Document:-

A/CN.4/SR.953

Summary record of the 953rd meeting

Topic:

Representation of States in their relations with international organizations

Extract from the Yearbook of the International Law Commission:-

1968, vol. I

Conference had discussed the possibility of several States being represented by the same ambassador; that idea was an innovation.

54. Mr BARTOŠ said he still considered that an institution which allowed several States joint representation was dangerous. There was always the question whether one State could disclaim the acts of the joint representative. In any case, such an institution could impair the sovereignty of a weak State, which was in fact dependent on its partner whose official was vested with the powers of permanent representative.

55. The developing countries had maintained that it was not always possible for them to be represented individually because they had insufficient trained staff and lacked financial resources, and groups of States had therefore resorted to joint representation. That was why the majority had accepted that institution in Vienna in 1961, despite the opposition of slightly less than one third of the participants. Although the Special Rapporteur had not included an article on the subject in his report, he seemed to accept the idea of joint representation. He (Mr. Bartoš) was also willing to accept it, provided that the text expressly stated that a State which was dissatisfied with the acts of the joint representative could contest their validity.

56. Mr. EL-ERIAN (Special Rapporteur) suggested that the Commission should decide provisionally, pending consideration of article 48, not to include an article on the appointment of a joint permanent mission by two or more States.

57. The CHAIRMAN said that if there were no objection, he would assume that the Commission agreed to adopt the course suggested by the Special Rapporteur.

It was so agreed.

The meeting rose at 1 p.m.

953rd MEETING

Thursday, 13 June 1968, at 10 a.m.

Chairman: Mr. Erik CASTRÉN

Present: Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. El-Erian, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Relations between States and inter-governmental organizations

(A/CN.4/195 and Add.1; A/CN.4/203 and Add.1-2; A/CN.4/L.118 and Add.1-2)

[Item 2 of the agenda]
(continued)

1. ARTICLE 9

Article 9

Appointment of the members of the permanent mission

The sending State may freely appoint the members of the permanent mission.

2. The CHAIRMAN invited the Special Rapporteur to introduce article 9 and the accompanying note on the nationality of members of a permanent mission (A/CN.4/203/Add.1).

3. Mr. EL-ERIAN (Special Rapporteur) said that, unlike article 7 of the Vienna Convention on Diplomatic Relations [1] and article 8 of the draft on special missions,[2] article 9 of his draft did not contain the proviso "Subject to the provisions of articles..." which limited the freedom of the sending State to appoint the members of the permanent mission by reference to a number of restrictive articles. In particular, the question of the *agrément*, either of the organization or of the host State, did not arise.

4. On the question of the nationality of members of a permanent mission, he had included a note analysing the relevant provisions of the conventions on privileges and immunities, host agreements and regional agreements. His analysis showed that the consent of a State was not required for the appointment of one of its nationals to the permanent mission of another State, but that the privileges and immunities of such a person were restricted.

5. In the light of that practice, he had framed article 9 in terms of the freedom of choice of the sending State in appointing the members of the permanent mission. Problems relating to nationality would be dealt with by limitation of privileges and immunities in the appropriate cases under article 38 (Nationals of the host State and persons permanently resident in the host State).

6. Mr. TAMMES said that the freedom of appointment provided for in article 9 meant the absence of restrictions on the sending State in three respects: the size of the permanent mission, the nationality of its members and *agrément* or consent, either by the host State or by the organization itself.

7. On the question of size, he suggested that article 9 should include a proviso reserving the provisions of article 14, which required that the size of the permanent mission should not exceed what was reasonable and normal. Those provisions were rather more flexible than the corresponding article 11 of the Vienna Convention on Diplomatic Relations, but they nevertheless laid down definite legal obligations for the sending State. Article 8 of the draft on special missions might help to solve the problem in so far as it required the sending State to inform the receiving State in advance of the size of the mission and the identity of its members.

8. With regard to the question of nationality, he agreed that it should be left open to the sending State to appoint persons who were not its nationals as members of its permanent mission. But the position should be clearly stated, especially in view of the possibility of a member of a joint permanent mission representing a State other than the sending State. The question arose whether it might not be preferable to give the host State the right to object to the appointment, rather than the right to restrict privileges and immunities in certain cases.

9. The question of the non-requirement of *agrément* or consent by the organization or by the host State, had been

[1] See United Nations, *Treaty Series*, vol. 500, p. 100.

[2] See *Official Records of the General Assembly, Twenty-second Session, Supplement No. 9*, p. 7.

summed up adequately by the Legal Counsel of the United Nations in the statement quoted in the commentary.

10. Mr. KEARNEY said that article 9 stated a rule which was essential for the efficient operation of international organizations. The situation was, however, perhaps more complicated than it appeared at first sight. In particular, it was not possible to divorce the problem of the members of a permanent mission from that of the host State. That was particularly true in regard to protection of the members of the mission, a problem which could be made more acute by the particular composition of a mission.

11. Referring to paragraph 5 of the note on the nationality of members of a permanent mission, he pointed out that the provisions of article 9 were intended to be part of a draft convention, so that, if adopted, they would in due course become the internal law of the States parties to that convention. The question would then arise whether the article placed an obligation on States to amend their laws if they did not permit nationals to serve on the permanent mission of a foreign country. If the intention was that States should retain the right to require that a national must obtain their permission to enter the service of a foreign country, that intention should be made clear in the text of the article. Perhaps the matter could be dealt with by means of a reservation made by the States concerned when signing the future convention; but the question would then arise whether such a reservation was not incompatible with the object and purpose of the treaty and hence precluded by the provisions of article 16, sub-paragraph (*c*), of the draft articles on the law of treaties, as adopted by the Committee of the Whole at the first session of the United Nations Conference on the Law of Treaties.[3]

12. Mr. USHAKOV reminded the Commission that the 1961 Vienna Conference had recognized that, generally speaking, the appointment of nationals of the receiving State as diplomatic representatives was something quite abnormal. It had been necessary, however, to take account of the fact that many States had not enough qualified persons to represent them. That was why article 8 of the Vienna Convention on Diplomatic Relations provided for the possibility of appointing nationals of the receiving State or of a third State. But it had been thought that the practice would gradually cease.[4]

13. It was probably not yet time to state as a rule of international law that the members of permanent missions to international organizations must be nationals of the sending State, for the application of such a rule would still cause difficulties. Under the terms of article 8 of the Vienna Convention, however, the consent of the receiving State was required for the appointment of its nationals as members of a diplomatic mission; and that article must be read in conjunction with article 38 of the same convention, which defined the privileges and immunities of a diplomatic agent who was a national of the receiving State. Thus, by giving its consent to the appointment of one of its nationals as a member of the diplomatic mission of another State, the receiving State was undertaking to grant privileges and immunities to that person. If, in the draft before it, the Commission did not provide in one way or another for the consent of the host State, there would be no means of obliging that State to grant privileges and immunities to any of its nationals who became members of the permanent mission of another State to an international organization; and failing that precaution, a permanent mission consisting of nationals of the host State might find itself in a difficult position.

14. Mr. YASSEEN said he thought that States should be allowed the fullest possible freedom to choose the members of their permanent missions. The organization itself could not object to an appointment. The only problem that arose concerned the host State and third States whose nationals it was desired to appoint as members of the permanent mission.

15. Generally speaking, the host State could not object to the appointment of members of permanent missions, but the freedom of the sending State was limited by the obligation to act in good faith; for example, it could hardly be allowed to appoint a common criminal convicted by the courts of the host State as a member of its permanent mission.

16. With regard to nationality, although it was true that no conflict of loyalties existed where officials of secretariats were concerned, he nevertheless believed, unlike the writer quoted in paragraph 3 of the note, that some such conflict was possible in the case of members of permanent missions. States might adopt different and sometimes incompatible attitudes in an international organization. It was therefore possible that a State might prohibit its nationals from holding posts in a permanent mission of another State. That point had been said to concern only relations between the State and its citizens; but the State's personal jurisdiction over its citizens was recognized by international law, and the situation might create international problems. The Commission should therefore reflect on the matter. The draft ought to impose some restriction on the absolute freedom of the sending State to choose persons of any nationality whatsoever as members of its permanent mission.

17. The question of privileges and immunities was, of course, another matter. No State could be obliged to grant a privileged status to its own nationals.

18. Mr. ALBÓNICO said he found article 9 acceptable in principle.

19. On the question of nationality, there were four separate cases to be considered. The first was that of nationals of the sending State. For them, no *agrément* was needed, but the freedom of choice of the sending State must be exercised in good faith, as pointed out by Mr. Yasseen. Nationals of the sending State appointed as members of the permanent mission enjoyed the full measure of privileges and immunities.

20. The second case was that of nationals of the host State. The right of the host State to object to their appointment must be recognized, unless that State was not a member of the organization. In any event, a national

[3] A/CONF.39/C.1/L.370.

[4] See United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. I, pp. 60 *et seq.* and 98 *et seq.*

of the host State would not enjoy privileges and immunities in his own country.

21. The third case was that of nationals of a third State. For them, no *agrément*, either by the host State or by the organization, was needed, and when they were appointed to a permanent mission they should enjoy the full measure of privileges and immunities.

22. The fourth case was that of dual nationals, who had both the nationality of the host State and that of the sending State. He suggested that that case should be dealt with in the commentary, where it could be pointed out that the host State's consent was required for the appointment. Clearly, the host State was entitled, if it so desired, to make its nationality prevail and treat the person concerned as one of its own nationals. If the host State consented to the appointment, however, that person would enjoy the full measure of privileges and immunities.

23. Mr. BARTOŠ said he thought that article 9 raised three questions of principle. The first concerned the principle it stated, namely, that the sending State had the right to choose freely the members of its permanent mission. That rule was justified and was already followed in practice with regard to diplomatic missions and consular posts, subject to the *agrément* or *exequatur*, as the case might be, of the receiving State. Since the proposed rule mentioned neither *agrément* nor *exequatur*, the question arose whether the sending State's freedom of choice was absolute. The question of the size of the permanent mission, on which limitation was at least possible under article 14, could be disregarded for the moment. Even though the formality of *agrément* was not required for members of permanent missions, the host State could make difficulties about the granting of an entry visa. In the case of the United Nations in New York, the State Department had sometimes refused a visa to a particular person, which had led to a protest by the Secretary-General, normally followed by the issue of the visa, but as a compromise rather than in express recognition of a right. The extension of visas also provided an opportunity for the host State to limit the stay of certain persons. He would not give a definite opinion on the question, but thought that the Commission, the Special Rapporteur and the Drafting Committee should give it further consideration.

24. The second question was whether permanent missions to international organizations should consist solely of nationals of the sending State, in accordance with a principle analogous to that adopted as the general rule in the two Vienna Conventions. He had originally upheld that principle and thought that it should always be applied. But he agreed that some countries, particularly developing countries, sometimes needed to appoint nationals of other States as members of their permanent missions. In New York, he had known a distinguished person of the Arab world who had changed his nationality several times so as to be able to act as the permanent representative to the United Nations of several Arab States in succession, since at the time those States did not have nationals with the necessary knowledge and experience. That example clearly showed that the problem arose in practice; there was nothing unacceptable about such a situation provided it was generally known. It had also been asked whether United States citizens could be members of the permanent missions of other countries to the United Nations; the practice was generally allowed for junior staff, but the State Department considered that it could always call upon the person concerned to relinquish his post. In his opinion, the host State was entitled to prohibit any of its citizens from serving a foreign State in its territory. It was not merely a question of discipline or of the relationship between the State and its citizens; the two Vienna Conventions gave the host State that right with regard to diplomatic missions and consular posts. It was a matter of relations between States.

25. The third question was the possible appointment of persons having the nationality of a State at war with the host State. A restriction on such appointments was already recognized in regard to delegations to particular organs of the United Nations provided for in the New York Headquarters Agreement.[5] It should therefore apply *a fortiori* to permanent missions, since the person appointed would have the right to stay in the host State and would perform his duties continuously in its territory.

26. In a more general form, with regard to the appointment to the staff of the permanent mission of persons who were not nationals of the sending State or of the host State, the question was whether the host State was entitled to proceed as provided in the two Vienna Conventions, under which the receiving State could withdraw its consent at any time.

27. In short, the Commission should decide whether it wished the members of permanent missions to enjoy more extensive diplomatic privileges and immunities than those accorded to diplomatic missions. He himself would advise keeping within the bounds of the Vienna Convention on Diplomatic Relations, and thought it would be difficult to go any further. An international organization could not object to the appointment of a person as a member of a permanent mission, but the host State was not obliged to accept everything. It accepted various constraints because of the presence of the organization in its territory, but it was not obliged to tolerate more where that organization was concerned than it did in the case of the diplomatic missions of foreign States accredited to it.

28. Mr. RAMANGASOAVINA said he thought the members of the Commission were agreed on the principle of the article, which could hardly be challenged, and on the need for some restriction of the freedom of the sending State; for too wide a rule might well involve the host State in difficulties.

29. No difficulty was likely to arise when the sending State chose its own nationals; but the host State might regard a particular person as undesirable—for example, someone who had formerly possessed its nationality—so it should at least have the right to object.

30. If the person chosen was a national of the host State or of another State, the problem was similar, but more acute. The host State was not obliged to allow just anyone to enter its territory and to perform, under its protection, duties on behalf of another State which entitled him to privileges and immunities. The host State

[5] General Assembly resolution 169 (II).

had some say in the matter, and perhaps otherwise than through visa formalities, which were not always required.

31. There were two methods of safeguarding the freedom of the host State. One, already suggested by Mr. Albónico, would be to include the necessary explanations in the commentary. That was a good solution provided the commentary had legal force for the signatories of the future convention. The other solution, which was more definite, but perhaps a little too categorical, would be to insert in article 9 a reservation such as "without prejudice to the sovereign powers of the host State". Some might fear that such a reservation would lead to unjustified refusals by the host State, but every convention must be applied in accordance with the principle of good faith, as Mr. Yasseen had rightly pointed out.

32. Mr. AMADO said he would confine himself to what he considered the essential problem, namely, the appointment of nationals of the host State by the sending State as members of its permanent mission to an international organization. Must the sending State obtain the prior consent of the host State, or could it, as Mr. Bartoš had implied, make the appointment and await the reaction of the host State, whose silence would be interpreted as consent?

33. In practice, poor or newly independent States wishing to establish an efficient permanent mission might find it advantageous to select, as head of the mission, a national of the host State who was a specialist on matters of interest to them. The host State must certainly receive such a head of mission in good faith; but was it bound to grant privileges and immunities to one of its own nationals which would place him in a peculiar position among his compatriots? It was necessary to consider whether it was enough to state that such an appointment could be made provided the host State did not object, or whether further particulars should be added to that proviso. The question required some thought.

34. Mr. ROSENNE said he still thought that article 9 was correctly drafted, although obviously it would have to be applied in good faith, with common sense, tact and courtesy. The possibility of a State appointing to a permanent mission a person who had been convicted of a crime in the host State was a remote one. The case of a person who had formerly been a member of his country's permanent diplomatic mission to the host State and had been declared *persona non grata* by that State was more serious. The right of the sending State freely to appoint the members of a permanent mission was an essential concept of the law of international organizations, but at the same time it was recognized in existing international agreements that the host State might need some protection. He assumed, therefore, that before completing the draft articles, the Commission would insert the necessary provisions to ensure that protection.

35. Questions relating to the privileges and immunities of members of a permanent mission did not belong in article 9, but in other articles which the Special Rapporteur had submitted or would submit in the future.

36. He agreed with the views expressed by the Special Rapporteur in his note on the nationality of members of a permanent mission and, in particular, with the conclusions reached in paragraph 4 of that note. With regard to paragraph 5, however, he thought the Special Rapporteur should make it quite clear that, under the general principles of international law, States were under an obligation not to interfere with the relations between another State and its own nationals.

37. Mr. USHAKOV said that, generally speaking, he supported the principle that the staff of a permanent mission should be chosen from among the nationals of the sending State. But allowance had to be made for special situations and, in particular, for the fact that developing countries sometimes found it an advantage to appoint nationals of other States. That situation existed and should therefore be taken into consideration.

38. The question of the appointment of a national of a third State did not arise in the same terms for a permanent mission to an international organization as it did for a permanent diplomatic mission, where it concerned the relations between the sending State and the receiving State, which was therefore entitled to object to the appointment. A member State of an international organization should be able to choose the staff of its permanent mission freely and, in particular, to appoint nationals of a third State. The host State should not be in a position to object. Just as a member State could establish a permanent mission to an organization even when diplomatic relations between itself and the host State had been broken off, so it could choose a national of a third State as a member of its permanent mission, even in the absence of diplomatic relations between that third State and the host State. Consequently, he did not think it necessary to devote a special paragraph to nationals of third States chosen by the sending State as members of its permanent mission.

39. Mr. Bartoš had cited the case of the host State and the third State being at war, but that was an absolutely exceptional situation for which it was difficult to provide expressly in the article; it would be sufficient to give an explanation in the commentary.

40. The problem was quite different where the sending State wished to appoint a national of the host State as a member of its permanent mission. Such a choice could be allowed; but relations between the host State and its national came under its own internal law. Hence it was only when the host State gave its express consent to the appointment that it was obliged to grant privileges and immunities to its own national. Article 9 should therefore include a separate paragraph providing for the express consent of the host State.

41. The CHAIRMAN,* speaking as a member of the Commission, said that at first he had thought States should be allowed very great freedom in the choice of members of their permanent missions; he had therefore favoured the proposed text of article 9, which seemed to him to meet that requirement.

42. The discussion had raised doubts in his mind, however, since most members of the Commission thought that the sending State's freedom of choice should be restricted, at least with regard to nationals of the host State. As the Special Rapporteur had pointed out in

* Mr. Castrén.

paragraph 4 of his note on nationality, however, the difficulties created by that particular situation could be dealt with in the articles on privileges and immunities, which would be examined later. Article 38,[6] for example, would probably allow the host State to limit or withhold privileges and immunities in respect of its own nationals.

43. As to the question of members of a permanent mission who were nationals of a State at war with the host State, he too thought that was a very exceptional case which need only be mentioned in the commentary.

44. Mr. EL-ERIAN (Special Rapporteur) said that the majority of the Commission seemed to favour the inclusion in article 9 of a paragraph concerning the appointment to a permanent mission of nationals of the host State.

45. Article 38 was modelled on the corresponding articles of the Vienna Convention on Diplomatic Relations and the draft on special missions; paragraph 1 read: "Except in so far as additional privileges and immunities may be granted by the host State, a permanent mission or a member of the diplomatic staff of a permanent mission who is a national of or permanently resident in that State shall enjoy immunity from jurisdiction, and inviolability, only in respect of official acts performed in the exercise of his functions".

46. In connexion with paragraph 5 of his note on the nationality of members of a permanent mission, Mr. Kearney had asked what effect the adoption of article 9 in a convention would have on the internal law of signatory States. He (the Special Rapporteur) had merely wished to point out that it was the practice of some States to require their nationals to obtain permission before entering the service of a foreign government or an international organization. In some States, such service might lead to loss of nationality, though in his own country the Minister of the Interior would first issue a warning to the person concerned. It was a matter of the relations between a person and his own State. He considered it clear, therefore, that the adoption of the article would not oblige States to change their internal law.

47. The question of dual nationality raised by Mr. Albónico was covered by article 8, paragraph 3, of the Vienna Convention. Persons who were nationals of both the sending State and a third State would be considered nationals of the sending State by the host State. If a person appointed to a permanent mission was a national of both the sending State and the host State, the latter would insist on regarding him as one of its own nationals. In paragraph (6) of his commentary on article 10 of the draft articles on special missions,[7] Mr. Bartoš had said: "The Commission also considered the question of the employment in special missions of persons having the status of refugees or stateless persons. It concluded that, as in cases coming under the two Vienna Conventions, this matter should be settled according to the relevant rules of international law". Something on the same lines might be included in the commentary on article 9.

48. The Commission should decide, in principle, whether it wished to confine the article to the existing practice, which he had already stated to the best of his ability. In practice, the consent of the host State was not required for the appointment of members of a permanent mission. He did not consider it necessary to deal with the case of nationals of third States in the article itself; a note in the commentary should be sufficient.

49. If the Commission decided that some restriction should be placed on the right of the sending State to appoint a national of the host State to a permanent mission, either by requiring the host State's consent or by giving it the right to object, he would prepare a new text for article 9.

50. Mr. AMADO said that some members of the Commission considered it unnecessary to add anything to article 9, which they accepted as it stood. Nevertheless, there was a problem. It was true that relations between a State and its nationals were a matter of internal law; but in practice, when a State appointed a national of the host State as a member of its permanent mission, the host State's consent was taken for granted if it did not protest against the appointment. That practice was not yet a recognized part of international law, however, and he was not sure whether the rule in article 9 should be retained in its present bare form or whether something should be added, as several members of the Commission wished.

51. Mr. BARTOŠ noted that the Special Rapporteur agreed that the provisions of article 9 of the draft should cover the question of the nationality of members of a permanent mission. He hoped that would be done by adding the proviso "unless the host State objects".

52. He agreed with Mr. Ushakov and Mr. Castrén that the appointment to a permanent mission of a national of a third State which was in armed conflict with the host State was an exceptional case. It would be sufficient to mention it in the commentary, explaining that there were rules on the subject in the Headquarters Agreement between the United Nations and the United States of America.

53. He suggested that the Special Rapporteur should prepare a draft taking account of the objections to the text of article 9 raised during the discussion, and that the new draft should be referred direct to the Drafting Committee.

54. Mr. ALBÓNICO said there appeared to be three points of view regarding article 9. Some members, like Mr. Rosenne, were in favour of keeping the article as it stood; in their opinion, any points of particular difficulty should be dealt with in the commentary. Others, like Mr. Ushakov, thought that the article should include a separate paragraph providing that a national of the host State could not be appointed to a permanent mission without the express consent of that State. Yet others, like Mr. Amado, had suggested that if a national of the host State was appointed and it made no objection, its silence should be interpreted as consent. He (Mr. Albónico) hesitated to accept that view; after all, silence, in both internal and international law, meant no more than that the person who was silent did not wish to say anything.

[6] A/CN.4/203/Add.5.

[7] See *Official Records of the General Assembly, Twenty-second Session, Supplement No. 9*, p. 9.

55. Mr. ROSENNE said he thought the difficulties confronting the Commission were more apparent than real. He agreed with Mr. Bartoš that article 9 should be referred to the Drafting Committee for consideration, as was usual. All members agreed that the fundamental position of the host State should be safeguarded. And, as he had already pointed out, that safeguard should also cover members of a permanent mission who were nationals of the sending State, since they might have been previously declared *persona non grata* by the host State, when acting in some other capacity.

56. There was no difficulty about the case in which a State had particular rules on the employment of its nationals in the service of a foreign government; he was sure that nobody in the Commission would wish to interfere with such questions of domestic jurisdiction. All the problems raised by article 9 were, in fact, problems of drafting rather than of substance.

57. Mr. REUTER said he thought the only question at issue was the appointment of nationals of the host State as members of a permanent mission. It had been asked whether such appointments should be subject to the prior approval of the host State or whether the latter should merely be allowed to object.

58. Mr. Rosenne had proposed a third solution, which seemed the most natural. Article 9, as drafted, should be combined with a general reservation covering the whole convention and safeguarding the application of the rules of the organization and of agreeements with the host State. It might also be considered whether it was useful or necessary to reserve the internal law of the host State. That was the question Mr. Rosenne had raised.

59. Most States had laws requiring their nationals to obtain permission before accepting service with a foreign State. The question was, therefore, whether article 9 was to lay down a rule of international law having effects in internal law and possibly dispensing a national from obtaining his State's consent to his employment in the service of a third State, or whether the article was to reserve compliance with internal law, which would be a very flexible solution, since each State could then adopt the régime that suited it. If the Commission favoured the latter solution, the further question arose—and on that point he would rely on the conclusions of the Special Rapporteur—whether it was sufficient for the commentary to say that article 9 stated a principle, but did not authorize derogations from internal law, or whether the article itself should contain an express reservation, which might read: "subject to compliance with the laws of States concerning the employment of their nationals in the service of a foreign State". That was a compromise formula which safeguarded the freedom of States to order their relations with international organizations as they pleased, while at the same time respecting, as far as possible, the territorial sovereignty of the States concerned in such matters.

60. Mr. YASSEEN said that no matter whether nationals of the host State or of a third State were concerned, the appointment by the sending State of nationals of another country as members of its permanent mission raised the problem of the personal jurisdiction of the State over its nationals.

61. When a national disobeyed his government's orders, whether in its own territory or elsewhere, he was breaking the law of the State to which he belonged, and such law-breaking had repercussions on the international legal order, because international law recognized personal jurisdiction. He had no concrete proposal to make, but he asked that that point should not be overlooked when the Commission was considering whether the sending State could appoint a foreigner as a member of its permanent mission.

62. Mr. AMADO said he did not think the questions he had raised had been answered. When a national of the host State was appointed as a member of a foreign permanent mission, did the host State have any say in the matter or not, and if it did, must the sending State obtain prior approval or was the absence of any objection by the host State sufficient?

63. Mr. BARTOŠ said that under international law, as represented by the two Vienna Conventions, a State was entitled to withdraw its consent in respect of its own nationals in its own territory, even if that consent was presumed. He thought that rule should also be followed in article 9 of the draft.

64. He did not deny the existence of the principle of personal jurisdiction mentioned by Mr. Yasseen, but, depending on internal law, there were two systems applicable to the freedom of a national to enter the service of a foreign State and become a member of its permanent mission. Either the person in question had to obtain permission before entering the service of a foreign State, or the State of which he was a national could order him to leave that service at any time. Where the person in question was serving a foreign State outside the territory of the State of which he was a national, the internal law of some States provided that if, after having been told to leave the service of the foreign State, he retained his post, he would be deprived of his nationality. In that event, was the State employing him obliged to terminate his contract and deprive him of his status as a member of its permanent mission? Even if the notion of personal jurisdiction was introduced, it was open to question whether the text of article 9 should go so far. Prevailing opinion did not demand such termination.

65. Mr. USHAKOV observed that some countries had no laws on the subject, and that in others the law did not provide that the State must grant privileges and immunities to its own nationals. Consequently, he did not think the question should be dealt with by reference to internal law.

66. The CHAIRMAN suggested that, as proposed by Mr. Bartoš, the Special Rapporteur should draft a new text for article 9 taking account of the objections raised during the discussion and that it should be referred direct to the Drafting Committee.

It was so agreed.[8]

The meeting rose at 1 p.m.

[8] For resumption of discussion, see 982nd meeting, paras. 2-9.