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VIENNA CONVENTION ON DIPLOMATIC RELATIONS

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HEARING BEFORE THE SUBCOMMITTEE OF THE COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

EXECUTIVE H, 88TH CONGRESS, 1ST SESSION

THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS,
TOGETHER WITH THE OPTIONAL PROTOCOL CONCERNING
THE COMPULSORY SETTLEMENT OF DISPUTES, SIGNED
AT VIENNA UNDER DATE OF APRIL 18, 1961

JULY 6, 1965

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III





VIENNA CONVENTION ON DIPLOMATIC RELATIONS

TUESDAY, JULY 6, 1965

UNITED STATES SENATE,
SUBCOMMITTEE OF THE
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 4221, New Senate Office Building, Senator Frank Church presiding.

Present: Senators Church and Clark.

Also present: Senators Sparkman and Case.

Senator CHURCH. The subcommittee will please come to order.

The subject for the hearing this morning is Executive H of the 88th Congress, 1st session, of the Vienna Convention on Diplomatic Relations, together with an optional protocol on the settlement of disputes under it.

(For text of Vienna Convention see p. 40.)

Senator CHURCH. This is the first time a comprehensive international convention on this subject has been before the Committee on Foreign Relations, and I hope that members other than the subcommittee members who are interested in this subject will be present today. I understand that several other Senators plan to attend the hearings this morning.

The principal witness from the Department of State is the Honorable Leonard C. Meeker, Legal Adviser of the Department of State.

Mr. Meeker, you are here, are you not? Please come up and be seated.

STATEMENT OF LEONARD C. MEEKER, LEGAL ADVISER, DEPARTMENT OF STATE

Mr. MEEKER. Thank you, Mr. Chairman.

Senator CHURCH. I might say, Mr. Meeker, that if there are subjects that come up during the questioning this morning which you would prefer to discuss in executive session, please say so, and we will arrange an executive session for that purpose.

Mr. MEEKER. Thank you, sir.

NEED FOR HEARINGS ON CONVENTION

Senator CHURCH. Since this is a rather major convention with which this committee has had no past familiarity, this may be the first of several hearings that may be required before the committee acts.

Mr. Meeker, why don't you proceed with your opening statement.

BACKGROUND OF DIPLOMATIC CONVENTION

Mr. MEEKER. Thank you very much, Mr. Chairman.

I appreciate this opportunity of appearing before the special subcommittee in support of the Vienna Convention on Diplomatic Relations, also the optional protocol concerning compulsory settlement of disputes which accompanies the convention, and further I should like to speak very briefly about some draft legislation which the administration will very shortly be submitting to the Congress to complement the Vienna Convention itself.

Since 1790 the United States has accorded diplomatic privileges and immunities to foreign diplomatic missions and their personnel thereof pursuant to customary international law and statutes which have been enacted from time to time to clarify the application of this customary international law.

The United Nations General Assembly as early as 1952 expressed its interest in the common observance by all governments of existing principles of international law and practice regarding diplomatic intercourse and immunities, particularly in regard to the treatment of diplomatic representatives, and the Assembly asked the International Law Commission to give priority to study of this topic. The Commission is an organ of the United Nations on which there is regularly an American representative.

The present American member is Professor Briggs of Cornell University.

In 1958 the International Law Commission adopted draft articles which it recommended be considered by governments with a view to the conclusion of a convention. In December 1959 the General Assembly convened a conference to meet at Vienna, Austria, in the spring of 1961 to consider these draft articles. The 1961 Vienna Conference examined the articles in the light of modern conditions, surveying the body of law and practice which had developed over the years regarding the rights, duties, and privileges of diplomatic missions and their staffs. All delegations at the conference recognized the great need for an agreed international standard of treatment of diplomatic missions and their personnel.

The convention which resulted from the deliberations of 81 nations participating at the 1961 Vienna Conference is a significant step forward in international cooperation, and should facilitate in years to come the conduct of diplomatic relations. The Vienna Convention goes far toward clarifying the obligations of states concerning the treatment to be accorded foreign diplomatic missions and their personnel. Because of its definite rules and procedures, the convention should reduce materially the possibility of misunderstandings between governments in this area of their relations.

JUSTIFICATION FOR RATIFICATION

Ratification of the Vienna Convention in our opinion makes advisable certain adjustments in U.S. law and practice relating to diplomatic missions and their personnel. Accordingly, the Department of State, in consultation with the Department of Justice and the Treasury Department, has prepared some draft legislation which I believe will

shortly be transmitted to the Congress and which we trust will soon be before this committee for its consideration.

When a state agrees to receive a foreign diplomatic mission, it assumes under international law the obligation to accord to the mission and its personnel appropriate privileges and immunities. These diplomatic privileges and immunities are not benefits for the individuals concerned, for the diplomats themselves. Instead they are protections which experience has long established are essential to assure the effective performance of the functions of diplomatic missions. These protections are what the United States needs for its missions and personnel abroad, and by the same token these are what the United States must be willing to provide here in the United States. This is the rationale for the convention and proposed legislation.

Previous treaties relating to diplomatic privileges and immunities to which the United States is a party have provided merely that certain categories of diplomatic representatives shall receive the rights, privileges, and benefits generally accorded to other diplomatic representatives under international law and practice. In contrast, the Vienna Convention specifies exactly what privileges and immunities shall be provided for the members of diplomatic missions and their families.

We believe ratification of the Vienna Convention by the United States is a desirable means of resolving, in orderly fashion, many questions in such fields as immunity from jurisdiction, customs privileges, and tax exemptions. Problems regarding these matters have been arising throughout the world with increasing frequency as the numbers of diplomatic missions and the size of their staffs have grown. In the absence of clearly formulated rules as to what is required in given circumstances, the practice of governments is tending to vary widely.

PROVISIONS OF CONVENTION

The main features of the Vienna Convention are described in the report of the Secretary of State and the report of the U.S. delegation which accompany the convention. I shall not attempt a detailed outline of its provisions, but instead shall discuss some general features that are particularly worth noting.

First I should like to emphasize that this convention is for the most part a codification of principles heretofore observed by governments in their practice. For instance, the division of chiefs of mission into three classes—ambassadors, ministers, and chargé d'affaires—and the provision that they shall rank in each class in order of seniority as determined by their arrival in the receiving state, is essentially a restatement of the Vienna regulation which was adopted in 1815, at the end of the Napoleonic wars.

Similarly, the provisions regarding the inviolability of the premises of the mission, its archives, and its communications, and the immunity of the chief of mission and other diplomatic officers and their families from arrest and prosecution reflect practice which developed long before 1815, in fact go very far back in history.

In some areas where practice has not been uniform or has not been considered appropriate in the light of modern conditions, the convention establishes new rules. One such change provides that while members of the administrative and technical staff of the mission shall

continue to have the same complete immunity from criminal jurisdiction which diplomatic agents presently enjoy, they shall have immunity from civil jurisdiction only with respect to their official acts. Another new rule is that a diplomatic agent and his family will have no immunity from jurisdiction with respect to certain nonofficial matters such as private professional or commercial activities.

The convention does not increase the number of persons in the United States who will be entitled to diplomatic privileges and immunities except in one limited respect; it provides that families of members of the administrative and technical staff of a diplomatic mission will have immunity from criminal jurisdiction.

This is a new immunity for families of that category of person. Senator CHURCH. Will you restate that, please?

Mr. MEEKER. The families of members of the administrative and technical staff under the convention would have immunity from criminal jurisdiction where prior to the convention members of the families would not have that immunity, although the administrative and technical staff members themselves would have it.

CATEGORIES OF DIPLOMATIC PERSONNEL

Senator CHURCH. How broadly is the administrative and technical staff defined in the convention?

Mr. MEEKER. It is defined in article I, paragraph (f), where it is stated—

the members of the administrative and technical staff are the members of the staff of the mission employed in the administrative and technical service of the mission.

That excludes diplomatic officers, such as the counselors, the first secretaries, and the second secretaries, but it does include clerical personnel, communications personnel, people like that.

Senator CHURCH. What about the ordinary domestic help?

Mr. MEEKER. No. They would not be included in the administrative and technical staff. They would come under the next paragraph of article I where the service staff is defined as members of the staff of the mission in the domestic service of the mission. Now that is separate, of course, from the private servants of individual members of the mission. Those are defined in article I, paragraph (h).

The United States, as I was indicating earlier, does have to consider the individual provisions in the convention on diplomatic relations both from the viewpoint of this country as a receiving state, and from the viewpoint of this country as a sending state. It is to our advantage to obtain all the privileges and immunities necessary to enable our diplomatic missions, and the officers and employees attached to them, to perform their duties effectively and under conditions which are conducive to their proper discharge.

Naturally, also, we want to maintain reasonable limitations on the privileges and immunities enjoyed by officers and employees of foreign diplomatic missions in the United States. In our judgment, the Vienna Convention represents a good balancing of those interests.

OPTIONAL PROTOCOL

I would like to say a word now about the optional protocol concerning the compulsory settlement of disputes which provides that disputes arising out of the interpretation or application of the convention shall lie within the compulsory jurisdiction of the International Court of Justice, and may be brought before the Court by any party to the dispute, unless the parties have agreed that before resorting to the Court they will first resort to an arbitral tribunal or will adopt a conciliation procedure. The protocol is in keeping with the U.S. position in favor of the use of the Court for the resolution of legal disputes. Adoption of the protocol is desirable as a means of securing uniformity in the interpretation of the provisions of the convention.

NEED FOR LEGISLATION

Next I should like to comment very briefly indeed on the proposed legislation which we will shortly be transmitting, which is designed to complement the Vienna Convention itself.

The convention, being a treaty, if it is ratified will, of course, be the law of the land and does not itself require legislation in order to make it the law. However, there are certain changes which we think would be desirable in existing statutes in the light of the convention, if, in fact it comes into force with respect to the United States.

First of all, the legislation would repeal three sections in title XXII of the United States Code. Those are sections 252, 253 and 254. These sections are derived from an act of Congress of April 30, 1790, a very old statute indeed. We think that the wording of them has now become archaic and is not useful in relation to present-day conditions, and present-day terminology.

We think the language of the old statutes is inconsistent with some of the definitions of mission personnel and private servants that are contained in the Vienna Convention. Moreover, these statutory provisions, sections 252 to 254, if they were left on the books unchanged, would operate to provide a greater measure of immunity than is required by the convention and indeed a greater measure than most other governments would accord to American diplomatic personnel.

Therefore, we would like to see removed from the books those statutes which would compel us to go beyond the immunities called for in the convention itself.

Now the new legislation besides repealing those old sections, would have another purpose. They would authorize the President to apply the Vienna Convention to the diplomatic missions of countries which had not become parties to the Vienna Convention. There are some countries who are not now parties to the convention, and indeed for quite some period of time it is possible that a number of countries will not become parties to this convention and we would like to have a basis for the President to accord to those other countries the same immunities which are provided for in the convention.

We would also like to have authority, and the legislation contains a grant of authority, for the President to accord to some diplomatic missions of other countries, on a basis of reciprocity somewhat greater immunities than are required to be granted by the convention. We are

thinking here in such areas as customs privileges and tax exemptions, when it is in our national interest to grant and to secure for ourselves abroad a larger measure of immunity than what is provided for by the convention.

In these areas today our missions in a number of countries abroad do enjoy a somewhat wider degree of immunity than what the convention requires, and we would like to have the President enabled to provide reciprocal treatment here as a way of gaining for us advantages which we think are important to our missions abroad.

EXAMPLE OF DIPLOMATIC RIGHTS

Senator CHURCH. Will you give us any examples that would be illustrative in connection with any particular country.

Mr. MEEKER. One or two examples would be, first of all, the right of a diplomatic officer to have continuing free entry for articles that he might want in his post.

Now in the United States this is not a very significant kind of immunity because of the wide availability of all kinds of merchandise here, but if an American diplomat officer is stationed at a somewhat remote post, perhaps in Africa or Asia or some other capitals, what is available to the local market may be very limited indeed, so if he has the right of bringing in free of duty during his whole stay articles that he may need in his household, this is a valuable concession for us to have. We think that it is quite worthwhile from our point of view.

In conclusion, Mr. Chairman, I should like to emphasize that the virtue of this Vienna Convention, we believe, is its establishment of a uniform standard of treatment for diplomatic missions and their personnel throughout the world. As such, it is a valuable contribution not only to the continuing process of codifying international law but also to the elimination of inequalities in the application of diplomatic law and practice.

We therefore hope that the Senate will see fit to give its advice and consent to the ratification of this treaty and of the optional protocol on the settlement of disputes.

Senator CHURCH. I think, Mr. Meeker, that the first questions I will put to you are meant generally to cast this convention in rather broad terms so that we can begin to get some perspective on just what may be entailed here. Then we will have more specific questions to ask either now or later about it.

EFFECT OF CONVENTION ON INTERNATIONAL LAW

First of all, in what major respect does the convention constitute a departure from present international law or practice?

Mr. MEEKER. I suppose one of the principal differences between this convention and existing international law lies in the following new disposition which the convention makes in the area of immunities.

The convention divides the personnel of a diplomatic mission into three groups.

First, by the diplomatic agents who are the head of mission and other professional diplomatic officers; second, the class of administrative and technical personnel; and finally, the service staff.

Under the convention the rules of immunity will be different for those three groups. The first class of diplomatic agents will have virtually complete immunity from both civil and criminal jurisdiction. There is a little difference here regarding diplomatic agents under the convention. Under international law today, diplomatic agents have complete immunity without exceptions.

However, under the Vienna Convention there will be some exceptions and they are set forth in article 31, paragraph 1. Those exceptions relate to the following things. If there is a civil action, a judicial proceeding, relating to real estate in the territory of the receiving state, and if a diplomatic agent is a party thereto he is subject to jurisdiction unless he happens to hold the property on behalf of his government. But if he holds it for himself and in his own name, then he would be subject to suit.

The same would be true under the next subparagraph of article 31, subparagraph 1(b), if the diplomatic agent were involved in some probate proceedings as executor, administrator, heir or legatee in a private capacity.

And finally, if the diplomatic agent engages in any professional or commercial activity outside of his official duties as a diplomatic agent when he would be subject to the jurisdiction of the receiving state with respect to those nonofficial acts of a professional or commercial character.

NATURE OF IMMUNITIES

Senator CHURCH. These provisions, then, impose certain limitations on the privileges and immunities that heretofore have been recognized?

Mr. MEEKER. They do. They narrow the immunities somewhat. Where it is a hundred percent today, it will be reduced in these relatively minor respects for diplomatic agents.

Senator CHURCH. Now, as to the second category.

Mr. MEEKER. The next category is the administrative and technical staff. Under the convention they will have a degree of immunity which is less than what diplomatic agents have. They will have full immunity from criminal jurisdiction but they will have immunity from civil jurisdiction only with respect to official acts. So this is somewhat narrower.

Senator CHURCH. What are the present customs?

Mr. MEEKER. Today those persons have full immunity. Then the service staff have an even narrower degree of immunity. Their immunity is limited to immunity from income tax, from social security tax, and from process with respect to official acts. With respect to nonofficial matters they are subject not only to civil jurisdiction but even to criminal prosecution as well.

Today a chauffeur or another member of the service staff of an embassy would have full immunity unless, of course, in this country he were an American citizen or permanent resident of the United States. So that in those respects, the Vienna Convention will cut down the degree of immunity which is provided for in international law as it is currently being applied.

IMMUNITIES OF AMERICAN NATIONALS EMPLOYED BY EMBASSIES

Senator CHURCH. Let me inquire about the status of an American citizen employed in a domestic role by a foreign embassy in this country under present law and custom. What immunities does such a person have now and what will they be under the convention?

Mr. MEEKER. In the case of a chauffeur or other domestic employee today he would have immunity with respect to official acts; that is, if he is an American citizen employed in a domestic capacity. Under the convention, I think under article 38 he would have that same level of immunity. In that particular case the convention does not really make a change. Article 38, paragraph 1, reads as follows:

Except insofar as additional privileges and immunities may be granted by the receiving state, a diplomatic agent who is a national of or permanently resident in that state shall enjoy only immunity from jurisdiction, and inviolability in respect of official acts performed in the exercise of his functions.

That is with respect to a diplomatic agent.

Paragraph 2 relates to other members of the staff, the administrative and technical group, and finally the service staff and it says—

Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving state shall enjoy privileges and immunities only to the extent admitted by the receiving state. However, the receiving state must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

That last statement is a suggestion but it is not a rigid one, that official actions would be an area in which the service staff would have immunity today under the convention.

Senator CHURCH. Providing that the receiving nation is willing to give it.

Mr. MEEKER. Yes.

Senator CHURCH. Does that complete your answer to my question, Mr. Meeker?

TAX IMMUNITIES

Mr. MEEKER. There are other differences and perhaps I might review just a few more of the principal ones. Article 34 of the Vienna Convention now sets forth comprehensively the exemptions from taxes which are to be granted to diplomatic agents. In the past there has been some unclarity and at times some difference of view about the applicability of exemption from taxes and in certain tax situations.

Article 34 undertakes to settle this by providing that a diplomatic agent, a member of the first group, diplomatic officers, shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except, among others, for the following:

Indirect taxes of a kind which are normally incorporated in the price of goods and services.

Second, dues and taxes on private immovable property, land situated in the territory of the receiving state, unless the diplomatic agent holds it for the use of the mission.

Third, estate, succession, or inheritance duties levied by the receiving state subject to the provisions of paragraph 4 in article 39, which provides if a diplomatic agent dies while in service in the receiving

state then his property, movable property, may be taken from the country and is exempt from estate tax.

Fourth, dues and taxes on private income having its source in the receiving state and capital taxes on investments made in commercial undertakings.

This means that if the diplomatic agent, in addition to his official salary is deriving income from business activities in the receiving state, then he would be taxed on that additional income which he has apart from his salary.

Senator CHURCH. Do these provisions vary from the present taxes?

Mr. MEEKER. The estate provision does somewhat. The others are not too different.

OBLIGATION TO RESPECT LOCAL LAWS

There is one new article in the convention which hopefully will have a good deal of helpful influence. This is a new provision in article 41 which states:

Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving state. They also have a duty not to interfere in the internal affairs of that state.

What this does is to say that although a diplomat may not be subject to prosecution or subject to civil action with respect to his activities while in the receiving state, nevertheless, his enjoyment of immunity is not a license to disregard the laws of the receiving state, and I think that this should provide a helpful basis for our making it very clear to embassies that their members are going to have to live up to laws in this country and ultimately, if the situation becomes serious enough, we would have to in certain cases perhaps require the departure of members of diplomatic missions as we have a right to require and will have that right under the convention, just as we do now.

Senator CHURCH. That, however, is the only sanction we could apply, is it not?

Mr. MEEKER. Yes, it is; with respect to the diplomatic agents.

Those, Mr. Chairman, I think, are the principal differences which the convention would make with respect to, and in comparison to, existing international law. As I said earlier, the convention, we believe, is largely a codification of international law as it is accepted by the great majority of the countries and as it is applied by the United States.

SCOPE OF U.S. SUPPORT FOR CONVENTION

Senator CHURCH. Which provisions of the convention did the U.S. delegation oppose at Vienna and for what reasons?

Mr. MEEKER. We did, with respect to customs privileges, want to have all of the members of diplomatic missions able to enjoy free entry throughout their stay rather than just free entry at the time of arrival.

The convention limits the customs privilege to first entry but we are hopeful that on the basis of reciprocity in conjunction with the legislation I referred to that we will be able to work out suitable arrangements with most countries so as to be able to have for our people continuing free entry throughout their assignment to their foreign post.

Senator CHURCH. This would have to be done on the basis of a bilateral arrangement, supplementary to the convention.

Mr. MEEKER. Yes. Yes, it would have to be done that way. This could be done perhaps quite informally. We wouldn't need to have anything so formal as a treaty but we would have informal understanding with other governments.

There is another principal area in which—

Senator CHURCH. Incidentally what would an informal understanding be? Would that be an executive agreement?

Mr. MEEKER. We might do it by exchange of notes pursuant to the legislation which will be sent very shortly to Congress. The statute, of course, would authorize this, and we contemplated an exchange of notes would probably be the way it would be carried forward.

Another area in which the U.S. delegation was not in agreement with a provision of the convention as it emerged from the conference was the limitation of privileges and immunities for the administrative and technical staff. The U.S. position was to give them the same immunities as those which were to be enjoyed by diplomatic agents. We did not at that time want to have the immunities of administrative and technical staff limited. Other members, in fact a distinct majority of the conference, did want to make a differentiation and provide more limited immunities and this is what the convention now provides for. We think that we will have no problem in living with that, and in particular cases we may gain by bilateral arrangements somewhat enlarging the scope of the immunities of those people.

Senator CHURCH. Does the State Department favor the attachments of any interpretations or reservations to the resolution of ratification?

Mr. MEEKER. No, we do not.

Senator CHURCH. I notice that some countries that have ratified have done so with reservations.

Mr. MEEKER. They have. A number of them, of course, relate to matters that are not of particular interest in connection with this convention. For example, some of the Soviet bloc countries have attached reservations which relate to the countries which have the right to accede to the convention.

This is a standard Communist position. It is related to the question of East Germany and Communist China, which the U.S.S.R. and other bloc countries would like to see have the right to accede.

EXTENT OF COVERAGE OF THE CONVENTION

Senator CHURCH. What countries are excluded from acceding to the convention under the terms as it is written?

Mr. MEEKER. Well, actually the coverage is very broad. The accession clause provides for accession by all states members of the United Nations, or of any of the specialized agencies, or parties to the statute of the International Court of Justice or any other state invited by the General Assembly of the United Nations to become a party. So that potentially there are no exclusions at all, if the General Assembly wishes to invite a state to become a party even though it may not fall into one of these other categories. But the number of countries excluded who are not automatically entitled to accede without an invitation, that number is really very small. It would be Communist China,

North Vietnam, North Korea, East Germany. That is the practical effect of it.

Senator CHURCH. I think you have indicated in your original statement the Federal statutes that will need to be repealed. You mentioned three sections of the code. These are the only provisions of the existing code that would have to be modified if the convention were to be ratified.

Mr. MEEKER. Yes.

EFFECT ON FEDERAL-STATE RELATIONS

Senator CHURCH. What effect, if any, will this treaty have on subjects normally within the jurisdiction of States of the United States?

Mr. MEEKER. Well, it will have an effect on real property taxation. If, for example, a mission should locate its chancery or embassy residence in Maryland or Virginia, then the convention would preclude the collection of real estate taxes with respect to that property.

Senator CASE. Preclude, did you say?

Mr. MEEKER. Yes.

Senator CHURCH. Isn't that presently the custom or is it not?

Mr. MEEKER. Actually today the exemption from real estate taxes comes about by virtue of a statute in the District of Columbia which provides for exemption here. I think there has been an Austrian Embassy residence built in Maryland and we were able to get exemption for it under a treaty which the United States had with Austria, but this Vienna Convention would now establish as a rule exemption from real estate taxation for the chancery and other embassy property, wherever it was located, in the District of Columbia or any State.

Senator CHURCH. Providing that that property is held by the government concerned.

Mr. MEEKER. And also it must actually be used as the Embassy office building or as the residence of the Ambassador.

Senator CHURCH. Senator Case, do you have a question about this?

TAXES ON PROPERTY OWNED OR LEASED BY DIPLOMATS

Senator CASE. Following the thinking of the chairman, supposing the property is merely leased by the foreign state, does the domestic owner then become immune from tax?

Mr. MEEKER. No; he would not. He would still be subject to real estate taxes and, of course, I suppose this would have to be reflected in the rental.

Senator CASE. So that there is a distinct premium on a foreign embassy, or foreign mission, to buy a house, isn't there?

Mr. MEEKER. Yes.

Senator CASE. Is that desirable?

Mr. MEEKER. We think that it is better than to have any class of American citizens who can own property, lease it to a foreign embassy, and thereby be excused from paying normal real estate taxes.

Senator CASE. Why should the foreign owned property be immune from the tax at the regular rates paid by Americans, or vice versa?

Mr. MEEKER. The reason, I suppose, is simply that this is one of the types of immunity which most countries feel is desirable. We would

like to have this kind of immunity from taxation for our much more extensive premises and buildings abroad, and I think on balance it works out very much to our interest.

Senator CASE. Does it apply only to the freehold or does it apply also on the improvements?

Mr. MEEKER. I think to land and buildings, yes.

Senator CASE. And appurtenances, fixtures?

Mr. MEEKER. Yes.

Senator CASE. Personal property?

Mr. MEEKER. Yes. The convention would provide exemption from personal property taxes, also.

Senator CASE. All property taxes whatever.

Mr. MEEKER. Yes.

Senator CASE. Thank you very much.

Mr. MEEKER. This, of course, is different from a charge which might be made by local authorities for putting in a sewer. If there are specific services or improvements made which benefit the property, such as the putting in of a sewerline, this kind of charge would not be one that the mission would be exempt from. They would have to pay that.

Senator CASE. But it couldn't be enforced.

Mr. MEEKER. However, the charge would remain as a charge against the property, and this would mean that in the end when the Embassy had to sell it they would have to take this into account and any purchaser would have to realize he would be subject to that charge.

Senator CHURCH. It would simply remain as a lien against the property?

Mr. MEEKER. Yes, it would.

Senator CHURCH. Which would have effect only if the property itself were to come out from beneath the umbrella—of the foreign ownership?

Mr. MEEKER. Yes.

Senator SPARKMAN. I would presume it would also have the status of an ordinary open account such as a bill made downtown in a department store.

Senator CASE. You couldn't collect it.

Senator SPARKMAN. Could you collect bills that are made?

Mr. MEEKER. I think we could not collect the bill in the ordinary way of a judicial proceeding, but what we certainly could do and what we have sometimes had to do is to make representations to the Ambassador of the foreign government asking them to settle up an account which is really due and for which they have no excuse not to pay. I would hope that particularly in view of the presence of article 41 in this new convention that I read a few moments ago about the duty to respect the laws and regulations of the receiving state, that we would find relatively few problems of an embassy, members of a mission, flatly refusing to obey the laws.

Senator SPARKMAN. Mr. Chairman, I am going to have to go. I wonder if I might ask a couple of questions.

Senator CHURCH. Certainly. Senator Sparkman.

Senator SPARKMAN. With reference to the ownership of real estate, you say it is desirable for the countries here to own their own real estate: Will this give us the right to own our own property in other member states?

Mr. MEEKER. We will have exactly the same rights and immunities abroad in the countries which are parties to this convention.

Senator SPARKMAN. There are some countries, are there not, that do not permit ownership.

Mr. MEEKER. We would not necessarily have a right of ownership of a freehold estate, but there is a provision in the convention under which the receiving State is obligated to assist in the provision of suitable premises. Article 21 provides:

The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.

It shall also, where necessary, assist missions in obtaining suitable accommodations for their members.

ROLE OF WORLD COURT AND THE CONNALLY RESERVATION

Senator SPARKMAN. I understand from a statement that you made that there will be implementing legislation presented to us in time.

Mr. MEEKER. Yes.

We hope very shortly, just in the matter of a day or two.

Senator SPARKMAN. You mentioned three sections to be repealed. Does that include the Connally amendment?

Mr. MEEKER. No, it does not. The Connally amendment is attached to the U.S. acceptance of the compulsory jurisdiction of the International Court of Justice.

Senator SPARKMAN. In part of your statement you referred to submission of questions to the International Court of Justice.

Mr. MEEKER. That reference was to the optional protocol which accompanies this treaty. Now the optional protocol would not have the effect of canceling out the Connally amendment. What it would do would be to provide that with respect to this treaty, and with respect to this treaty alone, we would accept the compulsory jurisdiction of the Court for settling disputes that arise out of this treaty, and similarly we would have the right to bring to the Court any other party who had accepted the optional protocol.

Senator CHURCH. May I ask in that connection, Senator Sparkman, we have followed this procedure in connection with a number of other treaties, have we not?

Mr. MEEKER. Yes, we have.

Senator CHURCH. For example, in commercial treaties of various kinds we have accepted the compulsory jurisdiction of the World Court for disputes that would arise from these particular treaties.

Mr. MEEKER. That is right.

Senator CHURCH. So that this would not be breaking new ground in connection with the Connally reservation.

Mr. MEEKER. No, it would not. The U.S. acceptance of the jurisdiction of the Court to which the Connally reservation is attached is a general acceptance relating to all kinds of international legal disputes. This optional protocol relates to this Vienna Convention and nothing else, just as in the case of a friendship, commerce and navigation treaty the disputes clause relates only to that treaty.

Senator CASE. How do you tell? Who decides the issue whether a question arises under this treaty?

Mr. MEEKER. Whether it has arisen under the treaty in question? Well, I think the International Court of Justice would have to decide that question, if it were raised.

Senator CASE. In other words, any party could raise it. Thereby making our acceptance of this treaty as embodied in the protocol subject to the International Court and not a matter for us to determine.

Mr. MEEKER. That is correct. The International Court of Justice in that case would have the task of deciding whether the question arose under the Vienna Convention or not. I think myself, in view of the history of the Court's jurisprudence, that we may expect it to be quite conservative in construing its jurisdiction. It has been so far.

Senator CASE. If I may pursue this, what we are consenting to is reference of disputes arising under and not disputes to which in some fashion a provision of the convention may be applicable. Is that it?

Mr. MEEKER. It is strictly limited to disputes arising out of the interpretation or application of this convention.

Senator CASE. A party couldn't just throw this in as one of many things and then have it presented to the Court?

Mr. MEEKER. No. It would only be the question which related to the interpretation of this convention that the Court would have authority to pass upon.

Senator CHURCH. Mr. Meeker, the State Department's transmittal letter terms the provisions on immunity from jurisdiction "a significant departure from existing customary international law."

Do you feel you have covered the full scope of that departure in your previous answer to questions this morning?

Mr. MEEKER. Yes. I would go back particularly to the one subject that I mentioned earlier, and that is the limitation of immunity for administrative and technical personnel. There there is a substantial reduction brought about by the convention in relation to what the United States and many other governments consider international law today requires.

NATURE OF CONSULAR CONVENTIONS

Senator CHURCH. How do the provisions of the Vienna Convention compare with those of the bilateral consular conventions between the United States and other states?

Mr. MEEKER. Well, they are very different because in the consular conventions the level of immunity which is provided for consular officers is very much less than what is provided for members of diplomatic missions in this convention.

Under the consular conventions that we have, some with Japan, Korea, and other countries that have been negotiated recently, a consular officer enjoys immunity with respect to official acts but he does not enjoy a general immunity. Also he has an immunity from criminal prosecution for misdemeanors, but not immunity with respect to criminal prosecution for felonies, so that the whole level of immunity for a consular officer is very much narrower and more limited than what members of diplomatic missions would have.

Senator CHURCH. If this convention were ratified, I take it that whatever broader immunity we secure by virtue of bilateral arrangements would not be affected by this convention. That is, this convention, in establishing the general minimal levels of diplomatic im-

munity, would not supersede bilateral agreements which extend a broader scope of immunity to our diplomats and to those of the other country with whom we have this special agreement.

Mr. MEEKER. The convention establishes a floor and not a ceiling. We can go above it by bilateral arrangement to the extent we wish.

Senator CHURCH. Are there any significant differences in principle between this convention and the pending consular convention with the Soviet Union that is now before this committee?

Mr. MEEKER. Again, the consular convention with the Soviet Union relates to the whole subject of exchange of consular representatives rather than diplomatic representatives. Thus the approach and the treatment are quite different from the approach and treatment in the Vienna Convention. It is true that the consular convention with the U.S.S.R. differs in some important respects from consular conventions that we have in other countries. There are special reasons for this which we would certainly like to go into at a later time when the committee is considering that convention.

Senator CHURCH. But this agreement simply does not have any application to consular officers; is that correct?

Mr. MEEKER. None at all.

Senator CHURCH. None at all. It is entirely removed from that field?

Mr. MEEKER. That is correct.

CONVENTION AND INTERNATIONAL LAW

Senator CHURCH. I am not certain whether or not you have answered this question but I will put it to you. To what extent does the convention make new international law? You need not repeat fully what you have already said.

Mr. MEEKER. It does make new international law in the field of immunities and in setting up the groups and narrowing the relation of each. It makes some new international law in regard to the matter of taxation in certain instances as with regard to the estate taxes on diplomatic agents dying in the service, and it makes a little new international law, I suppose, in article 41 which sets forth flatfootedly the obligation of members of diplomatic missions to abide by the laws and regulations of the receiving state.

Senator CHURCH. Would I be correct in concluding that whatever new law is made here, apart possibly from article 41 to which you referred, is in the direction of narrowing present immunities rather than in the direction of expanding them.

Mr. MEEKER. In general, I think that would be an accurate characterization of the effect of the convention. This is not universally true with respect to every change but in general in the area of immunities, in the area of customs privileges, and with respect to article 41 it has a somewhat narrowing tendency.

INTERNATIONAL ORGANIZATIONS NOT COVERED DIRECTLY

Senator CHURCH. Does the Vienna Convention apply to any international organizations?

Mr. MEEKER. No. This will be a treaty among states. It is open for signature and accession only by states, and the privileges and im-

munities of international organizations are dealt with in a different way. Usually the constituent instrument of such an organization has in it some provisions on privileges and immunities.

Also in the United States we have the International Organizations Immunities Act of 1945 under which the President may designate an organization and then it is entitled to the privileges and immunities set forth in the statute. Therefore, this convention in fact, has no effect on the international organizations.

This Vienna Convention would have an effect with respect to certain individuals in the case of the United Nations by virtue of section 15 of the Headquarters Agreement. In the Headquarters Agreement, section 15 provides that the representatives of member states to the U.N., not officials of the U.N. Secretariat, and representatives of member states to the specialized agencies are to enjoy the same privileges and immunities as diplomatic envoys in Washington.

So that to the extent that the Vienna Convention has changed, has somewhat narrowed in certain respects, the privileges and immunities of diplomatic missions in Washington, similarly the representatives of member countries to the U.N. in New York will be affected by virtue of this convention through a sort of incorporation by reference. This will happen in the case of the OAS as well. The members in Washington have in general separate representatives to the OAS and those missions to the OAS will be affected by reference.

PROVISIONS FOR ENFORCEMENT

Senator CHURCH. Are there any provisions for the enforcement of the convention?

Mr. MEEKER. Provisions for the enforcement of the convention? Not other than the optional protocol for the compulsory settlement of disputes and the usual process of diplomatic negotiation which goes on all the time between governments.

Senator CHURCH. What action, in connection with your last statement, can a sending state take if a receiving state does not accord its diplomatic personnel the privileges and immunities set forth in the convention?

Mr. MEEKER. Well, there are various possibilities. If the sending state has become a party to the protocol and the receiving state has also, then a lawsuit may be instituted to determine the rights and duties of the two countries and the judgment of the court would be a legally binding determination between them.

Also, in article 47 of the Vienna Convention it is specifically provided:

In the application of the provisions of the present convention the receiving state shall not discriminate as between states. However, discrimination shall not be regarded as taking place [a] where the receiving state applies any of the provisions of the present convention restrictively because of a restrictive application of that provision to its mission in the sending state.

That means if a sending state finds that it is not securing the kind of treatment that it feels it is entitled to in the receiving state, it can take reciprocal action at home. This is another means of enforcing its rights.

Senator CHURCH. I think it might be helpful if you would state for the record what means are available to the World Court for enforcing any judgment reached that might arise from a dispute under this convention.

Mr. MEEKER. The enforcement of judgments of the International Court of Justice is provided for in article 94 of the United Nations Charter. Under article 94 the Security Council is given jurisdiction to take such measures as may be needed to enforce a judgment of the Court. That is the one provision on enforcement.

Senator CHURCH. And has the Security Council in the history of the United Nations ever acted under that authority?

Mr. MEEKER. It has not. We are, of course, following the *South-West Africa* case with great interest, and it may well be that the Security Council will be confronted with the necessity of taking some action therefor.

Senator CHURCH. The United States, of course, having a veto in the Security Council is always in a position to protect its interests against any attempt to enforce a judgment in the World Court which the United States regards as adverse to its interests, is that correct?

Mr. MEEKER. That is correct. I would hope we would not find it necessary ourselves to use the veto in a situation which would defeat a judgment of the Court which was properly obtained against us.

Senator CHURCH. I would hope so as well. I think for the record we ought to note the circuitry of this arrangement. It starts with sovereignty and comes back to sovereignty, doesn't it?

Mr. MEEKER. It does in the case of the permanent members of the Security Council.

Senator CHURCH. Senator Case, do you have some questions you would like to ask?

Senator CASE. Thank you, Mr. Chairman.

Mr. Meeker, I am sorry I was not here to hear the beginning of your statement and if I ask questions that are repetitive please tell me so.

DIPLOMATS AND TRAFFIC REGULATIONS

As you know, I have been interested in this question in connection with some rather specific matters particularly relating to violation of traffic laws, speeding on the New Jersey Turnpike. I take it that this convention would not materially affect the situation in regard to foreign diplomats, members of the mission and their families or employees. But I would like to be rather specific with you.

I made a suggestion which is before you now, in regard to a point system which might lead eventually, if the accumulated points reached a critical number, to a declaration that the individual accumulating those points is not personally acceptable to us and therefore be sent home.

I am not going to ask you about that because you are entitled to make a formal presentation. I take it you have had discussions with the head of our New Jersey State Police, haven't you?

Mr. MEEKER. Yes; we have.

Senator CASE. And you haven't arrived at any convention, protocol, concordat, or understanding as to the question of whether the State

police have the right to escort diplomats violating the speed laws off the turnpike, is that correct?

Mr. MEEKER. That is correct. We are hopeful that this can be worked out in a way which will be satisfactory from the point of the authorities in New Jersey, and also in a manner that the State Department would consider as reasonable in relation to the functioning of diplomatic missions, and we will undoubtedly be continuing our discussions.

Senator CASE. Let's be rather specific about it because I would like to know. Suppose somebody parks his car in front of my driveway and I can't get out. What can I do, assuming he has a diplomatic tag on it, right here in the District, first, and second, in New Jersey. Suppose there was an emergency that made it necessary for me to get my car out?

Mr. MEEKER. I would think in any emergency situation one could certainly push the car from the position of obstruction where it was.

Senator CASE. Suppose it is my wife home and not me.

Mr. MEEKER. Perhaps she could find some one to help in the pushing of the car.

Senator CASE. Suppose she didn't, could she call the police, and if so, what could they do?

Mr. MEEKER. I would think if there were no other way of her dealing with it, she could certainly call the Police Department and they could push the car out of the way.

Senator CASE. Suppose all the places to park are taken, where will they take it? Can they have it towed away?

Mr. MEEKER. Well, I would think they could certainly take it any reasonable distance and then after having done so, I would think they would have the normal responsibility of informing the owner what had happened to the car so that he would later be able to find it.

Senator CASE. In that case, suppose, it is towed away, does the garage have a lien on this car for the towing until the charges are paid or not?

Mr. MEEKER. There is a provision in the convention which would have a bearing on this. If the automobile belonged to the mission rather than to a private individual.

Senator CASE. How would this effect it?

Mr. MEEKER. Article 22, paragraph 3, states:

The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment, or execution.

So I would suppose under that that an embassy vehicle owned by the mission rather than by an individual diplomat would be immune from attachment and indeed could not be kept by a lien holder to enforce his lien.

Senator CASE. Wouldn't that provision apply to this sort of situation and make it illegal or a violation of the treaty to touch the car at all, no matter where it was.

Mr. MEEKER. I would not think so. It seems to me that the effect of the treaty would be to say to the individual who needs to move the car "you may move it. You may use what means you need to move it but afterward neither you nor anyone else can hold the car to satisfy a charge which normally would apply."

I think that would be the consequence of the convention rather than any restriction on what one could do to move the car in an emergency.

Senator CASE. Only if it is one owned by the Government and not by the individual, and used by the Government, at the time, on Government business.

Mr. MEEKER. I don't think article 22 requires that the means of transport actually be operated on official business at the moment, although it is a little hard to see when the car of an embassy would not really be on some kind of official business.

SPECIFIC EXAMPLE

Senator CASE. Let me take an example from my own experience. We live next to a little church. It has a French service at 12:30. Many diplomats go to this French service. Our driveway is 15-foot wide front, much too small to have any of these cars in front of it without blocking the driveway. Quite frequently, in fact every Sunday, somebody drives up and leaves the car right in front of the garage. Now is going to church by the ambassador and his wife official business?

Mr. MEEKER. I don't think that the convention really distinguishes between official business so far as the ambassador is concerned and nonofficial acts, and this would be true indeed of anyone in the whole group of diplomatic agents.

Senator CASE. In technical terms of the United States, if he is employed in the mission, is he immune? If he can get a diplomatic license, can he put his car in front of somebody else's driveway and thumb his nose at him as he walks into the church.

Mr. MEEKER. I would say under article 41, no diplomat, not even the ambassador, has the right to park in front of a driveway or in any other way that is illegal. This is made clear by article 41.

DIPLOMATIC RIGHTS AND LAW-ENFORCEMENT OBLIGATIONS

Senator CASE. When you use the term "right" are you using it in the sense of a right that is enforceable. This doesn't give you a moral right.

Mr. MEEKER. Well, indeed not even a legal right, I think, because of the presence of article 41 in the convention.

Now the means of enforcement are going to turn out to be different if you are dealing with someone who is not subject to judicial process. The means of enforcement then are diplomatic means rather than judicial means but I think it would still be accurate to say that no diplomat has the right to break the law in any respect whether it is parking or anything else.

Senator CASE. There are more serious things than an annoyance caused to a resident. There may be parking in front of a firehouse or hospital driveway which would prevent an ambulance from coming out; or a firetruck or a police car. There may be all kinds of things dangerous to the health of the community and of the people in the community. I take it the community is not helpless in these matters; is that correct?

Mr. MEEKER. No, it is not helpless and can certainly take any reasonable measures of self-help to deal with any emergency situation like that.

Senator CASE. And this applies to an individual?

Mr. MEEKER. It would apply to an individual car or the mission's car, in either case.

Senator CASE. And it applies to the individual who is in need of self-help, I take it, too, as the owner of a home and so forth.

Mr. MEEKER. Yes.

NEW JERSEY TURNPIKE SITUATION

Senator CASE. Coming back, if you don't mind, to our New Jersey Turnpike situation. Is the New Jersey trooper obliged to let this man continue driving, after catching him going 83 miles an hour.

Mr. MEEKER. The difficulty here is—well, to begin with, the diplomat has no right to drive 83 miles an hour. This is perfectly clear.

Senator CASE. Do you mean it is wrong for him to do it?

Mr. MEEKER. It is contrary to his legal obligations as a diplomatic officer accredited to the United States.

Senator CASE. I understand.

Mr. MEEKER. I think it is more than a moral question. It is a legal question of what his obligations are as a diplomat who has been received here in that capacity.

Senator CASE. There is no right without a remedy, and an effective remedy.

Mr. MEEKER. Now, the question is what should the remedy be.

MEANS OF ENFORCEMENT OF TRAFFIC LAWS

Senator CASE. Yes, the New Jersey trooper has a job to see that people don't drive dangerously. I take it if the diplomat is drunk he can haul him off by the scruff of the neck and cool him off, is that right?

Mr. MEEKER. I would not have any difficulty about that.

Senator CASE. The answer is "Yes"?

Mr. MEEKER. Yes.

Senator CASE. Thank you.

Mr. MEEKER. Not taking him to jail but preventing him.

Senator CASE. Confining him.

Mr. MEEKER. But preventing him from doing damage in the immediate future.

Senator CASE. Yes, and this means confining him. If he is going to hurt himself or hurt anybody else he can be prevented, he can be restrained, I take it.

Mr. MEEKER. Mr. Harris says that not infrequently the District police have just taken the keys from the car for a little while so the car cannot be driven.

Senator CASE. In New Jersey there are a few stretches in the turnpike where a man might have to go 10 miles without food or drink. Is that a cruel thing to do? I take it this is what you have to do; more than just take his keys away. I should think even that is technically a violation of the treaty.

Mr. MEEKER. To remove the keys from the car.

Senator CASE. Yes.

Mr. MEEKER. I think not in an emergency situation, no. And, of course, the individual could be escorted to the next Howard Johnson's. There would be various practical ways, I think, of dealing with the problem in the case that you suggest, for example, a cup of coffee.

Senator CASE. Is it unreasonable to take the man off the turnpike if he is driving at that speed? Would you let him continue? Would this require him to continue? Does it change the law or the general situation as far as immunity goes?

Mr. MEEKER. I don't think the convention changes the law.

Senator CASE. That is important. What is the situation?

Mr. MEEKER. My own view would be that if a diplomat on one occasion while driving down the turnpike was found to be exceeding the speed limit, this, of course, is going to be a question of judgment as to how much, because I think the answer may be different in different cases. I think 83 miles an hour is quite a lot different from 63. But if the diplomat is found exceeding the speed limit once by an amount which is not so excessive as 93, and in circumstances where his driving is not of such a nature as to threaten a considerable hazard to other drivers, I would think that he might be given at least one warning before he is escorted from the turnpike.

Senator CASE. That is the present practice, I understand, by the New Jersey police. I think you probably ought to have two warnings.

Mr. MEEKER. This has been one of the difficulties, I think, in the case of the turnpike. Actually our information is, and this seems to be the fact, that the turnpike authorities, the troopers, do escort from the turnpike not necessarily someone who has been given a warning previously but any second vehicle of a mission which has been given a warning in the past.

This is the practice they have followed, so that if one representative of Belgium, shall we say, has speeded on the turnpike in February and been given a warning, and then another representative of Belgium in another car is speeding, we will say, in August, or maybe 2 years later, then he will be escorted from the turnpike simply because another member of his mission was given a warning at the earlier time. This seems to us to be a little—

Senator CASE. Putting pressure on the Belgians to keep themselves in line. Isn't that a good idea?

Mr. MEEKER. I think all these matters are questions of judgment. We would like to see the warning done on an individual basis rather than on a country basis.

OBEYANCE OF TRAFFIC LAWS EVERYWHERE URGED

Senator CASE. I can understand this and I think you ought to say this publicly. You ought to fight for this position and I think it is up to us to make it possible for you to get as much support as you need to argue your case because you have to do the negotiating with these other countries. I am thoroughly aware that this is a reciprocal matter and we have problems abroad. But I don't want a single American to stay in any position, whether he is an ambassador or a clerk, if he is

the kind of a person who is going to breach any foreign traffic laws even though we may think they are not necessary.

Mr. MEEKER. Our instructions to members of American diplomatic missions abroad are extremely clear on this, and we hope that they are carried out. We do what we can to see that they are. In dealing with comparable situations here, we do have to remember that there are even larger numbers of Americans abroad and that sometimes the facts in those cases may be less clear than they seem to us in some situations in this country.

Senator CASE. You understand this entirely. I think it is desirable, however, to make this as automatic as possible and as effective and sure as possible, and that is why I have made the suggestion about points.

I hope that this matter will be considered from the standpoint of our concern about making very clear, your point that nobody is above the law. I think this is a very important principle.

I don't like to see our President riding down 80 miles an hour even though I understand it is necessary for his safety to get from one place to another.

I don't like to see the sheriff of the county preceded by a screaming siren in a police car running along Hudson Boulevard or any place.

I think these things are all wrong and they put in everybody's mind the idea that you can get things done if you are the right person, and you can't if you are not. There is great inequality in the world, and this is not good. I think there is every reason to try to enforce all our laws equally toward foreign people here and diplomats as well as anybody else. One of my colleagues the other day told me he was very glad I raised this matter because some high official was leaving his car in front of the British Embassy for a long time and it took representations from the Senator to the Ambassador for remedy. I think this is nonsense. To think anybody has a right to leave his car on Massachusetts Avenue at the time of peak traffic is just ridiculous and it should take little time to clear it up.

You ought to be doing more important things, it seems to me, and so should our Embassy and everybody else. I really think these laws ought to be made more automatic.

Mr. Chairman, I am sorry to take so much time but this is a matter that is much misunderstood.

SCOPE OF DIPLOMATIC IMMUNITY

How many diplomatic agents are there in the United States from foreign countries to whom this would apply? Are most of them in Washington?

Mr. MEEKER. The diplomats in Washington, and those in New York at the United Nations and also those attached to the OAS and to the NATO headquarters who have diplomatic status, number about 3,000 in this country, roughly.

Senator CASE. In addition to that there are those whose immunity depends upon the United Nations Organization arrangements in New York, I take it.

Mr. MEEKER. That 3,000 includes those in New York who have diplomatic status by virtue of section 15 of the headquarters agreement.

Senator CASE. There is only a small number of those. How many United Nations people are there in addition to that?

Mr. MEEKER. The UN Secretariat has a large number of employees, I suppose 3,000 or 4,000 who do not have diplomatic immunity.

Senator CASE. But they have some special status?

Mr. MEEKER. They do have immunity under our laws from any judicial procedure in relation to their official duties, their official acts. But they do not have a personal immunity.

Senator CASE. They can be sued if they don't pay the store's bill?

Mr. MEEKER. Yes, indeed.

Senator CASE. Do they have to observe local zoning laws, and so forth?

Mr. MEEKER. They have no immunity at all from criminal laws and regulations generally.

DISTRICT OF COLUMBIA ZONING SITUATION

Senator CASE. What would happen if, say, the zoning law of the District of Columbia is breached by a diplomat under this convention. Suppose he puts up a 50-story building; and he doesn't have to get a domestic contractor to do it; he can get a foreign contractor or do it himself.

Mr. MEEKER. By hand?

Senator CASE. Yes.

Mr. MEEKER. This, I think, would be quite a feat for the diplomatic corps.

Senator CASE. Yes, it is. There are ways of violating the law. I made it extreme.

Mr. MEEKER. I think the diplomat himself would not be subject to judicial process but anyone whom he hired to do the job whether it is an American contractor or a foreign contractor wouldn't have the same immunity at all.

Senator CASE. Even if he made the foreign contractor an agent, his employee?

Mr. MEEKER. No. The foreign contractor would not because it is up to the U.S. Government and specifically the State Department to accept diplomatic agents, and it is only by virtue of that acceptance that they acquire any immunity at all.

Senator CASE. How about the use of a new building for a chancery. This is covered by special arrangements now. This is Senator Fulbright's legislation, I understand. I hesitate to get into an area where someone else is expert.

Is there any control or would there be under this convention?

Mr. MEEKER. The convention doesn't affect that situation at all. New construction cannot take place in contravention of zoning laws and ordinances.

Senator CASE. How can it not?

Mr. MEEKER. Because a contractor could not get a permit to build a building which was not in conformity with the zoning laws. And if he built without the permit he would be subject to very heavy penalties.

Senator CASE. Now suppose it was a foreign contractor? Again, he wouldn't have diplomatic status?

Mr. MEEKER. No immunity at all.

Senator CASE. If the Ambassador with his hammer and saw did it why you couldn't stop him.

Mr. MEEKER. If we felt his efforts were menacing enough we could speak to his government about it and maybe ask that he go home.

Senator CASE. Right. But you still have no control of the use of the premises unless it requires some material physical change.

Mr. MEEKER. That is true, yes.

NEED FOR DIPLOMATS TO ABIDE BY LOCAL LAWS

Senator CASE. Mr. Chairman, I am much obliged. In general, the concerns I have had, and we have been talking about, are not affected materially by this convention. Is that a fair statement? I am not going to vote for it if it does, because I am not going to vote for anything that changes the situation to the further laxity of the enforcement of our traffic laws.

Mr. MEEKER. The convention certainly does not affect these interests adversely. In fact I think its effects have been distinctly affirmative and positive in article 41 where it states that without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving state. This is a clear statement in a treaty for the first time of the duty to abide by the law.

Senator CASE. Could you tell me, when a response from the Department to my inquiry about the suggestions of a point system in traffic laws might be expected. I say this because I don't think I will vote on this treaty until I have the answer to it.

Mr. MEEKER. Mr. Mitchell informs me that this is now in the Office of Protocol. When we go back to the Department we will inquire and see what progress is being made.

Senator CASE. You can go back and see.

Thank you very much.

Senator CHURCH. Senator Clark, do you have any questions?

IMPORTANCE OF RATIFICATION

Senator CLARK. Mr. Meeker, how urgent does the State Department think the ratification of this convention is? I noticed it started on this round in 1961. The Soviet Union and a number of other states have already ratified it. Is this a matter which has much effect, if any, on our international posture?

Mr. MEEKER. I think that it does. This is a treaty which was drawn up at a conference of over 80 countries on the basis of much work that had been done in the United Nations for 7 or 8 years before that.

It is an important treaty. A substantial number of countries have become parties to it already. Probably others would do so after the United States ratifies. Since we consider it a good treaty, we would like to see the United States become a party and we would like to see the treaty accepted and applied quite generally throughout the world.

Senator CLARK. I understand you have had some discussion about what would perhaps be a natural question in the mind of some acceptors, that is whether ratification of the convention would have any adverse effect on the espionage problem and the ability of the FBI to ferret out spies in foreign embassies—a question which often does aggritate a number of Senators.

Mr. MEEKER. I don't think it would have the slightest effect on the ability of law enforcement agencies to pursue their normal functions.

EFFECT ON IMMIGRATION LAW

Senator CLARK. Will this have any effect on existing immigration law with respect to domestic servants brought into this country by diplomats who are then fired or leave and whose servants are then deported. I happen to feel strongly about this having had a personal experience which resulted in my having to get a private bill through the Congress. I am concerned about some of the labor aspects of this. In the first place a domestic servant is brought over here by a diplomat, and pretty soon he or she comes to know a certain amount about the rights and wages and hours of work. If much effort is made by them to improve their economic situation there is always the threat, "Well, if you don't continue to work for \$2 a day we are going to let you out and then they will deport you and back you will go to Paraguay."

If the servant is let out then the only other situation may be to tie up with another mission or be deported. It may be that in terms of overall policy of the United States this is not too bad but it does create a personal or individual hardship. I wonder if you have any views on that.

Mr. MEEKER. I think that does sometimes happen. If one looks at it from the other point of view, I suppose it would be quite unsatisfactory and probably unacceptable to the Congress if the servants of diplomatic officers upon being discharged or leaving the employ of their employer could thereby achieve preference status or some special treatment under the immigration laws. If they had that ability by virtue of their employment, that would work hardship on a lot of other people whose cases might be as meritorious or more meritorious.

Senator CLARK. It would be subject to a good deal of abuse, I can see this. But I want to tell you, I got the most wonderful Spanish cook that way and she had unique capabilities. I don't want to pursue this at any length but it does seem to me that with the situation the way it is in this country at the moment that there might well be some kind of a provision whereby a person with particular capabilities wouldn't have to be deported and sent out of the country if he or she could show a skill which is in short supply. This might apply to many other skills, too. I remember an incident which shocked me when a very capable Italian mechanic who had been a chauffeur for a diplomat was let out and was hired by a gentleman of some eminence in Washington who holds a very high Government position. The immigration people came and literally handcuffed him and took him out of the house of this individual who employed him in all innocence, and sent him back to the country of his origin.

Mr. MEEKER. I believe the new immigration bill, the administration's immigration bill—

Senator CASE. Which Senator Clark and I are cosponsors of.

Mr. MEEKER (continuing). Is going to be very helpful in situations where the foreign national does have some special skill, where the existing system of quotas has operated to his detriment and prevents his coming here to establish his livelihood, so that I would hope that through a combination of intelligent and humane administration, plus the much greater flexibility of the new legislation which we hope to see on the books, this should make it possible to avoid at least a large number of those hardship cases.

Senator CASE. I think the place to take a look at it is in connection with the immigration bill.

NEED FOR EXPANDING WORLD LAW

I have only one other matter I want to mention to you which is not really relevant to this treaty. I heard a very interesting talk the other day before a group which calls itself Members of Congress for World Peace Through World Law, by Prof. Roger Fisher at Harvard University Law School, in which he suggested the possibility of making a perceptible extension of the field of international law by arranging through diplomatic channels to permit courts to take a wider jurisdiction of judicial controversy than is presently the case, such as matters which were now reserved. For example, if the limousine or the automobile of the American Ambassador to Paris runs over a French citizen, it is my understanding that this becomes a diplomatic matter rather than a matter for the courts, is that correct?

Mr. MEEKER. Well, it can be if immunity is not waived, yes.

Senator CASE. I just mention this for your consideration and perhaps later I will come up and talk to you about it. Perhaps we could make a really rather significant contribution to the spread of international law if our State Department took a somewhat less conventional view toward the controversies which could be considered justiciable before the courts of foreign countries rather than insisting on handling them as a diplomatic matter. In this way we might even build up the jurisdiction of the World Court. I make those observations not for any particular comment from you but just to indicate the possibility at a later date we might talk about it.

Mr. MEEKER. I think it is a very interesting suggestion. One of the things we have been interested in is arranging for a very comprehensive, broad coverage plan of insurance for diplomats' cars, both the mission vehicles and the individually owned cars. We have discussed this with the superintendent of insurance here in Washington, and with representatives of some associations of insurance companies, and I think it will not be impossible or indeed difficult in the end to work out an entirely satisfactory plan.

We are at the moment trying to gather some further information from missions here in Washington on which to base our proposals.

Senator CASE. As you know, in many States, the interest of an insurance company cannot be revealed to the jury. In this situation you are speaking of, would this result—in the event there was disagreement between the plaintiff and the insurance company as to the amount

of recovery—in a case getting into court, or would it still have to be handled through diplomatic channels?

Mr. MEEKER. It could go to court and what we would expect would be to have the normal immunity waived for the purposes of the lawsuit.

Senator CASE. In connection with the insurance there would be an automatic waiver?

Mr. MEEKER. Yes.

Senator CASE. Professor Fisher's suggestion was a good deal broader than that and I just give you an example which may or may not have any merit. He said for years and years the United States and United Kingdom have been arguing about the status of Christmas Island out in the Pacific. This seemed to him to be a typical kind of a situation that ought to go to the World Court for solution. It is handled in diplomatic channels and pretty far down the line in the line of priority and it would be an action of timidity to give in, in the interests of your own country.

I don't know whether you know that and wonder whether you would comment on it.

Mr. MEEKER. I would only comment that we did 4 years ago make a rather large survey of a number of disputed island territories, especially in the Pacific, to see whether there would be some real purpose to be served by litigating their proper title, ownership, and sovereignty.

We came to the conclusion that the effort would probably not be justified by the results. The amount of work that would have to be done by the other countries and by ourselves would be very large. The amounts of real estate are very small.

Quite frequently, the basis of the U.S. claim is a lot less strong than we might like to see it, and our ultimate conclusion was that we would do better to leave the legal situation alone and to continue to make agreed arrangements from time to time with the other country asserting claims. We have done this very successfully in a very large number of instances, and that approach has appeared to be satisfactory even though, perhaps, not as intellectually satisfying as to have the legal issues finally resolved.

Senator CLARK. Thank you, sir. Thank you, Mr. Chairman.

DRIVING REQUIREMENTS FOR DIPLOMATS

Senator CASE. Does a diplomat have to get a driver's license in this country to drive a car?

Mr. MEEKER. No, he does not.

Senator CASE. He does not have to? Suppose he is blind?

Mr. MEEKER. He does presumably have to be able to drive.

There is no requirement that a diplomat get a driving license here, and the same is true of our representatives in most other countries.

Senator CASE. Does that apply in the District of Columbia? Could New Jersey require that a diplomat have a license?

Mr. MEEKER. I do not think so in the sense of penalizing him if he undertakes to drive without a license. I think the State could not subject him to penalties for driving without a New Jersey license.

Senator CASE. So the requirements, such as compulsory insurance, which apply in some States in various forms cannot be made applicable to diplomats?

Mr. MEEKER. This would have to be done by virtue of arrangements which the State Department would make, and which we would undertake with the various local authorities, insurance associations, and the diplomatic missions.

Senator CASE. You do not do that now, do you?

Mr. MEEKER. We have it under study, and I hope we will work it out in a way that will provide a large measure of protection for the public and will avoid some of the very unfortunate and tragic accidents which have in the past occurred occasionally, and where there has not been forthcoming immediately suitable compensation.

NEED FOR INSURANCE

Senator CASE. I feel very strongly that nobody should be in a position to drive with impunity, as you say, because tragic accidents occur for which there is no recourse. I think if we are going to do this there should be automatic payment by the Government of the United States. I think there ought to be something set up so that the individual affected could sue the United States and recover in any amount as if it were the violating person. I just do not think citizens should have to take the burden of this diplomatic immunity, important as it is for the country. As you pointed out so well, we do not give this to the foreigner to be enjoyed and flaunted. It is not something to satisfy his ego. It is for the purpose of making it possible, to avoid harassment on a mutual basis of each other's agents abroad, and permit intercourse of nations, and we ought to encourage it. This is fine.

There is no reason why individuals should be made to pay for this country's benefit. If we are going to do this, then, it seems to me, we should have some absolute provision by statute setting up a right of action against the United States of America for every violation, so that he could recover against an individual's diplomatic immunity.

Would you just comment generally about that proposition.

Mr. MEEKER. Well, that would, of course, require an act of Congress.

Senator CASE. Oh, yes; it could be recommended.

Mr. MEEKER. I would think that the better approach, one that we ought to try first, would be to work out an insurance plan and see that it is applied. I think that ought to be tried first before making the U.S. Government liable to pick up the tab.

Senator CASE. Is there anything wrong with the logic of this? We do this for the benefit of the United States and all its people. Shouldn't all the people pay for it and not have the accidental, arbitrary, fortuitous penalties put upon individuals?

Mr. MEEKER. I suppose there have been some earlier experience with legislation of that type. For example, New York wanted very much to be reimbursed for the costs of added police protection at the General Assembly session of 1960, and I think that legislation still has not been enacted.

There have also been legislative proposals to reimburse the States for the amount of real property taxes which were not collected from diplomatic missions, and that legislation also has not become law.

I would think, going back to motor vehicles and the danger of accidents and how to deal with those risks, we ought to make a serious effort by way of insurance first. I would like to see that tried seriously before we go into the other possibility of legislation making the United States liable.

Senator CASE. You could make the United States liable and then insure the United States. Why isn't that a simpler way to do it?

Mr. MEEKER. I believe there is a statute which provides that the United States is its own insurer.

Senator CASE. Well, if it is a statute, then we can change the statute. I do not question you because you are terribly well informed, as I am not surprised, but I do make this point. There is some argument that New York City gets some benefit from the presence of all these people.

There is very little argument, if any, that John Jones, whose youngster is killed by some drunken diplomat—whether it is by an American diplomat abroad or some foreign diplomat here—gets anything in any way commensurate with this.

Senator CLARK. If the Senator will yield, this is not unlike the business of insurance of airplane passenger of these foreign airlines under the Warsaw Convention and the Hague Protocol we had recently.

Senator CASE. Except in some sense the individual has the right to go or not by airplane, and he takes the risk of this when he does it, as opposed to somebody just being on the sidewalk and being run over by some one.

Senator CLARK. Nevertheless, there is an adequate protocol that provides for damages.

Senator CASE. I should always start out by recognizing that your replies are helpful. Thank you.

Senator CHURCH. We have a decision to make. I would like to get this record complete at one hearing if it is possible. The Senate is now in session. We have permission to sit. Perhaps if we just run through a series of questions that I am going to ask you mainly for completing the record, because the printed copy of these hearings will then be distributed to all other members of the committee, then at an appropriate time it will, perhaps, be possible to take this matter up in executive session without bringing you back again.

I remember when we commenced this hearing I stated that some of these questions may touch on tender ground, and if you prefer to answer them in executive session please indicate that and we will accommodate you.

THIRD STATES AND DIPLOMATIC IMMUNITY

Moving through them rather rapidly, the duties of the third states with respect to transiting diplomatic personnel are, for the first time, spelled out in article 40. What has been the practice in this respect up until now?

Mr. MEEKER. We have generally recognized the status of diplomats in transit through the United States from, say, France to Mexico, so that article 40 does not seem to us to make any great difference in the situation.

Senator CHURCH. Suppose that Communist China were to send her Ambassador to France through the United States en route to Paris. What would be the effect of the convention? I realize that as things now stand Red China would not be a party to the convention and, therefore, the terms of the convention would not be applicable.

But assume that action of the General Assembly or some such occurrence were to make Red China a party to the convention. What then would be the effect of the provision?

Mr. MEEKER. Well, article 40, paragraph 1, provides that the diplomatic agent may pass through a third state which has granted him a passport visa if a visa was necessary, so this would give the United States the option of deciding whether to give that visa or not.

There was an occasion back in 1950 when we did admit a Chinese Communist delegation to this country to come to the United Nations for some meetings of the Security Council and the General Assembly.

Senator CHURCH. The United States, however, would be left in control of the situation and could refuse to grant the visa if the Government were so to decide?

Mr. MEEKER. It could.

Senator CHURCH. And not be in violation of any provision of the convention?

Mr. MEEKER. That is correct, because the convention is conditional on the granting of a visa which remains in the power of the United States to decide.

Senator CHURCH. What does article 5, subsection 3 provide?

Mr. MEEKER. Well, that provision enables, for example, the head of a Latin American mission in Washington, an Ambassador, shall we say, of Bolivia, to be also the representative of Bolivia to the Organization of American States.

Senator CHURCH. Is that a departure from current practice?

Mr. MEEKER. No. In some cases the Latin American ambassadors have served in dual capacities.

IMMUNITY OF MILITARY PERSONNEL

Senator CHURCH. Does the accreditation of military attachés differ in any way from other diplomatic agents?

Mr. MEEKER. Well, in article 7 there is a provision which specifically states that in the case of military, naval, or air attachés, the receiving state may require their names to be submitted before their arrival for its approval. That is different from the situation with respect to other diplomatic agents who are not heads of mission.

Senator CHURCH. Does the United States have any objection to this change?

Mr. MEEKER. No. We do it with some countries today at the present time.

Senator CHURCH. There is a provision in article 6, is there not, that permits several states to join in accrediting the same person to be the head of the mission for more than one country.

Mr. MEEKER. There is.

Senator CHURCH. How many states have, in fact, followed that practice here in Washington, for example?

Mr. MEEKER. Mr. Mitchell informs me that in the case of Western Samoa, which has become independent, that the same person, namely, the New Zealand Ambassador, represents the interests of Western Samoa as well as New Zealand. It is a fairly rare occurrence.

SIZE OF DIPLOMATIC MISSIONS

Senator CHURCH. As a matter of fact, to some extent, the size of the embassy frequently seems to be in reverse proportion to the size of the country, especially with some countries that are receiving very large amounts of American aid.

This convention makes a provision, does it not, for the receiving country to determine whether the size of the mission is reasonable and normal.

Mr. MEEKER. Yes; it does.

Senator CHURCH. What standards are used? It seems to me there is a conspicuous lack of conforming standards where many of these missions are concerned here in Washington. What is the practice of the State Department in that respect? Has the State Department ever objected to the size of a mission on the part of any government, although that government may be small and the mission very large? Also is there any correlation between what that government is receiving in amounts of American aid and the size of the mission sent to Washington?

Mr. MEEKER. Except in the case of a few Eastern European countries, we have not undertaken to impose limits on the size of missions. I am looking here at the current edition of the diplomatic list, the blue book, having in mind the question of which countries have the biggest embassies.

For example, Canada has a pretty sizable Embassy: Cameroun has exactly 6 people, Burundi has 4; the Central African Republic has exactly 1; the Republic of China has a fairly sizable Embassy; Colombia has an Embassy of rather modest size; the United Kingdom has a very large Embassy; so does France, so does the Soviet Union; Ghana has a rather small Embassy of 6 or 7; Guatemala appears to have about 10 people; Guinea has 3; India has a fairly large Embassy.

Senator CLARK. How large is "fairly large," Mr. Meeker?

Mr. MEEKER. India appears to have perhaps 35 or 40 people in the diplomatic list.

Senator CLARK. How many does the United Kingdom have?

Mr. MEEKER. The United Kingdom has more than that. Mr. Mitchell says it has sometimes had as many as 70 or 80 on the diplomatic list at one time.

Senator CLARK. You double that for the number of clerks?

Mr. MEEKER. You would increase it above that because the people on the "white list" who are not in the "blue list" would be even more numerous than those who are on the "blue list."

Senator CHURCH. Your answer to my question is that the State Department has as a matter of history never imposed any limitation on the size of any Embassy other than one or two Communist countries behind the Iron Curtain.

Mr. MEEKER. That is correct.

Senator CASE. It would be very ticklish and tricky to say to one country that it cannot have, just as a matter of ipse dixit, as many people as it wants.

Mr. MEEKER. This is what has motivated us to take a rather liberal view about it because considering our interests abroad almost invariably we want to be able to have a mission which is larger than the corresponding one here. There are activities we want to carry out which we think are in the national interest, and we do not want to be precluded by limitations on the numbers.

Senator CHURCH. With respect to article 20, the right to fly the flag, have there been restrictions on this in the past? Has every U.S. Ambassador been permitted to fly the flag on his car, for example?

Mr. MEEKER. I know of no restrictions on that.

FACILITIES FOR DIPLOMATIC MISSIONS

Senator CHURCH. Article 21 provides that each receiving state shall facilitate or assist the sending state in acquiring or obtaining premises or accommodations. What exactly does this involve? Let us take a country where it is not possible to secure private ownership of real property. If the sending state wants premises and accommodations in areas zoned for residential purposes, for example, what are the obligations of the receiving state? How does this work?

Mr. MEEKER. Well, the article does not impose any obligation on the receiving state to provide premises in places where the local laws and regulations do not allow it.

We have construed this kind of obligation to mean that in the case of a smaller country, like some of the African countries, if they have experienced difficulty in obtaining suitable quarters for chancery and residence purposes, we have, through our Office of Protocol, made efforts to try to find suitable places. We have there two or three people who have worked on this a good deal. They have talked with real estate firms and owners of buildings. In that way we do try to assist them, but always within the framework and context of applicable laws.

Senator CHURCH. Article 22 relates to the inviolability of mission premises and the duty of the receiving state to protect them. There have been a number of violations of U.S. Embassies in numerous countries in recent years. These violations would be obvious violations of the convention; would they not?

Mr. MEEKER. They would, and also of international law before the convention.

Senator CHURCH. Yes. Would this be a case that could be brought under the provisions of the convention to the International Court of Justice? Let us assume that an American Embassy were attacked and that the American ambassador attempted to secure protection from the local authority. No adequate protection was given. The Embassy was seriously damaged.

Would the United States then, under the provisions of this convention, charge the other government with a failure to abide by the provisions of the convention and take the matter to the World Court and seek damages? Could the United States do that?

Mr. MEEKER. It could if the receiving state had accepted the optional protocol on compulsory jurisdiction, and we had also.

Senator CASE. What would you go to the Court for, damages or an order to stop it?

Mr. MEEKER. You might go to the Court for two kinds of relief. One, damages, and this, as a practical matter, would probably not be necessary because our experience has been that the host country a day or two after the riot takes place not only offers to but does begin the job of repair and reconstruction.

The other relief that a sending state might seek would be a judgment of duty, judgment on the duty of protection and on the inadequacy of what was offered in the particular case.

Senator CASE. That is in the nature of a parliamentary opinion.

Mr. MEEKER. Yes.

Senator CHURCH. How general is the act of waiving diplomatic immunity? I know that our Ambassador to Canada, Livingston Merchant, said we would waive immunity of U.S. diplomatic personnel for traffic tickets. We are back again on traffic. Has any mission in Washington done this?

Mr. MEEKER. Apparently there have been waivers in some instances. This is a subject on which the Vienna Convention does not make any change.

VIOLATIONS OF DIPLOMATIC PRIVILEGES

Senator CHURCH. The conference, I understand, acknowledged there were violations in the use of the diplomatic bag, but not sufficient to justify an inclusion in the convention of the provision that requires submission of the bag for inspection if any suspicion existed that it was being used improperly.

To what degree is the diplomatic bag being violated, in the opinion of the State Department?

Suppose there was a suspicion, for example, that jewels or narcotics or something of that kind were actually being transported into the United States under the protection of the diplomatic bag. What would the United States do about it?

Mr. MEEKER. In the case of personal baggage of a diplomat, of course, there is article 36, paragraph 2, which says that that baggage shall be exempt from inspection unless there are serious grounds for presuming that it contains articles not covered by the exemptions.

Now, in the case of the diplomatic bag, the pouch, this is a different subject. I think that we do not know, of course, precisely, we cannot know exactly, what is in the diplomatic bag. If we did receive information from some source, either at point of origin or point of destination, that it was being used for improper purposes, narcotics or other illegal importation or exportation, we would undoubtedly undertake some discussions with the government concerned.

I think it is difficult for us to know just because of the inviolability of the pouch. But sometimes information does come, and our law enforcement agencies are quite alert to things which go on in this country, information which they pick up here and, of course, they also pick up either directly or indirectly a good deal of information abroad.

Senator CHURCH. In any case, the convention does not change either the immunity given the diplomatic bag nor our procedures for dealing with a problem of that kind should it arise?

Mr. MEEKER. No, it does not.

INTERNATIONAL CONSULAR CONVENTION

Senator CHURCH. Are there any plans to have a similar conference on a multilateral consular convention? You have already drawn the distinction between this and the consular arrangements.

Mr. MEEKER. There has already been held such a conference at Vienna in 1963, and there emerged from that conference a convention which is being studied by the different branches, different departments, in the executive branch, and we look forward to submitting that convention at a later date.

Senator CHURCH. Has that been signed yet by the United States?

Mr. MEEKER. It was signed at the time of its conclusion in Vienna.

Senator CHURCH. Are the USIA and AID and other groups of that sort covered in any way by this convention?

Mr. MEEKER. If the groups concerned operate out of the embassy as part of the embassy and have been accepted by the other government as performing diplomatic functions, then, of course, they have corresponding immunities.

Senator CHURCH. Does this convention enlarge the powers of the Federal Government versus the States in any respect?

Mr. MEEKER. Perhaps in one or two respects it may, while in others it cuts it down, and we go back here, I think, to the same examples we had before.

Senator CHURCH. I think the same examples would suffice.

Mr. MEEKER. With respect to State taxes, in that rare kind of case, the Federal Government, through the exercise of its treaty power, is a little bit larger than it was before, and in respect to immunities the power of the Federal Government is reduced to a larger degree.

Senator CHURCH. Is there any known opposition to this convention?

Mr. MEEKER. I think we know of none.

Senator CHURCH. Have the views of the bar associations been solicited?

Mr. MEEKER. I am not sure that this convention has been specifically laid before bar associations for their examination. Of course, it is a public document, and is generally available. It does not cover the area in which bar associations have often been interested, an area that is covered by consular conventions; namely, provisions on practice of law with respect to estates of decedents of foreign countries. So I think there is no basis here for any concern on the part of bar associations.

DIPLOMATIC IMMUNITY AND WAR

Senator CHURCH. Do the provisions on privileges and immunities during time of war constitute a departure from past practice?

Mr. MEEKER. Mr. Chairman, I think, perhaps, this is a subject which it might be appropriate to go into in executive session at a later time.

Senator CHURCH. I think, perhaps, in order to expedite this matter, would you make a notation of the questions that you would like to answer in executive session and then submit to us a written answer. If we have any further inquiry we can call upon you to supplement the written answer, and we will then have before us answers to all these questions, although all of them will not appear in the public record.

Mr. MEEKER. We will be glad to do that.

Senator CHURCH. Fine.

I have several other questions that relate to this general subject of treatment in time of war which you may want to answer in the same way and, if so, please indicate.

With respect to situations of armed conflict, did not the United States in World War II take over the Japanese and the German chanceries? Would such a step be possible under the Vienna Convention?

Mr. MEEKER. Mr. Chairman, I believe that is factually correct as to what happened at the end of hostilities in World War II. Under this convention in such an event the mission would, under article 45, be entrusted to the protection of a third country.

Senator CHURCH. So that your answer is that such a seizure as did, in fact, occur, at the commencement of World War II would constitute a violation of the convention?

Mr. MEEKER. The seizure did not in fact occur until after Germany and Japan had surrendered. The embassies and legations of Germany and Japan and other enemy countries, prior to that time, were under the protection of neutral states. If the United States were to seize a foreign embassy at the outset of a new armed conflict, such action would constitute a violation of the convention.

Senator CHURCH. I understand that the United States opposed the provision that even in the case of armed conflict a member of the mission would enjoy privileges and immunities until his departure, for the reason that it was thought to be unrealistic, and it also did not reflect universal practice. What treatment did the United States accord World War II enemy diplomatic agents? Should a reservation to article 39 be considered by the committee?

Mr. MEEKER. What we did, in the beginning of World War II was to take the diplomats to the Homestead Hotel in Hot Springs, Va., and other hotels, where they were, I think, entertained and sheltered very well indeed until such time as they could be repatriated. Their movements, of course, were restricted, but I think the conditions of their custody were highly satisfactory and favorable.

Senator CHURCH. Does that treatment accord with the provisions of this convention?

Mr. MEEKER. I think that such treatment could be justified under the convention. Article 26 recognizes the right of the receiving state to regulate or prohibit the travel of diplomatic agents for reasons of national security. While article 29 provides that a diplomatic agent shall not be liable to any form of arrest or detention, it also provides that the receiving state shall take all appropriate steps to prevent any attack on a diplomatic agent's person, freedom, and dignity. At the outbreak of the war the premises of enemy missions and residences of mission members were protected by police. Initially, mission members were allowed to remain in their respective embassies or legations, or

in their homes. The restrictions on their movements varied. After certain incidents occurred in restaurants and other public places, the United States decided that for the protection and well-being of enemy diplomatic personnel, it would be better if they were lodged in hotels away from Washington until arrangements could be completed for their repatriation. I think that the same sort of protective measures could be taken under the convention.

Senator CHURCH. Since the end of World War II, the role of non-diplomatic representatives of foreign government has been increasing. For example, the common practice of engaging not only legal counsel but public relations firms to take charge of the national image before the American public. Does this convention serve in any way to proscribe the activities of such agents?

Mr. MEEKER. No; this convention does not relate to that at all.

Senator CHURCH. Article 44 states that in the event of conflict and in case of need the receiving state must place at the disposition of persons enjoying privileges and immunities the necessary means of transport for themselves and their property. This was opposed by the United States.

Would this mean that in case of war that the United States would have to put its naval or air facilities at the disposal of enemy diplomatic personnel?

Mr. MEEKER. I do not believe that this would require any military means of transport be used. Presumably either commercial facilities or some other means of transport, like the *Gripsholm*, which was used in World War II, something like that, would be appropriate.

Senator CHURCH. Senator Clark has very graciously consented to complete these questions. I have just had a call to which I have to respond. Before turning the hearing over to him, I am going to insert in the record of the hearings, if there is no objection, at the appropriate place, a listing of those countries that have now ratified or acceded to the convention, and the reservations, declarations, and understandings that some of these countries have attached to their ratification or accessions, as the case may be, and also a special paper that has been prepared by the State Department and submitted to the committee, which sets out the various articles of the convention and contains some explanatory comment on the part of the State Department concerning the article-by-article analysis of the convention.

(The documents referred to follow:)

VIENNA CONVENTION ON DIPLOMATIC RELATIONS, DONE AT VIENNA, APR. 18, 1961

DATE OF ENTRY INTO FORCE, APR. 24, 1964

Number of government parties.....	40
Signatures.....	63
Ratifications deposited.....	26
Accessions deposited.....	14

Signatories	Date of signature	Ratifications deposited
Albania.....	Apr. 18, 1961	
Argentina.....	do.....	Oct. 10, 1963
Australia.....	Mar. 30, 1962	
Austria.....	Apr. 18, 1961	
Belgium.....	Oct. 13, 1961	
Brazil.....	Apr. 18, 1961	Mar. 25, 1965
Bulgaria.....	do.....	
Byelorussian S.S.R.....	do.....	May 14, 1964
Canada.....	Feb. 5, 1962	
Central African Republic.....	Mar. 28, 1962	
Ceylon.....	Apr. 18, 1961	
Chile.....	do.....	
China.....	do.....	
Colombia.....	do.....	
Congo (Léopoldville).....	do.....	
Costa Rica.....	Feb. 14, 1962	Nov. 9, 1964
Cuba.....	Jan. 16, 1962 ²	Sept. 26, 1963
Czechoslovakia.....	Apr. 18, 1961	May 24, 1963
Denmark.....	do.....	
Dominican Republic.....	Mar. 30, 1962	Jan. 14, 1964
Ecuador.....	Apr. 18, 1961 ³	Sept. 21, 1964
Finland.....	Oct. 20, 1961	
France.....	Mar. 30, 1962	
Germany, Federal Republic of.....	Apr. 18, 1961	*Nov. 11, 1964 June 28, 1962
Ghana.....	do.....	
Greece.....	Mar. 29, 1962 ⁴	
Guatemala.....	Apr. 18, 1961	Oct. 1, 1963
Holy See.....	do.....	Apr. 17, 1964
Hungary.....	do.....	
Iran.....	May 27, 1961	Feb. 3, 1965
Iraq.....	Feb. 20, 1962 ⁵	Oct. 16, 1963
Ireland.....	Apr. 18, 1961	
Israel.....	do.....	
Italy.....	Mar. 13, 1962	
Japan.....	Mar. 28, 1962 ⁶	June 8, 1964
Korea.....	Mar. 28, 1962	
Lebanon.....	Apr. 18, 1961	
Liberia.....	do.....	May 15, 1962
Liechtenstein.....	do.....	May 8, 1964
Luxembourg.....	Feb. 2, 1962	
Mexico.....	Apr. 18, 1961	
New Zealand.....	Mar. 28, 1962	
Nigeria.....	Mar. 31, 1962	
Norway.....	Apr. 18, 1961	
Pakistan.....	Mar. 29, 1962	Mar. 29, 1962
Panama.....	Apr. 18, 1961	Dec. 4, 1963
Philippines.....	Oct. 20, 1961	
Poland.....	Apr. 18, 1961	Apr. 19, 1965
Rumania.....	do.....	
San Marino.....	Oct. 25, 1961	
Senegal.....	Apr. 18, 1961	
South Africa.....	Mar. 28, 1962	
Sweden.....	Apr. 18, 1961	
Switzerland.....	do.....	Oct. 30, 1963
Tanganyika.....	Feb. 27, 1962	Nov. 5, 1962
Thailand.....	Oct. 30, 1961	
Ukrainian S.S.R.....	Apr. 18, 1961	June 12, 1964
U.S.S.R.....	do.....	Mar. 25, 1964
United Kingdom.....	Dec. 11, 1961	Sept. 1, 1964
United States.....	June 29, 1961	
Uruguay.....	Apr. 18, 1961	
Venezuela.....	do.....	
Yugoslavia.....	do.....	Apr. 1, 1963

* Applicable also to Land Berlin.

Accessions deposited

Algeria.....	Apr. 14, 1964.
Congo (Brazzaville).....	Mar. 11, 1963.
Gabon.....	Apr. 2, 1964.
Ivory Coast.....	Oct. 1, 1962.
Jamaica.....	June 5, 1963.
Laos.....	Dec. 3, 1962.
Malagasy Republic.....	July 31, 1963.
Malawi.....	May 19, 1965.
Mauritania.....	July 16, 1962.
Niger.....	Dec. 5, 1962.
Rwanda.....	Apr. 15, 1964.
Sierra Leone.....	Aug. 13, 1962.
Uganda.....	Apr. 15, 1965.
United Arab Republic.....	June 9, 1964.*

RESERVATIONS, DECLARATIONS, AND UNDERSTANDINGS

- (1) *Byelorussian Soviet Socialist Republic*
Ukrainian Soviet Socialist Republic
Union of Soviet Socialist Republics

Reservation and declaration made in each case at the time of deposit of instrument of ratification:

[Translation]

Reservation concerning article 11, paragraph 1:

In accordance with the principle of the equality of rights of states, the (Byelorussian Soviet Socialist Republic) (Ukrainian Soviet Socialist Republic) (the Union of Soviet Socialist Republics) considers that any difference of opinion regarding the size of a diplomatic mission should be settled by agreement between the sending state and the receiving state.

Declaration concerning articles 48 and 50:

(The Byelorussian Soviet Socialist Republic) (the Ukrainian Soviet Socialist Republic) (the Union of Soviet Socialist Republics) considers it necessary to draw attention to the discriminatory nature of articles 48 and 50 of the convention, under the terms of which a number of states are precluded from acceding to the convention. The convention deals with matters which affect the interests of all states and should therefore be open for accession by all states. In accordance with the principle of sovereign equality, no state has the right to bar other states from accession to a convention of this nature.

- (2) *Cuba*

Reservation in instrument of ratification:

[Translation]

The Revolutionary Government of Cuba makes an explicit reservation in respect of the provisions of articles 48 and 50 of the convention, because it considers that, in view of the nature of the contents of the convention and the subject it governs, all free and sovereign states have the right to participate in it; for that reason, the Revolutionary Government of Cuba favors facilitating the admission of all countries of the international community, without any distinction based on the extent of a state's territory, the number of its inhabitants or its social, economic or political system.

- (3) *Ecuador*

On deposit of its instrument of ratification Ecuador withdrew the reservation to article 37, paragraphs 2, 3 and 4, made at the time of signature.

(4) *Grecco*

Reservation at time of signature:

With the reservation that the last sentence of paragraph 2 of article 37 of the convention shall not apply.

(5) *Iraq*

On deposit of instrument of ratification Iraq confirmed the following reservation made at the time of signature:

With the reservation that paragraph 2 of article 37 shall be applied on the basis of reciprocity.

(6) *Japan*

Understanding set forth at time of signature:

It is understood that the taxes referred to in article 34(a) include those collected by special collectors under the laws and regulations of Japan provided that they are normally incorporated in the price of goods or services. For example, in the case of the traveling tax, railway, shipping and airline companies are made special collectors of the tax by the traveling tax law. Passengers of railroad trains, vessels and airplanes who are legally liable to pay the tax for their travels within Japan are required to purchase travel tickets normally at a price incorporating the tax without being specifically informed of its amount. Accordingly, taxes collected by special collectors such as the traveling tax have to be considered as the indirect taxes normally incorporated in the price of goods or services referred to in article 34(a).

(7) *Venezuela*

[Translation]

Reservations at the time of signature:

On behalf of the Government which I represent, I wish to formulate the following reservations to the Vienna Convention on Diplomatic Relations:

(1) Venezuela, under article 2 of the legislative decree of 23 May 1876, does not permit the performing of both diplomatic and consular functions by the same person. It cannot, therefore, accept article 3, paragraph 2, of the convention.

(2) Under present Venezuelan law, privileges and immunities cannot be extended to administrative and technical staff or to service staff; for that reason Venezuela does not accept the provisions of article 37, paragraphs 2, 3, and 4 of the same convention.

(3) Under the Constitution of Venezuela, all Venezuelan nationals are equal before the law and none may enjoy special privileges; for that reason I make a formal reservation to article 38 of the convention.

(Only the last of the three reservations was approved by the Venezuelan Congress when it completed ratification of the convention.)

(8) *United Arab Republic*

Reservations at time of deposit of instrument of accession:

1. Paragraph 2 of article 37 shall not apply.

2. It is understood that the accession to this convention does not mean in any way a recognition of Israel by the Government of the United Arab Republic. Furthermore, no treaty relations will arise between the United Arab Republic and Israel.

JUNE 22, 1965.

VIENNA CONVENTION ON DIPLOMATIC RELATIONS, DONE AT VIENNA
APRIL 18, 1961

(Senate Executive H, 88th Congress, 1st Session)

The States Parties to the present Convention,

Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents,

Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,

Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,

Have agreed as follows:

ARTICLE 1

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

(a) the "head of the mission" is the person charged by the sending State with the duty of acting in that capacity;

(b) the "members of the mission" are the head of the mission and the members of the staff of the mission;

(c) the "members of the staff of the mission" are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;

(d) the "members of the diplomatic staff" are the members of the staff of the mission having diplomatic rank;

ARTICLE BY ARTICLE COMMENTARY, INCLUDING A REFERENCE TO RELEVANT STATUTES, AND A CONCLUSION WHETHER ENACTMENT OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS WOULD CHANGE PRESENT LAW OR PRACTICE IN ANY PERTINENT RESPECT

(Preamble)

The preamble states principles which have long been accepted by governments in the conduct of diplomatic relations. The statement of legal significance is that rules of customary international law shall continue to govern questions not expressly regulated by the Convention.

This will require no change in United States law or practice.

ARTICLE 1 (DEFINITIONS)

These definitions do not deviate in substance from the practice of the United States. Paragraph (c), which divides members of diplomatic missions into three classes: (1) the diplomatic staff, (2) the administrative and technical staff, and (3) the service staff; and paragraph (h), which defines private servants, are perhaps the most important. This is because other articles of the Convention specify the privileges and immunities which shall be accorded to persons in each of these four categories, and to their families.

While the precise terminology of paragraphs (c) and (h) is new, the United States and other governments have recognized in their

practice that mission members logically divide into three categories along the lines of paragraph (c), and that private servants constitute a fourth category. Section 4063 of the Revised Statutes (22 U.S.C. 252), derived from the Act of April 30, 1790, which is the present statutory basis for diplomatic immunity, refers to "ambassadors", "public ministers", and "any domestic or domestic servant of any such minister." The customs privileges and tax exemptions accorded foreign diplomatic personnel in the United States have varied depending on whether the individual concerned is a member of the diplomatic staff, the clerical staff, or the service staff, or is a private servant.

R.S. 4063 and related provisions in RS 4064-4066 (22 U.S.C. 252-254) should be repealed because they are not consistent with the definitions in paragraphs (c) and (h) of this Article, and because these statutes accord greater immunity from jurisdiction than is provided in subsequent articles of the Convention. See the discussion on Articles 31 and 37, below.

This Article will require no other change in United States law.

ARTICLE 2 (ESTABLISHMENT OF DIPLOMATIC RELATIONS)

This Article conforms with United States practice.

ARTICLE 3 (FUNCTIONS)

This Article conforms with United States practice.

(e) a "diplomatic agent" is the head of the mission or a member of the diplomatic staff of the mission;

(f) the "members of the administrative and technical staff" are the members of the staff of the mission employed in the administrative and technical service of the mission;

(g) the "members of the service staff" are the members of the staff of the mission in the domestic service of the mission;

(h) a "private servant" is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;

(i) the "premises of the mission" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

ARTICLE 2

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

ARTICLE 3

1. The functions of a diplomatic mission consist *inter alia* in:

- (a) representing the sending State in the receiving State;
- (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
- (c) negotiating with the Government of the receiving State;
- (d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;

ARTICLE 3

(c) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

ARTICLE 4

1. The sending State must make certain that the agreement of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.

2. The receiving State is not obliged to give reasons to the sending State for a refusal of *agrément*.

ARTICLE 4 (AGRÉMENT)

This conforms with United States practice.

ARTICLE 5

1. The sending State may, after it has given due notification to the receiving States concerned, accredit a head of mission or assign any member of the diplomatic staff, as the case may be, to more than one State, unless there is express objection by any of the receiving States.

2. If the sending State accredits a head of mission to one or more other States it may establish a diplomatic mission headed by a *chargé d'affaires ad interim* in each State where the head of mission has not his permanent seat.

3. A head of mission or any member of the diplomatic staff of the mission may act as representative of the sending State to any international organization.

ARTICLE 5 (DUAL ACCREDITATION)

This conforms with United States practice.

ARTICLE 6

Two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State.

ARTICLE 6 (DUAL REPRESENTATION)

This Article formally recognizes the right of two or more states to be represented by the same person, provided the receiving state does not object. While the concept of dual representation is novel, it appeared advisable to recognize in the Convention that in years to come two states, or a group of states, having a community of interest, or a desire to economize, might wish to be represented by the same chief of mission. If the receiving state objects, it may refuse to grant an agrément, in accordance with Article 4. This will require no change in existing United States law and practice.

ARTICLE 7

Subject to the provisions of Articles 5, 8, 9, and 11, the sending State may freely appoint the members of the staff of the mission. In the case of military, naval or air attachés, the receiving State may require their names to be submitted beforehand, for its approval.

ARTICLE 7 (APPOINTMENT OF MEMBERS OF THE MISSION)

The first sentence of this Article accords with existing United States practice except in one respect. At present, the United States reserves the right to object to the appointment of any person to the staff of the mission, if it so desires. Under the Convention, the same result may be achieved by declining to issue a visa for a particular individual to enter the United States. Also, under the Convention, the prior consent of the United States will continue to be required for the appointment to the diplomatic staff of a person having the nationality of the receiving state or of a third state, as provided in Article 8. Under the Convention, however, the prior consent of the United States is not required for the appointment of other persons present in the United States. This provision is expected to create no serious problems, however, because Article 9 of the Convention provides that the receiving state may at any time declare the individual *persona non grata* or unacceptable, thus terminating his appointment and his entitlement to privileges and immunities under the Convention.

The second sentence reflects the practice of certain governments which require formal agréments for the appointment of military, naval, and air attachés and the reciprocal right of the receiving state, if it so desires, to require agréments from the other state concerned.

ARTICLE 8

1. Members of the diplomatic staff of the mission should in principle be of the nationality of the sending State.
2. Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time.
3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

ARTICLE 8 (NATIONALITY OF MEMBERS OF THE MISSION)

This Article conforms with long-established practice of the United States.

ARTICLE 9

1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this Article, the receiving State may refuse to recognize the person concerned as a member of the mission.

ARTICLE 9 (PERSONS DECLARED PERSONA NON GRATA OR NOT ACCEPTABLE)

This Article conforms with the practice of the United States.

ARTICLE 10

1. The Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, shall be notified of:
- (a) the appointment of members of the mission, their arrival and their final departure or the termination of their functions with the mission;
 - (b) the arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the mission;
 - (c) the arrival and final departure of private servants in the employ of persons referred to in sub-paragraph (a) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons;
 - (d) the engagement and discharge of persons resident in the receiving State as members of the mission or private servants entitled to privileges and immunities.

2. Where possible, prior notification of arrival and final departure shall also be given.

ARTICLE 11

1. In the absence of specific agreement as to the size of the mission, the receiving State may require that the size of a mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission.

2. The receiving State may equally, within similar bounds and on a non-discriminatory basis, refuse to accept officials of a particular category.

ARTICLE 12

The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.

ARTICLE 10 (NOTIFICATION OF ARRIVAL AND DEPARTURE)

This Article conforms with existing United States practice.

ARTICLE 11 (SIZE OF MISSION STATE)

As a sending state, the United States considers that it is best qualified to determine the size of the mission it needs in a particular country. As a receiving state, the United States must be in a position to exercise some control over the size of foreign diplomatic missions.

This Article will require no change in existing United States practice.

ARTICLE 12 (OFFICES AWAY FROM THE SEAT OF THE MISSION)

This Article conforms with existing United States practice.

ARTICLE 13 (COMMENCEMENT OF THE FUNCTIONS OF THE HEAD OF THE MISSION)

This Article is essentially a restatement of rules adopted by eight European Powers at Vienna in 1815. They provided that diplomatic officials shall rank in each class according to the date on which their arrival was officially notified, and that a uniform method shall be established in each state for the reception of representatives of each class. These rules have been observed by all states, including the United States, since 1815. The words "or such other ministry as may be agreed" recognizes the existing practice, for example, of Commonwealth countries, whereby High Commissioners present a copy of their credentials not to the Foreign Ministry but to the Home Ministry or some other Ministry. This Article will require no change in United States law and practice.

ARTICLE 13

1. The head of the mission is considered as having taken up his functions in the receiving State either when he has presented his credentials or when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, in accordance with the practice prevailing in the receiving State which shall be applied in a uniform manner.
2. The order of presentation of credentials or of a true copy thereof will be determined by the date and time of the arrival of the head of the mission.

ARTICLE 14 (CLASSES OF HEADS OF MISSION)

This is essentially a restatement of the classification adopted at Vienna in 1815 and which has been generally observed by all States since that time. The inclusion in the first class, of "heads of mission of equivalent rank" is new. It recognizes the Commonwealth practice of being represented by High Commissioners who, having been appointed by the Queen, are not accredited to her, but who have the rank and status of ambassadors. This will require no change in existing United States law and practice.

ARTICLE 14

1. Heads of missions are divided into three classes, namely:
 - (a) that of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;
 - (b) that of envoys, ministers and internuncios accredited to Heads of State;
 - (c) that of *chargé d'affaires* accredited to Ministers for Foreign Affairs.

ARTICLE 15 (LEVEL OF HEADS OF MISSION)

This conforms with the practice of the United States.

ARTICLE 16 (PRECEDENCE)

Paragraphs 1 and 3 conform with the Vienna Regulation of 1815.

Paragraph 2 reflects the general practice of ratio with respect to alterations in credentials which do not affect the class of the head of mission concerned. It means that precedence within each class is not affected by the presentation of new credentials required by either the sending or receiving state, owing to a change of government, the death of a monarch or other reasons.

This Article will require no change in United States practice.

ARTICLE 17 (PRECEDENCE OF DIPLOMATIC STAFF)

This Article conforms with the present practice of the United States.

Precedence among themselves of members of United States diplomatic missions abroad is established by E.O. 9998, issued September 14, 1940.

ARTICLE 18 (MODE OF RECEPTION)

This Article restates the rule adopted at Vienna in 1815.

Article 11 of the Constitution of the United States provides:

"Section 3. * * * he [the President] shall receive ambassadors and other public ministers."

This Article conforms with present United States law and practice.

ARTICLE 15

The class to which the heads of their missions are to be assigned shall be agreed between States.

ARTICLE 16

1. Heads of mission shall take precedence in their respective classes in the order of the date and time of taking up their functions in accordance with Article 13.

2. Alterations in the credentials of a head of mission not involving any change of class shall not affect his precedence.

3. This article is without prejudice to any practice accepted by the receiving State regarding the precedence of the representative of the Holy See.

ARTICLE 17

The precedence of the members of the diplomatic staff of the mission shall be notified by the head of the mission to the Ministry for Foreign Affairs or such other ministry as may be agreed.

ARTICLE 18

The procedure to be observed in each State for the reception of heads of mission shall be uniform in respect of each class.

ARTICLE 19

1. If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions, a *chargé d'affaires ad interim* shall act provisionally as head of the mission. The name of the *chargé d'affaires ad interim* shall be notified, either by the head of the mission or, in case he is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

2. In cases where no member of the diplomatic staff of the mission is present in the receiving State, a member of the administrative and technical staff may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the mission.

ARTICLE 20

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the head of the mission, and on his means of transport.

ARTICLE 21

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.

2. It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

ARTICLE 19 (VACANCY IN POST OF HEAD OF MISSION)

Paragraph 1 confirms the right of the receiving state to be assured that the person who presents himself as *chargé d'affaires ad interim* is in fact authorized to speak on behalf of his government, and is not self-appointed. Paragraph 2 recognizes the right of the receiving state to decline to discuss affairs of state with a custodian of the mission premises or a member of the administrative and technical staff who has been left in charge of the mission.

This Article requires no change in United States practice.

ARTICLE 20 (USE OF FLAG AND EMBLEM)

There are no Federal statutes with respect to use of a flag and emblem by a diplomatic mission of a sending State. It is believed that this Article will not change present United States practice.

ARTICLE 21 (ACCOMMODATION)

The Act of October 13, 1964, 73 Stat. 1091, was enacted to govern the construction, alteration, repair, and occupancy of buildings for chancery purposes in the District of Columbia. Article 21 in no way detracts from the present authority of Congress to prescribe rules and regulations concerning zoning matters in the District of Columbia.

This Article restates the practice which the Department of State has followed in recent years in providing assistance to many new States which have just opened diplomatic missions in the United States.

Article 21 will not require a change in present law or practice.

ARTICLE 22

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.
2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

ARTICLE 22 (INVIOIABILITY OF THE MISSION PREMISES)

The inviolability of the premises of a diplomatic mission is fully recognized in United States practice, although it is not the subject of a statute.

The duty of protecting the premises of a diplomatic mission against intrusion, damage, and disturbance of the peace is reflected in Section 22-1115 of the District of Columbia Code which makes it a criminal offense under certain conditions to picket or congregate within 500 feet of a diplomatic mission.

The exemption of the mission premises, furnishings, and means of transportation from search, requisition, attachment or execution is not the subject of any present statute. The accepted legal rule, however, is that property owned by a foreign government and used for diplomatic purposes is not subject to attachment or execution. That this is the accepted rule is noted by reference to the International Organizations Immunities Act, 22 USC 288a (c), which provides that property and assets of international organizations, wherever located and by whomsoever held, shall be immune from search. It was the intention of this Act to grant by statute for international organizations the various immunities granted under customary international law to diplomatic missions.

With respect to execution, the Department does not interpret Article 22 as precluding the exercise of the right of eminent domain for public purposes, if prompt and adequate compensation is given and if the sending State is assisted in obtaining re- placement accommodations.

Article 22 does not, therefore, alter present law or practice of the United States Government.

ARTICLE 23

1. The sending State and the head of the mission shall be exempt from all national, regional, or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this Article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

ARTICLE 23 (EXEMPTION OF MISSION PREMISES FROM TAX)

Present statutory provisions relating to tax exemptions for the premises of the diplomatic mission, which by reference to Article 1(1) of the Convention also includes the residence of the head of the mission, are parallel to the exemption from taxation offered by this Article. Section 47-801a (c) of the District of Columbia Code provides that property belonging to foreign governments and used for legation purposes shall be exempt from taxation in the District of Columbia; Section 47-803 of the District of Columbia Code provides that property owned by foreign governments and used for legation purposes shall be exempt from assessments for improvements; and Section 45-722(3) of the District of Columbia Code provides that deeds to property exempted, *inter alia*, by Section 47-801a (c) of the Code, are exempt from the recordation tax. In the District of Columbia, Sections 47-801a (c) and 803 are interpreted as exempting from real property taxation the chancery and the residence of the chief of mission.

Article 23 will not, therefore, change the present practice prevailing in the District of Columbia with respect to real property tax exemptions for the diplomatic mission and the residence of the head of the mission except in the rare case where the head of the mission personally owns the premises. If with the permission of the Department of State a foreign government should open a chancery or residence for its chief of mission in either Virginia or Maryland, however, these states would be obliged to provide a real property tax exemption for such premises.

ARTICLE 24

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

ARTICLE 24 (INVIOIABILITY OF THE ARCHIVES)

That the archives and documents of a diplomatic mission are inviolable is unchallenged in international law. As noted in the commentary to Article 22, above, a section of the International Organizations Immunities Act is relevant, in that it provides to these international organizations, on the pattern of what is available under international law to diplomatic missions, that "the archives of international organizations shall be inviolable (22 USC 288a(c))."

Article 24 does not, therefore, alter the present practice of the United States Government.

ARTICLE 25

The receiving State shall accord full facilities for the performance of the functions of the mission.

ARTICLE 25 (FACILITIES)

This Article is intended to facilitate the initial opening of a diplomatic mission or the changing of mission premises. The Article indicates that the receiving State is expected to assist the sending State in the obtaining of licenses or permits, or help with the installation of equipment or the making of repairs when, as in many cases, authorities of the receiving State act as suppliers and/or contractors.

The only United States statute related to this Article is 44 U.S.C. 91 which provides that documents and reports may, on a reciprocal basis, be furnished to foreign missions by the Secretary of State.

The Department of State will not, in implementing this Article, go beyond the scope of authorizing legislation and appropriations.

ARTICLE 26

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

ARTICLE 26 (FREE MOVEMENT)

There are no statutory provisions on this subject. From time to time the Department has imposed travel restrictions for reasons of national security upon the travel of foreign diplomatic officers and employees in the United States.

The present Article will not alter this practice of the United States Government.

ARTICLE 27

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The diplomatic bag shall not be opened or detained.

4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate diplomatic couriers *ad hoc*. In such cases provisions of paragraph 5 of this Article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

ARTICLE 27 (FREEDOM OF COMMUNICATION)

In practice, foreign governments desiring to operate radio transmitters must obtain the approval of the United States Government for their installation and operation. Section 305(d) of the Communications Act of 1934, as amended, 47 U.S.C. 305(d), was amended several years ago to specifically authorize the President to authorize a foreign government, under such terms and conditions as he may prescribe, to construct and operate in Washington, D.C., a low-power radio station for transmission of its messages to points outside the United States, if the President has deemed this to be consistent with the national interest of the United States, and where such foreign government has provided substantially reciprocal privileges to the United States abroad.

The regulations of the Bureau of Customs, 19 C.F.R. 10.30(d), provide that packages bearing the official seal of a foreign government, accompanied by certificates under seal to the effect that they contain only official communications or documents, may be admitted free of duty without customs examination. Implementing circular letters of the Bureau of Customs prescribe, at present, instructions relating to the substance of paragraph (3) through (7) of this Article. These regulations do not vary in any significant respect from the regime established by these paragraphs of Article 27.

Article 27 would not, therefore, require a change in present law.

ARTICLE 28

Fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

ARTICLE 28 (EXEMPTION OF FEES AND CHARGES FROM TAXES)

The relevant statutory provision is Section 802 of the 1954 Internal Revenue Code, 26 USC 892, which provides *inter alia*, that the income derived by foreign governments from investments, interest "or from any other source within the United States" shall not be included in gross income and shall be exempt from taxation.

Article 28 will not, therefore, change the present practice in the United States with respect to exempting from taxation the fees and charges levied by a diplomatic mission in the course of its official duties.

ARTICLE 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

ARTICLE 29 (PERSONAL INVIOLEABILITY)

That the diplomatic agent is not liable to any form of arrest or detention is established by 22 USC 252, which provides that any writ or process sued out or prosecuted against an ambassador or public minister, is deemed void. 22 USC 253 provides that every person who prosecutes a writ or process in violation of 22 USC 252 may be imprisoned or fined.

The obligation set forth in the second sentence of Article 29 has been regarded as a part of customary international law. Several statutes presently in force relate to this problem. Pursuant to 5 USC 170e, security officers of the Department of State are authorized to carry firearms for the purpose of protecting heads of foreign states, high officials of foreign governments, and other distinguished visitors to the United States, and pursuant to 5 USC 170e-1, these security officers are empowered to arrest without warrant and deliver into custody any person violating 18 USC 112. This latter statute provides that whoever assaults, strikes, wounds, imprisons, or offers violence to the person of a head of foreign state or foreign government, foreign minister, ambassador or other public minister, may be fined or imprisoned.

ARTICLE 29

Further recognition of the status of a diplomatic officer is found in 18 USC 915 which places criminal penalties on one who "with intent to defraud within the United States, falsely assumes or pretends to be a diplomatic, consular, or other official of a foreign government duly accredited as such to the United States and acts as such, or in such pretended character, demands or obtains or attempts to obtain any money, paper, document, or other thing of value."

Article 29 will not, therefore, change the present practice of the United States Government with respect to the treatment due a diplomatic agent in the United States.

ARTICLE 30 (INVOLVEMENT OF RESIDENCE AND PROPERTY)

The rule established by this Article is only an amplification of the provisions of Articles 22 and 24, which are discussed above. This article is in full accord with the practice prevailing in the United States.

ARTICLE 31 (IMMUNITY FROM JURISDICTION)

Paragraphs 1 and 3 slightly narrow the complete immunity from the civil jurisdiction of the United States presently granted by 22 U.S.C. 252 to diplomatic agents. Paragraph 1 continues, without change, the total immunity of such persons from the criminal jurisdiction of the United States.

28 U.S.C. 1251 provides that the Supreme Court shall have original and exclusive jurisdiction over all actions and proceedings against ambassadors or other public ministers and has original but not exclusive jurisdiction over all actions or proceedings brought by ambassadors or other public ministers of foreign States.

Paragraph 2 continues the present situation with respect to the immunity from the obligation to give witness testimony of a diplomatic agent. This situation represents one of the historic excep-

ARTICLE 30

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.
2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability.

ARTICLE 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:
 - (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
 - (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
 - (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b), and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

ARTICLE 32

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under Article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.

ARTICLE 33

1. Subject to the provisions of paragraph 3 of this Article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this Article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition:

tions to the Sixth Amendment of the United States Constitution, since the diplomatic agent has heretofore been and will continue to be exempt from "compulsory process."

It is not believed, therefore, that Article 31 will serve to increase the immunity heretofore enjoyed by a diplomatic agent pursuant to 22 U.S.C. 252 and customary international law. It will, on the contrary, somewhat limit this immunity.

Section 4063 of the Revised Statutes (22 U.S.C. 252) should be repealed as it accords greater immunity than is required by this Article.

ARTICLE 32 (WAIVER OF IMMUNITY)

Paragraph 1 of this Article, which provides that immunity may be waived by the sending state, conforms with United States practice. In this connection, Volume 2, Section 221.4 of the State Department Foreign Affairs Manual provides that immunity of American diplomatic officers and employees shall not be waived except by the consent of the Secretary of State.

Paragraph 2, which provides that waiver of immunity must always be express, establishes a precise rule in an area in which United States practice has not been uniform.

Paragraphs 3 and 4 conform with United States law and practice. This Article will require no change in United States law.

ARTICLE 33 (EXEMPTION FROM SOCIAL SECURITY LEGISLATION)

This Article conforms in most respects with United States law and practice, but will result in two changes: foreign diplomatic agents in the United States will no longer be exempt from payment of the employer's share of taxes in the case of private servants; and the number of private servants of such diplomatic agents subject to the Federal old-age, survivors, and disability insurance program will be slightly narrowed.

ARTICLE 33—continued

(a) that they are not nationals of or permanently resident in the receiving State; and

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

3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

5. The provisions of this Article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

The Article does not require diplomatic missions or the sending state to comply with local social security legislation for services rendered to the mission, and does not require the receiving state to extend social security coverage to employees of foreign diplomatic missions. This accords with existing United States law on the subject, which specifically excludes service performed in the employ of a foreign government. See 26 U.S.C. 3121(b)(11), and 42 U.S.C. 410(a)(11).

Diplomatic agents have heretofore been subject, in theory, to the requirement of withholding the employee's share of taxes due under the Federal Insurance Contributions Act, for their private servants, regardless of the latter's nationality or residence. Because diplomatic agents are exempt from all direct taxes, they have not been required to pay the employer's share otherwise due under the Act, however.

Paragraph 2 of this Article exempts diplomatic agents from the obligations imposed on employers with respect to private servants who (1) are not nationals or residents of the receiving state, and (2) are covered by social security provisions in force in a sending state or a third state. Paragraph 3 provides, however, that diplomatic agents shall observe the obligations imposed on employers with respect to private servants not covered by paragraph 2. Articles 37 and 38 establish that members of the administrative and technical staff and the service staff who are not nationals or residents of the receiving state have the same obligations under this Article as do diplomatic agents.

Pursuant to Articles 37 and 38 nationals and residents of the receiving state are not entitled to the benefits of Article 33. Since 1960, American citizens employed by foreign diplomatic missions are considered as self-employed, and are required to pay social security taxes. See 42 U.S.C. 411(c). The Article does not change United States requirements in this respect.

This Article requires no change in existing United States law but will require members of diplomatic missions to pay certain taxes from which they are now exempt, and will exempt certain private servants from coverage under United States law.

ARTICLE 34

Section 893 (a) of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 893 (a), provides that wages, or salary of any employee of a foreign government, received as compensation for official services to such government shall not, except in certain limited circumstances, be included in gross income, and is exempt from taxation. A similar rule is followed in the states of Virginia and Maryland. There is no personal property tax in the District of Columbia or Maryland, but the State of Virginia exempts diplomatic officers and employees from such a tax.

Section 704 of the District of Columbia Tax Regulations exempts a member of the foreign diplomatic corps from any tax on the receipts of the sale of tangible personal property (sales tax). A similar tax exemption is accorded by the States of Maryland and New York.

Concerning taxes imposed in connection with the issuance of license plates for automobiles, diplomatic officers get such plates free of charge in the District of Columbia and Virginia. Diplomatic officers residing in the State of Maryland, customarily obtain District of Columbia plates free of charge.

Diplomatic employees must pay the tax associated with issuance of license plates in the District of Columbia. Such employees would be exempted from this tax by this Article of the Vienna Convention.

The exceptions to the exemption accorded by paragraph (a) of this Article are fully in accord with present practice of the Internal Revenue Service, except to the extent that Revenue Ruling 296 dated December 21, 1953, as amended, accords greater tax exemptions. This ruling exempts diplomatic officers and certain diplomatic employees from (1) Federal excise taxes the legal incidence of which would otherwise fall on them; and (2) if these diplomatic personnel purchase from the manufacturer or retailer subject to a Federal excise tax whose burden is upon such persons, the transaction will also not be taxed.

Except as noted above, it is believed that this Article will not increase in any respect the tax exemptions presently accorded to diplomatic officers and employees.

ARTICLE 34

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of Article 39;

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

- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of Article 23.

ARTICLE 35

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

ARTICLE 35

Diplomatic representatives and technical attaches of foreign embassies and legations are exempted from registration as well as training and service under the Universal Military Training and Service Act, 50 USC 456 (a).

Although diplomatic officers and employees are not specifically exempted from jury duty in the District of Columbia, Section 11-1417 of the District of Columbia Code makes it clear that only citizens of the United States are competent to serve as jurors.

Other related exemptions pertaining to Article 35 are those provided to foreign diplomatic officers and employees:

- (a) from alien registration and fingerprinting (8 USC 1201 (b)),
- (b) registration with the Attorney General concerning knowledge or training in foreign espionage assistance (50 USC 852 (c)), and
- (c) registration with the Attorney General as an agent of a foreign principal (22 USC 613 (a)).

Military obligations such as requisitioning, contributions and billeting do not form the basis for present United States statutes. Since these concepts do not reflect the practice of the United States, it is not believed that the undertaking of this obligation will cause any difficulty.

Except as noted above, Article 35 merely reaffirms the obligation of the United States Government to provide exemptions of the nature already provided by statute.

ARTICLE 36

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

(a) articles for the official use of the mission;
 (b) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this Article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

ARTICLE 36 (EXEMPTION FROM CUSTOMS DUTIES AND INSPECTION)

Articles for the official use of the mission referred to in paragraph 1(a) of Article 36 are presently imported free of customs duties and import taxes under Item 841.10 of the Tariff Schedules of the United States and section 10.30(a) of the Customs Regulations. Under these provisions free entry is accorded, on a basis of reciprocity, to all articles (not prohibited by law) which are imported for the official, non-commercial use of the diplomatic mission. The countries according reciprocal treatment are listed from time to time in Treasury Decisions (see TDs 52847 and 53233).

Articles for the personal use of a diplomatic agent or members of his family referred to in paragraph 1(b) of Article 36 are presently accorded free entry under the provisions of Items 820.10 and 822.10 of the Tariff Schedules of the United States and sections 10.29(a) (1) and 10.30(c) (1) of the Customs Regulations. Item 820.10 and section 10.29(a) (1) refer to baggage and effects of diplomatic agents and family members upon arrival in the United States, whereas item 822.10 and section 10.30(c) (1) relate to articles imported subsequent to arrival and during official residence in the United States of the diplomatic agent or family member.

With respect to paragraph 2 of Article 36, dealing with the exemption of the personal baggage of a diplomatic agent from inspection, the present provision regarding inspection of diplomatic baggage is found in section 10.29(c) (1) of the Customs Regulations which provides that the baggage and effects of diplomatic agents "shall remain inviolate".

The only change in present practice which will result from Article 36 of the Vienna Convention is that relating to the inspection of diplomatic baggage. The present United States Customs Regulations state that the baggage of a foreign diplomatic agent is "inviole," i.e., not subject to inspection under any circumstances, whereas paragraph 2 of Article 36 would permit inspection where it appears that there are "serious grounds" to suspect that the import or export laws and regulations of the receiving State were being violated.

ARTICLE 37

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in Article 33.

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

ARTICLE 37 (PERSONS ENTITLED TO PRIVILEGES AND IMMUNITIES)

Paragraph 1 of this Article provides that members of the family forming part of the household of a diplomatic agent shall, if they are not nationals of the receiving state, enjoy the privileges and immunities specified in Articles 29 to 36. These are the Articles which provide that a diplomatic agent will have personal inviolability, immunity from jurisdiction, and certain fiscal privileges and exemptions. Under existing United States law (22 U.S.C. 252), as interpreted by our courts, family members who are spouses and dependent members of the family of diplomatic officers, including American citizens or permanent residents of the United States, are immune from both civil and criminal jurisdiction. This paragraph will remove the present exemption from jurisdiction of American citizens who are members of the families of foreign diplomatic officers.

Paragraph 2 of this Article provides that members of the administrative and technical staff, and their families, shall, if they are not nationals or permanent residents of the receiving state, enjoy the same privileges and immunities as diplomatic agents, provided that (1) their immunity from jurisdiction under Article 31 shall not include immunity from civil and administrative jurisdiction except with respect to official acts, and (2) they shall enjoy customs privileges only at first installation. Pursuant to 22 U.S.C. 252-254, the United States presently accords full immunity from both criminal and civil jurisdiction to all members of foreign diplomatic missions including those who, under Article 1 of the Convention, would be defined as the administrative and technical staff. The families of such persons presently are accorded no such immunity. Statutory authority now exists to accord to all members of diplomatic missions on the basis of reciprocity, exemption from customs duties and internal revenue taxes imposed by reason of importation. (Tariff Schedules of the United States, 19 U.S.C. foll. 1202, Schedule 8, Part 2, headline 1, Subpart C, headline 4, and Item 822.30.)

Paragraph 3 of this Article is restrictive, in that it accords members of the service staff (1) immunity from jurisdiction only in respect to official acts performed in the course of their duties, (2) exemption from income taxes on their salaries for services rendered to the sending state, and (3) exemption from social security taxes, as provided in Article 33. Under existing United States law (22 U.S.C. 252-254) all members of the service staff of a foreign diplomatic mission, with some few exemptions, have complete immunity from both civil and criminal jurisdiction. The exceptions (22 U.S.C. 254) apply only to citizens or inhabitants of the United States, and then only if the process was founded upon a debt incurred prior to the time the individual entered upon such service. The Tariff Regulations of the United States presently authorize the according, throughout their sojourn, and on the basis of reciprocity, customs privileges to members of the service staffs of foreign diplomatic missions. Paragraph 3 is silent as to customs privileges.

Paragraph 4 requires only that private servants, who are not nationals or permanent residents of the receiving state, be accorded exemption from income taxes on their salaries for services rendered to the sending state, and that the receiving state exercise its jurisdiction over them in such a manner as not to interfere unduly with the performance of the functions of the mission. Under existing United States law (22 U.S.C. 252-254) such private servants have complete immunity from civil and criminal jurisdiction in the United States.

Since 1960, the United States Government has declined to suggest the immunity of a member of the family of a diplomatic officer who was gainfully employed away from the mission, or of a national or permanent resident of the United States except with respect to acts performed by him within the scope of his functions.

Sections 4063-4066 of the Revised Statutes (22 U.S.C. 252-254) should be repealed so that the Article, among others, may be implemented.

ARTICLE 38 (NATIONALS OF THE RECEIVING STATE)

1. Except insofar as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Paragraph 1, which relates to a diplomatic agent who is a national or permanent resident of the receiving state, and which requires that he be accorded immunity from jurisdiction and inviolability in respect of official acts, is academic, so far as the United States is concerned. It has long been the practice of the United States neither to send nor to recognize as diplomatic officers persons who are nationals or residents of the receiving state. Pursuant to Sections 515, 522, and 534 of the Foreign Service Act of 1946, as amended (22 U.S.C. 910, 922, and 939), only citizens of the United States may be appointed Foreign Service officers, Reserve officers, or Staff officers and employees.

Paragraph 2, which provides that other members of the staff of the mission and private servants who are nationals or permanent residents of the receiving state shall enjoy only such privileges and immunities as the receiving state may care to accord, accords generally with the present practice of the United States. Since 1960, the United States has declined to suggest the immunity of members of foreign diplomatic missions who were nationals or permanent residents of the United States, except with respect to official acts. The United States has consistently declined to accord such persons customs privileges or tax exemptions.

To give full effect to this Article, Sections 4063-4066 of the Revised Statutes (22 U.S.C. 252-254) should be repealed.

ARTICLE 39

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession, and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

ARTICLE 39

Paragraph 1 of Article 39 provides entitlement to diplomatic privileges and immunities from the moment of arrival in the receiving State, or if the person is already there, from the moment his appointment is notified to the authorities there. Current United States practice requires acceptance by the receiving State as a condition for such entitlement. For example, with respect to diplomatic employees, acceptance by the United States is normally evidenced by including the person's name in the so-called "white" list issued by the Secretary of State and forwarded to the United States Marshall for the District of Columbia as required by 22 U.S.C. 254. To meet the requirements of the Convention, the acceptance procedure required by United States law will hereafter be implemented through issuance of a visa to the individual concerned. As regards the person already in the receiving State when his appointment is notified, the United States delegation recorded at the Conference its view that the according of privileges and immunities must be understood as provisional.

Paragraphs 2 and 3 of Article 39, providing for duration of privileges and immunities until a person leaves the country, or until expiry of a reasonable time so to do, are in general a restatement of existing practice. The determination of "a reasonable period" would be a prerogative of the Department of State.

Paragraph 4 respecting withdrawal of movable property of a deceased member of a diplomatic mission or of his family, is consistent with present United States practice. The exemption of such property of a member of a diplomatic mission, from Federal estate, succession, and inheritance duties is consistent with present practice; however paragraph 4 would extend this exemption to movable property comprising the estate of family members.

The Laws of the District of Columbia contain no tax exemption with respect to estates of member of diplomatic missions and members of their families, and would be modified to the extent required by paragraph 4 of this Article.

ARTICLE 40

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2, and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to *force majeure*.

ARTICLE 40

Article 40 provides inviolability and such other immunities as are required to ensure transit through a third State of diplomats, their families, and couriers, and unhindered transit of staff members and their families. It does not grant an absolute right of entry or transit; consequently the United States retains control over entry of such persons, for transit or otherwise, by means of the visa procedure.

The immunity granted diplomats in transit is in general accord with United States practice as reflected in decisions of State and Federal courts. In this connection see 18 U.S.C. 1545 which provides criminal penalties for violation of any safe conduct duly obtained and issued under authority of the United States.

The United States has traditionally recognized the privileged status of diplomatic couriers to the extent necessary for their particular service. Since their duties require frequent passage through third States, they are entitled to protection parallel to that of transiting diplomatic agents. The same is true of diplomatic correspondence and bags.

This Article will not change present United States practice.

ARTICLE 41

Paragraph 1 conforms to United States practice in requiring that persons enjoying diplomatic privilege and immunities respect the laws and regulation of the receiving State. Thus foreign diplomats in Washington, although immune from civil and criminal jurisdiction, have a duty to obey traffic laws and regulations.

The rule against interference in the internal affairs of the receiving State is well established. The determination of what constitutes interferences in United States politics rests with the Department of State which can, and does object *inter alia* to any dissemination of propaganda or speeches attacking United States policies, criticizing its citizens, or reflecting on other governments with which the United States maintains friendly relations.

The paragraph 2 rule on conducting official business through the Ministry of Foreign Affairs, i.e., the Department of State, or such other Ministry as may be agreed, prevails in the United States. This practice accords with the responsibility of the Secretary of State for management of foreign affairs under 5 U.S.C.

The paragraph 3 rule against use of diplomatic premises in a manner incompatible with their functions or with international law or special agreements is also well recognized. The United States has no special agreement in this regard.

ARTICLE 41

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

ARTICLE 42

In general, this Article accords with present United States practice. The Department of State present makes two exceptions to the principle that a diplomatic agent shall not engage in outside gainful employment—*viz.*, educational and cultural pursuits. It has been the Department's policy to permit diplomatic agents to accept teaching or similar positions which contribute to the knowledge or culture of the United States people, particularly since the Department encourages its own foreign service personnel to engage in occasional educational or cultural activities abroad, although in general we do not permit them to engage in outside profitable employment.

ARTICLE 42

A diplomatic agent shall not in the receiving State practice for personal profit any professional or commercial activity.

ARTICLE 43

The function of a diplomatic agent comes to an end, *inter alia*:
 (a) on notification by the sending State to the receiving State that the function of the diplomatic agent has come to an end;

(b) on notification by the receiving State to the sending State that, in accordance with paragraph 2 of Article 9, it refuses to recognize the diplomatic agent as a member of the mission.

ARTICLE 44

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

ARTICLE 45

If diplomatic relations are broken off between two States, or if mission is permanently or temporarily recalled:

- (a) the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;
- (b) the sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;
- (c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

ARTICLE 46

A sending State may with the prior consent of a receiving State, and at the request of a third State not represented in the receiving State, undertake the temporary protection of the interests of the third State and of its nationals.

ARTICLE 43

This Article conforms with the practice of the United States.

ARTICLE 44 (FACILITATION OF DEPARTURE)

The obligation of the receiving State to facilitate departure of diplomatic agents whose functions have come to an end has generally been acknowledged in international law and practice. Though the undertaking to place at their disposal, in case of need, the necessary means of transport for their property goes beyond the presently acknowledged obligation which is limited to transport of their personal effects, no changes in existing United States law will be necessary.

ARTICLE 45 (PROTECTION OF PREMISES, ARCHIVES, AND INTERESTS)

This Article reflects general international practice. No change in United States law or practice will be necessary.

ARTICLE 46 (PROTECTION OF INTERESTS OF THIRD STATES)

This Article was included to provide for the protection of interests and nationals of third States where there is a simple absence of diplomatic relations, as in the case of new States. No change in United States law or practice will be necessary.

ARTICLE 47 (NON-DISCRIMINATION)

This Article prescribes a general rule of non-discrimination in applying provisions of the Convention, but provides for certain exceptions to the rule. The first exception is for those cases where the receiving State applies a provision of the Convention restrictively because the provision, though capable of being applied liberally or restrictively, is being applied restrictively by the sending State. An example of such a provision might be found in Article 38, relating to nationals and permanent residents. Another example is found in Article 26 concerning "zones entry into which is prohibited or regulated for reasons of national security". The second exception is for those cases where, by custom or agreement, advantages are granted more liberal than the minimum laid down by the Convention as obligatory. The United States under its present laws and treaties grants privileges and immunities beyond the standard prescribed in the Convention.

The bill which has been drafted in implementation of the Convention authorizes the President to extend more favorable treatment than is provided in the Convention with respect to (a) exemption from certain Federal taxes and (b) immunity from civil and criminal jurisdiction of the United States or of any state, territory, or possession thereof for those persons defined in the Convention as the members of the administrative and technical staff and the service staff of the mission.

Existing law and practice supplemented by the draft bill will permit the United States to take such restrictive action as might be considered desirable, should provisions of the Convention be applied restrictively by any other governments. For example, 19 C.F.R. § 10.29 permits duty free entry of baggage and effects of servants of representatives of foreign governments, "provided the governments which they represent grant reciprocal privileges to American officials of like grade accredited thereto or en route to or from other countries to which accredited".

ARTICLE 47

1. In the application of the provisions of the present Convention, the receiving State shall not discriminate as between States.
2. However, discrimination shall not be regarded as taking place:
 - (a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State;
 - (b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

ARTICLE 48

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

ARTICLE 49

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE 50

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in Article 48. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE 51

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

ARTICLE 48-53 (FORMAL ARTICLES)

These Articles contain formal provisions such as those regarding signature, ratification, accession, entry into force, and notification. The provisions are similar to those found in various other agreements to which the United States is a party.

The provisions require no change in United States law and practice.

ARTICLE 52

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in Article 48:

(a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Article 48, 49, and 50;

(b) of the date on which the present Convention will enter into force, in accordance with Article 51.

ARTICLE 53

The original of the present Convention, of which the Chinese, English, French, Russian, and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 48.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, duly authorized thereto by their respective Governments, have signed the present Convention.

DONE AT VIENNA, this eighteenth day of April one thousand nine hundred and sixty-one.



Senator CHURCH. I think, as an appendix, it would be appropriate to include also the text of the proposed legislation to which you have referred which is now in the committee's hands, together with the covering letter of the State Department concerning that legislation. (The document referred to appears in the appendix.)

Senator CHURCH. Senator Clark, if you will complete the hearing, I would appreciate it.

Senator CLARK. Mr. Meeker, is it convenient for you to complete your testimony this morning?

IMMUNITIES OF SPECIAL ENVOYS

Mr. MEEKER. Yes, it is. I leave it up to you entirely.

Senator CLARK. From time to time the President has accorded a U.S. representative the personal rank of ambassador. Does this carry with it the privileges and immunities of the Vienna Convention?

Mr. MEEKER. No, it does not. It has no relationship.

Senator CLARK. How would that work out with respect to the privileges and immunities of the particular individual who was given this personal rank?

Mr. MEEKER. His privileges and immunities in another country would depend entirely on what his assignment was there. If he was counselor of embassy with a personal rank of minister, and had been accredited as a diplomat to that country, then he would have the immunities of a diplomatic agent.

Senator CLARK. The question has been raised of a situation such as that of Myron Taylor, who was sent by President Roosevelt to the Vatican, but my understanding was that he was never designated as an ambassador there. Would the Vienna Convention apply to such a personal representative?

Mr. MEEKER. I think the answer to that question would depend on whether we should at any time establish a U.S. diplomatic mission to the Vatican.

Senator CLARK. My understanding is that we did not formally.

Mr. MEEKER. No. In the absence of the establishment of such a mission, then this convention would not apply.

Senator CLARK. Recently former Ambassador Martin was sent down to the Dominican Republic by President Johnson to make a survey of the situation. Would this convention apply to him?

Mr. MEEKER. No; it would not.

Senator CLARK. You may remember Ambassador Bunker went out to Indonesia to try to ameliorate the situation there, and I take it it would not apply to him?

Mr. MEEKER. No; it would not.

Senator CLARK. How about Mr. Bunker when he shows up in the Dominican Republic as the chairman of the OAS Committee? What is the status of an international regional committee such as that with respect to this convention?

Mr. MEEKER. This would not be determined, I think, at all, by the Vienna Convention, but rather by the privileges and immunities provisions in the Charter of the OAS. There are some provisions there which are quite similar to the provisions of the U.N. Charter, and the chairman of an OAS Committee would have whatever privileges are

set forth in the OAS Charter and would not be affected by the Vienna Convention.

Senator CLARK. And since the Dominican Republic was a member of the OAS, this charter would apply as well?

Mr. MEEKER. The OAS Charter would.

USE OF MINISTERIAL RANK

Senator CLARK. To what extent is the rank of minister still being used?

Mr. MEEKER. For a chief of mission?

Senator CLARK. Only to Rumania, is it not, or have we got an ambassador even in Rumania?

Mr. MEEKER. Last year we raised the level of our representation to an ambassador in the case of Rumania.

I think now we have relations at the legation level with Hungary and the three Baltic States, Estonia, Latvia, and Lithuania.

Senator CLARK. Everywhere else we have an ambassador. How about the relation of other states to us? Do they in each instance have ambassadors?

Mr. MEEKER. It is reciprocal.

Senator CLARK. So those three or four, Hungary and the three Baltic States would be the only ones where we have a minister as opposed to an ambassador.

Mr. MEEKER. Bulgaria, like Hungary, is a country with which we have exchanged ministers rather than ambassadors.

Senator CLARK. Yes.

Mr. MEEKER. And the three Baltic countries, Estonia, Latvia, and Lithuania.

The principal representatives of these three countries in the United States are the Consul General of Estonia at New York, the Minister Plenipotentiary and Chargé d'Affaires of Latvia, and the Chargé d'Affaires ad interim of Lithuania.

Senator CLARK. We do, however, use the rank of minister in many instances in large embassies where there is also an ambassador, do we not?

Mr. MEEKER. Yes; we do. Usually the second ranking man, the deputy chief of the mission in a large embassy, is likely to be minister and counselor.

Senator CLARK. Counselor as well as minister?

Mr. MEEKER. Yes.

EXTENT OF RATIFICATION

Senator CLARK. This convention is now in effect, is it not, because the requisite number of states have ratified?

Mr. MEEKER. Yes.

Senator CLARK. Do you have any explanation as to why so many of the newly independent states have not yet ratified?

Mr. MEEKER. I do not know that there is any one explanation. I suppose that with the small size of their foreign ministries and the large number of questions that they have to deal with, this, perhaps, has simply not been considered by them yet, and they may be waiting to see what other countries will do.

Senator CLARK. I note by this memorandum which Senator Church placed in the record, and I think I will restate it here, that there were 63 signatories as of April 24, 1962. Do you have an up-to-date list of the countries which have either ratified or acceded?

Mr. MEEKER. Yes; I think we do. Would you like to have it?

Senator CLARK. I would like to have it placed in the record.

Perhaps you can tell me how many States which have signed have not either ratified or acceded.

Mr. MEEKER. There are 23 that signed, and which have not either ratified or acceded.

Senator CLARK. Could you state for the record the difference between ratification and accession?

Mr. MEEKER. Ratification is what is done by a State that has signed the treaty in order to complete the process. Accession is the act of depositing an instrument of accession when the treaty is no longer open for signature, by which instrument of accession the country becomes a party to the treaty.

Senator CLARK. Not having initially signed it.

Mr. MEEKER. That is correct.

CONVENTION AND PERSONAL RIGHTS OF DIPLOMATS

Senator CLARK. Is there anything in the convention which deals with freedom of worship of a diplomatic agent to a foreign country?

Mr. MEEKER. No; there is nothing at all in the convention on that.

Senator CLARK. So that, to be specific, there might be difficulties by a Jewish representative in an Arab country being able to worship in accordance with his faith?

Mr. MEEKER. I think there would be only the difficulty occasioned by the lack of an established place of worship.

Senator CLARK. A synagogue.

Mr. MEEKER. A synagogue. There would be no restriction, of course, on any worship that he might wish to engage in.

Senator CLARK. Privately.

Mr. MEEKER. Privately with facilities available.

Senator CLARK. How about the right of transit of an enemy diplomatic agent from one neutral country to another? Suppose we were at war with North Vietnam, let us say, and nonetheless, Mexico would want to receive a North Vietnamese diplomat. What would be the situation there?

Mr. MEEKER. We would not be required to, under the convention, because the convention states that a visa may be required and the United States could simply withhold a visa.

RIGHT OF ASYLUM

Senator CLARK. Does the convention deal at all with the right to asylum?

Mr. MEEKER. No; it does not have any provisions on asylum in it.

Senator CLARK. Do we recognize the right of asylum?

Mr. MEEKER. I suppose there are at least two elements here that we might look at. One is asylum which might be taken by a person in an embassy building, like Cardinal Mindszenty—

Senator CLARK. That was the question involved here.

Mr. MEEKER. As far as the United States is concerned, we regard the right of granting asylum to exist in rather special and emergency circumstances.

If an individual, regardless of nationality or anything else, is in imminent danger of serious personal harm or would be the victim of something which would be only a travesty of justice, where his safety and life were greatly in jeopardy, we would regard a diplomatic mission as having the right to give him asylum. This is not a duty.

The embassy would not be under a duty to give him asylum, but it would have the right vis-a-vis the receiving country to grant asylum in such cases.

Senator CLARK. What would the situation be with respect to a national of another country attached to the embassy who was being looked for under espionage charges and took asylum in a third country? Would we recognize that, or is there anything in the convention which would deal with that?

Mr. MEEKER. There is nothing in the convention, and we would not recognize it.

Senator CLARK. What do you do in the State Department to alert state and local authorities to the privileges and immunities of diplomatic agents who pass through their jurisdictions? I suppose this might have been covered by Senator Case earlier. I do not know whether it was or not.

Mr. MEEKER. We do it all the time, and we feel this is a duty of the Federal Government under the treaty and under international practice.

DIPLOMATIC IMMUNITY FROM TAXES

Senator CLARK. Do excise and sales taxes constitute direct or indirect taxes? What indirect taxes does the United States have? Does this have some bearing on this protocol?

Mr. MEEKER. Excise taxes are generally indirect taxes. I am not sure that I recall the other part of that question.

Senator CLARK. Sales taxes. They are indirect, at least they were when I was in law school.

Mr. MEEKER. This would depend, I guess, on the state statute. If the state statute imposed the sales tax by its terms on the purchaser, and if the purchaser is a diplomatic agent, then it would qualify as a direct tax.

Senator CLARK. I think you had better note for the record the relevance between the question I just asked and the protocol of the treaty or the convention. I think it is probably article 34.

Mr. MEEKER. Thirty-four is the article which deals with this, and it says that a diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional, or municipal except, and then there are a series of categories, indirect taxes of a kind normally incorporated in the price, and that one, I think, would be the exception which would be most relevant to the question, and whether a tax was indirect, whether a sales tax was indirect, would depend on the state statute, whether the state statute made it a tax upon the purchaser or upon the seller. If the tax were on the seller then it would not be a direct tax upon the diplomat.

Senator CLARK. And, therefore, article 34 would or would not apply?

Mr. MEEKER. If the tax is on the seller, then there would be no exemption. If the tax were on the purchaser, then article 34 would provide for an exemption.

EXTRATERRITORIALITY

Senator CLARK. Is there a problem of extraterritoriality in this treaty or convention?

Mr. MEEKER. Well, I suppose there might be said to be in that the premises of an embassy are inviolable. Article 22 says that the premises of the mission shall be inviolable. The agents of the several states may not enter them except with the consent of the head of the mission. So that to that extent there is an issue of extraterritoriality.

Senator CLARK. Does extraterritoriality still exist in any part of the world?

Mr. MEEKER. Not really. The old capitulations in Egypt and elsewhere in north Africa are now gone and the same is true of the Far East.

Senator CLARK. Mr. Meeker, in view of the lateness of the hour, I am going to ask you to give us written answers to a series of questions which we have not been able to get to, to send them down to the committee at your early convenience and indicate which, if any, you consider executive material so that it can be appropriately classified.

May I say, on behalf of my two colleagues, on this subcommittee, how grateful we are for your very candid and able exposition of this mildly complicated matter.

(The additional questions together with the answers referred to are as follows:)

ADDITIONAL QUESTIONS AND ANSWERS FURNISHED BY THE STATE DEPARTMENT

Question. What would be the status of a trade mission under this convention?

Answer. A trade mission of a foreign government in the United States, which is either constituted on an ad hoc or permanent basis, would not have any special status, privileges, or immunities under the Vienna Convention.

Question. The Department has a policy of issuing courtesy diplomatic passports to former U.S. chiefs of mission. What does this entitle the holder of the passport to? Are there any provisions in this treaty relating to "courtesy" diplomatic passports?

Answer. There are no provisions in the Vienna Convention on Diplomatic Relations which relate to the use of "courtesy" passports. The type of passport possessed by an officer or employee of a foreign government, or the type of visa issued to him, has no bearing upon the immunities which are accorded to such personnel by the U.S. Government. The granting of privileges, exemptions, and immunities correspond with the position occupied by such persons or the activity which they are undertaking. This practice corresponds with the position taken by most foreign governments.

Question. Does article 47(2) (a) adequately protect the right of the United States to control the movement of Soviet diplomatic personnel in the United States on the same basis that the U.S.S.R. restricts the movement of U.S. personnel in the Soviet Union?

Answer. Travel restrictions on foreign diplomatic personnel may be imposed for reasons of national security pursuant to article 26 of the Vienna Convention. When travel restrictions are imposed upon personnel of a U.S. diplomatic mission abroad, article 47(2) (a) of the convention indicates that the United States would not be discriminating as between states (and therefore in violation of the convention) when it reciprocally applied similar travel restrictions to diplomatic personnel in the United States of the state imposing such restrictions.

Question. How are waivers from immunity effected? Can an individual diplomatic agent waive immunity or must this be done by the chief of mission or the sending state?

Answer. Waivers of diplomatic immunity have been accomplished in a variety of ways in the past. Some U.S. courts have considered the bringing of an action by a diplomatic officer or employee as an implied waiver of his immunity with respect to all matters relating to or arising from the litigation. An implied waiver of immunity also results when a diplomatic officer or employee voluntarily appears to testify as a witness in any action or proceeding. Other waivers of immunity have been formally communicated by the Ambassador of the mission concerned to the Department of State. The waiver is then communicated by the Department of Justice to the appropriate judicial authority. Article 32 of the Vienna Convention makes it clear that waivers of immunity henceforth must be express. In U.S. practice, waivers of immunity are only made by the chiefs of mission of our diplomatic missions abroad, pursuant to an authorization from the Department of State.

Question. The Vienna Convention is accompanied by an optional protocol on the settlement of disputes. Is Executive H two treaties in fact? Should the Senate approve two resolutions of ratification?

Answer. The Vienna Convention and the optional protocol on the settlement of disputes are two treaties in fact, but are so interrelated that the optional protocol could not be in force between any given countries unless the convention were also in force between such countries. It would be appropriate for the Senate to approve the convention and the protocol in one resolution of ratification, rather than in two.

Question. With respect to article 47 (nondiscrimination as between states) does the United States have any special relationships with other countries that would qualify under paragraph 2?

Answer. On the basis of treaties and other international agreements or on the basis of reciprocal practice, the United States accords free entry for household goods and personal effects on first arrival and for a reasonable period of time thereafter (usually 6 months), to all members of foreign diplomatic missions in Washington who are nationals of the sending state.

Free entry privileges subsequent to a first arrival, with some exceptions regarding automobiles and alcoholic beverages, are accorded, on a reciprocal basis, to subordinate staff personnel of the diplomatic missions of the following countries:

Australia	Germany	Malaysia
Austria	Great Britain	Mexico
Belgium	Greece	Nepal
Brazil	Haiti	Netherlands
Burundi	Honduras	Nicaragua
Cambodia	Hungary	Panama
Central African Republic	Iceland	Paraguay
Ceylon	Indonesia	Peru
Chad	Iran	Philippines
China	Ireland	Poland
Congo (Léopoldville)	Israel	Rwanda
Costa Rica	Ivory Coast	Sierra Leone
Cyprus	Jamaica	Somalia
Czechoslovakia	Japan	Tanzania
Dominican Republic	Kenya	Togo
El Salvador	Korea	Trinidad/Tobago
Ethiopia	Kuwait	Uruguay
Finland	Laos	Vietnam
France	Liberia	Yemen
Gabon	Luxembourg	Zambia

Exemptions from various taxes the payment for which, under the Vienna Convention, all members of the mission would be liable, are presently being accorded by the United States and some other countries to members of the diplomatic staff. Such exemptions are accorded pursuant to domestic law and regulations and as a matter of courtesy and comity. It is not feasible to undertake to enumerate either the countries concerned or the taxes from which exemption is accorded. Pursuant to Revenue Ruling 296, the United States exempts all members of diplomatic missions, other than custodial personnel and domestic

servants, who are not American citizens or permanent residents of the United States, from payment of certain Federal excise taxes. Such mission members are also accorded exemption from certain taxes levied by the District of Columbia.

Question. How would the nondiscrimination clause in article 47 apply to the British Commonwealth or the European communities?

Answer. It would vary country by country, depending on the provisions of foreign domestic law and of applicable international agreements between the United States and the country concerned.

Question. Why have a number of states made reservations to parts of article 37, especially paragraph 2? (Relates to privileges and immunities of the administration and technical staff of a mission.)

Answer. The reasons for the reservations doubtless vary. The majority of delegations at Vienna took the position that members of the administrative and technical staff and the service staff had no representational functions and therefore had little if any need for customs privileges. Several delegations observed that the loss of revenue from customs would be more important to their governments than the benefits they might derive from reciprocal privileges for their personnel abroad.

Question. To what extent does the convention guarantee freedom of movements of a diplomatic agent in the territory of state to which accredited? Can the United States restrict the movement of any diplomatic agents under the convention?

Answer. Article 26 provides that, subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving state shall insure to all members of the sending state diplomatic mission freedom of movement and travel in its territory. From time to time the U.S. Government has imposed travel restrictions for reasons of national security upon the travel of foreign diplomatic officers and employees in the United States. The ratification of the Vienna Convention will not affect the ability of the United States to restrict the travel of foreign diplomatic officers or employees in the United States.

Question. Do the provisions of this convention apply directly or indirectly to visiting heads of state or government? If not, what laws govern the treatment a host country is obligated to accord a visiting foreign dignitary?

Answer. The provisions of the Vienna Convention do not directly apply to visiting heads of state or heads of government. The draft legislation which the Department of State has prepared to complement the Vienna Convention will, in effect, make pertinent provisions of the convention applicable to the head of a foreign state or the head of government of a foreign state, and when they are on an official visit to or in transit through the United States, the foreign minister of a foreign government, and those members of the official party accompanying such officials.

At present, security officers of the Department of State are authorized to carry firearms for the purpose of protecting heads of foreign states, high officials of foreign governments, and other distinguished visitors to the United States and, pursuant to 5 U.S.C. 170e-1, these security officers are empowered to arrest without warrant and deliver into custody any person violating 18 U.S.C. 112. This latter statute provides that whoever assaults, strikes, wounds, imprisons, or offers violence to the person of a head of foreign state or foreign government, ambassador, or other public minister, may be fined or imprisoned. Other than these specific laws, the status of visiting heads of state or heads of government of a foreign state has not been the subject of any other statutes in the United States.

Question. In view of the United States own previously restrictive legislation against letting foreign chanceries have transmitters, why was the U.S. delegation instructed to vote against the six-power amendment making the use of transmitters subject to local law and international regulations?

Answer. The delegation was instructed to vote in favor of a provision in the convention which would permit diplomatic missions to use radio transmitters, because it was felt that the prohibition in U.S. law was contrary to our national interest and should be removed. The Departments of Defense and Justice and the FCC concurred in this instruction.

The Department of State had long considered it essential to have radio transmitters installed in U.S. diplomatic missions in various countries where the facilities or the caliber of service was inadequate. Frequently, the host government, whose permission was necessary, had been willing to grant permission only

on condition that their diplomatic missions have reciprocal rights in Washington. This we were unable to offer at the time, because section 310(a)(2) of the Federal Communications Act of 1934, as amended, was interpreted as prohibiting the use of radio transmitters by foreign diplomatic missions in the United States. Subsequent to the signing of the Vienna Convention, the 1934 Communications Act was amended to authorize a foreign government, on the basis of reciprocity, to construct or operate a low-power radio station at or near its embassy or legation in Washington.

The U.S. delegation opposed the six-power amendment, because it did not give the sending state an absolute right to operate a radio transmitter. We did not object to compliance with international radio regulations.

Question. A diplomatic agent is to deal only with the foreign ministry or the head of state of the country of his mission. How strictly is this observed? To what extent do diplomatic agents try to influence the press, Members of Congress, and industrial leaders without going through the State Department?

Answer. It has long been established that as a general rule diplomatic officers should conduct all official business with or through the ministry of foreign affairs, except as may have been otherwise agreed.

Any case of flagrant breach of normal diplomatic practice by obviously improper contacts is dealt with by the Department by making the Department's disapproval known to the diplomatic mission concerned.

Many diplomatic missions have press attachés and information officers whose principal duty is to deal with the news media. The Department considers that this is a proper diplomatic function, so long as the mission does not make statements or disseminate political propaganda which is objectionable to the United States.

The Department is, of course, not fully informed of the nature and substance of all discussions concerning matters of policy which diplomatic officers have with Members of the Congress and with industrial leaders. Such direct contacts, as distinct from contacts by nondiplomatic representatives of foreign governments, have not occasioned any significant complaint.

Question. What controls does the Department have over the activities of diplomatic agents? For instance, how would the State Department know whether a diplomatic agent did practice here for personal profit, any professional or commercial activity? Or how would the State Department know that the premises of a mission was "not used in any manner incompatible with the functions" of that mission?

Answer. The control the Department has over the activities of foreign diplomatic agents is that if they engage in activities the Department has warned against, or might consider objectionable, the United States might request their recall or declare them *persona non grata*. The Department, of course, does not learn of every instance in which a foreign diplomatic agent practices some private professional or commercial activity in the United States for personal profit. However, the Department is kept generally informed of such activities. On occasion a private citizen complains to the Department regarding a diplomat's private business ventures. The matter might also be brought to the Department's attention by either the diplomatic agent concerned or the appropriate authorities, in event the diplomatic agent claimed exemption from or failed to pay taxes or comply with other applicable laws and regulations. Sometimes the activity becomes a matter of public knowledge, as in the case of a diplomatic agent who wrote a bestseller, or taught a course in a college.

Any repeated or flagrant misuse of the premises of a diplomatic mission would be altogether likely to come to the Department's attention, in one way or another.

Question. According to the delegation report, the United States was initially against the attempt to draft a convention on this subject because it doubted that the convention would be widely adhered to. What led to the change of heart?

Answer. The draft articles adopted by the International Law Commission in 1958 met many of the objections the United States previously had to the draft articles provisionally adopted by the Commission in 1957. The unanimous vote in the General Assembly in 1959 on the resolution convening the 1961 Vienna Conference indicated likelihood of general acceptance of the convention to be formulated at that conference. Additionally, it had become clear that since new states had no body of traditional law and practice to guide them it would be in the interest of both new and old states to agree on the rights and obligations of receiving and sending states.

Question. According to the delegation report, the United States, the United Kingdom, and the U.S.S.R. were the only abstainers in a vote by which the provisions of article 27 were adopted in the Committee of the Whole. What were the reasons of these three delegations for abstaining?

Answer. Article 27 was one of the articles on which there were differences of opinion between large states and small states. The United States, the United Kingdom, and the Union of Soviet Socialist Republics each maintain many large diplomatic missions abroad, and each are hosts to many diplomatic missions. They therefore each felt a special need to consider their rights and obligations under this article both as a sending state and as a receiving state.

Question. Article 27 concerns freedom of communications including by transmitter with the consent of the receiving state. In 1963, the SFRC handled a bill to amend the Federal Communications Act of 1934 to eliminate the FCC requirements that all transmitter licensees be U.S. nationals in order to make it possible for chanceries in the District of Columbia to apply for permission to operate transmitters. How many foreign chanceries have applied for authority to build transmitters? How is this new law working out?

Answer. Section 305(d) of the Communications Act of 1934, as amended, 47 U.S.C. 305(d), permits the President to authorize a foreign government, under such terms and conditions as he may prescribe, to construct and operate in Washington, D.C., a low-power radio station for transmission of its messages to points outside the United States, if the President has deemed this to be consistent with the national interest of the United States, and where such foreign government has provided substantially reciprocal privileges to the United States abroad. To date, the embassy of only one foreign government has established a radio facility under the authority of this law. The Department has, pursuant to this law, concluded reciprocal radio rights agreements with six additional countries, three of which are expected shortly to establish radio facilities in Washington. This recent amendment to the Communications Act of 1934 appears to be working out well in practice.

Question. In the event of armed conflict, may foreign diplomatic agents withdraw their private property and other assets from the United States? Is this consistent with U.S. law and practice?

Answer. We have discussed with the Treasury the effect of the convention on blocking regulations which have been or may be imposed pursuant to section 5 of the Trading With the Enemy Act of 1917, as amended (50 U.S.C., app. 5). The private property of diplomatic agents and members of the administrative and technical staff and their families is inviolable under articles 30 and 37 of the convention. However, that inviolability does not extend to assets of the mission or the sending state. Moreover, that inviolability does not extend to property in the custody of a diplomatic agent or other member of the staff which in fact belongs to his government or to third persons not entitled to the same inviolability. In the event funds in a bank account in the name of a diplomatic agent or other member of a diplomatic mission were blocked under the Trading With the Enemy Act, a license would be issued unblocking the personal funds of the mission member concerned. If the funds in question were more than a few thousand dollars, the burden of proof would be on the diplomatic agent to establish to the satisfaction of the Treasury that the funds were in fact "his" property.

There is no provision in the convention that in event of severance of diplomatic relations, the sending State concerned may withdraw its property. In this connection, article 45 of the convention provides only that the receiving state must, even in case of armed conflict, respect and protect the premises of the mission together with its property and archives.

Question. What was the practice of the United States with respect to blocking controls in World War II?

Answer. All funds of certain foreign governments and nationals of designated countries were blocked by blanket orders. Licenses were immediately issued to release funds for expenses of their diplomatic and consular establishments in the United States and, subsequently, in the case of France, in Latin America. Licenses were also issued to release funds to individual mission members for living, travel, and other personal expenses.

Pursuant to reciprocal agreements between the United States and Germany, Italy, and Japan, Axis and associated officials, their staffs, families, and servants being repatriated were permitted to take with them from the United States all their personal baggage and household effects except furniture, and had the privilege of shipping their furniture by commercial means at private expense.

Each adult Axis or associated official in the United States at the outbreak of the war was allowed to take with him a sum in cash not to exceed \$300. After the cessation of hostilities their property in the United States was returned to them, with certain exceptions. For example, vested securities held as investments by former German and Japanese diplomats were not returned.

Axis officials arriving in the United States from Latin America were permitted to take with them whatever additional personal effects and money they had been permitted to bring out of the country to which they had been accredited.

Senator CLARK. We will do our best to process this convention promptly. Thank you very much. The hearing will be adjourned. (Whereupon, at 12:55 p.m., the subcommittee adjourned.)

APPENDIX

THE SECRETARY OF STATE,
Washington, July 9, 1965.

HON. HUBERT H. HUMPHREY,
President of the Senate.

DEAR MR. VICE PRESIDENT: The Department of State encloses a draft bill entitled "Diplomatic Relations Act of 1965." The draft bill has been prepared to complement the Vienna Convention on Diplomatic Relations, signed April 18, 1961, which is now pending in the Senate for advice and consent to ratification (S. Ex. H, 88th Cong.), and which is presently in force between forty (40) countries. A sectional analysis of the draft bill and a copy of the convention are also enclosed.

The Vienna Convention on Diplomatic Relations was prepared under United Nations auspices and is a codification of the rights, privileges and immunities of all members of permanent diplomatic missions and of their families and private servants, and of the rights and obligations of the state on whose territory they perform their functions. For the most part, the convention is a restatement of principles so universally observed by governments in their practice that they had come to constitute international law. In areas where practice was not uniform, or where it appeared that existing practice should be changed, the convention establishes new rules. For example, the convention provides that members of the administrative and technical staff of the mission and their families who are not nationals or residents of the receiving state will have complete immunity from criminal jurisdiction, that said members will have immunity from civil jurisdiction only with respect to official acts, and that diplomatic agents and their families will no longer enjoy immunity from civil jurisdiction with respect to certain private matters. In the Department's opinion, these new rules are desirable in the light of present conditions.

The present statutory basis for diplomatic immunity in the United States is contained in sections 4063-4066 of the Revised Statutes (22 U.S.C. 252-254), which are derived from an Act of Congress approved April 30, 1790 (1 Stat. 117). Section 252, which provides that any writ or process whereby the person of any ambassador or public minister, or any domestic or domestic servant of any such minister, is arrested or imprisoned, or his goods or chattels are distrained, seized, or attached, shall be deemed void, has been held to be declaratory of the law of nations. Sections 253 and 254 provide penalties for acts in violation of section 252, with certain exceptions relating to citizens and inhabitants of the United States, and domestic servants.

Sections 4063-4066 of the Revised Statutes have been interpreted as according complete immunity from both criminal and civil jurisdiction to diplomatic agents and their families and to members of the administrative and technical staff, and as not according any immunity to the families of the latter category of mission members. For this reason the draft bill provides for the repeal of these sections, and the substitution therefor of provisions of law which can be applied in a manner consistent with the convention.

The Vienna Convention conforms substantially to the views of the Department of State as to the standard of treatment which a receiving state is or should be required by international law and practice, as a minimum, to accord to diplomatic missions and the personnel thereof. The convention is self-implementing with respect to diplomatic missions and the personnel thereof of states parties to the convention. Legislation is necessary, however, in order to permit the United States to accord this standard of treatment to missions and personnel of states not party to the convention. In order to assure that American diplomatic personnel in the territory of a state not party to the convention will enjoy comparable privileges and immunities, the draft bill accordingly grants the President discretion to determine which categories of such state's personnel in the United States will be entitled to specific privileges and immunities.

In two particulars, the proposed legislation will assist the Department of State in adequately meeting the needs of American diplomatic missions and their personnel. In the Department's opinion, all members of a diplomatic mission, regardless of nationality or residence, should have immunity from jurisdiction with respect to official acts, and all members of the administrative and technical staff, other than nationals or permanent residents of the receiving state, should enjoy customs privileges throughout their sojourn. The draft bill therefore authorizes the President to accord, under such terms and conditions as he may determine, to the personnel of certain diplomatic missions exemption from certain Federal taxes and greater immunity from jurisdiction than is required by the convention. In the administration of this provision, consideration will be given to reciprocity or other appropriate *quid pro quo*.

The Vienna Convention on Diplomatic Relations deals only with permanent diplomatic missions and the personnel thereof, and has no application to foreign heads of state and heads of government and foreign ministers. Such privileges and immunities as have been accorded these three classes of high officials on an ad hoc basis rest generally on the law of nations and custom and comity and, when applicable, on the doctrine of sovereign immunity. While no serious questions have thus far arisen with respect to the status of these persons, the Department of State is of the opinion that the matter should be clarified by statute. There can be no doubt that heads of state and heads of government are entitled to no less consideration than an ambassador or minister who is the personal representative of the head of state, and who receives his instructions from his head of government and his foreign minister. Accordingly, the draft bill provides that for the purpose of the bill the phrase "foreign diplomatic mission and the personnel thereof" includes foreign heads of state and heads of government, and, when they are on an official visit to the United States, foreign ministers, and members of the official parties accompanying such persons.

In summary therefore, the draft bill has several purposes: (1) to provide statutory authority for accordng the privileges and immunities specified in the Vienna Convention on Diplomatic Relations to diplomatic missions and the personnel thereof of states not parties to the Vienna Convention; (2) to authorize accordng more favorable treatment to foreign diplomatic missions in the United States and their personnel, depending, inter alia, on reciprocal treatment of U.S. diplomatic missions and their personnel in the territory of the sending state concerned; (3) to clarify the status in the United States of foreign heads of state and heads of government and special envoys, and to specify the privileges and immunities to which they and members of their official parties shall be entitled during their sojourn; and (4) to repeal Revised Statutes 4063-4066, sections 252-254 of title 22 of the United States Code.

The Department of State has been informed by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the submission of this proposal to the Congress for its consideration.

A letter similar in content is being sent to the Speaker of the House of Representatives.

Sincerely yours,

DEAN RUSK.

Enclosures:

1. Draft bill.
2. Sectional analysis.
3. Vienna Convention on Diplomatic Relations (omitted).

A BILL To complement the Vienna Convention on Diplomatic Relations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Diplomatic Relations Act of 1965."

STATEMENT OF PURPOSE

SEC. 2. The purpose of this Act is to promote the conduct of the foreign relations of the United States by specifying the privileges and immunities to which foreign diplomatic missions and the personnel thereof are entitled and by authorizing the President to regulate, consistent with treaties and other international agreements of the United States, customary international law and practice, and this Act, the granting of such privileges and immunities.

DEFINITIONS

SEC. 3. As used in this Act, the phrase "foreign diplomatic mission and the personnel thereof" includes:

(a) any permanent or special diplomatic mission of a sending state accredited to the United States, including special envoys, and the members of the staff of the mission, the members of the families of such members of the staff, the private servants of the members of the mission, and diplomatic couriers.

(b) the head of a foreign state or the head of the government of a foreign state, and when they are on an official visit to or in transit through the United States the foreign minister of a foreign government, and those members of the official party accompanying such officials.

AUTHORITY OF THE PRESIDENT

SEC. 4. (a) The President is authorized, under such terms and conditions as he may from time to time determine:

(1) to apply the treatment prescribed by the Vienna Convention on Diplomatic Relations, or any part or parts thereof, to foreign diplomatic missions and the personnel thereof of states not parties to the Convention;

(2) to extend more favorable treatment than is provided in the Vienna Convention on Diplomatic Relations to foreign diplomatic missions and the personnel thereof with respect to—

(A) exemption from Federal taxes; and

(B) immunity from civil and criminal jurisdiction of the United States or of any state, territory, or possession thereof for those persons defined in the Vienna Convention on Diplomatic Relations as the members of the administrative and technical staff and the service staff of the mission;

(b) The determination of the President as to the entitlement of a foreign diplomatic mission and the personnel thereof to diplomatic privileges and immunities under the Vienna Convention on Diplomatic Relations or under this Act shall be conclusive and binding on all Federal, State, and local authorities.

(c) The President shall from time to time publish in the Federal Register of the United States a list of the permanent foreign diplomatic missions and the personnel thereof entitled to diplomatic privileges and immunities pursuant to the Vienna Convention on Diplomatic Relations or this Act.

JUDICIAL MATTERS

SEC. 5. (a) Whenever any writ or process is sued out or prosecuted in any court, quasi-judicial body, or administrative tribunal of the United States, or of any state, territory, or possession thereof, against a person or the property of any person entitled to immunity from such suit or process under the Vienna Convention on Diplomatic Relations or pursuant to this Act, such writ or process shall be deemed void.

(b) Whoever knowingly obtains, prosecutes, or assists in the execution of such writ or process shall be fined not more than \$5,000 or imprisoned not more than one year, or both: *Provided*, That this paragraph shall not apply unless the name of the person against whom the writ or process is issued has, before the issuance of such writ or process, been published in the Federal Register.

EXERCISE OF FUNCTIONS

SEC. 6. The President may exercise any functions conferred upon him by this Act through such agency or officer of the United States Government as he shall direct. The head of any such agency or such officer may from time to time promulgate such rules and regulations as may be necessary to carry out such functions, and may delegate authority to perform any such functions, including, if he shall so specify, the authority successively to redelegate any of such functions to any of his subordinates.

EFFECTIVE DATE AND REPEALS

SEC. 7. (a) This Act shall be effective upon the entry into force of the Vienna Convention on Diplomatic Relations with respect to the United States.

(b) Sections 4063, 4064, 4065, and 4066 of the Revised Statutes (22 U.S.C. 252-254) are repealed upon the effective date of this Act.

(c) The repeal of the several statutes or parts of statutes accomplished by this Act shall not affect any act done or right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before such repeal, but all rights and liabilities under the statutes or parts thereof so repealed shall continue, and may be enforced in the same manner as if such repeal had not been made, subject only to the applicable immunities heretofore flowing from customary international law and practice.

SECTIONAL ANALYSIS

SECTION 1. TITLE

This may be cited as the "Diplomatic Relations Act of 1965."

SECTION 2. STATEMENT OF PURPOSE

This states the purpose of the bill, which is to promote the conduct of the foreign relations of the United States by specifying the privileges and immunities to which foreign diplomatic missions and the personnel thereof may be accorded, and by authorizing the President to regulate, consistent with treaties and other international agreements, customary international law and practice, and this proposed legislation, the granting of such privileges and immunities.

SECTION 3. DEFINITIONS

This defines the phrase "foreign diplomatic mission and the personnel thereof" as including not only members of permanent diplomatic missions, their families, and their private servants, but also heads of foreign states and heads of foreign governments, whether in the United States for official or personal reasons, foreign ministers when on an official visit to or in transit through the United States, and persons on special diplomatic mission to the United States, together with the members of the official parties accompanying all such persons. The definition also includes diplomatic couriers. This broad definition is desirable for several reasons. The Vienna Convention on Diplomatic Relations has reference only to permanent diplomatic missions, and, in limited respects, to diplomatic couriers. The repeal of sections 4063-4066 of the Revised Statutes (22 U.S.C. 252-254) will remove from the books the present statutory basis for according diplomatic immunity to persons on special diplomatic mission. The privileges and immunities which are everywhere accorded to visiting heads of state and heads of government should have some basis in the statutory law of the United States.

SECTION 4. AUTHORITY OF THE PRESIDENT

Paragraph (a) of this section authorizes the President, under such terms and conditions as he may from time to time determine:

(1) To apply the treatment prescribed by the Vienna Convention on Diplomatic Relations, or any part or parts thereof, to foreign diplomatic missions and the personnel thereof of States not parties to the convention. The articles of the Vienna Convention which are particularly relevant to this provision are those which define the categories of mission personnel and specify the privileges and immunities to be enjoyed by persons in each category. These are articles 1, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 47.

(2) To extend more favorable treatment than is required by the Vienna Convention on Diplomatic Relations to foreign diplomatic missions and the personnel thereof with respect to (a) exemption from Federal taxes; and (b) immunity from criminal and civil jurisdiction for members of the administrative and technical staff and the service staff of the mission. The taxes to which section 4 applies will be those imposed by or pursuant to acts of Congress. This provision will enable the United States to continue to accord, in return for an appropriate quid pro quo by the sending State; (1) the exemption from Federal taxes presently enjoyed by duly accredited diplomatic officers and members of the administrative and technical staff who are nationals of the appointing State, (2) complete immunity from criminal jurisdiction to members of the service staff who are not nationals or residents of the United States, and (3) immunity from civil and criminal jurisdiction in respect of official acts to members of the administrative and technical staff who are nationals or residents of the United States.

The draft bill does not contain specific authorization to accord to members of the administrative and technical staff exemption from customs duties and internal revenue taxes imposed upon or by reason of importation because statutory authority now exists to accord such exemptions on the basis of reciprocity (Tariff Schedules of the United States, 19 U.S.C. foll. 1202, schedule 8, pt. 2, headnote 1, subpt. C, headnote 4, and item 822.30). In the case of many countries, section 4(a)(2) of the draft bill, if enacted, and the pertinent portions of the Tariff Schedules would merely authorize the continuance of long-existing arrangements where by custom or agreement subordinate personnel at American diplomatic missions are accorded more favorable treatment than is required by the Vienna Convention.

Paragraph (b) of section 4 reaffirms the primacy of the executive branch's determination with respect to entitlement of a particular foreign diplomatic officer or employee to immunity from civil or criminal jurisdiction; the making of such a determination would presumably be delegated to the Department of State pursuant to section 6, and the certificate of the Secretary of State or his designee would be transmitted by the Attorney General to the appropriate court.

Paragraph (c) of section 4 adopts the notice feature of title 22, United States Code, section 254, with these changes: the names of all persons entitled to immunity pursuant to the Vienna Convention or the draft bill will be made of public record, instead of just those persons presently listed in the so-called "white list"; the names of entitled persons will be published in the Federal Register rather than posted in the office of the Marshal for the District of Columbia; and the variable treatment of foreign diplomatic missions and their personnel authorized in section 4(a) will be made a matter of public record for the application of applicable laws and regulations, and for immunity purposes.

SECTION 5. JUDICIAL MATTERS

Paragraph (a) provides that any writ or process sued out or prosecuted against a person or the property of any person entitled to immunity from such process shall be deemed void. Paragraph (b) provides that any person who knowingly obtains, sues out, prosecutes, or assists in the execution of such writ or process may be fined or imprisoned, or both. Similar provisions are contained in title 22, United States Code, sections 252-254.

SECTION 6. EXERCISE OF FUNCTIONS

This is a standard delegation of authority provision.

SECTION 7. EFFECTIVE DATE AND REPEALS

Paragraph (a) provides that the "Diplomatic Relations Act of 1965" will be effective upon entry into force of the Vienna Convention on Diplomatic Relations with respect to the United States. Paragraph (b) provides for the repeal of sections 4063, 4064, 4065, and 4066 of the Revised Statutes (22 U.S.C. 252-254), upon the effective date of the above-mentioned act. Paragraph (c) is a clause regarding legal acts done or rights accrued, or proceedings commenced in any civil cause before the repeal of the several statutes referred to in paragraph (b) above.

