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Summary record of the 1033rd meeting

Topic:
Representation of States in their relations with international organizations

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67. Mr. KEARNEY asked Mr. Castrén how the provision, as amended by him, would apply to the son of a permanent representative who committed a grave offence.

68. Mr. CASTRÉN observed that there was no need to deal with members of the family in article 44. The sending State could always waive immunity in respect of them, since provision had been made for such action earlier in the draft.

69. Mr. BARTOŠ remarked that the question of violations committed by members of the family was not an academic hypothesis; it had arisen on several occasions in New York. Mr. Castrén's proposal was, however, a sound one. The simplest course in a situation of that kind was either to waive immunity or to require the person concerned to leave the country within a reasonable time.

70. Mr. ROSENNE stressed the need to bear in mind that the whole concept of *persona non grata* was inapplicable to permanent missions. It was because no such remedy was available to the host State in the circumstances under consideration that paragraph 3, as proposed by the Drafting Committee, was entirely appropriate.

71. Lastly, with reference to Mr. Ustor's earlier remarks, he reminded the Commission of its decision to replace the original title of article 44, "Obligation to respect the laws and regulations of the host State", by "Respect for the laws and regulations of the host State".¹²

72. Mr. JIMÉNEZ DE ARÉCHAGA said he was against the change proposed by Mr. Castrén. Paragraph 3 should be read in conjunction with article 44, paragraph 1. The provisions of that paragraph were very broad and covered "all persons enjoying such privileges and immunities", that was to say, not only the permanent representative and members of the diplomatic staff of the mission, but also members of the administrative and technical staff, who enjoyed immunity from criminal jurisdiction, and the families of members of the mission. It would defeat the whole purpose of article 44 to restrict the provisions of paragraph 3 in the manner proposed. In practice, most of the problems arose from offences committed not by members of permanent missions, but by the younger members of their families.

73. Mr. USTOR said that he had supported Mr. Castrén's proposal in the interests of logic; but logic could also be satisfied by making the alteration elsewhere. Bearing in mind the point raised by the previous speaker, the words "recall the person concerned" could be amended so as to refer not only to an official who could be recalled, but also to any "person enjoying immunity from criminal jurisdiction".

74. Mr. CASTRÉN said he thought the members of the Commission might support a simpler solution. The words "a person enjoying immunity from criminal jurisdiction" could be retained, but the words "unless

it" might be deleted. The latter part of the first sentence would then read: "the sending State shall waive this immunity, recall the person concerned or terminate his functions with the permanent mission, as appropriate". There would thus be three possible solutions; the first would be the only one that could be applied to members of families, but all three could, of course, be applied to members of the permanent mission.

The meeting rose at 1.25 p.m.

1033rd MEETING

Thursday, 31 July 1969, at 3.40 p.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Ago, Mr. Bartoš, Mr. Castrén, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tsuuroka, 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 (Respect for the laws and regulations of the host State) (continued)

1. The CHAIRMAN invited the Commission to continue consideration of the compromise text for article 44, paragraph 3, submitted at the previous meeting¹ by Mr. Ago, Mr. Jiménez de Aréchaga and Mr. Kearney.
2. Speaking as a member of the Commission, he said he could not accept the proposal made by Mr. Castrén at the end of the previous meeting that the last part of the first sentence be amended to read "the sending State shall waive this immunity, recall the person concerned or terminate his functions with the mission, as appropriate". There were in fact only two alternatives: the sending State could waive the immunity of a person who had committed a grave violation, or it could recall the person concerned or terminate his functions, depending on his nationality and type of function. He therefore preferred the compromise text or the originally submitted by the Drafting Committee.² In his view, Mr. Castrén's first proposal that the words "a member of the permanent mission" should be substi-

¹ See para. 27.

² See 1029th meeting, para. 16.

¹² See 1024th meeting, paras. 69 and 85-87.

tuted for "a person enjoying immunity from criminal jurisdiction" was more acceptable.

3. Mr. YASSEEN said he supported Mr. Castrén's second proposal. The sending State could not recall members of the family. It might perhaps recall the principal agent because of the misconduct of a member of his family, but in that case liability for an act committed by another person would have to be established, and that was certainly not made clear in the existing text. It should be specified that paragraph 3 referred only to a principal agent.

4. Mr. CASTRÉN said he did not share the Chairman's views regarding the phrase "unless it waives this immunity". The sending State had only one choice where members of the family were concerned, namely, to waive their immunity. Hence the words "unless it" had no place in the sentence. Where members of the permanent mission were concerned, the sending State had a choice between recalling them and terminating their functions.

5. Mr. KEARNEY said that if, for example, the child of a diplomat committed a grave violation of the criminal law of the host State, it would be excessive to require that the diplomat himself be recalled. In order to cover all persons enjoying immunity from criminal jurisdiction, he suggested that the word "recall" in the English text be replaced by the word "remove".

6. Mr. AGO proposed that the word "recall" be replaced by some such expression as "secure their return to their country", which would apply to persons other than the members of the mission.

7. He was against Mr. Castrén's second amendment, which would oblige the sending State to waive immunity from criminal jurisdiction in certain cases. That consequence seemed to him to be quite unacceptable in the case of a right which the sending State should be free to waive or not.

8. Mr. CASTRÉN said he was prepared to accept the substitution of the word "remove" for the word "recall" in the English text, as proposed by Mr. Kearney.

9. Mr. YASSEEN observed that the paragraph under consideration was based on article 9 of the Vienna Convention on Diplomatic Relations,³ which did not cover members of the family. The Commission should take care not to go further than that Convention and should avoid solutions that would endanger the unity of the family. The fact that owing to diplomatic immunity there would be no judicial decision made it advisable to exercise the greatest caution.

10. Mr. TSURUOKA said he appreciated Mr. Yasseen's views, but in very grave cases the family would be disunited in any event, if not by the repatriation of the person concerned, then by his imprisonment. He could therefore accept the fact that the provision might possibly entail disruption of the family.

11. Mr. JIMÉNEZ DE ARÉCHAGA said he support-

ted Mr. Kearney's proposal. Article 9 of the Vienna Convention should not be taken as the basis for the text under consideration, since it referred only to diplomatic personnel. The paragraph should not exclude persons who might be regarded as more likely to commit a grave violation of the criminal law of the host State than the diplomat himself, such as his children.

12. Mr. AGO said that in the event of a grave violation it was the normal practice for a member of the family, who only enjoyed immunity from criminal jurisdiction indirectly, to be obliged to leave.

13. Mr. USTOR supported the views expressed by Mr. Castrén and Mr. Yasseen. The members of the family involved might well be adults and the sending State might not be in a position to enforce their repatriation. Since the Commission could not hope to cover all possible cases, the text of article 9 of the Vienna Convention on Diplomatic Relations should be taken as the model, leaving extreme cases to be settled by negotiation as and when they arose.

14. Sir Humphrey WALDOCK pointed out that in the Vienna Convention on Diplomatic Relations, article 9, dealing with the question of *persona non grata*, was widely separated from article 41, which laid down the obligation to respect the local laws. There was therefore no awkward juxtaposition of the two provisions, as in the article now before the Commission. It would seem a little strange to state, in one paragraph of the article, that all persons enjoying immunity had an obligation to respect the laws and regulations of the host State and then, in a later paragraph of the same article, relating to grave and manifest violations of the criminal law, to provide that the obligation to secure the withdrawal of the person concerned was confined to diplomatic personnel. He therefore preferred the solution suggested by Mr. Kearney, which would not present any difficulties in practice, since the sending State could always secure either the withdrawal of the person concerned or the cessation of his protection by immunity.

15. After a discussion of the correct rendering in French of the English word "remove", Mr. AGO suggested that, in order to meet the difficulty, the end of the first sentence of paragraph 3 should be amended to read: "shall recall the person concerned, terminate his functions with the mission or secure his departure, as appropriate".

16. The CHAIRMAN said that, if there were no objections, he would assume that the Commission approved the following wording for the first sentence of article 44, paragraph 3: "In case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from criminal jurisdiction, the sending State shall, unless it waives this immunity, recall the person concerned, terminate his functions with the mission or secure his departure, as appropriate".

It was so agreed.

17. The CHAIRMAN, referring to the second sentence of article 44, paragraph 3, invited the Commission to vote on the proposal made by Mr. Yasseen

³ United Nations, *Treaty Series*, vol. 500, p. 102.

at the previous meeting that the words "within either the Organization or the premises of a permanent mission" be deleted.

The proposal was rejected by 9 votes to 5.

18. The CHAIRMAN said it had been proposed that the words "*au sein de l'Organisation*" should be substituted for "*à l'Organisation*" in the French version of the second sentence. There being no objection to that proposal, he put the second sentence to the vote, with the French version thus amended.

With that amendment to the French text, the second sentence of article 44, paragraph 3 was adopted by 9 votes to 5.

19. The CHAIRMAN put article 44, paragraph 3, to the vote as a whole.

Article 44, paragraph 3, as a whole, was adopted by 9 votes to 4.

20. The CHAIRMAN said it had been proposed that the order of paragraphs 2 and 3 of article 44 be reversed. He suggested that, in the absence of any objection, that proposal should be adopted.

It was so agreed.

21. The CHAIRMAN pointed out that the title of article 44 adopted by the Commission⁴ was "Respect for the laws and regulations of the host State". Paragraph 1 and the former paragraph 2 of article 44 had already been approved.⁵ He then put the article, as a whole, to the vote, as amended.

Article 44, as a whole, as amended, was adopted by 9 votes to 1, with 4 abstentions.

22. The CHAIRMAN, speaking as a member of the Commission, explained that he had voted against article 44 as a whole because paragraph 2 (formerly paragraph 3) was quite unacceptable to him.

The meeting rose at 4.55 p.m.

⁴ See 1024th meeting, paras. 69 and 85-87.

⁵ *Ibid.*, paras. 88 and 90.

1034th MEETING

Friday, 1 August 1969, at 9.40 a.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. Tsuruoka, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

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[Item 1 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

Section IV: End of functions

ARTICLE 46 (End of the functions of the permanent representative or of a member 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 re-draft of article 46.

2. Mr. USTOR said that the Drafting Committee had reconsidered article 46 in the light of the Commission's discussion and proposed the following text:

Article 46

End of the functions of the permanent representative or of a member of the diplomatic staff

The functions of the permanent representative or of a member of the diplomatic staff of the permanent mission come to an end, *inter alia*:

- (a) on notification to this effect by the sending State to the Organization;
- (b) if the sending State withdraws its permanent mission to the Organization.

3. The new text differed from the previous text in that it no longer referred to members of the permanent mission in general. The scope of its provisions had been confined to the permanent representative and to members of the diplomatic staff of the permanent mission.

4. In addition, the reference in sub-paragraph (a) to notification to the host State had been dropped. The paragraph now required notification of termination of functions to be made only to the organization. The provisions of article 17 would, of course, be applicable, but it was the notification to the Organization which brought to an end the functions of the individual concerned.

5. Sub-paragraph (b) had been completely reworded. It no longer mentioned the termination or suspension of membership in the organization and dealt only with the withdrawal of the permanent mission.

6. It should be emphasized that the cases mentioned in sub-paragraphs (a) and (b) were still only examples and did not constitute an exhaustive list of cases of termination.

7. In consequence of those changes in the text, the Drafting Committee now proposed the title "End of functions" for section IV and the title "End of the functions of the permanent representative or of a member of the diplomatic staff" for article 46 itself.

¹ For previous discussion and text, see 1025th meeting, paras. 5-84.