been omitted, because the question of establishment did not arise for members of a special mission. Similarly, the words "members of his family forming part of his household" had been replaced by "members of their family who accompany them". Exemption from inspection of the personal baggage of members of special missions was subject to the same conditions as that granted to diplomatic agents.

82. The Belgian Government thought the word "articles" in sub-paragraph (b) was too vague and should be replaced by "personal effects"; that point could be left to the Drafting Committee. The Belgian Government also proposed the deletion of the words "or of the members of their family who accompany them".

83. The Swedish Government observed that there was a discrepancy between the expression "who accompany them" in article 31 and the words "who are authorized by the receiving State to accompany them" in article 35, paragraph 1. With regard to the latter expression, he would point out that, although the receiving State could limit the number of the members of the family accompanying a member of a special mission, an authorization from that State would not always be necessary.

84. The Austrian Government said that there was some inconsistency between the wording of articles 31 and 32 of the draft with regard to exemption of administrative and technical staff from customs duties. The United Kingdom Government expressed an almost identical opinion.

85. The Canadian Government considered that the exemption referred to in the article should be removed, because it should remain a matter of courtesy and reciprocity.

86. The Government of Gabon considered that exemption of members of special missions from customs duties was one of the matters in which some discretion should be left to the authorities of the receiving State.

87. The United States Government had expressed reservations concerning the scope of exemption from customs duties and inspection. Its comments raised a matter of principle which the Commission should settle before making any amendment to article 31.

88. Lastly, the Greek Government considered that the privileges and immunities provided in the article should not be so extensive.

89. The comments of Governments related to the substance of the article, and the Commission should consider them carefully.

The meeting rose at 5.50 p.m.

920th MEETING

Tuesday, 13 June 1967, at 10 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, 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 31 (Exemption from customs duties and inspection) [35] (continued)¹

1. The CHAIRMAN invited the Commission to continue its consideration of article 31, which had been introduced by the Special Rapporteur at the previous meeting.

2. Mr. CASTRÉN said that he was inclined to accept the existing text of article 31. Nevertheless, there was good reason for the comments by the Governments of Belgium and Sweden, both of which proposed that in paragraph 1(b) the words "or of the members of their family who accompany them" should be deleted, since the matter was dealt with in article 35, paragraph 1. The Special Rapporteur had first said, in paragraphs 6 and 9 of his comments (A/CN.4/194/Add.2), that he accepted that suggestion, but had then said in paragraph 12(2) that it would be enough to mention the comments by those Governments in the commentary to the article. He (Mr. Castrén) could not agree; his view was that the sentence should be dropped, as it duplicated the provisions of article 35.

3. Mr. JIMÉNEZ de ARÉCHAGA said that while the provisions of paragraph 1(a) had not elicited any comment, those of paragraph 1(b) had given rise to objections by all the Governments that had submitted comments on the article. The privilege of importing articles for personal use without paying customs duties or taxes was, in the case of permanent diplomatic missions, one of those which created most difficulty. If that privilege were extended to special missions, the draft articles were unlikely to receive general support.

¹ See 919th meeting, para. 79.

4. He therefore suggested that the exemption laid down in paragraph 1 should be restricted to articles necessary for the performance of the functions of the special mission and to the personal effects and baggage brought in by its members. It would not then extend to the duty-free importation of such articles as beverages and cigarettes, which was such a sensitive point in many countries.

5. Mr. NAGENDRA SINGH said he agreed with the proposal to delete the concluding words of paragraph 1 (b); the question of the members of the family would be covered by other provisions of the draft.

6. He could accept the remainder of paragraph 1 (b) because he interpreted the words "articles for the personal use" as having very much the same meaning as the words "personal effects and baggage", suggested by the Belgian Government.

7. The Austrian Government had drawn attention to the problem of the administrative and technical staff, covered by paragraph 2 of article 37—and not 36 as erroneously indicated by that Government—of the 1961 Vienna Convention on Diplomatic Relations. The members of the administrative and technical staff were not mentioned in article 31 of the draft on special missions. It was article 32 which dealt with that staff, but unlike article 37, paragraph 2, of the 1961 Vienna Convention, it made no provision for customs exemption in respect of articles imported at the time of first installation. The reason for that difference in approach was that members of the special mission would not normally stay long in the receiving State.

8. If the intention was not to grant any customs exemption to members of the administrative and technical staff except for the very limited privilege specified in paragraph 1 (b) of article 31, the words "the privileges and immunities specified in articles 24 to 31" in article 32 should be amended to read "the privileges and immunities specified in articles 24 to 30".

9. He had anticipated some of his observations on article 32 because, as was shown by the Austrian Government's comments, articles 31 and 32 were closely connected.

10. Mr. KEARNEY said that, since a special mission was temporary in character and limited in purpose, it should be granted fewer customs exemptions than a permanent diplomatic mission. Article 31, however, granted exemption from customs duties on articles for the personal use of all members of the special mission, including administrative and technical staff. It was therefore necessary to introduce some limitation into the provisions of paragraph 1. In view of the difficulty of making a distinction in practice between articles for official use and articles for personal use, he did not favour a limitation based on that distinction. Instead, he suggested that customs exemption should be confined to articles imported at the time of first installation, on the lines of article 37, paragraph 2, of the 1961 Vienna Convention. The special mission should be able to bring in, at the time of its first entry into the receiving State, such articles as it would require during its stay.

11. The formula which he proposed would give both States enough freedom and protection to suit the purposes of most special missions. Should a particular special mission need to conduct activities lasting a long time, the receiving State would certainly consent to make the necessary arrangements by special agreement.

12. Mr. TAMMES said that a number of government comments had shown the close connexion between articles 31 and 32. Article 32 specified that members of the administrative and technical staff enjoyed "the privileges and immunities specified in articles 24 to 31". Such staff would thus benefit from the exemption from all customs duties on articles for their personal use set forth in article 31.

13. The question whether such a wide measure of customs exemption was appropriate should be examined in the light of the provisions of article 2 of the draft. Paragraph (2) of the commentary to that article stated: "The scope and content of the task of a special mission are determined by mutual consent. Such consent may be expressed by any of the means indicated in paragraph (4) of the commentary on article 1. In practice, however, the agreement to the sending and reception of special missions is usually of an informal nature, often merely stating the purpose of the mission".²

14. In practice, arrangements for sending and receiving a special mission were often made in an extremely informal manner. They sometimes took the form of a mere telephone conversation between an expert and his counterpart in another country. As a result, the local authorities in the receiving State would have no prior knowledge of the arrival of the expert, accompanied by his administrative and technical staff; they would become aware of the privileges of the members of the special mission only when explanations were given to them by the central authorities. At the moment of entry into the receiving State, the position would thus be one of great confusion for the customs authorities, who would have to apply the provisions of article 31. Those authorities would not be aware of the arrangements made for the special mission and article 8 on notification did not provide an answer to the problem, since it made no provision for prior notification.

15. Article 31 should be examined with great care, bearing in mind the informal character of the arrangements for the special mission and the wide range of exemptions for which the article made provision.

16. Mr. USHAKOV said that he found it difficult to understand the doubts expressed by certain Governments with regard to paragraph 1 (b). For ordinary people articles for their personal use and their personal effects were always exempt from customs duty everywhere and the sub-paragraph did not provide for any privileges for members of special missions. There was consequently no basis for the United States Government's comment that the provision would result in the grant of personal privileges for members of special missions.

² *Yearbook of the International Law Commission, 1965, vol. II, p. 166.*

17. It was in fact paragraph 2 of article 31 which, like article 36 (2) of the Vienna Convention on Diplomatic Relations, was important, for it provided that the baggage of members of special missions should be exempt from inspection. Spirits and tobacco were subject to the customs regulations, which might include a limitation on the quantity per person, established by the receiving State.

18. He saw no reason why the exemption provided for in paragraph 1(b) should be restricted and considered that the article should be retained as at present worded.

19. Mr. JIMÉNEZ de ARÉCHAGA said that there would be no problem if the provisions of article 31 were interpreted in the manner indicated by Mr. Ushakov. But the words "articles for personal use", employed in the 1961 Vienna Convention, had in fact been interpreted much more broadly. Under article 36 of that Convention, in many countries members of permanent diplomatic missions enjoyed such privileges as exemption from customs duty on the importation of a new motor car every two years and on the importation of certain quantities of foodstuffs and beverages. There would be vigorous resistance by governments to the extension of such privileges to members of special missions.

20. In 1958, when the Commission had adopted article 34 of its draft on diplomatic intercourse and immunities—the text on which article 36 of the 1961 Vienna Convention was based—it had stated in paragraph (3) of the commentary thereto:

"Because these exemptions are open to abuses, States have very frequently made regulations, *inter alia*, restricting the quantity of goods imported or the period during which the import of articles for the establishment of the agent must take place, or specifying a period during which goods imported duty-free must not be resold. Such regulations cannot be regarded as inconsistent with the rule that the receiving State must grant the exemption in question."³

21. It was thus clear that, in practice, the privilege in question involved much more generous customs treatment than would be granted to any ordinary person.

22. It was true that the words "in accordance with such laws and regulations as it may adopt" gave the receiving State the power to regulate the matter and some countries had used that power to restrict the privilege. Those countries, however, were the exception rather than the rule.

23. Mr. USHAKOV said he agreed that abuses might arise in applying the provision on exemption from customs duties, but those abuses were caused by the exemption of baggage from inspection and not by paragraph 1(b). The receiving State was in no way required to grant exemption on the scale which Mr. Jiménez de Aréchaga had just mentioned. What practice was followed was a domestic matter and was governed by the laws of the receiving State. The point was that paragraph 1(b) did not give members of special missions any more rights than any other alien.

24. Mr. REUTER said that the subject was of some importance. Considering that customs difficulties arose over articles such as typewriters, portable radios, cars and so forth being brought into a country, obviously the results would be very different according as a liberal text or a restrictive text was chosen. In any case, he would accept the majority view on the point.

25. For reasons of form, paragraph 1 should be redrafted to read something like: "The receiving State shall adopt the necessary laws and regulations to permit...".

26. Paragraph 2 referred to the import or export of articles prohibited by law or controlled by the quarantine regulations of the receiving State. The paragraph seemed to draw a distinction between a strict prohibition laid down by law and a mere quarantine regulation. That was unacceptable, for, in addition to quarantine regulations, which applied mainly to dogs, there were also plant-health certificate requirements and several others of the same kind. He therefore proposed that the passage be amended to read: "or articles the import or export of which is prohibited or controlled by special regulations in the receiving State."

27. Mr. BARTOŠ, Special Rapporteur, said that article 31 did not include the phrase relating to articles intended for the establishment of the mission—which appeared in the Vienna Convention—because the staff of a special mission was not established in the receiving State.

28. He could not agree with Mr. Ushakov: paragraph 1(b) did not refer so much to personal effects contained in the baggage as to articles for personal use imported into the receiving State. Mr. Jiménez de Aréchaga had rightly raised the problem of customs-free consignment of articles for the personal use of members of a special mission. The article clearly stated that "articles for... personal use" enjoyed the exemption, and did not specify that what was referred to was articles contained in the baggage. In practice, diplomats obtained articles from all countries without paying customs duties; if that practice were adopted by members of special missions, it might prove harmful to the interests of the mission.

29. Imports of alcohol and tobacco had always been a point of dispute between special missions and the receiving State. That was why the Commission had adopted the reservation set out in the first part of paragraph 1, the wording of which showed that the exemption was not absolute, but that its application and modalities were governed by the receiving State. The receiving State should not, however, consider itself thereby authorized to take discriminatory measures. It was for that reason that the Commission had decided to mention the question of the importation of such articles in its commentary to the 1965 draft.⁴

30. Mr. Ushakov had quite rightly pointed out that the used personal effects of any foreigner were exempt from customs duties when imported in his baggage and that that was a universal rule.

³ *Yearbook of the International Law Commission, 1958*, vol. II, p. 100.

⁴ *Yearbook of the International Law Commission, 1965*, vol. II, p. 186.

31. With regard to customs duties on cameras or cine-cameras, transistors and portable typewriters, which were now regarded as personal effects of travellers, the latest convention on tourism provided for customs exemption for such articles.
32. He doubted whether the Commission should accept Mr. Jiménez de Aréchaga's proposal that reference should be made to articles contained in baggage. In any case, members of special missions proceeding to countries where the food was very different from that of their own should be enabled to import foodstuffs, as well as medicaments which might be unobtainable in local pharmacies. That was an argument in favour of the wording used in the Vienna Convention.
33. The question before the Commission was whether or not it should retain the wording adopted for the Vienna Convention. If it did, the door would be opened to abuses in connexion with subsequent imports; if it did not, a new text might create difficulties for special missions. The Commission should be fully aware of the implications of a possible limitation of the exemption.
34. The Commission should also agree on the exact meaning of the word "articles" and decide whether it referred to articles contained in and arriving at the same time as the baggage, or to articles for personal use, irrespective of how they were imported into the receiving State.
35. The CHAIRMAN said that the issue with regard to paragraph 1(b) was whether the exemption should cover only articles brought into the receiving State when the special mission first entered the country, or whether the privilege should also apply to articles subsequently imported for the personal use of the members of the special mission.
36. Mr. AGO said that the Commission should not pay overmuch attention to questions of customs exemption; even if there might be some abuse, the State granting the exemption could not be seriously harmed thereby.
37. Generally speaking, he was not in favour of adopting different wording from that used in the Vienna Convention on Diplomatic Relations. On one particular point, however, he agreed with Mr. Reuter, namely, that the French text of article 36, paragraph 1, of that Convention, was incomprehensible. He himself had protested against it during the Conference, but to no purpose. If the Commission wrote a clearer provision into its draft, it might help indirectly to render the Vienna Convention more intelligible. Instead of the phrase "in accordance with such laws and regulations" the Commission might use some such wording as "subject to such laws and regulations", if that was the meaning it wished to give to the opening phrase of the article.
38. In paragraph 1(b) the qualification "forming part of his household", referring to members of the family, used in article 36 of the Vienna Convention, had been replaced by "who accompany them". That wording might raise a problem; for instance, if the wife of a member of a special mission did not travel with her husband and only arrived some days later, would she be regarded as not accompanying her husband and in consequence be denied the privileges provided for in that paragraph 1(b)?
39. Mr. BARTOŠ, Special Rapporteur, said he had suggested at the previous meeting that the words "who accompany them" might be replaced by the words "authorized to accompany them". That would also cover the point that the receiving State did not always issue such authorizations. Alternatively, the Commission might adopt the simplest wording of all, "or of the members of their family", without any qualification.
40. Mr. AGO said he would prefer the last-mentioned solution, because it would be better not to raise questions of authorization in the draft.
41. The CHAIRMAN pointed out that the Commission had decided to deal with the question of members of the family in another part of the draft.
42. Mr. EUSTATHIADES said he associated himself with Mr. Ago's and Mr. Reuter's criticism of the drafting of article 36, paragraph 1, of the Vienna Convention. The lack of precision in the opening sentence of article 31 made it necessary to adopt a different wording, in order to avoid practical difficulties.
43. With regard to paragraphs 1(a) and 1(b) he considered that "articles for the official use of the special mission", referred to in paragraph 1(a), could be sent separately, but that "articles for the personal use of the head and members of the special mission", referred to in paragraph 1(b), should be part of the baggage of the person concerned and should arrive with him; they could be brought in on several occasions if the person concerned left and came back, but separate import should be excluded.
44. Mr. BARTOŠ, Special Rapporteur, describing the background of the identical provisions included in article 36, paragraph 1, of the Vienna Convention on Diplomatic Relations and in article 50, paragraph 1, of the Vienna Convention on Consular Relations, which read "The receiving State shall, in accordance with such laws and regulations as it may adopt, permit...", said that at the first Vienna Conference, several heads of delegations, including himself, had taken the view that the provision was procedural, rather than substantive. According to that view, the receiving State could not determine whether or not the case was one for exemption; all it could do was to establish the modalities for exemption. For instance, it could lay down restrictive regulations governing such points as the time-limit within which applications must be submitted and the inspection or declaration of articles. In the light of that explanation, the provision had been adopted by a two-thirds majority, but it could not be denied that there was some doubt as to its meaning.
45. Other explanations had been put forward during the second Vienna Conference, and it had been said that the receiving State could fix the extent to which exemption would be granted.
46. The two Conferences had thus adopted an identical provision, but attached different meanings to it. The

Commission was not, of course, obliged to use the same wording. The English text of the opening words of paragraph 1, "The receiving State shall, in accordance with such laws and regulations as it may adopt, permit...", was undoubtedly more satisfactory than its French equivalent. In the draft articles on diplomatic intercourse and immunities adopted by the Commission in 1958, the French version of the corresponding article, article 34, was closer in construction to the English, since it read: "*L'État accréditaire accorde, suivant les dispositions de sa législation...*" ("The receiving State shall, in accordance with the regulations established by its legislation...").⁵ The Commission might consider going back to a wording of that kind.

47. Mr. USTOR said that until 1961 the exemption of diplomatic agents from customs duties was not regarded as a rule of customary international law but merely as a matter of international courtesy. The 1961 Vienna Conference had raised that exemption to the status of a rule of international law, but had done so under a compromise formula embodied in the words "in accordance with such laws and regulations as it may adopt".

48. The position was that, as between parties to the 1961 Vienna Convention, the duty to grant customs exemption to diplomatic agents now constituted a rule of international law. At the same time, however, the receiving State had wide powers to introduce laws and regulations to regulate the whole matter in all its details.

49. As far as the privilege set forth in paragraph 1(b) was concerned, the position was in some ways similar to that of tax exemption. It was possible to arrive at quite different results depending on what was considered to be a high-level special mission or a mission of the ordinary kind. Perhaps the Drafting Committee should be instructed to prepare alternative texts, as in the case of article 29, on exemption from dues and taxes, so that the Commission could reach a definite decision at a later stage.

50. Mr. CASTRÉN said that the introductory part of paragraph 1 contained a reservation which enabled the receiving State to limit the scope of the exemptions provided for in paragraphs 1(a) and 1(b). It would be unwise to amend the substance of paragraph 1(b), since some special missions might continue for a very long time, even for several years.

51. The CHAIRMAN said that the Commission seemed to have no very clear view on the issue of substance and should perhaps wait for a fresh text from the Drafting Committee which would have to pay special attention to the wording of the opening proviso.

52. Speaking as a member of the Commission, he said that the issue was not of great importance, and perhaps was more a matter of presentation than substance. If the Commission formulated a very strict rule, confining the exemption to personal baggage, members of the special mission might seek further privileges through the permanent mission. As many governments were reluctant

to grant extensive immunities, a restrictive approach might commend itself to them. They might be uneasy if special missions in their own right had access to the exemptions of a permanent mission, but their concern would be allayed by the fact that those exemptions would be subject to the rules governing permanent missions. Even if a provision on the lines of the corresponding provision of the Vienna Convention on Diplomatic Relations were adopted, he doubted whether that would open the door to dangerous abuse.

53. He suggested that the article might now be referred to the Drafting Committee.

*It was so agreed.*⁶

ARTICLE 32 (Administrative and technical staff) [36]

54. *Article 32* [36]
Administrative and technical staff

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 24 to 31, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 2 of article 26 shall not extend to acts performed outside the course of their duties.

55. The CHAIRMAN invited the Commission to consider article 32, the Special Rapporteur's proposals for which were contained in paragraph 15 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.

56. Mr. BARTOŠ, Special Rapporteur, said that article 32 corresponded to article 37, paragraph 2, of the Vienna Convention on Diplomatic Relations; the other matters dealt with in the latter article were divided up in the draft between article 33 (Members of the service staff), article 34 (Private staff) and article 35 (Members of the family). At the first reading, the Commission had considered it preferable to split up in that way the provisions concerning the various categories of persons grouped together in article 37 of the Vienna Convention.

57. Article 32 laid down the same rules for administrative and technical staff as did the Vienna Convention, but the idea expressed in the last sentence in article 37, paragraph 2, of the Convention had been omitted, since there could be no question of first installation for that category of persons, or of installation for the diplomatic staff of the special mission. The only other difference between article 32 and the corresponding provision in the Vienna Convention was that members of families were not mentioned in the former; it was apparently the Commission's intention to group everything concerning members of families in article 35, and he was wholly in favour of that method.

58. The Government of Israel suggested that the privileges and immunities set forth in the article should be extended to the entire staff of the special mission. That was a different conception from that of the Commission.

⁵ *Yearbook of the International Law Commission, 1958*, vol. II, p. 104 (French), p. 100 (English).

⁶ For resumption of discussion, see 933rd meeting, paras. 78-82.

59. The United Kingdom Government feared that the wording of the article might give administrative and technical staff the right to customs privileges for first installation. As he had just explained, however, that privilege was excluded.
60. Both the Belgian Government and the United Kingdom Government considered it unnecessary to insert the clause excluding nationals of, and permanent residents in, the receiving State from the application of the article, since that question was dealt with in article 36. He agreed that it was better to avoid repetition; the point could be dealt with by the Drafting Committee.
61. The Netherlands Government proposed that the article should be amended in such a manner that liability for damage resulting from road accidents fell outside the scope of the immunity. He would point out that immunity from civil and administrative jurisdiction was limited to acts performed in the course of duty. Obviously, it was sometimes extremely difficult to determine whether a particular motor trip came within the course of duty of the special mission or not, and whether the offence of exceeding the speed limit, for example, could be attributed to the needs of the special mission. The Commission might perhaps add the words "and to motor vehicle accidents" at the end of the article.
62. The United States Government doubted whether it was necessary to extend the privileges and immunities provided for in the article to members of families. The Commission could consider that point when it came to discuss article 35.
63. The essential problem was to decide whether, in the case of administrative and technical staff, the Commission wished to follow the model of the Vienna Convention on Diplomatic Relations or to depart from it. If it wished to depart from it, it should review each of articles 24 to 31 in order to decide whether or not it was applicable to administrative and technical staff, but he would advise against a review. In his opinion, except for the restriction on immunity from civil and administrative jurisdiction—and, possibly, motor vehicle accidents—members of the administrative and technical staff should enjoy exactly the same privileges and immunities as members of the diplomatic staff, for the administrative and technical staff was essential for the efficient operation of the special mission.
64. Mr. USHAKOV said that the provision laid down in the last sentence of article 37, paragraph 2, of the Vienna Convention should be included in article 32 of the draft. Of course, in the case of the administrative and technical staff of a special mission, it was not a question of articles imported at the time of their first installation but of their baggage and personal effects. He suggested, therefore, that the following sentence be added at the end of article 32: "They shall also enjoy the privileges specified in article 31, paragraph 1, in respect of their baggage and personal effects." On the other hand, the draft should not, any more than did the Vienna Convention, provide that the personal baggage of the administrative and technical staff should be exempt from inspection.
65. With reference to the proposal that it should be made clear that immunity did not apply to responsibility for damage resulting from road traffic accidents, that was a matter for the civil courts. Since article 32 provided that the immunity from civil jurisdiction granted to administrative and technical staff did not apply to acts performed outside the course of their duties, it was pointless to include a special provision on that subject.
66. Mr. CASTAÑEDA said that the exemption from customs duties mentioned in article 31, paragraph 1, might mean that administrative and technical staff would be able to import various articles subsequently.
67. Mr. KEARNEY said that although the privileges granted in article 31 were not restricted to first entry privileges, they should be so restricted in article 32 for practical reasons. Anyone who had had experience of dealing with personnel matters for foreign service staff was aware how much resentment could be caused by giving different treatment to persons of equivalent grades.
68. Mr. REUTER said that the question of road traffic accidents raised very complex legal problems. The Government which had proposed that article 32 should be amended so that immunity would not apply in the case of road traffic accidents was undoubtedly hoping for the establishment of a general rule under which there could never be any question of international status in such cases and road traffic accidents would come under ordinary law. He wondered, however, whether that result would be achieved by the wording which had been proposed.
69. With regard to civil and administrative questions only, he himself favoured a rule which went beyond the scope of special missions and would eventually become part of French law: that was the rule that every driver was responsible for any accident caused by him. No privileges should be granted in such cases; all drivers should be compelled to take out an insurance policy. The question was a difficult one and, for the time being, the Commission did not have the necessary information on which to take a final decision. It should, therefore, either stress the seriousness of the question in its report and explain that it did not have the necessary information to reach a decision, or consider very carefully whether it could adopt a formula which would also cover the case of motor vehicles driven by a head of mission or a diplomatic agent.
70. Mr. BARTOŠ, Special Rapporteur, said he proposed that a sub-paragraph (*d*) be added at the end of article 26, paragraph 2, reading: "An action relating to road traffic accidents". There would then be no immunity from the civil and administrative jurisdiction of the receiving State. That had to be made clear, for it frequently happened that the compensation paid by insurance companies was inadequate.
71. The CHAIRMAN said that if motor car accidents were to be covered in a separate provision, presumably the Special Rapporteur would present a formal proposal.
72. Mr. BARTOŠ, Special Rapporteur, said he could accept the addition to the end of article 32 proposed by

Mr. Ushakov. He was also prepared to include in article 36 the clause concerning nationals of the receiving State and persons permanently resident in that State.

73. The CHAIRMAN suggested that the Drafting Committee be asked to consider the question of a separate provision on liability for motor car accidents in connexion with article 26.

*It was so agreed.*⁷

74. Mr. USTOR suggested that the Drafting Committee might also consider the possibility of eliminating articles 32 to 35 and incorporating their substance in the preceding articles so as not to have two separate sets of articles on the members of the mission and of its diplomatic staff, on the one hand, and the members of the administrative, technical and service staff on the other. The draft would then follow the Vienna Convention system less closely, but would be easier to consult and to understand.

75. Mr. BARTOŠ, Special Rapporteur, said that the participants in the Vienna Conference had not been completely satisfied with the wording of article 37 of the Convention on Diplomatic Relations. It might therefore be better to devote a special article to each category of staff.

76. The CHAIRMAN, speaking as a member of the Commission, said that he doubted whether it was necessary to drop the reference to nationals of, or permanent residents in, the receiving State, for such a deletion would be a departure from the Vienna Convention on Diplomatic Relations and might be confusing.

77. Speaking as Chairman, he suggested that article 32 be referred to the Drafting Committee, together with the problem of liability for road traffic accidents.

*It was so agreed.*⁸

Membership of the Drafting Committee

78. The CHAIRMAN said that he had received a letter from Mr. Albónico stating that, for reasons beyond his control and very much to his regret, he had had to go back to Chile and would not be returning before the end of the session. That left the Drafting Committee without a Spanish-speaking member and he suggested that Mr. Jiménez de Aréchaga be asked to replace Mr. Albónico.

79. Mr. JIMÉNEZ de ARÉCHAGA said he was willing to serve on the Drafting Committee.

80. Mr. AGO said he regretted the forced departure of Mr. Albónico and noted with concern that, despite the enlargement of the Commission's membership, the number of members participating in the work of the session had not increased. He asked the Chairman to appeal to all members to do their utmost to attend the Commission's meetings during the last few weeks of the

session, for if there were any more absences, the question of voting might raise serious problems.

The meeting rose at 1 p.m.

921st MEETING

Wednesday, 14 June 1967, at 10.10 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, 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 33 (Members of the service staff) [37]

1. *Article 33* [37]

Members of the service staff

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.

2. The CHAIRMAN invited the Commission to consider article 33, the Special Rapporteur's proposals for which were contained in paragraph 11 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.

3. Mr. BARTOŠ, Special Rapporteur, said that article 33, which was based on article 37, paragraph 3, of the Vienna Convention on Diplomatic Relations, provided that members of the service staff enjoyed immunities only in respect of acts performed in the course of their duties and were exempt from dues and taxes in respect of the emoluments they received by reason of their employment.

4. The Belgian Government asked that an express reference should be made in that article to exemption from social security legislation. The Drafting Committee would have to decide whether there was any need to mention social security, which had already been dealt with in article 28.

5. The Greek Government thought that that provision was too extensive. He, on the contrary, thought that it would be a mistake to put any further restriction on any privileges and immunities provided for that category of staff.

6. His conclusion was that the article could be kept in its present form, with perhaps the addition of the phrase

⁷ See 933rd meeting, para. 2.

⁸ For resumption of discussion, see 934th meeting, paras. 1-27.