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Summary record of the 936th meeting

Topic:
Special missions

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ARTICLE 24 (Personal inviolability) [29]¹²

56. The CHAIRMAN said that no changes were proposed in the text of article 24 which the Commission had already approved in principle.

Article 24 was adopted unanimously.

ARTICLE 25 (Inviolability of the private accommodation) [30]¹³

57. The CHAIRMAN invited the Commission to consider article 25. During the previous discussion he had suggested that in the English text of paragraph 2 the words "subject to the proviso in article 26, paragraph 4", should be replaced by "except as provided in article 26, paragraph 4", to bring the wording into line with the corresponding provision of the 1961 Vienna Convention.

Article 25, as thus amended, was adopted unanimously.

58. Mr. KEARNEY pointed out that the provisions of article 25 were governed by those of article 19, which dealt with the inviolability of the premises of the special mission, and which the Commission had not yet finally adopted. When the Commission came to vote on article 19, he intended to propose¹⁴ that the text be amended so as to bring it into line with that of the corresponding provision of the 1963 Vienna Convention on Consular Relations. If the Commission amended article 19 in that manner, the operation of article 25 would be affected.

59. The CHAIRMAN said he had taken note of that remark, which did not affect the actual wording of article 25.

The meeting rose at 5.30 p.m.

¹³ For earlier discussion, see 931st meeting, paras. 59-63.

¹⁴ See 936th meeting, para. 12.

936th MEETING

Monday, 10 July 1967, at 3.15 p.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, 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 undertake a final examination of articles 12 to 14, 17 to 19, and 26 to 31 proposed by the Drafting Committee.

ARTICLE 12 (End of the functions of a special mission) [20]¹

2. The CHAIRMAN put article 12 to the vote.

Article 12 was adopted unanimously.

ARTICLE 13 (Seat of the special mission) [17]²

3. The CHAIRMAN said that the word "upon" should be deleted from the English text of paragraph 1 of article 13.

4. Mr. EUSTATHIADES said it was his understanding that the Commission had decided to replace the word "localité" in paragraph 2 of the French text by the word "ville".

5. Mr. USHAKOV explained that the Drafting Committee had preferred to keep the word "localité", which was used in article 12 of the Vienna Convention on Diplomatic Relations.

6. The CHAIRMAN put to the vote article 13, without amendment, except for the deletion of the word "upon" in the English text of paragraph 1.

Article 13 was adopted unanimously.

ARTICLE 14 (Nationality of the members of the special mission) [10]³

7. The CHAIRMAN drew attention to the fact that the opening word in paragraph 2 should read: "Nationals".

Article 14 was adopted by 14 votes to none, with 1 abstention.

8. Mr. EUSTATHIADES said that he had abstained because of the retention of the words "which may be withdrawn at any time" in paragraph 2. He had explained his views on that point at the 907th meeting.⁴

ARTICLE 17 (General facilities) [22]⁵

9. The CHAIRMAN put article 17 to the vote.

Article 17 was adopted unanimously.

ARTICLE 18 (Accommodation of the special mission and its members) [23]⁶

10. The CHAIRMAN said that when the Commission had approved article 18 in principle, it had been decided that the words "in obtaining the necessary premises and suitable accommodation" in the English text should be amended to read: "in procuring the necessary premises and obtaining suitable accommodation".

Article 18, with that amendment to the English text, was adopted unanimously.

¹ For earlier discussion, see 931st meeting, paras. 64-67.

² For earlier discussion, see 931st meeting, paras. 68-77.

³ For earlier discussion, see 931st meeting, paras. 78-84.

⁴ Para. 67.

⁵ For earlier discussion, see 930th meeting, paras. 113-115.

⁶ For earlier discussion, see 930th meeting, paras. 116-121.

ARTICLE 19 (Inviolability of the premises) [25]⁷

11. The CHAIRMAN recalled that, during the earlier discussion of article 19, some members had favoured the insertion of a provision which would cover emergency situations by creating a presumption of consent to enter the premises of the special mission in such situations.

12. Mr. KEARNEY proposed that the following sentence should be added at the end of paragraph 1: "Such consent may be assumed in case of fire or other disaster requiring prompt protective action."

13. The 1963 Vienna Conference had inserted a similar phrase in the corresponding provision of the Convention on Consular Relations⁸ in order to fill a gap which had been left in the 1961 Vienna Convention on Diplomatic Relations. As a result of that gap, the situation regarding remedial action in the event of an emergency was not clear so far as permanent diplomatic missions were concerned. It would be a retrograde step not to incorporate in the present article 19 the improvement introduced in 1963.

14. Mr. EUSTATHIADES supported Mr. Kearney's proposal. If it were rejected, he would request that the idea it expressed should be mentioned in the commentary.

15. Mr. USHAKOV said that, as article 19 was based on article 22 of the Vienna Convention on Diplomatic Relations, in which there was no reference to assumed consent, the inclusion of such a provision in article 19 would be contrary to the purpose of the article.

16. Mr. AGO, Acting Chairman of the Drafting Committee, said that the point had been considered in the Drafting Committee. It had been because of the analogy with permanent diplomatic missions that the Drafting Committee had not proposed the inclusion of that provision in article 19 and had preferred to re-submit the question to the Commission. Most of the members of the Drafting Committee had been of the opinion that, in practice, consent was in fact assumed in cases of *force majeure*. An express provision to that effect was therefore unnecessary and might indeed be rather dangerous.

17. The CHAIRMAN put to the vote Mr. Kearney's proposal for the insertion of the following sentence in paragraph 1: "Such consent may be assumed in case of fire or other disaster requiring prompt protective action".

The proposal was adopted by 6 votes to 5, with 4 abstentions.

18. Mr. TABIBI expressed regret that the Commission should have adopted by so narrow a majority a provision which might lend itself to abuse. He proposed that a passage should be inserted in the commentary explaining that there had been a division of opinion in the Commission regarding the insertion of that additional sentence in paragraph 1.

19. Mr. AGO said that, although he had no objection to that suggestion, it was desirable for the commentary not to give the impression that there had been a serious division of opinion in the Commission on the point. In point of

fact, some members would simply have liked to include such a provision in the article, whereas others had been of the opinion that the idea it expressed was self-evident. He himself had abstained in the vote because he regarded both solutions as equally satisfactory.

20. Mr. BARTOŠ, Special Rapporteur, said that many members of the Commission had raised the question, both at the current session and at previous sessions, and had based their views on arguments of substance which showed that the question was not a purely technical one. An objective explanation of how the Commission had reached its decision might be given in the commentary in such a way as to avoid suggesting that it was a controversial matter.

21. The CHAIRMAN invited the Commission to vote on article 19 as a whole, as amended by Mr. Kearney.

Article 19 as a whole, as amended, was adopted by 11 votes to 3, with 1 abstention.

ARTICLE 26 (Immunity from jurisdiction) [31]⁹

22. The CHAIRMAN said that, in paragraph 1 of the English text of article 26, the word "on" in the expression "the representatives of the sending State on the special mission" should be replaced by "in"; the same change would also be made in article 27 and wherever else that expression appeared.

*Article 26 was adopted unanimously.*¹⁰

ARTICLE 27 (Waiver of immunity) [41]¹¹

23. The CHAIRMAN recalled that the Commission's approval of article 27 in principle at the 933rd meeting had been limited to the first four paragraphs. It had been decided that the subject-matter of paragraph 5 should be transferred to a separate article (article 27 *bis*), the text of which would be modelled on that of Resolution II of the 1961 Vienna Conference.

*Article 27, as amended, was adopted unanimously.*¹²

ARTICLE 27 *bis* (Settlement of civil claims) (New article) [42]

24. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed that article 27 *bis* should read:

"Settlement of civil claims"

"The sending State shall waive the immunity of one of the members of the special mission 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, and when immunity is not waived, the sending State shall use its best endeavours to bring about a just settlement of the claims".

25. The article had been provisionally numbered 27 *bis* but its final place in the draft would be decided when the

⁷ For earlier discussion, see 931st meeting, paras. 2-6.

⁸ United Nations Conference on Consular Relations, *Officia Records*, vol. II, p. 180, article 31, para. 2.

⁹ For earlier discussion, see 933rd meeting, paras. 2-13.

¹⁰ See 938th meeting, paras. 66 and 69.

¹¹ For earlier discussion, see 933rd meeting, paras. 14-56.

¹² For amendment to the text of article 27, see below, paras. 49 and 51.

Commission had adopted all the articles dealing with the immunities of all the members of the special mission; the obligation laid down in article 27 *bis* related not only to the immunity dealt with in article 27, which was concerned with representatives of the sending State in the special mission and the members of its diplomatic staff, but to all the immunities enjoyed by the special mission.

26. Mr. BARTOŠ, Special Rapporteur, said that he took the contrary view: the waiver of civil immunity could refer only to the immunity of representatives of the sending State and of the members of the diplomatic staff. The immunity of members of the special mission belonging to other categories was restricted to acts performed in the course of their duties and could not be affected by the new provision in article 27 *bis*.

27. Mr. REUTER said that the word “*obtenir*” in the French text of the article did not correspond exactly to the English words “bring about”. It might be better to say “*aboutir à un règlement équitable du litige*”.

28. Mr. AGO pointed out that article 27 *bis* reproduced almost word for word the terms of Resolution II of the Vienna Conference.¹³ The question was therefore whether the Commission wished to depart from a translation which had already been adopted officially.

29. Mr. BARTOŠ, Special Rapporteur, supported Mr. Reuter’s suggestion. The article was based on a resolution of the Conference, not on an article of the Convention, and the Commission therefore had greater liberty to change the wording.

30. Mr. CASTRÉN said that the expression “of persons in the receiving State” was not very clear. Did it refer to persons residing in the receiving State, to persons domiciled there permanently, or to persons who were nationals of that State?

31. Mr. AGO urged the Commission not to clarify the meaning of the expression more precisely, in order to prevent any possibility of discrimination.

32. The CHAIRMAN explained that the Drafting Committee’s intention had been that the text of the article should be applicable to any person bringing a claim in the receiving State.

33. Mr. USTOR said that, in his view, the text of article 27 *bis* would cover civil claims made in the receiving State by persons living outside that State.

34. Mr. REUTER said that the words “of persons” seemed to him to be superfluous, as civil claims could be brought only by natural or legal persons.

35. Mr. CASTRÉN proposed that the words should be deleted.

36. Mr. AGO said that he had no objection to their being deleted. He proposed that in the French text the words “*appliquera tous ses efforts à*” should be replaced by the words “*s’efforcera d’*”.

37. Mr. BARTOŠ, Special Rapporteur, said that there was some danger that article 27 *bis* might open the door to abuses, since it did not state clearly that the obligation to waive immunity related only to civil claims brought in connexion with events that had taken place in the territory of the receiving State.

38. Mr. JIMÉNEZ de ARÉCHAGA said he did not think that there was any possibility of abuse, because the sending State always had the option of not waiving the immunity.

39. The CHAIRMAN said that the receiving State would be very unlikely to exert any pressure for the waiver of immunity in respect of a claim which had not arisen in its territory.

40. Mr. EUSTATHIADES suggested that article 27 *bis* should be entitled “Waiver of immunity in civil proceedings and the just settlement of claims”. Such a title would form a logical continuation of the title of article 27 (Waiver of immunity).

41. Mr. CASTRÉN said that the new title proposed by Mr. Eustathiades was more accurate than the existing one, but was too long.

42. Mr. AGO said that he had already thought of inserting the word “just” before the word “settlement” as proposed by Mr. Eustathiades, but there was no need to do so in cases where immunity was waived and which became subject to normal proceedings.

43. Mr. USHAKOV said that there seemed to be no point in repeating the title of article 27 in article 27 *bis*.

44. Mr. YASSEEN said that, although he did not object to the substance of the article, he thought it would be better for its provisions to take the form of a recommendation by the conference rather than that of an article of the convention.

45. The CHAIRMAN recalled that the question had been discussed at the 933rd meeting and that the majority had favoured an article on the subject of the settlement of civil claims. If the Commission were now to decide against the inclusion of such an article, that decision would not rule out the possibility of a recommendation.

46. Mr. REUTER said that, in addition to supplementing paragraph 2(d) of article 26 (Immunity from jurisdiction), article 27 *bis* created what might be described as an obligation of honour, for it would be out of the question for the special mission to leave the territory of the receiving State without having first discharged all its responsibilities towards that State.

47. The CHAIRMAN put to the vote article 27 *bis* subject to the deletion of the words “of persons” and to the drafting changes to be made in the French text.

*Article 27 bis was adopted by 12 votes to none, with 4 abstentions.*¹⁴

¹³ See United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. II, p. 90.

¹⁴ For amendment to the text of article 27 *bis*, see below, paras. 50 and 52.

Amendment to articles 27 and 27 bis

48. The CHAIRMAN said that the Special Rapporteur had drawn his attention to the fact that articles 27 and 27 bis referred only to representatives of the sending State on the special mission and to the members of the diplomatic staff of the mission. It had been suggested that the gap should be filled by the addition of another article, but that seemed a rather clumsy solution.

49. Mr. AGO, Acting Chairman of the Drafting Committee, explained that paragraph 1 of article 27 as now worded did not relate to the administrative and technical staff, the service staff, the private staff or the members of the family, whereas the corresponding provision in article 32, paragraph 1, of the Vienna Convention on Diplomatic Relations, by referring to "persons enjoying immunity under article 37," included persons in all those categories. The same arrangement might therefore be adopted in article 27, in which case the French text of paragraph 1 would read "*L'Etat d'envoi peut renoncer à l'immunité de juridiction de ses représentants dans la mission spéciale, des membres du personnel diplomatique de celle-ci et des autres personnes qui bénéficient de l'immunité en vertu des articles 32 à 35*".

50. It would also be necessary to make a slight change in article 27 bis so as to include the members of the family. The French text of that article might read "*L'Etat d'envoi renoncera à l'immunité de l'une des personnes mentionnées au paragraphe 1 de l'article 27...*". The whole question of waiver of immunity would then be dealt with in those two articles only and there would be no need to revert to the matter.

51. The CHAIRMAN said that the English text of paragraph 1 of article 27 would now read as follows:

"The sending State may waive the immunity from jurisdiction of its representatives in the special mission, of the members of its diplomatic staff and of the persons enjoying immunity under articles 32 to 35."

The amendment was adopted unanimously.

52. The CHAIRMAN said that with the amendment proposed by Mr. Ago, the English text of the opening phrase of article 27 bis would now read: "The sending State shall waive the immunity of any of the persons mentioned in paragraph 1 of article 27 in respect of civil claims in the receiving State...".

The amendment was adopted unanimously.

ARTICLE 28 (Exemption from social security legislation) [32]¹⁵

53. The CHAIRMAN put article 28 to the vote.

Article 28 was adopted unanimously.

ARTICLE 29 (Exemption from dues and taxes) [33]¹⁶

54. The CHAIRMAN recalled that, at the 933rd meeting, the Commission had chosen the second of the two alternative texts prepared by the Drafting Committee.

55. Mr. USTOR noted the reference in paragraph (c) to "the provisions of paragraphs 2 and 3 of article 38". In fact, the final text of article 38¹⁷ had only two paragraphs. Article 29 corresponded to article 34 of the Vienna Convention on Diplomatic Relations, paragraph (c) of which referred to paragraph 4 of article 39 of that Convention. The latter paragraph corresponded to paragraphs 1 and 2 of article 38 of the draft on special missions and he therefore suggested that paragraph (c) should simply refer to "the provisions of article 38".

56. Mr. BARTOŠ, Special Rapporteur, said it was debatable whether it was preferable to include a proviso referring to article 38 as a whole or one referring only to paragraph 2 of that article, which was the one particularly concerned. But if the Commission wished the immunity to be wider in scope, it would be better to use the formula "subject to the provisions of article 38" in article 29, paragraph (c).

57. The CHAIRMAN put to the vote the second alternative text for article 29, with the amendment proposed by Mr. Ustor to paragraph (c).

Article 29, as amended, was adopted unanimously.

ARTICLE 30 (Exemption from personal services and contributions) [34]¹⁸

58. The CHAIRMAN put article 30 to the vote.

*Article 30 was adopted unanimously.*¹⁹

ARTICLE 31 (Exemption from customs duties and inspection) [35]²⁰

59. The CHAIRMAN said that the Drafting Committee recommended no change in article 31 in view of the modification it was proposing in article 32 in order to cover the situation of administrative and technical staff.²¹

60. Mr. AGO, Acting Chairman of the Drafting Committee, referring to paragraph 1 (b), said that some members of the Commission had thought it necessary to reproduce the text of article 36 of the Vienna Convention on Diplomatic Relations and to add at the end of the sub-paragraph the words "including articles intended for their establishment". Other members had held that those additional words were unnecessary in the case of special missions, which were usually of short duration. The Drafting Committee had finally decided that it was in fact unnecessary to include those words in article 31, which related to the representatives of the sending State and the members of the diplomatic staff of the special mission. On the other hand, at the end of article 32, which related to the administrative and technical staff, the Drafting Committee had added a sentence making it clear that such staff enjoyed the privileges mentioned in paragraph 1 of article 31 "in respect of articles imported at the time of their first entry into the receiving State".

¹⁷ See 934th meeting, para. 51.

¹⁸ For earlier discussion, see 933rd meeting, paras. 75-77.

¹⁹ See 938th meeting, para. 66.

²⁰ For earlier discussion, see 933rd meeting, paras. 78-82.

²¹ See 934th meeting, paras. 20-27, and 937th meeting, paras. 1 and 2.

¹⁵ For earlier discussion, see 933rd meeting, paras. 57-62.

¹⁶ For earlier discussion, see 933rd meeting, paras. 63-74.

61. Mr. REUTER said that he found the drafting of paragraph 1 of article 31 unsatisfactory. In particular, the words “the receiving State shall permit entry of and grant exemption from all customs duties” did not seem to be clear.

62. Mr. YASSEEN said that it was surely not essential to follow the provisions of the Vienna Convention to the letter. He too thought that the drafting of paragraph 1 should be improved.

63. Mr. CASTRÉN said that he still thought that the words “or of the members of their family who accompany them” in paragraph 1 (b) were unnecessary, since members of the family were dealt with in article 35.

64. Mr. AGO pointed out that article 35 contained no reference to articles intended for the personal use of members of the family. As those articles might be contained in the baggage of the representatives of the sending State or of the members of the diplomatic staff of the special mission, it was necessary that article 31 should also mention members of the family.

65. Mr. BARTOŠ, Special Rapporteur, said that the Commission was not obliged slavishly to reproduce the text of the Vienna Convention. Furthermore, the words “Within the limits of such laws and regulations” in paragraph 1 did not express the Commission’s intention, which was that the receiving State should be obliged to grant customs exemption. In his view, the text of paragraph 1 could be improved; perhaps Mr. Reuter would suggest a different wording.

66. Mr. REUTER said that article 31 as at present drafted stated a purely discretionary rule and was therefore pointless. If the intention was to impose an obligation on the receiving State, the text of paragraph 1 should be revised.

67. Mr. JIMÉNEZ de ARÉCHAGA thought that the language of paragraph 1 could be changed, provided that no alteration was made in the substance. The future convention should not give special missions wider privileges than those granted to permanent diplomatic missions.

68. Mr. USHAKOV said that in his view the words “within the limits” did not mean that the receiving State could refuse to grant customs exemption.

69. Mr. KEARNEY said that the type of situation the provision was intended to cover was illustrated by the experience of the United States. The United States Government had, in fact, taken steps to prevent any member of the Foreign Service or of a permanent diplomatic mission from taking advantage of the economic situation in a foreign country. For example, if a member of such a mission was deemed to have made an undue profit from the sale of an automobile, he was obliged under an official regulation to turn the profit over to charity.

70. The CHAIRMAN pointed out that the Commission had discussed the purpose of the provision in detail on an earlier occasion and that the only objection to the article had been the retention of the words “in accordance with

such laws and regulations as it may adopt” used in the corresponding provision (article 36) of the Vienna Convention. Mr. Jiménez de Aréchaga had rightly pointed out that, in view of the principle of reciprocity involved, it was most unlikely that any State would enact unreasonable laws and regulations in that respect.

71. After a brief discussion, Mr. REUTER proposed that the French text of paragraph 1 should read:

“*Dans les limites des dispositions législatives et réglementaires qu’il peut adopter, l’Etat de réception autorise l’entrée et accorde l’exemption de droits de douane, taxes et autres redevances connexes autres que frais d’entreposage, de transport et frais afférents à des services analogues, en ce qui concerne.*”

72. The CHAIRMAN said that no change was required in the English text, and invited the Commission to vote on article 31.

*Article 31, with the changes made in the French text, was adopted unanimously.*²²

The meeting rose at 6.5 p.m.

²² See 938th meeting, paras. 66-68.

937th MEETING

Tuesday, 11 July 1967, at 3.15 p.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, 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)

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

1. Mr. AGO, Acting Chairman of the Drafting Committee, said that the 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 30, 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

¹ For earlier discussion, see 934th meeting, paras. 1-27.