Document:-
**A/CN.4/SR.405**

# Summary record of the 405th meeting

Topic:
**Diplomatic intercourse and immunities**

Extract from the Yearbook of the International Law Commission:-
**1957** , **vol. I**

mats abroad and to be performed abroad might be outside the jurisdiction of the court of the country. Yet, without the addition of the proviso "in accordance with the laws of that [the sending] State", the amendment might place countries under the obligation of assuming in the case of diplomats a competence which they refused in every other case.

80. All things considered, he preferred the negative formulation advocated by Mr. Yokota, and would suggest wording the provision on the following lines:

"The immunity of a diplomatic agent from the jurisdiction of the receiving State shall not exempt him from the jurisdiction of the sending State, to which he shall remain subject in accordance with the law of that State".

The meeting rose at 1.5 p.m.

## 405th MEETING

*Monday, 27 May 1957, at 3 p.m.*

*Chairman:* Mr. Jaroslav ZOUREK.

### Diplomatic intercourse and immunities (A/CN.4/91, A/CN.4/98) *(continued)*

[Agenda item 3]

CONSIDERATION OF THE DRAFT FOR THE CODIFICATION OF THE LAW RELATING TO DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/CN.4/91) *(continued)*

ARTICLE 20 *(continued)*

1. The CHAIRMAN announced that the Special Rapporteur, Mr. Sandström, and Mr. François unfortunately were indisposed and could not attend the meeting.

2. He invited the Commission to continue consideration of the additional paragraph proposed by Mr. François (404th meeting, para. 29).

3. Mr. EDMONDS said that he appreciated the concern expressed by several members of the Commission that a diplomatic agent should not enjoy complete immunity in the event of his having committed a criminal offence, and should not be entirely exempt from jurisdiction in a civil action brought against him. He pointed out, however, that the Commission was overlooking one or two fundamental points.

4. The section of the draft under discussion related solely to the diplomatic privileges and immunities enjoyed by a diplomatic agent in the receiving State, and had nothing to do with his position in the sending State. If the law of the sending State already made him subject to the jurisdiction of its courts, the text proposed by Mr. François was unnecessary; if it did not, the proposal could only give rise to difficulties. The Commission was tentatively working on the assumption that the draft would form the basis of a draft convention. The numerous States which did not already recognize the competence of their own courts in cases, civil or criminal, arising out of actions committed by their diplomatic agents while serving abroad would be unable, unless they were prepared to alter their laws very radically, to accede to the convention without making a serious reservation. Amongst the States which would have to make reservations would be of necessity all the federal States. If, on the other hand, the Commission's draft finally took the shape of a code, a paragraph along the lines proposed by Mr. François could amount to nothing more than a pious hope.

5. In his view, the Commission should be content in the knowledge that the laws of certain States made it impossible for their diplomats to enjoy complete immunity, in their own country as well as in the receiving State, and that, as far as other countries were concerned, there was nothing it could do about the matter.

6. Mr. HSU thought that, if the Commission was prepared to ask States whose laws did not already make their diplomatic agents subject to the jurisdiction of their domestic courts to change their laws in that sense, there was no reason why it should not do so. States could always make reservations at the time of acceding to the proposed convention, and he did not think such reservations would give rise to any objections, since it was obvious that the change was one which it would take some time to put into effect. On the other hand, if the majority of the members of the Commission were not prepared to ask governments to accept that obligation—and it seemed that they were not—the situation was clearly different, and the best course might be to use the commentary, as the Special Rapporteur had suggested, in order to draw the attention of Governments to the fact that in certain countries diplomatic agents enjoyed complete immunity in respect of acts committed in the receiving State, not only before that State's courts but also before the courts of the sending State.

7. The CHAIRMAN recalled that Mr. François had accepted Mr. Tunkin's suggestion (404th meeting, para. 59) that the words "in accordance with the laws of that State" be added at the end of the first sentence of the additional paragraph which he proposed.

8. Mr. BARTOS said that, although he was not opposed to Mr. François's amendment, he would be obliged to abstain from the vote on it, since it would not have the slightest effect in practice.

9. Mr. AGO agreed that, with the additional words suggested by Mr. Tunkin, the first sentence of Mr. François's amendment, which without them had been open to serious objections, became completely useless.

10. The second sentence was still open to the same kind of objections as had been lodged against the first. The competent tribunal was determined by the laws of the sending State, and the provision was therefore either superfluous or aimed at changing existing law, and that would be questionable.

11. Mr. AMADO felt that Mr. François's proposal was dictated by highly practical considerations. It was a matter of considerable importance to know where a diplomatic agent could be sued, and it seemed quite reasonable that he should retain his domicile in his country of origin, as provided in article 9 of the resolution adopted in 1929 by the Institute of International Law.[1] A provision of that nature, however, appeared to be quite out of place in one of the articles of a draft dealing with diplomatic immunities in the receiving State.

12. Mr. EL-ERIAN agreed that, with the additional words suggested by Mr. Tunkin, the first sentence of Mr. François's amendment was of very little, if any, practical importance. Such importance as the amendment possessed resided in the second sentence.

13. Mr. GARCIA AMADOR suggested that the Commission decide first whether a provision of the kind proposed by Mr. François should be included at all.

[1] Harvard Law School, *Research in International Law, I. Diplomatic Privileges and Immunities* (Cambridge, Mass., 1932), p. 187.

14. The CHAIRMAN agreed, but suggested that the vote on that question be deferred until Mr. François was again able to be present.

15. Mr. SPIROPOULOS said that, before the Commission voted, he wished to remind it of a memorandum which the Government of the Union of South Africa had sent to Greece, and presumably to other States, requesting their comments on a law which the Union Government considered introducing. That law would provide that, in the event of civil actions involving a diplomatic agent, the diplomatic agent should be exempt from jurisdiction, but the receiving State itself should be justiciable. That was not as illogical as might at first appear, since it could be argued that a State which deprived its citizens of the right to sue a certain category of persons should agree to being sued, if necessary, in their stead.

*It was agreed to defer the vote on whether to include in the draft a provision along the lines of the amendment proposed by Mr. François.*

16. The CHAIRMAN recalled that at the close of the 403rd meeting, the Special Rapporteur had been asked to prepare a redraft of paragraph 2. The Special Rapporteur had proposed the following text:

> "A diplomatic agent who is a national of the receiving State shall enjoy immunity from jurisdiction in respect of official acts legitimately performed in the exercise of his functions. He shall moreover enjoy the privileges and immunities granted to him by the receiving State."

17. Mr. TUNKIN recalled that several members of the Commission had stressed that the receiving State should have a deciding voice in the matter of the immunities conferred on diplomatic agents who were its own nationals. That was not reflected in the Special Rapporteur's new text, to the first sentence of which he accordingly proposed that the following words be added: "unless otherwise determined by the receiving State at the time it agrees to his serving as a diplomatic agent of the sending State."

18. Mr. MATINE-DAFTARY urged that the vote on the Special Rapporteur's new text be deferred until he was able to be present.

19. Mr. EL-ERIAN also thought that the vote should be deferred, particularly since two of the members who had presented amendments to the Special Rapporteur's original text, namely Mr. François and Mr. Padillo Nervo, were also not present.

20. The CHAIRMAN agreed that further discussion of the new text proposed by the Special Rapporteur should be deferred till he was present, since it still appeared to give rise to difficulties.

*It was so agreed.*

ARTICLE 21

21. Mr. BARTOS said that article 21 related to a serious matter which gave rise to many difficulties in practice. He was glad that in paragraph 1 the Special Rapporteur had clearly recognized that it was for the sending State to waive immunity. However, his failure to distinguish between civil and criminal cases involved him in some inconsistency. For under paragraph 2, which related to civil cases, the diplomatic agent himself was, in effect, able to waive his immunity, without the consent even of the head of the mission, simply by initiating legal proceedings; and that corresponded to the real position in many countries, although practice was by no means uniform.

22. The whole subject was much more involved than the Special Rapporteur's text suggested. Not only was there a distinction between civil and criminal cases, but also between civil cases proper and cases arising purely out of administrative matters.

23. Moreover, since the Commission was concerned not only with the codification but also with the progressive development of international law, it could not shirk the fact that more and more attention was nowadays being paid to whether immunity was invoked for personal reasons or for the protection of the diplomatic function. A clear distinction in that respect was made in the case of international officials. It had been suggested that it was not permissible to draw even a rough analogy between the treaty rules of the United Nations Charter and similar instruments, and the general rules of international law; but the United Nations undoubtedly regarded itself as representing the interests of the world as a whole, and its membership was virtually identical with that of the international community.

24. Mr. VERDROSS agreed with Mr. Bartos that the Commission must distinguish between civil and criminal cases. In criminal cases immunity could only be waived by a formal decision of the Government of the sending State; in civil cases it could be waived by the diplomatic agent himself.

25. A distinction must also be made between diplomatic agents and their servants. A servant who was a national of the receiving State did not, of course, enjoy jurisdictional immunity at all; if he was an alien, however, he enjoyed immunity as long as he continued to be employed by the mission, but the question of waiving such immunity did not usually arise in practice, since his employment contract was terminated by the mission as soon as he was known to be involved in a court case. He would propose an amendment to paragraph 1 of article 21 to make the position with regard to servants clear.

26. The CHAIRMAN suggested that Mr. Verdross's proposed amendment could best be discussed under article 24.

*It was so agreed.*

27. Sir Gerald FITZMAURICE agreed that article 21 was not entirely satisfactory as it was. For the purpose of waiving immunity, a distinction was usually made between the head of a mission and its subordinate members. For the head of the mission the consent of the Government of the sending State was necessary; but he, himself, could waive immunity for any member of his staff, without necessarily consulting his Government. In either case it was probably correct, as stated by the Special Rapporteur, that "A statement to that effect by the head of the mission shall serve as evidence of waiver of immunity".

28. In the absence of any such statement, it might be asked to what extent the court was bound to enquire whether the necessary consent had been given. In many countries the answer was probably, not at all: if the person in question indicated that he accepted the court's jurisdiction, that was enough. It could be argued, however, that, in criminal cases at least, it was the court's duty to ascertain that immunity had been properly waived before proceeding with the case.

29. Mr. SPIROPOULOS agreed that in criminal cases the court should automatically declare itself without jurisdiction unless immunity was specifically waived; in civil cases, on the other hand, there was a presumption that immunity had been waived unless and until it was specifically invoked, either by the head of the mission or by the diplomatic agent himself.

30. Mr. AMADO agreed that paragraph 1 should be made more explicit by stating in a positive way the legal principle it contained. The question did not relate solely to immunity from jurisdiction; article 26 of the Harvard Law School draft contained the following provision: "A sending State may renounce or waive any of the privileges or immunities provided for in this convention."[2] The whole question clearly bristled with difficulties.

31. Mr. PAL said that the deficiencies of the Special Rapporteur's text for article 21 sprang mainly from its failure to recognize the threefold basis of jurisdictional immunity: the requirements of the diplomatic function itself, the dignity of the sending State and the security of the diplomatic agent. That being so, the grant of immunity implied a pact not only between the sending and the receiving States but between them and the diplomatic agent. In order to determine the competence in the matter of waiver of immunity, the Commission could ill afford to ignore whose right it was that was being waived. Of course, the text presented by the Special Rapporteur could be supported if it was taken as only suggesting the agency through which the act of waiver should be exercised, irrespective of the question where the right actually rested. Even for that purpose, however, he would not support the text. He would prefer to see it expressed as in article 19 of the Havana Convention.[3]

32. Mr. TUNKIN said that immunities were granted to a diplomatic agent not as an individual but as a member of a diplomatic mission, because they were necessary for the discharge of his diplomatic function and for maintaining the representative character of the mission. That being so, his immunities were not his to dispose of, and the principle implied in the first sentence of article 21, paragraph 1, was quite correct. Immunity could be waived only by the Government of the sending State.

33. Moreover, since immunity was granted on the same basis in both cases, he doubted the advisability of drawing a distinction between waiving immunity from criminal jurisdiction and waiving immunity from civil jurisdiction, especially as the Commission had already agreed to certain limitations on a diplomatic agent's immunity from civil jurisdiction.

34. As for the question whether the immunity of other members of the mission could be waived by its head, he did not believe that the Commission shared the view prevailing at the time of the Congress of Vienna that an ambassador enjoyed privileges and immunities as a personal representative of his sovereign, the other members of the embassy sharing them merely as a part of his retinue. On the contrary, while not wishing to minimize the difference which existed between an ambassador and the other members of the staff, Mr. Tunkin thought the Commission held, as he did, that the other members of the mission were enjoying immunities, not because they were covered by the immunities granted to the ambassador, but because they were collaborators of the mission and also civil servants just as the ambassador was. If that was so, the Commision would have to consider whether it was not essential for the decision to waive immunity to come from the Government of the sending State, even in the case of subordinate members of missions.

35. He agreed with previous speakers on the desirability of redrafting paragraph 1. For the first sentence, he suggested the following text, which, in his opinion, expressed an existing rule of international law:

> "The sending State may waive any of the privileges or immunities provided for in this draft. Such waiver may be made only by the Government of the sending State."

36. He proposed that the second sentence should be deleted. An ambassador would normally ask for instructions from his Government before waiving immunity; but if he failed to do so and his Government later reversed its ambassador's decision, disputes might arise between the two States concerned. An ambassador must be able to state *expressis verbis* in the name of his Government that he was empowered to waive the immunity of a member of his mission.

37. Mr. AGO maintained that, since diplomatic immunities were an international right of States, the act of waiving them was, in all cases, an act of the State. The question through whom that act of the State was performed was another matter. Clearly, waiver of the immunity of heads of missions could be made normally only by the Government of the sending State, but a declaration waiving the immunity of a subordinate member of a mission could be made, in a normal case, by the head of the mission. The head of the mission was the representative of his State in the receiving State, and when he performed an official act in discharge of his functions he was, so to speak, the State itself.

38. It was extremely unlikely that any dispute would arise over the competence of a head of a mission when an act of waiver was made by him. Such action might give rise to a dispute between the head of a mission and his Government, but that was a purely internal matter. Once the head of a mission had declared, in the name of his sending State, that the immunity of a diplomatic agent had been waived, the receiving State was fully entitled to regard that declaration as final. The sending State might regret the head of the mission's action, but it could not repudiate it.

39. He was accordingly in favour of a text somewhat on the lines of that proposed by Mr. Tunkin, stating that immunity could be waived only by the sending State, and that a declaration of waiver of immunity must be made by the Government of that State in the case of a head of a mission, but could be made by the head of the mission in the case of other members.

40. Mr. YOKOTA thought that, since the question of the privileges and immunities enjoyed by the staff of the mission was not mentioned at all until article 24, in article 21 the Special Rapporteur must have had in mind only the waiver of immunity of the head of the mission. The procedure for waiving the immunity of the head of a mission being different from that for waiving the immunity of subordinate members of missions, it would be more convenient to discuss article 21 with reference only to heads of mission, and to deal with the question of other members of the mission in connexion with arti-

[2] *Ibid.*, p. 24.

[3] Convention regarding Diplomatic Officers, signed at Havana on 20 February 1928. See League of Nations, *Treaty Series*, Vol. CLV, 1934-1935, No. 3581, p. 282.

cle 24. The Commission should, he thought, take a decision on that point before proceeding further.

41. Mr. LIANG, Secretary to the Commission, thought that the Special Rapporteur had correctly stated the law on the subject. In fact, it was in all cases the State which invoked or waived the immunity of its diplomatic agents, even though the head of the mission, in the name of his sending State, might invoke or waive the immunity of the subordinate members of the mission. He could recall no instance in any treaty, or other draft, where a distinction was drawn between the waiving of immunity in the case of the head of a mission and that in the case of other members. From the theoretical standpoint he agreed with Mr. Tunkin and Mr. Ago.

42. He also agreed that the second sentence in paragraph 1 was unnecessary. It seemed to be axiomatic both that the statement by the head of a mission was valid evidence and that the head of a mission could not speak for himself and waive his own immunity. The statement, in his case, must be made by his Government.

43. Mr. SPIROPOULOS agreed that, in principle, it was always the State which waived the immunity of its diplomatic agents. In practice, however, a civil court, seized of an action against a foreign diplomatic agent, did not wait for the production of documentary evidence that his immunity had been waived. The mere fact of his not invoking immunity justified the presumption that immunity had been waived.

44. A declaration of waiver of immunity need not always come from the Government of the sending State. Heads of missions did more than simply wait for instructions from their Governments; they enjoyed the right of general representation, which allowed them a certain discretion. On the other hand, he could not agree with Mr. Ago that a declaration of waiver of immunity once made by a head of mission could not be repudiated by his Government. On the contrary, he thought that it could, provided the repudiation was made immediately. But it was hardly necessary to go into such detail, for ambassadors generally consulted their governments before taking action.

45. The CHAIRMAN, replying to Mr. Yokota, suggested that it would be preferable to discuss the waiver of immunity of the head of a mission and the waiver of immunity of the members of the mission together, since the immunity rested on the same basis in both cases.

*It was so agreed.*

46. Mr. HSU said that, although paragraph 1 needed redrafting, the principle it enunciated was quite simple and acceptable. The actual act of waiving immunity was a State matter, but it was for the head of a mission to give expression to that act. If he overstepped his powers, it was for his Government to deal with him; and it might even go so far as to repudiate his declaration.

47. Mr. KHOMAN agreed that immunities were granted to the sending State to enable its diplomatic representatives to discharge their functions. It was accordingly not only unnecessary but even dangerous to draw any distinction between a waiver of immunity by the head of the mission on his own behalf and a waiver with respect to a member of his mission. If such a distinction were drawn, the authorities of the receiving State might question the validity of a declaration of waiver.

48. Immunity applied both to civil and criminal jurisdiction, and he could not accept the distinction drawn by certain members between the two. In his view, the only occasions on which it was permissible to presume that immunity had automatically been waived, was when the diplomatic agent himself brought an action or voluntarily appeared in a civil court of the receiving State.

49. Mr. SPIROPOULOS, referring to the question of waiving immunity from civil jurisdiction, asserted that, if a diplomatic agent contested an action brought against him in the civil court of the receiving State, he was not entitled to claim immunity later when it was brought before a higher court. The Greek Court of Cassation had on one occasion rendered what was, in his view, an entirely erroneous judgment, allowing immunity to be claimed even when an action had reached the third Court.

50. Mr. MATINE-DAFTARY wondered whether, when a diplomatic agent made no move to claim immunity in a civil suit, it was incumbent on the judge to ask him or his Government whether he proposed to do so.

51. In his opinion, if, as was agreed, immunities were something enjoyed by the State, it was impossible to draw any distinction between criminal and civil jurisdiction. A point which he would like to have cleared up was whether diplomatic immunity resembled parliamentary immunity in that, when a person ceased to be a diplomatic agent, it was possible to bring an action against him retrospectively.

52. The CHAIRMAN said that a distinction should be made between acts carried out in the discharge of diplomatic functions and those which were not. In the first case, immunity from jurisdiction remained even after the cessation of the diplomatic function. He said that the point could be discussed under article 25, which dealt with the duration of privileges and immunities.

53. Sir Gerald FITZMAURICE said that, from the purely logical point of view, Mr. Matine-Daftary was probably quite right in claiming that there was no ground for distinguishing between civil and criminal jurisdiction in the matter of waiver of immunity, since both types of immunity were to some extent based on the same idea, that court proceedings against a diplomatic agent might prevent or impede the proper discharge of his diplomatic functions. In practice, however, States did make a distinction. He had, for instance, never heard it suggested that the court of the receiving State must obtain an express declaration from the Government of the diplomatic agent waiving his immunity in civil cases, even when the agent was a defendant. But in criminal actions, such a declaration might well be required.

54. While agreeing with Mr. Spiropoulos that a diplomatic agent bringing an action in a civil court could be regarded as having waived his immunity in advance, he could not share the view that the court might presume immunity to have been waived if the diplomatic agent failed to invoke it when a defendant. The diplomatic agent might be unaware of the action, or not have sufficient opportunity to invoke immunity. It was a moot point, and his own view might not be correct. He believed, however, that a distinction between criminal and civil jurisdiction in the matter of waiving immunity did exist in practice.

55. Mr. MATINE-DAFTARY pointed out that no distinction was drawn between criminal and civil jurisdiction in article 19 of the Havana Convention.

56. The CHAIRMAN observed that, since the Commission appeared to be unanimous in regarding the waiving of immunity as an act of State, he would put the first sentence of paragraph 1 to the vote, subject to redrafting by the Drafting Committee.

*The first sentence was adopted by 17 votes to none with 1 abstention.*

57. Mr. AGO pointed out that he had voted for the proposal on the understanding that it would be redrafted in a positive sense, as proposed by Mr. Amado, and that the words "the Government of" would be omitted.

58. Mr. PAL said that he had abstained, because he doubted the validity of the principle implied in the text voted upon. He would have preferred a wording on the lines of article 19 of the Havana Convention. The sanction of the sending State was certainly needed, but the question was whether that was enough; he had grave doubts whether the sending State alone could waive immunity. Further, the rights of waiver before and after an incident were on different footings.

59. Faris Bey EL-KHOURI said that he had voted for the proposal, only on the understanding that waiver of immunity applied only to specific legal proceedings. Nothing in the article indicated any limitation on the scope or duration of a waiver of immunity.

60. The CHAIRMAN put to the vote Mr. Tunkin's proposal to delete the second sentence of paragraph 1 (para. 36 above).

*The proposal was adopted by 8 votes to none with 8 abstentions.*

61. Mr. AMADO said that he had voted for the deletion of the sentence because it enunciated something which was self-evident.

62. Mr. BARTOS explained that he had been obliged to abstain because mere deletion of the second sentence did not make it clear that a declaration of waiver of immunity need not necessarily be made by the head of the mission. Had Mr. Tunkin proposed replacing the sentence by a provision stating that a formal declaration from the sending State was necessary, but without specifying through whom it was to be made, he would have voted for the proposal.

63. Mr. KHOMAN said that he had abstained because he considered a formal declaration to be necessary as evidence that immunity had been waived. He noted that many jurists were of that opinion, including Sir Cecil Hurst, who stated that "there must be some act to which the courts can look as embodying the consent of the sovereign of the country which the diplomatist represents".[4]

The meeting rose at 6.10 p.m.

## 406th MEETING

*Tuesday, 28 May 1957, at 9.30 a.m.*

*Chairman:* Mr. Jaroslav ZOUREK.

### Diplomatic intercourse and immunities (A/CN.4/91, A/CN.4/98) *(continued)*

[Agenda item 3]

[4] *International Law—The Collected Papers of Sir Cecil Hurst* (London, Stevens and Sons Ltd., 1950), p. 249.

CONSIDERATION OF THE DRAFT FOR THE CODIFICATION OF THE LAW RELATING TO DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/CN.4/91) *(continued)*

ARTICLE 21 *(continued)*

1. The CHAIRMAN invited the Commission to consider paragraph 2 of article 21 and drew attention to the following alternative text submitted by Mr. François:

> "The instigation of legal proceedings by a diplomatic agent shall preclude him from invoking immunity of jurisdiction in respect both of counter-claims directly connected with the principal claim and of appeals lodged against the decision rendered."

2. Mr. BARTOS said that, although the immunity of diplomatic agents from criminal jurisdiction was absolute, case law pointed to the almost general conclusion that diplomatic agents could waive their immunity from civil jurisdiction in various ways. In the United Kingdom, the United States of America and France, for instance, case law was unanimous in the view that acceptance by diplomatic agents of the jurisdiction clause in leases and hire contracts implied that they thereby automatically waived their immunity from civil jurisdiction. He was, therefore, opposed to the paragraph in question, because, in many cases, it was not the instigation of legal proceedings that precluded the diplomatic agent from invoking immunity but the prior act of entering into a contract.

3. Mr. MATINE-DAFTARY, recalling his previous statement (405th meeting, paras. 50 and 51), said that if, as he himself considered, immunity from jurisdiction belonged to the sending State, no distinction could be drawn in that regard between civil and criminal jurisdiction, and a diplomatic agent could waive immunity only with the consent of his Government. There was, however, no indication in the paragraph whether the instigation of legal proceedings could be undertaken only with the consent of the sending State. On a point of drafting, he saw no occasion for the inclusion in the Special Rapporteur's text of the words "germane to the principal claim". Any receivable counter-claim must be germane to the principal claim.

4. Mr. SPIROPOULOS wondered whether the Commission was on the right course. Having adopted in paragraph 1 the principle that a waiver of immunity must ultimately come from the sending State, it must be careful not to adopt any provision which appeared to contradict that principle. Paragraph 2 gave the impression that whenever a diplomatic agent appeared as plaintiff in a court in the receiving State, the judge must conclude that he had waived his immunity from civil jurisdiction. Paragraph 2 could, however, be reconciled with paragraph 1 if it was understood that a diplomatic agent must obtain his Government's consent before entering into litigation in the State to which he was accredited.

5. Mr. Bartos, by raising the matter of contracts, had introduced a further complication—the idea of the waiving of immunity in advance. There again the question arose whether the consent of the sending State was necessary before the agent could accept the jurisdiction clause, and whether the fact of its consent should be mentioned in the clause.

6. Mr. PAL said that the Commission must examine how far paragraph 2 was consistent with the principle adopted in paragraph 1. According to paragraph 1, it was for the sending State to waive immunity. If that