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Summary record of the 1028th meeting

Topic:
Representation of States in their relations with international organizations

Extract from the Yearbook of the International Law Commission:-
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39. Mr. ROSENNE said that, like the previous speakers, he found the Drafting Committee's text for article 49 an improvement on the original text. However, it still caused him considerable uneasiness and he could not vote for it in its present form, since he regarded it as too loosely drafted.

40. Paragraph 3 of the Special Rapporteur's commentary to the original article 49 stated that "Paragraph 1 is drafted in such a flexible manner as to envisage the holding of consultations between the sending State and the host State or between either or both of them and the Organization concerned". In his opinion, the text of the article conveyed the idea that only tripartite consultations would be held. With regard to the discussion in the Sixth Committee following the incident involving Guinea and the Ivory Coast referred to in that same paragraph 3 of the commentary, the Chairman of the Sixth Committee had ruled that there was to be no debate on the Legal Counsel's statement at the 1016th meeting of that Committee, which was an *ex parte* statement, although that did not imply any stand on the part of the Committee members. In his view, therefore, the Commission should be extremely cautious about drawing from that isolated statement, which related exclusively to the United Nations, any broad conclusion that every international organization to which the draft article would apply had a general interest in such matters which entitled it to be consulted at all times, on the basis of a unilateral request and independently of the relevant treaty provisions.

41. He shared the doubts expressed by previous speakers about the words "on any question", since the word "question" was very broad and since there were at least two kinds of consultations which could be envisaged, namely, those designed to prevent difficulties from arising and those intended to resolve them once they had arisen.

42. Concerning the jurisdictional problem, he thought that while the Drafting Committee had been right to omit paragraph 2 of the Special Rapporteur's draft, that problem still remained. Mr. Jiménez de Aréchaga had referred to article VIII, section 30, of the Convention on the Privileges and Immunities of the United Nations, but in his opinion that provision was of little value. It had never been formally invoked, and the study by the Secretariat was extremely reticent in describing the experience that had been gained.[12]

43. The CHAIRMAN, speaking as a member of the Commission, proposed the following text for article 49: "If necessary, consultations shall be held on any question relating to the interpretation or application of the present articles, at the request of one of the parties".

44. Mr. RUDA said that he accepted the Drafting Committee's proposal to delete the second sentence of paragraph 1 of the Special Rapporteur's text.

45. He had his doubts, however, about the deletion of paragraph 2, which concerned the settlement of disputes. In introducing article 49, the Special Rapporteur had said that, for formal disputes on the application or interpretation of the draft articles, "other means of settlement should be provided, possibly in the final clauses of the present draft, or should be worked out on an *ad hoc* basis for particular disputes".[13] Paragraph 2 seemed to be intended to serve that purpose, a view which Mr. Jiménez de Aréchaga appeared to share.

46. Thus, while he was prepared to accept the text of article 49 proposed by the Drafting Committee on a provisional basis, he thought the commentary should mention the possible future need for some such provision as paragraph 2, to deal with the problem of the settlement of disputes.

47. With regard to the text suggested by the Chairman, he had no objection to the insertion of the words "if necessary", but could not agree to the insertion of the word "interpretation", which would only complicate the problem.

48. The CHAIRMAN, speaking as a member of the Commission, said he agreed that the words "interpretation or" would best be omitted.

49. Speaking as Chairman, he suggested that the Commission ask the Drafting Committee to consider the possibility of preparing a new article on the lines suggested by Mr. Rosenne earlier in the meeting. That article might deal with the cases of armed conflict and of the non-recognition of a government.

It was so agreed.

The meeting rose at 1.5 p.m.

[12] See *Yearbook of the International Law Commission, 1967*, vol. II, pp. 296, paras. 388-391, and 321, paras. 175-181.

[13] See 999th meeting, para. 27.

1028th MEETING

Monday, 28 July, at 3.15 p.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, 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 49 (Consultations between the sending State, the host State and the Organization) *(continued)*

1. The CHAIRMAN invited the Commission to continue consideration of the Drafting Committee's text

for article 49. At the previous meeting, in his capacity as a member of the Commission, he had proposed a new wording for the article and his final text now read:

"Consultations shall be held between the sending State, the host State and the Organization, at the request of one of them, on any question relating to the application of these articles."

2. Mr. Tammes had submitted an amendment consisting in the addition of a paragraph 2 and a change in the title of the article. He invited him to introduce it.

3. Mr. TAMMES said that article 49, as worded by the Drafting Committee, was more general in character than the article on consultations originally proposed by the Special Rapporteur (A/CN.4/218/Add.1). The Special Rapporteur had focussed attention on particular articles, such as those on the size of the permanent mission and on the duty to respect the laws and regulations of the host State, whereas the Drafting Committee, and now the Commission itself, had considered that the consultations procedure might be useful in connexion with all the draft articles.

4. The Drafting Committee had dropped the Special Rapporteur's paragraph 2, which stated that the provisions of the article were without prejudice to any international agreements concerning settlement of disputes. The omission of that paragraph left a gap in the draft which his amendment was intended to fill.

5. In providing for recourse to an impartial procedure only if the consultations failed to achieve a result satisfactory to the parties concerned, his amendment followed article VII, section 24, of the Convention on the Privileges and Immunities of the Specialized Agencies.[1] The resulting sequence of procedures was in keeping with the spirit of Article 33 of the Charter, which implied that the parties to a dispute should seek a solution by negotiation before resorting to such methods as arbitration or judicial settlement.

6. Section 24 of the Convention specified that any dispute as to whether an abuse of a privilege or immunity thad occurred should be submitted to the International Court of Justice for an advisory opinion. That somewhat artificial procedure was necessitated by the fact that specialized agencies could not technically be parties in cases before the Court. As indicated by the Secretariat study,[2] the practice of the agencies showed that that procedure was too cumbersome and that no agency or State had so far had recourse to it.

7. He had therefore couched his own amendment in very general terms and his proposed new paragraph 2 merely stated:

"2. If such consultations fail to achieve a result satisfactory to the parties concerned, the matter shall be submitted to an impartial procedure which shall be established within the Organization."

8. His proposal involved a consequential amendment to the title of the article, which would now read: "Procedures to be followed with respect to any question arising out of the application of the present articles."

9. He was prepared to accept the Chairman's wording for paragraph 1; the insertion of the words "at the request of one of them" made the text more precise.

10. Mr. KEARNEY said he could accept the Chairman's rewording, which was an improvement on the Drafting Committee's text.

11. The new paragraph 2 proposed by Mr. Tammes made good an omission in the draft, and the Commission would have to consider its contents at some stage. It was true that certain sections of the draft were still outstanding, such as those dealing with permanent observers and with delegations to international conferences, and article 49 would thus have to cover a wider field than permanent missions. He was nevertheless in favour of adopting a new paragraph 2 at that stage, subject to any later redrafting to cover other cases. A similar problem of rewording would also arise in regard to paragraph 1 of article 49.

12. With regard to the substance of the proposed new paragraph 2, he noted that the paragraph did not lay down any hard and fast rule on the procedures to be followed, but merely imposed a duty to provide a procedure for impartial settlement. The provision was also sufficiently flexible to cover the variety of procedures established by the different organizations. The point was important because article 49 dealt with privileges and immunities acquired as a result of membership in an organization, and there might be considerable differences in the relevant provisions of the various headquarters agreements.

13. He shared the view that disputes of the type under consideration were not suitable for full treatment by the International Court of Justice. The purpose of the proposed new paragraph 2 would generally be to deal with relatively minor disputes where no agreement could be reached between the host State and the sending State concerned.

14. Mr. REUTER said that the amendments by the Chairman and Mr. Tammes had not removed all the uncertainties in the original version of article 49 (A/CN.4/218/Add.1). In the first place, he would like to know what was to be the relationship between article 49 and the similar articles already included in the constituent instruments of international organizations. The article not only formed a final clause to the present articles, but also served that purpose as between the present articles and the other agreements now in force.

15. The article specifically defined the part to be played by an international organization itself in the type of dispute in question. The original version had tended to place the sending State, the host State and the organization on the same footing—a tendency which had been strengthened by the Chairman's amendment, since it provided that the initiative in requesting consultations might be taken by any one of the three parties. It might also be asked whether, in the new paragraph 2 proposed by Mr. Tammes, the organization was to be

[1] United Nations, *Treaty Series*, vol. 33, p. 276.

[2] See *Yearbook of the International Law Commission, 1967*, vol. II, p. 321.

regarded as an interested party or not. He, personally, had some difficulty in imagining how triangular disputes could arise.

16. It would also be necessary to make it clear what was meant by an "impartial" procedure and a procedure "established within the Organization". Was the procedure to be established by an internal act of the organization or by agreement among its member States? What would happen if the host State was not a member of the organization? That was a specific technical problem. It was necessary to define the status of an organization involved as a legal entity in such a dispute.

17. If the article was envisaged as one of subsidiary importance, establishing a general obligation to hold consultations, it would not raise any substantive difficulties, but the meaning of "consultations" and "questions" would, perhaps, at least have to be defined. Could a "question" arise before a dispute existed? But if it was decided that the provision would apply only where a formal dispute existed, it would be necessary to specify the exact cases to which the article applied as well as the procedure, and that would give rise to many difficulties.

18. Accordingly, though he was not opposed to the various texts submitted to the Commission, he was not prepared to take a definite position until he had seen the final clauses as a whole.

19. Sir Humphrey WALDOCK said he shared many of the doubts expressed by the previous speaker. In his view, the Commission should first take a decision on the purpose and scope of article 49.

20. His own impression had been that the purpose of the article was to establish a right to a procedure of consultation in cases arising essentially between the host State and a sending State. If the Commission wished to be more ambitious and to draft a provision dealing with the whole question of the settlement of disputes arising out of the application of the draft articles, such a provision should form part of the final clauses. It should, however, be remembered that the Commission had hitherto avoided going too deeply into the question of the general settlement of disputes. In its draft articles on the law of treaties, it had included a clause dealing with some aspects of the matter, particularly with the very special problems arising out of the provisions on the invalidity and termination of treaties. At the Vienna Conference on the Law of Treaties, the question of the settlement of disputes had become one of the central issues and the convention ultimately adopted had contained much more extensive provisions on the subject.

21. He had some sympathy for the proposal submitted by Mr. Tammes, but had misgivings with regard to a provision requiring that a certain procedure "shall be established within the Organization". It seemed to him that such a provision would have the effect of writing something into the constitution of the organization concerned.

22. With regard to the Chairman's proposed text for article 49, he was in favour of the change made to the words "arising out of the application of the present articles", which were inadequate, if only because the problems that would occur would very often arise out of the non-application of certain privileges and immunities. For that reason, it was better to use the more general wording "relating to" or "concerning".

23. He was not altogether satisfied with the words "at the request of one of them", if they meant that the organization could itself request the holding of consultations independently of the wishes of the States concerned. It had been his understanding that article 49 was primarily concerned with disputes between the host State and a sending State and was intended to cover the situation that would arise in the event of one of those States adopting an intransigent position. In such a situation, it was a normal practice at present to bring into consultation the senior official of the organization concerned; and he agreed that the organization was itself interested in any problem affecting its smooth functioning.

24. If such was the purpose and scope of article 49, the article might conveniently be reworded on the following lines:

> "If any question arises between a sending State and a host State concerning the application of the present articles which has not been settled by negotiation, either State may require that consultations on the question shall be held between them and the Organization."

He did not put that text forward as a proposal, but for the purpose of finding out what precisely was the scope of the article which the Commission had in mind.

25. Mr. ROSENNE said he associated himself with the doubts expressed by the two previous speakers regarding the scope and purpose of article 49 and the proposed new paragraph 2.

26. As he had already said, he found it difficult to accept the premise that an organization would be a party to a question arising out of the application of the draft articles.[3]

27. The proposed new paragraph 2 referred to the failure to achieve "a result satisfactory to the parties concerned". It seemed to him that the meaning of that phrase needed some clarification, since any settlement would usually be unsatisfactory to at least one of the parties.

28. With regard to the point of principle raised by Sir Humphrey Waldock, he would go even further and dispute the right of an organization to assert its own position in a bilateral dispute between two States. As indicated in the opening sentence of paragraph 3 of the Special Rapporteur's commentary to his article 49 (A/CN.4/218/Add.1), the intention had been to avoid such a result. The text now under discussion lacked the flexibility which the Special Rapporteur had had in mind and which to some extent also marked the text put forward by Sir Humphrey Waldock.

29. Mr. USTOR said that he shared some of Sir Humphrey Waldock's views on the proposed new para-

[3] See previous meeting, para. 40.

graph 2. If the constituent instrument of the organization concerned contained provisions on the settlement of disputes, those provisions would apply in accordance with article 3 of the present draft.[4] If it contained no such provisions, he did not believe that the situation would be remedied by the proposed new paragraph. The present draft could not impose on an organization the obligation to amend its basic instrument.

30. The essential problem involved in article 49 was whether the organization itself should be entitled to initiate a procedure for the settlement of questions arising between a sending State and the host State. On that point, he would himself adopt a somewhat liberal approach, bearing in mind the provisions of article 23 *bis*,[5] which the Commission had not yet examined but which dealt with the assistance to be given by an organization to sending States in respect of privileges and immunities. The provisions of that article would not only confer upon the organization a right, but would impose upon it a duty, to assist the sending State concerned. It should be remembered that even if a particular sending State did not protest against the failure to observe a privilege or immunity, the matter was still of interest to the organization and to other sending States.

31. Mr. EUSTATHIADES said that the amendments proposed by the Chairman and by Mr. Tammes improved the proposed procedure for consultations. But the preliminary question of the scope of the article had to be settled first. Reference to paragraphs 4 and 6 of the Special Rapporteur's commentary and to his explanations at the Commission's 999th meeting showed that the article was intended to deal with the practical difficulties which might arise in day-to-day relations. There was no question of making the article a general clause for the settlement of disputes concerning the interpretation and application of the future convention.

32. In any event, the distinction was clear in practice. That was demonstrated by, for example, article IV, section 14 of the Headquarters Agreement between the United Nations and the United States of America,[6] and by article VIII, section 30, of the Convention on the Privileges and Immunities of the United Nations.[7] Consultations could not, therefore, be the final stage in a procedure for the settlement of disputes. Thus, although the text proposed by Mr. Tammes was a step forward, it failed to make it clear whether the procedure provided for was to be an intermediate stage in relation to the future article concerning the settlement of disputes.

33. If it was agreed that the article was concerned with practical difficulties, it would be seen that the text proposed by Sir Humphrey Waldock had several advantages, especially that of the requisite flexibility. The other texts seemed to imply that consultations must be held automatically whenever a difficulty arose, which was neither consonant with the practice of international organizations nor desirable *de lege ferenda*.

34. Lastly, though he did not object to the idea of consultations with the organization, he thought that the main issue in that particular instance was the difficulty, or disagreement, between the host State and the sending State. The wording should therefore bring out the fact that consultations were to be the second stage, after the breakdown of negotiations, as Sir Humphrey Waldock proposed.

35. Mr. JIMÉNEZ de ARÉCHAGA said he supported the Chairman's proposal that the words "arising out of" should be replaced by the words "relating to".

36. With regard to the wording suggested by Sir Humphrey Waldock, he thought it would be a mistake to lay down a rigid rule that consultations should take place only after the failure of negotiations. In practice, consultations with the organization could take place simultaneously with the negotiations between the two States concerned.

37. He was in favour of including a second paragraph in the article to make it clear that consultations did not bring the matter to an end, and would be satisfied with a text similar to that originally proposed by the Special Rapporteur, if the one proposed by Mr. Tammes were considered too ambitious. Some of the substantive provisions included in the present draft undoubtedly required procedural safeguards. A case in point was the new paragraph which the Commission had added to article 44, introducing the equivalent of the *persona non grata* system for members of permanent missions.[8]

38. The organization as such could certainly have a real interest of its own in upholding the privileges and immunities of permanent representatives. On that point, the Special Rapporteur had drawn attention, at the end of paragraph 3 of his commentary to article 49, to the Secretary-General's view that the United Nations might be one of the "parties" in the sense in which that term was used in section 30 of the Convention on the Privileges and Immunities of the United Nations. The existence of that provision had an effect of its own, whether it was applied or not.

39. Mr. YASSEEN said that, as he saw it, article 49 did not state a general rule for the settlement of disputes, but established a procedure for resolving certain difficulties likely to arise in applying the convention. The text proposed by Mr. Tammes went further than that relatively limited aim.

40. If a disagreement arose between the host State and a sending State, it could naturally be settled in accordance with international law or with certain special instruments. But the direct contact thus established between the two parties might not lead to a satisfactory settlement. The procedure contemplated in article 49 was to associate the international organization with the contact for consideration of the question. Indeed, the representatives of the organization might play a useful part in such situations.

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

[5] See 1030th meeting, para. 54.

[6] United Nations, *Treaty Series*, vol. 11, p. 24.

[7] *Op. cit.*, vol. 1, p. 30.

[8] See 1024th meeting, para. 6.

41. If the Commission agreed that the article went no further than that, it might accept the text proposed by Sir Humphrey Waldock. It was the normal practice for contact first to be established between the host State and the sending State. He, too, was in favour of using the term "disagreement", which was more precise than "question". If there was no disagreement, consultations would not be necessary.

42. The CHAIRMAN, speaking as a member of the Commission, said that the basic idea of the article was to provide for the possibility of intervention by the organization in regard to questions arising out of the application of the future convention. Otherwise, as consultations and negotiations could always be held between the sending State and the host State at the request of either, it was impossible to see what purpose the article would serve.

43. As drafted by the Special Rapporteur, however, the article might give the impression that consultations were mandatory in any event and on any question. He had therefore proposed in his amendment the insertion of the phrase "at the request of one of them", but because of the objections raised to the option thus given to the organization, that phrase might be omitted and, instead, the words "if necessary" inserted at the beginning of the articles, as he had originally had in mind.

44. Sir Humphrey Waldock's proposal seemed to be based on a similar idea. It would, however, have the effect of instituting a method of settling disagreements in two stages, first by negotiations and then, if they failed, by consultations with the organization. It was dangerous to suggest disagreements, even by implication, whereas consultations might serve to settle any questions that arose even before a disagreement had developed. And even in the event of a disagreement, if the host State or the sending State wished for tripartite discussions before bilateral negotiations were initiated, there ought to be some provision making that possible.

45. Mr. Tammes' proposal was to establish within the organization a procedure for the settlement of disputes. He himself found it acceptable, but it was only one move among many, as was clear from Article 33 of the United Nations Charter. But in any event it involved the more general question of the settlement of disputes concerning the interpretation or application of the articles. It would be better to state in the commentary that the purpose of article 49 was to provide for consultations, not to establish machinery to be available in the last resort for the solution of any dispute.

46. The Special Rapporteur had said that he would draft an article concerning the settlement of disputes arising out of any part of the convention. It would therefore be better to wait until he had completed the draft.

47. Sir Humphrey WALDOCK said there could be no question of excluding the normal day-to-day consultations between the organization and the host State, which would, of course, take place before a situation such as that contemplated in article 49 was reached. He did not believe, however, that the article was merely intended to give general approval to that process of informal consultation. Its purpose was to deal with the difficulty which arose when there was a difference of views between the host State and a sending State on a matter of privileges or immunities. The provisions of article 49 were intended to confer upon each of the States concerned, and in particular upon the host State, a formal right to set in motion the process of consultation. That formal right would be exercised when one of the two States concerned believed that the other was being intransigent.

48. Mr. CASTRÉN said that the Chairman's proposal considerably improved the text submitted by the Special Rapporteur, as amended by the Drafting Committee. He did not, however, think it would be desirable to substitute the phrase "if necessary" for "at the request of one of them", as the Chairman had proposed orally, since it was too general; it was self-evident that consultations would only be held if necessary.

49. The text proposed by Sir Humphrey Waldock departed too far from the Special Rapporteur's original idea, by giving the organization a more restricted role than the Special Rapporteur and even the Drafting Committee had provided for it. The organization should preferably be able to intervene *ab initio* in the settlement of a question arising between a sending State and the host State. Moreover, the organization must safeguard its own interests. Hence article 49 should not be amended as radically as Sir Humphrey proposed.

50. It might be preferable to make the new paragraph 2 proposed by Mr. Tammes into a separate article and to improve its wording, although the proposal it contained, while sound in itself, was a source of some misgivings.

51. Mr. AGO said that the Commission ought to be quite clear about what it meant to say in the article. The words "any question" could apply to several kinds of dispute. For instance, they might apply to a dispute between the host State and a particular sending State over, say, a criminal offence committed by a member of the latter's permanent mission. In that case, the matter would be settled by direct negotiations or by the other procedures normally used in relations between two States. But although that would be a bilateral inter-State dispute, the organization might have an interest in being kept informed and being allowed to have its say, since the settlement of the dispute might create a precedent and thus affect the interests of the organization as such. The Commission, therefore, had to decide whether it wished to give the organization an opportunity of defending its interests by stipulating that it must be consulted.

52. Another type of dispute might arise between the host State and not just one, but all the sending States if, for example, the State took legislative or administrative measures which affected all the sending States. There was no necessity to provide for compulsory consultation of the organization in such a case, for it would be the organization itself which would make representations to the host State.

53. Furthermore, while it might be desirable to provide for the possibility of consultations with the orga-

nization in case of a dispute between the host State and a sending State, it was important to avoid giving the impression that such consultations exhausted the means of settlement of disputes. In that respect Mr. Tammes' proposal for resort to an impartial procedure within the organization had merit, but it was open to two objections; first, that small and highly specialized organizations might not perhaps consider it desirable to establish such a complicated internal procedure and, secondly, that the host State might not be a member of the organization and might thus not consider itself bound by an internal procedure of the organization. Again, different organizations with headquarters in the same host State might establish different procedures.

54. For those reasons, the Commission should not take a hasty decision on those aspects of the problem. The Special Rapporteur had thought of reserving all such questions for the end of his report, in other words, of deferring them until the Commission had examined all the problems arising from the relations between States and international organizations.

55. It would be better, therefore, for the time being, just to draft a very brief article merely imposing an obligation on the sending State and the host State to consult the organization in the event of a dispute between themselves concerning the application of the articles so far considered, and to postpone until a later stage the preparation of a more ambitious article covering the problem of the settlement of disputes in relation to the draft articles as a whole.

56. Mr. RUDA said that his original doubts about article 49 had increased as the debate proceeded. As Mr. Ago had pointed out, the article might give rise to complicated problems. In paragraph 1 of his commentary to the article, the Special Rapporteur had said that the purpose of the consultations referred to in paragraph 1 "would be to provide remedies for difficulties which may arise as a result of the non-application, between States members of international organizations and between States members and the organizations, of rules of inter-State bilateral diplomatic relations regarding *agrément*, the declaring of a diplomatic agent as *persona non grata* and reciprocity". In paragraph 6 of his commentary, the Special Rapporteur had gone on to say that the purpose of paragraph 2 of article 49 was "to make clear that the consultations envisaged in the article relate to difficulties of a practical character and not to disputes of a rather more formal character to which the interpretation of the articles may give rise . . .". The ideas referred to in those two paragraphs of the commentary were far from simple and were quite distinct.

57. He also shared Mr. Reuter's uncertainty regarding the exact meaning to be given to the word "consultations". In bilateral diplomatic relations, such "consultations" might be more correctly described as "negotiations", and for that reason, he could support the amendment proposed by Sir Humphrey Waldock.

58. He thought it would be more prudent for the Commission to postpone a decision on provision for the settlement of disputes until it had the whole draft before it, as well as some idea of the Special Rapporteur's wishes in the matter.

59. Sir Humphrey WALDOCK said that he agreed with the views expressed by the last two speakers. The main difficulty, to his mind, was that the proposed article 49 was neither a general article nor an article designed to deal effectively with disputes between the host State and the sending State. The amendment proposed by the Chairman seemed to be limited to relations between the host State and the sending State, with the possibility of intervention by the organization to protect its own interests; but, as Mr. Ago had said, there were also larger issues in which the organization might have to play a part. If the organization was to provide some formal procedure for consultations, he could only recommend his own proposal; on the other hand, in view of the more general aspects of the problems involved, it might be better to defer consideration of article 49 until the Commission had the draft articles as a whole before it.

60. Mr. USTOR suggested that the Commission might tentatively adopt the present text of article 49, explaining in the commentary that it was intended for consideration by Governments and that the whole matter would be reconsidered by the Commission at a later stage. It should, however, make clear in its report that it had deferred its decision on article 49 until it had dealt with the following chapter of the draft.

61. Mr. ROSENNE said he shared Mr. Ustor's view; the Commission's position would be liable to misunderstanding if it did not include even a tentative text for article 49. Some of the articles were relatively far reaching in scope, and if the Commission failed to point out at the present stage that it envisaged some procedure for dealing with any questions which might arise in connexion with them, the draft might be open to serious misinterpretation. Many of the present articles might look remarkably similar to the corresponding articles of the Vienna Convention on Diplomatic Relations, but inasmuch as they concerned permanent missions to international organizations, they were not at all the same.

62. As Mr. Ustor had said, if the Commission decided to defer its decision on article 49, it should include a full account of the present discussion in its report in order to elicit the views of Governments.

63. Mr. RAMANGASOAVINA said he agreed with other members of the Commission that it was not possible to anticipate the full scope of article 49 at the present stage of the Commission's work, since the draft articles were not yet complete. For the time being, therefore, any text that the Commission drafted must be tentative.

64. Mr. KEARNEY said that, after hearing the arguments of Mr. Ago and Mr. Ruda, he too had reached the conclusion that the Commission should postpone any action on article 49. His ideas had been largely modified by the discussion of the role the organization should play in the consultations. He could not agree with those who considered that the organization had no special role to play; since it was a contracting party

to the relevant headquarters agreement, he thought it would have a role to play in connexion with almost any problem involving a sending State. Entirely different problems might arise, however, in connexion with delegations to international conferences. He believed, therefore, that for the present the Commission's best course would be to defer a decision on article 49.

65. The CHAIRMAN, speaking as a member of the Commission, said he was still convinced that an article was needed, no matter how it was worded, providing that the organization might intervene in certain circumstances to help the host State and the sending State settle a dispute arising out of the application of the articles. The host State did not always have diplomatic relations with all the member States of an organization and in some cases therefore could negotiate, if necessary, only through the organization. It was also possible that a sending State might wish to enter into negotiations with the host State in order to conclude agreements or to clarify certain matters in the presence of a representative of the organization. That was a quite conceivable situation, since relations between the host State and the sending State were not, strictly speaking, bilateral relations, but relations arising from the organization's presence in the host State's territory.

66. Some text was essential, even if it was of a tentative character, so that the Commission could draft the article in its final form on the basis of the comments elicited from Governments. The Commission could adopt any wording, for example, that proposed by Sir Humphrey Waldock, with the omission of the phrase "which has not been settled by negotiation", but it should do so forthwith and not wait until it had considered the draft articles as a whole, since the next sections would deal with different subjects. The Special Rapporteur had had his reasons for proposing the article, and the Drafting Committee should therefore be asked to make one more effort to produce a satisfactory text.

67. The situation mentioned by Mr. Ago, in which the host State took measures contrary to the interests of all the members of the organization, was a matter of general concern, not a question arising out of the application of the articles, so it was not covered by article 49.

68. Mr. JIMÉNEZ de ARÉCHAGA said that paragraph (8) of the Commission's commentary to article 16 (Size of the permanent mission) as adopted at the previous session read: "Some members of the Commission raised the question of the remedies available to the host State in case of non-observance by the sending State of the rule laid down in article 16. They suggested that a provision should be included in the text of the article for consultation between the host State, the sending State and the organization. When it takes up the remainder of the draft articles, the Commission will consider inclusion of an article of general scope concerning remedies available to the host State in the event of claimed abuses by a permanent mission." [9]

Since, at the present session, it had been considered necessary to provide guarantees to the host State in connexion with article 44, it would, in his opinion, be a serious mistake to omit a separate article on consultations.

69. He was prepared to accept Sir Humphrey Waldock's proposal, provided that consultations were not made subordinate to negotiations.

70. Mr. AGO said he had proposed allowing the Commission time to ponder a delicate problem. If, however, the Commission wished to adopt a tentative text forthwith, it should make it quite plain that its intention was not to solve the problem of the settlement of disputes arising out of the application of the articles as a whole, but merely to ensure that, in the event of a dispute between the host State and the sending State, the interests of the organization would be safeguarded and it would be consulted. It should, furthermore, use language which clearly showed that it was dealing with an obligation, and not with a mere possibility or vague contingency.

71. Mr. RUDA, pointing out that article 49 was the last article in part II of the draft, dealing with permanent missions to international organizations, asked whether it would therefore apply only to the articles preceding it or to all subsequent articles as well.

72. The CHAIRMAN, speaking as a member of the Commission, said that, in his view, article 49 applied only to the preceding forty-eight articles. That should perhaps be stated in the article itself or in the commentary.

73. Speaking as Chairman, he said that the Commission was divided on the question of the need for the article. Before he put that question to the vote, however, he would suggest that the article be referred back once more to the Drafting Committee with a request that it make one final effort to produce a generally acceptable text in the light of the discussion.

74. Sir Humphrey WALDOCK said that he supported the Chairman's suggestion. He also endorsed Mr. Jiménez de Aréchaga's view that adequate remedies should be available to the host State. He hoped that the Drafting Committee would give full attention to the interests of all three parties, namely, the sending State, the host State and the organization.

75. The CHAIRMAN said that, in the absence of any objection, he assumed that his suggestion to refer article 49 back to the Drafting Committee was accepted.

It was so agreed.[10]

The meeting rose at 6.10 p.m.

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

[10] For resumption of the discussion, see 1034th meeting, para. 92.