

Document:-
A/CN.4/SR.1094

Summary record of the 1094th meeting

Topic:
Representation of States in their relations with international organizations

Extract from the Yearbook of the International Law Commission:-
1971, vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

93. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to refer article 25 to the Drafting Committee, together with the proposal by Mr. Elias regarding the third sentence of paragraph 1. With regard to paragraph 3, the Drafting Committee would be requested to take special account of the comments of members.

*It was so agreed.*¹⁵

The meeting rose at 12.55 p.m.

¹⁵ For resumption of the discussion see 1112th meeting, para. 42.

1094th MEETING

Thursday, 6 May 1971, at 10.5 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Barotoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Thiam, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 6; A/CN.4/241 and Add.1 to 3; A/CN.4/L.162/Rev.1)

[Item 1 of the agenda]

(continued)

ARTICLE 26

1. The CHAIRMAN invited the Special Rapporteur to introduce article 26.

2.

Article 26

Exemption of the premises of the permanent mission from taxation

1. The sending State, the permanent representative or another member of the permanent mission acting on behalf of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the permanent mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the host State by persons contracting with the sending State, the permanent representative or another member of the permanent mission acting on behalf of the mission.

3. Mr. EL-ERIAN (Special Rapporteur) said that the comments of governments and secretariats of interna-

tional organizations on article 26 were summarized in his sixth report (A/CN.4/241/Add.3) and followed by his replies to those comments.

4. Bearing in mind the provisions of article 36, especially sub-paragraph (a), he did not believe that article 26 could be interpreted as covering indirect taxes. With regard to the problem of the ownership of shares in housing corporations, he interpreted the provisions of the article as covering such ownership. For those reasons, he did not recommend any changes in the text.

5. Mr. CASTRÉN said he accepted article 26 as adopted by the Commission at first reading. He was grateful to the Special Rapporteur for the reassuring explanation he had given in his report (para. 15 under article 26) in reply to the question raised by the Finnish Government concerning difficulties in interpretation (A/CN.4/238/Add.1, section B.5).

6. Mr. KEARNEY said the United States Government had suggested revising article 26 by drawing on the language of article 32, paragraph 1, of the Vienna Convention on Consular Relations,¹ so that the opening words would read: "The premises of the permanent mission . . . shall be exempt . . ." (A/CN.4/238/Add.2, section B.8).

7. It was highly desirable to ensure that taxes were not levied direct on the premises of the mission; it was not sufficient merely to exempt the person who leased the premises or who held the title to the property. In the United States, at least, it was possible for the revenue authorities to place a tax lien direct on the premises. Cases of that kind had occurred in the state of New York and in the state of Connecticut. In that type of case, the mission was, of course, exempt from paying the taxes, but if it decided to sell the premises in order to buy accommodation elsewhere, the title to the property sold would not be cleared for the purchaser unless he paid the tax arrears. The purchaser would make allowance for such payment in his offer, so that the value of the property would be reduced by the amount of the tax arrears.

8. He therefore suggested that consideration be given to the suggested change of language.

9. Mr. SETTE CÂMARA said that tax exemption was a very important part of privileges and immunities, both in bilateral diplomacy and for permanent missions. The provisions of article 26 were based on those of article 23 of the Vienna Convention on Diplomatic Relations,² but the comments of governments were not sufficiently clear to solve some of the problems that arose. For example, the question of indirect taxes was not fully covered by the provisions of article 36, sub-paragraph (a), because those provisions referred to indirect taxes "normally incorporated in the price of goods or services", so that they would not cover indirect taxes which were charged separately.

10. As to the problem of ownership of shares in a

¹ United Nations, *Treaty Series*, vol. 596, p. 288.

² *Op. cit.*, vol. 500, p. 108.

housing corporation, he saw no reason to exclude such ownership from the exemption in article 26.

11. With regard to rented premises, it might be desirable to extend the system applied at Vienna, where the International Atomic Energy Agency had secured an agreement that no taxes should be levied on the premises of permanent missions whether owned or rented by the sending State. On that point the government comments were not of much assistance, while the practice in New York and at Geneva hardly justified the hope that equality between owned and rented premises would be ensured.

12. Mr. USTOR said he had no objection to the substance of paragraph 1, but he thought the Drafting Committee should consider the United States suggestion referred to by Mr. Kearney, which would bring the text closer to the language of article 32 of the Vienna Convention on Consular Relations. Since that suggestion had been made in order to overcome difficulties encountered in the United States, which was a host State, it should be given special attention. He himself had an open mind on the subject.

13. He had doubts about the expression "acting on behalf of the mission", which was also used in the corresponding provision of article 24 of the Convention on Special Missions.³ In many legal systems a diplomatic mission or a permanent mission was not recognized as a legal entity and had no legal corporate existence distinct from the sending State. He therefore suggested that the Drafting Committee consider replacing that formula by the words "acting on behalf of the sending State", on the lines of article 32 of the Vienna Convention on Consular Relations.

14. With regard to paragraph 2, ever since the adoption of the 1961 Vienna Convention on Diplomatic Relations, he had protested against the inequality of treatment as between rented and owned premises. A number of governments had drawn attention to that injustice in their comments, as indicated by the Special Rapporteur in his report. The simplest way of dealing with that problem would be to delete paragraph 2, but so far there had never been a majority in the Commission in favour of that course. If the position was still the same, he would propose that a passage be included in the commentary drawing attention to the matter and suggesting to governments that it was desirable to avoid discrimination as between owned and leased premises and to put an end to the present inequality of treatment.

15. Mr. EL-ERIAN (Special Rapporteur) proposed that article 26 be referred to the Drafting Committee with instructions to give careful consideration to the United States suggestion and to the inclusion of a passage in the commentary drawing attention to the present inequality of treatment as between owned and rented premises.

It was so agreed.⁴

³ See General Assembly resolution 2530 (XXIV), Annex.

⁴ For resumption of the discussion see 1113th meeting, para. 2.

ARTICLE 27

16. The CHAIRMAN invited the Special Rapporteur to introduce article 27.

17.

Article 27

Inviolability of archives and documents

The archives and documents of the permanent mission shall be inviolable at any time and wherever they may be.

18. Mr. EL-ERIAN (Special Rapporteur) said that only one government had commented on article 27, stressing the significance it attached to that provision (A/CN.4/238, section B.1).

19. He suggested that the text be retained as it stood.

20. Mr. USTOR said he had no objection to the substance of the article, but he would suggest, for the consideration of the Drafting Committee that, in article 1 on the use of terms, a paragraph be included on the lines of article 1, paragraph 1 (k) of the Vienna Convention on Consular Relations.⁵ Since the definition of "archives" would then cover all papers, documents, correspondence, etc., article 27 could be amended to refer to the "archives" of the permanent mission, instead of the "archives and documents", as at present.

21. The CHAIRMAN suggested that article 27 be referred to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.⁶

ARTICLE 27 bis

22. The CHAIRMAN invited the Special Rapporteur to introduce the new article 27 bis.

23.

Article 27 bis

Entry into the host State

1. The host State shall ensure entry into its territory and freedom of transit to and from the premises of the Organization to members of the permanent mission and members of their families forming part of their respective households.

2. Visas, where required for any person referred to in paragraph 1 of this article, shall be granted as promptly as possible.

24. Mr. EL-ERIAN (Special Rapporteur) said that, at the twenty-first session, he had expressed the view that there was no need to include in the draft articles a special provision on freedom of entry for members of the permanent mission, because that matter was already covered by article 22, on general facilities.⁷ His views on the subject had not changed, but he had nevertheless prepared a text on freedom of entry to serve as a basis for discussion which might assist the Commission in its second reading of the draft articles.

⁵ United Nations, *Treaty Series*, vol. 596, p. 264.

⁶ For resumption of the discussion see 1113th meeting, para. 9.

⁷ See previous meeting, para. 2.

25. The United Nations Secretariat had submitted elaborate observations (A/CN.4/239, section D.1) on the right of entry into and sojourn in the territory of the host State. He had not attempted to paraphrase or summarize those observations, but had reproduced them in full in his report (A/CN.4/241/Add.3); they concluded with a suggested draft for a new article 27 *bis*, which read:

26.

Article 27 bis

Entry into and sojourn in the host State

1. The host State shall take all necessary measures to facilitate the entry into and sojourn in its territory of any person appointed, in accordance with article 10, by a State member of the Organization as a member of that State's permanent mission and of any member of the family forming part of the household of such member of permanent mission.

2. The host State shall ensure to all persons referred to in paragraph 1 of this article the freedom of transit to and from the Organization and shall afford them any necessary protection in transit.

3. Visas, where required for any person referred to in paragraph 1 of this article, shall be granted free of charge and as promptly as possible.

4. Laws or regulations of the host State tending to restrict the entry or sojourn of aliens shall not apply to any person referred to in paragraph 1 of this article.

27. The secretariat of the International Atomic Energy Agency had also favoured the inclusion of a new article on the right of entry (A/CN.4/239, section D.9).

28. At its twenty-first session, the Commission had considered the matter in connexion with article 48, on facilities for departure, but had postponed taking a decision until the second reading, as recorded in paragraph (2), of the commentary to article 48.⁸ It was in view of that decision and of the elaborate observations by the United Nations Secretariat, that he had considered it his duty to prepare a text for a new article 27 *bis*, although it did not reflect his own views.

29. Mr. MOVCHAN (Secretary to the Commission) said that the Secretariat had followed the Commission's discussions attentively and, in submitting its suggestion for article 27 *bis*, had had especially in mind paragraph (2) of the Commission's commentary to article 48, according to which the Commission had decided to consider "the possibility of including in the draft, as a counterpart to article 48, a general provision on the obligation of the host State to allow members of permanent missions to enter its territory to take up their posts".

30. The Secretariat had based its suggestion, first, on practice: it had had some experience of the difficulties that arose, which indicated that it would be advisable to include in the draft a new provision on the right of entry and sojourn. It had based its suggestion, secondly, on the provisions of the 1946 Convention on the Privileges and Immunities of the United Nations,⁹ the 1947

Convention on the Privileges and Immunities of the Specialized Agencies,¹⁰ headquarters agreements and other relevant international instruments.

31. In the Secretariat's view, the right of entry into the territory of the host State and the right of sojourn there were indispensable for the independent and effective exercise of the functions of the members of permanent missions in connexion with the organization to which they were accredited or appointed. That right was also a prerequisite for the enjoyment of all other privileges and immunities in the host State, such as the freedom of movement provided for in article 28.

32. It was for those reasons that, in the opinion of the Secretariat, the suggested new article might compromise the following provisions: first, that the host State should facilitate the entry into its territory and the sojourn therein of all members of permanent missions and members of their families forming part of their households; second, that the host State should ensure freedom of transit to and from the organization to those persons; third, that visas, where required, should be granted as promptly as possible—a point of practical importance because delay in granting visas could cause considerable inconvenience; and fourth, that any laws or regulations of the host State which tended to restrict the entry or sojourn of aliens should not apply to the persons mentioned.

33. The United Nations Secretariat felt sure that the Commission would give due consideration to its suggestion.

34. Mr. YASSEEN said that, although at first sight article 27 *bis* seemed to be superfluous, in order to avoid any accidental or deliberate misinterpretation of the rules laid down in the draft articles, there was no harm in stating an essential right which, though self-evident, was nevertheless not always respected, for political reasons.

35. The obligations of the host State with respect to the entry, sojourn and movement of members of the permanent mission and their families should therefore be clearly stated. It might perhaps be going too far to provide, as in paragraph 3 of the text proposed by the United Nations Secretariat, that visas should be granted free of charge. Possibly it could be laid down that the State should not make a heavy charge for visas, but that was an unnecessary detail and would be rather inelegant. Paragraph 4, on the other hand, was very useful and should be included in the draft in some form or other.

36. In paragraph 2 of the text proposed by the Special Rapporteur, it would be better to replace the words "referred to" by the word "mentioned".

37. Mr. USHAKOV said that, for the reasons very well expressed by the United Nations Secretariat (A/CN.4/239, section D.1), he considered that the draft articles should include a general provision on the obligation of the host State to allow members of permanent missions to enter

⁸ Op. cit., 1969, vol. II, p. 221.

⁹ United Nations, *Treaty Series*, vol. 1, p. 16.

¹⁰ Op. cit., vol. 33, p. 262.

its territory to take up their posts. In the case of permanent missions to international organizations, the principle of reciprocity could not apply between the sending State and the host State, as it did between the sending State and the receiving State in bilateral relations. It was therefore necessary to lay down the principle of the obligation of the host State to permit the entry of members of the permanent mission into its territory.

38. In the text proposed by the United Nations Secretariat, only paragraph 1 contained essential provisions, but it might perhaps be better to divide it into two parts, one dealing with entry into, and the other with sojourn in, the territory of the host State.

39. The other three paragraphs were superfluous for the following reasons. In paragraph 2, it was not "transit" that was being provided for—that meant crossing the territory of a third State—but "movement"; and freedom of movement was already covered by article 28. In paragraph 3, the granting of visas referred to was only one of the ways of applying the general principle of the obligation of the host State to ensure entry into its territory; and visa formalities were covered by the obligation of the host State, stated in paragraph 1, to take all necessary measures to facilitate entry into its territory. Moreover, where a visa was not required, the host State would have to employ other means to fulfil that obligation. As to paragraph 4, it went without saying that members of the permanent mission who enjoyed privileges and immunities were *ipso facto* exempt from the restrictions referred to in that paragraph, so there was no need to mention them.

40. He therefore suggested that, taking as a basis the text proposed by the Special Rapporteur, paragraph 1 of article 27 *bis* be reworded to read:

"The host State shall permit the entry into its territory of members of the permanent mission and members of their families forming part of their respective households, and shall take all necessary measures to facilitate the sojourn of these persons in its territory".

41. Paragraph 2, relating to visas, could be retained if necessary.

42. Mr. CASTRÉN said it was true that the provisions of article 22, on general facilities, could be interpreted very broadly to cover what was envisaged in the new article, but since the question dealt with in the new article was of such importance, it was better to have express provisions in order to avoid any wrong interpretation. Moreover, several organizations, some governments and the United Nations Secretariat recognized the usefulness of the new article. For those reasons, he supported the inclusion in the draft of a provision on the lines of article 27 *bis*.

43. So far as the working was concerned, the text proposed by the Special Rapporteur, which was more succinct than the Secretariat text, was to be preferred, but no doubt the two could be combined, as Mr. Ushakov had suggested.

44. However, he did not think there was any need to mention sojourn, in view of article 28, on freedom of movement in the territory of the host State, or to refer to article 10, as the Secretariat did in its suggested text. It was also unnecessary to mention transit, but if the Commission wished to retain a provision on that subject, it would be better to replace the word "transit" by the word "access", in order to avoid any overlapping with article 43. The reference to visas should also be deleted, for the reasons given by Mr. Ushakov and because visas were in any case issued free of charge to diplomats.

45. Paragraph 4 of the Secretariat text was superfluous, for the reasons given by Mr. Ushakov and the Special Rapporteur.

46. Mr. RAMANGASOAVINA said he was in favour of including article 27 *bis*, either as a separate article, or as a paragraph in article 28.

47. The text proposed by the Special Rapporteur had the advantage of being shorter and more precise than the Secretariat text, but like Mr. Ushakov he thought it was not "freedom of transit" that was required, but "freedom of movement", so that members of the permanent mission could travel to the place where the mission was situated and return to their countries when they left their posts. On the other hand, there was some value in making express provision for facilitating visa formalities.

48. The text proposed by the Secretariat also had certain merits and he would favour an article worded on the lines of the first two paragraphs of that text, on the understanding that the provision that the host State should take "all necessary measures" to facilitate entry into its territory was broad enough to cover the issuing of visas, delay, and so on, and that words "freedom of transit" in paragraph 2 would be replaced by the words "freedom of movement". The Drafting Committee could perhaps consider the possibility of combining the Secretariat text with the text proposed by the Special Rapporteur.

49. Mr. BARTOŠ said that in general he agreed with the views expressed by Mr. Ushakov, but he would like to clarify a few points, mainly for the benefit of the Drafting Committee.

50. There was no need to mention transit in the new article, not only for the reasons given by Mr. Ushakov, but also because freedom of transit was already dealt with in article 43. The Drafting Committee should bear that in mind.

51. On the other hand, the provision relating to the prompt issue of visas was important and should be retained. It would be a pity to leave any doubt on that subject just for the sake of being brief and concise.

52. It was also useful to impose on the host State the obligation to facilitate the sojourn of members of the mission and to exempt them from any restrictions applicable to foreigners in that regard; disputes on that subject had already arisen between a sending State and

a host State. The text proposed by the Special Rapporteur should be expanded to cover the point.

53. It was true that article 28 guaranteed members of permanent missions freedom of movement in the territory of the host State, but care should be taken to ensure that that provision also enabled the permanent representative or any other member of the permanent mission to keep in contact with the diplomatic mission or consulate of the sending State in the host State, as was often necessary for practical reasons. If that possibility was not covered by article 28, it should be mentioned in article 27 *bis*; if it was already covered, it should still be mentioned, but more concisely.

54. Mr. ALBÓNICO said that the right stated in article 27 *bis* would exist even without that new provision. The right of entry into and sojourn in the host State was in fact covered by article 22, on general facilities.

55. Nevertheless, it was perhaps desirable to specify that right, so as to avoid erroneous interpretations. For that purpose, he much preferred the text drafted by the Special Rapporteur, which was clearer and more precise than the text suggested by the United Nations Secretariat. That applied particularly to paragraph 1.

56. Paragraph 2 of the Secretariat text was unnecessary; its provisions were already covered by article 28 on freedom of movement. Paragraph 2 of the Special Rapporteur's text was similar to paragraph 3 of the Secretariat text, except that it did not mention visas being granted free of charge—a point to which further consideration might be given.

57. As to paragraph 4 of the Secretariat text, the exemption of members of diplomatic missions from the laws and regulations relating to aliens was a part of customary international law.

58. For those reasons, he supported the text drafted by the Special Rapporteur, but suggested that it be placed immediately after article 22, on general facilities. The right of entry was the first of all the facilities to be granted by the host State and was a prerequisite for the enjoyment of all the other privileges and immunities.

59. Mr. ELIAS said that the text submitted by the Special Rapporteur provided a sound basis for an article which was not only useful but necessary.

60. The text prepared by the Secretariat did not constitute an actual proposal; it was submitted as a "draft text which indicates the substance which such article might cover". It was simply intended to draw attention to the points that ought to be covered and the principles that ought to be included in the new article 27 *bis*.

61. The Special Rapporteur had been right in reducing the length of the proposed article. It was unnecessary to include a provision on freedom of access to the organization, a matter which was already covered by the provisions of article 28 on freedom of movement. A specific provision was necessary, however, on the granting of visas as promptly as possible; the Drafting Committee could consider whether it should be specified that visas should be granted free of charge.

62. With regard to paragraph 4 of the Secretariat text, he thought that article 27 *bis* should not contain any reference to the laws and regulations of the host State relating to the entry or sojourn of aliens. In some countries that matter was regulated in the constitution and not merely in the organic law. In Nigeria, for example, the constitution guaranteed all citizens freedom to enter and leave the country, but no similar right was guaranteed to aliens. It would therefore be preferable not to try to regulate the matter in article 27 *bis*, but to leave it to each country to ensure that the generally acknowledged exception in favour of diplomats was also applied to members of permanent missions.

63. With regard to the subject-matter of paragraph 1 of the Secretariat text, it was necessary to have regard to the provisions of article 10. In the event of the sending State appointing to a permanent mission a person who had been previously declared *persona non grata* by the host State, the question would no doubt have to be settled by means of mutual consultations under article 50. For paragraph 1, he preferred the text submitted by the Special Rapporteur, subject to the deletion of the words "and freedom of transit to and from the premises of the Organization". Paragraph 2, he suggested, should be slightly recast so as to state that visas had to be granted free of charge and as promptly as possible.

64. He was not in favour of including paragraph 4 of the Secretariat text, because the provision it contained could be regarded as implied.

65. Mr. SETTE CÂMARA said that the right of the members of a permanent mission to enter the host State and sojourn there was inherent and could be inferred from other articles of the draft, even without article 27 *bis*. Convincing arguments had, however, been put forward by the United Nations Secretariat in favour of the inclusion of such a new article as a counterpart to article 48, on facilities for departure. In addition, cases of refusal of permission to enter the host State had been mentioned.

66. He did not believe that the question of freedom of access to the organization was fully covered by the provisions of article 28, on freedom of movement. Those provisions were made specifically subject to the host State's "laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security". The purpose of paragraph 2 of the Secretariat's article 27 *bis* was to cover such extreme hypotheses as the scheduling as a prohibited area of the district in which the premises of the organization were situated. When dealing with that provision, the Drafting Committee should bear in mind the various criticisms of the expression "freedom of transit" and consider replacing it by a more suitable expression, such as "freedom of movement to and from the premises of the organization".

67. The Special Rapporteur's text had the merit of being couched in terms of the obligations of a host State, rather than the rights of the sending State.

68. Article 27 *bis* was necessary, but he supported the suggestion that it be placed immediately after article 22.

69. Mr. USTOR said that the simple draft for article 27 *bis* submitted by the Special Rapporteur was preferable to the longer text submitted by the Secretariat.

70. He agreed with Mr. Ushakov that the expression "transit" was not, perhaps, a happy one, but thought that the idea it embodied should be reflected in the text. The essential point was that the members of a permanent mission should be permitted to enter the territory of the host State, leave the territory and re-enter it as often as they wished. Perhaps the Drafting Committee should give special attention to the problem of re-entry, since it involved the question of visas.

71. He did not think that visas could be included among the exceptions to exemption provided for in article 36 (e); the host State would have to waive visa charges on the principle that it could not ask the members of a permanent mission to pay charges for the operation of its own administrative machinery. As a precaution, therefore, it might be well to include the rather inelegant expression "shall be granted free of charge".

72. Mr. EUSTATHIADES said that the guarantee provided in article 27 *bis* could be regarded as being contained in other provisions of the draft or as a matter to be covered by headquarters agreements, as it had been so far. Nevertheless, since the Commission was preparing a detailed draft, it was natural that it should devote a special provision to that guarantee, especially as the United Nations Secretariat had mentioned cases in which representatives of a State had been refused entry into the host State.

73. The Special Rapporteur had been right to cut down the Secretariat's draft article, but some aspects dealt with by the Secretariat, particularly in paragraph 4 of its draft, deserved to be mentioned in the commentary.

74. He agreed with Mr. Ushakov that the word "transit" applied to passage through a third State and should be replaced by the word "movement". Article 28 dealt with a different situation from that dealt with in article 27 *bis*, which concerned entry into the host State, not freedom of movement in the territory of that State.

75. However, article 28 contained a reservation which might, in extreme cases, apply to article 27 *bis*. For although it was improbable that a member of a permanent mission or a member of his family would enter the host State through a zone "entry into which is prohibited or regulated for reasons of national security", it was possible that he might cross such a zone in exercising his "freedom of transit". He therefore suggested that the words "subject to the reservation contained in article 28" be added at the beginning of article 27 *bis*.

76. Mr. EL-ERIAN (Special Rapporteur) said that there appeared to be general support in the Commission for article 27 *bis*, despite the fact that the question of entry was already covered by article 22, on general facilities. Owing to the importance of the question, the Commission obviously considered that it should be dealt with in a separate, explicit provision.

77. He agreed with most of the suggestions that had been made. As Mr. Ushakov and others had pointed

out, the expression "transit" was ambiguous and confusing, since it applied to a third State and not to the host State. Mr. Albónico had suggested that article 27 *bis* should follow immediately after article 22, because it was only an elaboration of that article. Mr. Ustor had suggested that it should be expressly stated that visas should be granted "free of charge". Those suggestions constituted a good basis for further discussion in the Drafting Committee.

78. Mr. MOVCHAN (Secretary to the Commission) said that the Secretariat appreciated the Commission's reaction to its views on the right of entry and sojourn, which it had not intended to present as an actual draft text. The question of charges for visas was one on which the fiscal authorities of each country would have their own opinion. In principle, however, the Secretariat considered the provisions concerning visas most important and wished to draw the Commission's attention to the very specific provisions on that subject in article 43.

79. The CHAIRMAN suggested that article 27 *bis* be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*¹¹

ARTICLE 28

80. The CHAIRMAN invited the Special Rapporteur to introduce article 28.

81.

Article 28

Freedom of movement

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

82. Mr. EL-ERIAN (Special Rapporteur) said that the difficulties encountered in drafting that article in 1969 had been reflected in the discussions in the Sixth Committee and in the observations of governments. The view had been expressed in the Sixth Committee that "article 28 should be restricted to movement of members of the mission that was necessary in the performance of the functions of the mission, and that there was no need to extend it to their families". The Government of Switzerland had made the interesting observation that the facilities accorded to members of permanent missions were not really justified by their functions. It had also been suggested that article 28 should be brought more closely into line with article 26 of the Vienna Convention on Diplomatic Relations.¹²

83. He himself did not think that any changes were necessary.

¹¹ For resumption of the discussion see 1113th meeting, para. 13.

¹² United Nations, *Treaty Series*, vol. 500, p. 108.

84. Mr. YASSEEN said that freedom of movement was not justified by the requirements of the function, but was rather a question of human rights. In other words, the aim was not so much to ensure the performance of the mission's functions as to guarantee normal living conditions to members of the mission and their families. The requirements of the function would appear to justify only movements between the residence, the mission and the organization, whereas humanitarian considerations called for general freedom of movement. The interests of the host State were amply protected by the reservation contained in the opening clause.

85. He was in favour of keeping article 28 as it stood. The reason why it was more liberal than the corresponding provision of the Vienna Convention on Diplomatic Relations was that the principle of reciprocity could not operate as it did in bilateral diplomacy.

86. Mr. CASTAÑEDA said that, like Mr. Yasseen, he supported the Special Rapporteur's very clear formulation of an important principle. It was not a question of the importance of the functions of members of the mission; if a State offered to act as host to an international organization, it must ensure that the members of permanent missions had satisfactory working conditions. Such conditions would not exist if restrictions were placed on their freedom of movement. Certain limitations could be imposed in the interests of national security, but they should not be carried any farther than that. Freedom of movement should also extend to the families of the members of permanent missions.

87. Mr. ALCÍVAR said that he, too, fully approved of the draft article proposed by the Special Rapporteur. As Mr. Castañeda had pointed out, when a State agreed to act as host to an international organization, it must accept any disadvantages that might be involved. It could not restrict the freedom of movement of members of permanent missions and their families, except in so far as that was justified by reasons of national security.

88. Mr. KEARNEY said it was interesting to note that most of the governments which had expressed doubts about article 28 had based their position on the functional theory. Four of them were governments of host States and it might be that their expressions of concern were motivated not so much by any desire to restrict the freedom of movement of members of permanent missions, as by a desire to establish a reasonable balance between the rights and obligations of the host State.

89. Article 28, in fact, claimed the same degree of freedom, or even more freedom, than was provided for in the Vienna Convention on Diplomatic Relations, while at the same time denying the host State some of the safeguards provided by the Vienna Convention on the basis of functional necessity. For example, a member of a permanent mission was accredited to the organization, not to the host State, so that the latter did not have the right of *agrément* or the right to declare the member *persona non grata*.

90. He himself was in favour of freedom of movement

and considered it undesirable to restrict the movements of families; but if permanent missions were to be granted certain rights, the Commission should also take into account the legitimate concern of the host State about the possible abuse of those rights. If the draft articles were to be acceptable to host States, that problem would have to be considered when the Commission came to articles 45 and 50.

91. Mr. THIAM said he agreed with Mr. Yasseen. He wondered what disadvantages a host State could see in freedom of movement being enjoyed not only by members of permanent missions, but also by their families. From the humanitarian point of view, it was obvious that such freedom should be extended to members of families. States wishing to act as hosts to international organizations should not limit the facilities they granted to the requirements of the function alone.

92. He approved of both the form and the substance of the Special Rapporteur's draft article.

93. Mr. REUTER said he had no comments to make on the form of article 28. The discussion had shown that the article could be justified in three different ways. First, because, for a variety of reasons, the members of the permanent mission and their families enjoyed freedom of movement as provided in the article. Secondly, because they enjoyed freedom of movement as it was generally understood in the host State, in other words, subject to possible restrictions, in which case they would be treated in the same way as nationals of the State. Thirdly, because freedom of movement was understood in accordance with the general principles of human rights. It would be interesting to know the Commission's view.

94. Mr. USHAKOV, referring to Mr. Kearney's remarks about abuse of rights, said it was a notion which had often been invoked in regard to the sending State, but which should also be examined in regard to the host State. He hoped concrete proposals could be submitted because, in his view, the matter did not lend itself to detailed regulation.

95. Mr. ELIAS said it seemed to him that no member was really questioning the Special Rapporteur's draft article and that Mr. Kearney's comments were merely suggestions for consideration by the Drafting Committee. The Commission was not likely to make much progress if it insisted on having written texts before disposing of an article, which, on the whole, was not controversial. It might have to be reconsidered in connexion with later articles, but for the time being, he proposed that it be referred to the Drafting Committee.

96. Mr. AGO said he approved of the article proposed by the Special Rapporteur.

97. He was surprised that some governments had made reservations; he believed that they originated from the Commission's commentary to the corresponding article of the Vienna Convention on Diplomatic Relations—

article 26, formerly article 24—which included the following passage: “One of the necessary facilities for the performance of the mission’s functions is that its members should enjoy freedom of movement and travel. Without such freedom, the mission would not be able to perform adequately its function of obtaining information . . .”¹³ Since permanent missions to international organizations did not exercise similar functions, particularly the function of obtaining information, some governments had considered that it was not necessary to grant very extensive freedom of movement to members of permanent missions, still less to members of their families, because the latter did not enjoy freedom of movement under the Convention on Diplomatic Relations.

98. The Commission should make it clear in the commentary that freedom of movement was not only a faculty necessary for the performance of certain functions, but also a basic right of everyone—a freedom which should, in principle, be enjoyed by every member of a permanent mission to an international organization, as well as by every member of a diplomatic mission.

99. Mr. SETTE CÂMARA said that the comments of governments had included some criticisms of the liberal approach adopted in article 28, which went beyond the provisions of article 26 of the Vienna Convention on Diplomatic Relations by including families, and discarded the restrictive terminology of article 27 of the Convention on Special Missions.¹⁴ However, the only possible restriction—that made in the interests of national security—was duly taken into account. He therefore supported article 28 as it stood.

100. Mr. BARTOŠ said that the Commission had always considered freedom of movement as covering no more than the movement needed to perform diplomatic or consular functions. But there was another freedom, which was a part of human rights, and the one did not exclude the other. In the conventions with which the Commission was concerned, it was important to emphasize the freedom which members of the mission should enjoy in the performance of their functions.

101. The CHAIRMAN, speaking as a member of the Commission, said that he had no amendments to propose to the text of article 28. The Commission should examine carefully, in its commentary to the article, the extent to which freedom of movement was linked with the requirements of the function and the extent to which it was part of human rights. There were various obstacles to the free exercise of freedom of movement throughout the world. By expressly granting that freedom, article 28 thus conferred a certain privilege. The precise nature of that freedom, as expressed in article 28, should be clearly defined.

¹³ See *Yearbook of the International Law Commission, 1958*, vol. II, p. 96.

¹⁴ General Assembly resolution 2530 (XXIV), Annex.

102. Mr. EL-ERIAN (Special Rapporteur) said that no actual changes to article 28 had been proposed during the discussion. Mr. Kearney had pointed out that it did involve certain problems of remedies and abuse of rights, which should be discussed in connexion with articles 45 and 50. Mr. Reuter and Mr. Ago had also made certain suggestions concerning the commentary which he would be glad to take into consideration.

103. The CHAIRMAN suggested that article 28 be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*¹⁵

ARTICLE 8 (Accreditation to two or more international organizations or assignment to two or more permanent missions) and

ARTICLE 9 (Accreditation, assignment or appointment of a member of a permanent mission to other functions) (*resumed from the 1090th meeting*)

104. The CHAIRMAN said that, at an earlier meeting, Mr. Rosenne had asked if the Secretariat could provide the Commission with information on the position at Geneva with regard to multi-accreditation.¹⁶ The Secretary was now in a position to give that information.

105. Mr. MOVCHAN (Secretary to the Commission) said that credentials were submitted by the permanent representative to the Director-General in his capacity as representative of the Secretary-General. The titles reproduced in the Blue Book¹⁷ were those given in the credentials themselves. When a permanent representative was appointed as representative to the United Nations and to the specialized agencies at Geneva or in Switzerland, the specialized agencies were informed in writing of the appointment by the United Nations Office at Geneva. When the credentials indicated that the permanent representative was appointed as representative to other international organizations at Geneva or in Switzerland, only the specialized agencies were informed by the United Nations Office. It was the view of the Geneva Office that the Blue Book was issued purely for information.

106. Mr. ROSENNE thanked the Secretary for having provided information which would enable the Commission to consider a difficult point on the basis of actual practice as well as theory.¹⁸

The meeting rose at 1.5 p.m.

¹⁵ For resumption of the discussion see next meeting.

¹⁶ See 1090th meeting, para. 38.

¹⁷ Entitled: *Missions permanentes auprès des Nations Unies à Genève*.

¹⁸ For resumption of the discussion see 1111th meeting, paras. 1 and 16.