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18th meeting of the Committee of the Whole

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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-

dence of the head of mission". Since article 25 was concerned with the exemption from taxation of real property, it did not, in his delegation's view, cover such taxes as gas and electricity tax, commodity tax, liquor tax, gasoline tax, taxes on consumption in hotels and restaurants when the premises of the mission were located in an hotel, or food and drink consumed on the premises which, on the other hand, might be exempt from tax under other articles of the draft convention. In paragraph 4 of its commentary to article 24 (see A/CONF.67/WP4), the ILC stated that article 24 should be interpreted "as covering also 'indirect taxes' ". His delegation wondered whether the indirect taxes to which article 24 might apply really existed and he stated that there were none in the Japanese fiscal system. Assuming that article 1, paragraph 1 (26) was adopted, the problem of exemption from taxation of the residence of the head of mission would also arise, and that was dealt with in subparagraph (*b*) of article 33. In his delegation's view, only the principal residence of the head of mission should be exempt from taxation, but not his secondary residences such as summer villas.

4. Mrs. THAKORE (India) said that the article under consideration was of fundamental importance. Her delegation was pleased to note that under article 24 taxes have been made a direct charge on the property itself. It was also pleased with the explanation given in paragraph 4 of the International Law Commission's commentary to that article, according to which article 24 should be "interpreted as covering also 'indirect taxes' ". That explanation put an end to any ambiguity with regard to the interpretation of article 24. Her delegation could not support the amendment in document A/CONF.67/C.1/L.51 and declared itself in favour of the International Law Commission's text.

5. Mr. TANKOUA (United Republic of Cameroon) asked the Expert Consultant how the term "regional" in paragraph 1 of article 24 should be interpreted. He wished to be certain that the term "regional" referred to administrative divisions within the same State and not to groupings like the Common Market. Since the administrative structure of States varied greatly, he hoped that the enumeration "national, regional or municipal" covered every possible administrative division.

6. Mr. EL-ERIAN (Expert Consultant) replied that the United Republic of Cameroon's interpretation of the term "regional" was correct; that term meant administrative divisions within the same State.

7. Mr. DO NASCIMENTO E SILVA (Brazil) thought it was quite impossible to reconcile the tax laws of all countries and that it would therefore be advisable to refer to the preparatory work of the ILC and to article 32 of the Vienna Convention on Consular Relations [1] when studying article 24. While avoiding the drawing of an analogy between that Convention and the draft convention, it was important, in the present case, to use the same terms, since customs and taxation departments could not be presented with texts whose terminology differed. For those reasons, the phrase "or any person acting on its behalf" should be retained, even if, in the case of some States, including his own, it had no special significance.

8. Mr. GLÖCKEL (Austria) said he considered the provisions of article 24 acceptable, although his delegation would have preferred that the article had followed the wording of article 23 of the Vienna Convention on Diplomatic Relations.[2] It was also of the opinion that paragraph 4 of the International Law Commission's commentary was not entirely compatible with the provisions of article 24, since the Commission said that that article should be interpreted as covering also "indirect taxes", without taking account of the fact that a person acting on behalf of the sending State might be subject to tax under the law of the host State. In his delegation's view, the provisions of article 24 could in no case be interpreted as imposing on the host State an obligation to grant persons contracting with the sending State exemption from indirect taxes. The provisions of article 24 ought never to apply to the case where a person contracting with the sending State asked that State to pay the taxes levied by the host State for services rendered or goods delivered by that person to the permanent mission of the sending State. They could not confer on the sending State the right to request the host State to reimburse indirect taxes in the case he had just mentioned. Those taxes were incorporated in the price of the goods or services and were invariably paid by the person contracting with the sending State.

9. Mr. CALLE Y CALLE (Peru) pointed out that exemption of premises from taxation was established by national jurisprudence and laws. With regard to the phrase "or any person acting on its behalf" contained in paragraphs 1 and 2 of article 24, which the amendment in document A/CONF.67/C.1/L.51 was designed to delete, it had some justification in the light of subparagraph (*b*) of article 33 concerning exemption from dues and taxes. His delegation would therefore be unable to support that amendment and considered the International Law Commission's text satisfactory.

10. Mr. MUSEUX (France) said that, in view of the comments made by several delegations, his delegation withdrew its amendment (A/CONF.67/C.1/L.51).

11. The CHAIRMAN said that if there were no objections he would take it that the Committee decided to adopt article 24 and to refer it to the Drafting Committee.

It was so decided.

Article 25 Inviolability of archives and documents (A/CONF.67/4)

12. The CHAIRMAN said that no amendment had been proposed to that article and that, if there were no objections, he would take it that the Committee decided to adopt draft article 25 and to refer it to the Drafting Committee.

It was so decided.

Article 26 (Freedom of movement) (A/CONF.67/4, A/CONF.67/C.1/L.48

13. Mr. WADE (Canada) introduced the amendment in document A/CONF.67/C.1/L.48, which was based

[1] United Nations, *Treaty Series*, vol. 596, No. 8638, p. 261.

[2] *Ibid.*, vol. 500, No. 7310, p. 95.

on the idea that the privileges and immunities granted by the host State to members of the permanent mission to international organizations were intended to facilitate the performance of their functions. During the debate, moreover, no delegation had opposed the principle of the functional criterion enshrined in the Charter of the United Nations. His delegation's amendment was modelled on the wording of article 27 of the Convention on Special Missions [3] and it brought the text of article 27 into line with that of article 57 which applied to delegations. In paragraph 1 of its commentary (see A/CONF.67/4), the ILC stated that article 26 was modelled on article 26 of the Vienna Convention on Diplomatic Relations. But, unlike members of diplomatic missions, the members of permanent missions were not accredited to the host State and they could therefore only enjoy freedom of movement in the zone in which the seat of the organization to which they were accredited was situated. If article 26 were adopted in its present wording, members of the permanent missions to international organizations would have the right—thereafter established by international law—to travel wherever they wished in the territory of the host State, subject to the laws and regulations of that State relating to zones entry into which was prohibited or regulated for reasons of national security. In his delegation's view, however, there might be cases where the national secu- of the host State was not at stake, but where the host State should be able to restrict the freedom of movement of members of the permanent missions. For that reason it considered the present wording of article 26 unacceptable. His delegation was naturally of the opinion that the host State should not restrict unduly the freedom of movement of the members of permanent missions. It could not, however, accept the argument, which the article as drafted would have enshrined in international law, that members of permanent missions to international organizations had a positive right to travel in those areas of host States where they had no functions.

14. The wording of its amendment was perhaps not sufficiently clear in the case of members of families and, if the amendment were adopted, the Drafting Committee might try to solve that problem.

15. Mrs. THAKORE (India) pointed out, on the subject of the amendment in document A/CONF.67/C.1/L.48, that, in paragraph 4 of its commentary to article 26 (*ibid.*) the ILC had deemed it preferable "not to add the reservation which had been provided for in the case of special missions and which was justified by the particular character of those missions". It would also seem difficult, in the opinion of her delegation, to apply functional criteria to the movement of the families of permanent missions. For that reason, she supported the International Law Commission's text and thought that, subject to the laws and regulations of the host State relating to zones entry into which was prohibited or regulated for reasons of national security, the freedom of movement of members of permanent missions should not be restricted.

16. Mr. PASZKOWSKI (Poland) said that the permanent missions and the delegations to organs and conferences of international organizations represented sovereign States, and that, owing to their representative character, they enjoyed and should continue to enjoy diplomatic status. In the case of freedom of movement, it would seem difficult to apply the principle of the functional criterion. While he was aware of the fact that Article 105 of the Charter and other instruments only referred expressly to the privileges and immunities that were necessary to representatives of Members of the United Nations for the independent exercise of their functions, he noted that in no other legal instrument was the question evoked in abstract terms, and that in the preamble of the Vienna Convention on Diplomatic Relations it was stipulated that the purpose of privileges and immunities "was not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States". In that connexion, he pointed out that a number of bilateral and multilateral agreements provided for a régime of privileges and immunities and that those régimes varied considerably. In practice, however, the representatives of States to international organizations in general, and to the United Nations in particular, had always enjoyed diplomatic privileges and immunities.

17. His delegation therefore thought that the International Law Commission's text met existing needs. Thus, no restriction was imposed on the freedom of movement of members of the permanent missions to the Office of the United Nations at Geneva, who also had no difficulty in obtaining visas to enter for instance, France—not for the purpose of performing their functions in that country but for touristic or personal reasons.

18. Mr. TANKOUA (United Republic of Cameroon) said that, in his view, the Canadian amendment in document A/CONF.67/C.1/L.48 was difficult to accept, as the words "as is necessary for the performance of the functions of the mission" would relate to the whole of the article and the condition thus imposed would exclude the families of members of the mission from the scope of the article.

19. Mr. MOLINA LANDAETA (Venezuela) thought that freedom of movement for the members of the mission was essential, since it contributed not only to the efficient performance of the functions of the mission but also to a better knowledge of the country. If the ILC had not adopted, in article 26, the same formula as in article 57, which dealt with the freedom of movement of members of delegations, that was because it had considered, as was explained in its commentary to that article, that as delegations were temporary, it was not necessary to accord to their members the same freedom of movement and travel as that granted to missions of a permanent character. He would therefore vote in favour of the International Law Commission's text of article 26 and against the Canadian amendment (A/CONF.67/C.1/L.48).

20. Mr. SMITH (United States of America) said that he supported the Canadian amendment. The Agreement between the United Nations and the United States of America regarding the Headquarters of the United

[3] General Assembly resolution 2530 (XXIV), annex.

Nations [4] ensured to members of permanent missions and to permanent observers accredited to the United Nations freedom of transit to or from the headquarters and freedom of movement in the territory of the United States to the extent necessary for the performance of their functions. In its present wording, article 26 would give the permanent missions a greater freedom of movement than the diplomatic missions, which was not justified. He would therefore vote for the Canadian amendment.

21. Mr. WERSHOF (Canada) said that, in submitting the amendment in document A/CONF.67/C.1/L.48, the Canadian delegation had never intended to encourage the host State to restrict the freedom of movement of the members of the mission. In his opinion, article 26 served no useful purpose in the convention, since the question to which it related was already dealt with in other international instruments and in the headquarters agreements. He therefore saw no need to state in the convention, as a rule of international law, that the host State should not impose any restriction on the freedom of movement of the members of permanent missions, since that freedom of movement had nothing to do with the performance of the mission's functions.

22. Several members of the Committee had repeatedly stated that the members of a permanent mission to an international organization had nothing to do with the host State, since they were not accredited to that State, but only to the organization. Why, therefore, should it be necessary to introduce into the convention a provision requiring the host State to ensure the freedom of movement of the members of the permanent mission throughout its territory?

23. He thought that the restriction which the ILC had specified in article 57 in respect of the freedom of movement of members of the delegation was equally valid in the case of article 26, as he did not agree with those who held that the members of the permanent missions should enjoy the same facilities and immunities as the members of diplomatic missions. However, since the majority of delegations did not seem to be in favour of its amendment, the Canadian delegation had decided to withdraw it.

24. Mr. EUSTATHIADES (Greece) said he thought it was necessary to ensure the freedom of movement of members of the mission, as was done in article 26, subject to the "laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security". Host States were generally liberal and accorded practically complete freedom of movement to members of missions. He did not think that the Canadian delegation was desirous of placing greater restrictions on the freedom of movement of members of permanent missions than those currently in force in the host countries. Yet the Canadian amendment might have given the impression that the freedom of movement of the members of the mission was being restricted to the performance of their functions, which was tantamount to prohibiting something to the members of the mission which was permitted to every alien in the territory of the host State. Perhaps it would be better to employ, at the beginning of the article, the wording: "In conformity with the laws and regulations of the country concerning movement and travel".

25. Mr. RITTER (Switzerland) said that, since reference had been made to the Swiss practice, he would remind the Committee that his country had never placed the least restriction on the freedom of movement of members of the permanent missions at Geneva or of members of diplomatic missions in Berne, and that it had no intention of doing so. However, he thought that, since the members of the permanent missions were not accredited to the host State, they did not need to have a comprehensive knowledge of the country and that, for the performance of their functions, their sojourn could be restricted to the headquarters of the organization and to its immediate vicinity. The host State might therefore, in certain circumstances, be induced to restrict the freedom of movement of the members of the permanent missions to the organization's headquarters and its immediate vicinity. If the Canadian amendment had been maintained, the Swiss delegation would therefore have been able to support it for reasons of principle.

26. Mr. GOBBI (Argentina) said he thought, like the representative of Canada, that the host State should be required to ensure freedom of movement and travel in its territory to members of the permanent missions only as is necessary for the performance of the functions of the mission. In fact, that was the minimum that could be claimed. If the host State wished to accord complete freedom of movement to the members of the mission, it was at liberty to do so, but it was not required to do so.

27. However, he thought that it would be duly specified in the preamble to the future convention that the purpose of the privileges and immunities granted to the members of the permanent missions was not to benefit individuals, but to ensure the efficient performance of the functions of the permanent missions.

28. Mr. MUSEUX (France) said that his delegation would have voted for the Canadian amendment, had it been maintained. That did not mean that his delegation was opposed to freedom of movement. On the contrary, that was a principle which France had always upheld and which it was currently upholding at the Conference on Security and Co-operation in Europe. The French delegation considered, however, that freedom of movement of the members of the mission was necessary only for the performance of their functions.

Article 26 was adopted by 52 votes to none, with 10 abstentions.

29. Sir Vincent EVANS (United Kingdom) said he had abstained in the vote on article 26 because he had been in favour of the Canadian amendment and would have voted for that amendment, had it been put to the vote.

30. Article 26 of the draft was modelled on the wording of article 26 of the Vienna Convention on Diplomatic Relations. But in applying the provisions of that Convention, the United Kingdom Government had considered it necessary, when restrictions had been imposed on the movement of diplomats in another country, to impose similar restrictions by way of reciproc-

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

ity. In those circumstances it would find it reasonable to apply the same treatment to permanent missions as to diplomatic missions.

Article 27 (Freedom of communication) (A/CONF. 67/4, A/CONF.67/C.1/L.54)

31. Mr. RAZZOUQI (Kuwait) pointed out that article 27 of the draft was modelled on article 27 of the Vienna Convention on Diplomatic Relations, which had been the source of many difficulties in practice. That article did not provide a definition of the word "bag", and in particular did not define its dimensions. Now, some States were taking advantage of that lack of precision to abuse the complete immunity afforded by the bag. Kuwait's amendment, in document A/CONF.67/C.1/C.1/L.54, aimed at preventing such abuse. The Kuwaiti delegation would have liked to propose a definition for the word "bag", but in view of the difficulties of such a definition, it had chosen to propose a qualification. It should be emphasized that his country was not a host State to any international organization and that it was only submitting the amendment as a matter of principle.

32. Mr. MAAS GEESTERANUS (Netherlands) said he was prepared to support the amendment by Kuwait (A/CONF.67/C.1/L.54) which he considered was a very useful one. He wondered, however, if it might not be possible to replace the expression "have reason to believe" by "have serious reason to believe", so as to take up the words used in article 35, paragraph 3, of the Vienna Convention on Consular Relations. The Drafting Committee might consider that point.

33. Mr. SMITH (United States of America) said he could approve the amendment by Kuwait, as his country had had to deal several times with cases in which the inviolability of the diplomatic bag had given rise to abuse by members of permanent missions. The provision proposed by Kuwait was already contained in a large number of agreements between States and in article 35 of the Vienna Convention on Consular Relations. It would not affect the inviolability of the diplomatic bag, but would simply guarantee the proper use of that privilege. He would therefore vote for the Kuwait amendment.

34. Mr. CALLE Y CALLE (Peru) pointed out that the article prepared by the ILC was modelled on the corresponding article of the Vienna Convention on Diplomatic Relations, whereas the amendment submitted by Kuwait was based on article 35 of the Vienna Convention on Consular Relations. There was, however, a big difference between consular relations and diplomatic relations, since the latter were always ruled by the principle of the sovereignty of States. The ILC had therefore been right to follow the Convention on Diplomatic Relations, and he would vote against the amendment by Kuwait.

The amendment by Kuwait to article 27 (A/CONF. 67/C.1/L.54) was adopted by 37 votes to 8, with 21 abstentions.

Article 27, thus amended, was adopted by 45 votes to none, with 19 abstentions.

Article 28 (Personal inviolability) (A/CONF.67/4, A/CONF.67/C.1/L.58)

35. Mr. BABIY (Ukrainian Soviet Socialist Republic), introducing his delegation's amendment (A/CONF.67/C.1/L.58), stressed the importance of the article under consideration and said that the text prepared by the ILC was, in principle, acceptable. Moreover, it should be supplemented so as to make it more complete. The host State had to guarantee the inviolability of the persons of the head of mission and of the members of the diplomatic staff of the mission and, for that purpose, had to take "all appropriate steps to prevent any attack on their persons, freedom or dignity". It was indeed natural for the host State to have to take steps of that kind, but it ought, in addition, to be required to ensure that the persons guilty of attacks were punished. That was the essence of the Ukrainian amendment. Adoption of the amendment would enable the protection and the safety of the persons covered by article 28 to be better ensured and it would facilitate the proper performance of their functions. It was a fact that different pretexts were sometimes making it possible to protect the guilty from punishment. Often, the host State refused to prosecute the offenders and asked representatives who were victims to institute judicial prorceedings themselves, give evidence in court and make accusations against the criminals. Such demands were made in spite of the fact that the representatives had immunity from criminal jurisdiction, including the right not to give evidence in court. In view of that immunity, the authorities of the host State should instiute judicial proceedings themselves and not require a private prosecution.

36. The host State could not be released from that obligation by invoking its internal law. Every State had to ensure compliance with its international obligations within its own territory. It was a basic principle of international law that imperfections in, or the existence or absence of, internal laws could in no way serve as grounds for not respecting those obligations. That principle had been confirmed in the Vienna Convention on the Law of Treaties,[5] and it should be reflected in the article under consideration.

37. Mr. SURENA (United States of America) said he considered that the Ukrainian amendment (A/CONF.67/C.1/L.58) dealt in an undesirable form with issues which were dealt with more appropriately elsewhere, or which should be dealt with elsewhere. One of those issues was that of the protection of diplomats. Now, at its twenty-eighth session, the United Nations General Assembly had adopted the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.[6] That Convention clearly encompassed the issues raised by the Ukrainian amendment. Not only did it provide for the prevention and punishment of

[5] See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

[6] General Assembly resolution 3166 (XXVIII), annex.

crimes against diplomats, it also regulated questions of jurisdiction, provided an obligation to extradite the alleged offenders and, in its article 10, provided that States should assist one another in the prosecution of alleged offenders.

38. The Ukrainian amendment did not deal appropriately with all those aspects of the question. It began by stating a fact so obvious that it was not to be found in the other Vienna Conventions on Diplomatic Law: in case of an attack on a diplomat, the host State should "carry out an investigation"; such a clause had clearly no place in the future convention. Next it provided that the host State should "prosecute and punish, through judicial proceedings, persons guilty of committing such criminal acts". It was obvious that "persons guilty of committing such criminal acts" should be prosecuted and punished. However, in the United States of America and in other States, a person could be found guilty or innocent only after the judicial proceedings had been concluded. According to the Ukrainian amendment, it seemed that the authorities in the host State were in some way in a position to know in advance who was guilty of a crime.

39. According to the Ukrainian amendment, the members of the mission would not be required "to make any personal written or oral statement or complaint", which meant that the sending State would not have to assist the host State in bringing the alleged offenders to justice. Taking into account article 10 of the Convention he had mentioned earlier, which had been adopted at the twenty-eighth session of the General Assembly, he whole-heartedly rejected that view. As all were aware, numerous difficulties had been encountered by members of the diplomatic community in New York. The United States Government had sought to apprehend those who had perpetrated offences against some members of that community or against missions. It had happened that the Government had arrested alleged offenders and that the sole witness of the offence, a member of a mission, had refused to give evidence. A host State could not be expected to prosecute alleged offenders effectively if members of missions would not give it the minimum of assistance. In addition, the United States of America, like other countries, recognized to an accused person the basic right of being confronted by his accusers. The Ukrainian amendment was incompatible with that requirement.

40. As regards the paragraph 3 which the Ukrainian amendment would add to article 28, it referred to an obligation of the host State. If such a provision were considered necessary, it was not in article 28 that it should have its place and it should not refer only to the host State. It should apply to the entire convention and should provide, for example, like article 27 of the Vienna Convention on the Law of Treaties, that a party might not invoke the provisions of its internal law as justification for failure to implement the convention. That being the case, the United States delegation wished to make it clear that it did not consider that the fact that an accused person had to be confronted by his accuser was a requirement of internal law which was incompatible with an international obligation. The purpose of his statement was to show that the matter was provided for in the Vienna Convention on the Law of Treaties and that there was no need to deal with it in the future convention. Not only would the Ukrainian amendment add nothing to that instrument, but it would upset its proper balance.

41. It appeared that the Ukrainian amendment also referred to the general question of a State's obligation to deal effectively with terrorism. He pointed out that that issue had already been considered by the United Nations General Assembly and was on the provisional agenda of its thirtieth session.

42. For all the foregoing reasons, the United States delegation would vote against the amendment in document A/CONF.67/C.1/L.58.

43. Mr. TAKEUCHI (Japan) thought that the Ukrainian amendment (A/CONF.67/C.1/L.58) was out of place in the future convention, for it was obvious that every State was under an obligation to take appropriate measures in the event of an attack on the person of the head of mission or a member of the diplomatic staff of the mission. That was a general principle of State responsibility, which applied to all the obligations embodied in the draft under consideration.

44. It should be borne in mind, with regard to the paragraph 3 proposed by the Ukrainian delegation, that article 4 of the draft articles that were being prepared in the ILC contained an analogous provision.[7] The principle involved applied to all international obligations.

45. Consequently, his delegation was opposed to the Ukrainian amendment.

46. Mr. SHELDOV (Byelorussian Soviet Socialist Republic) said it must be stressed that according to the universally recognized norms of international law the principle of the personal inviolability of the head of mission and of the members of the diplomatic staff of the mission meant that the host State had an obligation to treat them with due respect and to take all appropriate steps to prevent any attack on their personal freedom or dignity. In affirming that very important principle, however, article 28 did not cover all the measures that should be taken by the host State in connexion with continuing cases of flagrant violation of the personal inviolability of diplomats performing their official functions in the territory of the State hosting the international organization. The host State was under the obligation to take all appropriate steps to defend and ensure the normal activities of missions and their personnel. In cases where criminal acts against missions and their personnel occurred, the host State should carry out an investigation, institute judicial proceedings and duly punish the guilty persons. That followed from the host State's voluntary acceptance of the international organization in its territory. It should consequently undertake the necessary measures to ensure the personal inviolability of the head of mission and the rest of the mission staff. It could not refuse to carry out an investigation, institute judicial proceedings and punish the offenders by involving the provisions

[7] See *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10,* chap. III, sect. B.

of its internal law. There was a serious gap in article 28, as drafted by the ILC, which could be filled by the Ukrainian amendment (A/CONF.67/C.1/L.58); he fully supported that amendment.

47. Mr. MOLINA LANDAETA (Venezuela) was of the opinion that the principle of personal inviolability could not be subject to any exception. Host States were frequently accused of not having taken the necessary steps in that respect and the ILC was right in clearly stating the obligations incumbent upon them.

48. There was nothing to criticize in the substance of the Ukrainian amendment (A/CONF.67/C.1/L.58). It was obvious that the host State should arrest and punish the guilty persons. That obligation stemmed from the general principle of law according to which every crime must be punished and every criminal prosecuted. As other members of the Committee had pointed out, there was already a convention dealing with the protection of diplomats and, furthermore, States normally fulfilled the obligations which the Ukrainian amendment sought to impose on them. In most Latin American countries, however, there was an institution, the right of asylum, which would prevent those States from accepting the obligation to prosecute and punish the guilty persons where they were debarred from doing so by their domestic legislation. Those States declined to prosecute and punish the alleged perpetrator of a political offence even though other States might claim that an offence under ordinary law was involved.

49. He also wondered what would happen if the person committing an offence against a diplomat was himself a diplomat. In view of the immunity from jurisdiction provided for in article 30, it was not the host State but the sending State which could punish the guilty person.

50. Though he approved of the substance of the amendment under consideration he was unable to support it, for he feared that the Latin American States would not always be able to discharge the obligations which it would impose.

51. Mr. CALLE Y CALLE (Peru) said that although, on the whole, he approved of the International Law Commission's article 28, the Ukrainian amendment was not without merit. The article made no provision for the consequences of an attack on the persons, freedom or dignity of the persons in question. There was, of course, a convention on the protection of diplomats, but the instrument now being drafted was an entirely separate convention and there was nothing to prevent incorporating in it a provision requiring the host State to prosecute and punish offenders. Every State had laws requiring the perpetrators of offences against representatives of foreign States to be prosecuted and punished as a matter of course. The protection of diplomats was as old as international law. If the host State did not punish the guilty persons it was responsible at the international level for its failure to do so.

52. Accordingly, his delegation would vote for the International Law Commission's article 28 and for the Ukrainian amendment (A/CONF.67/C.1/L.58). If that amendment was rejected, the words "and to punish through judicial proceedings the perpetrators of such an attack" should be added at the end of the International Law Commission's text.

The meeting rose at 1.10 p.m.

19th meeting

Tuesday, 18 February 1975, at 3.25 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 28 (Personal inviolability) (*concluded*) (A/CONF.67/4, A/CONF.67/C.1/L.58)

1. Mrs. SLÁMOVÁ (Czechoslovakia) said that in support of their negative attitude to the Ukrainian amendment (A/CONF.67/C.1/L.58) to article 28 of the International Law Commission (ILC) (See (A/CONF.67/4), the Japanese and United States representatives had referred to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly in 1973.[1] The amendment was, however, wider in its scope than that Convention since it specifically provided for the prosecution and punishment of attacks against the dignity of members of missions. She supported the amendment which she considered well founded.

2. Mr. KHASHBAT (Mongolia) said that articles 28 and 29 were among the most important provisions in the convention under consideration. In accepting the principle that persons representing States were inviolable, all the organs of the host State were called upon to ensure that inviolability by protecting the lives and dignity of such persons from any form of attack. As the USSR and other representatives had observed, provisions to that end must be incorporated in the standard texts of international law and in the domestic law of States. Unfortunately, examples had occurred of nationals, and even agents of the host State grossly attacking the inviolability of members of missions. Such incidents were often political and sometimes even racist in nature. He therefore supported the Ukrainian amend-

[1] General Assembly resolution 3166 (XXVIII), annex.