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Summary record of the 1024th meeting

Topic:
Representation of States in their relations with international organizations

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paragraph 1. In his opinion, Mr. Rosenne's restrictive construction was not logical. In practice, until a third State had received a visa application or advance notification, it would not know whether a journey was the official travel in transit covered by article 42.

81. Mr. KEARNEY said that the legislative history of the corresponding article of the 1961 Vienna Convention supported the construction placed on paragraph 1 by the Chairman of the Drafting Committee. The Commission's 1958 draft of article 39¹¹ had not contained the words "which has granted him a passport visa if such visa was necessary"; they had been introduced at the 1961 Vienna Conference as an amendment.

82. The CHAIRMAN, speaking as a member of the Commission, said he concurred in the interpretation of paragraph 1 given by Mr. Castañeda and other members.

83. Mr. ROSENNE said he was opposed to article 42 as it stood. He could have supported the article if it had been drafted in the same form as article 43 of the draft on special missions.

84. The CHAIRMAN suggested that the Commission adopt article 42 in the form proposed by the Drafting Committee.

Article 42 was adopted.

ARTICLE 43 (Non-discrimination)¹²

85. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the Drafting Committee's text for article 43.

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

Article 43

Non-discrimination

In the application of the provisions of the present articles, no discrimination shall be made as between States.

87. In order to bring the Spanish version of the article closer to the other language versions, the Committee had deleted the word "*ninguna*", although it appeared in the text of the Vienna Convention.

88. Mr. NAGENDRA SINGH suggested that the Commission adopt article 43 as proposed by the Drafting Committee.

Article 43 was adopted.

The meeting rose at 1 p.m.

1024th MEETING

Tuesday, 22 July 1969, at 10.15 a.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Elias, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Ramangasoavina, Mr. Rosenne, Mr. Ruda, Mr. Tammes, Mr. Ustor, Sir Humphrey Waldoock, Mr. Yasseen.

Relations between States and international organizations

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

[Item 1 of the agenda]

(continued)

DRAFT ARTICLES

PROPOSED BY THE DRAFTING COMMITTEE

ARTICLE 44 (Obligation to respect the laws and regulations of the host State)¹

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the Drafting Committee's text for article 44.

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

Article 44

Obligation to respect the laws and regulations of the host State

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the host State. They also have a duty not to interfere in the internal affairs of that State.

2. The premises of the permanent mission must not be used in any manner **incompatible with the functions** of the permanent mission [as laid down in the present articles or by other rules of general international law].

3. The Committee had unanimously decided that the words "or by special agreements in force between the sending and the host State", at the end of paragraph 2 (A/CN.4/218/Add.1), were unnecessary, because article 4 stated that "The provisions of the present articles are without prejudice to other international agreements in force between States or between States and international organizations". The Committee had therefore deleted those words.

4. Several members of the Committee had also considered the words "as laid down in the present articles or by other rules of general international law" to be unnecessary. As not all the members had been in favour

¹¹ *Op. cit.*, 195, vol. II, p. 103.

¹² For previous discussion, see 997th meeting, para. 22.

¹ For previous discussion, see 997th meeting, paras. 67-75, and 998th meeting.

of deleting those words, however, the Committee had placed them in brackets.

5. A few slight changes had been made to the Spanish version of the article.

6. Mr. Kearney, it would be remembered, had submitted an amendment adding a paragraph 3 to article 44.² Later, he had submitted a revised version to the Drafting Committee, but had finally withdrawn it, as most of the members of the Committee had not favoured it. Mr. Kearney had now submitted a new version of his amendment. It was designed solely to state a substantive rule, omitting any reference to procedure, and read:

“3. The sending State shall remove from the permanent mission any person enjoying immunity from the criminal jurisdiction of the host State under this Convention who has seriously violated the criminal laws or regulations of the host State.”

7. Mr. KEARNEY, introducing his amendment, said that in two previous proposals he had tried to combine certain procedural steps with the general principle that a member of a permanent mission who violated the criminal laws of the host State should not be allowed to remain in its territory and enjoy immunity from its criminal jurisdiction. In view of the difficulty of reaching agreement about the procedural problems, however, he was now proposing merely a statement of the general principle, which would place an obligation on the sending State to remove the offending member. The question of what might or might not happen if the sending State violated that general principle could be left for consideration in connexion with the final clause of the draft articles, concerning the settlement of disputes.

8. In view of the objections of other members, he had omitted any reference in his present proposal to the case of repeated violations of the criminal laws of the host State.

9. Mr. Bartoš had been somewhat concerned at the inclusion of a reference to the “regulations” of the host State.³ In the case of his own country, such a reference would be immaterial because criminal regulations in the United States were always based on legislation, but since there were a number of States which recognized criminal regulations or orders in their legislation, he thought that the reference to regulations should remain. He would, however, have no serious objections to its deletion.

10. The CHAIRMAN, speaking as a member of the Commission, said that in the cases covered by the amendment the organization was usually informed of the violation by the host State and itself approached the permanent mission with a request that the person concerned leave the territory of the host State.

11. Despite that practice, it might be as well to add the proposed paragraph 3, but with the following changes: the words “or regulations” should be deleted, since the reference was in fact to criminal laws; the

words “these articles” should be substituted for the words “this Convention”, since the Commission was still only considering a draft of articles; and in the French version the words “*doit retirer*” should be replaced by the word “*retirera*”, which would be closer to the English.

12. Mr. ROSENNE said he supported Mr. Kearney’s amendment.

13. It would be better, however, not to introduce the concept of “regulations”, which was subject to various interpretations. As a minor drafting point, he would suggest that the plural expression “criminal laws” be replaced by “criminal law”.

14. Mr. ELIAS said he questioned the use of the adverb “seriously” in the expression “who has seriously violated the criminal laws or regulations of the host State”. It was not so much the manner in which the criminal laws were violated as the fact of the violation itself that was decisive. If the provision was to be restricted to “serious violations”, it should state that clearly.

15. Mr. RAMANGASOAVINA said he was in favour of adding the new paragraph 3.

16. He was afraid that, if the words “or regulations” were deleted, as the Chairman urged, that might unduly restrict the scope of the provision. Some regulations, such as local police regulations, appeared in decrees or orders. Although a breach of such regulations did not constitute a criminal offence, it might be dangerous or cause an accident, depending on how serious it was or how frequent. To take an example, there was the case of a member of a permanent mission who had deliberately and repeatedly driven the wrong way down a one-way street. Everything depended on whether the paragraph was intended to cover only persons who committed crimes, or whether it was intended to cover also persons who committed breaches of regulations. Under the French system, the notion of “criminal jurisdiction” could cover mere infringements of police regulations.

17. Mr. USTOR said he doubted whether the word “remove”, in the English version of the amendment, had the same meaning as the word “*retirer*” in the French version. He suggested that the paragraph be redrafted on the lines of the second sentence of article 9, paragraph 1, of the Vienna Convention on Diplomatic Relations,⁴ which read: “In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission”.

18. Mr. ALBÓNICO said that he supported Mr. Kearney’s amendment, though he understood it to mean that the sending State would not be obliged to take the action in question until the remedies provided for in article 49, entitled “Consultations between the sending State, the host State and the Organization” (A/CN.4/218/Add.1), had been exhausted.

19. He took the term “seriously violated” to imply a

² See 997th meeting, para. 71.

³ See 998th meeting, para. 41.

⁴ United Nations, *Treaty Series*, vol. 500, p. 102.

repetition of violations; in other words, a violation became serious when it was constantly repeated.

20. Like Mr. Ramangasoavina, he favoured the retention of the word "regulations", since it covered all the minor police rules governing motor vehicle traffic, hunting, fishing and the like, the violation of which might be a mere misdemeanour, but which were nevertheless a part of criminal law.

21. Sir Humphrey WALDOCK said that, in his opinion, Mr. Kearney's amendment was a useful addition to the text of article 44.

22. He assumed that Mr. Kearney had deliberately used the non-legal word "remove" in order not to be too precise and to cover the various kinds of action which the sending State might take, depending on the gravity of the offence. In the case of an ordinary crime, for example, the sending State might merely recall its permanent representative, while in the case of a more serious crime which gave rise to public indignation in the host State, it might expel the representative from the permanent mission, without recalling him, in order to leave him open to the criminal jurisdiction of the host State.

23. He had no strong feelings for or against the use of the word "regulations", but since that word was also used in the title of the article, it would seem logical to retain it.

24. Mr. KEARNEY said that Sir Humphrey Waldock had been correct in assuming that he used the word "remove" in order to avoid some more technical term.

25. It was for the same reason that he had used the expression "seriously violated". Legal systems differed dramatically throughout the world; the "misdemeanours" and "felonies" of the common law system meant nothing in countries with a code system, and even the latter differed widely among themselves. A sending State should not be required to remove its representative for a mere parking offence, for example, although it might have to do so if the offence was repeated too often. It should also be borne in mind that what was considered a relatively minor offence in one country might be regarded as a serious crime in another. What was needed, therefore, was some term which would cover all possible geographical variations.

26. Mr. EUSTATHIADES said that he had already expressed a definite opinion on the principal of including a paragraph 3.⁵

27. He was in favour of retaining the words "or regulations". The diversity of national laws and regulations was an argument in favour of providing the same penalties for the same acts, no matter how they might be described or whether they were covered by a law or a regulation.

28. As he understood it, paragraph 3 was intended to prescribe a penalty for non-compliance with the provisions of paragraph 1. Paragraph 1 laid down that the laws and regulations of the host State must be respected. If paragraph 3 dealt only with the violation of laws, it would be a very lame provision.

29. Perhaps it would be better to use the expression "criminal legislation". In that case, if the notion of "serious violation" were retained, the clause would cover not only the criminal law, but also serious violations of regulations.

30. Assuming that paragraph 3 was essentially a sanction for violation of the provisions of paragraph 1, the obligation it contained did not apply to the violation of one obligation laid down in paragraph 1, namely, that of non-interference in the internal affairs of the host State. Since the notion of interference was somewhat vague, instead of amending paragraph 3, it might be better to expand the title of the article to read: "Respect for the laws and regulations, and non-interference in the internal affairs, of the host State."

31. With regard to the word "remove", the important point was to convey the general obligation of the sending State not to keep the person concerned in its mission, because of the unfortunate effect that might have on public opinion and on relations between the sending State and the host State and, above all, in the interests of the organization itself.

32. The Commission should therefore accept the amendment as it stood.

33. Mr. RUDA said that he could agree to the changes in article 44 recommended by the Drafting Committee, but he favoured the deletion of the words in square brackets in paragraph 2.

34. With regard to the amendment proposed by Mr. Kearney, he agreed with the basic idea that the host State required some such protection, though he had doubts about the drafting. The expression "shall remove from the permanent mission", for example, could only mean that the sending State would recall the offender at the request of the host State, since to remove him from the permanent mission without recalling him would leave him exposed to the local criminal jurisdiction, and that was entirely contrary to the idea of immunity from such jurisdiction, as well as to the idea that the sending State's waiver of immunity was purely optional.

35. With regard to the expression "seriously violated", he did not think it should be left to the discretion of the host State to determine whether its laws or regulations had been "seriously" violated; hence it would be better to delete the word "seriously".

36. He had no objection to retaining the word "regulations", although in the Latin-American legal system a law could include regulations.

37. Mr. CASTRÉN said he was in favour of the first two paragraphs of article 44, provided that the phrase in brackets was deleted.

38. The earlier version of Mr. Kearney's proposal had given rise to a long discussion, whereas the present version seemed to be accepted by almost all the members of the Commission. In view of what the Chairman had said about the practice of international organizations, he concurred in the general view, but would suggest that the Commission take no final decision until it knew the reaction of Governments.

⁵ See 998th meeting, paras. 33-36.

39. The reference to "regulations" seemed useful, in view of the variety of legal systems. In any event, the amendment dealt with serious violations; it was the serious element that was important, not the repetition, which had also been mentioned in the previous version.

40. As to the remaining questions of form, he suggested that the Drafting Committee be asked to submit a new text.

41. Mr. JIMÉNEZ de ARÉCHAGA said that paragraph 2 of the Drafting Committee's text, including the words within square brackets, was based on the corresponding articles in the Vienna diplomatic and consular Conventions and in the draft on special missions. For example, article 48, paragraph 2, of the latter read: "The premises of the special mission must not be used in any manner incompatible with the functions of the special mission, as envisaged in the present articles or in other rules of general international law or in any special agreements in force between the sending and the receiving States." In paragraph (3) of its commentary to that article, the Commission had stated that: "The question of asylum in the premises of the special mission is not dealt with in the draft. In order to avoid any misunderstanding, the Commission wishes to point out that among the special agreements referred to in article 48, paragraph 2, there are certain treaties governing the right to grant asylum in mission premises, which are valid as between the parties that concluded them".⁶

42. In general, he supported Mr. Kearney's amendment although, as Mr. Eustathiades had pointed out, it might have connotations which would exclude the duty of removal in connexion with other than "serious" violations. There was also the question, mentioned by Mr. Ruda, of the waiver of immunity from criminal jurisdiction by the sending State. He proposed, therefore, that article 44 be referred back to the Drafting Committee for further study.

43. The CHAIRMAN, speaking as a member of the Commission, said that Mr. Kearney's proposal was based on the same idea as article 9 of the 1961 Vienna Convention on Diplomatic Relations. Taking the wording of that article as a starting point, therefore, he proposed that paragraph 3 be redrafted to read:

"The sending State shall recall any person enjoying immunity from criminal jurisdiction under the present articles who has seriously violated the criminal law of the host State or shall terminate his functions with the permanent mission, as appropriate."

44. The phrase "or by special agreements in force between the sending and the host State", which the Drafting Committee had deleted from the end of paragraph 2, had been added at Vienna⁷ at the request of certain Latin American countries. He was in favour of its deletion.

⁶ See *Yearbook of the International Law Commission, 1967*, vol. II, p. 367.

⁷ United Nations, *Treaty Series*, vol. 500, p. 120, article 41, para. 3.

45. Mr. BARTOŠ said it would certainly be wrong to impose on members of permanent missions, in the same way as on diplomatic agents, who were members of regular diplomatic missions, the duty not to interfere in the internal affairs of the host State. Members of permanent missions were occasionally obliged by their functions as members of a mission to criticize the host State, and that had sometimes been regarded by the host State as a breach of hospitality. He therefore considered that that clause should be deleted from paragraph 1 or formulated differently.

46. With regard to paragraph 2, he was in favour of retaining the words in brackets, because the premises of a permanent mission were often combined with those of an embassy or consular post, and that justified the mention of other rules of international law.

47. He was against Mr. Kearney's amendment in principle. The Drafting Committee had sought to protect the host State and, with that aim in mind, had tried to find a compromise between the interests of the sending State and those of the host State. But the obligation to remove a member of a permanent mission merely at the request of the host State, on the pretext that he was guilty of a serious offence, would amount to interference by the host State with the selection of the members of the mission. Everyone knew that in the past, at United Nations Headquarters, the United States Government had on more than one occasion considered some members of missions from eastern countries to be dangerous. He was not in favour, therefore, of basing paragraph 3 simply on article 9 of the 1961 Vienna Convention on Diplomatic Relations. The principle of the sending State's freedom of choice in the selection of the members of its missions ought to be respected, and provided with better safeguards.

48. Mr. YASSEEN said he found paragraph 1 of the text proposed by the Drafting Committee acceptable, provided that the meaning of the second sentence was fully explained in the commentary. It should be clearly understood that the duty not to interfere in the internal affairs of the host State applied only to matters unconnected with the performance of the functions of the permanent mission. For although the host State's foreign policy might be considered, in a sense, as an internal affair coming exclusively under its sovereignty, a permanent representative had the right to criticize that policy within an international organization if it affected the international community.

49. The phrase in brackets in paragraph 2 might be omitted for the sake of brevity, since it could be regarded as expressing a self-evident truth. In any event, he doubted whether, even in Latin America, the granting of diplomatic asylum could be considered as being within the functions of a permanent mission, which concerned relations between the sending State and the international organization, not between the sending State and the host State.

50. The addition of a paragraph 3 to the article had been proposed in order to ensure some protection for the host State's interests. He was entirely in favour of a balance between the interests of the three parties,

namely, the sending State, the host State and the international organization. It was not possible, however, simply to apply the institution of recall in such cases.

51. In bilateral diplomacy, the fact that the attitude of a certain person was not conducive to good relations between two States was sufficient ground for the receiving State's declaring him *persona non grata*. That was why the 1961 Vienna Convention did not require a host State to explain its decision. In relations with international organizations the problem was different, but that did not mean that the amendment was not justified. The possibility of abuse could not be invoked against it, since that argument could be advanced against any legal rule whatever. From the point of view of good faith, it was obvious that the host State could not be required to allow a person who had seriously violated its criminal law to remain in its territory. The whole institution of diplomatic immunities would be undermined if the sending State persisted in keeping a criminal as a member of its permanent mission.

52. Caution was required, however, and that was why he preferred the Chairman's wording. It had the merit of using the verb "recall", which was the standard term, and of omitting the reference to "regulations", the violation of which was not usually serious enough to warrant recall. He would, however, prefer the expression "criminal law" to be replaced by "criminal laws".

53. Mr. USTOR said he supported paragraph 1 as formulated by the Drafting Committee, including the second sentence, which expressed the duty of members of the permanent mission not to interfere in the internal affairs of the host State. There could be no doubt about the existence of such a duty.

54. In paragraph 2, he suggested that the clause in square brackets be dropped. Paragraph 2 would then become a brief and precise provision, on the lines of article 55, paragraph 2, of the 1963 Vienna Convention on Consular Relations,⁸ which provided a better model in the present instance.

55. With regard to paragraph 3, he supported the rewording suggested by the Chairman for Mr. Kearney's proposal.

56. Mr. JIMÉNEZ de ARÉCHAGA said he still favoured not only the retention of the words in brackets in paragraph 2, but also the reintroduction of the words "or by special agreements in force between the sending and the host State". That phrase corresponded to the concluding proviso of article 41, paragraph 3, of the 1961 Vienna Convention on Diplomatic Relations, which had been inserted in that Convention to safeguard existing Latin American agreements on diplomatic asylum. A similar formula had been included in the corresponding article 48 of the draft on special missions. The purpose of the formula was not to grant diplomatic asylum, but merely to ensure that such asylum was not precluded where an agreement on the subject already existed between the two States concerned, namely, the sending State and the receiving or host State. Such agreements existed between certain Latin

American countries and had always been interpreted broadly; they would therefore cover the case of diplomatic asylum in the permanent mission to an international organization. The phrase in question would merely express the fact that those Latin American agreements were not contrary to any rule of *jus cogens*.

57. Mr. ROSENNE said he accepted the Drafting Committee's text for paragraph 1.

58. In paragraph 2, he supported the suggestion that the words in brackets be dropped, as they were unnecessary.

59. He agreed with Mr. Ustor that article 55, paragraph 2, of the 1963 Vienna Convention provided a better model for the present paragraph 2 and he therefore proposed that the paragraph be reworded to read: "The premises of the permanent mission shall not be used in any manner incompatible with the exercise of the functions of the permanent mission".

60. That wording was an improvement in two respects. First, the use of "shall" instead of "must", was more appropriate, apart from the fact that it corresponded better to the French text. Secondly, the introduction of a reference to "the exercise" of the functions of the permanent mission was also appropriate, bearing in mind the broad scope of those functions.

61. The Drafting Committee should re-examine the question of the position of paragraph 2. Its provisions did not belong in article 44 and should either be incorporated in article 22 or article 23, or be placed in a separate article altogether.

62. Regardless of the ultimate placing of paragraph 2, paragraph 3 should in any case follow immediately after paragraph 1. With regard to its text, he suggested that the Drafting Committee be asked to examine the three language versions.

63. Mr. RUDA said that, in the Spanish version of paragraph 2, the appropriate wording was: "*no serán utilizados*".

64. Mr. BARTOŠ said that his first impression of the Chairman's text for the new paragraph 3 was favourable. It was well-balanced, more appropriately worded and, he thought met Mr. Kearney's point. It brought out, not a right of the host State, but rather a duty of the sending State either to recall a person who had seriously violated the criminal law of the host State or to terminate his functions, according to the circumstances. In that form the paragraph would fulfil its purpose. He could not see any need to refer the text to the Drafting Committee a second time, but if the Commission so decided, he would not object.

65. The question had been raised whether paragraph 2 of the text proposed by the Drafting Committee should be retained in article 44. He was not in favour of making it into a separate article. If the paragraph was to be kept in article 44, however, it would be better to adopt the Chairman's proposal as paragraph 2, and the Drafting Committee's text of paragraph 2 as paragraph 3. It would be more logical first to state the obligation of the staff of a permanent mission, then to deal with a violation of that obligation and the sending State's

⁸ United Nations, *Treaty Series*, vol. 596, p. 308.

duty, to make reparation of it, as it were and finally to turn to the question of the use of the premises, in connexion with which the sending State had an objective duty.

66. The CHAIRMAN said he was opposed to referring the text to the Drafting Committee, since the Commission would have some difficulty in finding time to discuss it again. In any event, the proposal he had made for paragraph 3, as a member of the Commission, was merely a rewording of Mr. Kearney's amendment. As Mr. Kearney was the original author of the proposal, he would like to know whether the new wording was acceptable to him.

67. Mr. KEARNEY said that he was prepared to accept the revised text suggested by the Chairman, since it adequately reflected the idea in his own proposal.

68. Mr. CASTAÑEDA (Chairman of the Drafting Committee) said that when the Drafting Committee had discussed the deletion of the words "or by special agreements in force between the sending and the host State", he had been under the impression that such agreements were already covered by the reference in article 4 of the draft⁹ to "other international agreements in force between States", which meant that it was still possible for a permanent mission to grant the right of asylum.

69. Mr. USTOR suggested that the title of the article be shortened to read "Respect for the laws and regulations of the host State", like that of the corresponding article 55 of the 1963 Vienna Convention.

70. Mr. RUDA said he had doubts about the concluding words of the Chairman's proposal for paragraph 3, "or shall terminate his functions with the permanent mission, as appropriate". As he saw it, the choice for the sending State was not between recalling the offending person and terminating his functions, but between recalling him and waiving his immunity.

71. The CHAIRMAN said that those alternatives already existed in article 9 of the Convention on Diplomatic Relations. There were two cases to be considered. If the person concerned was a national of the sending State, that State must recall him. If he was not, the sending State obviously could not recall him; all it could do was to terminate his functions.

72. Mr. RUDA said he was grateful to the Chairman for his interpretation, which clarified the provisions of the proposed paragraph 3. But if that paragraph were retained in article 44, an explanation should be included in the commentary so as to avoid any misinterpretation.

73. Sir HUMPHREY WALDOCK said that he agreed with the Chairman regarding the meaning of article 9 of the 1961 Vienna Convention on Diplomatic Relations. The words "as appropriate" were used in the second sentence of paragraph 1 of that article in order to distinguish between a national of the sending State who would be recalled and a national of the receiving State,

whose employment with the mission would be terminated. That article, however, was intended to deal with the general case of a declaration of *persona non grata*.

74. The provisions of the present paragraph 3 were intended to deal not with the *persona non grata* rule but with the special case of a serious offence committed by a person enjoying immunity. In the case of such an offence, the sending State had the choice between recalling the offending person and waiving immunity so as to allow the law of the host State to take its course. It would be for the sending State to weigh the respective merits of the two possible solutions, bearing in mind the feelings aroused by the offence which had been committed.

75. The CHAIRMAN said there was a separate article in the draft, namely, article 32,¹⁰ which enabled a sending State to waive immunity from jurisdiction. The sending State was always at liberty to do so in cases of violation of the criminal law. It was therefore unnecessary to repeat that in article 44.

76. Sir Humphrey WALDOCK said that the point should be covered in the commentary, where it should be explained that the provisions of paragraph 3 did not derogate from those of article 32, on waiver of immunity, and did not preclude any action that might be taken under that article.

77. Mr. RUDA said he fully agreed with Sir Humphrey Waldock. There were only two alternatives for the sending State: recall of the offender or waiver of immunity. There could be no question of leaving a person in the territory of the host State without allowing the justice of that State to take its course.

78. Mr. CASTAÑEDA said that the confusion arose in part from the retention of the words "as appropriate". Those words had a specific meaning in article 9 of the Convention on Diplomatic Relations, as Sir Humphrey Waldock had explained. In article 44, he thought the intention had been to allow the sending State to choose one or the other alternative rather than make its choice solely in accordance with the legal situation of the member of the mission concerned.

79. Mr. ROSENNE said that the questions which had arisen were essentially of a drafting character, but were quite delicate. He therefore proposed that paragraph 3 be referred to the Drafting Committee.

80. The CHAIRMAN, speaking as a member of the Commission, said that the phrase "as appropriate" seemed clear enough both in the corresponding article of the 1961 Vienna Convention and in the new paragraph 3. To delete it would be tantamount to leaving the sending State at liberty to choose between the two alternatives. If it was included, it was clear that the sending State must take the alternative consonant with the legal position of the person concerned. It would, however, perhaps be better to refer the new paragraph 3 to the Drafting Committee. It was only for practical reasons connected with the organization of the Commission's work that he had suggested otherwise in his capacity as Chairman.

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

¹⁰ See 1019th meeting, para. 46.

81. Mr. ALBÓNICO said he could accept paragraph 1 as formulated by the Drafting Committee.

82. With regard to paragraph 2, he supported the suggestions made by Mr. Jiménez de Aréchaga, which would safeguard existing regional treaty provisions on the right of diplomatic asylum.

83. With regard to the new paragraph 3, he agreed that the sending State whose diplomatic agent had committed a serious offence could, instead of recalling him, waive his immunity and allow the local courts to deal with him. The Government of Chile had on one occasion discharged from its diplomatic service a diplomatic agent who had committed an offence in a foreign country where he was not accredited, and had allowed justice to take its course in that country.

84. He supported the proposal to refer paragraph 3 to the Drafting Committee, which should endeavour to find a formulation that would adequately cover the various situations.

85. The CHAIRMAN asked whether there were any objections to Mr. Ustor's proposed amendment to the title of article 44. ✓

86. Mr. BARTOŠ said he was opposed to it because the title proposed was incomplete.

87. The CHAIRMAN said that the majority of the Commission seemed to be in favour of the change and he therefore suggested that the Commission adopt the title as amended.

The title of article 44, as amended, was adopted.

88. The CHAIRMAN said that no proposal had been made to amend paragraph 1 of the text prepared by the Drafting Committee. He therefore suggested that the Commission adopt that paragraph.

Paragraph 1 was adopted.

89. Mr. JIMÉNEZ de ARÉCHAGA said that he withdrew his suggestion for the amendment of paragraph 2, on the understanding that Mr. Castañeda's explanation would be included in the commentary to the article.

90. The CHAIRMAN said that Mr. Ustor and Mr. Rosenne had proposed the deletion of the phrase in brackets in paragraph 2 and that no member had formally proposed its retention. Mr. Rosenne had also proposed two drafting amendments.¹ He suggested that the Commission adopt paragraph 2 thus amended and without the phrase in brackets.

Paragraph 2, as amended, was adopted.

91. The CHAIRMAN suggested that the Commission approve the new paragraph 3 of article 44 in principle and refer it to the Drafting Committee for consideration of the wording. Article 44 as a whole would be adopted after the Drafting Committee had sent the text of paragraph 3 back to the Commission.

*It was so agreed.*¹²

The meeting rose at 1.10 p.m.

1025th MEETING

Wednesday, 23 July 1969, at 10.10 a.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Elias, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tammes, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

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

[Item 1 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

ARTICLE 45 (Professional activity)¹

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the text proposed by the Drafting Committee for article 45.

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

Article 45

Professional activity

The permanent representative and the members of the diplomatic staff of the permanent mission shall not practice for personal profit any professional or commercial activity in the host State.

3. The Drafting Committee had made no change in the text of the article and the Commission had made no comment on it at the first reading.

Article 45 was adopted.

SECTION IV (End of the functions of the permanent mission or of its members)

ARTICLE 46 (Modes of termination)²

4. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the Drafting Committee's text for article 46.

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

¹ For previous discussion, see 999th meeting, para. 1.

² For previous discussion, see 999th meeting, para. 3.

¹¹ See para. 59 above.

¹² For resumption of the discussion, see 1029th meeting, para. 16.