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Summary record of the 1022nd meeting

Topic:
Representation of States in their relations with international organizations

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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)¹

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

¹ For previous discussion, see 996th meeting, para. 52.

nationals of the host State, enjoy the privileges and immunities specified in articles 29 to 37.

2. Members of the administrative and technical staff of the permanent mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 29 to 36, except that the immunity from civil and administrative jurisdiction of the host State specified in paragraph 1 of article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in article 37, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the permanent mission who are not nationals of or permanently resident in the host State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in article 34.

4. Private staff of members of the permanent mission shall, if they are not nationals of or permanently resident in the host State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the permanent mission.

3. The Drafting Committee had altered the title of the article. The Special Rapporteur's original title "Persons entitled to privileges and immunities" could give the impression that article 39 covered all the persons entitled to privileges and immunities. In fact, the article did not deal with the permanent representative and the members of the diplomatic staff of the permanent mission, whose privileges were dealt with in article 29 and the following articles. The Committee had therefore considered it appropriate to propose a new title which, though much longer, expressed more correctly the contents of the article.

4. Paragraph 1 had been redrafted on the lines of the corresponding provision, article 36, of the Commission's 1958 draft on diplomatic intercourse and immunities.² The alteration in the wording did not affect the substance.

5. The Drafting Committee wished to draw attention to a matter of substance arising out of article 39. Paragraph 1 conferred on members of the family "the privileges and immunities specified in articles 29 to 37", an enumeration that did not include article 27, which dealt with freedom of movement. It could of course be argued that freedom of movement was necessary for the purposes of the functions of the members of the permanent mission and should therefore be confined to them. It could, however, also be argued that the officials concerned had a human right to move and travel freely with their families in the host State. The Committee therefore suggested, for the consideration of the Commission, the following modification of the concluding words of article 27: "... the host State shall ensure freedom of movement and travel in its territory

to all members of the permanent mission and to the persons referred to in paragraph 1 of article 39".³

6. Mr. ROSENNE asked whether it would not be appropriate to include article 38, which dealt with the question of nationality, in the enumerations contained in paragraphs 1 and 2 of article 39.

7. Mr. USTOR said that the terms of article 38 were not restricted to the permanent representative and the members of the diplomatic staff, as were those of the articles mentioned in paragraphs 1 and 2 of article 39. Moreover, article 38 would eventually be placed after article 39.

8. Mr. KEARNEY said he had no objection in principle to the extension of freedom of movement to members of the family of members of the permanent mission. It should be noted, however, that the 1961 Vienna Convention on Diplomatic Relations contained no provision to that effect. The question had not given rise to any difficulty and States appeared to allow freedom of movement to members of the family in the case of diplomats. Nevertheless, the Commission ought to consider whether the amendment of article 27 in the manner now proposed might not have an effect on the future interpretation of the corresponding article 26 of the 1961 Vienna Convention.⁴

9. Mr. USTOR said that freedom of movement of members of the family probably went without saying, but he thought it was better to express it clearly in article 27.

10. The CHAIRMAN, speaking as a member of the Commission, said that the Drafting Committee's proposal to include a reference to article 39 in article 27 was possibly judicious. On the other hand, the wording of article 26 of the Vienna Convention on Diplomatic Relations was identical with that already approved by the Commission for article 27 of the draft, so that the Drafting Committee's proposal might lead to the Vienna Convention's being interpreted as not providing for freedom of movement and travel for the families of members of a diplomatic mission.

11. In those circumstances it would, perhaps, be better not to amend article 27, but to mention in the commentary to that article that freedom of movement and travel extended to members of the family of the persons concerned and that the same applied to article 26 of the Vienna Convention. He was in favour of the Drafting Committee's broad interpretation, but dubious about its proposed modification of article 27.

12. Mr. CASTRÉN said he considered that the members of the family of a person who enjoyed freedom of movement and travel should also enjoy that freedom. It was not possible, however, to interpret the Vienna Convention so broadly.

13. He proposed, therefore, that before article 27 was amended as proposed by the Drafting Committee, Governments should be asked how they had applied article 26 of the Vienna Convention. If State practice had been liberal, the Commission might consider increa-

² See *Yearbook of the International Law Commission, 1958*, vol. II, p. 101.

³ For text of article 27, see 1017th meeting, para. 17.

⁴ United Nations, *Treaty Series*, vol. 500, p. 108.

sing the number of persons benefiting from the right to freedom of movement and travel.

14. Mr. NAGENDRA SINGH said he was in favour of freedom of movement for the families of the members of permanent missions. Nevertheless, he saw some difficulty in amending article 27 in the manner proposed. The 1961 Vienna Convention on Diplomatic Relations did not expressly extend freedom of movement to the families of diplomatic agents. The need for freedom of movement for their families appeared to be greater for diplomats than for members of permanent missions, who were only concerned with the international organization to which they were accredited.

15. He suggested that the matter be dealt with in the commentary on lines favourable to freedom of movement.

16. Mr. BARTOŠ said that while the Commission should take the provisions of the Vienna Convention on Diplomatic Relations into account, it should not regard them as sacrosanct. The purpose of those provisions was to enable members of diplomatic missions to perform their functions in the receiving State freely and efficiently. The Headquarters Agreement between the United Nations and the United States of America⁵ did not expressly accord members of permanent missions to the United Nations freedom to travel throughout United States territory. Though the United States authorities were tolerant in practice, in principle they might require the persons concerned to apply for permission for their travel. The United Nations General Assembly had approved that interpretation of the Agreement.

17. It would be going too far to place members of permanent diplomatic missions and representatives of States to international organizations on an equal footing in every case and in every respect. While they might generally be more or less assimilated in fact, in law there was no justification for any rule of strict equality.

18. Mr. USTOR said that, as a general rule, he agreed that care should be taken to avoid any action which might affect the interpretation of the 1961 and 1963 Vienna Conventions. In the present instance, however, he favoured the inclusion of an express provision on the right of members of the family to move freely in the host State.

19. It would of course be necessary to explain the matter in the commentary. There were two possible approaches to the problem. One was to consider the present liberal practice with regard to the members of the family of diplomatic agents as a broad interpretation of the provisions of the 1961 Vienna Convention on Diplomatic Relations. The other was to consider that practice as expressing a customary rule of international law which was applicable by virtue of the concluding paragraph of the preamble to the 1961 Vienna Convention. That Convention did not restrict the freedom of movement of members of the family of diplomatic agents; it simply did not regulate that freedom and, in the absence of any such regulation, the rules of customary international law applied.

20. He did not believe that the inclusion of such an express provision in article 27 could have any detrimental effect on the situation regarding members of the family of diplomatic agents. In bilateral diplomacy, reciprocity was the rule and there was no danger of a State going back on the present liberal practices in the matter, because it would immediately face the prospect of reciprocal action by other States. In the present instance, however, there could be no question of reciprocity, and it would not be unduly bold for the Commission to amend article 27 in the manner suggested by the Drafting Committee.

21. He did not favour the alternative of including a reference to article 27 in the enumeration in article 39. That enumeration was intended to cover provisions dealing with privileges and immunities, and it would perhaps not be altogether appropriate to regard freedom of movement, which was provided for in article 27, as a privilege or an immunity. For that reason, he preferred the approach adopted by the Drafting Committee.

22. The CHAIRMAN, speaking as a member of the Commission, said he accepted Mr. Ustor's arguments. He suggested that the Commission add to article 27 the phrase proposed by the Drafting Committee and explain in the commentary that it had been added in the light of established State practice, although it was not to be found in article 26 of the Vienna Convention.

23. Mr. KEARNEY said that, if the amendment to article 27 proposed by the Drafting Committee were adopted, the effect would be to extend the right to freedom of movement to the families of permanent representatives and members of the diplomatic staff, who were "the persons referred to in paragraph 1 of article 39". But the same right would apparently not be accorded to members of the families of members of the administrative and technical staff, who were covered by paragraph 2 of article 39.

24. In order to overcome that difficulty, the result sought by the Drafting Committee might be obtained by amending the concluding words of article 27 to read "... shall ensure freedom of movement and travel in its territory to all members of the permanent mission and to the members of their families forming part of their respective households".

25. Mr. ROSENNE suggested that, in examining article 39, the Commission should refrain from reconsidering article 27. The point to which the Drafting Committee had drawn attention should be dealt with in the commentary to article 39. It should be remembered that the Special Rapporteur had been invited to furnish more material in connexion with article 27.⁶

26. Sir Humphrey WALDOCK said that if it were desired to alter article 27, it should be done in the manner suggested by Mr. Kearney. At the same time, he would urge caution in departing from the language of the 1961 Vienna Convention, which drew rather precise distinctions between the various categories of persons it covered.

⁵ United Nations, *Treaty Series*, vol. 11, p. 12.

⁶ See 1017th meeting, paras. 43-46.

27. Mr. ROSENNE said he had come prepared to discuss the texts of articles 39 and 40, on which the Drafting Committee had reported to the Commission. If it were now suggested that the Commission reconsider article 27, it would be better for the Drafting Committee to submit a proposal in writing so that members could give it careful consideration.

28. The CHAIRMAN said that, as articles 27 and 39 were connected, the Commission could take a decision on the reconsideration of article 27 and, if necessary, instruct the Drafting Committee to prepare a new text for it.

29. Mr. USTOR said that, purely as a matter of formal procedure, Mr. Rosenne was entitled to request that the proposal to amend article 27 be made in writing. The Commission, however, had made it a practice always to adopt a more flexible approach and to treat such cases on their merits.

30. Sir Humphrey WALDOCK said it was important that the Commission should retain a considerable flexibility in its procedures. When the Commission discussed an article of a draft, it must frequently happen that it would have repercussions on other articles.

31. Mr. ROSENNE said it was not a question of the Drafting Committee or the Commission not reverting to another article which had already been adopted, since both retained full freedom of action. But the Drafting Committee was now recommending changes in article 27 which, in his opinion, were far-reaching and might lead to interpretations and re-interpretations of other instruments. Since the Commission had so far been careful not to adopt formulas which would imply a need for some re-interpretation of the Vienna Convention on Diplomatic Relations in analogous circumstances, he was a little surprised at the Drafting Committee's rather complicated proposal.

32. Mr. ELIAS said that, in discussing article 38, many members had held that amendments to that article would give rise to difficulties, because it would no longer be in line with the Protocol to the Vienna Convention. He himself had thought that the Commission should be free to improve the text of the article, but in dealing with articles 24 to 38, the Commission had so far scrupulously refrained from making any changes which departed from the Vienna Convention. He suggested, therefore that the Commission refer article 39 back to the Drafting Committee, together with Mr. Kearney's amendment, for further consideration.

33. Mr. CASTRÉN said he withdrew his proposal and would agree to an immediate vote on article 27; alternatively, the Drafting Committee could submit its proposal in writing, as had been requested.

34. The CHAIRMAN said that the Commission had offered no comments on the Drafting Committee's text for article 39. On the other hand, certain proposals had been made for the amendment of article 27. As the Commission had already adopted that article, a two-thirds majority would be needed for its amendment.

35. He suggested that the Commission first adopt

article 39 as proposed by the Drafting Committee, with its new title, and then turn to article 27.

Article 39 was adopted.

ARTICLE 27 (Freedom of movement)⁷

36. The CHAIRMAN said that with the amendment proposed by the Drafting Committee, as further amended by Mr. Kearney, article 27 would read:

“Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the host State shall ensure freedom of movement and travel in its territory to all members of the permanent mission and to the members of their families forming part of their respective households.”

37. Mr. CASTRÉN asked whether the expression “members of their families” included members of the families of the service staff. Article 39, paragraph 3, did not provide for privileges or immunities for that category of persons.

38. Mr. KEARNEY said that in his opinion a person who performed domestic service for a family should be allowed to travel with that family to the same extent as anybody else.

39. M. CASTRÉN said he was glad to have Mr. Kearney's opinion. He was not against amending article 27, but if the text now proposed were adopted, the Commission would be departing appreciably from the corresponding provisions of the Vienna Convention.

40. Mr. ROSENNE said he would have no objection to the new text, provided that a sentence on the lines suggested by the Chairman was included in the commentary.

41. The CHAIRMAN invited the Commission to vote on the Drafting Committee's amendment to article 27, as further amended by Mr. Kearney. The Special Rapporteur would be requested to draw attention to the novelty of the provision in the commentary.

The amendment to article 27 was adopted by 10 votes to none, with 4 abstentions.

42. Sir Humphrey WALDOCK said that he had abstained from voting on the amendment to article 27, not because he was opposed to it, but because he did not think that an adequate case had been made out for departing from the text of the Vienna Convention.

43. Mr. BARTOŠ said he had abstained from voting for two reasons. First, the amendment was inconsistent with the preambles to the Vienna Conventions on Diplomatic Relations and Consular Relations, which stated that the purpose of privileges and immunities was not to benefit individuals, but to ensure the efficient performance of their functions; for whereas the functions of diplomatic agents and consuls required that they should be able to move freely throughout the territory of the host State, the functions of members of permanent mis-

⁷ For previous discussion, see 1017th meeting, para. 16.

sions did not require that privilege. Secondly, the amendment was contrary to United Nations practice under the Headquarters Agreement with the United States, which did not guarantee freedom of travel throughout United States territory, even though it might tolerate it.

44. Mr. CASTRÉN said he had abstained from voting because he doubted the advisability of extending freedom of movement and travel to members of the families of service staff.

ARTICLE 40 (Nationals of the host State and persons permanently resident in the host State)⁸

45. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the Drafting Committee's text for article 40.

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

Article 40

Nationals of the host State and persons permanently resident in the host State

1. Except in so far as additional privileges and immunities may be granted by the host State, the permanent representative and any member of the diplomatic staff of the permanent mission who are nationals of or permanently resident in that State shall enjoy immunity from jurisdiction, and inviolability, only in respect of official acts performed in the exercise of their functions.

2. Other members of the staff of the permanent mission and private staff who are nationals of or permanently resident in the host State shall enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

47. In paragraph 1 of the French version, the Committee had replaced the words "*les membres*" by the words "*tout membre*" after the words "*le représentant permanent*", so as to make it clear that the words "*qui sont ressortissants*" related both to "*le représentant permanent*" and to "*tout membre du personnel diplomatique*". Similar changes had been made in the English and Spanish versions.

48. In the same paragraph, the Special Rapporteur had provided for three cases in which immunity from jurisdiction and inviolability was enjoyed only in respect of official acts performed in the exercise of the functions of the persons concerned. The Drafting Committee had deleted the words "or is, or has been, its representative," because it considered that they referred to such exceptional situations that there was no need for them. Moreover, if a person represented, or had represented, the host State, he was very likely to be one of its nationals and therefore subject to the limitation imposed by the paragraph.

49. The Drafting Committee had also discussed the case of persons permanently resident in the host State. Some members of the Committee had advocated the deletion of the reference to them as well, taking the

view that a national of another State already permanently resident in the host State was often appointed as the permanent representative of the State of which he was a national, and that there was no justification for giving him a lesser status. On the other hand, it had been pointed out that that deletion would leave the host State in a difficult position, because it would mean granting some permanent residents a more favourable status than others. The Drafting Committee regarded that as a question of substance which the Commission should decide. It had therefore left the reference to permanent residence, though in the English version it had replaced the words "a permanent resident of" by the words "permanently resident in", since that was the expression used in the Vienna Conventions and in the draft on special missions.

50. In paragraph 2 of the French version, the Committee had deleted the words "*de la mission*" after the words "*les personnes au service privé*" because, as stated in article 1 (k) of the draft,⁹ the persons in question were in the service of the members of the mission and not of the mission itself.

51. Also in paragraph 2 of the French version only, the Committee had added the words "*ces membres et*" before the words "*ces personnes*", so as to make it clear that the rule stated in the second sentence of the paragraph applied to the members of the staff of the mission and to the private staff mentioned in the first sentence. That change was necessitated by the fact that the French version of article 1 (k) used the term "*personnes au service privé*", whereas in the English version the wording was "*private staff*". There was now no doubt that the words "those persons" in the second sentence of article 40, paragraph 2, referred to all the persons mentioned in the first sentence, whereas the original French version might have suggested that the words "*ces personnes*" referred only to the private staff. That difficulty had not arisen in the Vienna Conventions, because private staff were referred to by the terms "private servant" in the 1961 Convention and "member of the private staff" in the 1963 Convention.

52. Mr. TAMMES said that, in the note on nationality of members of a permanent mission in the Special Rapporteur's third report,¹⁰ reference was made to a number of conventions on privileges and immunities which contained wording similar to the words "or is, or has been, its representative" which the Drafting Committee now proposed to delete from paragraph 1. Although the Chairman of the Drafting Committee had rightly pointed out that that case would rarely occur in practice, he wondered whether, since provision was made for it in so many important conventions, it would be altogether wise to drop it from article 40.

53. Mr. ROSENNE said that there was a minor discrepancy between the French and English versions of the second sentence of paragraph 2. The French version read: "*Toutefois, l'Etat hôte doit exercer sa juri-*

⁹ See *Yearbook of the International Law Commission, 1968*, vol. II, Report of the Commission to the General Assembly, chapter II, section E.

¹⁰ *Ibid.*, document A/CN.4/203/Add.1.

⁸ For previous discussion, see 996th meeting, para. 61.

diction sur ces membres et ces personnes . . .”, while the English version read: “However, the host State must exercise its jurisdiction over those persons . . .”. In drafting multilingual texts, it was surely unsound to adopt a phrase which in one language version had two objects and in another had only one.

54. Sir Humphrey WALDOCK suggested that the English version of the first sentence of paragraph 2 be amended to read: “Other members of the staff of the permanent mission and persons on the private staff . . .”; the second sentence of that paragraph could then be amended to read: “However, the host State must exercise its jurisdiction over those members and persons . . .”.

55. Mr. BARTOŠ said that in any case there could be no question of reverting to the term “servant”, which had been rejected in the new ILO terminology. Furthermore, the expression “private staff” was wider and could include a tutor, private chaplain, and so on.

56. The CHAIRMAN suggested that the Commission accept the amendment to the English version proposed by Sir Humphrey Waldock in order to bring it into line with the French.

It was so agreed.

57. Mr. CASTRÉN said he was a little concerned at the deletion of the words “or is, or has been, its representative”. He did not particularly like that form of words, which he did not find very clear because he did not see how the fact of a person having been a representative of the host State could affect his legal status when he was no longer a representative of that State. But Mr. Tammes had pointed out that the words appeared in several treaties or conventions, so it might be better to hear the Special Rapporteur’s opinion before deleting them.

58. Mr. ALBÓNICO said that the text of article 40 proposed by the Drafting Committee reflected present practice and was in conformity with the corresponding article 38 of the Vienna Convention on Diplomatic Relations.¹¹ He was therefore prepared to accept the Drafting Committee’s proposal to delete the words “or is, or has been, its representative”.

59. Mr. BARTOŠ said that the situation contemplated in the phrase deleted by the Drafting Committee might occur in consequence of a change of régime or a territorial change entailing a change in nationality, but such cases were relatively rare and it seemed unnecessary to complicate the article by alluding to them, particularly since they were always governed by special provisions.

60. The CHAIRMAN said that Mr. Castrén had suggested that the Special Rapporteur be asked for his opinion, but no member had formally proposed that the deleted phrase be restored. The Commission might therefore adopt the article in the Drafting Committee’s version, the more so since the 1961 Vienna Convention did not contain the phrase, and at the same time ask the Special Rapporteur for his opinion.

61. Mr. CASTAÑEDA said that the Commission also had to decide whether the reference to permanent residence should be kept or deleted.

62. Mr. YASSEEN said he had stated his opposition to the reference to permanent residence as long ago as 1961, at the Vienna Conference on Diplomatic Inter-course and Immunities. Though status as a national of the host State might be a reason for restricting privileges and immunities, permanent residence in that State was not, especially if the person concerned had the nationality of the sending State. He was therefore against mentioning permanent residence in article 40, paragraph 1.

63. Mr. ALBÓNICO said that he supported the Drafting Committee’s proposal to retain the words “or permanently resident in that State” in paragraph 1, since it was only logical that representatives who had their permanent residence in the host State should not enjoy the same privileges and immunities as those coming from the sending State.

64. Mr. CASTAÑEDA said that the situation contemplated in the phrase “or permanently resident in that State” often arose, especially in New York. There was no reason whatever to give such persons a lower status, since that would mean creating a separate of permanent representatives different from the others. Permanent residence did not create any special link with the host State that justified discriminatory treatment of permanent representatives who were also permanent residents.

65. If the host State considered that the person concerned ought not to enjoy the privileges and immunities of a permanent representative at the same time as the status of permanent resident, it should change its internal laws or regulations governing the status of permanent residents. He was in favour of deleting the phrase “or permanently resident in that State”.

66. Mr. KEARNEY said he did not think that the host State should be placed under the burden of changing its legislation for the benefit of representatives who had their permanent residence in its territory. By electing to live permanently in the host State, the individual in question had already acquired certain privileges and immunities which were denied to temporary visitors, such as tourists, students, trainees and the like. If he subsequently became the permanent representative of a foreign State, it would be unreasonable for him to expect that he might thereby acquire an additional set of privileges and immunities, such as exemption from taxation and police jurisdiction and the right to import duty-free goods. He therefore favoured the retention of the words “or permanently resident in that State”.

The meeting rose at 1 p.m.

1023rd MEETING

Friday, 18 July 1969, at 10.20 a.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Elias, Mr. Eustathiades, Mr. Ignacio-

¹¹ United Nations, *Treaty Series*, vol. 500, p. 118.