

Document:-  
**A/CN.4/SR.1021**

**Summary record of the 1021st meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
**1969, vol. I**

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wording it, but that was hardly important in a title, which only had to suggest the content of the article.

83. With regard to the substance, he entirely agreed with Mr. Yasseen. Laws on nationality were always brought into operation by a fact or an act. It would be better, however, to keep to the wording of the Vienna Protocol and reproduce the gist of the discussion in the commentary. When Governments had sent in their comments, the Commission could see whether the wording need be changed.

84. Mr. ROSENNE said that Mr. Ustor's suggestion for the title was a good one, but perhaps a little too short; a better wording might be: "Exemption from the application of the nationality legislation of the host State".

85. With regard to the substance of the article, while appreciating the scruples of certain members, he considered that it was drafted with reasonable correctness; the word "solely", in particular, clearly indicated that it was meant to operate as a kind of reservation. Moreover, as to the possible marriage of a daughter of a member of the permanent mission to a national of the host State, it might be asked whether by virtue of that marriage she ceased to be a member of the household of the exempted person.

86. Mr. KEARNEY said there appeared to be a fundamental weakness in article 38, since in the hypothetical case of the marriage of a daughter of a member of the permanent mission to a national of the host State, Mr. Elias and Mr. Yasseen had interpreted it in entirely different ways. As Mr. Rosenne had pointed out, the interpretation of the article hinged on the one word "solely", since in the absence of that word, the legal situation would be quite different. Consequently, while appreciating the fact that the article was based on the corresponding provision of the Optional Protocol to the Vienna Convention on Diplomatic Relations, he wondered whether it was not susceptible of various interpretations and therefore in need of some correction.

87. Mr. ALBÓNICO proposed that article 38 be redrafted to read:

"The nationality of members of the permanent mission and of their families forming part of their household who are not nationals of the host State shall not undergo any change solely by the operation of the law of that State except by an express declaration to the contrary".

88. The CHAIRMAN, speaking as a member of the Commission, said that, when the situation was similar, he was in favour of keeping to the wording that had already been adopted. Article 38 was worded, *mutatis mutandis*, like article II of the 1961 Vienna Protocol. That article certainly had the meaning that the Special Rapporteur gave to article 38 of his draft. If the Commission wished to keep to that interpretation, therefore, it should not alter the wording. It should alter the text only if it had good reason to do so.

89. With regard to the title, he assumed that Mr. Ustor would have no objection to using the term "nationality

legislation" rather than "nationality laws" in the English version, since the word "legislation" had already been used in the title of article 34, which the Commission had just adopted. Moreover, it had not been thought necessary to add the words "of the host State" in the titles of previous articles; the title was clear enough without that detail.

90. Mr. YASSEEN said that article 38 raised a problem of law-making policy which concerned the Commission's work as a whole. The Commission should not depart from the Vienna text when dealing with similar situations. To use a different text might give the impression that the Commission had adopted a different solution. The wording of the Vienna Protocol might perhaps not be very felicitous, but it was agreed that it gave a clear idea of what was intended.

91. Mr. ROSENNE said he now thought that the Commission should retain the title adopted by the Special Rapporteur, which had been based on the Optional Protocol to the Vienna Convention on Diplomatic Relations. Moreover, it should be remembered that the words "the operation of the law of the host State" were not necessarily limited to the nationality laws of the host State. The Commission should not take a hasty decision, but should reflect further on the article until the next meeting.

92. The CHAIRMAN, speaking as a member of the Commission, pointed out that according to article 1, sub-paragraph (f),<sup>14</sup> the expression "members of the permanent mission" meant "the permanent representative and the members of the staff of the permanent mission". According to the definition in sub-paragraph (g) of the same article, the "members of the staff of the permanent mission" comprised all the members of the staff except persons in the private service of members. Hence those were the persons to whom article 38 applied. There was no difference between it and the Vienna Protocol.

The meeting rose at 6.10 p.m.

<sup>14</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, Report of the Commission to the General Assembly, Chapter II, section E.

## 1021st MEETING

Wednesday, 16 July 1969, at 10.10 a.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Albónico, Mr. Bartoš, Mr. Cartañeda, Mr. Castrén, Mr. Elias, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Rosenne, Mr. Ruda, Mr. Tammes, Mr. Ustor, Mr. Yasseen.

## Co-operation with other bodies

[Item 5 of the agenda]

(resumed from the 1010th meeting)

### STATEMENT BY THE OBSERVER FOR THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

1. The CHAIRMAN welcomed Mr. Pirzada, observer for the Asian-African Legal Consultative Committee, and invited him to address the Commission.
2. Mr. PIRZADA (Observer for the Asian-African Legal Consultative Committee) said that his Committee wished to express its deep appreciation of the contributions made by the International Law Commission in various branches of international law. It was also grateful to the Commission for having sent one of its members, Mr. Tabibi, as an observer to the Committee's tenth session which had been held at Karachi at the beginning of the year.
3. The body known as "The Asian Legal Consultative Committee" had been constituted in November 1956, but in April 1958 its name had been changed to "The Asian-African Legal Consultative Committee" and countries of the African continent had begun to participate. The Committee served as an advisory body of legal experts from the two continents and provided a forum for the exchange of views and information on legal matters of common concern to member Governments. It had discussed and formulated principles on such topics as the privileges and immunities of diplomatic envoys, the extradition of offenders, free legal aid, reciprocal enforcement of foreign judgements, arbitral procedure and the legality of nuclear tests.
4. At its recent session at Karachi, the Committee had devoted a considerable amount of time to the Commission's draft on the law of treaties and had attempted to reach agreement on certain important articles in the interests of Asian-African solidarity. At the Vienna Conference, notwithstanding the difficulties encountered over the most controversial articles, namely, articles 5 *bis* and 62 *bis*,<sup>1</sup> the members of the Committee, and in particular Mr. Elias of Nigeria, had made an important contribution.
5. At the same session, the Committee had also considered the subject of the rights of refugees and had unanimously adopted a resolution stressing the need for alleviating the sufferings of Palestine Arab refugees and other displaced Arabs. Previously, at its session at Bangkok, the Committee had adopted a report on the rights of refugees and had agreed to reconsider, at its next session, the Bangkok principles concerning the treatment of refugees.
6. Another topic considered at Karachi had been the law of international rivers, with particular reference to the needs of the Asian-African countries. An inter-sessional sub-committee had been appointed to study and report on that topic at the Committee's next session.
7. The membership of the Committee was increasing: Jordan had now joined, while Kenya and Nigeria intended to submit their applications. The presence at the Karachi session of observers from Iran, Malaysia, Morocco, Philippines, Sierra Leone, Singapore and Turkey had provided further evidence of the growing interest in the work of the Committee.
8. The Committee had been gratified to note that the Asian-African viewpoint was adequately reflected in the Commission's formulation of the legal principles of the topics it was considering, and that its recommendations provided sound solutions when divergent views prevailed in different regions of the world. The Committee was taking a particular interest in such items on the Commission's present agenda, as relations between States and international organizations, succession of States and Governments, and State responsibility. He was confident that the deliberations and reports of the Commission would be of immense value to the Committee, which, as in the past, would look forward to welcoming an observer from the Commission at its next session, which was to be held in Ghana.
9. Mr. NAGENDRA SINGH, after thanking Mr. Pirzada for his interesting statement, said that he had presided with distinction over the Committee's session at Karachi, where his spirit of co-operation and understanding had won the admiration of all members.
10. He had already referred at an earlier meeting to the service Mr. Tabibi had rendered the Commission by attending the Committee's tenth session as an observer.<sup>2</sup> It was important to maintain the closest co-operation between the Commission and all institutions which were responsible, on a regional basis, for the codification and progressive development of international law. He suggested that the Commission should thank the Committee for the spirit of co-operation it had shown in sending its Chairman in person to the present session.
11. Mr. YASSEEN said he was glad to welcome Mr. Pirzada, the Chairman of the Asian-African Legal Consultative Committee, who was an eminent jurist and a former Minister for Foreign Affairs of Pakistan. There was a functional link between the Asian-African Legal Consultative Committee and the International Law Commission, for under its statute the Committee examined all the items on the Commission's agenda in order to collaborate with it in promoting the codification and progressive development of international law.
12. The Committee spared no effort to ensure that the new realities of international life and the legitimate needs of countries which had recently achieved independence were taken into consideration in the codification and progressive development of international law. It arranged to be represented at most meetings of bodies concerned with that work, and was to be congratulated on doing so.
13. Mr. RAMANGASOAVINA said he would like particularly to thank the Asian-African Legal Consultative Committee, through its Chairman, for its hospitality to the representative of his country at the

<sup>1</sup> See *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference*, document A/CONF.39/15.

<sup>2</sup> See 1010th meeting, para. 28.

Committee's last session. The Committee was performing a valuable service by bringing together jurists from an actively developing world in which age-old customary law confronted Roman and English law. Within the great juridical family that was growing up on all five continents, the Asian-African Legal Consultative Committee was playing an important part as the representative of the "third world". It had demonstrated that most effectively at the Vienna Conference on the Law of Treaties.

14. Mr. ELIAS said that although his country was not yet a member of the Asian-African Legal Consultative Committee, it had been represented at its meetings by an observer on two occasions. At the last session, his Government's representative had been authorized to inform the Committee that it intended to apply for membership. He was deeply appreciative of the contribution made by the Committee to the success of the recent Vienna Conference on the Law of Treaties.

15. Mr. ALBÓNICO said he could not exaggerate the importance of the contribution made by such regional legal institutions as the Asian-African Legal Consultative Committee and the Inter-American Council of Jurists towards meeting the needs of the countries of the third world. Those bodies were concerned with stating the basic principles of international law on such vital problems for the developing countries as the self-determination of nations, sovereignty over natural resources, non-intervention in the internal affairs of States, economic co-operation and world peace and security. Although representing different legal systems, they placed themselves above all political considerations and tended to complement each other. He wished the Committee every success in its future work.

16. Mr. RUDA said he wished to associate himself with the thanks expressed by previous speakers to Mr. Pirzada for his statement, and through him to the Asian-African Legal Consultative Committee for its excellent co-operation with the Commission in making the Vienna Conference on the Law of Treaties a success.

17. Mr. USTOR said he had heard with great interest that the membership of the Committee was steadily increasing. He hoped that in the not too distant future it would embrace nearly all the countries of the Asian and African continents and thus be in a position to make a still greater contribution to the work of the Commission.

18. The CHAIRMAN thanked Mr. Pirzada for his statement and said the Commission had had an opportunity to appreciate the value of the Committee's work when it had considered Mr. Tabibi's report on the Committee's tenth session.<sup>3</sup> The Commission had been especially glad to note that it had been due to the Committee's efforts that the Vienna Conference on the Law of Treaties had managed to settle a number of important and delicate questions, thereby achieving success. The Commission welcomed its close and valuable links with the Committee, which were essential

to the successful codification and progressive development of contemporary international law. Those links should be maintained and become even closer.

19. Mr. TESLENKO (Deputy Secretary to the Commission) said he had received a letter from Mr. Tabibi regretting his inability to be present to welcome Mr. Pirzada. Mr. Tabibi went on to say that the tenth session of the Asian-African Legal Consultative Committee had been a most important one, because it had been devoted almost entirely to discussion of the draft convention on the law of treaties, with a view to ensuring the success of the second session of the Vienna Conference. It was as a result of that work that the Vienna Conference had finally surmounted its difficulties and that the world now had an important Convention before it.

#### Relations between States and international organizations

(A/CN.4/218 and Add.1)

[Item 1 of the agenda]

(resumed from the previous meeting)

#### DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (continued)

#### ARTICLE 38 (Laws of the host State and nationality) (continued)

20. The CHAIRMAN invited the Commission to continue consideration of article 38 as proposed by the Drafting Committee. At the previous meeting Mr. Rosenne had suggested that the Commission should reflect further on the problems raised by the article and its title. He had further suggested that, if the Commission meant to keep to the text of the 1961 Vienna Protocol,<sup>4</sup> it would perhaps be preferable to use the title proposed by the Special Rapporteur, since it was copied from the title of the Protocol.

21. Mr. RAMANGASOAVINA said that at the previous meeting he had suggested a completely different wording which he thought would better express the idea underlying the article. However, after examining the texts of earlier conventions and draft conventions anew, he had decided it would be better to keep to the wording and title already adopted in the 1961 Vienna Protocol concerning acquisition of nationality. He therefore supported the text and title proposed by the Special Rapporteur (A/CN.4/218).

22. Mr. CASTAÑEDA said he appreciated the concern of those members who wished to follow the Vienna Protocol as closely as possible. The title raised a special problem, however. The Protocol was entitled: "Optional Protocol . . . concerning Acquisition of Nationality". To use only the final words, "Acquisition of Nationality", as the title of an article which in fact dealt with precisely the opposite of acquisition of nationality would

<sup>3</sup> See 1010th meeting, paras. 24-42.

<sup>4</sup> United Nations, *Treaty Series*, vol. 500, p. 224.

produce a very different result, at least so far as the spirit of the article was concerned.

23. Mr. Rosenne and Mr. Ramangasoavina might perhaps be willing to accept the wording "Exemption from the laws of the host State concerning acquisition of nationality". That kept the words "acquisition of nationality", but at the same time included the idea underlying the proposal made by Mr. Ustor at the previous meeting.<sup>5</sup>

24. Mr. KEARNEY said that the problem of the title of the article was not as important as that of its substance. There had been sufficient discussion at the previous meeting to show that the phrase "solely by the operation of the law of the host State", even though sanctified by article II of the Optional Protocol to the Vienna Convention on Diplomatic Relations was ambiguous and open to varying interpretations. He therefore suggested that it be amended to read something like "solely as a result of their presence in the host State".

25. In addition to the presence in the host State of members of the permanent mission and their families, there were other acts of a voluntary nature which might give rise to the acquisition of nationality. He did not see why the effect of those acts with respect to the members of permanent missions should not be clarified. In any case, the test should be a factual one rather than the abstract and difficult test of what would happen solely by the operation of the law of the host State.

26. Mr. NAGENDRA SINGH said there appeared to be general agreement in the Commission that the article as it stood was ambiguous and capable of improvement. If the Commission had a clean slate to write on, it could undoubtedly produce an article which would be more precise than article II of the Optional Protocol, but as it had not, any departure from the original Vienna text would confront the Commission with many dangers and difficulties. He therefore proposed that the Commission retain the present text and title of the article, but also prepare a detailed commentary in which the present ambiguity of both would be made fully evident. In particular, it should be made clear in the commentary that the mere residence of a member of a permanent mission in the host State did not affect his nationality.

27. Mr. USTOR said he agreed that the present text was not articulate and gave rise to difficulties of interpretation. However, he did not think that Mr. Kearney's proposal would improve it, since it might be asked whether the reference to the "presence" of the members of the permanent mission and their families in the host State would cover the case of the birth of children to those persons. He therefore thought, for the reasons given by Mr. Yasseen and Mr. Nagendra Singh, that the best solution was to retain the present text, but to append a detailed commentary explaining how nationality would be affected by the different cases of birth and marriage, for example, thus giving Governments an opportunity to express their views.

28. With respect to the title, he proposed that it read: "Exemption from laws concerning acquisition of nationality", without any reference to the host State.

29. Mr. YASSEEN said he favoured the retention of the text proposed by the Special Rapporteur, because any change might raise a number of difficulties.

30. The title proposed by Mr. Castañeda would have the advantage of clarifying the meaning of the article, by showing not only that there was no question of excluding the operation of all laws on nationality, but above all that it remained possible to acquire nationality voluntarily. An exemption could apply only to what was imposed on a person, not to the rights he enjoyed, and as far as the substance was concerned, it was fully agreed by all that the sole purpose of the provision was to protect those concerned against the imposition of nationality.

31. Mr. ALBÓNICO said he agreed with Mr. Kearney that the article was obscure. It did not, however, purport to solve all the problems which could arise in connexion with the members of permanent missions and their families, such as those connected with birth and marriage, since legislation on those matters naturally varied from State to State. The essential point was that the persons in question should not undergo any change of nationality merely as a result of their residence in the host State. He proposed, therefore, that the final clause be amended to read: "shall not, merely by their residence in the territory of the host State, acquire the nationality of that State". The title proposed by the Special Rapporteur should be retained.

32. Mr. ELIAS said it must be admitted that article 38 was unsatisfactory. The Commission might decide to retain it merely for the sake of conformity with the Optional Protocol, but article II of the Protocol was certainly very ambiguous, as was often the case with articles hastily prepared at an international conference. As a lawyer, he had the utmost respect for legal precedent, but if the Commission found the present text unsatisfactory, it ought to say so. Mr. Rosenne had given an interpretation of the article which made sense, but in his opinion that interpretation was not immediately apparent from the text. In any case, if the Commission did decide to retain the present text, he agreed with Mr. Yasseen that it should add a copious commentary pointing out just where it was in need of revision.

33. Mr. ROSENNE said that all members agreed that the present text was inadequate and ambiguous; attention had also been rightly called to the danger of overcharging individual words in order to arrive at some sensible meaning.

34. He did not recall all the circumstances in which the Commission had dealt with the subject when preparing its draft articles on diplomatic relations some ten years before. However, the mere fact that the 1961 Vienna Conference had not included the relevant article in the text of the Convention itself, but had relegated the subject to an Optional Protocol, seemed to indicate that it had had some difficulty with it.

<sup>5</sup> See 1020th meeting, para. 73.

35. He thought that the Commission should clarify the relations, if any, between article 38 and article 44, on the obligation to respect the laws and regulations of the host State.

36. He agreed with Mr. Elias that the Commission should not be bound by the precedents of a conference held ten years ago, even if the subject-matter was substantially the same, if it could improve the text in the direction desired by Governments. What that direction might be, however, was not yet known. At the present juncture, the Commission was still engaged in a first reading of the article and was not in a position to put forward any alternatives. Once the matter had been discussed in the Sixth Committee in the light of the records of the Commission's present session, the comments of Governments should be forthcoming and the Commission should be able, at the second reading, to propose an improved text.

37. With regard to the title, in some legal systems the title of a treaty was excluded for purposes of interpretation while in other systems the reverse was true. The Commission should be careful, however, not to include any new elements in the title which might affect the interpretation of the article. He was prepared, therefore, to support Mr. Ustor's proposal.

38. The CHAIRMAN, speaking as a member of the Commission, said that Mr. Kearney's and Mr. Albónico's proposals differed in form but were very similar in substance. He did not think the changes they proposed were felicitous.

39. It was not just presence in the territory of the host State which attracted the attribution of nationality; that arose by the operation of the law. Whereas the presence of the person concerned in the territory of the host State was always necessary for the law of the host State to produce its effect, that effect might consist in the attribution of the nationality of the host State on legal grounds unconnected with presence in the territory. For instance, if a woman national of a host State in which nationality was based on *jus sanguinis* married a diplomat and gave birth to a child outside the territory of that State, once the child set foot on that State's territory, it would automatically become a national of that State by the operation of its law; but that would be because its mother was a national of the host State and not solely by the operation of the law of the host State. The wording of the Vienna Protocol was therefore more satisfactory and he, at any rate, found it perfectly clear.

40. With regard to the title, at the previous meeting he had expressed his support for the formula proposed by Mr. Ustor, but on second thoughts had concluded that the idea of exemption was not the essence of the article. To say that the persons covered by the article did not acquire nationality solely by the operation of the law of the host State implied that they could acquire the nationality of that State other than solely by the operation of its law, for example, as a result of certain legal acts such as marriage, divorce and affiliation. So it was really more a matter of acquisition, and the Special Rapporteur's title was more suitable than the

new title proposed. It would be better to keep to the formula used in the Vienna Protocol.

41. Mr. BARTOŠ said that in some Latin American countries mere presence in the territory was a sufficient legal ground for the attribution of nationality if the presence was for a certain time. That was an argument in favour of Mr. Kearney's view. However, presence in the territory was only one legal ground among many, which was why he now supported the position taken by the Chairman.

42. The CHAIRMAN, speaking as a member of the Commission, said that he approved of the text proposed by the Drafting Committee, but preferred the title proposed by the Special Rapporteur.

43. Mr. KEARNEY said it might help the discussion if he were to go over the history of the Optional Protocol concerning Acquisition of Nationality adopted by the 1961 Vienna Conference.

44. The Commission's 1958 "Draft articles on diplomatic intercourse and immunities", which had served as the basis for the work of that Conference, had contained an article 35 entitled "Acquisition of nationality",<sup>6</sup> which ultimately became article II—the operative article—of the 1961 Optional Protocol. That article 35 had of course been proposed as part of the draft Convention, but it had led to considerable controversy at the 1961 Conference. The Committee of the Whole of the Conference had referred it to a working group, which had proposed an alternative text that concentrated on the problem of the birth in the receiving State of a child of a diplomatic agent. The alternative text, however, had been rejected by the Committee of the Whole, which had adopted article 35 as it appeared in the Commission's 1958 draft.

45. The article had then come before the plenary Conference, but had failed to obtain the required two-thirds majority and had consequently not been adopted. The representative of Spain had then proposed that the contents of article 35 "should form the subject of a separate optional protocol" and his proposal had been adopted by 54 votes to 4, with 11 abstentions.<sup>7</sup> The Drafting Committee of the Conference had thereupon prepared the text of the Optional Protocol which the Conference had adopted at its twelfth plenary meeting without objection.<sup>8</sup>

46. The proceedings of the 1961 Vienna Conference thus showed that there had been a sharp division of opinion among States on the issues involved. Once it had been decided to make article 35 the subject of an Optional Protocol, it seemed that the question of the adequacy of its language had been forgotten, since those States which had objected to its wording had no intention of signing the Protocol.

47. In the circumstances, he would not press his proposed amendment to article 38, since he realized

<sup>6</sup> See *Yearbook of the International Law Commission, 1958*, vol. II, p. 101.

<sup>7</sup> See *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, vol. I, p. 31.

<sup>8</sup> *Ibid.*, p. 51.

that the formula he had envisaged might not adequately cover all the problems involved. In view of the difficulties to which the article had given rise, he suggested that the text be placed in square brackets so as to underline the need for Governments to comment on it and to indicate the Commission's concern as to whether it adequately disposed of the various problems involved. A very full explanation should be given in the commentary.

48. Mr. CASTRÉN said that article 35 of the draft on diplomatic intercourse and immunities had been discussed at length at Vienna, but although a majority of States had been in favour of the text proposed by the Commission, it had not gained the necessary two-thirds majority and so had had to be relegated to an Optional Protocol.

49. The commentary to the article, which was to be found in the Commission's report on the work of its tenth session,<sup>9</sup> indicated the scope of the provision. He was in favour of retaining the wording used in the Vienna Optional Protocol; any additional explanation could be given in the commentary.

50. With regard to the title, he supported Mr. Ustor's last proposal.

51. Mr. CASTAÑEDA said that the text proposed by the Drafting Committee was supported by nearly all the members of the Commission and no concrete proposal had been made for its amendment. There was, however, a proposal to amend the title of the article and it had secured the support of several members.

52. Mr. ALBÓNICO said he wished to withdraw his earlier suggestion and to support Mr. Kearney's proposal that the text of article 38 be placed in square brackets; the Commission could review the article at the second reading in the light of the comments of Governments.

53. The discussion had shown that the issues of substance involved in article 38 were much more complex than he had at first believed. They were connected not only with the problems arising from the imposition of a nationality, but also with the conflict between the *jus soli* and the *jus sanguinis* principles.

54. Mr. ROSENNE, after thanking Mr. Kearney and Mr. Castrén for their explanations regarding the history of article 38, said he did not favour placing the text of the article in square brackets. Since the draft was only going to be approved at first reading, all of its articles were necessarily of a tentative character, and there was no reason to place any one article in brackets to indicate that it had been approved only tentatively. The position was quite different when the Commission placed a few words of a text in square brackets because it had doubts about those particular words.

55. He agreed that it was important to include an appropriate paragraph in the commentary to draw the attention of governments to the difficulties involved.

56. The CHAIRMAN suggested that the Commission adopt the text of article 38.

*The text of article 38 was adopted.*

57. The CHAIRMAN asked Mr. Rosenne whether he wished to maintain his suggestion regarding the title of article 38<sup>10</sup> or whether he accepted Mr. Ustor's proposal.

58. Mr. ROSENNE said that he found Mr. Ustor's proposed title adequate.

59. The CHAIRMAN suggested that the Commission therefore adopt for article 38 the title "Exemption from laws concerning acquisition of nationality".

*The title of article 38 was adopted.*

60. The CHAIRMAN suggested that the Special Rapporteur be requested to expand the commentary to article 38 by including a reference to the Commission's commentary to article 35 of the draft on Diplomatic intercourse and immunities.

*It was so agreed.*

61. Mr. USTOR said that at least the Commission was unanimous on the subject of the commentary. The Special Rapporteur would have a difficult task in drafting it because of the diversity of nationality laws and the variety of factors which affected nationality. Without suggesting that the list was in any way exhaustive, he would suggest for the consideration of the Special Rapporteur that the factors which affected nationality included, first, mere presence in a territory; secondly, for both legitimate children and children born out of wedlock, birth in a territory; thirdly, voluntary acknowledgment of paternity; fourthly, recognition of paternity by a court judgment; fifthly, child adoption; sixthly, dissolution of adoption; seventhly, marriage and divorce, with the different types of divorce.

62. The CHAIRMAN said that Mr. Ustor's suggestions would be transmitted to the Special Rapporteur.

63. Mr. BARTOŠ said that some States deprived their nationals of their nationality if they entered the service of a foreign State without the permission of the government of their own country. The former Yugoslav law on nationality had contained a provision to that effect. He suggested that the question be intentionally left undecided but mentioned in the summary record.

#### REQUEST BY THE SWISS GOVERNMENT

64. The CHAIRMAN said that the Permanent Observer for Switzerland had informed the Legal Counsel that the Swiss Government wished to submit comments on the draft articles on representatives of States to international organizations.

65. The twenty-one articles the Commission had approved in 1968<sup>11</sup> had already been communicated to the Governments of States Members of the United

<sup>10</sup> See previous meeting, para. 84.

<sup>11</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, Report of the Commission to the General Assembly, chapter II, section E.

<sup>9</sup> See *Yearbook of the International Law Commission, 1958*, vol. II, p. 101.

Nations for their comments. But in view of the special position of Switzerland, which was host to several international organizations, the Commission might wish to ask the Secretary-General to communicate the draft articles to the Swiss Government and invite it to present its comments. On previous occasions, the Commission had agreed to communicate draft articles to the Swiss Government at the latter's request.

66. Mr. BARTOŠ said he supported the Chairman's suggestion that the Commission should accede to the Swiss Government's request. Switzerland was interested in the draft articles in three capacities: as host to international organizations, as a member of many international organizations open to States which were not Members of the United Nations, and as a State represented by an observer in international organizations. He would remind the Commission that the provisions of the draft articles dealing with observers to international organizations had not yet been considered.

67. Mr. CASTRÉN said he thought the Commission should comply with the Swiss Government's request. Switzerland had participated in the discussions on special missions in the Sixth Committee without the right to vote, and could be expected to take part in further discussions.

68. Mr. YASSEEN said he endorsed the comments of Mr. Bartoš and Mr. Castrén.

69. Mr. ROSENNE said he welcomed the initiative of the Swiss authorities and the Commission's response to it. The decision about to be taken by the Commission would repair a serious omission in the general technique of codification adopted by the United Nations. It would be particularly timely, since the report submitted in June 1969 by the Swiss Federal Government to the Swiss Parliament on the relations between Switzerland and the United Nations contained a specific reference to the fact that Switzerland was not normally able to submit comments to the International Law Commission.

70. He wished to take that opportunity of pointing out that, by virtue of articles 25 and 26 of its Statute, the Commission could consult with any United Nations organ or specialized agency if it believed that such a procedure might assist it in dealing with a topic on its agenda. Experience with the draft articles on the law of treaties had shown that some of the comments submitted by the specialized agencies would have been much more useful to the Commission if they had been available before the second reading of those articles, and he therefore hoped that the specialized agencies would be consulted before the Commission began its second reading of the present articles.

71. Mr. BARTOŠ said that the specialized agencies had been invited on several occasions to attend the Commission's discussions and speak as advisers. He suggested that the Secretariat repeat the invitation when it sent them the Commission's report.

72. The CHAIRMAN said that the Commission seemed to be in favour of requesting the Secretary-General to transmit to the Swiss Government for comment the twenty-one articles on representatives of

States to international organizations already adopted, and the articles on that subject adopted subsequently. The Commission could take a decision later on the chapter on the legal status of permanent observers to international organizations. When the draft articles on representatives of States to international organizations were completed, the Commission might decide to send them to the specialized agencies too. He suggested that the Commission comply with the Swiss Government's request and defer its decision on the other matters.

*It was so agreed.*

The meeting rose at 1 p.m.

## 1022nd MEETING

*Thursday, 17 July 1969, at 10 a.m.*

*Chairman:* Mr. Nikolai USHAKOV

*Present:* Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Elias, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Rosenne, Mr. Ruda, Mr. Tammes, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

### Relations between States and international organizations

(A/CN.4/218)

[Item 1 of the agenda]

*(continued)*

### DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

ARTICLE 39 (Privileges and immunities of persons other than the permanent representative and the members of the diplomatic staff)<sup>1</sup>

1. The CHAIRMAN, in the temporary absence of the Chairman of the Drafting Committee, invited Mr. Ustor, to introduce the Drafting Committee's text for article 39.

2. Mr. USTOR said that the Drafting Committee proposed the following text:

#### *Article 39*

*Privileges and immunities of persons other than the permanent representative and the members of the diplomatic staff*

1. The members of the family of the permanent representative forming part of his household and the members of the family of a member of the diplomatic staff of the permanent mission forming part of his household shall, if they are not

<sup>1</sup> For previous discussion, see 996th meeting, para. 52.