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

Vienna, Austria
4 February - 14 March 1975

Document:-
A/CONF.67/C.1/SR.39

39th meeting of the Committee of the Whole

Extract from Volume I of the *Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

it had voted against the revised Australian amendment because it did not think that missions or delegations should be required to initiate proceedings in respect of an investigation or porsecution. Moreover, it was concerned by the trend in the Committee towards the adoption of standards of international law which related only to domestic law and considered that it was time to reverse that trend.

83. Mr. MITIĆ (Yugoslavia), speaking in explanation of vote, said that his delegation had voted against the revised Australian amendment not because it was against the principle of co-operation, which would benefit sending States and host States alike, but because it could not agree that such co-operation should mean that members of missions and delegations would have the obligation to testify in the host State or to take part in the conduct of investigations carried out in accordance with other articles of the proposed convention.

84. Mr. SURENA (United States of America), speaking in explanation of vote, said that his delegation had voted in favour of the revised Australian amendment even though it considered that the new article stated the obvious, namely, that co-operation was necessary between the sending State and the host State in the conduct of investigations or prosecutions. However, his delegation was of the opinion that the article was absolutely necessary in the present convention in order to balance equally obvious points included in other provisions of the convention. Thus, the host State was obliged to prosecute offenders and the sending State was obliged to co-operate with the host State in any necessary investigation or in the prosecution itself.

Article 75 (Respect for the laws and regulations of the host State) (A/CONF.67/4)

85. The CHAIRMAN said that six amendments and one subamendment had been submitted to article 75 and that the discussion of that article would be very difficult because most of the amendments were contradictory. He therefore suggested that the sponsors of the amendments or the regional groups should hold consultations in order to find a compromise solution either for the amendments or for the text of article 75 proposed by the ILC. In order to leave time for those consultations, he also suggested that the Committee should discuss article 75 after it had completed its consideration of article 1 and article A of the annex.

The meeting rose at 12.50 p.m.

39th meeting

Tuesday, 4 March 1975, at 3.35 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 75 (Respect for the laws and regulations of the host State) (*continued*) (A/CONF.67/4, A/CONF.67/C.1/L.78, L.119, L.132, L.134 and Corr.1, L.141, L.144, L.149)

1. The CHAIRMAN recalled that at the previous meeting he had suggested that the discussion of article 75 should be deferred on account of the number of amendments, oral amendments and subamendments, of which it was the subject. He hoped that the members of the Committee would agree on a joint proposal and would wait until the substantive articles of the draft had been discussed before taking up article 75.

2. Mr. KUZNETSOV (Union of Soviet Socialist Republics) said that his delegation was not categorically opposed to that proposal, all the more so since the subamendment by Japan (A/CONF.67/C.1/L.149) to the Nigerian amendment (A/CONF.67/C.1/L.78) had only been distributed at the current meeting. However, the consultations that had taken place between delegations had revealed very great divergencies of view on that article and, if discussion of the question were postponed until later, there was a risk of being faced with a still greater number of amendments and subamendments, and that at a time when the Committee would have even less time to devote to its discussion.

3. Mr. SOGBETUN (Nigeria) said that there were several gaps in the text of the article prepared by the International Law Commission (ILC) (see A/CONF.67/4). When the Committee had discussed article 9, on the appointment of the members of the mission, it had tried to make the same type of amendment to it, but in the end it had been decided to wait until article 75 had been discussed.

4. Under the terms of paragraph 2 of the present text of the article, in case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from jurisdiction, four possible courses of action were open to the sending State: first, to waive the immunity of that person; second, to recall him; third, to terminate his functions, and fourth to secure his departure. In the Nigerian delegation's view, the main point in that article was to provide for the recall by the sending State of the person concerned, as was the practice followed in traditional diplomacy: when the ambassador of a State to another country was guilty of an offence and was declared *persona non grata,* he was simply recalled to his country of origin. The Nigerian delegation's amendment (A/CONF.67/C.1/L.78) was aimed at such a simplification. Under the terms of the draft convention, the members of missions and of delegations were going to enjoy certain privileges and

immunities, provided for in articles 21, 24, 26, 27, 28, 29, 30 and 35. But those privileges and immunities should not be accorded without any restriction: if a person who was a member of a mission of another State had already committed offences in the host State, the host State should be enabled to refuse to re-admit that person into the country and to recognize him as a member of the mission. In its present form, paragraph 2 of the article 75 did not make it possible to deal with such a situation, and that was why the Nigerian delegation had proposed that a new subparagraph (*b*) should be added to that paragraph, so as to authorize the host State to take measures to ensure its internal security. As was mentioned in paragraph 1 of the International Law Commission's commentary to article 75 (see A/CONF.67/4), it was necessary to safeguard all the interests involved, namely, the interests of the host State, of the sending State and of the international organization in question.

5. With regard to the new subparagraph (*c*) which the Nigerian delegation was proposing should be added to paragraph 2, it provided for the case where the sending State took no steps to recall the person concerned within a reasonable period from the date of notification. It was logical that the host State should be able in such a case to refuse to recognize that person as a member of the mission.

6. He said that, in his view, the purpose of the Belgian proposal to insert a new article 75 *bis* in the draft articles (A/CONF.67/C.1/L.62) seemed to be covered already by articles 30 and 61 of the draft convention.

7. Mr. MUSEUX (France) said that the purpose of the amendment submitted by his delegation to article 75, paragraph 3 (A/CONF.67/C.1/L.119) was merely to supplement the present text of that provision. However, following consultation with the other delegations, it appeared that the proposal was giving rise to difficulties because prohibited doings, such as drug trafficking, were not listed exhaustively in it. The French delegation therefore withdrew his amendment.

8. With regard to the other amendment submitted by France to article 75 (A/CONF.67/C.1/L.134 and Corr.1) he recalled that article 9 of the draft convention had given rise to a very difficult discussion and that the amendments submitted to that article had been rejected. On the one hand, the host States were anxious to see the draft convention providing them with guarantees and, on the other, the right of appointment conferred on the sending State under the provisions of article 9 was a sovereign right, and the French delegation agreed with that. It considered, none the less, like a certain number of other delegations, that the legitimate interests of the host State should be protected, and it therefore feared a new confrontation in connexion with article 75 of the draft. Even although the interests of host States and sending States were different, the main concern of all States should be to ensure the efficient functioning of the international organization. He had heard it said that the host States would not ratify the draft convention; yet it was in their interests, too, that those problems should be clearly regulated; but it was justifiable that they should ask for safeguarding clauses. Whatever might be the positions *a priori,* the host State should not be given unlimited and excessive rights, it should be enabled to take the necessary measures to ensure its protection in certain cases.

9. In its amendment to article 75 (A/CONF.67/C.1/L.134 and Corr.1), the French delegation was therefore proposing that paragraph 2 of the present text of the article should be recast by amending the words "the sending State shall, unless it waives the immunity of the person concerned," in the first sentence to read as follows: "the sending State, unless it waives the immunity of the person concerned, shall at the request of the host State". The International Law Commission's text listed the obligations of the sending State, but there was no mention anywhere of the rights of the host State. But it was justifiable for the host State to have the right to request the sending State to recall a person who was guilty of grave and manifest violations of its criminal law.

10. With regard to the additional safeguard clause provided for in the French amendment to article 75 which proposed adding a new paragraph 4 to the article, he thought it was sufficiently explicit. The host State might, in fact, be obliged to take urgent measures in certain cases, and the draft convention should include a provision authorizing it to do so. There was no question, of course, of according the host State unlimited, discretionary or arbitary powers, and that was why the new paragraph proposed by the French delegation contained the words "as are necessary". The powers of the host State would therefore be exercised in the context of the draft convention, and particularly of articles 81 and 82.

11. The French delegation considered that its amendment constituted a compromise proposal, which conduced to the promotion of international co-operation. It was none the less ready to agree to any constructive proposals that other delegations might make.

12. Mr. YÁÑEZ-BARNUEVO (Spain) said that article 75 illustrated, once again, the fundamental problem which the ILC had come up against and which resulted from the fact that the relations between States and international organizations had to be regulated multilaterally whereas classical international law had a strictly bilateral setting. In its written observations on the first draft articles prepared by the ILC, Spain had stressed the importance of that problem. In multilateral relations, recourse could not be had to the notion of *persona non grata* used in bilateral relations, because the members of missions or of delegations were not accredited to the host State, but to the organization. But the host State could not, on that account, be left without defence, while additional guarantees were being accorded to the sending State. A mechanism should therefore be devised, enabling the interests of the host State and those of the sending State to be protected, while at the same time taking into account the interests of the organization. That was what the ILC had sought to do in article 75, which deviated from the corresponding articles of the Vienna Convention on Diplomatic Relations [1] and

[1] United Nations, *Treaty Series,* vol. 500, No. 7310, p. 95.

the Convention on Special Missions [2] and which it was advisable to bring closer to articles 81 and 82 concerning the procedure to be followed for the settlement of disputes. The ILC had taken the different interests involved into account; it had tried to reconcile the various interests and to reach a solution that would be acceptable and realistic. The Spanish delegation had therefore confined itself to proposing a few small changes so as to make the International Law Commission's text entirely acceptable. In its amendment in document A/CONF.67/C.1/L.132, it was thus proposing that the words "and manifest" should be deleted in paragraph 2. It considered that the point was to know whether the violation of the criminal law of the host State or the interference in the internal affairs of that State had in fact taken place and were sufficiently grave. It also thought it necessary to avoid attaching too great an importance to the external aspects of the act and judging from appearances, which were often misleading. The Spanish delegation was further proposing that the third sentence in paragraph 2 should be deleted, because it was not convinced of the usefulness of that sentence in the context of the article. It considered that an act committed by a member of a mission or of a delegation in the performance of his functions could not be considered as a serious violation of the criminal law of the host State or as interference in the internal affairs of that State. In that regard, it shared the view expressed by Sri Lanka in its written comment on article 75 (see A/CONF.67/WP.6, p.122) when it asserted that "It would seem that any case of grave and manifest violation of the criminal law, or interference in the internal law of the host State could not possibly fall within the 'functions of the mission or the tasks of the delegation' ". In his opinion, the two ideas were mutually exclusive.

13. He thought, that, after the oral introduction of the amendments and when the discussion had been opened, it would be desirable for delegations to hold consultations.

14. Sir Vincent EVANS (United Kingdom) recalled that when article 9 and article 75 had been considered together at the 16th and 17th meetings of the Committee, his delegation had said (16th meeting) that those articles did not sufficiently protect the interests of the host State. Article 75, paragraph 1, rightly imposed on all persons enjoying privileges and immunities a duty to respect the laws and regulations of the host State and not to interfere in the internal affairs of that State. But the draft articles did not expressly confer on the host State the right to object to the presence of a person in its territory in any circumstances, even if that person was interfering in the internal affairs of the host State or was otherwise abusing the privileges and immunities he enjoyed contrary to article 75, paragraph 1. Article 75 confined itself to imposing an obligation on the sending State to recall the person concerned, terminate his appointment or secure his departure in particular circumstances, namely when he had committed a "grave and manifest" violation of the criminal law of the host State or a "grave and manifest" interference in its internal affairs. In all other circumstances, it appeared that a member of a mission could abuse his privileges and immunities with impunity and the draft articles did not recognize that the host State had any right to request the recall of the person concerned and imposed no obligation on the sending State in that respect. He thought such provisions were unacceptable, since they did not take due account of the legitimate interests of the host State and were contrary to international practice and to well-established principles of diplomatic law and of the law relating to international organizations, which acknowledged the right of the host State to declare unacceptable any person who had abused his privileges of residence. The amendment submitted by the United Kingdom to paragraph 2 of article 75 (A/CONF.67/C.1/L.141) was designed to re-establish a fair balance in those provisions. Seeing that the draft articles as a whole aimed at requiring the host State to accord to the representatives of States to international organizations the same treatment as that accorded to diplomatic staff, it seemed logical also to apply the rules concerning non-acceptability.

15. The first purpose of the amendment in document A/CONF.67/C.1/L.141 was to define the circumstances in which the sending State should waive the immunity of the person concerned, terminate his appointment or secure his departure. Its second purpose was to give express recognition to the host State's interest, by introducing the phrase "at the request of the host State". The host State could request the sending State to waive the immunity of the person concerned, terminate his appointment or secure his departure in three cases: if the person concerned had committed a serious criminal offence, if he had interfered in the internal affairs of the host State, or if he had otherwise seriously abused his position as a person enjoying privileges and immunities. Those provisions were not only reasonable; they were also essential for the protection of the legitimate interests of the host State.

16. As some delegations had considered that it would be easier for them to accept the United Kingdom amendment if the third sentence of paragraph 2 of the original text of article 75 were maintained, the amendment in document A/CONF.67/C.1/L.141 should be considered as bearing solely on the first two sentences of paragraph 2.

17. Mr. MARESCA (Italy) said he had the impression that article 75 was incomplete and that the ILC had not drawn the logical inference from the principle which it had stated in paragraph 2 of the article. It had very rightly asserted that "in case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from jurisdiction", the sending State had a duty to recall the person concerned. Now, what happened if the sending State failed in its duty? The ILC said nothing about that. There was thus a gap there, which the Italian delegation had tried to fill. In its amendment in document A/CONF.67/C.1/L.144, it had borrowed the text of article 9, paragraph 2, of the Vienna Convention on Diplomatic Relations, which drew the logical inferences from a possible defaulting

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

by the sending State. Thus, "If the sending State refuses to carry out, or fails to carry out within a reasonable time, its obligations under paragraph 2 of this article, the host State may refuse . . . to recognize the person concerned as a member of the delegation". However, as conciliation procedures were provided for in article 81 and 82, in the event of disputes between the sending State and the host State, the host State could only exercise that right pending the conclusion of the procedures prescribed in articles 81 and 82.

18. He pointed out that his amendment was not at variance with the other amendments proposed but that, on the contrary, it drew the logical inference from and was the necessary complement to them. He would agree to combining his amendment with other amendments, provided that the basic idea was maintained. He considered that the host State should not be refused all possibility of defending its interests: article 75 should re-establish the balance and meet the requirements of equity. He added that the attitude of Italy with regard to the future convention would depend, to a large extent, on the introduction of that essential idea into the draft articles.

19. Mr. HIRAOKA (Japan), introducing his delegation's subamendment (A/CONF.67/C.1/L.149) to the amendment by Nigeria (A/CONF.67/C.1/L.78), said that his delegation considered, like the delegations of the United Kingdom, Spain and Italy, that the host State should be in a position to protect its interests. The Committee was in a delicate situation, because other delegations wished to strengthen the rights of the sending State with regard to the host State. The Nigerian amendment seemed well-advised, but it should be modified in certain respects. Hence it would be advisable to revert to the original text for paragraph 2 prepared by the ILC, but adding to it the words "on the request of the host State". The Commission's text had the merit of leaving it to the host State to choose what measures to take. Moreover, it would be desirable for the Nigerian delegation's proposed subparagraphs (*b*) and (*c*) to refer not only to missions but also to delegations. Lastly, as the notification referred to in the subparagraph (*c*) in question was the notification mentioned in subparagraph (*b*), it would perhaps be advisable to replace the expression "of notification" by "of such notification". Moreover, the words "request or" should be inserted before the word "notification" (or "such notification") as that was a matter of the request referred to in the subparagraph (*a*) proposed by the Nigerian delegation. That modification would establish a link between the subparagraphs (*a*) and (*c*). Thus, when the sending State did not respond to the request of the host State referred to in subparagraph (*a*), the person concerned could be considered as *persona non grata* by the host State.

20. Mr. UNGERER (Federal Republic of Germany) said he noted a tendency in the Committee and in the ILC to be generous in the granting of privileges and immunities not only to permanent missions, but also to delegations and to observer delegations to organs and conferences. On the other hand, the host State seemed to be less generously treated. An attempt to introduce the concept of *persona non grata* into article 9 had not obtained the necessary majority. Of course, that concept was more appropriate in bilateral diplomacy than in multilateral diplomacy, but certain measures should be provided in the future convention to penalize the abuse of privileges by the members of missions or delegations.

21. The delegation of the Federal Republic of Germany supported, in substance, article 75 which was one of the few articles which protected the host State, but it considered that that provision was not sufficient to establish the necessary balance between the privileges and immunities granted by the host State and the protection of the latter against the possible abuse of such privileges and immunities. Of all the amendments submitted to correct that situation, the delegation of the Federal Republic of Germany preferred the United Kingdom amendment (A/CONF.67/C.1/L.141), as it had been orally subamended. However, the third sentence of the International Law Commission's text for paragraph 2 remained obscure. It appeared that a member of a mission or a delegation could violate the criminal law and interfere in the internal affairs of the host State as long as he did so in the exercise of his official functions. It would be helpful if the Expert Consultant could give some clarifications on that point.

22. Although he considered the United Kingdom amendment to be acceptable in principle, he would nevertheless like it to be completed by the subparagraphs (*b*) and (*c*) proposed by the Nigerian delegation (A/CONF.67/C.1/L.78), modified in accordance with the Japanese subamendments. He stressed the need for maintaining the idea contained in the amendments by the United Kingdom, Nigeria, Italy and Japan. If they were not accepted he would have great difficulty in recommending the authorities of his country to sign the future convention.

23. Mr. GOBBI (Argentina) said he thought that the International Law Commission's article 75 sufficed to protect the interests of the host State and that it would be difficult to depart from it. The French amendment (A/CONF.67/C.1/L.134 and Corr.1), which had the merit of re-affirming the well-established right of the host State to protect itself, would nevertheless introduce an element of imprecision into the article under consideration. The United Kingdom amendment (A/CONF.67/C.1/L.141), as modified orally by the representative of that country, was not entirely satisfactory. The notion of interference in the internal affairs of the host State was extremely vague; a mere statement could constitute such interference. Moreover, if the host State could be the judge of the conduct of the members of a mission or of a delegation, it was liable to abuse that right. In bilateral diplomacy, it was not necessary to invoke objective reasons in order to declare someone "*persona non grata*". Consequently, his delegation could not accept any of the amendments submitted and preferred the article prepared by the ILC.

24. Mr. CALLE Y CALLE (Peru) said that, judging from the large number of amendments which had been submitted to the article under consideration, it might be supposed that the ILC had not sufficiently taken account of the need to protect the interests of the host

State. But article 75 was the result of lengthy discussions and was presented in a balanced form. It provided that the laws and regulations of the host State should be respected and that there should be no interference in the internal affairs of that State. In case of grave and manifest violation of the criminal law of the host State, the sending State should take appropriate measures. Articles 22 and 53 provided, furthermore, that the organization should assist the host State in order that the sending State could discharge all its obligations on the subject of privileges and immunities, namely, the obligations referred to in the article under consideration. Since the notion of *persona non grata* was not applicable in relations between States and international organizations, another way was sought in paragraph 2 of article 75 to ensure on the one hand, the performance of the obligations of the members of a mission or delegation towards the host State and, on the other, to protect the interests of the latter. Consequently, his delegation was in favour of the International Law Commission's article 75. It could not support the French amendment (A/CONF.67/C.1/L.134 and Corr.1), since, in its view, the host State seemed to be sufficiently protected by various provisions of the draft convention, and more particularly by articles 81 and 82.

25. Mr. TANKOUA (United Republic of Cameroon) said that the various amendments and subamendments under consideration all contained positive and negative elements but that it would be difficult to reconcile them. Article 75 as prepared by the ILC represented a compromise solution which would have nothing to gain from a medley of amendments. Ever since they had studied article 9, delegations had been alive to the problems posed by article 75, and they had had time to reflect on them. Considering, moreover, that the suggestion made by the Chairman at the previous meeting to adjourn the debate on article 75 had not been agreed to, he requested that the debate be closed and that the text of article 75 prepared by the ILC be put to the vote first.

26. Mr. WILSKI (Poland) said that, although his delegation had previously declared itself in favour of the joint consideration of article 9 and article 75, that did not mean that it was willing to agree to the insertion in the draft convention of a provision which applied solely to bilateral relations. For that reason, his delegation could not support any of the amendments to article 75, and was in favour of the International Law Commission's text.

27. Mr. BARAKAT (Yemen) thought that it would be very difficult even impossible, to reconcile the numerous amendments to article 75. Some of them would doubtless help to improve the Commission's text, but others deviated too much from those provisions. Moreover, some of those amendments were akin to amendmends which the Committee had already long since considered, but not accepted. The Committee should avoid repeating those debates.

28. He proposed a subamendment to the United Kingdom amendment in document A/CONF.74/C.1/L.141, consisting in adding the words "gravely and manifestly" after the word "interfered" in paragraph 2 (*b*) and deleting that part of paragraph 2 (*b*) which followed the words "host State".

29. Mr. GÜNEY (Turkey), although he was opposed to the motion by the representative of the United Republic of Cameroon, recalled that the latter had requested that the debate be closed and that the text of article 75 prepared by the ILC be put to the vote first.

30. The CHAIRMAN gave the floor to two speakers opposing the closure of the debate, in conformity with rule 26 of the rules of procedure.

31. Mr. WERSHOF (Canada) said he was convinced that all delegations shared the Cameroonian delegation's concern to see the Committee's work completed in due time. It seemed to him, however, that it was unacceptable to move the closure of the debate on such an important provision as article 75 and on amendments which had been submitted in due form.

32. Mr. SOGBETUN (Nigeria) said that he, too, was opposed to the closure of the debate and considered the request made by the representative of the United Republic of Cameroon to be excessive. The Committee had to elaborate a convention which would be generally acceptable; for that, it was important that it should examine any suggestion that was calculated to improve article 75. Nothing had been said during the debate which would justify its closure.

33. The CHAIRMAN put to the vote the motion for closure.

The motion was rejected by 28 votes to 21, with 19 abstentions.

34. Mr. GÜNEY (Turkey) pointed out that paragraphs 1 and 3 of article 75 were modelled on article 41 of the Vienna Convention on Diplomatic Relations and article 47 of the Convention on Special Missions, and that the importance of that provision was obvious, since it sought to safeguard all the interests involved—those of the host State, those of the sending State and those of the international organization. Paragraph 2 of article 75 offered the sending State three courses of action in case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from jurisdiction. Nevertheless, it seemed to his delegation that the last sentence of paragraph 2 weakened the impact of the paragraph.

35. His delegation considered that it would be premature, at the present stage, to adopt a position on article 75, in view of the large number of amendments which had been submitted. It suggested, however, in conformity with the methods of work adopted by the Committee, that a working group should be set up to try to work out an acceptable solution by reconciling the various amendments. If the idea of the creation of a working group was adopted, the Committee could determine its composition and mandate.

36. The CHAIRMAN recalled that his suggestion to adjoin consideration of article 75 had not been favourably received, and said he thought that the Turkish representative's proposal was liable to meet with the same response.

37. Mr. KUZNETSOV (Union of Soviet Socialist Republics) said that his delegation had not submitted any amendment to article 75 because it considered that the International Law Commission's text was wise and well-balanced, and that it had been prepared over a number of years by specialists on the subject. The Commission seemed to have taken into consideration all the relevant factors for the establishment of a balance between the duties and rights of the host State and those of the sending State. Although it was true that in the case of articles 23 and 54 his delegation had submitted amendments to the Commission's text, it had not thought it would be led to defend the provisions of article 75, which had seemed to it entirely reasonable having regard to the climate of international détente and to the task entrusted to the Conference, which was the progressive development of international law.

38. The progress of the work did not afford grounds for optimism. The amendments to article 75 were calculated to destroy a text which had been the subject of mature reflexion. The United Kingdom and Nigerian amendments reintroduced the concept of the *agrément* of the host State embodied in the amendments which the Committee had rejected in adopting article 9, and that idea was stated particularly clearly in the amendment in document A/CONF.67/C.1/L.141. The Spanish amendment (A/CONF.67/C.1/L.132) proposed to abolish the immunities of the members of the delegation when they committed a grave and manifest breach of the criminal law of the host State in the exercise of their functions; that amendment was entirely unacceptable to his delegation. Equally unacceptable was the French amendment (A/CONF.67/C.1/L.134 and Corr.1), which proposed to add a new paragraph the effect of which would be to reduce to nothing all the obligations of the host State provided for in article 75. In addition, his delegation could not support the proposal by the French delegation to change the title of the article. With regard to the Italian amendment in document A/CONF.67/C.1/L.144, its effect would be to abolish the procedure provided for in article 61 and 72, which was something to which his delegation could not agree.

39. It was inappropriate, in his opinion, to consider and comment on the subamendments at the present stage of the debate, and he strongly supported the proposal by the United Republic of Cameroon that the International Law Commission's text should be put to the vote first. Nevertheless, in view of the practice followed by the Committee, his delegation might, if necessary, submit oral subamendments to the amendments submitted to article 75, and it reserved the right to do so. On the whole, it considered the Commission's text satisfactory, and it thought that the Austrian amendment to article 22, together with other amendments, had already sufficiently strengthened article 75, which had no need of any modification.

40. Mr. WERSHOF (Canada) supported the idea contained in the amendments submitted to article 75. He wondered what the members of the Committee hoped to achieve by engaging in such discussions; was their object to discredit the amendments submitted and scorn the considerations of the host States which took their obligations seriously, or was it to institute a serious discussion in an attempt to arrive at a version of article 75 which would make the draft convention more acceptable?

41. It was true that the idea embodied in the amendment in document A/CONF.67/C.1/L.141 was taken from the amendment in document A/CONF.67/C.1/L.18, the first point in which concerned the notion of *persona non grata,* but that amendment, which had been rejected by 32 votes to 25, with 12 abstentions, had been supported not only by 5 or 6 host States, but by as many as 25 delegations, and 12 more delegations had not been prepared to reject it. That was an important consideration which should be taken into account.

42. Moreover, he had been extremely surprised to hear the Soviet Union representative say that his delegation set great store by the International Law Commission's opinion and that it was anxious to remain faithful to the Commission's text, whereas in fact it had proposed some 20, if not 30, important amendments to the Commission's draft articles and had supported a number of others which sometimes departed considerably from the original text. He failed to understand, therefore, why the Soviet delegation deemed it inappropriate, in the present instance, to depart from the Commission's text.

43. With regard to the motion by the representative of the United Republic of Cameroon that article 75 should be put to the vote before the amendments, he raised a point of order that the motion was out of order, being contrary to rule 41 of the rules of procedure, and said that he would ask the Chairman to rule on the point of order in due course.

44. Mr. SMITH (United States of America) said that his delegation disagreed with the view that the amendments submitted to article 75 related not to the question of respect for the laws and regulations of the host State, but to the question dealt with in article 9, which had already been considered. It believed that the proposed amendments would considerably improve the draft convention. The United Kingdom amendment to paragraph 2 was preferable to the International Law Commission's text because it was clear and concise and in no way constituted a *persona non grata* clause. The Nigerian amendment also deserved support.

45. His delegation was opposed to the motion of the representative of the United Republic of Cameroon, which was completely contrary to the procedure so far followed by the Committee and particularly inappropriate when the Committee was considering a very important article.

46. As to the comments of the Peruvian and Polish representatives that the receiving State could request the recall of a diplomatic agent in bilateral relations but the host State could not do so in the case of relations between States and international organizations, he considered that a very strange argument indeed, in view of the fact that many international instruments, including the Headquarters Agreements between the United

Nations and the United States of America, between the French Republic and the United Nations Educational, Scientific and Cultural Organization and between the Republic of Austria and the International Atomic Energy Agency, contained provisions to that effect. Such a rule therefore had its place in instruments relating to multilateral relations.

47. The question at issue was relatively simple, namely, whether a host State could be required to accept and tolerate the continued presence in the territory of that State of a member of a mission or delegation who had committed a grave and manifest breach of the criminal law of the host State or had otherwise abused his privileges. The accession of many States to the convention would probably depend on the solution that was given to that problem.

48. In his delegation's view, if the Committee refused to meet the legitimate needs of host States it could only be assumed that they were not particularly interested in host States becoming parties to the convention.

49. Mr. PLANA (Philippines) suggested that the various delegations which had sponsored amendments should get together and try to arrive at a common text, for the multiplicity of amendments was only confusing the Committee. His delegation considered that article 75, as prepared by the ILC, was well balanced and represented an acceptable compromise. For that reason, his delegation would support the Commission's text for the time being, although it recognized that the amendment in document A/CONF.67/C.1/L.141 contained a number of interesting elements.

50. Mr. SANGARET (Ivory Coast) said that no one challenged the fundamental principles stated in paragraph 1 of article 75, but that in paragraph 2, the words "grave and manifest violation" were ambiguous. There were, of course, articles 81 and 82 relating to conciliation procedures, but those provisions could only be applied *a posteriori* and did not enable a State to take the emergency measures its security might require.

51. All the amendments submitted had in common the idea that the initiative of recalling a member of its mission or delegation if he had committed a grave violation should not be left to the sending State and they reflected a concern to give the host State the possibility of initiating a procedure whereby a person might be declared *persona non grata.*

52. He associated himself with those members of the Committee who had suggested that the sponsors of the various amendments should get together in order to draft a common document giving the host State the right to initiate the recall procedure and containing a clause whereby a person might be declared *persona non grata.* He supported the motion by the representative of the United Republic of Cameroon that the Commission's text of article 75 should be put to the vote before the amendments.

53. Mr. PHOBA DI M'PANZU (Zaire) pointed out that the provisions of article 75 were taken from the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations whose application had not occasioned any difficulty among States. For that reason, he approved the motion by the representative of the United Republic of Cameroon that the International Law Commission's text should be put to the vote first.

54. Mr. SOGBETUN (Nigeria) said that it was neither useless nor out of place to submit amendments to article 75 that had been rejected in connexion with article 9, for during the discussion of article 9, some representatives had specifically stated that those amendment should be considered in the context of article 75.

55. He thought that the amendment in document A/CONF.67/C.1/L.144 submitted by Italy might be incorporated in paragraph 3 (*c*) of the amendment in document A/CONF.67/C.1/L.78 submitted by his own delegation and that the subamendments in document A/CONF.67/C.1/L.149 could likewise be combined with the Nigerian amendment.

56. He expressed the view that every host State should have the right to refuse entry into its territory of a person whom it had already had occasion to declare *persona non grata* and it was necessary to include a provision to that effect since the draft convention was silent on that point. He wished to stress that the amendment in document A/CONF.67/C.1/L.78 did not by any means imply that a person who had misused his privileges in one State should be declared unacceptable in other States.

57. Mr. CISSE (Senegal) supported the Turkish representative's suggestion that the sponsors of the various amendments should get together, since all the amendments were aimed at re-establishing a balance between what had previously been accorded to representatives of the sending State and the interests of the host State. It was desirable to seek a compromise formula.

The meeting rose at 6.10 p.m.