

**United Nations Conference on the Representation of States
in Their Relations with International Organizations**

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19th meeting of the Committee of the Whole

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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.

ment, which was a useful amplification of the International Law Commission's text of article 28.

3. Sir Vincent EVANS (United Kingdom) said that the Ukrainian amendment was out of place in the convention under consideration. He agreed with the Japanese representative that its subject-matter came more appropriately within the purview of the Draft Articles on State Responsibility² under study in the ILC. Some speakers had referred to the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents but the proposals in the Ukrainian amendment were at variance in a number of respects with the provisions of that Convention. It had been correctly observed by one speaker that the scope of that Convention was not the same as that of the Ukrainian amendment; that was because, after careful consideration of that Convention, the Sixth Committee and the General Assembly had reached the conclusion that not all acts of the kind referred to in the Ukrainian amendment could be made the subject of an obligation to prosecute. In article 2, the 1973 Convention listed the acts which States parties to the Convention undertook to make punishable under their domestic law. The right course was not to include similar provisions in the convention under consideration but rather for States to ratify the 1973 Convention.

4. Furthermore, as the United States representative had pointed out at the previous meeting, the second sentence in paragraph 2 of the Ukrainian amendment was at variance with article 10 of the 1973 Convention, which specifically required States parties to afford each other the greatest measure of assistance in connexion with criminal proceedings brought in respect of the crimes set out in article 2 of the Convention, including the supply of all evidence at their disposal. The provision in the Ukrainian amendment that members of missions should not be required to make any personal written or oral statement distorted the process of justice to an extent which was unacceptable in many countries. Under his country's law, an effort was made to deal equitably with all parties: that could not be done without the evidence of the person against whom an alleged offence had been committed and the evidence of witnesses who might well be members of the mission concerned; otherwise the accused might be deprived of the chance to defend himself effectively. The proposed paragraph 3 in the Ukrainian amendment might be taken as implying that States could invoke their domestic law to justify non-fulfillment of other provisions of the convention under consideration.

5. Mr. HELYES (Hungary) said that the International Law Commission's text of article 28 was based on the corresponding article 29 of the Vienna Convention on Diplomatic Relations.³ In view, however, of the increasing number of attacks on diplomatic agents which had occurred in various parts of the world, the Committee should adopt the Ukrainian amendment (A/CONF.67/C.1/L.58) which was an improvement

on the International Law Commission's text. A number of delegations had referred to similar provisions in comparable international agreements and they were fully in accordance with existing practice. It was therefore only logical to include them in the present convention. The hypothetical case put forward by the Venezuelan representative at the previous meeting of an attack on one member of a mission by a member of another mission in no way affected the main issue which was that the domestic law of some host States did not readily afford the possibility of instituting legal proceedings against those guilty of infringing the personal inviolability of diplomatic agents.

6. Mr. RICHARDS (Liberia) said he supported the International Law Commission's text of article 28. With regard to the Ukrainian amendment he was at a loss to understand how judicial proceedings could be instituted if the mission was unwilling to make a complaint, since that was an indispensable preliminary in Liberia. He requested a separate vote on the last sentence of the proposed paragraph 2 in the amendment.

7. Mr. OSMAN (Egypt) believed that events had confirmed the necessity of article 28. For a number of years, members of the Egyptian mission to the United Nations and their families had been subjected to repeated threats and attacks with the aim of adversely affecting the work of the mission. Other missions had also been subject to attacks. Despite the existence of other relevant conventions, he considered that the provisions of article 28 should be included in the convention to ensure that missions could discharge their functions. He would however support the Peruvian representative's suggestion and proposed that the end of the third sentence of the existing text of the article should be amended to read "shall take all appropriate steps to prevent, prosecute and punish any attack on their persons, freedom or dignity". Since that amendment would achieve the main purpose of the Ukrainian amendment, he hoped the Ukrainian representative would be able to support it and withdraw his amendment.

8. Mr. TODOROV (Bulgaria) said that the International Law Commission's text of article 28 made provision for preventing attacks on members of missions while the Ukrainian amendment (A/CONF.67/C.1/L.58) provided for effective measures if such an attack nevertheless occurred. His delegation therefore supported it.

9. It was not a question of hypothetical cases such as that mentioned by the Venezuelan representative. Missions to the United Nations from the Caribbean area, Africa and Asia, as well as the Ukrainian mission, had often been subjected to attacks, but very few judicial proceedings had been instituted against the perpetrators. The second sentence of the proposed paragraph 2 in the Ukrainian amendment did not imply that no assistance would be forthcoming from missions. The point was that it was not necessary to have a written complaint in order to initiate proceedings—they could be set in motion by the authorities. Furthermore, there was no question of a person being regarded as guilty before he had been tried: the Ukrainian amendment specifically referred to prosecution and punishment

² See *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10*, chap. III, sect. B.

³ United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

through judicial proceedings, which would determine whether or not he was guilty.

10. Mr. BABIY (Ukrainian Soviet Socialist Republic) said that, in order to reach a compromise and to take account of the suggestions made by the representatives of Peru and Egypt, his delegation had decided to reduce its amendment to one paragraph reading as follows: "In case such attacks take place, the host State shall take immediate and effective measures to seek and punish the persons who are guilty of committing them."

11. Mr. MEISSNER (German Democratic Republic) said that, in rejecting the amendment proposed by the Ukrainian Soviet Socialist Republic (A/CONF.67/C.1/L.58), some speakers had referred to the International Law Commission's Draft Articles on State Responsibility. It was well known, however, that those articles dealt only in general terms with internationally wrongful acts. It was true that the problem under discussion had been dealt with in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. On the other hand, the purpose of the draft articles before the Committee was to outline the relationship between sending States, organizations and host States. The Conference would not complete its task if it made no mention in the convention of the special responsibilities referred to in the Ukrainian amendment. His delegation therefore fully supported that amendment.

12. Mr. ATAYIGA (Libyan Arab Republic) said that his delegation supported the oral amendment proposed by the representative of Egypt, which would add balance to the Commission's text.

13. Mr. SURENA (United States of America) said that his delegation had been particularly interested in the exchange of views on the original Ukrainian amendment (A/CONF.67/C.1/L.58), which appeared not to reflect fully the elements necessary for the effective prosecution of persons who might be guilty of attacks against diplomats. He appreciated the fact that the Ukrainian representative had modified his delegation's proposal in order to bring it closer into line with reality. One necessary element, however, was still absent from the revised text. If the issue under discussion was to be mentioned in the convention at all, it should be mentioned in such a way as to reflect the elements required to conduct an investigation and effective prosecution. He proposed, therefore, that the following sentence should be added to the orally revised amendment: "The authorities of the sending State shall, as appropriate, assist the host State in the conduct of an effective investigation and prosecution." That language would be essential in any version of the Ukrainian proposal which could be accepted by a delegation whose country had to deal with the matters under discussion.

14. Mr. BABIY (Ukrainian Soviet Socialist Republic) said that his delegation could not accept the United States subamendment, which was in conflict with the very idea of the amendment he had orally revised. The fact that the sending State was interested in carrying out effective investigations and prosecutions and also in en-

sureing that persons who had attacked members of its mission were punished was so obvious that there was no need to give it special mention in the convention.

15. Mr. WERSHOF (Canada) said that his delegation and Government strongly supported article 28 and its principles as presented by the ILC. His Government deplored attacks on anybody. An entirely new idea concerning prosecution could not, however, be inserted in the convention at short notice without causing difficulties. The General Assembly had been obliged to spend an enormous amount of time in preparing and adopting the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, precisely because the legal systems of countries differed so much. For example, although his delegation could accept the wording of article 28 and could even undertake to take steps to prevent attacks on the dignity of members of missions, it could not pledge itself to take measures against, say, a cartoonist, because in Canada it was not a crime to publish insulting cartoons attacking a person's dignity. It was interesting to note, in that connexion, that attacks on dignity were not among the types of attack which, according to the list in article 2 of the 1973 Convention, should be considered as crimes. Similarly, his Government would be unable to enter into a commitment to take effective measures to punish persons guilty of the attacks in question, because in Canada such matters were under the control of the courts, not of the Government. A State could enter into the type of commitment found in article 7 of the 1973 Convention, which however, was not tantamount to promising that the measures would be effective. Accordingly, his delegation would have to vote against the Ukrainian proposal.

16. Mr. OSMAN (Egypt) said that the longer the debate continued the more convinced he became of the wisdom of his delegation's oral amendment. The words "shall take all appropriate steps to prevent, prosecute and punish", proposed by his delegation, could cover the lodging of a complaint. They could also mean that the host State could contact the sending State in order to solicit its help in investigating an attack and prosecuting the guilty person.

17. Mr. EUSTATHIADES (Greece) said that, for the reasons given by the United States representative at the previous meeting and the United Kingdom representative at the current meeting, his delegation would vote in favour of the Commission's text of article 28.

18. Mr. RITTER (Switzerland) said that he wished to propose three subamendments to the orally revised version of the Ukrainian amendment. First, the words "In case such an attack occurs" should be replaced by the words "In case of a serious attack, or at the request of the mission". Secondly, the words "immediate and effective measures" should be replaced by the words "appropriate measures". Thirdly, the words "to seek and punish the persons guilty of such an attack" should be replaced by the words "to seek and prosecute those committing such acts". There were various reasons for his delegation's proposals. First, in Switzerland there were offences for which persons could not be

prosecuted unless a complaint were lodged; and it would be difficult for his Government to enter into a commitment which conflicted with its legislation. Secondly, it was difficult to say in advance that the measures taken would be effective. Thirdly, it would be difficult to enter into a treaty commitment that persons guilty of the attacks under discussion would be punished; it raises, in effect, the question of guilt in the sense of penal law, for example, in the case of persons of unsound mind.

19. The CHAIRMAN suggested that, in view of the great number of amendments, revised amendments and subamendments before the Committee, the votes on articles 28 and 29 should be deferred for two days, by which time the various proposals would have been translated and circulated to members.

20. Mr. BABIY (Ukrainian Soviet Socialist Republic) said that, as the Egyptian oral proposal was the only proposal on which the Committee was in a position to vote, his delegation was prepared to withdraw its amendment as orally revised.

21. Mr. SURENA (United States of America) said that even before the Ukrainian representative had withdrawn his delegation's orally revised amendment, the United States delegation had decided to withdraw its subamendment thereto. It had reached that decision because, as the Canadian representative had pointed out, the matter under discussion was dealt with in the 1973 Convention on the Prevention and Punishment of Crimes against International Protected Persons, including Diplomatic Agents. In view of the existence of that Convention, the only appropriate text for article 28 was that prepared by the ILC. His delegation would not wish, by pursuing its subamendment, to contribute to a less satisfactory text which the Committee might adopt. Accordingly, it would, in any case, have withdrawn its subamendment.

22. Mr. ABDALLAH (Tunisia), observing that the only proposals before the Committee were the Commission's text of article 28 and the Egyptian oral amendment thereto, moved the closure of the debate.

23. The CHAIRMAN said that under rule 26 of the rules of procedure, two speakers could oppose that motion.

24. Observing that no delegation wished to take the floor on the motion, he suggested that the debate on article 28 be closed.

It was so decided.

25. The CHAIRMAN put to the vote the oral amendment proposed by the Egyptian delegation which would insert the words "prosecute and punish" between the words "prevent" and "any" in the third sentence of article 28.

The amendment was adopted by 39 votes to 13, with 15 abstentions.

Article 28, as a whole, as amended, was adopted by 51 votes to 1, with 12 abstentions.

26. Mr GÜNEY (Turkey) pointed out that the Drafting Committee would have to recast the French version of article 28 to take account of the Egyptian amendment.

27. Mr. SURENA (United States of America), explaining his vote, said that he had voted against the Egyptian oral amendment, and had abstained from voting on the article as a whole as amended, for the reasons indicated by his delegation during the debate and the further reasons given by the Canadian delegation, with which his delegation had associated itself.

28. Mr. MOLINA LANDAETA (Venezuela), explaining his vote, said that he had voted against the Egyptian oral amendment because its wording in Spanish presented inconsistencies similar to those alluded to by the Turkish representative with regard to the French text. His delegation had, however, voted in favour of article 28 as a whole because the article upheld the vital principle of personal inviolability.

29. That being said, he gave the assurance that the Venezuelan Government would, in the event of any attack against a mission or a member thereof, take all appropriate steps to seek the persons responsible and to bring them to trial; of course, it could not give an assurance in advance that, in all such cases, there would be a conviction following the trial of the accused.

30. Mr. RITTER (Switzerland), explaining his vote, said that he had abstained from voting on article 28 as a whole because the Swiss delegation interpreted that article in the form in which it had been adopted as not imposing any obligation upon the parties to the future convention to prosecute as a matter of course minor offences which, under Swiss law, could only be prosecuted upon the lodging of a complaint.

31. Mr. TAKEUCHI (Japan), explaining his vote, said that he had voted against both the amendment and article 28 as a whole. It did not oppose the principle embodied in the Egyptian amendment but it was convinced that the problem which it raised was not peculiar to article 28 but applied rather to all the international obligations of States and was one that should be governed by the general rules of State responsibility. He also associated himself with the representative of Switzerland who had explained his vote on article 28 before him.

*Article 29 (Inviolability of residence and property)
(A/CONF.67/4, A/CONF.67/C.1/L.63)*

32. Mr. BABIY (Ukrainian Soviet Socialist Republic), introducing his delegation's amendment (A/CONF.67/C.1/L.63), said that articles 28 and 29 were closely linked. Following the thorough discussion on article 28 and the adoption of the Egyptian oral amendment thereto, there was no need for him to explain at length the reasons for his amendment.

33. It was very important to stress in article 29 also the obligation of the host State to take the appropriate steps in cases where any attack on the premises or residence had already occurred. There should be special provision to the effect that the host State should institute judicial proceedings and punish through the judicial process the persons guilty of committing such attacks.

34. Mr. SURENA (United States of America) said that his delegation agreed that the issue raised by the Ukrainian amendment to article 29 (A/CONF.67/

C.1/L.63) was rather similar to that raised by that same delegation's amendment to the previous article (A/CONF.67/C.1/L.58). The views which his delegation had expressed with regard to article 28 and the Ukrainian amendment thereto applied *mutatis mutandis* to article 29 and the Ukrainian amendment to article 29. His delegation accordingly opposed the amendment.

35. Mr. AUST (United Kingdom) said that, following the Committee's decision on article 28, his delegation now put forward two subamendments to the Ukrainian amendment (A/CONF.67/C.1/L.63). The first was to replace in the third and fourth lines the words "take immediate effective steps" by the words "take appropriate steps." The second was to replace the words "to find" by the words "to prosecute".

36. Mr. CALLE Y CALLE (Peru) said that the inviolability of residence and property dealt with in article 29 was an institution of lesser category than the personal inviolability governed by article 28.

37. In that connexion, he drew attention to the provisions of the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly in its resolution 3166 (XXVIII). Article 28, in its original form, specified the obligation for the host State to prevent any attack on the persons, freedom or dignity of the diplomatic staff of the mission. There was no provision, however, in that text for the prosecution and punishment of such attacks when, despite those preventive measures, they happened to occur. It was for that reason that his delegation had supported the Ukrainian amendment to article 28 (A/CONF.67/C.1/L.58) and the Egyptian oral amendment in favour of which that Ukrainian amendment had been withdrawn.

38. As for article 29, since it dealt with inviolability of residence and property and since it did not refer to attacks, there was not the same urgent need for an amendment of the same kind. Nevertheless, since the concept of prosecution and punishment of the offender had been introduced into article 28, the idea should also be incorporated into the text of article 29 in the interests of coherence. His delegation would therefore be prepared to vote in favour of the Ukrainian amendment (A/CONF.67/C.1/L.63) provided it was subamended in the manner proposed by the United Kingdom delegation.

39. Mr. OHWADA (Japan) said that, for the reasons already stated during the discussion on article 28, his delegation could not accept a provision which might impose upon the host State an obligation to punish certain persons in every case. The adoption of such a formula would make it extremely difficult for Japan to ratify the future convention.

40. Mr. VON KESSEL (Federal Republic of Germany) said that his delegation welcomed the basic idea of the Ukrainian amendment (A/CONF.67/C.1/L.63). In its present form, with the subamendments proposed by the United Kingdom delegation, it seemed acceptable to his delegation. In view of the form in which article 28 had emerged from the committee—taking into account that in the understanding of his delegation

the provisions of article 23 as adopted also apply in the case of article 29—his delegation felt that the text of the Ukrainian amendment would be more logical if the subamendment proposed by the United Kingdom delegation were incorporated.

41. Mr. HAQ (Pakistan) said that the Egyptian oral amendment adopted for article 28 had an important bearing on article 29 as well. For reasons of consistency, his delegation would support the Ukrainian amendment if the Ukrainian delegation could accept the changes proposed by the United Kingdom delegation.

42. Mr. BABIY (Ukrainian Soviet Socialist Republic) thanked the United Kingdom representative for his efforts at co-operation and took note of the useful subamendments he had submitted. His delegation accepted them and requested that its amendment (A/CONF.67/C.1/L.63) should be put to the vote with the changes proposed by the United Kingdom representative.

43. Mr. EUSTATHIADES (Greece) asked the Expert Consultant to explain the consequences of the adoption of the proposed amendment, bearing in mind the form in which article 23 had been adopted.

44. The CHAIRMAN said that, if the Committee adopted article 29 with the proposed amendment, the Drafting Committee would certainly examine the relationship between that article and article 23. The Drafting Committee would, as usual, benefit from the counsel of the Expert Consultant, who would contribute to finding a suitable solution. Should the Drafting Committee find it necessary to make any drafting changes in article 23, it would do so.

45. The CHAIRMAN, in reply to a question by Mr. WERSHOF (Canada), explained that should the Drafting Committee find any conflict in substance between articles 29 and 23 as finally adopted, it would of course refer the matter back to the Committee of the Whole. The Drafting Committee would only make drafting changes in the language of article 23 if rendered necessary by the form in which article 29 was adopted.

46. The CHAIRMAN put to the vote the Ukrainian amendment (A/CONF.67/C.1/L.63) as revised by its sponsor in keeping with the changes proposed by the representative of the United Kingdom.

The revised amendment was adopted by 51 votes to 4, with 10 abstentions.

Article 29 as a whole, as amended, was adopted by 55 votes to none, with 11 abstentions.

47. Mr. TAKEUCHI (Japan), explaining his vote, said that he had voted against the revised amendment not because of any objection to the principle it embodied but because it might be interpreted to impose absolute obligation to prosecute and punish all the acts in question, including possibly very minor offences.

48. His delegation had abstained from voting on article 29 as a whole as amended and it construed its wording as not imposing any absolute obligation upon States.

49. Mr. RITTER (Switzerland), explaining his vote, said that his delegation had abstained from voting on the revised amendment and on article 29 as a whole. In that regard, he reiterated the views expressed in his statement explaining his vote on article 28.

50. Mr. MOLINA LANDAETA (Venezuela), explaining his votes on articles 29 and the amendment thereto, said that his delegation's position was identical to that adopted with regard to article 28 and the amendment to that article.

51. Mr. SURENA (United States of America), explaining his vote, said that he had voted against the Ukrainian amendment as revised, and had abstained from voting on article 29 as a whole. The position of the United States Government in that regard was identical in all respects with that explained by him following the votes on article 28 and the amendment thereto.

52. His delegation was concerned that the Committee, in its consideration of those articles, had once again failed to present a balanced text which allowed equally for the rights and obligations of both host States and sending States.

53. Mr. VON KESSEL (Federal Republic of Germany), explaining his vote, said that his delegation had voted in favour of the Ukrainian amendment (A/CONF.67/C.1/L.63) as orally subamended by the United Kingdom, as a consequence of the decision taken by the Committee of the Whole regarding article 28 in which the words "prosecute and punish" had been added to the International Law Commission's text of that article.

54. That vote by his delegation did not imply any agreement on its part with the form of the legal stipulations provided for in both articles 28 and 29.

Article 30 (Immunity from jurisdiction) (A/CONF.67/4, A/CONF.67/C.1/L.56, L.61, L.69)

55. The CHAIRMAN observed that the amendments submitted by Spain (A/CONF.67/C.1/L.56) and Pakistan (A/CONF.67/C.1/L.69) were identical.

56. Mr. ALBA (Spain), introducing his delegation's amendment (A/CONF.67/C.1/L.56), said that it was indeed identical to the amendment to article 30 submitted by Pakistan. His delegation was proposing the deletion of paragraph 1, subparagraph (d) because the 1961 Vienna Convention on Diplomatic Relations did not contain a similar provision and because the very general wording of paragraph 1, subparagraph (d) might lead to the establishment of a dangerous principle since an accident involving a vehicle used by a member of the diplomatic staff of a mission could be deliberately provoked.

57. Sir Vincent EVANS (United Kingdom), introducing his delegation's amendment to article 30 (A/CONF.67/C.1/L.61), said that the second sentence of paragraph 1 conferred on members of the diplomatic staff of missions immunity from the civil and administrative jurisdiction of the host State, except in the cases described in subparagraphs (a) to (d). His delegation was of the opinion that the ILC had been right to include the exception described in subparagraph (d) bearing in mind the precedents established by the provisions of article 31, paragraph 2 (d), of the Convention on Special Missions,⁴ and of article 43, paragraph 2 (b), of the Vienna Convention on Consular Relations,⁵ which

referred to a civil action brought by a third party for damage arising from an accident caused by a vehicle, vessel or aircraft. His delegation was of the opinion that it was the second of those precedents which should be followed in the draft convention and therefore proposed to delete the words "outside the exercise of the functions of the mission" in paragraph 1, subparagraph (d) and to include the words "vessel or aircraft" after the word "vehicle". The words "outside the exercise of the functions of the mission" should be deleted because a traffic accident could not be caused in exercise of the functions of the mission and, even if this were not accepted, it would be difficult to decide whether a traffic accident had occurred during or outside the exercise of the functions of the mission.

58. His delegation also proposed the deletion of the words "where those damages are not recoverable from insurance" because there was no reason in principle for the article to relate only to accidents not covered by insurance. Litigation was often necessary to determine liability even where the accident was covered by insurance. Moreover, insurance companies would often not pay compensation until the question of responsibility had been decided and the claim of the victim of an accident involving a member of a mission might be defeated if the insurance company was able to hide behind the immunity from jurisdiction of the member of the mission.

59. Mr. HAQ (Pakistan), introducing his delegation's amendment to delete subparagraph (d) of paragraph 1 from article 30 (A/CONF.67/C.1/L.61), agreed that it was identical with the Spanish proposal. He therefore requested that it should be treated as a joint proposal of the two delegations.

60. Articles 6 and 7 defined the functions of the mission only in broad terms. It might therefore be difficult, in the case of a particular accident, to determine whether it had taken place during the exercise of the legitimate functions of the member of the mission concerned. The determination of that question might have to be referred to tribunals or courts from whose jurisdictions the diplomatic agent concerned was immune. Such a result would be contrary to the functional theory underlying the Vienna Convention on Diplomatic Relations and the present draft as well. The insurance companies might find themselves absolved from making any payment for reasons of jurisdictional immunity of the diplomatic agent concerned.

61. Deletion of the subparagraph in question might further have the effect of compelling the diplomatic agent to insure against such accidents. Without such adequate insurance coverage, he might find himself liable for payment of compensation. The provisions of paragraph 1, subparagraph (d) introduced an element of ambiguity into the article by making a dubious distinction based on performance of official duties, a distinction which was liable to bring confusion into the basic question of immunity from jurisdiction enshrined in article 30. Such cases as those described in paragraph 1, subparagraphs (a), (b) and (c), could not be assimilated to situations arising out of vehicle accidents.

62. In its commentary to the article (see A/CONF.

⁴ General Assembly resolution 2530 (XXIV), annex.

⁵ United Nations, *Treaty Series*, vol. 596, No. 8638, p. 261.

67/4), the ILC had not convincingly argued the case in favour of subparagraph (d) and had somewhat arbitrarily ruled in favour of its inclusion. As drafted, the subparagraph could certainly not be interpreted as emphasizing the desirability of securing insurance coverage by members of missions to international organizations. By virtually requiring the sending State to waive immunity in respect of civil claims in the host State, the provision went too far.

63. It was in the light of those arguments that his delegation proposed the deletion of paragraph 1, subparagraph (d) not only in article 30 but also in article 61.

64. Mr. WERSHOF (Canada) said that, although the opinions of the members of the ILC had been divided on the question of immunity from civil and administrative jurisdiction in the case of an action for damages arising out of an accident caused by a vehicle used by a member of a mission, it had concluded that such a provision should be included in the draft convention so that it might be considered by the Conference.

65. As the representative of the United Kingdom had just stated, the exceptions provided for in article 43, paragraph 2 (b), of the Vienna Convention on Consular Relations and article 31, paragraph 2 (d) of the Convention on Special Missions constituted important precedents which should be followed in the proposed convention. Moreover, the proposed paragraph 1, subparagraph (d) provided added protection for the sending State because, if an accident occurred while the member of a mission was exercising the functions of the mission, his immunity would still apply, as it would if the damages were recoverable from the insurance of the member of the mission. On that basis, his delegation did not consider that the exception provided for in paragraph 1, subparagraph (d) was contrary to the principle of immunity from civil and administrative jurisdiction and would therefore vote against the proposal by the delegations of Spain and Pakistan to delete it. It would vote in favour either of the United Kingdom amendment (A/CONF.67/C.1/L.61) or the text prepared by the ILC.

66. Mr. CALLE Y CALLE (Peru) said that the Vienna Convention on Diplomatic Relations did not provide for an exception to immunity from civil and administrative jurisdiction in the case of an action for damages arising out of an accident caused by a vehicle used by a member of a mission. In the Convention on Special Missions, however, provision had been made for such an exception, on the condition that the vehicle was being used outside the exercise of the functions of the mission. In the text of article 30 proposed by the ILC, the exception was made even more specific in that it related to accidents which occurred outside the exercise of the functions of the mission and for which damages were not recoverable from insurance.

67. In principle, his delegation agreed that such an exception should be included in the proposed convention and could therefore not support the amendment proposed by Pakistan and Spain. Referring to the United Kingdom amendment for the addition of the words "vessel or aircraft" after the word "vehicle",

which broadened the scope of the exception, he said that it should be specified that the exception would apply in the case of the use of vehicles, vessels and aircraft outside the exercise of the functions of the mission where damages were not recoverable from insurance. It should also be made clear that the vehicle, vessel or aircraft in question belonged to the mission or to a member of the mission. Moreover, in the Commission's draft, the words "vehicle used" were too vague and should be replaced by a more specific formula. With regard to the question of insurance, he was sure that all members of missions would have third-party liability insurance and, if they did not and caused an accident, that would seem to be sufficient justification for taking away their immunity.

68. Mr. RAOELINA (Madagascar) said that the wording of paragraph 1, subparagraph (d) proposed by the ILC was restrictive because it referred only to the use of a "vehicle" by a member of a mission. During weekends and holidays, however, members of missions might also use other means of transport in which they might be involved in accidents. In order to improve the wording of paragraph 1, subparagraph (d), his delegation suggested that the word "vehicle" should be replaced by the words "any means of transport".

69. Mr. TAKEUCHI (Japan) said that the purpose of the very useful provision contained in paragraph 1, subparagraph (d) was to protect the interests of the victims of accidents caused by vehicles used by members of missions and to avoid the situation in which the victim would receive no compensation from the insurance company because the accident had been caused by a diplomat who enjoyed immunity from civil and administrative jurisdiction. His delegation could therefore not support the Spanish and Pakistan proposal to delete paragraph 1, subparagraph (d) and would vote in favour of the text proposed by the ILC, which would adequately protect the interests of victims of accidents involving members of missions.

70. Mr. RAZZOUQI (Kuwait) said that his delegation supported the amendment proposed by Pakistan and Spain to delete paragraph 1, subparagraph (d).

71. Mr. BIGAY (France) said that his delegation would vote in favour of the amendments to paragraph 1, subparagraph (d) proposed by the United Kingdom because it did not think that members of missions should have immunity from civil and administrative jurisdiction in the case of traffic accidents they might cause and because the amendment provided adequate protection for the interests of victims, who should be fairly compensated when involved in accidents with members of missions. Moreover, his delegation agreed with the United Kingdom that the words "where those damages are not recoverable from insurance" should be deleted because there were cases in which insurance companies invoked the immunity from jurisdiction of members of missions causing accidents in order to avoid compensating victims.

72. Mr. SCHÜTZ (Austria) said his delegation welcomed the inclusion in article 30 of the principle embodied in paragraph 1, subparagraph (d) which would serve to deal with a very real and growing problem not

adequately regulated by article 31 of the Vienna Convention on Diplomatic Relations.

73. At the same time, his delegation considered that the provision in that subparagraph should not be limited to accidents caused outside the exercise of the functions of the mission where damages could not be recovered from insurance. The functions of the mission were defined in articles 6 and 7 in very broad and general terms and it would be very difficult in practice to determine whether a particular accident had occurred during the exercise of official functions or not.

74. The problem under discussion had given rise to a lengthy debate at the United Nations Conference on Consular Relations held at Vienna in 1963. Taking into account the rapidly growing traffic problem in all cities and the increasing number of traffic accidents, that Conference had decided that for such accidents an exception should be made, in article 43 (2)(b) of the Convention, to the rule of immunity from jurisdiction in respect of acts performed in the exercise of consular functions laid down in article 43 (1).

75. That exception had been made even though all members of the consular post were required under article 56 of the same Convention to comply with the laws and regulations of the receiving State in respect of third-party risk insurance.

76. Similarly, there seemed to be no reason in principle to limit the scope of the provisions to accidents not covered by insurance, especially as the position would not be clear in the case of countries where insurance covered only part of the damage, or covered the damage up to a stated amount.

77. For those reasons, his delegation supported the United Kingdom proposal (A/CONF.67/C.1/L.61), which represented a useful and realistic innovation that took into account the ever-growing needs of contemporary life.

78. Mr. GOLDKLANG (United States of America) supported the United Kingdom amendment to paragraph 1 (d) which would limit immunity where litigation arising from certain types of vehicle accidents was concerned.

79. The International Law Commission's draft represented a favourable development. It recognized one of the most difficult problems which could cause friction between a diplomat and residents of the host State. The Vienna Convention on Diplomatic Relations did not deal with that problem at all, so that even the text now under discussion represented an improvement.

80. The wording of paragraph 1, subparagraph (d), however, was ambiguous. It did not make it clear whether a third party injured in an accident was first required to make a claim against his own insurance company and then bring an action for any balance under the provisions of that subparagraph, or whether the member of the mission was liable only where his own insurance coverage proved inadequate.

81. His delegation believed that any use of insurance was governed by the municipal private law applicable and that article 30 should therefore not deal with it. The provision of the article should be confined to stat-

ing the exception to immunity from jurisdiction. At that point, the domestic law of the country concerned would contain adequate provision to deal with the disposition of proceeds from insurance.

82. The text, moreover, related only to accidents which occurred outside the exercise of the functions of the mission. So far as the victim was concerned, however, it made little difference whether the accident had occurred while the vehicle was being used for official purposes or not. Missions could and should be able to protect themselves by insurance. It was unfair to shift the burden on to an innocent injured party. It might also be difficult to distinguish between official and non-official use; any attempt to discriminate between those two types of uses would simply complicate needlessly the process of just settlement of the case.

83. The United Kingdom amendment eliminated those elements of complication. It was based on the sound precedent of article 43 of the Vienna Convention on Consular Relations and therefore deserved support.

84. His delegation did not agree with the suggestion that under the United Kingdom amendment airline accidents should also be covered. The Conference was not engaged in the codification of the law of tort. The United Kingdom amendment did not create any new rule on civil liability. It merely ruled out immunity from jurisdiction, so that the normal rules of liability at tort would apply.

85. Mr. OSMAN (Egypt) said that his delegation supported the amendment proposed by Spain and Pakistan to delete paragraph 1, subparagraph (d). Although it fully sympathized with the victims of accidents caused by members of missions, it felt that the solution to the problem lay in making insurance coverage compulsory. A satisfactory solution could not be provided by the Commission's text of paragraph 1, subparagraph (d).

86. Mrs. THAKORE (India) said that the inclusion of paragraph 1, subparagraph (d) in article 30 was a useful innovation because there were frequent cases of accidents in which the victim was not compensated by the insurance company owing to the immunity from jurisdiction of the person causing the accident. Her delegation fully supported the text of paragraph 1, subparagraph (d) proposed by the ILC since it would meet the ends of justice. In her opinion, the exception in paragraph 1, subparagraph (d) would not give rise to any difficulties since it had been made more specific in that it related to accidents which occurred "outside the exercise of the functions of the mission" and not "outside the official functions of the person in question" of which there was no definition. She would therefore vote against the amendment proposed by Spain and Pakistan.

87. Mr. SANGARET (Ivory Coast) said that his delegation agreed with the representative of France that the amendment proposed by the United Kingdom provided adequate protection for the victims of accidents caused by members of missions. It would therefore vote in favour of that amendment.

88. Mr. NOOR (Indonesia) said that his delegation

favoured retention of the ILC text because it took into account the principle of functional necessity and safeguarded the interests of the victims of accidents caused by members of the diplomatic staff of missions. It would not be opposed to any drafting changes which might improve the text of paragraph 1, subparagraph (d).

89. Mr. MOLINA LANDAETA (Venezuela) recalled that a similar discussion had been held in connexion with the Convention on Special Missions. He agreed with the International Law Commission's text of article 30 and could not support the Spanish and Pakistan proposal (A/CONF.67/C.1/L.56 and L.69) to delete subparagraph (d) of paragraph 1. He would however welcome a definition by the Expert Consultant of the term "vehicle" used in that subparagraph.

90. Mr. EL-ERIAN (Expert Consultant) said that it had been the intention of the ILC that vehicles should be construed in a broad sense to cover not only automobiles but other types of conveyance.

91. Mr. RAOELINA (Madagascar) said that in view of the definition just given of the word "vehicle", he would withdraw his oral amendment to paragraph 1, subparagraph (d) and would leave the matter to the Drafting Committee.

92. Sir Vincent EVANS (United Kingdom) asked whether, in line with his suggestion, the Peruvian representative would like to move, as a formal subamendment, the addition of the words "used or owned by a member of the mission" at the end of the United Kingdom amendment (A/CONF.67/C.1/L.61).

93. Mr. CALLE Y CALLE (Peru) said that he had some reservation about the Spanish word "*utilizado*", which was rather vague and might not cover the act of driving a vehicle.

94. Mr. MOLINA LANDAETA (Venezuela), agreeing with the Peruvian representative, asked for the views of the Expert Consultant.

95. Mr. DORON (Israel) said that in English the

word "used" was most suitable since it included both the act of driving and the state of being driven, whether the person concerned owned the vehicle or not.

96. Mr. EL-ERIAN (Expert Consultant) said that the ILC had thought it would be undesirable to enter into the intricacies of the rules relating to liability which existed in all legal systems. It was better to confine the matter to the basic concept of owner and user. For the purposes of interpretation of the provision, it was important to distinguish between criminal and civil liability: it was civil liability which was at issue in article 30.

97. Mr. CALLE Y CALLE (Peru) said that in the light of the explanation just given, he would propose, as a subamendment, the addition of the words "used or owned by a member of the mission" at the end of the United Kingdom amendment (A/CONF.67/C.1/L.61).

98. The CHAIRMAN, after indicating the order of voting on article 30 and the amendments thereto, put to the vote the Spanish and Pakistan proposal to delete paragraph 1 (d) (A/CONF.67/C.1/L.56 and L.69).

The proposal was rejected by 30 votes to 13, with 17 abstentions.

99. The CHAIRMAN put to the vote the Peruvian oral subamendment to the United Kingdom amendment.

The subamendment was adopted by 27 votes to 3, with 23 abstentions.

100. The CHAIRMAN put to the vote the United Kingdom amendment (A/CONF.67/C.1/L.61), as amended.

The United Kingdom amendment, as amended, was adopted by 29 votes to 15, with 16 abstentions.

Article 30, as a whole, as amended, was adopted by 36 votes to 1, with 23 abstentions.

The meeting rose at 6.45 p.m.

20th meeting

Wednesday, 19 February 1975, at 10.50 a.m.

Chairman: Mr. NETTEL (Austria).

In the absence of the Chairman, Mr. Wershof (Canada), Vice-Chairman, took the Chair.

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 31 (Waiver of immunity) (A/CONF.67/4, A/CONF.67/C.1/L.59, L.60)

1. Sir Vincent EVANS (United Kingdom), introducing the amendment by Japan, Nigeria and the United Kingdom (A/CONF.67/C.1/L.60) to article 31 proposed by the International Law Commission (ILC) (see A/CONF.67/4), said that the sponsors proposed

inserting between paragraphs 4 and 5 a paragraph whose wording was modelled on article IV, section 14, of the Convention on the Privileges and Immunities of the United Nations¹ and on article V, section 16, of the Convention on the Privileges and Immunities of the Specialized Agencies.² That new paragraph would indicate that the purpose of immunity from jurisdiction was to safeguard the independent exercise by the persons mentioned in article 31 of their functions in connexion with the organization; it would also specify that the sending State was under a duty to waive the immunity of such persons in certain circumstances.

2. During the discussion in the Committee, some dele-

¹ General Assembly resolution 22 A (I).

² General Assembly resolution 179 (II).