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Summary record of the 1093rd meeting

Topic:
Representation of States in their relations with international organizations

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90. The CHAIRMAN suggested that article 21 be referred to the Drafting Committee.

*It was so agreed.*¹¹

APPOINTMENT OF A DRAFTING COMMITTEE

91. The CHAIRMAN suggested that the Commission appoint a Drafting Committee of twelve members, consisting of the first Vice-Chairman, the General Rapporteur and the following members of the Commission: Mr. Alcívar, Mr. Castrén, Mr. Elias, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Ushakov, Mr. Ustor, and Sir Humphrey Waldock.

It was so agreed.

The meeting rose at 12.40 p.m.

¹¹ For resumption of the discussion see 1112th meeting, para. 27.

1093rd MEETING

Wednesday, 5 May 1971, at 10 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Barotoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, Mr. Thiam, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 6; A/CN.4/241 and Add.1-3; A/CN.4/L.162/Rev.1)

[Item 1 of the agenda]

(continued)

ARTICLE 22

1. The CHAIRMAN invited the Special Rapporteur to introduce article 22.

2.

Article 22

General facilities

The host State shall accord to the permanent mission full facilities for the performance of its functions. The Organization shall assist the permanent mission in obtaining those facilities

and shall accord to the mission such facilities as lie within its own competence.

3. Mr. EL-ERIAN (Special Rapporteur) said that there had been a certain scepticism in the Sixth Committee about the inclusion of the second sentence, while the secretariats of two specialized agencies had expressed reservations about the implied obligation of the organization to provide office facilities for the permanent mission (A/CN.4/241/Add.3).

4. During the discussion in the Commission, Mr. Tammes had been the first to raise the question whether it was intended that the organizations themselves should become parties to the future convention.¹ He (the Special Rapporteur) had observed that that question would be decided by the organ entrusted with the formulation of the conventional instrument. He proposed that article 22 be retained in its present form.

5. Mr. KEARNEY said that article 22 raised the question of imposing obligations on the organization and thus the question of the relationship between the organization and the future convention. In his opinion, that problem was of such legal complexity that it went beyond the normal final clauses and should not be left to the future conference.

6. With a view to achieving a proper balance between the host State and the sending State in the matter of obtaining assistance, he would suggest that the second sentence might be amended to read: "The Organization shall assist the host State and the sending State in arranging for those facilities . . .". That, however, was a question which should be considered by the Drafting Committee.

7. Mr. NAGENDRA SINGH suggested that the first sentence be amended to read: "The host State shall accord to the permanent mission the facilities necessary for the performance of its functions". However, he could accept the present wording if the word "necessary" was inserted after the words "full facilities".

8. In the second sentence, he proposed that the word "also" should be inserted after the words "The Organization shall . . .", though that point might also be met by Mr. Kearney's suggested amendment.

9. He could not agree with the view of the Japanese Government, which had proposed that the second sentence should be deleted (A/CN.4/239/Add.2, section B.5), since the practice showed that organizations did assist permanent missions in obtaining facilities.

10. With regard to the observation of UNESCO (A/CN.4/239, section D.3, para. 7), he submitted that when a sending State sent a representative to an organization, the latter would be failing in its duty if it shirked the responsibility of providing assistance to that representative. In his opinion, the comments of UNESCO and WHO were not quite in keeping with the elementary courtesies expected of an international organization.

¹ See *Yearbook of the International Law Commission*, 1969, vol. I, p. 6, para. 8 and p. 17, para. 11 *et seq.*

11. Mr. SETTE CÂMARA said that the two sentences of article 22 dealt with the consequences of the establishment of the organization and the presence in the host State of permanent representatives. Any host State was under an obligation to accord full facilities to the permanent mission, but the organization was also under an obligation to assist the permanent mission in obtaining those facilities. Those obligations emanated from general international law and not from any specific rules in the draft articles.

12. On the question of the participation of international organizations in the future convention, he thought that the Special Rapporteur had disposed of the comments of governments in an able and elegant way and had restored the original text. Those comments were relevant, however, and would have to be dealt with in due course.

13. Mr. EL-ERIAN (Special Rapporteur) said that he could not agree with Mr. Kearney that the Commission itself would have to discuss, at some later stage, the question of the obligations of organizations and their participation in the future convention. He thought that the Commission should try to lay down a general rule and leave the preparation of the actual text to the Sixth Committee.

14. He was prepared to reflect on Mr. Kearney's suggested amendment to the second sentence.

15. Mr. Nagendra Singh had suggested amending the first sentence by introducing the word "necessary" after "facilities". He himself thought that idea was implied in the sentence as it stood, but he would leave the point to the Drafting Committee.

16. Mr. NAGENDRA SINGH said he agreed that the question of the participation of international organizations in the future convention should be left to the Sixth Committee to decide; it had, however, been brought before the Commission, which was at least entitled to recommend that organizations of an international character should be invited to the conference.

17. Mr. REUTER, commenting on Mr. Kearney's proposal, said that the Drafting Committee might indeed attempt to find less provocative and more acceptable wording.

18. As to whether the provisions of an international convention could be binding on international organizations, the Commission should, as the Special Rapporteur had proposed, defer consideration of that question; but it should nevertheless stress the importance of the problem in its report. It might become possible to invoke a convention against an international organization which was not itself a party to it.

19. Mr. ROSENNE said he doubted whether the Commission should make any formal recommendation concerning the participation of international organizations in the conference. Nevertheless, the Commission had invited organizations to submit their observations and it should indicate in some way that it had taken those observations into account; otherwise, if organizations were invited to submit observations in the future, they might be reluctant to do so. In other words, the Commis-

sion should show that it was aware of the problem and remind the General Assembly that precedents did exist.

20. Mr. EL-ERIAN (Special Rapporteur) said that questionnaires had been sent to the specialized agencies and to the International Atomic Energy Agency with a view to obtaining material concerning their practice, and their reactions to the draft articles. Up to the present there had thus been a full partnership between the agencies and the Commission; he was confident that the General Assembly would make sure that the partnership continued, by providing that the international organizations should attend the conference at which the draft articles were put into final form. The organizations which should be invited had already been named when the questionnaires had been addressed to them.

21. He agreed with Mr. Reuter that the question of the obligations of the organization was an important one and should be left to the Sixth Committee. A statement should be included in the commentary which would assure all organizations that the Commission had discussed the problem of their obligations and express the hope that they would participate in the final stage of drafting the convention, while at the same time leaving it to the General Assembly to decide whether they should become parties to the convention.

22. The CHAIRMAN suggested that article 22 be referred to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.²

ARTICLE 23

23. The CHAIRMAN invited the Special Rapporteur to introduce article 23.

24.

Article 23

Accommodation of the permanent mission and its members

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

2. The host State and the Organization shall also, where necessary, assist permanent missions in obtaining suitable accommodation for their members.

25. Mr. EL-ERIAN (Special Rapporteur) said that the use of the word "accommodation" in paragraph 1 had been criticized in the Sixth Committee. With respect to paragraph 2, WHO and ILO had expressed misgivings about the role of the Organization in securing private accommodation (A/CN.4/239, section D.2 and 4). He had not, however, found it necessary to make any changes in the article.

26. Mr. KEARNEY said it was not clear to him whether the words "where necessary", in paragraph 2, were intended to apply to the host State or the organiza-

² For resumption of the discussion see 1112th meeting, para. 29.

tion or both. He thought that they applied to both and therefore proposed that they should be placed at the beginning of the sentence.

27. Mr. AGO said that the French text should be revised to bring it into line with the English version of the article and with the French version of the corresponding provisions of the Vienna Conventions.

28. Mr. SETTE CÂMARA said that the question of the title of the article should be reserved till the final reading, since it was only then that uniformity could be achieved.

29. Three international organizations had sharply criticized the article, and the observations of UNESCO (A/CN.4/239, section D.3) were couched in particularly acid terms. The Special Rapporteur had given an adequate answer to those criticisms by stressing that the organization's obligation under paragraph 2 was "to assist in obtaining", not "to provide" (A/CN.4/241/Add.3, para. 9 under article 23). In its early days the United Nations had given such assistance by reserving premises for permanent missions; that kind of assistance, which was based on the principle of the comity of nations, was still given, though it did not involve an actual obligation to provide accommodation.

30. The Special Rapporteur was right in retaining the article as it stood.

31. Mr. ROSENNE said he agreed very much with what had just been said and believed that the acidity of UNESCO's observations was completely unjustified. However, he would suggest that paragraph (3) of the Commission's commentary³ be reworded along the lines of the reply in the report before the Commission, so as to give no excuse to UNESCO to repeat that acidity in the future.

32. Mr. CASTRÉN said he thought that article 23 could be adopted as it stood.

33. He noted, however, that the Special Rapporteur had not replied specifically to UNESCO's observations and therefore suggested that the Commission should do so in its report.

34. Mr. USTOR said he questioned whether the words "of the permanent mission and its members", in the title of the article, were really necessary. The title might perhaps be shortened, as had been done in article 30 of the Vienna Convention on Consular Relations and in article 23 of the Convention on Special Missions.

35. Mr. EL-ERIAN (Special Rapporteur) said he agreed with that suggestion.

36. The CHAIRMAN suggested that article 23 be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*⁴

³ See *Yearbook of the International Law Commission*, 1969, vol. II, p. 208.

⁴ For resumption of the discussion see 1112th meeting, para. 32.

ARTICLE 24

37. The CHAIRMAN invited the Special Rapporteur to introduce article 24.

38.

Article 24

Assistance by the Organization in respect of privileges and immunities

The Organization shall, where necessary, assist the sending State, its permanent mission and the members of the permanent mission in securing the enjoyment of the privileges and immunities provided for by the present articles.

39. Mr. EL-ERIAN (Special Rapporteur) said that some fears had been expressed that the assistance provided by the organization under article 24 might take up too much time, but he thought those fears were exaggerated. Article 24 was based on the legitimate interest of the organization and the fact that the privileges and immunities in question were provided for the performance of the work of the organization itself. He had no changes to propose.

40. Mr. AGO said he thought article 24 should be moved to the end of section 2. The Commission usually dealt with the obligations of the host State before mentioning the assistance that might be provided by the organization.

41. Mr. ELIAS said he agreed with Mr. Ago that article 24 should be a residual provision in the part of the draft articles dealing with privileges and immunities.

42. Mr. REUTER said he thought the drafting of the article was ambiguous, perhaps because of its relationship with article 50. If the terms "assist" and "enjoyment" referred only to material things, the article was in its proper place after article 23. But if those terms referred to legal matters, the organization had a more important role to play, in accordance with article 50. The nature of the assistance should be specified in the commentary to article 24.

43. Mr. ROSENNE said that the point made by Mr. Ago and supported by Mr. Elias was a valid one; however, since article 24 touched upon the substance of article 22 and of article 23, paragraph 2, it could perhaps be kept where it was.

44. Mr. EL-ERIAN (Special Rapporteur) said he agreed with Mr. Ago and Mr. Elias that article 24 should be placed at the end of the articles dealing with facilities, privileges and immunities. On the point made by Mr. Reuter, he thought that article 24 was of positive nature, whereas article 50 was more general in character. The question should be referred to the Drafting Committee.

45. The CHAIRMAN suggested that article 24 be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*⁵

⁵ For resumption of the discussion see 1112th meeting, para. 38.

ARTICLE 25

46. The CHAIRMAN invited the Special Rapporteur to introduce article 25.

47.

*Article 25**Inviolability of the premises of the permanent mission*

1. The premises of the permanent mission shall be inviolable. The agents of the host State may not enter them, except with the consent of the permanent representative. Such consent may be assumed in case of fire or other disaster that seriously endangers public safety, and only in the event that it has not been possible to obtain the express consent of the permanent representative.

2. The host State is under a special duty to take all appropriate steps to protect the premises of the permanent mission against any intrusion or damage and to prevent any disturbance of the peace of the permanent mission or impairment of its dignity.

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

48. Mr. EL-ERIAN (Special Rapporteur) said that article 25 had received general support in the Sixth Committee, subject only to the inclusion of appropriate safeguards to prevent abuses. Some governments had stressed that only in extreme cases, such as fire and other disasters, should an exception be allowed to the principle of inviolability.

49. The Government of Switzerland had proposed (A/CN.4/239, section C.II) the addition to paragraph 3 of a provision like the last sentence of paragraph 4 of article 31 of the Vienna Convention on Consular Relations, which read: "If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State". In his opinion, however, it would be more appropriate to deal with that matter as part of the topic of State responsibility.

50. Apart from the amendment referred to in paragraph 17 of his report (A/CN.4/241/Add.3, under article 25), replacing the words "property thereon" in paragraph 3 by the words "property attaching to those premises", he thought that article 25 should be retained in its present form.

51. Mr. ALCÍVAR said he had reservations about the third sentence of paragraph 1. The same sentence had been adopted by the Sixth Committee in article 25 of the Convention on Special Missions,⁶ as the result of a compromise proposed by the delegation of Argentina.⁷ The argument advanced at that time in favour of the sentence had been that special missions, being temporary in character, were generally accommodated in hotels and that it was therefore necessary to safeguard other persons in the same premises. The situation with regard to

permanent missions, however, was quite different, and no such provision had been included in the Vienna Convention on Diplomatic Relations. In his opinion, the inclusion of that sentence in article 25 of the present draft was very dangerous and might at some time be used to justify a violation of the premises of a permanent mission.

52. Mr. USHAKOV said he endorsed the general remarks made in the Sixth Committee, which had been reproduced by the Special Rapporteur in his report (A/CN.4/241/Add.3, para. 6 under article 25). Those remarks were in line with the position he had taken at the first reading. He was, therefore, in favour of a provision based on the corresponding articles of the Vienna Convention on Diplomatic Relations.⁸

53. Mr. BARTOŠ said he wished to make it clear he was not responsible for the adoption of the Argentine amendment referred to by Mr. Alcívar. In the Sixth Committee, his role had been that of expert consultant and personally he was convinced that the best solution was that adopted in the draft articles on diplomatic intercourse and immunities submitted by the International Law Commission.⁹ He had made every effort to defend that point of view, but had not been supported by the majority of the Sixth Committee.

54. Mr. AGO said he hoped the Commission would delete the third sentence of paragraph 1, and thus align the paragraph with the corresponding provision of the Vienna Convention on Diplomatic Relations. There was no need to make any distinction, on that point, between a permanent mission to an international organization and a permanent mission to a State.

55. Furthermore, the sentence was ambiguous; if it referred only to cases of *force majeure*, there was no more reason to include it in the future convention than in the Convention on Diplomatic Relations, since it was self-evident. Indeed, it might be asked why those cases had been provided for in one convention and not in the other. Nor was the wording of the sentence satisfactory. It gave the impression that even if the permanent representative refused his consent, his refusal could be ignored.

56. Mr. USTOR said he wished to state for the record that he too had misgivings about the third sentence of paragraph 1. He fully agreed with the reasons given by Mr. Ago.

57. Mr. ALBÓNICO said he shared the reservations expressed by Mr. Alcívar. The inclusion of the sentence in question in article 25, paragraph 1 of the Convention on Special Missions had been justified by the temporary character of special missions, but its inclusion in the draft on permanent missions was quite inappropriate and should be opposed.

58. Mr. RAMANGASOAVINA said he did not share what appeared to be the majority view with regard to

⁶ General Assembly resolution 2530 (XXIV), Annex.

⁷ See *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 85, document A/7375, paras. 188-195.

⁸ See United Nations, *Treaty Series*, vol. 500, p. 106-108, article 22.

⁹ See *Yearbook of the International Law Commission, 1958*, vol. II, p. 95, article 20.

the third sentence of paragraph 1. The first two sentences stated a general principle which was then modified by exceptions. The Commission should not follow slavishly the Vienna Convention on Diplomatic Relations, which conferred extensive privileges because it applied particularly to ambassadors in their capacity as representatives of Heads of State. The same privileges should not be granted in the same way in the case of permanent missions, which were often technical services attached to international organizations. They should enjoy only those privileges that were necessary for the performance of their functions. As to the need for consent, it should be noted that the permanent representative himself often took the initiative of requesting assistance from the host State.

59. He hoped the Commission would retain the third sentence, subject to possible drafting changes. The word "endangers", for example, might be broadly interpreted to justify interference in the affairs of the permanent mission.

60. Mr. CASTRÉN said he too thought that the article proposed by the Special Rapporteur could be adopted without any change of substance. The absolute principle stated in the Vienna Convention on Diplomatic Relations had already been watered down in the Convention on Consular Relations,¹⁰ following the decision taken in the Sixth Committee. Moreover, several governments considered that the Commission was inclined to grant too many privileges to permanent missions. Those considerations justified the retention of article 25 in its present form.

61. Mr. ALBÓNICO said that in the event of grave danger, there were two possible situations: either the head of the permanent mission would be present and would give his consent, or he would not be present and his consent would be assumed. It would be extremely dangerous, however, if the local authorities were to assume his consent in cases other than fire or some equally serious disaster, since such an assumption might lead to arbitrary measures, particularly if relations between the host State and the sending State happened to be strained.

62. Mr. AGO said that the question being considered, although of relatively minor importance, had evoked expressions of opinion on a fundamental problem: that of the representative character of the permanent mission. In the draft articles, the permanent mission was considered as the representative of a State, a subject of international law, to an organization, also a subject of international law. But if the permanent mission was to be considered as merely a technical service, the draft articles would have to be viewed from a completely different standpoint. The first approach, which was his own, did not justify any derogation from the principles formulated with respect to diplomatic missions or any borrowing from the Vienna Convention on Consular Relations, at least so far as inviolability of the premises was concerned.

63. Mr. ALCÍVAR said he agreed with Mr. Ago that the question was one of principle and that the provision should be deleted.

64. Mr. ELIAS proposed that the idea embodied in the third sentence of paragraph 1 should be retained, subject to the Drafting Committee's being able to improve the wording in order to make it more generally acceptable.

65. There was considerable merit in the view that permanent missions should be equated with diplomatic missions rather than with consulates. But the Commission had discussed all the issues at its twenty-first session, before arriving at the decision to include the sentence in question. The main purpose of that sentence was to cover cases in which the permanent representative was not immediately available during an emergency. It was only logical to make provision for such a contingency, and the failure to do so in the Vienna Convention on Diplomatic Relations had been entirely due to inadvertence.

66. The discussions in the Sixth Committee and the written comments of governments showed that there was a slight majority of governments in favour of retaining the idea contained in the third sentence of paragraph 1.

67. Mr. KEARNEY said that the sentence in question embodied a practical solution to a very difficult problem. It also reflected the difference between a classical diplomatic mission and a permanent mission to an international organization. That difference had constituted the major influence in the adoption of the sentence.

68. An embassy or legation was usually housed in a separate building in the capital city of the receiving State. The same was not normally true of permanent missions—certainly not in New York or Geneva. As a general rule, a permanent mission occupied only one office or apartment in a large building containing a great many other offices or apartments occupied by other people. In the event of a fire or other emergency, the authorities in the host State had to take action to put out the fire or to evacuate the people from the building. Such action had to be taken promptly in order to save lives and to protect the property of people who had nothing to do with the permanent mission. The case was clearly one in which the different physical situation justified the adoption of a principle different from that embodied in the Convention on Diplomatic Relations.

69. As Mr. Alcívar had pointed out, the wording of the third sentence of paragraph 1 had its origin in an amendment adopted by the Sixth Committee, as a compromise solution for the concluding sentence of paragraph 1 of article 25 of the 1969 Convention on Special Missions. It betrayed the usual defects of compromise solutions and a good deal of dissatisfaction had been expressed as to both its meaning and its effect. At least three States which were hosts to international organizations had criticized its ambiguity and suggested that it be replaced by language similar to that of the concluding sentence of article 31, paragraph 2, of the Vienna Convention on Consular Relations. He suggested that the Drafting Committee take those remarks into account.

¹⁰ United Nations, *Treaty Series*, vol. 596, p. 288, article 31.

70. Mr. REUTER said that the Commission should decide whether it was considering a question of drafting or of substance. If it was accepted that the last sentence of paragraph 1 was redundant because there was a general legal theory—for example, *force majeure*—which justified derogation from the basic principle, it followed that such derogation was also justified under the Vienna Convention on Diplomatic Relations, although the reservation was not expressly stated, so that the Commission was merely considering the advisability of mentioning it expressly in the draft articles. On the other hand, if it was not accepted that a reservation existed implicitly by virtue of a general legal theory, the Commission was discussing a question of substance.

71. Personally, he thought it was a question of advisability, and since it had already been decided to include an express mention in two previous Conventions—the Convention on Consular Relations and the Convention on Special Missions—that trend should be continued, even though the wording might need improvement. The essential point, however, was to know whether all the members of the Commission were agreed on the substance.

72. Mr. USHAKOV, referring to the change which the Special Rapporteur had proposed to paragraph 3 for the reasons set out in paragraph 17 of his report (A/CN.4/241/Add.3, under article 25) said he thought it would be better to keep to the earlier wording, which was in line with the corresponding provision of the Vienna Convention on Diplomatic Relations.

73. Mr. EUSTATHIADES said that the principle of the inviolability of premises and the exceptions to which it might be subject were based primarily on good faith. If that was lacking, no provision would be safe from abuse. Consequently, if malice was excluded, there was nothing against making express mention of an exception in the article.

74. It would be interesting to know whether the commentary to the corresponding article of the Vienna Convention on Diplomatic Relations¹¹ had mentioned exceptional cases, in particular cases of *force majeure*. The Commission would then be able to see whether it was departing from the Vienna Convention in regard to substance.

75. His reply to those who said that diplomatic missions and permanent missions could not be given different treatment was that it was absurd to repeat what might have been a mistake in an earlier set of rules, merely for the sake of maintaining parallel texts.

76. Admittedly, the text on permanent missions should be closer to that of the Convention on Diplomatic Relations than to that of the Convention on Consular Relations or the Convention on Special Missions. But, apart from the question of parallelism of texts, even assuming that the exception in the case of *force majeure* was not implicit in the Convention on Diplomatic Relations, could

it be said that the premises of a permanent mission could be left to burn because it had been accepted that the premises of a diplomatic mission could be left to burn? If that was the question of substance, the Commission should deal with it in the draft articles by making clear provision for an exception in the case of *force majeure*. Since it was agreed that a permanent mission could be assimilated to a diplomatic mission in so far as inviolability of premises was concerned, the Commission would then be doing useful work by clarifying the position in regard to diplomatic missions at the same time.

77. He was therefore in favour of retaining the last sentence of article 25, paragraph 1. For it would be absurd if, in order to avoid the appearance of placing diplomatic, consular, special and permanent missions on the same footing, the Commission allowed the possibility of derogating from the principle of inviolability of the premises to be clouded by doubt in the case of some of those missions.

78. With regard to the drafting, the present wording was not entirely satisfactory. What was meant was that officials of the host State would endeavour, in all cases, to obtain the consent of the permanent representative, which could only be assumed in the event of a disaster. Perhaps the last half of the sentence, beginning with the words “and only”, could be dropped. The Drafting Committee should consider, in that connexion, whether it would not be better to reproduce the text of the corresponding provision in the Convention on Consular Relations, irrespective of the substance, assuming that the problem of substance was settled.

79. Mr. THIAM said that the question was whether the principle of inviolability of the premises, once proclaimed, should admit of any exceptions. In the discussion on article 17,¹² it had been argued that the rights of the host State could not be left out of account: it was even less admissible to disregard them in the present case. Article 25, as at present drafted, protected the interests both of the host State and of the permanent mission by taking into consideration not only public safety, but also the possibility of demonstrations, riots and such like. It would therefore be well to state that although the principle of inviolability was the basic principle, there could be exceptions. If members were agreed on the substance, it should not be difficult to express it in the text by improved wording.

80. Mr. ROSENNE said that there had been a long discussion at the twenty-first session, in 1969, before the Commission adopted article 25 unanimously. His own view was that the article should remain as it stood, but that the commentary¹³ should be made more concentrated and more specific; paragraph (6) in particular, needed to be substantially recast.

81. It was hardly fruitful to speculate on what the language of article 22 of the Vienna Convention on Diplomatic Relations would have been if it had been

¹¹ See *Yearbook of the International Law Commission*, 1958, vol. II, p. 95, article 20.

¹² See previous meeting, para. 10 *et seq.*

¹³ See *Yearbook of the International Law Commission*, 1969, vol. II, p. 209.

adopted ten years later. He believed, however, that the third sentence of paragraph 1 might well reflect the law as it now stood. In the last twenty years, there had been a very great change in the character of office accommodation in the major cities, including the office accommodation of permanent missions, and rules that had been appropriate for diplomatic missions in the nineteenth century were not necessarily applicable to permanent missions at the present time.

82. He fully agreed with Mr. Ago that article 25 should certainly not be modelled on article 31 of the Vienna Convention on Consular Relations. In fact, however, the text now proposed for the third sentence of paragraph 1 was not modelled on the corresponding provisions either of the Convention on Consular Relations or of the Convention on Special Missions. Both article 31, paragraph 2, of the Convention on Consular Relations and article 25, paragraph 1, of the Convention on Special Missions specifically mentioned the possibility of obtaining the consent of the head of the mission of the sending State. The present text contained no such reference, nor should any be included. Consequently, the reference to the Convention on Special Missions in paragraph (6) of the commentary should be deleted.

83. He agreed that the Drafting Committee should carefully review the drafting of article 25, especially that of the third sentence of paragraph 1. With regard to the previous sentence, it had crossed his mind that members of the fire brigade were frequently officers of the local authority and not "agents of the host State".

84. The Special Rapporteur's proposal concerning paragraph 3 was intended to be essentially of a drafting character, but it required closer examination. In some legal systems in which the English language was used, the words "attaching to those premises" could have a technical meaning which was not intended in the proposal.

85. Mr. NAGENDRA SINGH said that, on grounds of logic and precedent, he agreed that a permanent mission should be equated with a diplomatic mission. If, however, the third sentence of paragraph 1 were deleted, the resulting absolute inviolability of the premises could have absurd results. In the event of a fire, the premises might be allowed to burn while the fire brigade looked on, simply because the permanent representative could not be found. Such a result would give rise to responsibility of the host State; the permanent mission and the sending State would have a claim against the host State for having failed to protect the premises.

86. Even if the Commission were to adopt the approach of the Vienna Convention on Diplomatic Relations, the exception relating to fire or disaster should still remain. Unfortunately, the question of fire or disaster had not come to the fore till after the adoption of the Vienna Convention on Diplomatic Relations.

87. He was not impressed by arguments based on the possibility of acts in bad faith. Such acts would always be possible, whatever text was adopted.

88. Mr. YASSEEN said that the change proposed by the Special Rapporteur raised more problems than it

solved, and it would be better to keep to the text of the corresponding provision in the Vienna Convention on Diplomatic Relations, which was easier to apply.

89. Mr. AGO said that members seemed to be generally agreed on the substance and now had to find the best way of expressing what they thought. The essential point was to establish that a permanent mission to an organization and a diplomatic mission to a State were on the same level and should receive the same treatment. If the Commission believed that the exception to the principle of inviolability of the premises in cases of *force majeure*, which was also applicable to diplomatic missions, was self-evident, it should not state that exception explicitly in the draft articles, any more than it had in the Vienna Convention on Diplomatic Relations. If, on the other hand, the Commission now thought that the situation had evolved since the adoption of the Convention on Diplomatic Relations, it was right that it should supplement the relevant provision of the draft articles, provided that it clearly explained in the commentary that it was stating in writing a principle which had always existed and was not making a distinction between diplomatic missions and permanent missions.

90. Mr. CASTRÉN proposed that, in order to prevent any abusive interpretation of the text which would allow the host State to enter the premises of the mission even if the permanent representative had expressly opposed such entry, the words "to obtain the express consent of the permanent representative", at the end of paragraph 1, be replaced by the words "to obtain the opinion of the permanent representative" or "to consult the permanent representative on the matter".

91. Mr. RAMANGASOAVINA said that the Commission should decide whether it wished to keep to the implicit general rule or whether it wished to stipulate in the draft it was permissible to derogate from the principle of inviolability of the premises in cases of *force majeure*. In his opinion, that stipulation, as expressed in paragraph 1, ought to be included. Some members feared that it would lead to abuse, but every precaution had been taken, particularly in paragraph 3. Moreover, paragraph 2, which laid down the obligation of the host State not only to protect the permanent mission, but also to prevent intrusions and so on, already provided for a case in which agents of the host State should enter the premises of the mission even without the consent of the permanent representative. Hence it was not superfluous to include a supplementary clarification in order to prevent too strict an interpretation of the principle of inviolability.

92. Mr. EL-ERIAN (Special Rapporteur) said that the discussion at the twenty-first session had revealed a division among members of the Commission on the third sentence of paragraph 1.¹⁴ The proposal made by Mr. Elias might perhaps help the Drafting Committee to reach general agreement and thus avoid the Commission's having to decide the question by a vote.

¹⁴ Op. cit., 1969, vol. I, p. 213 *et seq.*

93. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to refer article 25 to the Drafting Committee, together with the proposal by Mr. Elias regarding the third sentence of paragraph 1. With regard to paragraph 3, the Drafting Committee would be requested to take special account of the comments of members.

*It was so agreed.*¹⁵

The meeting rose at 12.55 p.m.

¹⁵ For resumption of the discussion see 1112th meeting, para. 42.

1094th MEETING

Thursday, 6 May 1971, at 10.5 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Thiam, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 6; A/CN.4/241 and Add.1 to 3; A/CN.4/L.162/Rev.1)

[Item 1 of the agenda]

(continued)

ARTICLE 26

1. The CHAIRMAN invited the Special Rapporteur to introduce article 26.

2.

Article 26

Exemption of the premises of the permanent mission from taxation

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

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the host State by persons contracting with the sending State, the permanent representative or another member of the permanent mission acting on behalf of the mission.

3. Mr. EL-ERIAN (Special Rapporteur) said that the comments of governments and secretariats of interna-

tional organizations on article 26 were summarized in his sixth report (A/CN.4/241/Add.3) and followed by his replies to those comments.

4. Bearing in mind the provisions of article 36, especially sub-paragraph (a), he did not believe that article 26 could be interpreted as covering indirect taxes. With regard to the problem of the ownership of shares in housing corporations, he interpreted the provisions of the article as covering such ownership. For those reasons, he did not recommend any changes in the text.

5. Mr. CASTRÉN said he accepted article 26 as adopted by the Commission at first reading. He was grateful to the Special Rapporteur for the reassuring explanation he had given in his report (para. 15 under article 26) in reply to the question raised by the Finnish Government concerning difficulties in interpretation (A/CN.4/238/Add.1, section B.5).

6. Mr. KEARNEY said the United States Government had suggested revising article 26 by drawing on the language of article 32, paragraph 1, of the Vienna Convention on Consular Relations,¹ so that the opening words would read: "The premises of the permanent mission . . . shall be exempt . . ." (A/CN.4/238/Add.2, section B.8).

7. It was highly desirable to ensure that taxes were not levied direct on the premises of the mission; it was not sufficient merely to exempt the person who leased the premises or who held the title to the property. In the United States, at least, it was possible for the revenue authorities to place a tax lien direct on the premises. Cases of that kind had occurred in the state of New York and in the state of Connecticut. In that type of case, the mission was, of course, exempt from paying the taxes, but if it decided to sell the premises in order to buy accommodation elsewhere, the title to the property sold would not be cleared for the purchaser unless he paid the tax arrears. The purchaser would make allowance for such payment in his offer, so that the value of the property would be reduced by the amount of the tax arrears.

8. He therefore suggested that consideration be given to the suggested change of language.

9. Mr. SETTE CÂMARA said that tax exemption was a very important part of privileges and immunities, both in bilateral diplomacy and for permanent missions. The provisions of article 26 were based on those of article 23 of the Vienna Convention on Diplomatic Relations,² but the comments of governments were not sufficiently clear to solve some of the problems that arose. For example, the question of indirect taxes was not fully covered by the provisions of article 36, sub-paragraph (a), because those provisions referred to indirect taxes "normally incorporated in the price of goods or services", so that they would not cover indirect taxes which were charged separately.

10. As to the problem of ownership of shares in a

¹ United Nations, *Treaty Series*, vol. 596, p. 288.

² *Op. cit.*, vol. 500, p. 108.