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Summary record of the 933rd meeting

Topic:
Special missions

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because it was more general. He would not, however, be opposed to adopting a combination of the two.

88. Mr. CASTAÑEDA said he welcomed the new restrictive definition of the special mission, which made it possible to distinguish between true special missions and those which were not special missions within the meaning of the draft. The addition of the word "representative" was essential. Admittedly, the legal meaning of that word did not emerge clearly from the text, but it was unnecessary to go into that point in the definition.

89. If a choice had to be made between the two phrases proposed at the end of the text, he would prefer the first, which he considered was broader and would make it easier to take account of the heterogeneous character of special missions.

90. Mr. KEARNEY said he agreed with preceding speakers that it was wise to introduce the idea of the representative character of special missions into the definition, which thus covered missions which represented the State as a whole in dealings with other States, but did not cover visits to other countries by groups of government officials concerned with limited technical matters not involving representation of the State.

91. With regard to the two variants in the last part of the definition, he considered that the first reflected the representative character of the special mission more satisfactorily than the second, for certain groups making official visits which did not have a representative character nevertheless performed specific tasks, and the retention of the second variant might to some extent negate the term "representative character". The best solution might be to combine the alternatives to read "to deal with the latter regarding specific tasks".

92. Mr. USTOR said that the great merit of the provisional definition was that it clearly stated what a special mission was and what it was not. The term "representative character" obviously meant that the special mission must represent the State as a whole, and that groups of government officials which only represented certain interests of the State were not special missions. The definition would help to dispel the misgivings that had been expressed in the Sixth Committee of the General Assembly and would clearly indicate the Commission's stand on the question of privileges and immunities: it would be quite obvious that special missions, as defined in the clause, must be granted full diplomatic privileges and immunities.

93. Mr. TABIBI also supported the Drafting Committee's definition, which covered all the essential aspects of special missions. He agreed with Mr. Nagendra Singh that the two variants regarding specific questions and tasks would only confuse the issue, and that it would suffice simply to state that a special mission had a specific task.

94. The CHAIRMAN, speaking as a member of the Commission, said that, earlier in the session, he had pointed out that the representative character of a special mission must be an essential element of the Commission's concept of such missions, for otherwise it would be almost impossible to draw any line between a mission

ranking as a special mission for the purposes of the draft articles and a mere visit by officials or experts serving official purposes but not intended to be a "mission". He therefore welcomed the provisional definition submitted by the Drafting Committee.

95. Speaking as Chairman, he suggested that the Drafting Committee should be asked to reconsider the clause in the light of the suggestions made.

*It was so agreed.*⁸

The meeting rose at 1.5 p.m.

⁸ For resumption of discussion and adoption of the definition of a special mission, see 937th meeting, paras. 16-18.

933rd MEETING

Wednesday, 5 July 1967, at 3.10 p.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Tabibi, 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]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

1. The CHAIRMAN invited the Commission to resume consideration of articles adopted by the Drafting Committee on first reading.

ARTICLE 26 (Immunity from jurisdiction) [31]¹

2. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 26:

"1. The representatives of the sending State on the special mission and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the receiving State.

"2. 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 person in question holds it on behalf of the sending State for the purposes of the mission;

¹ For earlier discussion, see 917th meeting, paras. 1-69.

“(b) An action relating to succession in which the person in question 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 in question in the receiving State outside his official functions;

“(d) An action for damages arising out of an accident caused by a vehicle used outside the official functions of the person in question.

“3. The representatives of the sending State on 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 a representative of the sending State on the special mission or a member of its diplomatic staff except in the cases coming under sub-paragraphs (a), (b), (c) and (d) of paragraph 2 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or his residence.

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

3. The Drafting Committee had adopted for article 26 the system supported by the majority of the members of the Commission, namely, the system which provided full immunity from criminal jurisdiction and limited immunity from civil and administrative jurisdiction. Like the Vienna Convention on Diplomatic Relations, the text included a list of the cases in which the latter form of immunity was denied, some of the exceptions being more or less traditional. Paragraph 2(d) introduced a new element which would certainly make the article easier to accept.

4. While it had drawn largely on the corresponding article of the Vienna Convention on Diplomatic Relations (article 31), the Drafting Committee had borne in mind that the Commission favoured a limited conception of the special mission, immunity from jurisdiction being granted only to the representatives of the sending State on the special mission and the members of its diplomatic staff.

5. Mr. NAGENDRA SINGH said that article 26 was very close to the corresponding provision of the Vienna Convention on Diplomatic Relations; the Commission had already approved the only addition to that article.

6. Mr. EUSTATHIADES asked whether, when restricting immunity from jurisdiction to the representatives of the sending State and the members of the diplomatic staff, the Drafting Committee had taken into consideration article 6 of the draft, on the composition of the special mission, which provided that a special mission might consist of a head and one or more representatives—who might be numerous.

7. Mr. AGO replied that the number of representatives obviously depended on the size of the special mission, but there were not usually more than two or three of

them in addition to the diplomatic staff. The administrative and technical staff was subsidiary.

8. The CHAIRMAN, speaking as a member of the Commission, asked if he was right in assuming that the members of the diplomatic staff referred to in paragraph 1 were to be treated on an equal footing with the “members of the diplomatic staff” who were defined in article 1(d) of the Vienna Convention as “the members of the staff of the mission having diplomatic rank”. That would mean that if the sending State wished to provide immunity from jurisdiction for an eminent scientist on the special mission, it would presumably have to give him diplomatic rank or appoint him as a representative.

9. Mr. BARTOŠ, Special Rapporteur, replied that such persons did not have diplomatic rank, but were assimilated to representatives of the sending State. That was, moreover, what was provided in section 16 of the Convention on the Privileges and Immunities of the United Nations.²

10. The CHAIRMAN, speaking as a member of the Commission, said he thought that the English text of the definition he had cited might be more equivocal than the French. In any case, the sending State could give persons it wished to enjoy immunity the rank or character of diplomats.

11. Mr. AGO said that when an eminent scientist was a member of a special mission there were three possibilities: first, the scientist could be a member of the special mission’s technical or administrative staff; second, he could be appointed by the sending State as its representative or head of the special mission; third, he could be given diplomatic rank for the purposes of the mission.

12. Mr. BARTOŠ, Special Rapporteur, said that France did not give any diplomatic rank to commercial attachés, but put them on the diplomatic list, contrary to the practice of the United States and the United Kingdom.

13. The CHAIRMAN suggested that article 26 should be approved in principle.

*It was so agreed.*³

ARTICLE 27 (Waiver of immunity) [41]⁴

14. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for article 27:

“1. The sending State may waive the immunity from jurisdiction of its representatives on the special mission and of the members of its diplomatic staff.

“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

² United Nations, *Treaty Series*, vol. 1, p. 16.

³ For adoption of article 26, see 936th meeting, para. 22.

⁴ For earlier discussion, see 918th meeting, paras. 3-47.

to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

"[5. The sending State shall waive the immunity of persons referred to in paragraph 1 of this article in all cases where it considers that such immunity would prevent justice from being done and where it can be waived without prejudice to the purpose for which it is granted.]"

15. Article 27 was closely linked with article 26 and was based on the corresponding article of the Vienna Convention on Diplomatic Relations (article 32). In drafting paragraph 5, the Drafting Committee had tried to formulate a kind of recommendation, which contained nothing in the nature of an obligation. For it would be unthinkable to have one article granting an immunity to a State and another obliging it to waive the immunity, without leaving it free to appraise the facts. Thus paragraph 5 had, in fact, been included only as a matter of form.

16. If the Commission decided to make a recommendation on waiver of immunity in certain specific cases, it should appear in the commentary, not in the text of the article.

17. Mr. BARTOŠ, Special Rapporteur, observed that Mr. Ago's opinion on paragraph 5 reflected that of all the members of the Drafting Committee. In that paragraph the Committee had reproduced certain phrases from section 14 of the Convention on the Privileges and Immunities of the United Nations, although it recognized that very few States had so far complied with the General Assembly's recommendation on the subject.

18. Mr. YASSEEN said he recognized that article 27, paragraph 1, specifying that it was the State, not the individual, that could waive immunity from jurisdiction, was useful and fully justified. As to paragraph 5, the idea which it expressed was correct, but any commentary on paragraph 1 would lead to the same conclusion; thus paragraph 5 introduced nothing new and it could be deleted.

19. Mr. USHAKOV said he thought that paragraphs 1 and 5 duplicated each other, but he would not oppose the retention of paragraph 5 if the Commission decided to retain it.

20. Mr. CASTRÉN said that after much hesitation, he had come to regard paragraph 5 as very useful, as its terms were much stricter than those of paragraph 1. The provision would no doubt have little effect in practice, but it must be presumed that States acted in good faith and would, if the need arose, comply with the obligation laid down. The Commission should therefore retain paragraph 5, if only to show the future conference that it had tackled the problem.

21. Mr. EUSTATHIADES observed that paragraph 5 laid down an obligation to waive immunity when it would prevent justice from being done and could be waived without prejudice to the purpose for which it was granted, whereas paragraph 1 authorized the sending State to waive immunity for any reason. It might, there-

fore, be asked whether reasons other than those set out in paragraph 5 could justify a waiver. The article was not sufficiently clear on that point.

22. Mr. TAMMES said he welcomed paragraph 5 because it was a further slight concession to the functional principle set out in article 17. He would like to know, however, whether that paragraph applied to article 26, paragraph 3, and whether it was proposed to extend it to inviolability. In the latter connexion, it should be borne in mind that article 45 of the Vienna Convention on Consular Relations provided that the sending State might waive any of the privileges and immunities provided for in articles 41, 43 and 44 of that Convention, and article 41 related to inviolability.

23. Mr. AGO said that article 26, paragraph 3, on giving evidence as a witness, related to a situation that seldom arose in practice.

24. The problem of inviolability was a more serious one. It seemed amply sufficient to be able to waive immunity from jurisdiction, and it would really be going too far to provide for a waiver of inviolability, the importance of which could not be overrated.

25. Mr. TAMMES said that a waiver of inviolability was relevant to the phrase in paragraph 5: "in all cases where it considers that such immunity would prevent justice from being done".

26. Mr. KEARNEY endorsed Mr. Tammes's view. Although the decision whether or not to waive immunity rested exclusively with the sending State, paragraph 5 had the effect of at least a moral obligation to waive immunity if the course of justice would be promoted by doing so. He believed, however, that the provision was more valuable in connexion with civil jurisdiction than with criminal jurisdiction, for although it was basically desirable to punish criminals, the consequences of failure to punish them were borne by the State, whereas such civil offences as failure to pay debts affected private persons. It would therefore be wise to stress the civil aspect of a waiver of immunity.

27. Mr. AGO, replying to Mr. Tammes, observed that although article 45 of the Vienna Convention on Consular Relations did make it possible to waive personal inviolability and exemption from the obligation to give evidence, it did not place the sending State under any obligation to waive immunity of any kind. On the other hand, as paragraph 5 of the article under discussion purported to state an obligation, if the provision were extended to personal inviolability and exemption from the duty to give evidence, a special mission would be in a position inferior to that of a consular post, which would be abnormal. In any case, it would be a delusion to believe that paragraph 5 really stated an obligation; as the sending State was given discretion to decide whether to waive immunity or not, the clause was, in fact, purely optional.

28. Mr. YASSEEN endorsed Mr. Ago's last remark. The probable effect of paragraph 5 was so tenuous that the idea expressed in it was not worth putting into a legal provision.

29. The CHAIRMAN, speaking as a member of the Commission, said that an action had been brought against him in his capacity as chairman of the European Commission of Human Rights. The question of immunity had immediately been raised, in accordance with the European Agreement on Privileges and Immunities, which contained provisions similar to those of the United Nations Convention and other instruments on the privileges and immunities of international officials. The Secretary-General of the Council of Europe had been asked whether he wished to waive immunity in that case, and it had been stated in the proceedings before the court that he did not. It was therefore mistaken to think that paragraph 5 had no legal effect; unlike paragraph 1, it laid a positive obligation on the sending State to consider whether immunity should be waived in each individual case.

30. The Drafting Committee's text went beyond the recommendation in the resolution on consideration of civil claims adopted by the Vienna Conference on Diplomatic Intercourse and Immunities,⁵ which was limited to civil claims. He agreed with Mr. Kearney that the provision would be more generally acceptable if it was so limited.

31. Mr. YASSEEN said he would not be opposed to the provision in paragraph 5 or some similar provision appearing in a resolution of the plenipotentiary conference; but it should certainly not be a paragraph in an article of the convention.

32. The CHAIRMAN reminded members that at the 918th meeting⁶ Mr. Jiménez de Aréchaga had drawn attention to the recommendation in the resolution of the Vienna Conference, and had proposed that a similar provision should be inserted in the draft convention itself. The Commission now had to decide whether it should include such a clause or should simply recommend the adoption of a resolution similar to that of the Vienna Conference.

33. Mr. BARTOŠ, Special Rapporteur, said that he had submitted to the Drafting Committee, together with the text of paragraph 5, a draft resolution modelled on resolution II of the 1961 Vienna Conference. The Drafting Committee had preferred paragraph 5, despite certain reservations, but if the Commission deleted that paragraph, the Drafting Committee could reconsider the draft resolution.

34. Mr. NAGENDRA SINGH said that the use of the word "may" in paragraph 1 and of the word "shall" in paragraph 5 led him to agree with Mr. Yasseen that the sending State would in any case do what it thought best in the circumstances. Nevertheless, he appreciated the developmental aspect of paragraph 5 and considered that it should be retained in article 27, rather than be relegated to a resolution.

35. Mr. CASTAÑEDA said that he too would prefer paragraph 5 to be retained. It was certainly not a very

common practice, but it was not so very unusual either, to incorporate in a treaty a provision establishing an obligation, the fulfilment of which was left to the discretion of the party on which it devolved. A provision of that kind constituted a guide and, like all the other provisions, should be interpreted in good faith. As the Chairman had observed, paragraph 5 added something to article 27, but it would certainly be more acceptable to States if it was limited to immunity from civil jurisdiction. Only paragraph 1 should apply to criminal jurisdiction.

36. Mr. USTOR said he thought that the corresponding provisions of the Vienna Conventions could be interpreted to mean that the sending State could waive not only immunity from jurisdiction, but also other immunities, such as tax exemption.

37. In his opinion, paragraph 5 did not impose a legal obligation on the same level as other provisions of the draft. A possible solution might be to place the provision in the preamble; the draft preamble submitted by the Special Rapporteur (A/CN.4/194/Add.2) already contained a paragraph on privileges and immunities, which might be amplified to embody the idea set out in paragraph 5.

38. Mr. AGO said that the Commission had a choice between two rather different systems. On the one hand, the system of diplomatic relations included, on the point under discussion, a recommendation embodied in a resolution and limited to civil actions brought by private persons. On the other hand, the Convention on the Privileges and Immunities of the United Nations dealt with the matter in an article and laid down the duty to waive immunity not only when that could be done without prejudice to the performance of functions, but also when a State was convinced that immunity would impede the course of justice. The last condition, reproduced in paragraph 5 of the article under discussion, was not included in the resolution of the Vienna Conference; but on the other hand the resolution recommended that, if the State did not waive immunity, it should contribute in some other way to bringing about a settlement of the claims. The Commission must therefore decide which of the two systems was the more appropriate for special missions.

39. The CHAIRMAN pointed out that the Commission had to choose between two inconsistencies. If it decided to include paragraph 5 in article 27, the result would be different treatment for persons holding diplomatic rank in special missions and members of the diplomatic staff referred to in article 1(d) of the Vienna Convention on Diplomatic Relations; if it deleted paragraph 5, that would have the effect of differentiating between the treatment of members of special missions and that of persons attending international conferences.

40. Mr. EUSTATHIADES said that although paragraph 5 was worded in the form of an obligation, what it really established was an option. It certainly went a little further than paragraph 1, in that it invited the sending State to exercise that option, or at least seriously to consider any reasons for not doing so. But, in the last

⁵ United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. II, p. 90.

⁶ Para. 10.

resort, the sending State was left full discretion to decide whether to waive immunity.

41. In order to help the Commission out of the difficulty, he suggested that paragraphs 1 and 5 might be combined: the words "in particular where it considers" would be added at the end of paragraph 1 as it stood and followed by that part of paragraph 5 which came after the word "considers" in the text proposed by the Drafting Committee. That would strengthen paragraph 1, without dissociating two things which were not in fact separate.

42. Mr. AGO stressed that despite its apparently more attenuated formulation, the recommendation in resolution II of the Vienna Conference was in reality more effective for the protection of private interests which might be injured, because it recommended States not only to waive immunity, but also to use their best endeavours to bring about a just settlement of claims—which might be much more important.

43. There was yet another reason why the Commission should not depart from the system adopted by the Vienna Conference: a special mission might include both diplomats coming from the sending State and diplomats serving on the permanent mission of the sending State in the receiving State; under the terms of the draft, the latter would retain their status as members of the permanent mission. It would be strange if the two classes of person were given different treatment.

44. Mr. BARTOŠ, Special Rapporteur, said that section 14 of the Convention on the Privileges and Immunities of the United Nations, which had been the model for paragraph 5, covered all privileges and immunities and was intended to facilitate international relations. On the other hand, resolution II of the Vienna Conference, on which he had modelled the draft resolution he had prepared for the Drafting Committee, was confined to immunity from civil jurisdiction, because the Vienna Conference had been mainly concerned to protect the interests of private persons. In his opinion, the Commission had better not depart from the system adopted by the Vienna Conference.

45. Moreover, paragraph 5 was not only bad law, it was also inconsistent with paragraph 1; for immunities were granted to the State, not to persons, and it might be to the advantage of the State either to waive or not to waive immunities.

46. Furthermore, if the Commission decided to restrict paragraph 5 to immunity from civil jurisdiction, it would arrive at a system which was neither that of the Vienna Conference nor that of the Convention on the Privileges and Immunities of the United Nations.

47. He therefore proposed that the Commission should delete paragraph 5 and ask the Drafting Committee to re-examine the possibility of preparing a draft resolution for the future plenipotentiary conference.

48. The CHAIRMAN pointed out that the Commission had not always followed the example of the Vienna Conventions. Indeed, article 26 which it had just approved contained a provision which did not appear in those instruments.

49. Mr. USTOR said that paragraph 5 referred only to representatives on the special mission and the members of its diplomatic staff, not to administrative and technical staff or members of the family. If the paragraph was retained in the article, similar paragraphs would have to be added to articles 32 and 35, or a separate reference would have to be made to all the persons to whom a waiver of immunity applied.

50. Mr. CASTRÉN said he saw no inconsistency between paragraphs 1 and 5; under both provisions it was the State which waived or did not waive immunity. Mr. Eustathiades's proposal, however, would change the article's meaning entirely, because it would eliminate all obligation and leave only an option.

51. As to preparing a draft resolution for the future conference, he did not think that was the Commission's task.

52. He proposed that paragraph 5 be retained—the conference could always delete it—and requested that the matter be put to the vote.

53. The CHAIRMAN put the retention of paragraph 5 to the vote.

The retention of paragraph 5 in article 27 was approved by 8 votes to 5, with 2 abstentions.

54. Mr. CASTAÑEDA suggested that the Commission should also ask the Drafting Committee to include in paragraph 5 the idea expressed at the end of the operative paragraph of resolution II of the Vienna Conference, namely, that the sending State should use its best endeavours to bring about a just settlement.

55. Mr. AGO said he thought the best solution would be to re-cast paragraph 5 to include all the elements in the operative paragraph of resolution II of the Vienna Conference. In that form the provision would be much more effective. The Commission might perhaps prefer to make a separate article of it, when it had considered all the possible kinds of waiver.

56. The CHAIRMAN suggested that article 27 should be approved in principle, and that the Drafting Committee should be asked to submit a new version of paragraph 5, limited to civil claims.

It was so agreed.⁷

ARTICLE 28 (Exemption from social security legislation) [32]⁸

57. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 28:

"1. Subject to the provisions of paragraph 3 of this article, representatives of the sending State on the special mission and the members of its diplomatic staff shall with respect to services rendered for the

⁷ For resumption of discussion and adoption of paragraphs 1-4 of article 27, see 936th meeting, paras. 23, 48, 49 and 51. The Drafting Committee proposed a new version of paragraph 5 as article 27 *bis* (Settlement of civil claims), which was discussed at the 936th meeting (paras. 24-48, 50 and 52) and adopted.

⁸ For earlier discussion, see 918th meeting, paras. 48-81.

sending State be exempt from social security provisions which may be in force in the receiving State.

"2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of a representative of the sending State on the special mission or of a member of its diplomatic staff, on condition:

"(a) That such employed persons are not nationals of, or permanently resident in, the receiving State; and

"(b) That they are covered by the social security provisions which may be in force in the sending State or a third State.

"3. Representatives of the sending State on the special mission and members of its diplomatic staff who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

"4. The exemption provided for in paragraphs 1 and 2 of this article does not exclude voluntary participation in the social security system of the receiving State where such participation is permitted by that State.

"5. The provisions of the present article do not affect bilateral and multilateral agreements on social security which have been previously concluded and do not preclude the subsequent conclusion of such agreements."

58. Mr. USTOR questioned the need for paragraph 5, since its subject-matter would be covered by the proposed general article "Y" on the relationship between the draft articles and other international agreements (A/CN.4/194/Add.2).

59. Mr. AGO said that the question was too wide to be fully covered by article "Y".

60. The CHAIRMAN said he was inclined to agree with Mr. Ago. The provisions of the proposed article "Y" were in general terms; the agreements mentioned in paragraph 5 of article 28, however, were of a rather special character and it was perhaps desirable to retain that limited measure of duplication, as had been done in the 1961 Vienna Convention.

61. Mr. USTOR withdrew his objection.

62. The CHAIRMAN said that, if there were no further comments, he would assume that the Commission agreed to approve article 28 in principle.

*It was so agreed.*⁹

ARTICLE 29 (Exemption from dues and taxes) [33]¹⁰

63. Mr. AGO, Acting Chairman of the Drafting Committee, explained that the Drafting Committee had proposed two alternatives for article 29. In order to meet the Commission's wishes, it had first prepared a very short version which constituted the first alternative:

First alternative

"The representatives of the sending State on the special mission and the members of its diplomatic staff shall be exempt from all dues and taxes, national, regional or municipal, in the receiving State on the salaries and other emoluments attaching to their functions with the special mission."

64. After considering the matter, the Drafting Committee had come to the conclusion that that text was inadequate and might lead to rather absurd interpretations. It had therefore decided to submit a second alternative which followed article 34 of the Vienna Convention on Diplomatic Relations:

Second alternative

"The representatives of the sending State on the special mission and the members of its diplomatic staff shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

"(a) Indirect taxes of a kind which are normally incorporated in the price of goods or services;

"(b) Dues and taxes on private immovable property situated in the territory of the receiving State, unless they hold it on behalf of the sending State for the purposes of the mission;

"(c) Estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraphs 2 and 3 of article 38;

"(d) Dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;

"(e) Charges levied for specific services rendered;

"(f) Registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 23."

65. Mr. BARTOŠ, Special Rapporteur, said that he preferred the first alternative, although he appreciated the weight of the arguments in favour of the second.

66. Mr. KEARNEY said that it was not easy to choose between the two alternatives. On the whole, he preferred the first, because the second would involve additional labour for the officials of the receiving State, who would have to work out the various exemptions for the large number of persons forming the staff of special missions.

67. Mr. USHAKOV said he did not see why special missions, which were temporary, should be placed in a more difficult and delicate position than permanent diplomatic missions. It was precisely because they were usually of short duration that special missions should have the same privileges as permanent diplomatic missions. He therefore supported the Drafting Committee's second alternative.

68. Mr. AGO explained that the text of the second alternative was long because it enumerated the cases in which exemption was not granted. In all cases not specified, members of special missions were exempt from all dues and taxes, personal or real, national, regional or municipal.

⁹ For adoption of article 28, see 936th meeting, para. 53.

¹⁰ For earlier discussion, see 919th meeting, paras. 1-61.

69. The CHAIRMAN, speaking as a member of the Commission, supported the views put forward by Mr. Ago and Mr. Ushakov. The first, or short, version was not absolutely safe. For example, if a member of the staff of a special mission died while in the receiving State, it would not be clear whether his heirs would be exempted from estate duty.

70. There was no reason to impose the risk of being required to pay taxes upon members of special missions who were present in the receiving State in the interests of the two States concerned; those persons should, on the contrary, be given every protection.

71. Mr. TABIBI said he also favoured the second alternative. The first would not protect the receiving State from possible abuses, a matter which was of great importance to the smaller States. Much better protection was afforded by the provisions of the second alternative, which gave detailed guidance on tax exemption.

72. Mr. NAGENDRA SINGH said he supported the second alternative, which exhausted all the possibilities and closely followed the corresponding provision of the 1961 Vienna Convention.

73. Mr. KEARNEY withdrew his objection to the second alternative, in view of the strong support that text had received.

74. The CHAIRMAN said that, since the Drafting Committee had recommended the adoption of the second alternative, he would put that text to the vote first.

*The second alternative for article 29 was adopted by 14 votes to none, with 1 abstention.*¹¹

ARTICLE 30 (Exemption from personal services and contributions) [34]¹²

75. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 30:

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

76. The article corresponded to article 35 of the Vienna Convention and raised no problem.

77. The CHAIRMAN suggested that the Commission approve article 30 in principle.

*It was so agreed.*¹³

¹¹ For resumption of discussion and adoption of an amended text of article 29, see 936th meeting, paras. 54-57.

¹² For earlier discussion, see 919th meeting, paras. 62-78.

¹³ For adoption of article 30, see 936th meeting, para. 58.

¹⁴ For earlier discussion, see 919th meeting, paras. 79-89, and 920th meeting, paras. 1-53.

ARTICLE 31 (Exemption from customs duties and inspection) [35]¹⁴

78. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 31:

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

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

“(b) Articles for the personal use of the representatives of the sending State on the special mission and the members of its diplomatic staff or of the members of their family who accompany them.

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

79. The article reproduced article 36 of the Vienna Convention on Diplomatic Relations, with a few changes making it more restrictive. For instance, in the first sentence, the words “in accordance with” had been replaced by “within the limits of”. Again, in paragraph 1(b), the words “members of his family forming part of his household” had been replaced by “the members of their family who accompany them”. The words “including articles intended for his establishment” had been omitted, because special missions were temporary.

80. Mr. CASTRÉN said he was not sure whether the words “or of the members of their family who accompany them” in paragraph 1(b) were necessary, as there was a separate article—article 35—dealing with members of the family of members of special missions.

81. Mr. BARTOŠ, Special Rapporteur, pointed out that paragraph 1(b) concerned articles for the personal use of members of the family, and that matter was not covered by article 35.

82. The CHAIRMAN suggested that the Commission approve article 31 in principle.

*It was so agreed.*¹⁵

83. The CHAIRMAN invited the Commission to take a decision on articles 6, 16, 15 and 39.

ARTICLE 6 (Composition of the special mission [9]¹⁶

84. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following new text for paragraph 2 of article 6:

¹⁵ For resumption of discussion and adoption of article 31, see 936th meeting, paras. 59-72.

¹⁶ For earlier discussion, see 931st meeting, paras. 124-139.

"2. Members of a permanent diplomatic mission accredited to the receiving State may be included in the composition of the special mission while retaining their privileges and immunities as members of the diplomatic mission."

85. The Drafting Committee had considered that the word "functions" in the phrase "while retaining their functions in the permanent diplomatic mission" used in the previous text was liable to be misunderstood and had replaced it by the words "privileges and immunities."

86. The CHAIRMAN invited the Commission to vote on article 6 with the amended wording for paragraph 2.

Article 6, as amended, was adopted unanimously.

ARTICLE 16 (Activities of special missions in the territory of a third State) [18]¹⁷

87. The CHAIRMAN invited the Commission to resume consideration of article 16. The Drafting Committee proposed that the words "in question" in paragraph 2 should be deleted.

88. Mr. EUSTATHIADES said he supported the Drafting Committee's proposal.

89. The CHAIRMAN put article 16 to the vote with the change proposed by the Drafting Committee.

Article 16, as amended, was adopted unanimously.

ARTICLE 15 (Right of special missions to use the flag and emblem of the sending State) [19]¹⁸

90. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 15:

"1. A special mission shall have the right to use the flag and emblem of the sending State on the premises of the mission, and on its means of transport when used on official business.

"2. In the exercise of the right accorded by this article, regard shall be had to the laws, regulations and usages of the receiving State."

91. The CHAIRMAN reminded the Commission that during the previous discussion on article 15, it had been proposed that no article on the right to use the flag and emblem of the sending State should be included in the draft. However, many members of the Commission had thought that the omission of such a provision, contrasting with its inclusion in both Vienna Conventions, could lead to misunderstanding, and the Commission had therefore requested the Drafting Committee to prepare a draft of article 15. The text adopted by the Drafting Committee on second reading was based on the corresponding provision of the Vienna Convention on Consular Relations (article 29).

92. Mr. AGO, Acting Chairman of the Drafting Committee, said that the effect of paragraph 2 was to restrict the exercise of the right to use the flag and emblem of the sending State.

93. Mr. CASTAÑEDA said he would prefer the exercise of the right to display the flag or emblem of the sending State on the premises occupied by the mission and on its means of transport to be entirely confined to cases in which circumstances or the task of the mission required it.

94. Mr. YASSEEN said he fully approved the Drafting Committee's text. He noted that the exercise of the right granted by article 15 was subject to the laws, regulations and usages of the receiving State.

95. Mr. EUSTATHIADES thought that article 15 presented no danger, since the effect of paragraph 2 was to withdraw from the mission the right granted to it by paragraph 1.

96. The CHAIRMAN said that the provisions of paragraph 2 had been taken from the corresponding article of the 1963 Vienna Convention; although they weakened to some extent the right stated in paragraph 1, they did not withdraw it altogether.

97. Mr. BARTOŠ, Special Rapporteur, confirmed that paragraph 2 reproduced word for word the text of article 29, paragraph 3 of the Vienna Convention on Consular Relations. He had himself submitted to the Drafting Committee Mr. Castañeda's suggestion that article 15 should include the words "if the circumstances or the task of the mission require it", but the Drafting Committee had considered that the words "when used on official business" were sufficient. He would accept whatever view the Commission took.

98. Mr. YASSEEN emphasized that the provisions of paragraph 2 were not tantamount to a withdrawal of the right granted by paragraph 1: they simply stipulated that the right could be exercised only in certain circumstances. In his view, the wording proposed by the Drafting Committee was most satisfactory.

99. Mr. AGO said that the receiving State could lay down certain conditions for the exercise of the right, but could not withdraw it from the mission. If the receiving State enacted a law prohibiting a special mission from using the flag or emblem of the sending State, that law would infringe the convention.

100. In reply to Mr. Castañeda's remarks, he pointed out that the words "if the circumstances or the task of the mission require it" would unduly restrict the right to use the flag and emblem of the sending State; for the task of a mission certainly did not make it necessary to display a flag on the premises occupied by the mission or on its means of transport.

101. Mr. CASTAÑEDA said he would not press his suggestion to a vote.

102. The CHAIRMAN invited the Commission to vote on the proposed text of article 15.

Article 15 was adopted by 13 votes to none, with 1 abstention.

¹⁷ For earlier discussion, see 930th meeting, paras. 106-112.

¹⁸ For earlier discussion, see 929th meeting, paras. 51-61.

¹⁹ For earlier discussion, see 931st meeting, paras. 7-18.

ARTICLE 39 (Transit through the territory of a third State) [43]¹⁹

103. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee had revised paragraph 4 of article 39 to read:

“The third State shall be bound to comply with the obligations with respect to the persons mentioned in the foregoing three paragraphs only if it has been informed in advance, either in the visa application or by notification, of the transit of those persons as members of the special mission, and has raised no objection to it.”

104. The new wording met the objection made to the former text of paragraph 4 of article 39, that it only mentioned the transit of the special mission as such and did not cover the case of transit by a member of the special mission.

105. Mr. EUSTATHIADES said he found the new text acceptable as it included the words “of those persons” which he had suggested earlier.

106. The CHAIRMAN put article 39 to the vote as amended.

Article 39, as amended, was adopted unanimously.

The meeting rose at 5.20 p.m.

934th MEETING

Thursday, 6 July 1967, at 10.10 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, 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]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

ARTICLE 32 (Administrative and technical staff) [36]¹

1. The CHAIRMAN invited the Acting Chairman of the Drafting Committee to introduce article 32.

2. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 32:

“Members of the administrative and technical staff of the special mission shall 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.”

3. The Commission had decided that the representatives in a special mission and members of its diplomatic staff should have diplomatic privileges similar to those provided for by the 1961 Vienna Convention on Diplomatic Relations.

4. Articles 32 to 34 related to other classes of staff of the special mission. Article 32 dealt with the privileges and immunities of members of the administrative and technical staff.

5. Mr. CASTRÉN observed that, as Mr. Nagendra Singh had already pointed out at the 920th meeting², article 32, by referring to articles 24-31, granted wider privileges and immunities in regard to exemption from customs duties and inspection than did article 37 of the Vienna Convention on Diplomatic Relations. In particular, that Convention did not provide that the baggage of administrative and technical staff should be exempt from inspection. It therefore seemed more correct to say “shall enjoy the privileges and immunities specified in articles 24 to 30”, or possibly “in articles 24 to 30 and in article 31, paragraph 1”.

6. The CHAIRMAN said that article 37, paragraph 2 of the 1961 Vienna Convention gave members of the administrative and technical staff of a permanent diplomatic mission a privilege which was not granted by article 32 to members of such staff of special missions: article 37, paragraph 2, of the Vienna Convention provided that members of the administrative and technical staff “shall also enjoy the privileges specified in article 36, paragraph 1, in respect of articles imported at the time of first installation”.

7. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee had examined the whole question and had come to the conclusion that, in view of the temporary character of special missions, the question of extending customs privileges in respect of first installation did not arise.

8. Mr. NAGENDRA SINGH said that it was true that article 32, as proposed by the Drafting Committee, gave the members of the administrative and technical staff of a special mission greater privileges than the corresponding article of the 1961 Vienna Convention. Article 32 provided that “Members of the administrative and technical staff of the special mission shall enjoy the privileges and immunities specified in articles 24 to 31...”, and those articles corresponded to articles 29 to 36 of the 1961 Vienna Convention. But since article 37, paragraph 2, of the Vienna Convention only referred to articles 29 to 35, it granted less extensive privileges than the article under discussion.

9. Unless the words “specified in articles 24 to 31” were amended to read “specified in articles 24 to 30”,

¹ For earlier discussion, see 920th meeting, paras. 54-77.

² Para. 8.