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**Summary record of the 1107th meeting**

Topic:  
**Representation of States in their relations with international organizations**

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83. Sir Humphrey WALDOCK asked whether it was feasible for the Drafting Committee to prepare a single article on precedence applicable to the whole draft, so as to cover all situations.

84. The CHAIRMAN suggested that article 90 should be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*<sup>14</sup>

#### Organization of work

85. The CHAIRMAN said that the officers of the Commission recommended that a working group be set up to prepare, on the basis of the texts approved by the Commission, a set of consolidated draft articles on relations between States and international organizations. The officers proposed that the working group should consist of Mr. Kearney, as chairman, Mr. Ago, Mr. Ushakov and Sir Humphrey WaldoCK.

*It was so agreed.*

The meeting rose at 1 p.m.

<sup>14</sup> For resumption of the discussion see 1125th meeting, para. 16.

### 1107th MEETING

*Wednesday, 26 May 1971, at 9.30 a.m.*

*Chairman: Mr. Senjin TSURUOKA*

*Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Bar-toš, Mr. Castrén, Mr. Elias, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey WaldoCK, 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 6; A/CN.4/L.162/Rev.1)

[Item 1 of the agenda]

*(resumed from the previous meeting)*

#### ARTICLE 91

1. The CHAIRMAN invited the Commission to consider section 2, on facilities, privileges and immunities of delegations, beginning with article 91, to which the Special Rapporteur had proposed no change.

2.

#### Article 91

##### *Status of the Head of State and persons of high rank*

1. The Head of the sending State, when he leads a delegation to an organ or to a conference, shall enjoy in the host State or in a third State the facilities, privileges and immunities accorded by international law to Heads of State on an official visit.

2. The Head of the Government, the Minister for Foreign Affairs and other persons of high rank, when they take part in a delegation of the sending State to an organ or to a conference, shall enjoy in the host State or in a third State, in addition to what is granted by the present part, the facilities, privileges and immunities accorded by international law.

3. Mr. SETTE CÂMARA pointed out that article 91 was identical *mutatis mutandis* with article 21 of the 1969 Convention on Special Missions.<sup>1</sup> In view of that precedent he did not oppose retention of the article in its present form, though he recognized that there were some grounds for the criticisms advanced against it. If the additional facilities, privileges and immunities referred to were based on general international law, they did not require an express provision in the draft articles.

4. There appeared to be a discrepancy between the position of the Head of State and that of such other high-ranking authorities as the Head of Government. Paragraph 1 specified that the special privileges and immunities concerned were those accorded to Head of State "on an official visit", but no such restriction was made in paragraph 2. The implication was that the persons referred to in paragraph 2 would enjoy special privileges even if not on an official visit.

5. However, article 91 was not restrictive in spirit; the purpose of paragraph 1 was to secure for the Head of State all the special treatment to which he would be entitled on an official visit. On that understanding, he accepted the Special Rapporteur's proposal that the article be retained as it stood (A/CN.4/241/Add.6).

6. Mr. ALBÓNICO said that, although article 91 was based on the corresponding provision of the Convention on Special Missions, it did not add anything to the principle already recognized by international law. He doubted whether it was desirable to retain the article.

7. Mr. ROSENNE said that, although it was fairly common for a Head of State to visit United Nations Headquarters for a few days, it would be most unusual for one to serve as the head of a delegation to a conference or to an organ of any organization of the type to which the present draft related.

8. Mr. TESLENKO (Deputy Secretary of the Commission) said that, at the commemorative twenty-fifth session of the General Assembly, several delegations had been led by Heads of State. In United Nations practice a distinction was made between that situation and an official visit by a Head of State. When a Head of State led his delegation, he sat with it and spoke in his normal turn like any other representative. But when a Head

<sup>1</sup> General Assembly resolution 2530 (XXIV), Annex.

of State paid an official visit to the United Nations, he was given special precedence; he was the only speaker at the meeting and had a special seat.

9. Mr. ROSENNE said that that information confirmed his opinion that the provisions of paragraph 1, concerning the Head of State, were not needed in the draft. A State had, in any case, a duty under general international law to grant certain privileges to a visiting Head of State. Moreover, the attendance of Heads of State with the delegations of their countries was a very exceptional occurrence; the fact that it had taken place for one week in twenty-five years at a commemorative session did not justify the inclusion of a rule on the subject in the draft articles, especially as the provisions of paragraph 1 did not dispose of the problem completely.

10. Mr. USHAKOV said that there were three separate cases to consider. First, if a Head of State, a Head of Government or even a Minister for Foreign Affairs went to the host State on an official visit, that State must accord him the facilities, privileges and immunities referred to in article 91. Secondly, if such a person went to an organization, he had no direct relations with the host State and that State was not required to accord him those facilities, privileges and immunities. Thirdly, if a State in whose territory a conference was held invited such a person, while he was leading a delegation, to pay an official visit in his capacity as Head of State, Head of Government or Minister for Foreign Affairs, that State was bound by the terms of article 91. But it was only in that exceptional third case that article 91 would apply, and its utility was doubtful. The Drafting Committee should consider that question.

11. Sir Humphrey WALDOCK said that, in their observations, some governments had assumed that the provisions of article 91 were in accordance with the accepted rules of general international law. The Government of the United Kingdom, on the other hand, had indicated that it agreed to those provisions only with regard to the Head of State and his suite, and not with regard to other dignitaries (A/CN.4/240/Add.3, section B.12).

12. For his part, he doubted whether the provisions of paragraph 1 would give rise to any serious difficulty. The case they covered was perhaps rare, but, when it arose, the facilities referred to in the paragraph should be provided. A historic case had been the occasion at the League of Nations when the Emperor of Ethiopia had headed his country's delegation.

13. Mr. ELIAS supported the retention of article 91 on the understanding that the Drafting Committee would give further thought to the wording. From his own country's experience he could say that, when the Head of State attended a meeting of the Organization of African Unity or the United Nations, he was provided with a memorandum of instructions like any other head of delegation and, on his return, submitted a report.

14. Mr. Nagendra SINGH agreed with Mr. Elias. He saw no reason to delete article 91, which contained useful provisions for application on those occasions when a Head of State led a delegation.

15. Mr. REUTER said he thought the Drafting Committee should re-examine the text of the article. Each of the two paragraphs in fact provided for two separate sets of facilities, privileges and immunities at once. But the enjoyment of two régimes of that kind had never been regarded as entailing the loss of one of them. If the principle was accepted, the text of article 91 should be entirely recast in more general terms.

16. Mr. USTOR said that the Drafting Committee should give careful consideration to Mr. Reuter's suggestion that article 91 should take the form of a rule expressed in more general terms.

17. The general rule applicable was that if a person had two functions—in the present case those of Head of State and head of a delegation—the larger privileges and immunities, enjoyed by virtue of the more important function, would not be lost because of the lesser function. The same principle was embodied in article 59, paragraph 2, of the draft, which provided that, when a diplomatic agent was included in a permanent observer mission, his diplomatic privileges and immunities were not affected, and in article 9, paragraph 2, of the Convention on Special Missions.

18. The concluding words of paragraph 1, "on an official visit", should be deleted.

19. Sir Humphrey WALDOCK said that the Drafting Committee should bear in mind that the provisions of article 91 were based on article 21 of the Convention on Special Missions. If the Committee altered the text, the departure from that model might give rise to difficulties of interpretation.

20. Mr. CASTRÉN said that if the article was retained, it would not create any difficulties and could cover some exceptional situations. Since governments considered that the privileges and immunities referred to in the article were recognized by international law, they were not opposed to granting them. He agreed with Sir Humphrey Waldoack that the wording of article 91 should not be changed.

21. Mr. USHAKOV observed that the Commission should not lose sight of the difference between article 91 and its model, namely, that delegations were sent to a conference or to an organ, whereas special missions were sent to a State.

22. The CHAIRMAN suggested that article 91 should be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.<sup>2</sup>*

#### ARTICLE 92

23. The CHAIRMAN invited the Commission to consider article 92, to which the Special Rapporteur had proposed no change.

<sup>2</sup> For resumption of the discussion see 1125th meeting, para. 18.

24.

*Article 92**General facilities, assistance by the Organization and inviolability of archives and documents*

The provisions of articles 22, 24 and 27 shall apply also in the case of a delegation to an organ or to a conference.

25. Sir Humphrey WALDOCK said that, before dealing with article 92 and the following articles, the Commission would do well to examine the general question of the level of privileges and immunities to be extended to delegations. The Special Rapporteur, in his sixth report, had introduced Part IV, section 2, with a summary of the general comments of governments and secretariats of international organizations (A/CN.4/241/Add.6), which amounted to a strong attack on the position taken by the Commission throughout that section. The Commission should not appear simply to disregard the criticism, but should justify its position if it decided to maintain the line taken in the previous report.

26. Mr. USHAKOV said he was not in favour of a general debate on the foundation of the privileges and immunities of delegations of States to organs and conferences. It would be better to consider, article by article, whether such delegations had characteristics which called for different wording from that of the corresponding articles in other parts of the draft.

27. It was unfortunate that article 92 should refer to three articles as heterogeneous as articles 22, 24 and 27.

28. Article 22 specified that the organization must assist the permanent mission in obtaining the facilities which the host State must accord it. Certainly that provision could also apply to delegations to an organ of an organization; on the other hand, the organization was hardly in a position to assist delegations to a conference in obtaining facilities from the host State. For example the United Nations, with its Headquarters in North America, would find it hard to fulfil that obligation when a conference met in another continent. Those considerations confirmed that the Commission would have done better not to deal with delegations to organs and delegations to conferences at the same time.

29. Article 24 concerned assistance by the organization in respect of privileges and immunities. In the case of delegations to organs, the organization could very well render assistance; but where conferences were concerned, it was rather the conference itself which should assist delegations, for once the organization had convened the conference, it became, as it were a third party.

30. Article 27 provided for inviolability of the archives and documents of the permanent mission. Rather than refer back to that article, it would be better to draft a separate, though identical, article on delegations.

31. The CHAIRMAN invited members of the Commission to say whether or not they thought the Commission should take up the general question raised by Sir Humphrey Waldock.

32. Mr. ALBÓNICO considered it essential for the Commission to settle that question before taking up the

various articles in section 2. He was very impressed by the volume of criticism which governments had expressed.

33. Mr. ROSENNE said he doubted whether the Commission could have a useful discussion on that question at the present stage. The bulk of the governments' comments had been made in connexion with various matters of detail. Some of their criticisms were valid, but could be taken into account only in connexion with individual articles. When the Commission had completed its consideration of the various articles in section 2, and possibly amended some of them to meet those criticisms, it would be in a better position to deal with the general question raised by Sir Humphrey Waldock.

34. Sir Humphrey WALDOCK said that, in view of the formidable attack made by governments and organizations on the Commission's general approach to the privileges and immunities of delegations, he thought the Commission should consider carefully whether it wished to persist in that approach. The view had been put forward that the privileges and immunities in question were not only excessive, but contrary to existing law. It had been pointed out that the 1946 Convention on the Privileges and Immunities of the United Nations<sup>3</sup> and other existing instruments had been applied satisfactorily for many years and that the system proposed in the 1970 draft went much further than those instruments.

35. The Special Rapporteur had taken the view, which the Commission had endorsed at the previous session, that the law of international organizations had developed over the past twenty-five years and that practice today was not as strict as the 1946 Convention would indicate. An attempt had therefore been made in the draft articles to co-ordinate the law and bring it into line with the existing practice, which seemed to justify a proposal to have a more uniform system.

36. If the Commission were now simply to brush aside the governments' adverse comments on the 1970 draft without explanation, that would not facilitate acceptance of the proposed convention.

37. Mr. CASTRÉN said that about ten governments had adversely criticized the Commission's approach to the question of the facilities, privileges and immunities of delegations. The Special Rapporteur had replied to those criticisms by referring to paragraph 16 of the Commission's general comments on Part IV, section 2.<sup>4</sup> In reply to the observations made by organizations, the Special Rapporteur had pointed out that the provisions of articles 3 and 4 were intended to apply generally to Part IV of the draft (A/CN.4/241/Add.6). The Commission should explain in its new commentary that it had carefully considered the observations made but, for certain reasons, had maintained its position.

38. It would be useless to open a general discussion at that stage. As Mr. Rosenne had suggested, the Commission could always take up the problem as a whole after it had examined the individual articles in section 2.

<sup>3</sup> United Nations, *Treaty Series*, vol. 1, p. 16.

<sup>4</sup> See *Yearbook of the International Law Commission, 1970*, vol. II, document A/8010/Rev.1, chapter II, section B.

39. Mr. ELIAS said that the Commission had accepted his suggestion that it should consider the general philosophy of the articles in Part III,<sup>5</sup> and that had done much to facilitate its task. In view of the cogent criticisms made by governments of Part IV, section 2, the Commission should consider carefully whether it wished to maintain its position, and, if so, should state its reasons for doing so. The bulk of the provisions in the Commission's draft articles on the law of treaties had been accepted by the Vienna Conference precisely because the Commission had taken the comments of governments into account in deciding on the final text of those draft articles.

40. He could not agree that the Commission should first examine section 2 article by article; for if it subsequently discussed its general approach and reached different conclusions, it would have to go through all the articles again and redraft them in the light of those conclusions. The proposal was not that the Commission should reopen its general discussion on the privileges and immunities of delegations, but merely that it should take a clear position in the light of the governments' comments on section 2, and say whether it agreed with the Special Rapporteur and wished to maintain the same general approach.

41. Mr. AGO said that the Commission should not engage in a long general debate at that stage, but should take the comments of governments and organizations into account while examining the individual articles. As Mr. Rosenne had suggested, a general approach might emerge from that examination.

42. For his part, he was in favour of cross-references from one part of the draft to another, where the entities concerned were fully comparable; permanent missions and permanent observer missions were fully comparable in many cases, but permanent missions and delegations were not. In article 92 the reference to articles 22, 24 and 27 was quite out of place, because it gave the impression that delegations were subordinate to permanent missions. Moreover, as Mr. Ushakov had pointed out, it was important, in the case of delegations, to specify who was responsible for fulfilling the obligations set out in those three articles.

43. Mr. KEARNEY said that, as Mr. Elias had pointed out, the acceptability of the draft was the heart of the whole problem. The Commission's work on the draft articles would not bear fruit and, indeed, its standing would be impaired, if the articles did not prove generally acceptable.

44. With regard to the general problem whether delegations to conferences could be equated to special missions, he drew attention to article 2 of the 1969 Convention on Special Missions, which made the consent of the receiving State a requirement for the dispatch of a special mission. A rule of that kind might be wholly inapplicable to a conference convened by, or held under the auspices of, an international organization. The consent given by the host State to the holding of the conference would be

the relevant consideration in that case. Much would, of course, depend on the definition of a conference, and article 78, sub-paragraph (b), was not of much assistance in that respect. There were, in any case, very considerable differences between, on the one hand, bilateral diplomacy—to which special missions generally belonged—and, on the other, conferences and sessions of organs.

45. It was to be hoped that, in considering the individual articles, the Commission would make an effort to adjust their provisions so as to meet the concern expressed by governments in their comments.

46. Mr. USHAKOV observed that the governments and organizations which criticized the whole basis of the draft articles did not propose any concrete alternatives. The Commission could not engage in a purely theoretical discussion during the second reading.

47. Mr. ROSENNE acknowledged that it was essential, not only in order to ensure the acceptability of the draft but also in order to maintain the Commission's standing, that its report should put forward convincing arguments in reply to the criticisms voiced by government organizations. In his earlier statement, he had merely expressed the belief that it would be easier to prepare the relevant part of the report after the Commission had examined those criticisms in detail in connexion with each of the articles. Mr. Ushakov's valid criticism of article 92 as a piece of legal drafting provided a good example of the method of work he was recommending.

48. The situation which the Commission now faced reminded him of the situation during the second reading of the draft articles on the law of treaties, when government criticism had reopened discussion on the major issue of whether the work should take the form of a draft convention or an expository code. The Commission had been able to give cogent reasons for adhering to its earlier decision in favour of a draft convention, but had only done so after going through the whole draft article by article.

49. Sir Humphrey WALDOCK pointed out that many of the critical governments had not made any detailed suggestions in connexion with individual articles; they had simply urged that the Commission should take as its models, not the 1969 Convention on Special Missions, but rather the 1946 Convention on the Privileges and Immunities of the United Nations and the 1947 Convention on the Privileges and Immunities of the Specialized Agencies.<sup>6</sup> He believed that those Conventions and similar instruments represented the existing law and that the Commission should not have disregarded them.

50. The Special Rapporteur and the Commission had taken the view that the system embodied in those instruments no longer fully reflected the practice which had emerged following the great expansion of international organizations. For his part, he was in favour of restricting privileges and immunities in accordance with the principle of functional necessity. He recognized, however,

<sup>5</sup> See 1102nd meeting, para. 26 *et seq.*

<sup>6</sup> United Nations, *Treaty Series*, vol. 33, p. 262.

that it was difficult to give concrete expression to that principle owing, in particular, to the interaction between the representative character of delegations and the functions they performed.

51. It was vitally necessary to state the legal justification for the Commission's position; that had not yet been done, either in the introduction or in the commentaries to the articles.

52. The CHAIRMAN said he inferred from the discussion that the Commission should continue to examine the draft article by article, bearing in mind the observations of governments and organizations, which it should try to answer with sound legal arguments. In drafting its replies, the Commission could perhaps be guided by the spirit which had informed the whole discussion. It would thus be able to maintain its good repute, and its draft would be more likely to satisfy a large number of States.

*It was so agreed.*

53. Mr. CASTRÉN said that admittedly both the title and the text of article 92 were rather heterogeneous. Other articles in Part IV, such as article 104, suffered from the same defect; but their purpose was to reduce the total number of articles, as desired by many governments.

54. Despite its defective drafting, article 92 could be properly applied, with the help of good will. It was true that an organization did not have the same role in the case of conferences and permanent missions, but Part IV of the draft was concerned with conferences convened by, or under the auspices of, an international organization. Thus it was for the organization to make sure, when choosing a host State, that that State would grant delegations the necessary facilities. Thereafter, the organization had to exercise a kind of surveillance over the host State during the conference. If the Drafting Committee found no better wording for article 92, it could be kept as it stood.

55. Mr. ELIAS said he found Mr. Ushakov's criticism of the drafting of article 92 justified. The Commission should, however, bear in mind the criticism expressed in the Sixth Committee regarding the length of the draft, which consisted of 116 articles. The 1961 Vienna Convention on Diplomatic Relations contained less than half that number. He was concerned that the adoption of Mr. Ushakov's suggestion would make the draft still longer.

56. It should be remembered that article 92 and similar provisions of the draft had been put in their present form because of the Commission's desire to avoid the use of the formula *mutatis mutandis*. If that time-honoured, but admittedly somewhat inelegant formula had been used, the present difficulties would not have arisen.

57. Mr. AGO said that in any event article 92 should be divided into two articles, one dealing with general facilities and assistance by the organization, and the other with the inviolability of archives and documents, for those were two completely different subjects. In the first article, he suggested that the Drafting Committee should be guided by the corresponding provisions of

the Convention on Special Missions, since by reason of their temporary character special missions were more like delegations than permanent missions were. For the second, he was opposed to the inelegant solution of cross-reference.

58. Mr. ROSENNE observed that all members of the Commission were agreed on the need to shorten the draft. They should not overlook the possibility of converting articles 22, 24 and 27 into general provisions applicable to all the parts. He suggested that the Drafting Committee should try to find appropriate wording for that purpose.

59. An alternative solution would be for the Drafting Committee to prepare two separate draft conventions, the first dealing with permanent missions and permanent observer missions, and the second with all delegations and other temporary missions.

60. Mr. USHAKOV said he was in favour of reducing the total number of articles as much as possible.

61. He doubted whether the organization could keep the role of the host State under surveillance as Mr. Castren had suggested. Experience showed that host States did not consider themselves bound to keep in touch with the organization on conference matters and did not regard themselves as responsible to the organization in respect of delegations. Consequently, the Drafting Committee should either amend the wording of article 92 or find legal justification for the obligations imposed on the organization in regard to the host State.

62. Mr. TESLENKO (Deputy Secretary to the Commission) said that, in the practice of the United Nations and other international organizations, a conference or even a meeting of an organ in a State other than the host State was the subject of an agreement between the State in question and the organization which convened the conference or to which the organ belonged. That agreement usually included provisions on facilities, privileges and immunities.

63. It was evident that so far as the granting of facilities was concerned, the organization's means were very limited, as Mr. Ushakov had pointed out. But even so, the secretariat could always act as a post office or telephone exchange, and that often proved very useful.

64. Sir Humphrey WALDOCK said he was somewhat reassured by that information. The Commission had drafted its articles on precisely that understanding.

65. Since the draft dealt only with organizations of a universal character, and since it would cover only those cases in which the organization and the host State had not specified the privileges and immunities of delegations in a detailed agreement, the element of progressive development in the draft articles could perhaps be justified.

66. Mr. CASTRÉN explained that in making his previous intervention he had had in mind the agreements mentioned by the Deputy Secretary, but had been referring more especially to the negotiations which the organization undertook in advance and the commitments it entered into at that stage. It was in the organization's

own interests and in the interests of delegations that it should keep watch on the host State.

67. Mr. USHAKOV said that the information given by the Deputy Secretary did not concern article 92, because that article did not mention the conclusion of an agreement between the host State and the organization. In the absence of an agreement, it would appear that there was no obligation.

68. Mr. REUTER observed that at its last session the Commission had tended to regard conferences as veritable entities, almost endowed with legal personality. If difficulties arose after a conference, was it the President or the officers of the conference, or perhaps the organization itself which had legal authority to make claims against the host State?

69. Mr. YASSEEN stressed that the future convention concerned the case in which there were no special agreements on the various matters it regulated, especially privileges and facilities. And in that case, where delegations were sent to an organ it was for the organization to help secure observance of the convention; but where delegations were sent to a conference convened by an international organization it was for the secretariat of the conference to help secure observance. It was true to say that the role of the organization and the secretariat in performing that task was not merely that of a post office. For the organization and the secretariat could, indeed, intervene very effectively to remind the host State of its obligations.

70. Mr. AGO, in answer to Mr. Reuter's question, said that a conference had its own individual existence and its secretariat could approach the host State in case of difficulty.

71. The CHAIRMAN suggested that article 92 should be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.<sup>7</sup>*

#### ARTICLE 93

72. The CHAIRMAN invited the Commission to consider article 93 on premises and accommodation. He drew attention to the drafting changes recommended by the Special Rapporteur, which consisted in replacing the word "delegation" by "delegations" throughout, and making the necessary consequential amendments.

73.

#### *Article 93*

##### *Premises and accommodation*

The host State shall assist a delegation to an organ or to a conference, if it so requests, in procuring the necessary premises and obtaining suitable accommodation for its members. The organization shall, where necessary, assist the delegation in this regard.

74. Mr. TAMMES said that, in view of the large number of persons generally included in a delegation to

an organ or conference, it was desirable to make article 93 rather less categorical. Instead of simply requiring the host State to assist, it might be better to use the phrase "as far as possible" or "to the extent of its ability". The situation was not comparable with that of special missions, to which the commentary referred. His doubts about the practicability of imposing a legal obligation on the host State extended to article 94, paragraph 2, and article 99, paragraph 1. He hoped the Drafting Committee would consider that practical problem.

75. Mr. USHAKOV said he was not sure whether it was better to refer to a "delegation" in the singular, as in the text adopted at first reading, or to "delegations" in the plural, as the Special Rapporteur now proposed.

76. It would appear difficult, if not impossible, for the organization to assist a delegation in procuring premises and accommodation in the city where the organ or conference was meeting, if that was not where the organization had its headquarters.

77. Mr. KEARNEY noted that the Government of the Netherlands had proposed that the provision in article 93 "be reversed to the effect that the organization provides assistance and that, where necessary, it is assisted therein by the host State" (A/CN.4/240/Add.3, section B.11). That seemed a reasonable proposal, since it was the general practice at international conferences for the secretariat of the organization to request delegations in advance to send particulars of the accommodation they required. Unless the host State itself organized the conference, it was not initially concerned with the problem of finding accommodation and would take action only at the request of the organization.

78. Another argument in favour of the Netherlands proposal was that, in article 1, sub-paragraph (m),<sup>8</sup> an "organ of an international organization" was very broadly defined as "a principal or subsidiary organ, and any commission, committee or sub-group of any of those bodies". That meant that an international organization could set up any type of conference it wished, provided that it called it a commission, committee or sub-group, without having to notify the host State that the conference was to be held or entering into special arrangements with the host State regarding the meeting. In such a case it would surely be difficult to impose any obligation on the host State with respect to procuring accommodation for delegations. That situation was common in practice, and the Commission should hesitate before laying upon the host State the primary responsibility for assistance in procuring accommodation.

79. Mr. SETTE CÂMARA said that article 93 was based on article 23 of the Convention on Special Missions and article 23, paragraph 2, of the present draft articles.<sup>9</sup> The latter provision placed a dual responsibility on the host State and the organization. In the case of a conference of limited duration which was attended by

<sup>7</sup> For resumption of the discussion see 1133rd meeting, para. 136.

<sup>8</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 196.

<sup>9</sup> *Op. cit.*, 1969, vol. II, p. 208.

many delegations, there might be a more pressing need for assistance in obtaining accommodation than in the case of permanent missions. Since the host State would probably benefit materially by the conference, it was only natural to assume that it would be prepared to offer assistance.

80. With the minor drafting changes recommended by the Special Rapporteur, he thought that article 93 could be accepted.

81. Mr. ROSENNE said he had at first been attracted by the Netherlands Government's proposal. After further reflection, however, he was prepared to accept the recommendation of the Special Rapporteur. The situation was perhaps a more delicate one than it appeared at first sight. There had been cases in which a host State had made it impossible for a delegation to function or even to be present at a conference, merely by bringing its influence to bear upon the availability of accommodation.

82. If article 93 was to have any basis in reality, it should require that the host State must have advance knowledge of the presence of the delegation. The situation was not at all the same as that covered by article 18 of the Convention on Special Missions, which dealt with the case of special missions meeting in the territory of a third State.

83. Consideration should also be given to the question whether there was any difference between a conference, however large, held at United Nations Headquarters under the Headquarters Agreement and one held elsewhere. For instance, the *Ad Hoc* Committee to Study the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the Limits of National Jurisdiction was a subsidiary organ of the General Assembly which, with over eighty members, sometimes met at Geneva, while the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation Among States had once met at Mexico City. The Drafting Committee should at least state clearly to what extent meetings could take place without any notification being given to the host State.

84. Mr. ELIAS said that article 93 would require some modification to meet the difficulty referred to by the Netherlands Government. He did not think that the analogy drawn between delegations and special missions was entirely apt. In the case of special missions the relationship was bilateral, since there was a common interest between the sending State and the receiving State, but in the case of delegations to organs or conferences the host State did not appear to be involved to the same extent.

85. There was much force in the argument that delegations to organs or conferences should be asked to submit their difficulties to the organization and not to the host State, since the operative agreement was between the organization and the host State. Article 93 provided that the host State should assist a delegation "if it so requests"; the difficulty was to determine to whom the request should be made. On one occasion, while attend-

ing an international conference, he had been compelled to leave his hotel after a certain period and had been able to obtain new accommodation only through the United Nations Secretariat. On another occasion, when a conference had been held at a considerable distance from the centre of town, the organization had provided delegations with the necessary transport; and again, one leader of a delegation had been turned out of his hotel and had been assisted by the United Nations Secretariat.

86. Mr. USHAKOV said that in some cities where there was a shortage of hotel rooms it was impossible to find accommodation without the assistance of the authorities. Hence it was surely the host State that should be responsible for assisting delegations which so requested, no matter whether they did so direct or through the organization.

87. The article should be kept as it stood.

88. Mr. REUTER said that matters should always be settled through the organization, which was in the best position to judge whether the intervention of the host State was necessary or not. It might be therefore advisable to amend the opening words of the article to read:

"The host State shall assist a delegation to an organ or to a conference, if necessary through the organization, in procuring . . .".

The second sentence would be deleted.

89. Mr. USTOR said that States gained certain moral and material advantages by acting as hosts to an international conference and most of them were prepared to assume some obligations in order to gain those advantages. Host States were, as a rule, prepared to deal with any complaints made by delegations, and usually appointed a liaison officer to a conference. Consequently, he saw no need to provide that complaints should be made only through the organization. In his experience such problems as arose at international conferences generally solved themselves, so he was prepared to accept the rather vague wording of article 93 as it stood.

90. Mr. BARTOŠ observed that the first and second parts of the first session of the General Assembly, held in London and New York in 1946, could not have been held without the arrangements made between the Secretariat and the United Kingdom and United States authorities to overcome accommodation and transport difficulties. It was necessary to include an article providing in general terms that the organization and the host State must take the necessary measures to ensure that delegations could perform their functions undisturbed.

91. Mr. ALBÓNICO said that in practice delegations to an organ or conference generally received assistance in finding accommodation from their embassies or permanent missions. The problem should not be exaggerated. He was prepared to support article 93 in its present form.

92. Mr. CASTRÉN said he was in favour of retaining the article as it stood. The obligation it laid down was primarily one for the host State, since the organ or conference was meeting in its territory. The organization



had no power to demand that premises be placed at the disposal of delegations, and must therefore apply to the host State. So why not let delegations act direct, and provide that they should request assistance from the organization only in case of need? The wording proposed by Mr. Reuter was shorter, though it did not affect the substance; but if the Commission accepted it, it would be departing from the form of words adopted for permanent missions and permanent observer missions.

93. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission was prepared to refer article 93 to the Drafting Committee.

*It was so agreed.*<sup>10</sup>

#### ARTICLE 94

94. The CHAIRMAN invited the Commission to consider article 94, on the inviolability of the premises, to which the Special Rapporteur had proposed no change.

95.

#### *Article 94*

##### *Inviolability of the premises*

1. The premises where a delegation to an organ or to a conference is established shall be inviolable. The agents of the host State may not enter the said premises, except with the consent of the head of the delegation or, if appropriate, of the head of the permanent diplomatic mission of the sending State accredited to the host State. Such consent may be assumed in case of fire or other disaster that seriously endangers public safety, and only in the event that it has not been possible to obtain the express consent of the head of the delegation or of the head of the permanent diplomatic mission.

2. The host State is under a special duty to take all appropriate steps to protect the premises of the delegation against any intrusion or damage and to prevent any disturbance of the peace of the delegation or impairment of its dignity.

3. The premises of the delegation, their furnishings, other property used in the operation of the delegation and its means of transport shall be immune from search, requisition, attachment or execution.

96. Mr. USTOR said he was opposed to the last sentence of paragraph 1. He suggested that the second sentence of that paragraph should include a reference to the consent of the head of the permanent mission to the organization.

97. Mr. ALCÍVAR categorically opposed the last sentence of paragraph 1 on the ground that it placed an undue limitation on the principle of inviolability.

98. Mr. USHAKOV reserved his position on the last sentence of paragraph 1.

99. Since, under article 81, the appointment of a head of delegation was a faculty and not an obligation, it might be asked how the second sentence of article 94, paragraph 1, could be applied when no head of delegation had been appointed. The same question arose with

regard to all the other articles which mentioned the head of the delegation. The Drafting Committee would have to find a more appropriate form of words.

100. Mr. SETTE CÂMARA said that article 94 had been severely criticized in the Sixth Committee and in the observations of governments. Some governments had suggested that the article should depart from article 25 of the Convention on Special Missions and be modelled on article 22 of the Vienna Convention on Diplomatic Relations.<sup>11</sup> That would eliminate the possibility of assuming the consent of the sending State in case of fire or other disaster. Special missions and delegations to conferences were generally accommodated in hotels and it was therefore normal to provide for such contingencies as those covered by article 94, paragraph 1; but since delegations did not enjoy the same protection as permanent missions, article 94 needed to be very emphatic in stating the principle of inviolability of the premises.

101. He was prepared to support article 94 in its present form if the Drafting Committee would undertake to reconcile it with article 25.

102. Mr. AGO endorsed Mr. Ushakov's comment on the second sentence of paragraph 1. It could be assumed that, if the conference or organ was meeting in the city where the organization had its headquarters, it would normally be the consent of the head of the permanent mission which had to be obtained; if the meeting was elsewhere, it would be logical to apply to the diplomatic representative accredited to the host State. The Drafting Committee should see how that idea could be expressed.

103. With regard to Mr. Alcívar's comment on the last sentence of paragraph 1, it should be remembered that the same question had arisen in connexion with the corresponding provision on permanent missions.<sup>12</sup> In order to prevent that provision from being interpreted to mean that if the head of the delegation refused his consent the agents of the host State could proceed without it, the Drafting Committee had decided to specify that such consent might be assumed in case of fire or other disaster that seriously endangered public safety, and only in the event that it had not been possible to contact the permanent representative in order to obtain his express consent.<sup>13</sup>

104. Mr. KEARNEY said he acknowledged the importance of the principle of inviolability of the premises, but did not think it possible to deal with that principle in such abstract terms as his colleagues envisaged. Delegations to organs or conferences were generally accommodated in hotels, and hotel rooms were far from inviolable. They could always be entered by cleaners, or even by house detectives if the occupants happened to be making too much noise. If members of a delegation refused to abide by the hotel rules, they could always be asked to leave. In his opinion it would be foolish of the Commission to draft for solemn adoption in some future

<sup>10</sup> For resumption of the discussion see 1125th meeting, para. 62.

<sup>11</sup> United Nations, *Treaty Series*, vol. 500, pp. 106-108.

<sup>12</sup> See 1093rd meeting, para. 46 *et seq.*

<sup>13</sup> See document A/CN.4/L.168, article 25, para. 1.

convention, articles that disregarded the facts of life. He therefore proposed that the first sentence of paragraph 1 should be amended to read:

“The premises, other than hotel rooms, where the delegation to an organ or to a conference is established shall be inviolable.”

105. Mr. REUTER said that, if an article such as article 94, and in particular paragraph 2, was to be of any practical value, it was essential that the host State should be notified of the premises assigned to delegations.

106. Mr. USHAKOV said he thought the situation of delegations to organs or conferences was the same as that of special missions. Since they were temporary delegations, their premises, but not necessarily the private accommodation of their members, were in hotels. It was therefore appropriate that article 94 should be modelled on the corresponding article relating to special missions.

107. It was obvious that notification of the host State covered only the premises used as offices and not, as was provided in article 11, sub-paragraph (f) of the Convention on Special Missions, the private accommodation of members of the delegation. That was how he interpreted Mr. Kearney's proposal.

108. Mr. CASTRÉN said that in spite of the difficulties that might arise in practice in obtaining hotel rooms, the article should be retained as it stood, subject only to the drafting changes that had been proposed, on the understanding that it must be interpreted in a reasonable manner.

109. Paragraph 1 was an important provision that could easily be respected if the host State had been notified of the address of the premises occupied by the delegation.

110. Mr. ROSENNE, referring to Mr. Kearney's proposal, said that the Commission should be careful about adopting a text which might even appear to leave open the possibility that hotel rooms could be entered by agents of the host State.

111. He thought Mr. Ustor's proposal for the second sentence of paragraph 1 would needlessly overload the article; the problem would only arise when the conference was not held in the capital of the host State or near the site of a permanent mission. A conference might be held in a city such as San Francisco, where many countries maintained consulates-general; to cover that possibility it would be necessary to include a reference to the head of the consular post. Such cases could be multiplied *ad infinitum*.

112. He suggested that the Drafting Committee should consider adding some such provision as that of article 11, sub-paragraph (f), of the Convention on Special Missions.

113. Sir Humphrey WALDOCK said he agreed in principle with those members of the Commission who believed that article 94 should be kept as it stood. If the Commission was over-zealous in seeking further improvements, the result might be only minor differences in the

text which would offer loopholes for astute lawyers in the future. He would suggest, however, that the words “if appropriate” in the second sentence of paragraph 1 might be replaced by the words “as the case may be”.

114. The CHAIRMAN suggested that article 94 should be referred to the Drafting Committee with the comments made during the debate.

*It was so agreed.*<sup>14</sup>

The meeting rose at 12.55 p.m.

<sup>14</sup> For resumption of the discussion see 1125th meeting, para. 71.

## 1108th MEETING

*Thursday, 27 May 1971, at 9.40 a.m.*

*Chairman: Mr. Senjin TSURUOKA*

*Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Bar-toš, Mr. Castañeda, Mr. Castrén, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.*

### Co-operation with other Bodies

[Item 9 of the agenda]

1. The CHAIRMAN read out a letter from the Director of Legal Affairs of the Council of Europe to the Legal Counsel of the United Nations, inviting the International Law Commission to be represented at the forthcoming meeting of the European Committee on Legal Co-operation, to be held at the headquarters of the Council of Europe, Strasbourg, from 14 to 18 June.

2. After an exchange of views in which Sir Humphrey WALDOCK, Mr. YASSEEN, Mr. ROSENNE and Mr. USHAKOV took part, the CHAIRMAN said he understood it to be the wish of the members that he should represent the Commission at the meeting of the European Committee on Legal Co-operation but that, since his duties as Chairman would prevent him from absenting himself while the Commission was in session, he should nominate a substitute in due course.

*It was so agreed.*