

Document:-  
**A/CN.4/SR.454**

**Summary record of the 454th meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
**1958 , vol. I**

*Downloaded from the web site of the International Law Commission  
(<http://www.un.org/law/ilc/index.htm>)*

*Article 9 as a whole was adopted by 15 votes to none, with 1 abstention, subject to drafting changes.*

The meeting rose at 1.5 p.m.

#### 454th MEETING

*Monday, 2 June 1958, at 3 p.m.*

*Chairman: Mr. Radhabinod PAL.*

#### Resignation of Mr. El-Erian

1. Mr. LIANG, Secretary of the Commission, read out a letter from Mr. El-Erian, in which, having regard to the provision in article 2, paragraph 2 of the Commission's Statute that no two members of the Commission should be nationals of the same State, he tendered his resignation with deepest regret.

2. The CHAIRMAN said that in view of the circumstances, the Commission had no choice but reluctantly to accept Mr. El-Erian's resignation.

**Diplomatic intercourse and immunities (A/3623, A/CN.4/114 and Add.1-6, A/CN.4/116 and Add.1-2, A/CN.4/L.72, A/CN.4/L.75) (continued)**

[Agenda item 3]

DRAFT ARTICLES CONCERNING DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/3623, PARA. 16; A/CN.4/116/ADD.1-2) (continued)

#### ARTICLE 10

3. Mr. SANDSTRÖM, Special Rapporteur, introducing his revised draft of article 10 (A/CN.4/116/Add.1) pointed out that four Governments, those of Sweden (A/CN.4/114), Switzerland (A/CN.4/114), Finland (A/CN.4/116/Add.2) and Yugoslavia (A/CN.4/114/Add.5), had declared themselves in their comments to be in favour of dispensing with the second class of heads of missions accredited to heads of States, but had advanced few reasons not already considered by the Commission at its ninth session. The Government of Pakistan considered (A/CN.4/114/Add.6) that a fourth class of heads of mission should be recognized, namely, high commissioners, who normally carried letters of introduction to the Prime Minister.

4. The United States Government proposed that the article should begin with the words "For purposes of precedence and etiquette..." (A/CN.4/116). Although the idea was already expressed in article 14, he would have no objection to an explicit statement in article 10 for the sake of emphasis.

5. In sub-paragraph (b) the words "other persons", criticized by Switzerland as ambiguous, could, as proposed by Italy (A/CN.4/114/Add.3), be replaced by "internuncios", the only type of representative to which the words could conceivably refer.

6. Mr. VERDROSS, referring to sub-paragraph (a), pointed out that legates were not accredited to heads of State but were special envoys for particular affairs only. He proposed that the reference to legates should be omitted.

7. Mr. YOKOTA said that he was not in favour of the addition proposed by the United States Government. It was unnecessary to repeat the reference made at the beginning of article 14 and, moreover, the proposed classification of heads of mission had a certain significance for purposes other than precedence and etiquette, inasmuch as it reflected an evolution of ideas. He was in favour of substituting the word "internuncios" for the ambiguous term "other persons".

8. Mr. TUNKIN agreed with Mr. Yokota that the addition proposed by the United States was superfluous. The appointment of an ambassador rather than of a minister sometimes had political significance.

9. Mr. BARTOS said he had been consistently advocating the classification of heads of mission into two classes only: those accredited to heads of State and those accredited to Ministers of Foreign Affairs. Any differences, however minor, in the status of the two classes of heads of mission accredited to heads of State recognized in the article did violence to the principle of the equality of States established by the Charter of the United Nations.

10. Mr. PADILLA NERVO suggested that article 10 and article 14 be combined or that the principle of the equality of heads of missions be enunciated at the beginning of article 10 before the various classes were listed. Failing that, it would be better to adopt the addition proposed by the United States.

11. Since it was specified in article 14 that the equality of heads of mission was unaffected by the class to which they were assigned, it would be more logical to provide for only two classes, ambassadors and *chargés d'affaires*. Since, however, the question had been amply discussed at the ninth session, he would not press for the amendment of article 10 on those lines.

12. Mr. ZOUREK said that for drafting reasons he was opposed to the United States Government's addition for it constituted an unnecessary repetition and furthermore, although in law there was no distinction between classes (a) and (b), some political significance might attach to the choice of class. It was, for instance, the practice of countries wishing to emphasize the importance of diplomatic relations between them to raise their representation to embassy level. Though the "minister" class might disappear in time, it still formed part of existing practice.

13. He agreed with Mr. Verdross that legates came rather under the heading of "ad hoc diplomacy".

14. Sir Gerald FITZMAURICE suggested that the point raised by the United States Government could more satisfactorily be met by prefacing article 10 with the words "Subject to the provisions of article 14,"

He agreed to the substitution of "internuncios" for the words "other persons".

15. Mr. HSU and Mr. ALFARO both thought that Sir Gerald Fitzmaurice's suggestion would be a technically more acceptable solution to the problem.

16. Mr. SANDSTRÖM, Special Rapporteur, said that he had no objection to the suggestion but thought that article 14 might as well form paragraph 2 of article 10. The matter might simply be referred to the Drafting Committee. He considered Mr. Verdross' proposal to delete the word "legates" fully justified.

17. Sir Gerald FITZMAURICE withdrew his suggestion.

18. The CHAIRMAN put to the vote the proposal that article 14 should become paragraph 2 of article 10, in which event the United States Government's proposed addition would become unnecessary.

*The proposal was adopted by 14 votes to none, with 2 abstentions.*

19. The CHAIRMAN put to the vote Mr. Verdross' proposal to delete the word "legates".

*The proposal was adopted by 15 votes to none, with 1 abstention.*

20. The CHAIRMAN put to the vote the Special Rapporteur's proposal to substitute the word "internuncios" for "other persons".

*The proposal was adopted by 8 votes to 1, with 6 abstentions.*

*Article 10 as a whole, as amended, was adopted by 15 votes to none, with 2 abstentions.*

#### ARTICLE 11

21. Mr. SANDSTRÖM, Special Rapporteur, drew attention to a new wording of the article proposed by the United Kingdom Government (A/CN.4/116). The United States Government's observation (A/CN.4/116) that it was not essential that the receiving and sending States should be represented by heads of mission of the same rank could be inserted in the commentary.

22. Mr. FRANÇOIS, referring to the United Kingdom proposal, pointed out that diplomatic missions were not always at the capital of the receiving State. In the Netherlands, for instance, they were in a different city. The text would need to be amended accordingly.

23. Mr. TUNKIN pointed out that whereas the English text of the United Kingdom proposal referred to "the level of their diplomatic representations", in other words to the institution of diplomatic representation, the French text in document A/CN.4/116/Add.1 spoke of "*la classe à laquelle doivent appartenir les chefs de leurs missions*".

24. Sir Gerald FITZMAURICE observed that the change from the original draft article was largely a matter of drafting, the new proposal using the term "the level of their diplomatic representation", which

was current in English diplomatic parlance. There appeared to be some difficulty in rendering the expression in French.

25. Mr. TUNKIN said that since the English text was the authentic one, he would support it as more in harmony with the spirit pervading the whole draft, namely, the replacement of the old concept of diplomatic privilege and immunity as attaching to the person of the ambassador by the new concept of diplomatic representation as an institution, of which ambassadors were merely the heads.

26. Mr. AMADO remarked that, as the term "class" was employed in article 10, he would prefer the same term to be used in article 11, unless there were strong reasons against its use. The reference to "each other's capitals" in the United Kingdom proposal introduced an unnecessary complication. Quite apart from the case of the Netherlands, he said that diplomatic missions in Brazil would for some years to come be housed not at the new federal capital but at Rio de Janeiro.

27. Mr. EDMONDS said that he was not sure that the United Kingdom proposal would allow for the possibility of the receiving and sending States being represented by heads of mission of different rank. A reference to that possibility should at least be inserted in the commentary on the article.

28. Mr. LIANG, Secretary to the Commission, suggested that in order to keep the group of articles 10 to 13 coherent, it might be advisable to retain the draft article as it stood, especially as there was no difference in meaning between it and the United Kingdom proposal.

29. Mr. SANDSTRÖM, Special Rapporteur, said that he had not endorsed the United Kingdom proposal but merely offered it as a variant. He had no strong preference for either text, but thought, nevertheless, that the idea stated in the United States Government's comment was conveyed by the words "representation at each other's capitals".

30. Mr. ALFARO said that if the wording proposed by the United Kingdom for article 11 were adopted, and the expression "the level of their diplomatic representation" introduced into the text, consequential changes would be necessary in the drafting of other articles, including article 10. In his opinion, it would be preferable to adhere to the text of article 11 as adopted at the ninth session, especially since the proposed alternative was open to certain objections; for example, the word "mutually" and the expression "at each other's capital" were redundant.

31. The CHAIRMAN said he saw no reason for departing from the terminology which had been decided upon at the Commission's ninth session, and he therefore thought that the word "class" should be used in both articles 10 and 11.

32. Mr. PADILLA NERVO said he did not see the need for article 11, which added nothing to the meaning of article 1.

33. Mr. MATINE-DAFTARY said he preferred the original text of article 11, which was quite clear and required no amendment. The proposed alternative text introduced points which, if they were dealt with at all, should be dealt with either in separate articles or in the commentary. He referred in particular to the question whether heads of missions should be stationed in the capital of the receiving country, and whether the heads of missions exchanged by any two States should be of the same class.

34. Sir Gerald FITZMAURICE said that, though the expression "level of diplomatic representation" was more in conformity with current usage than the term "class", he realized that in the context it raised more difficulties than it solved. He also realized that the reference to capital cities was open to objection. If the Special Rapporteur had no strong preference for the alternative wording, therefore, he would suggest that it might be withdrawn.

35. He did not agree with Mr. Padilla Nervo that article 11 was redundant. Article 1 referred in general terms to the establishment of diplomatic relations, which was not quite the same thing as deciding to what classes heads of missions should be assigned.

36. Mr. SANDSTRÖM, Special Rapporteur, said he was willing to withdraw the alternative wording for article 11.

37. Mr. TUNKIN said he would vote for the text of article 11 as drafted at the ninth session. Though the expression "level of diplomatic representation" conveyed the meaning better than the word "class", the original wording was preferable in the particular context.

*Article 11 as drafted at the ninth session (A/3623, para. 16) was adopted by 16 votes to none, with 1 abstention.*

38. Mr. EDMONDS said the commentary should contain some reference to the United States Government's observation (A/CN.4/116) that it did not regard the terms of article 11 as implying that the heads of missions exchanged between any two countries should necessarily belong to the same class.

39. Mr. SANDSTRÖM, Special Rapporteur, said it was his intention to include such a reference in the commentary.

## ARTICLE 12

40. Mr. SANDSTRÖM, Special Rapporteur, drew attention to paragraph 7 of the commentary on articles 10 to 13 (A/3623, para. 16) in which it was pointed out that the text of article 12 gave States a choice of two dates by reference to which the precedence of heads of mission in their respective classes was to be decided. The two dates were the date of notification of their arrival and the date of presentation of their letters of credence. Of the Governments which had expressed a preference for one or other of those dates, only one—the Government of the United Kingdom—

had opted for the date of notification of arrival (A/CN.4/116). The United States Government had expressed the view that the article dealt with a matter of practice and protocol in the receiving State and not with a principle of international law suitable for codification (A/CN.4/116).

41. He proposed (A/CN.4/116/Add.1) that the article as drafted at the previous session should be retained, subject to an amendment proposed by the Netherlands Government (A/CN.4/116).

*The amendment proposed by the Government of the Netherlands was adopted.*

42. Mr. ALFARO observed that the expression "The present regulations", in paragraph 3 was inaccurate, since what the Commission was producing was a draft convention or draft articles, not regulations.

43. Mr. SANDSTRÖM, Special Rapporteur, said he had no objection to the proposed correction, which might be referred to the Drafting Committee.

*Article 12, as amended, was adopted by 16 votes to none, with 1 abstention, subject to drafting changes.*

## ADDITIONAL ARTICLE (ARTICLE 12 A)

44. Mr. SANDSTRÖM, Special Rapporteur, drew attention to the additional article proposed by the Italian Government (A/CN.4/114/Add.3). Although the functions of the diplomatic corps might not be so important as they had been formerly, the institution existed and might therefore form the subject of an article for inclusion in the draft.

45. Mr. BARTOS said he objected to the first paragraph of the proposed new article 12 A because it implied a definition of the diplomatic corps which would exclude diplomatic agents other than heads of mission.

46. The second paragraph was open to objection because it suggested that the functions of the diplomatic corps were confined to those which it was recognized to possess by international usage. Not all the functions of the diplomatic corps, however, were established by international usage and, furthermore, practice differed from country to country. Some of the functions of the diplomatic corps, for example, were defined by treaties.

47. The third paragraph was objectionable because it sanctioned the perpetuation of an outdated privilege for which there was no justification in objective theory.

48. Sir Gerald FITZMAURICE said he did not see any great objection to the proposed new article, the aim of which was merely to state the existing practice.

49. Referring to Mr. Bartos' criticism of the first paragraph, he agreed that in a looser sense the expression "diplomatic corps" might be taken to include all the diplomatic staff of the various missions. He suggested that it might be left to the Drafting Committee, in collaboration with the Special Rapporteur, to settle the problem in the light of the definitions to be included at the beginning of the draft.

50. The reference to international usage was in his

opinion correct in the context, because the subject of the second paragraph was the functions performed by the diplomatic corps as a whole. Practice in that matter depended entirely on usage and was not defined by individual treaties between one State and another. Perhaps the text might be made clearer by inserting the words "as a whole", or "as such", after the words "The diplomatic corps".

51. So far as the selection of the doyen of the diplomatic corps was concerned, he thought it would be difficult to object to such a long-standing practice as that by which, in some countries, the Apostolic Nuncio was automatically recognized as the doyen.

52. Mr. FRANÇOIS said he also had some doubts concerning the proposed new article. Practice in the matter of issuing "CD" plates for motor vehicles, for example, showed that the term "diplomatic corps" was not generally understood to include only heads of mission.

53. He thought it was incorrect to say, as did the second paragraph, that the diplomatic corps was represented by its doyen "for all purposes".

54. In the third paragraph, the use of the expression "*le plus âgé*" in the French text was mistaken, since the doyen of the diplomatic corps was not necessarily the oldest head of mission in the country concerned.

55. Mr. VERDROSS associated himself with the criticisms which had been voiced concerning the proposed new article. In particular, he considered the last paragraph redundant, for the point it made was already covered by article 12, paragraph 3.

56. Mr. AMADO considered the proposed new article superfluous. Moreover, it contained errors such as the one pointed out by Mr. François, it attached an incorrect meaning to the term "diplomatic corps" and it did not sufficiently define the functions of the diplomatic corps.

57. Mr. ZOUREK said he doubted the usefulness of the proposed new article. The diplomatic corps was not a collective body with a specified legal competence. Moreover, the criticisms expressed were very pertinent, particularly those relating to the meaning of the term "diplomatic corps" and the reference to international usage. It would be particularly inadmissible for the article to speak of international usage, as that usage was the very thing which the Commission was attempting to codify. If the article had to be adopted, it would be necessary to define the function of the diplomatic corps in unequivocal language.

58. Mr. LIANG, Secretary to the Commission, pointed out that the expression used in the English text of the third paragraph—"senior head of mission"—was correct, though the French text, which was the original, used the incorrect phrase "*le plus âgé*".

59. In his country, the institution of the diplomatic corps had formerly been resented, for it had been used to exert collective pressure on the Chinese Government for the purpose of enforcing rights of extraterritoriality.

That, however, was a matter of past history. In modern times, the functions of the diplomatic corps were mainly ceremonial and more suitable for treatment in a guide to diplomatic practice such as Sir Ernest Satow's<sup>1</sup> than in a codification of international law. A reference to the functions of the diplomatic corps in the draft convention on which the Commission was working might be a source of misunderstanding.

60. Sir Gerald FITZMAURICE said that the arguments advanced by previous speakers had surprised him, as it seemed to him that in the whole practice of diplomacy the concept of a diplomatic corps and doyen was one of the best known; he considered that the concept should receive recognition in the draft. Admittedly, the draft dealt mainly with questions of law, but it also dealt with etiquette, usage and privileges, so that a reference to the diplomatic corps would not be out of place.

61. In modern times the diplomatic corps as such no longer attempted to exert pressure on the Government of the receiving State, but it still performed a useful function in that, through its spokesman, the doyen, it could bring to that Government's attention any events or circumstances which affected the diplomatic corps as a whole. Possibly, the Italian Government's proposed text needed more precise drafting, but the principle it stated was sound and confirmed by ancient usage.

62. He was not certain that article 12, paragraph 3, covered the proposition that the Apostolic Nuncio should be the doyen of the diplomatic corps in countries where that was the practice, but article 12 in general certainly did not deal with the functions in general of the diplomatic corps or its doyen.

63. Mr. TUNKIN shared the doubts of other speakers regarding the Italian proposal, which, in his view, referred to concepts which required definition and to an international usage which it did not seek to clarify. The Commission's task was to draft concrete rules on diplomatic intercourse and immunities, and the Italian proposal did not contribute anything of value to that end.

64. He could see no reason for including in the draft any reference to the functions of the diplomatic corps, as if that corps were an organized body requiring special definition and special rules. What functions the corps now had were very restricted, and very different from those it had exercised in the past in some countries. While he had no objection in principle to an article concerning the diplomatic corps, he doubted whether an acceptable article could be drafted; it would not be a great defect if the draft omitted all reference to the diplomatic corps.

65. Mr. BARTOS felt that if the Italian proposal was accepted it would be necessary to state who or what body would authorize the doyen to take action, which authority would give permission to the diplomatic corps

<sup>1</sup> Sir Ernest Satow, *A Guide to Diplomatic Practice*, 4th ed., Sir Neville Bland (ed.) (London, Longmans, Green and Co., 1957).

to act collectively, and what were the possible subjects of collective action by the corps. The rules observed in dealings with the diplomatic corps varied from country to country. And in any case he considered that the concept of the diplomatic corps as a separate entity with the ability to interpret, and indeed to create, international usage should not be enshrined in the draft.

66. Nor was there any basis either in doctrine or in practice for regarding the Apostolic Nuncio as the doyen of the diplomatic corps. Such a person represented a spiritual authority, and to the lay person it seemed illogical to give him that eminence, which could only be viewed as discrimination in favour of religion, and of one religion at that. The question was not only a political one, for in his view the recognition of the Apostolic Nuncio's privileged position would be in direct conflict with the positive law of the United Nations.

67. Mr. HSU said that the diplomatic corps was much less important than it had been before international law had become highly developed. Nevertheless, since diplomats in a receiving State had interests in common, the diplomatic corps was still an important institution. While he would like to see the insertion of an article on the subject he felt that the text proposed by the Italian Government was badly drafted. He thought therefore it would be desirable that Mr. Ago should be given an opportunity to speak on it and perhaps amend it.

68. Mr. TUNKIN agreed in principle with Mr. Bartos that the Apostolic Nuncio should not be regarded as holding a pre-eminent position in the diplomatic corps. He had not objected to article 12, paragraph 3, but in that case too he felt that the special favour given to the Holy See was in contradiction with fundamental principles of international law, and was indeed a kind of relic of the past.

69. Mr. SANDSTRÖM, Special Rapporteur, felt that as the Commission had accepted paragraph 12 it could not really object to the precedence given to the Holy See in the Italian Government's proposal.

70. He could not accept the argument that all diplomats of whatever rank should be regarded as forming part of the diplomatic corps, for in any joint deliberations only the heads of missions took part. International usage was undoubtedly rather vague on the subject, but the diplomatic corps did form an entity which had common interests and common privileges.

71. The French term "*le plus âgé*" was undoubtedly not justified in the Italian proposal, and he himself would prefer some mention to be made of the class of the doyen. In view of the various criticisms that had been made, however, he agreed that it would be desirable to suspend debate on the Italian Government's proposal until Mr. Ago's return.

72. Mr. ALFARO felt that, in view of the statements made, it would be difficult, if not impossible, to reach agreement on the Italian Government's proposed new article. In his view the existing state of affairs should

be taken into account: heads of mission actually did form a diplomatic corps with analogous functions and common interests and had to agree on social and other matters, exchange views and make any necessary representations or *démarches*.

73. Although members of the Commission did not represent Governments, it was natural to assume that the member from Italy could best explain the Italian Government's intentions. For that reason he agreed that the Commission might await the return of Mr. Ago.

74. Mr. MATINE-DAFTARY thought that little good would be done by awaiting the return of Mr. Ago to explain or defend the Italian Government's proposal. However, it would be sensible to defer a decision until the Commission had considered whether the draft should contain any reference to the diplomatic corps.

75. The CHAIRMAN, noting the general desire to postpone discussion until Mr. Ago's return, suggested that the discussion be deferred until then, and that the Special Rapporteur, in consultation with Mr. Ago, submit a redraft of the Italian Government's proposal.

*It was so agreed.*

#### ARTICLE 13

76. Mr. SANDSTRÖM, Special Rapporteur, said that the only observation on article 13 was that of the United States Government (A/CN.4/116); in his view the point of that observation was implicit in the article.

*Article 13 was adopted unanimously.*

#### ARTICLE 14

77. Mr. SANDSTRÖM, Special Rapporteur, referred to the Netherlands Government's observation concerning an ambassador's right of access to the head of the receiving State, and to his comments on that observation (A/CN.4/116).

78. Mr. ZOUREK said that he had looked into the question and had come to the conclusion that right of access to the head of a State no longer existed. All heads of mission were in the same position and could request to be received by the head of State, as a rule through the Ministry for Foreign Affairs. The exclusive prerogative of audience with the head of State which Powers had formerly claimed on behalf of their ambassadors, as representing the person of the sovereign, had disappeared together with absolute monarchies and diplomatic practice no longer drew any distinction in that respect between the various classes of diplomatic agents, all of whom represented the sending State to the same degree. It should therefore be made clear that article 14 did not confer that right only on ambassadors.

79. Mr. FRANÇOIS said he was by no means certain that Mr. Zourek was correct in his view. As the Netherlands Government had said, the opinion was very widely held that an ambassador had the right to seek audience with the head of a State; he did not think that article 14 abrogated that right.

80. Sir Gerald FITZMAURICE noted that according to article 10 both ambassadors and ministers were accredited to heads of State, so that clearly no distinction should be made between them conferring only upon ambassadors right of access to heads of State.

81. On the question whether such a right existed now, he could not speak with much certainty, but such a right had undoubtedly existed in the past; it had been based on the conception of the ambassador as the representative of his sovereign or the head of his State. Even then, it had clearly been exercised sparingly, but merely because a right was exercised sparingly and tactfully it did not mean that it did not exist. At present, in any grave issue, on instructions from his Government, the head of the mission might ask for an interview with the head of the State or Government, although normally he would ask to see the Minister of Foreign Affairs; and in such a case it would be difficult for the authorities of the receiving State to refuse it. Satow's *Guide* was not very categorical in the matter, merely saying that an ambassador dealt "as a rule" with the Minister of Foreign Affairs.<sup>2</sup> In the circumstances, he was inclined to agree with Mr. François that there was a right, even if it was little used.

82. If it was possible to draft a suitable text, he was prepared to agree with the Netherlands Government that reference to the matter should be included in the commentary.

The meeting rose at 6 p.m.

<sup>2</sup> Sir Ernest Satow, *A Guide to Diplomatic Practice*, 4th ed., Sir Neville Bland (ed.) (London, Longmans, Green and Co., 1957), p. 167.

## 455th MEETING

Tuesday, 3 June 1958, at 9.45 a.m.

Chairman: Mr. Radhabinod PAL.

### Diplomatic intercourse and immunities (A/3623, A/CN.4/114 and Add.1-6, A/CN.4/116 and Add.1-2, A/CN.4/L.72, A/CN.4/L.75) (continued)

[Agenda item 3]

#### DRAFT ARTICLES CONCERNING DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/3623, PARA. 16; A/CN.4/116/ADD.1-2) (continued)

#### OBSERVATIONS OF THE CZECHOSLOVAK GOVERNMENT ON SECTION I

1. Mr. SANDSTRÖM, Special Rapporteur, drew attention to the Czechoslovak Government's proposal (A/CN.4/114/Add.1) that section I of the draft should deal with the rank and precedence, not only of the heads of mission, as in article 10, but also of the other diplomatic staff of the mission.

2. For the reasons he had given in his report (A/CN.4/116), he was not in favour of the proposal.

3. Mr. ZOUREK observed that the diplomatic staff of a mission, other than the head, were ranked according to a well-established hierarchical order which was the same in all countries. Though he appreciated the force of the Special Rapporteur's arguments, he thought that perhaps the matter could be dealt with in an article of the draft; or, if the Special Rapporteur considered that such a solution would exceed the scope of the draft, some reference might be made to the subject in the commentary. Another solution might be to add to article 12, dealing with the precedence of heads of mission, a clause indicating how the precedence of other diplomatic staff of the mission was to be determined.

4. If the Special Rapporteur agreed, he was willing to prepare a suitable text.

*It was decided to defer consideration of the proposal.*

5. Mr. SANDSTRÖM, Special Rapporteur, drew attention to the Czechoslovak Government's proposal that section I of the draft should also stipulate the right of individual diplomatic members of a mission to exercise diplomatic activities in accordance with the instructions of their Governments (A/CN.4/114/Add.1).

6. He was of the opinion that such a provision would be superfluous, especially if the proposal of the Netherlands Government regarding a definitions clause was adopted.

7. The CHAIRMAN, speaking as a member of the Commission, said he did not see the need for including in the draft a stipulation that individual diplomatic members of a mission should have the right to exercise diplomatic activities "in accordance with the instructions of their Governments". Whether a particular diplomatic activity was in accordance with the instructions of the Government of the sending State was a question strictly between that Government and the member of the mission concerned. Instead of being his right, it would rather be his duty to follow such instructions. But so long as his activity was within diplomatic bounds, nobody else would be entitled to question it or to withdraw the privileges and immunities from the agent on the ground of want of such instructions. For that reason he was opposed to the inclusion in the draft of a provision on the lines proposed by the Czechoslovak Government.

*It was agreed not to proceed with the consideration of the proposal.*

#### ADDITIONAL ARTICLE (ARTICLE 14 A)

8. Mr. SANDSTRÖM, Special Rapporteur, drew attention to the Czechoslovak Government's proposal that the draft should provide for the right of a diplomatic mission, and of the head of a mission, to use the flag and emblem of the sending country (A/CN.4/114/Add.1).

9. He was of the opinion that that proposal might be considered for adoption, and he had therefore embodied it in a draft additional article (A/CN.4/116/Add.1, article 14 A).