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Summary record of the 1127th meeting

Topic:
Representation of States in their relations with international organizations

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if he is already in its territory, from the moment when his appointment is notified to the host State by the Organization, by the conference or by the sending State.

2. When the functions of a person entitled to privileges and immunities under this part have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so. However, with respect to acts performed by such a person in the exercise of his functions as a member of the delegation to an organ or to a conference, immunity shall continue to subsist.

3. In case of the death of a member of the delegation, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the delegation not a national of or permanently resident in the host State or of a member of his family accompanying him, the host State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property which is in the host State solely because of the presence there of the deceased as a member of the delegation or of the family of a member of the delegation.

*Article 108 was provisionally approved.*²¹

The meeting rose at 1 p.m.

²¹ For resumption of the discussion see 1135th meeting, para. 22.

1127th MEETING

Thursday, 1 July 1971, at 4.15 p.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Alcívar, Mr. Bartoš, Mr. Castrén, Mr. Eustathiades, Mr. Reuter, Mr. Rosenne, Mr. Ruda, 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 7; A/CN.4/241 and Add.1 to 6; A/CN.4/L.162/Rev.1; A/CN.4/L.168/Add.7)

[Item 1 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE
(continued)

1. The CHAIRMAN invited the Commission to consider the texts of articles 110 to 116 *bis* as proposed by the Drafting Committee (A/CN.4/L.168/Add.7).

ARTICLE 110

2. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that article 110¹ corresponded to article 43 of the draft. The essential difference between the two articles had lain in the provisions of paragraph 4 of article 110, which were not included in article 43 or in the corresponding article 40 of the Vienna Convention on Diplomatic Relations.² Those provisions had read:

“4. The third State shall be bound to comply with its obligations in respect of the persons mentioned in paragraphs 1, 2 and 3 of this article only if it has been informed in advance, either in the visa application or by notification, of the transit of those persons as members of the delegation, members of their families or couriers and has raised no objection to it.”

3. On the other hand, the opening sentence of paragraph 1 of article 43, which was based on article 40 of the Vienna Convention on Diplomatic Relations, contained a clause not included in article 110, reading: “which has granted him a passport visa if such visa was necessary”. A similar clause was to be found in paragraph 3 of article 43 where it applied to couriers of the permanent mission.

4. There was thus a major difference of substance between article 43 of the draft and article 40 of the Vienna Convention on the one hand, and article 110 on the other. Under the terms of the first two articles, it was sufficient that the third State should have been asked for a visa, if a visa was necessary. Under the terms of article 110, even if a visa was not necessary, the third State had to be informed of the transit in advance, so that it could object if need be.

5. The Drafting Committee had noted that the provisions of paragraph 4 of article 110 were based on paragraph 4 of article 42 of the Convention on Special Missions³ and had considered that while they might be justified in the case of special missions in view of the great variety of their functions and nature, such provisions were hardly justified in the case of delegations to an organ or a conference. It had therefore deleted paragraph 4 of article 110 and had inserted the clause relating to a visa in paragraphs 1 and 3.

6. In the French version of paragraph 3, the Committee had departed slightly from the wording of the Vienna Convention on Diplomatic Relations in order to bring paragraph 3 into line with paragraph 1. It intended to do the same in article 43.

7. For the rest, the Committee had modelled article 110 as closely as possible on article 43. In the interests of clarity and concision, however, in the second sentence of

¹ For previous text see 1109th meeting, para. 83.

² United Nations, *Treaty Series*, vol. 500, pp. 118-120.

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

paragraph 1 it had replaced the words “the person referred to in this paragraph” by the personal pronoun “him”, and intended to make a similar change in article 43.

8. The Drafting Committee had also noted that in the English version of paragraph 4 of article 43, the expression “whose presence in the territory of the third State is due to *force majeure*” was questionable from a grammatical point of view, because the word “whose” referred not only to persons but also to things; so although that expression was used in article 40 of the Vienna Convention on Diplomatic Relations, the Committee had preferred a different form of words, reading “when they are present in the territory of the third State owing to *force majeure*”. It intended to use the same wording for article 43 when the draft was revised.

9. The text proposed for article 110 read:

Article 110

Transit through the territory of a third State

1. If a representative in the delegation to an organ or to a conference or a member of its diplomatic staff passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up his functions or returning to the sending State, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of the members of his family enjoying privileges or immunities who are accompanying him, whether travelling with him or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the passage of members of the administrative and technical or service staff of the delegation, and of members of their families through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the host State. They shall accord to the couriers of the delegation, who have been granted a passport visa if such visa was necessary, and to the bags of the delegation in transit the same inviolability and protection as the host State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to the official communications and bags of the delegation when they are present in the territory of the third State owing to *force majeure*.

10. Mr. EUSTATHIADES said that article 110, in its new form, said nothing about the case in which the third State was informed of the transit of the persons concerned in advance, by notification. That case was covered both in the former paragraph 4, which had been deleted, and in article 42 of the Convention on Special Missions. The commentary to article 110 should make it clear whether the obligation imposed on the third State was subject to notification if that State did not require a visa.

11. Mr. BARTOŠ said he agreed. It was useful for States which did not require a visa to be informed, by notification, of all movements of diplomats. Article 110 did not require such notification, but the commentary

should emphasize its desirability. If a third State which did not require a visa had been informed of the arrival in its territory of a member of a delegation, the sending State was in a better position to request it to show that person consideration of a kind which would not be shown to a mere tourist.

12. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the Committee had studied the matter and had found that neither of the two Vienna Conventions—on diplomatic relations and on consular relations—made the obligation of the third State conditional on notification. In reality, States were free to require or not to require prior notification; some did, others did not. The presence or absence of a clause requiring notification would not alter the situation in any way. Moreover, States could always object to the transit.

13. Mr. BARTOŠ said he was glad to have that explanation but, contrary to what the Drafting Committee had assumed, a number of States did require to be notified of movements in the diplomatic and consular corps. Furthermore, both the Vienna Conventions contained express provisions on notifications of that kind. If notification was required in the case of diplomatic missions and consular posts, it should be equally required for missions to international organizations.

14. Without going so far as to make notification compulsory, the Commission should emphasize its desirability in the commentary and point out that the absence of notification might give rise to disputes.

15. Sir Humphrey WALDOCK said that Mr. Ushakov had given a very clear explanation, with which he associated himself. It was to be emphasized that article 110 dealt exclusively with the problem of transit through a third State. The Drafting Committee had considered that problem at length and had come to the conclusion that an absolute requirement of prior notification as a condition for privileges and immunities would be too strict, and that in view of modern travel conditions such a condition would be unrealistic. For those reasons the Drafting Committee had considered that the rule laid down in the Vienna Conventions on diplomatic and consular relations was to be preferred, in the present draft, to the rule in the Convention on Special Missions. Of course, a diplomat whose transit had not been notified would run the risk of not being accorded his privileges and immunities until he had satisfied the authorities of the transit State that he was entitled to them. But it would be going too far to deny them to him altogether, once he had established status.

16. Mr. BARTOŠ said that many States did not follow the practice mentioned by Sir Humphrey Waldock. For example, the United Kingdom always asked the reasons for a journey. Hence notification was an indirect condition for the enjoyment of privileges and immunities. Although States were quite free in that matter, it was desirable that the commentary should stress the advantages of notification.

17. The CHAIRMAN said that if there were no objection he would take it that the Commission provisionally

approved article 110 as proposed by the Drafting Committee; due account would be taken of the views expressed with regard to the commentary.

*It was so agreed.*⁴

ARTICLE 111 (Non-discrimination),

ARTICLE 113 (Professional or commercial activity) and

ARTICLE 115 (Facilities for departure)

18. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the Working Group and the Drafting Committee intended to make general provisions of articles 111, 113 and 115, which had accordingly been placed in square brackets. The Drafting Committee proposed that consideration of those articles be deferred.

19. The CHAIRMAN said that if there were no objection he would take it that the Commission accepted the Drafting Committee's proposal.

*It was so agreed.*⁵

ARTICLE 112

20. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the Committee had brought article 112 into line with the text provisionally adopted by the Commission for article 45.⁶ The text proposed for article 112 read:

Article 112

Respect for the laws and regulations of the host State

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

2. In case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from jurisdiction, the sending State shall, unless it waives the immunity of the person concerned, recall him, terminate his functions with the delegation to an organ or to a conference or secure his departure, as appropriate. The sending State shall take the same action in case of grave and manifest interference in the internal affairs of the host State. The provisions of this paragraph shall not apply in the case of any act that the person concerned performed in carrying out the functions of the delegation.

3. The premises of the delegation shall not be used in any manner incompatible with the exercise of the functions of the delegation.

21. The CHAIRMAN said that if there were no objection he would take it that the Commission provisionally

⁴ For resumption of the discussion see 1135th meeting, para. 70.

⁵ For resumption of the discussion see 1135th meeting, paras. 49, 67 and 78.

⁶ See 1114th meeting, para. 51 and 1115th meeting, paras. 19-22.

approved article 112 as proposed by the Drafting Committee.

*It was so agreed.*⁷

ARTICLE 114

22. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the Committee had brought article 114 into line with article 47. In particular, it had changed the title of the article, which previously had referred to the end of the functions of any member of a delegation irrespective of his category A consequential change had been made in the text of the article.

23. The text proposed for article 114 read:

Article 114

End of the functions of a representative in the delegation to an organ or to a conference or of a member of the diplomatic staff

The functions of a representative in the delegation to an organ or to a conference or of a member of its diplomatic staff shall come to an end, *inter alia*:

(a) on notification of their termination by the sending State to the Organization or the conference;

(b) upon the conclusion of the meeting of the organ or the conference.

24. Mr. EUSTATHIADES asked whether the functions of a representative in the delegation to an organ or to a conference always came to an end on the conclusion of the meeting of the organ or the conference concerned, as provided in sub-paragraph (b). The commentary should indicate whether they might continue after the conclusion of the meeting in exceptional cases, when certain representatives had to hold an exchange of views, plan a future meeting or complete the work of the conference.

25. Mr. USHAKOV said he thought that Mr. Eustathiades' observation related rather to the duration of privileges and immunities than to the duration of functions. The latter concept was linked to the duration of the conference. Privileges and immunities, on the other hand, did not normally cease until the persons enjoying them had left the territory of the host State, as provided in paragraph 2 of article 108.

26. Mr. ROSENNE said that in the light of Mr. Eustathiades' observations he did not see what practical purpose article 114 was intended to serve at that point in the draft; it only repeated the substance of article 89, paragraph 1 (a).

27. Mr. USHAKOV said that the rule in sub-paragraph (a) followed the corresponding provision in article 43 of the Vienna Convention on Diplomatic Relations. On the other hand, the rule in sub-paragraph (b) was an innovation; it might not be necessary, but it was at least useful.

⁷ For resumption of the discussion see 1135th meeting, para. 46.

28. Mr. CASTRÉN said he accepted the text proposed by the Drafting Committee for article 114.

29. With regard to the eventualities mentioned by Mr. Eustathiades, if some representatives remained in the territory of the host State after the end of a meeting it was usually in a private capacity or in the exercise of other official duties. Moreover, some of the activities mentioned by Mr. Eustathiades were the responsibility of the secretariat of the organ or the conference.

30. Mr. USHAKOV said that the Vienna Convention on Diplomatic Relations contained both an article on regular notifications—article 10—and an article on the end of functions—article 43. It was right that the draft should include two corresponding provisions.

31. Mr. REUTER suggested that the title of the article should be amended to read: "End of the functions of a representative or of a member of the diplomatic staff in the delegation to an organ or to a conference." He would like to hear whether there was any obstacle to such a change.

32. Mr. TESLENKO (Deputy Secretary to the Commission) said that the title proposed by the Drafting Committee was purely provisional.

33. Sir Humphrey WALDOCK said he wished to associate himself with the explanation given by Mr. Ushakov. The purpose of article 114 was to fix the moment at which the functions of a representative came to an end, as had been done in article 43 of the Vienna Convention on Diplomatic Relations. That was essential in connexion with the duration of privileges and immunities.

34. The CHAIRMAN suggested that article 114 be provisionally approved with the amended title proposed by Mr. Reuter.

It was so agreed.⁸

ARTICLE 116

35. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the Committee had brought the title of article 116 into line with that of article 49, by adding the word "property" after the word "premises".

36. With regard to the text of the article, the Committee had noted two differences between articles 49 and 116, which it had retained.

37. First, the first sentence of article 116 provided that the host State must respect and protect the premises of the delegation "so long as they are assigned to it". The words "so long as they are assigned to it" were taken from article 46 of the Convention on Special Missions, but did not appear in article 40 of the draft. The Committee had considered that difference justified. Unlike the premises of permanent missions, those of delegations were in most cases occupied only for a short time. In those circumstances, the host State could not be required to protect them when they were no longer assigned to the delegation.

⁸ For resumption of the discussion see 1135th meeting, para. 31.

38. Secondly, the text of paragraph 1 of article 49, as provisionally approved by the Commission,⁹ contained a last sentence which read: "It [the sending State] may entrust custody of the premises, property and archives of the permanent mission to a third State acceptable to the host State". Article 116 contained no corresponding provision. There again, the Committee had considered that the difference between the two articles was justified in view of the short duration of the functions of most delegations.

39. The text proposed for article 116 read:

Article 116

Protection of premises, property and archives

1. When the meeting of an organ or a conference comes to an end, the host State must respect and protect the premises of the delegation so long as they are assigned to it, as well as the property and archives of the delegation. The sending State must take all appropriate measures to terminate this special duty of the host State within a reasonable time.

2. The host State, if requested by the sending State, shall grant the latter facilities for removing the property and the archives of the delegation from the territory of the host State.

40. The CHAIRMAN said that if there were no objection he would take it that the Commission provisionally approved article 116 as proposed by the Drafting Committee.

It was so agreed.¹⁰

ARTICLE 116 bis

41. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that article 116 bis had been added to the draft by the Committee. It was modelled on articles 49 bis and 77 bis, which had been provisionally approved by the Commission.¹¹

42. The words "The establishment or maintenance", at the beginning of paragraph 2, which had been taken from articles 49 bis and 77 bis, were not appropriate for a delegation and should be improved. At a later stage, the Drafting Committee might amend the beginning of paragraph 2 to read: "The sending of a delegation to" or possibly "The participation of a delegation in".

43. The text proposed for article 116 bis read:

Article 116 bis

Non-recognition of States or governments or absence of diplomatic or consular relations

1. The rights and obligations of the host State and of the sending State under the present articles shall be affected neither by the non-recognition by one of those States of the other State or of its government nor by the non-existence or the severance of diplomatic or consular relations between them.

2. The establishment or maintenance of a delegation to an organ or to a conference or any act in application of the present

⁹ See 1115th meeting, para. 52.

¹⁰ For resumption of the discussion see 1135th meeting, para. 34.

¹¹ See 1121st meeting, paras. 43-64.

articles shall not by itself imply recognition by the sending State of the host State or its government or by the host State of the sending State or its government.

44. Mr. ROSENNE said that article 116 *bis* contemplated not only the action of the sending State in sending a delegation, but also that of the host State in receiving that delegation, and the change proposed by Mr. Ushakov should be considered in that light.

45. Sir Humphrey WALDOCK said that the Working Group had envisaged article 116 *bis* as one of the general articles in the draft.

46. The CHAIRMAN suggested that the Commission approve article 116 *bis* provisionally.

*It was so agreed.*¹³

The meeting rose at 5.15 p.m.

¹³ For resumption of the discussion see 1135th meeting, para. 75.

1128th MEETING

Friday, 2 July 1971, at 11.40 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Alcívar, Mr. Bartoš, Mr. Castrén, Mr. Eus-thathiades, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

General Assembly resolution 2669 (XXV) on progressive development and codification of the rules of international law relating to international watercourses

(ST/LEG/SER.B/12; A/5409, A/7991, A/8202;
A/RES/2669 (XXV); A/CN.4/244; A/CN.4/245)

[Item 6 of the agenda]

1. The CHAIRMAN invited the Commission to consider item 6 of the agenda. He reminded members that the legislative texts and treaty provisions referred to in the report on legal problems relating to the utilization and use of international rivers prepared by the Secretary-General (A/5409) in pursuance of resolution 1401 (XIV), had been collected and published *in extenso* by the Secretariat in a volume of the United Nations legislative Series (ST/LEG/SER.B/12).

2. As the Commission had insufficient time to go into details, he asked members to express their views primarily on the action to be taken having regard to General Assembly resolution 2669 (XXV).

3. Mr. RUDA said that throughout the world there was growing concern to prevent the decrease, both

absolute and relative, of the limited resources of drinking water. Practical measures had been taken at the national level, particularly in the industrialized countries, to safeguard water resources and at the international level many bilateral and regional agreements had been concluded to prevent disputes between neighbouring countries.

4. For example, at the beginning of June 1971, the countries of the River Plate basin—Argentina, Bolivia, Brazil, Paraguay and Uruguay—at a meeting of Ministers for Foreign Affairs at Asunción, had adopted a resolution declaring that the utilization of any international river forming the boundary between two States required prior bilateral agreement between the two riparian States concerned, and that where an international river crossed the territories of two or more States successively, each riparian State might make use of the waters according to its needs, provided that it did not cause any appreciable prejudice to any other State on the same river basin. The resolution then provided for the exchange of hydrological, meteorological and cartographic information, and finally declared that each riparian State would strive to ensure the best possible conditions for navigation in its own sector.

5. Later in the same month, Chile and Argentina had signed an important agreement on the subject of international watercourses: the Act of Santiago de Chile.

6. A large number of existing bilateral and multilateral treaties on the subject were reproduced in the volume of the United Nations Legislative Series already mentioned by the Chairman, entitled "Legislative texts and treaty provisions concerning the utilization of international rivers for other purposes than navigation", and much useful information on those treaties was to be found in the Secretary-General's report.

7. Notwithstanding that mass of documentation, the utilization of international watercourses remained largely governed by general principles and rules of customary law. The Institute of International Law and the International Law Association had attempted a systematic formulation of those rules, but their efforts were of a purely private character. The General Assembly, by its resolution 2669 (XXV), had now recommended that the Commission "should, as a first step, take up the study of the law of the non-navigational uses of international watercourses with a view to its progressive development and codification". The phrase "as a first step" was, as he saw it, linked with the reference to "non-navigational uses", the implication being that navigational uses would be considered at a later stage.

8. At the same time, the General Assembly had requested the Secretary-General to "continue the study initiated by the General Assembly in resolution 1401 (XIV) in order to prepare a supplementary report on the legal problems relating to the utilization and use of international watercourses". In his view, the Commission would be in a position to begin its own study of the question as soon as the Secretariat had completed the supplementary report requested by the General Assembly. For the time being, the only action which the Com-