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Summary record of the 1014th meeting

Topic:
Representation of States in their relations with international organizations

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1014th MEETING

Thursday, 3 July 1969, at 10.20 a.m.

Chairman: Mr. Nikolai USHAKOV

Presents: Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Ruda, Mr. Tammes, Mr. Ustor, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/218)

[item 1 of the agenda]

(resumed from the 999th meeting)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

ARTICLE 22 (General facilities)¹

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the Drafting Committee's text for article 22.

2. Mr. CASTAÑEDA (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text:

Article 22

General facilities

The host State shall accord to the permanent mission full facilities for the performance of its functions, having regard to the nature and task of permanent missions to the Organization. The Organization shall assist the permanent mission to obtain such facilities and shall accord to it those which lie within its competence.

3. The Special Rapporteur's text of article 22 (A/CN.4/218) had consisted of a single sentence. In view of the comments made by members of the Commission, the Drafting Committee had considered it better to deal with the obligations of the host State in one sentence and the obligations of the international organization in another.

4. The first part of the first sentence followed the Vienna texts² exactly. Several members of the Commission had doubted whether it was necessary to retain the second part of that sentence; the Drafting Committee had decided to do so in order to emphasize the fact that the nature and tasks of diplomatic missions and permanent missions might differ. There were small permanent missions to international organizations of a technical character, which were very different from the permanent missions to major international organizations such as the United Nations. The Drafting Com-

mittee had, however, thought it necessary to put the words "permanent mission" in the second part of the sentence in the plural in order to make it clear that, although there might be differences between permanent missions according to the international organization to which they were accredited, there were none between permanent missions to the same organization.

5. The second sentence of article 22 imposed two kinds of obligation on the organization. First, it had to assist the permanent mission in obtaining the facilities which the host State was required to accord to it and which the organization itself was unable to accord; secondly, it had to accord certain facilities itself, but they were of the same kind as those accorded by the host State. That difference was brought out by the use of the words "which lie within its competence".

6. The text before the Commission had been adopted by the Drafting Committee unanimously.

7. Mr. CASTRÉN said that the new text was an improvement on the previous draft. The Drafting Committee had been right to distinguish between the obligations of the host State and those of the organization; it had also been right to put the verb "accorder" in the French text in the present tense and to insert the word "full" before the word "facilities", as had been done in the Vienna Conventions.

8. Nevertheless, there were still some drafting changes that could be made. First, the words "to the Organization" at the end of the first sentence seemed unnecessary, since the whole draft was concerned with permanent missions to international organizations.

9. Secondly, it was not possible, at all events in French, to speak of facilities which lay within the competence of an organization; it was the right to accord such facilities which lay within the competence of the organization. The second sentence of the article might therefore be reworded on the following lines: "The Organization shall, within its competence, assist the permanent mission in obtaining such facilities or shall accord them to it". An advantage of that wording would be that the qualification concerning competence would refer also to the assistance which the organization gave the sending State to enable it to obtain the facilities which the host State was required to provide.

10. Mr. NAGENDRA SINGH said he fully supported the Drafting Committee's text of article 22, which was a distinct improvement on the previous version. As he saw it, there were five tests of good drafting where the present draft articles were concerned. The first was due regard for the text of the 1961 Vienna Convention on Diplomatic Relations; the second was due regard for the draft articles on special missions, even though they had not yet been adopted as a convention; the third was that the substance of the subject under consideration should have an impact on the drafting, so that changes might have to be made to adapt the Vienna Convention text to the requirements of permanent missions; the fourth was that the language should be clear and unambiguous; and the fifth was that the different language versions should be identical in meaning.

¹ For previous discussion, see 993rd and 994th meetings.

² See United Nations, *Treaty Series*, vol. 500, p. 108, article 25, and. vol. 596, p. 286, article 28.

11. All those requirements had been met in the text now submitted for article 22, except perhaps the last. He found the English version perfect; it did not suffer from the inadequacies of the French version pointed out by the previous speaker, which would have to be looked into.

12. Mr. YASSEEN said that the Drafting Committee had been right to distinguish between the obligations of the host State and the obligations of the organization. But it was not clear to him what the word "nature" meant in that context: all permanent missions were of the same nature. Again, the words "for the performance of its functions" seemed to him to express, in advance, the idea contained in the last part of the first sentence. If the last part of that sentence was to be retained, at least the word "nature" should be deleted.

13. Mr. USTOR said that since the Drafting Committee, of which he was a member, had adopted the text now under discussion, it had occurred to him that an improved formulation could be found for both article 22 and article 23. The general facilities mentioned in article 22, and the special facilities in respect of accommodation mentioned in article 23,³ were essentially for the host State to grant. As to the international organization concerned, the permanent mission could request it to assist in obtaining facilities from the host State; it could also request it to accord any facilities which were within its competence. That idea was well expressed in the second sentence of article 22, but in article 23 it was only mentioned in paragraph 2.

14. The whole presentation could perhaps be improved by confining the provisions of article 22 to the first sentence and transferring the second sentence to a new article 23 *bis*, to be placed after article 23, and to be drafted on the following lines:

"The Organization shall assist the permanent mission to obtain the facilities mentioned in articles 22 and 23 and shall accord to it those facilities which lie within its competence".

15. The provisions of that article would govern those of both the preceding articles, and the reference to the organization could be dropped from paragraph 2 of article 23.

16. Mr. KEARNEY said that article 22 as now drafted solved most of the problems raised during the Commission's previous discussion. In order to remove a certain contradiction between the first and the second sentences, however, he suggested that the words "full facilities for the performance of its functions", which had been taken from the 1961 Vienna Convention on Diplomatic Relations, be replaced by the language originally used by the Special Rapporteur: "the facilities required for the performance of its functions". The present text implied that the host State would be able to grant full facilities, or all ("*toutes*") facilities, as stated in the French version; that statement was not consistent with the second sentence, which stated that

the granting of some facilities lay within the competence of the organization.

17. The point raised by Mr. Yasseen regarding the word "nature" in the last clause of the first sentence could be met by substituting some such word as "purpose". The clause itself was useful and should be retained.

18. Mr. BARTOŠ said he had no objection to the word "full", in the first sentence of the article, being deleted in order to avoid contradiction with the second part of the sentence, provided that the words "the necessary" were inserted in its place.

19. The reference to the "nature" of the permanent mission was not essential, but he saw no reason to criticize it and consequently had not opposed either its retention or its deletion. Permanent missions to an international organization were not always unconnected with the diplomatic mission proper; it often happened that an embassy performed the functions of a permanent mission to an international organization or that the head or a member of a permanent mission to an international organization represented a State in several international organizations. Facilities were accorded to the permanent mission in accordance with its status; that was the sense of the Special Rapporteur's proviso about the nature of the mission. If it was not desired to state the proviso expressly it could be deleted, as Mr. Yasseen had proposed, but the idea should then be explained in the commentary.

20. The second sentence of article 22 expressed two very different ideas. First, the organization acted as a sort of intermediary between the permanent missions and the host State; there, the article merely gave general application to a rule which already existed in practice. The second part of the sentence showed that the international organization could also itself accord certain facilities to permanent missions. For instance, organizations had libraries or laboratories which they placed at the disposal of members of permanent missions. It was true that article 22 expressed that idea in general terms whereas article 23 gave it specific application.

21. The Headquarters Agreement concluded between the United Nations and the United States of America provided that, in the event of armed conflict between the United States and States which sent representatives or observers, or any of their nationals in other capacities, to the Organization, the Organization was required to provide them with accommodation on its own premises; but there had not yet been any case in which that clause had been applied. Indeed, during the Korean war, representatives of the Chinese volunteers had been permitted by the United States Government to reside at the Waldorf Astoria Hotel in New York. There might be other examples. It was therefore useful to make it quite clear that only the facilities lying within the competence of the organization were accorded directly by the organization to permanent missions.

22. Mr. RAMANGASOAVINA said that the proposed new text of article 22 was a definite improvement on the earlier version, which seemed to confuse the

³ See next meeting, para. 2.

facilities accorded by the host State with those accorded by the organization. The Drafting Committee had found a form of words which clearly distinguished between the two, as the Commission had desired.

23. The second part of the first sentence was not unnecessary. The task of a permanent mission was not the same as that of a diplomatic mission, consular mission or special mission. Moreover, the two parts of that sentence were complementary, especially if the words "full facilities" were replaced by the words "the facilities required", as had been suggested. As to the second sentence, it was true that the words "*qui relèvent de sa compétence*" in the French version did not quite meet the case. The second part of the second sentence might be reworded to read "*et lui accorde celles-ci dans la limite de sa compétence*". That wording would have the additional advantage of concordance with the English word "within". To bring the French version still closer to the English, the verbs might be put in the future tense.

24. Mr. TSURUOKA said he thought Mr. Kearney's proposal might improve the existing text by removing some of its ambiguity.

25. The second part of the first sentence was not essential, but there was no objection to keeping it, as the position would then be clearer in the cases mentioned by Mr. Bartoš. He had no particular objection to the word "nature", though the words "for the performance of its functions" could, strictly speaking, be regarded as sufficient, since what followed merely clarified the meaning of the first phrase.

26. The second sentence dealt with the facilities accorded by the organization itself. In his view, those facilities were not of the same kind as the facilities which the host State accorded to the permanent mission, and the proviso regarding competence was therefore justified. He would agree, however, to the sentence being amended as suggested by Mr. Ramanasoavina.

27. The CHAIRMAN, speaking as a member of the Commission, said that article 25 of the Vienna Convention on Diplomatic Relations and article 28 of the Vienna Convention on Consular Relations were nearly identical. But article 22 of the present draft, which was the corresponding provision, had been worded more restrictively. Since it had been agreed that permanent missions should, in general, enjoy the same privileges and immunities as diplomatic missions, he saw no reason why a distinction should be made with regard to facilities, which were a minor matter.

28. He did not see how a distinction could be made between missions on the basis of their nature. Permanent missions to international organizations, like diplomatic and consular missions, were of a representative character, and that was the reason for the privileges and immunities granted to them. Again, although the functions of a permanent mission were described in article 7 of the draft,⁴ no article referred to the "task"

of such a mission. The function of all permanent missions to international organizations of universal character, to which the articles were to apply by virtue of article 2,⁵ was the same: it was to represent member States. Consequently, the phrase "having regard to the nature and task of permanent missions", which erroneously implied that there could be differences between permanent missions according to the organization to which they were accredited, should be deleted. However the phrase was worded, it was bound to weaken the force of the rule that the receiving State was required to provide full facilities for the performance of the mission's functions. It would be better to keep to the text of the Vienna Conventions, including the word "full".

29. He did not see why the words "permanent mission" should be in the singular in the first part of the first sentence and in the plural in the second part.

30. With regard to the second sentence, although the host State was required to accord to the permanent mission full facilities for the performance of its functions, the organization was not automatically obliged to assist the permanent mission. It might be better to add the words "where necessary", as in paragraph 2 of article 23.

31. The word "facilities" was rather vague. His understanding was that it included accommodation; if so, paragraph 2 of article 23 was perhaps unnecessary. He did not object to the proviso on competence, whether the existing wording or some other wording was used; but if it was retained it would be necessary to specify in the commentary what facilities were accorded by the organization itself.

32. As he had pointed out during the first reading, it was nowhere stated that the organization must assist the sending State in obtaining the privileges and immunities provided for;⁶ yet that was a much more important matter than facilities. He had therefore suggested that the Special Rapporteur should include a separate article on the subject. That article might read "The organization shall, where necessary, assist the sending State and its permanent mission in obtaining the privileges, immunities and facilities provided for by the present articles". His suggestion had not been taken up at the time, but he still thought such an article would be useful; the obligation of the organization would be moral rather than legal. If his suggestion were accepted, the second sentence of article 22 would have to be amended accordingly.

33. Mr. BARTOŠ reminded members that before leaving Geneva the Special Rapporteur had made a point of emphasizing, for the benefit of the future Drafting Committee, the importance of the words "having regard to the nature and task of permanent missions to the Organization". He had explained that their purpose was to stress the difference between diplomatic missions proper, whose task was essentially political, and missions to specialized international organizations,

⁴ Yearbook of the International Law Commission, 1968, vol. II, Report of the Commission to the General Assembly, chapter II, section E.

⁵ *Ibid.*

⁶ See 994th meeting, paras. 33-35.

whose task might be highly technical, as it was in the case of missions to organizations dealing with medical, chemical, meteorological and other matters.⁷ The facilities accorded would necessarily differ in the two cases, depending on the nature of the organization.

34. The Drafting Committee had deliberately put the word "Organization" in the singular, with a capital "O", so as to make it clear that all missions to one particular organization, of whatever kind, should receive the same treatment.

35. Mr. ALBÓNICO proposed that, in the first sentence of article 22, the clause "having regard to the nature and task of permanent missions to the Organization" be deleted, and that in the second sentence, the word "also" be inserted after the words "The Organization shall". He further proposed that, in the Spanish version, the word "*dependen*" be replaced by the word "*sean*", since the facilities in question belonged to the Organization, they were not dependent on it.

36. Mr. CASTAÑEDA (Chairman of the Drafting Committee) said that the Drafting Committee could hardly take the place of the Special Rapporteur, who knew better than anyone else the underlying reasons for his choice of certain terms. He (Mr. Castañeda) could, however, give his opinion on those points raised during the discussion on which agreement had been reached in the Drafting Committee.

37. Mr. Castrén had asked whether it was necessary to specify at the end of the first sentence that the permanent missions were permanent missions "to the Organization". As in article 1 (c) of the Vienna Convention on Diplomatic Relations, the word "Organization" as used in article 22 meant "the organization in question". The intention was to prevent any difference in treatment between the missions to a single organization; hence those words served a useful purpose and should be retained.

38. Mr. Castrén had also suggested that the words "those which lie within its competence", at the end of the second sentence, be deleted and that the words "within its competence" be inserted at the beginning of the sentence, after the words "The Organization shall". But if that were done, the sentence could be interpreted as meaning that the organization must provide facilities other than those within its competence, whereas the organization was only required to assist the missions in obtaining the facilities within its competence. He would, however, be prepared to accept that suggestion, provided the Drafting Committee could find satisfactory wording for the last part of the sentence.

39. Several members had criticized the use of the phrase "having regard to the nature and task", but the majority seemed to be in favour of retaining it.

40. It was true, as the Chairman had pointed out, that all missions had the same essential function, but the reference in the article was to specific tasks and those varied from mission to mission; the facilities

granted to missions should therefore vary accordingly. To Mr. Tsuruoka he would reply that the purpose of the phrase was to bring out the difference between permanent missions and diplomatic missions.

41. He agreed that the word "nature" was not very felicitous and that the Drafting Committee should find something better, it being understood that the meaning should be "purpose", as Mr. Kearney had said. It was the different purposes of the organizations that determined the kind of facilities to be accorded. It was for the Commission to decide whether it preferred to use the word "nature" or the word "purpose".

42. He had no objection of substance to Mr. Ustor's proposal for a new article to be inserted after articles 22 and 23, except that the new article would refer to two very different articles and would tend to complicate the convention. However, he was quite willing to follow the Commission's wishes on that point.

43. Like Mr. Kearney, he thought it would be preferable to replace the words "full facilities" in the first sentence of article 22, by the words "the facilities required", which had been used in the Special Rapporteur's original text. There was no reason to follow the text of the Vienna Convention exactly at that point, since it had been departed from a few words further on by the addition of the phrase "having regard to the nature and task of permanent missions to the Organization". Moreover, the text as it stood suggested that the host State was obliged to accord all kinds of facilities to permanent missions, whereas the organization need only accord certain facilities.

44. According to the information he had been able to obtain regarding the rendering of the words "shall accord" by the word "*accorde*", in the French version—which Mr. Ramangasoavina wished to replace by "*accordera*"—French legal texts were usually drafted in the present indicative; the future tense was only used in military orders.

45. The Chairman had proposed the addition of a new article stating that the organization must assist the sending State in obtaining privileges, immunities and facilities for its permanent mission. Subject to the Commission's views he (Mr. Castañeda) thought it might be enough to strengthen the second sentence of article 22, since it was an article of a general character, by saying, for example, that the organization "shall assist the permanent mission in obtaining such facilities and privileges and immunities".

46. The Chairman had also pointed out that it was contradictory to put the word "mission" in the singular at the beginning of the first sentence and in the plural at the end. The reason was that the last part of the sentence referred not to a single mission, but to all the missions accredited to the organization in question; the idea was to prevent any difference in treatment between missions to one and the same organization.

47. He could accept the Chairman's suggestion that the words "where necessary" be inserted after the words "The Organization shall" in the second sentence.

48. He did not consider, however, that the word "also" should be inserted before the word "assist" at

⁷ *Ibid.*, para. 48.

the beginning of the second sentence, since the first and second sentences did not refer to the same thing.

49. The CHAIRMAN, speaking as a member of the Commission, said he agreed that instead of adding a new article, as he had proposed, the second sentence of the article should be amended on the lines he had suggested.

50. Mr. EUSTATHIADES said that, although he had no objection to the substance of that proposal, he did not think it was desirable to include in article 22 the idea that the organization must ensure that privileges and immunities were accorded. The article was of a general character and provided an introduction to the next article, which was more specific. The Chairman's proposal could be inserted later in the draft.

51. There was no justification for including the phrase "having regard to the nature and task of permanent missions to the Organization". Although it was used in article 22 of the draft on special missions, where it had been included for the first time—it did not appear in the corresponding articles of the Vienna Conventions on Diplomatic and Consular Relations—the reasons which had led the Commission to use the words in that instance did not apply to permanent missions. The Commission had then been referring to the particular characteristics of special missions, their task and their field of activity, which were clearly defined for each special mission. On that point, paragraph (2) of the commentary on article 22 of the draft on special missions, and articles 2 on 3 of that draft, were instructive.⁸ Permanent missions, on the other hand, all had the same characteristics and the same functions. Since their nature and tasks did not differ, the phrase was inappropriate in the present draft.

52. Mr. YASSEEN said that he too was against retaining that phrase, since the article provided that the host State should accord to the permanent mission not all facilities of whatever kind, but full facilities for the performance of its functions. There was therefore no need for that additional phrase, since the task of the mission could not go beyond its functions.

53. The Chairman's proposal was incomplete, for, while the organization was required to assist permanent missions in obtaining certain facilities from the host State, it was also required to provide them with certain facilities. The idea of those two obligations should be retained. In order to avoid having to repeat it in every article, it might be possible to include in a single article all aspects of the assistance which the organization was required to give to permanent missions.

54. Mr. USTOR said he supported the Chairman's amendment to the second sentence of article 22, since he fully agreed that the organization should have some say in the privileges and immunities to be accorded to the permanent mission and its members.

55. He noted, incidentally, that the Chairman's amendment did not include any reference to the "members" of the permanent mission. It was obviously the legal right

and duty of the organization to take care of the privileges and immunities of both the permanent mission and its members, and in view of the importance of that matter, he agreed with Mr. Yasseen that a separate article should be devoted to it.

56. Mr. BARTOŠ said he approved of the substance of the proposals made by the Chairman and Mr. Ustor.

57. With regard to the drafting, article 22 should have two paragraphs. Paragraph 1 would provide that the host State and third States were required to accord to sending States and to their permanent missions the privileges and immunities provided for in the articles. Paragraph 2 would be worded as proposed by the Chairman. The article would be followed by a new article on facilities in general, for it was more logical to start with the obligation of States to accord privileges and immunities, and then to say the organization was required to ensure that those privileges and immunities were accorded.

58. The CHAIRMAN suggested that article 22 be referred back to the Drafting Committee, on the understanding that it would get in touch with the Special Rapporteur and prepare alternative versions taking account of the comments made during the discussion.

*It was so agreed.*⁹

The meeting rose at 1 p.m.

⁹ For resumption of the discussion, see 1030th meeting, para. 53.

1015th MEETING

Monday, 7 July 1969, at 3.15 p.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Elias, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Ustor.

Relations between States and international organizations

(A/CN.4/218)

[Item 1 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (continued)

ARTICLE 23 (Accommodation of the permanent mission and its members)¹

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the Drafting Committee's text for article 23.

⁸ See *Yearbook of the International Law Commission, 1967*, vol. II, pp. 359 and 348-349.

¹ For previous discussion, see 993rd and 994th meetings.