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17th meeting of the Committee of the Whole

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17th meeting

Monday, 17 February 1975, at 3.20 p.m.

Chairman: Mr. NETTEL (Austria).

Consideration of the question of the representation of States in their relations with international organizations in accordance with resolutions 2966 (XXVII), 3072 (XXVIII) and 3247 (XXIX) adopted by the General Assembly on 14 December 1972, 30 November 1973 and 29 November 1974 (*continued*)

Article 9 (Appointment of the members of the mission) (*concluded*) (A/CONF.67/4, A/CONF.67/C.1/L.18, L.27, L.28, L.35)

1. The CHAIRMAN suggested that it might be useful for the discussion of article 9 proposed by the International Law Commission (ILC) (see A/CONF.67/4) if he were to remind members of the substance of the oral amendment made to article 75 by the Nigerian delegation at the previons meeting. After reading out the Nigerian oral amendment, he observed that as a consequence of those changes, article 9 should be amended to read: "Subject to the provision of articles 14, 72 and 75, the sending State may freely appoint members of the mission".

2. Mr. KUZNETSOV (Union of Soviet Socialist Republics) asked the Chairman, how, in view of the rules of procedure, he proposed to deal with the Nigerian suggestion, which seemed too long to be qualified as an oral amendment.

3. As he had said at the previous meeting, adoption of the joint amendment put forward by Canada and the United Kingdom (A/CONF.67/C.1/L.18) and the amendment proposed by the United States (A/CONF.67/C.1/L.28) would have the effect of robbing article 9 of practically all its substance. If the amendments were adopted, article 9 would cover matters which properly came within the purview of headquarters agreements. In that connexion, he noted that, under the Nigerian proposal as well, the agreement of the host State to the appointment of members of a mission would be required. The scope of all the amendments to which he had referred undermined the freedom of the sending State in the matter. In practice that would mean that decisions concerning appointments to missions at New York would be taken by the State Department of the United States, not by the sending State. His delegation could not, therefore support any of the amendments. It could, however, support the article as it stood.

4. The CHAIRMAN said that so far he had not ruled out of order any oral proposals. He did not intend to rule the Nigerian proposal out of order.

5. Mr. LARSSON (Sweden) said that article 9 conferred wide discretionary powers on the sending State regarding the appointment of members of permanent missions and permanent observer missions. In fact, those powers were subject to only two exceptions, neither of which took account of the concern of the host State to protect itself against abuse of privileges by a member of a mission. It had been argued that failure to provide for a procedure whereby a member of a mission could be declared personally unacceptable was justified by the fact that members of a mission did not enter into direct relationship with the host State. His delegation could not accept that argument because a member of a mission could abuse his privileges and thereby jeopardize the internal security and public order of the host State.

6. It had been contended that the interests of the host State were sufficiently protected by the provisions of article 75, paragraph 2. It was questionable, however, that the interests of the host State would really be protected by that provision, the scope of which was limited. What, for instance, would happen if the host State asserted, and the sending State denied, that the person concerned had committed one of the offences referred to in paragraph 2 of article 75? Provision was made in article 82 for disputes to be submitted to conciliation procedure. The findings of the proposed conciliation commission referred to in that article would not, however, be binding on the parties to the dispute and the rules regarding the establishment and the work of the proposed commission were not such as to favour a speedy solution to the dispute. For those reasons, his delegation strongly supported the inclusion of a provision along the lines of those proposed in documents A/CONF.67/C.1/L.18 and L.28 in the convention. It had been argued that the subject was covered by headquarters agreements. His delegation could not believe, however, that a similar provision in the new convention, which when adopted would to a large extent reflect prevailing international law, would be used for improper purposes. On the contrary, it would establish a proper balance between the rights of the host State and the powers conferred by the Commission's text of article 9 on the sending State.

7. As to the contention that the proper place for a provision of the kind contained in documents A/CONF.67/C.1/L.18 and L.28 was a headquarters agreement, it should be noted that the Committee was codifying rules on the representation of States in their relations with international organizations. If such a provision was not included in the convention, it might in the future be suggested that the provision did not reflect customary international law and, hence, should not form part of future headquarters agreements.

8. Mr. HAQ (Pakistan) said that, when read together, the provisions of articles 9 and 75 made available all the remedies that the sponsors of the amendments in documents A/CONF.67/C.1/L.18 and L.28 were seeking for host States.

9. The desire to protect the interests of the host State was genuine and reasonable and it was normal that host States and potential host States should try to strengthen their position within the framework of the convention.

It was, however, a privilege of the sending State, which also needed protection, freely to choose its representatives. Indeed, it seemed, that a balance should be established between the interests of the sending State, the host State and even the Organization. The Commission's text posed no dangers to the host State, whose interests were, in any case, safeguarded under headquarters agreements. By not introducing any reference to mistrust and actions undertaken in bad faith the Commission had produced a very viable article regarding the choice of members of the mission. In the opinion of his delegation, it would be better if the title of article 9 were reworded to read "Choice of the members of the mission", because the idea emphasized in the article was that the sending State should freely appoint the members of its mission. Article 14 limited the size of the mission and article 72 called for the consent of the host State for appointments of persons having the nationality of the host State. The adoption of amendments whereby it would be possible to regard certain persons as unacceptable was likely to lead to serious problems. Such matters as the abuse of power and misconduct could effectively be dealt with under the provisions of articles 75, 81 and 82.

10. He referred to the oral amendment made by the representative of Nigeria and said that article 75 did need re-adjustment, but not on the scale indicated by the Nigerian delegation.

11. Mr. CONTINI (Observer for the United Nations Food and Agriculture Organization), speaking at the invitation of the Chairman, said that he wished to comment on the question of consulting the organization concerning the non-acceptability of a member of a mission. FAO was one of the United Nations agencies to which permanent representatives were accredited. The headquarters agreement between FAO and the Italian Government contained a section under which every person designated by a Member State as a representative was entitled to the same privileges and immunities, subject to corresponding conditions and obligations, as the Government accorded to diplomatic envoys and members of the mission of comparable rank accredited to the Government. In effect, with the words "subject to corresponding conditions and obligations" the headquarters agreement referred to the principles of international law including those concerning questions of recall and declarations of *persona non grata*. The agreement did not involve the organization in any dispute between sending States and the host State because permanent missions accredited to the organization were granted their privileges and immunities by the host Government, not the organization. He therefore agreed with the statement made by the Legal Counsel at the previous meeting; in particular he agreed with his suggestion that the involvement of an organization in the matter would lead to difficulties which should be avoided.

12. Mr. ESSY (Ivory Coast) said that articles 9 and 75 related to two completely different situations. The provisions of article 9 related to the appointment of diplomats, whereas those of article 75 related to a situation which might arise after a diplomat had been appointed. As prepared by the ILC, the text of articles 9 and 75 seemed reasonably balanced, although, in both articles, the role accorded to the host State could be described as passive. The aim of any attempt at codification was to establish laws which would safeguard the interests of all parties concerned. Thus, in the case of articles 9 and 75 the aim should be to find a form of words which would take account of the interests of the host State, the sending State and the organization. From the juridical point of view, the organization had legal personality in international law. Thus, representatives must be accredited to it in the same way as representatives were accredited to States in bilateral diplomacy. There were, on the territory of the Ivory Coast, two international institutions with which the Government had signed headquarters agreements. In the opinion of his Government, however, it went without saying that, whatever the personality of the organization, those institutions exerted their international competence on the territory of a sovereign State. The problem would have been simpler if the organizations had at their disposal territories sufficiently large to enable them to accord and guarantee all the privileges and immunities accorded to representatives of missions, which missions were created as a result of the presence of the international organization, the privileges and immunities of which, as things stood, were granted and guaranteed by the host State.

13. It went without saying that the appointment of a person who was suspect in the eyes of the host State would not be conducive to the success of that person's mission or to the establishment of good relations between the sending State and the host State or between the sending State and the organization. His delegation would therefore support any text under which it would be possible to hold tripartite consultations between the sending State, the host State and the organization and thus reach agreement in the matter. A legal provision which did not take account of certain realities would not be conducive to effective implementation of a convention intended to govern relations between three parties the legal personalities of which were unquestionable.

14. The amendment submitted by the delegations of Canada and the United Kingdom (A/CONF.67/C.1/L.18) related to the two questions covered in articles 9 and 75. The only sentence in that amendment which could be introduced into article 9 was the last sentence of proposed paragraph 2, subparagraph (*a*). The remainder of the amendment, would more appropriately be included in article 75.

15. Mr. MOLINA LANDAETA (Venezuela) said that his delegation had carefully examined all the legal and practical implications of the text of article 9 as drafted by the ILC. On the whole, in the articles it had prepared, the Commission had struck a balance between the interests of the host State, the sending State and the organization. In certain articles, however, no such balance had been achieved. Article 9 could be viewed either as an article standing on its own or as an article to be read in conjunction with other draft arti-

cles and with rules already established in other instruments.

16. Taken by itself, article 9 certainly had its merits. It maintained the concept of a direct relationship between the sending State and the organization exclusively. At the same time, the rule which it contained was subject to two limitations, expressed elsewhere in the draft articles, with regard to the size of the mission and the nationality of its members. Those two limitations should suffice.

17. More important, the draft articles also included provisions which adequately protected the host State against any abuse of the powers conferred on the sending State in article 9: in particular, the provisions of articles 75, 76, 81 and 82, all of which served to balance the provisions of article 9. Furthermore, in relation to article 22, the Committee had unanimously adopted at its 15th meeting an Austrian amendment (A/CONF.67/C.1/L.49, as orally amended) which made provision for the assistance which the Organization had to render to sending States in the discharge of their obligations under the future convention.

18. That impressive body of safeguards provided the host State with adequate protection and there was no need to amend article 9. It would be a grave error to impose any further limitations on the right of the sending State, as expressed in that article, merely on the basis of isolated cases of abuse. In the 25 years' history of the United Nations system, he had heard of remarkably few cases in which persons unacceptable to a host State had been appointed by a sending State to the staff of its mission.

19. The existing system had thus functioned quite adequately, and it had done so on the basis of the rule embodied in article 4, which introduced an element of great flexibility in relation both to past and to future agreements. The rule in article 4 was particularly relevant to headquarters or "host" agreements, which were specifically mentioned by the ILC in paragraph 2 of its commentary to that article (see A/CONF.67/4). From 1946 onwards, practically all headquarters agreements had included special clauses to protect the host State from any risk that might result from the sending State's freedom of choice of staff for the mission or from the latter State's right to demand admission to the host State for the officials concerned.

20. The representative of the International Atomic Energy Agency (IAEA) had mentioned that point at the previous meeting, and the Legal Counsel of the United Nations had drawn attention to the first clauses on the subject: section 13, paragraph (*b*), subparagraph 3, of article IV (Communications and transit), of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations.[1] Paragraph (*a*) of section 21, article VIII (Matters relating to the operation of this Agreement, of the same Agreement, provided for arbitration for the settlement of any dispute concerning the interpretation or application of any of the provisions of the Agreement, including of course section 13.

21. Article 9 (Access to Headquarters), paragraph 3, of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Headquarters Agreement of 2 July 1954 provided that persons enjoying privileges and immunities could not, during the whole period of their duties or missions, be compelled to leave the French territory "save where they have abused the privileges accorded to them in respect of their visits by carrying out activities unconnected with their duties or missions with the Organization and subject to the following provisions". The provisions in question included one to the effect that such persons "may not be required to leave French territory save in accordance with the procedure customarily applicable to diplomats accredited to the Government of the French Republic".

22. The IAEA Headquarters agreement of 11 December 1957 specified in article XI (Transit and Residence), section 27, that the Government of Austria would place no impediment in the way of the transit to or from IAEA Heaquarters of representatives covered by the Agreement, and that no activity performed by any such person "in his official capacity with respect to the IAEA" could "constitute a reason for preventing his entry into . . . the territory . . . of the Republic of Austria or for requiring him to leave such territory".

23. It was thus evident that host States could protect themselves and had done so, by including suitable clauses in headquarters agreements. Should Venezuela become host to the headquarters of an international organization, its Government would protect its legitimate interests solely by that means. It was both an honour and a responsibility for a State to be host to such an organization but, in view of the balancing factor built into the system of headquarters agreements, he saw no grave dangers arising from the present text of article 9. Those representatives who had maintained a rigid position should realize that their demand for a system of advance screening for staff of permanent missions was exaggerated. Those demands, embodied in the amendments under discussion (A/CONF.67/C.1/L.18 and L.28), were acceptable neither to the various organizations of the United Nations family nor to the vast majority of sending States. The amendments did not relate to exceptional cases in which an individual had been declared *persona non grata* by a State in the past and had tried to re-enter its territory by joining the staff of a permanent mission. They were couched in general terms and would confer upon the host State a unilateral right to declare "that any member of the mission is not acceptable" (A/CONF.67/C.1/L.18) or "is no longer acceptable to the host State" (A/CONF.67/C.1/L.28); both amendments provided that "a person may be declared not acceptable before arriving in the territory of the host State". His delegation could not accept any of those amendments; it supported article 9 as adopted by the ILC.

24. Mr. RITTER (Switzerland) said that, in the present discussion on articles 9 and 75 and the amendments to those two articles, the fate of the future convention was perhaps at stake.

25. The situation that would be created by article 9

[1] General Assembly resolution 169 B (II).

as it stood would be unbearable for host States like his own. A person who had committed grave abuses of privileges and immunities in the host country could remain on the staff of a permanent mission despite the objections of the host State. A person who had in the past carried on activities against the security of a receiving State elsewhere would be in a position to demand entry into the host State over that State's legitimate objections. Worse still, a person who, in the past, had committed violations of the rules on privileges and immunities in the capital of a receiving State where he was accredited as a diplomatic agent, and who for that reason had been declared *persona non grata* and required to leave that State, would be able to return immediately, as a member of the staff of the permanent mission of his country in another city of that same State, to the headquarters or office of an international organization there.

26. For those reasons, as the representative of a country which had the honour to be host at Geneva to a number of international organizations, he fully supported the amendments set forth in documents A/CONF.67/C.1/L.18 and L.28.

27. The practical importance of the issue at stake should be kept in mind in reviewing the theoretical arguments put forward for or against the two amendments in question. The sovereignty of the State had been invoked by the opponents of those amendments, who had claimed the sovereign right for the sending State freely to choose the staff of its mission without interference from the host State. But what was sauce for the goose was sauce for the gander; the host State was just as sovereign as the sending State, and could invoke its sovereignty with even better reason: for the issue at stake was the right of a State to be the master of its own territory. Territorial sovereignty was a simple concept. It implied a right for the State concerned to withhold admission to its territory from a person whom it deemed dangerous to its security; that right was an overriding right when it came into conflict with the right of the sending State freely to choose the members of the staff of its mission and hence to request entry for them into the host State.

28. It had also been argued that members of the staff of the mission, unlike diplomatic agents, were not accredited to the State in which they resided. That argument, too, could equally well be advanced in favour of the two amendments in question. In the case of a diplomatic agent or other member of the staff of a diplomatic mission accredited to a receiving State, that State had given its *agrément* or its acceptance to the sending State on being notified of the name, title and capacity of the person concerned. The receiving State, having thus given its consent, naturally became bound to confer upon that person all relevant privileges and immunities.

29. In the case now under discussion, the direct opposite applied. It was self-contradictory to claim on the one hand, with the opponents of the two amendments, that the host State had no say whatsoever in the process of selecting the person concerned, and on the other to demand from the host State the exorbitant privilege of unlimited right of entry under article 9.

30. For the sake of argument he would concede that the host State was a "third State" in the legal relationship involved, but only if that State was not called upon to confer upon the individuals in question any privileges or immunities whatsoever.

31. The argument of *res inter alios acta* could also with even more reason be advanced in favour of a host State, for it was unthinkable that such a State should be bound by transactions to which it was not a party, and still less by unilateral acts on the part of the sending State.

32. The supporters of the two amendments were not trying to introduce a system of *agrément* into the draft articles. They were merely upholding the undoubted sovereign right of the host State to object to the presence in its territory of a person unacceptable to it. In that connexion his delegation supported the French subamendment (A/CONF.67/C.1/L.35) which would introduce into the joint amendment (A/CONF.67/C.1/L./18) the formula "personally unacceptable" in preference to the words "not acceptable".

33. Nor was it a valid argument to say that the two amendments were unnecessary because adequate protection was already provided by the various headquarterters agreements. Those agreements embodied only the principles in the matter, and there was still ample scope for further legislation.

34. So far as Switzerland was concerned, every host agreement concluded by his country with an international organization clearly specified that nothing in the agreement diminished in any way the right of the Swiss Federal Council to take all appropriate measures in the interests of public security.

35. His delegation, then, in supporting the two amendments in question, was not demanding any new right. However, bearing in mind the general scope and necessarily imprecise terms of the saving clause which he had just quoted, his delegation considered that the adoption of those amendments would make for greater precision. Saving clauses said nothing of the cases or persons to which they would apply, and it was for a codification conference like the present one to endeavour to make them specific and thus clarify the law. Whenever a right was recognized as appertaining to the sending State or to its officials or agents, a corresponding obligation was imposed on the host State. Switzerland, for its part, accepted such obligations gladly, but not at the expense of its fundamental rights. His delegation unreservedly supported the joint amendment (A/CONF.67/C.1/L.18, with the subamendment submitted in document A/CONF.67/C.1/L.35) and the United States amendment (A/CONF.67/C.1/L.28), they would introduce into article 9 an essential element of balance which it now lacked.

36. His delegation did not see the present discussion as a clash between a few host States and a large number of sending States. Every State was potentially a host State and therefore shared the interests which he was defining. In any case, however, it would be unrealistic

to suggest that a proposal which safeguarded the legitimate rights of host States should be rejected mainly because the larger number of sending States could outvote the host States. On major questions of principle which involved the vital interests of States, consensus and the compromise were the only realistic approach.

37. Mr. CHANG (Republic of Korea) said that article 9 as it stood failed to protect adequately the interests of host States.

38. While it was true that the concepts of *agrément* and *persona non grata* of bilateral diplomacy were not suited to the present text it was none the less essential to maintain a fair balance between the rights and interests of the host State and those of the sending State. The sending State had a free hand to appoint the members of the staff of its mission but the host State had to have some means of protecting itself from grave abuses of privileges and immunities by any persons so appointed.

39. For those reasons, his delegation supported the amendment submitted by Canada and the United Kingdom (A/CONF.67/C.1/L.18) with the French subamendment (A/CONF.67/C.1/L.35) and also the United States amendment (A/CONF.67/C.1/L.28), which would, if accepted by the Committee, make for a better-balanced text of article 9.

40. Mr. DO NASCIMENTO E SILVA (Brazil) stressed that freedom of choice by the sending State in appointing the members of the mission was a principle basic to the functions of the mission. It was in that light that the ILC, after thoroughly exploring all the issues involved, had codified the existing international practice in its text of article 9.

41. Consequently, his delegation could not accept the amendment submitted by Canada and the United Kingdom (A/CONF.67/C.1/L.18) with the French subamendment (A/CONF.67/C.1/L.35) or the United States amendment (A/CONF.67/C.1/L.28).

42. When, at the 10th meeting, the USSR delegation had introduced its amendment (A/CONF.67/C.1/L.27) requesting the Committee to examine the amendment contained in document A/CONF.67/C.1/L.18 when draft article 75 was being examined, no request for a vote had been put forward. At the present stage, in his delegation's view, it was undesirable to vote on article 75. His delegation was not impressed by the argument, put forward by the sponsors of the two amendments contained in documents A/CONF.67/C.1/L.18 and L.28, that those amendments would serve to balance the existing provisions of article 9. The real balancing element was to be found in article 75. The Committee could only take a decision on article 75 when it knew the exact terms in which article 9 would be couched. If, following the present discussion, the text of article 9 was amended, the consequential changes would have to be made to the text of article 75.

43. The introduction by Nigeria of a long oral amendment to article 75 strengthened his delegation in that decision. For, like all the other delegations, it would need to examine carefully a written text of that extensive oral amendment before taking any decision on it.

44. The examples given by the sponsors of the two amendments (A/CONF.67/C.1/L.18 and L.28) did not withstand examination. Thus the example had been given of a diplomatic agent declared *persona non grata* and, hence recalled, after committing a criminal offence. It was obvious, however, that no self-respecting State would send such a person to serve on its mission to an international organization. In fact, in practically all countries, the individual concerned would be dismissed from the diplomatic service or at least never sent abroad again.

45. The argument of security was equally unconvincing. As to the suggestion that spies might be sent to the host State under the guise of officials of a permanent mission, he would merely point out that such a person who was known to the security services of the host State was not a spy but an ex-spy.

46. A more serious issue arose with regard to the argument based on expressions of political opinion. It had been argued that the host State should be entitled to exclude from the permanent mission an individual who had in the past expressed violently strong opinions against the host State. That argument was devoid of all foundation. It was based on a false analogy with ambassadors and other diplomatic agents.

47. That analogy was totally false, because an ambassador's principal function was to further friendly relations between the sending State and the receiving State. In the case of a representative to an international organization, whether in a permanent mission or in a delegation to a conference, the position might well be exactly the reverse. It could happen, and it had in fact happened, that a person was chosen by his State to be sent to represent it at a meeting of an organ of an international organization, or at a conference held under its auspices, precisely because of his strong views in matters over which a grave conflict existed between the sending State and the State which happened to be host State. On that point it seemed to him that the sponsors of the amendments were trying to transform certain rare exceptions into a general rule.

48. In the last analysis, however, the decisive argument was that when a State put forward its name as prospective host State of an international organization, it necessarily had to weigh the advantages and disadvantages resulting from that status. If it decided to be a candidate, it could only be because it felt the advantages outweighed the disadvantages, which might range from serious abuses of privileges and immunities to minor parking incidents.

49. The situation in practice was that, whenever a new international organization was established or a new office of an existing organization was set up, there was a veritable avalanche of candidates for host State. Every candidate advanced all manner of arguments for being chosen as the host State; needless to say, no candidate recollected at that juncture the abuses of privileges and immunities on which so much stress had been laid by the sponsors and supporters of the amendments contained in documents A/CONF.67/C.1/L.18 and L.28.

50. It had been said by some delegations that the

future convention would be unacceptable if it included an article 9 in the form in which it now stood. His reply on that point was that if the principle of the freedom of appointment were to be curtailed by the introduction into article 9 of either of the proposed amendments, the future convention would be totally unacceptable to most sending States, which constituted the majority of the members of the international community.

51. He wished to stress that, when examining the candidature of a State for the status of host State, the sending States would primarily take into account the factor of the acceptance of the future convention. To put it bluntly, a country which did not ratify the future convention with article 9 would not qualify as a host State from the point of view of sending States like his own.

52. Mr. GÜNEY (Turkey) said that article 9 embodied a principle which was basic to the effective performance of the functions of the mission—that of the freedom of the sending State to choose the members of its mission to international organizations. That principle was limited by the provisions of articles 14 and 72 and, of course, by the constitutional order of the sending State. Any other exceptions to that principle would be contrary to the normal practice of States.

53. Several delegations had raised the point that the provisions of the draft convention were not broad enough because they did not allow the host State to object to the entry and residence of persons appointed by the sending State. To provide for that possibility, various amendments had been proposed, but, from the legal point of view, the requirement of the consent of the host State was neither necessary nor appropriate in connexion with article 9 since the members of the mission were not accredited to the host State on whose territory the seat of the organization was situated. They did not enter into direct relationship with the host State, unlike the case of bilateral diplomacy. Consequently, as the representative of IAEA had stated, the question of the appointment of the members of the mission was governed by the relevant headquarters agreement, and not by article 9, because the *agrément* of the host State was not required.

54. On the other hand, his delegation would be prepared to try to meet the wishes of the delegations which had sponsored amendments to article 9 during the consideration of another, more appropriate, article of the proposed convention.

55. Mr. STUART (Australia) said that his delegation fully supported the principle embodied in article 9, as proposed by the ILC, but it was convinced that the freedom of the sending State to appoint the members of its permanent missions to international organizations must be exercised with at least some regard for the rights of others. In that connexion, it was surprising that article 9 made no mention of the interest of the host State in having a voice in deciding who should enter and reside in its territory. It was only fair and reasonable that the host State should seek to exert some control over the entry and residence of persons who would enjoy a wide range of rights, privileges and immunities. Moreover, it was of particular concern to the host State that persons who might act in a manner prejudicial to its security might enter its territory.

56. On the whole, the Conference had shown great respect for the precedents set by Vienna Convention on Diplomatic Relations and his delegation had expected that the ILC would draft articles 9 and 75 in a form more in keeping with that Convention. It could be said that the granting of privileges and immunities to diplomatic agents and to members of missions and delegations represented a suspension of the host State's domestic law but it was hard to believe that any host State would be willing to agree to the unconditional suspension provided for in articles 9 and 75. During the discussion of article 9, several delegations had emphasized the principle of sovereignty in relation to the rights of sending States, but the sovereignty of host States had been almost lost to sight. As the representative of Austria had said at the 16th meeting, a State must surely retain the right to request individuals who were not its own nationals to leave its territory. Thus, his delegation did not believe that articles 9 and 75 provided sufficient protection for the host State and it supported the amendments to article 9 proposed in documents A/CONF.67/C.1/L.18, L.28 and L.35.

57. Mr. UNGERER (Federal Republic of Germany) said that he wanted to emphasize three points. First, the concept of *persona non grata,* as it formed part of bilateral diplomatic relations, could not be applied in relations between sending and host States in the case of permanent missions to international organizations. Secondly, the articles proposed by the ILC did not provide sufficient protection for the host State in cases where the sending State appointed a person as a member of a permanent mission who had previously abused privileges and immunities in the host State. Thirdly, the articles also did not provide sufficient protection for the host State in cases where the sending State had not recalled or terminated the functions of a member of its mission who had violated the criminal law or interfered in the domestic affairs of the host State.

58. His delegation was of the opinion that a solution must be found to the latter two problems because such problems could not be covered by the proposed articles 81 and 82. It also considered that article 75 did not give adequate protection to the host State. Some delegations had stated that cases of the violation of the criminal law or interference in the internal affairs of the host State by a member of a mission were of an exceptional nature and therefore did not need to be covered in the proposed convention. Even if such cases were exceptional, the argument that the convention should relate only to normal cases seemed quite strange. Moreover, it was not certain that cases which had, until now, been exceptional would continue to be so and it was therefore necessary to provide for such possibilities in advance. The amendments proposed by Canada and the United Kingdom and by the United States covered those open questions and would therefore be acceptable to his delegation.

59. Some delegations had raised the question of whether provisions relating to the rights of the sending State should be included in article 9. His delegation had

an open mind on that question and could therefore agree to the compromise suggestion made by Nigeria and to the suggestion made by the Ivory Coast. It could also agree that the amendments covering the open questions to which he had referred should be combined and included in a separate article to be inserted after article 75. It was in a spirit of compromise that it had adopted a flexible attitude towards the solution of the problems he had mentioned because its main concern was that the Conference should adopt a convention acceptable to the largest possible number of States.

60. Mr. PLANA (Philippines) said that the proposed convention would essentially be an agreement between the sending State and the international organization, but it could not be denied that the host State was very much part of the arrangement and that its participation would be required for the implementation of the convention. His delegation was of the opinion that there was no need to make a distinction between a permanent mission and an embassy, both of which were granted privileges and immunities by the host State, which, in turn, should have the right to determine who should enjoy privileges and immunities denied to its own citizens. Thus, in view of its sovereign rights, the host State must have a voice in deciding who should enter and reside in its territory. In view of those considerations, his delegation supported the principle of the amendment proposed by the United States and could also support the principle of the oral amendment proposed by Nigeria.

61. Mr. OSMAN (Egypt) said that he agreed with the representative of Switzerland that the present negotiations should not become a confrontation between sending and host States because sending States could become host States and host States were also sending States. It should also be borne in mind that it was in the interest of all States to promote international peace and co-operation and friendly relations.

62. His delegation was of the opinion that the text of article 9 proposed by the ILC provided a solution for the conciliation of opposing interests and ensured harmony between States and international organizations. As had been stated in the commentary to article 9, the freedom of choice by the sending State of the members of the mission was essential for the effective performance of the functions of the mission. The appointment of the members of the mission by the sending State was not subject to the *agrément* of the host State because, as the representatives of Switzerland and the Federal Republic of Germany had pointed out, that concept did not apply in the case of members of missions to international organizations. It was, of course, true that the members of permanent missions lived and worked in the territory of the host State and must therefore respect its laws, in accordance with article 75. His delegation was of the opinion that the wording of articles 9 and 75 would adequately ensure respect for the rights of sending States, host States and international organizations, in accordance with the good-faith principle, without which the proposed convention would have no meaning.

63. The amendments proposed by Canada and the United Kingdom, by the United States of America and by France would have the effect of making the freedom of choice by the sending State of the members of its mission subject to the *agrément* of the host State. It was not, however, necessary to include such a provision in article 9 because, even if the host State did have good reasons to object to the appointment of a member of a mission, it had every opportunity to raise that objection to the sending State and, if the sending State refused to take the appropriate action, the host State could begin the procedure of conciliation. Moreover, under the amendments the host State could abuse its privilege of consenting or not to the appointment of a member of a mission. For example, it might object to the appointment of a member of a mission for political reasons and the results would then be disastrous because members of missions would always have to be in favour of the policies of the host State to which they were sent. The adoption of the proposed amendments would thus create enormous difficulties for sending States and his delegation was of the opinion that article 75 would adequately cover any cases of the abuse by members of missions of the privileges and immunities granted by the host State.

64. Mrs. OESER (German Democratic Republic) said that her delegation could not share the view expressed by some delegations that the text of article 9 proposed by the ILC did not take sufficient account of the interests of host States. The proposed convention as a whole contained provisions relating to the obligations to be fulfilled by sending States and to the rights to be enjoyed by host States and thus constituted a system for safeguarding the interests of host States. Such provisions were to be found, for example, in articles 5, 14, 15, 16 and 18. Article 75 represented another important link in the chain of provisions safeguarding the interests of host States. Her delegation was of the opinion that the proposed convention should create an equitable balance between the rights and obligations of sending and host States and ensure their sovereignty and equality as members of international organizations. The articles proposed by the ILC met those requirements and her delegation therefore supported the text of draft articles 9 and 75 as they stood.

65. Mr. ATAYIGA (Libyan Arab Republic) said that, just as it was the sovereign right of the sending State freely to appoint the members of its diplomatic staff abroad, it was also the legitimate right of the host State to declare a foreign diplomat *persona non grata*. His delegation could not, however agree that the appointment of members of missions of sending States to international organizations should be subject to the *agrément* of the host State because the interests of the host State were adequately safeguarded by article 75. His delegation could not therefore support the amendments proposed by Canada and the United Kingdom, by the United States and by France and would vote in favour of the text of article 9 as prepared by the ILC.

66. Mrs. MIRANDA (Cuba) said that the text of article 9 prepared by the ILC made the principle of the freedom of the sending State to appoint the members of its missions to international organizations subject to the provisions of articles 14 and 72 and thus adequately safeguarded the interests of the host State. The objective of the text proposed by the ILC had been to

create a balance between the interests of sending and host States and international organizations, but that balance would be tilted in favour of the interests of the host State if the amendments proposed by Canada and the United Kingdom and by the United States were adopted.

67. During the discussion of article 9, it had become apparent that some delegations recognized the diplomatic status of members of permanent missions and that others did so only when it suited their interests. As an example of that inconsistency, she pointed out that, in the amendment proposed by Canada and the United Kingdom, the words "personally unacceptable" referred to non-diplomatic persons. If such persons had actually been considered to have diplomatic status, the words *"persona non grata"* would have been used in that amendment.

68. Since her delegation was of the opinion that members of missions did have diplomatic status and that the articles proposed by the ILC adequately safeguarded the interests of host States, it would vote against all the proposed amendments to article 9 and support the text prepared by the ILC.

69. Mr. SOGBETUN (Nigeria) said that his oral amendment to article 75, which was based on the principles of equity and justice, had been proposed in order to create a fairer balance between the interests of host States and sending States. It in no way restricted the right of the sending State freely to appoint the members of its missions and, at the same time, safeguarded the interests of the host State in the event that a member of a mission should violate its criminal law or interfere in its internal affairs. If the Committee could not agree to include his delegation's oral amendment in the text of article 75, it should include in article 75 the substance of the amendments proposed by Canada and the United Kingdom and by the United States.

70. Mr. CAMCIGIL (International Atomic Energy Agency) said that some speakers had apparently misunderstood his statement at the previous meeting. He had intended, not to offer an opinion on the substantive issue under discussion, but merely to point out that article 4 and current practice, including the headquarters agreements in force, provided sufficient safeguards with regard to the appointment of the members of the mission.

71. The CHAIRMAN, after a procedural discussion, put to the vote the French subamendment (A/CONF. 67/C.1/L.35) on the understanding that, if it was adopted, the subamendment would apply not only to the amendment by Canada and the United Kingdom (A/CONF.67/C.1/L.18) but also to the amendment by the United States of America (A/CONF.67/C.1/L.28).

The subamendment was adopted by 28 votes to 26, with 13 abstentions.

72. Mr. KABUAYE (United Republic of Tanzania) and Mr. TANKOUA (United Republic of Cameroon) requested a separate vote on the last sentence of paragraph 2 (*a*) of the joint Canadian and United Kingdom amendment and of the United States amendment.

73. The CHAIRMAN put to the vote the last sentence of paragraph 2 (*a*) of the joint Canadian and United Kingdom amendment (A/CONF.67/C.1/L.18).

The sentence was rejected by 36 votes to 27, with 4 abstentions.

74. The CHAIRMAN put to the vote the remaining part of paragraph 2 (*a*) of the joint amendment (A/CONF.67/C.1/L.18), as amended by the subamendment of France (A/CONF.67/C.1/L.35).

At the request of the representative of Argentina, a vote was taken by roll-call.

Lebanon, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Madagascar, Netherlands, Norway, Republic of Korea, Republic of Viet-Nam, Sweden, Switzerland, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany (Federal Republic of), Indonesia, Ireland, Israel, Italy, Ivory Coast, Japan, Khmer Republic.

Against: Liberia, Libyan Arab Republic, Mexico, Mongolia, Oman, Pakistan, Peru, Poland, Qatar, Romania, Spain, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Argentina, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Egypt, El Salvador, German Democratic Republic, Guatemala, Hungary, India, Iraq, Kuwait.

Abstaining: Lebanon, Malaysia, Mali, Morocco, Niger, Nigeria, Philippines, Tunisia, Turkey, United Republic of Cameroon, Greece, Holy See.

The remaining part of paragraph 2 (a) of the joint amendment (A/CONF.67/C.1/L.18) was rejected by 32 votes to 25, with 12 abstentions.

75. The CHAIRMAN suggested that, in view of the rejection of paragraph 2 (*a*), there was no need to vote on paragraph 2 (*b*) of the joint amendment.

It was so decided.

76. The CHAIRMAN put to the vote the last sentence of paragraph 2 (*a*) of the United States amendment (A/CONF.67/C.1/L.28).

The sentence was rejected by 36 votes to 28, with 3 abstentions.

77. The CHAIRMAN put to the vote the remaining part of paragraph 2 (*a*) of the United States amendment (A/CONF.67/C.1/L.28), as amended by the French subamendment (A/CONF.67/C.1/L.35).

At the request of the representative of Argentina, a vote was taken by roll-call.

Sweden, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Sweden, Switzerland, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany (Federal Republic of), Indonesia, Ireland, Israel, Italy, Ivory Coast, Japan, Khmer Republic, Madagascar, Malaysia, Neth-

erlands, Norway, Philippines, Republic of Korea, Republic of Viet-Nam.

Against: Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Argentina, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Egypt, El Salvador, German Democratic Republic, Guatemala, Hungary, India, Iraq, Liberia, Libyan Arab Republic, Mali, Mexico, Mongolia, Nigeria, Oman, Pakistan, Peru, Poland, Romania, Spain.

Abstaining: Tunisia, Turkey, United Republic of Cameroon, Greece, Holy See, Kuwait, Lebanon, Morocco, Niger, Qatar.

The remaining part of paragraph 2 (a) of the United States amendment (A/CONF.67/C.1/L.28) was rejected by 32 votes to 27, with 10 abstentions.

78. The CHAIRMAN suggested that in view of the rejection of paragraph 2 (*a*) there was no need to vote on paragraph 2 (*b*) of the United States amendment.

It was so decided.

79. The CHAIRMAN put to the vote article 9.

At the request of the representative of Argentina, a vote was taken by roll-call.

The United States of America, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Uruguay, Venezuela, Yugoslavia, Argentina, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Egypt, El Salvador, German Democratic Republic, Greece, Guatemala, Holy See, Hungary, India, Iraq, Kuwait, Lebanon, Liberia, Libyan Arab Republic, Mali, Mexico, Mongolia, Morocco, Niger, Nigeria, Oman, Pakistan, Peru, Poland, Qatar, Romania, Spain, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Tanzania.

Against: None.

Abstaining: United States of America, Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany (Federal Republic of), Indonesia, Ireland, Israel, Italy, Ivory Coast, Japan, Khmer Republic, Madagascar, Malaysia, Netherlands, Norway, Philippines, Republic of Korea, Republic of Viet-Nam, Sweden, Switzerland, Thailand, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon.

Article 9 was adopted by 41 votes to none, with 28 abstentions.

80. The CHAIRMAN said that article 9 would be referred to the Drafting Committee on the understanding that the latter could insert other references if the Committee adopted any other relevant provisions. He proposed that the Committee should discuss article 75 further in its correct numerical sequence.

It was so decided.

81. Mr. WERSHOF (Canada) said that his abstention on article 9 did not imply that he was opposed to its contents. However, as he had previously stated, he considered it to be highly inadequate unless it was supplemented elsewhere in the convention by a provision on the lines of the rejected amendments (A/CONF.67/C.1/L.18 and L.28).

82. Mr. MUSEUX (France) associated himself with the Canadian representative's statement.

The meeting rose at 6.20 p.m.

18th meeting

Tuesday, 18 February 1975, at 11 a.m.

Chairman: Mr. NETTEL (Austria).

Organization of work

1. The CHAIRMAN announced that, so far, the Committee had considered on an average only 1.4 articles per meeting and that, in order to complete its work, it would henceforth have to deal with an average of 3.4 articles per meeting. He appealed to members of the Committee to make their statements as short as possible. Otherwise, he would be obliged to limit the time allotted to each speaker.

Consideration of the question of the representation of States in their relations with international organizations in accordance with resolutions 2966 (XXVII), 3072 (XXVIII) and 3247 (XXIX) adopted by the General Assembly on 14 December 1972, 30 November 1973 and 29 November 1974 (*continued*)

Article 24 (Exemption of the premises from taxation) (A/CONF.67/4, A/CONF.67/C.1/L.51)

2. Mr. MUSEUX (France), introducing the amendment in document A/CONF.67/C.1/L.51 to article 24 proposed by the International Law Commission (ILC) (see A/CONF.67/4),) explained that his delegation had proposed deleting the phrase "or any person acting on its behalf", as it did not see what the significance of those words might be. From talks it had had, however, it appeared that in the case of some delegations the formula might be useful. His delegation would withdraw its amendment if the discussion on article 24 showed that that was so.

3. Mr. TAKEUCHI (Japan) observed that the question of exemption from taxation was dealt with in several articles and that it would therefore seem necessary to define the scope of each of the relevant articles. Thus, article 24 dealt with exemption of the premises from taxation and, according to article 1, paragraph 1 (26), which had not yet been considered, "premises of the mission" meant "the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purpose of the mission, including the resi-