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Summary record of the 958th meeting

Topic:

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the Commission and of international conferences, but there was a limit to exceed which would hinder the attainment of the desired result.

55. Extraordinary sessions could, of course, be arranged, as Mr. Bartoš had suggested, but only to finish work in progress at the end of the Commission's term of office. The Commission's sessions must not be unduly prolonged, or it might lose the services of some members who could not spare the extra time because of their other activities.

56. In his view, the Commission's term of office was too short, for five years were not long enough for full consideration of even one important draft. The adoption of a term of nine years, with a system of renewing one third of the membership every three years, as was done in the International Court of Justice, might be considered, but it must not be allowed to impair the continuity of the work. Even filling casual vacancies meant time lost in familiarization. The question required careful study with a view to establishing a longer term of office that would provide the stability and continuity the Commission's work required.

57. With regard to the place for meetings, he thought the Commission could work best at Geneva. The social commitments involved in sessions in other countries caused loss of time and it would be difficult for many members to spend ten weeks very far away from their main centre of activity. Nevertheless, the idea of the Commission holding a shorter extraordinary session in another country could be followed up.

58. The Commission still had three major topics before it. That of relations between States and inter-governmental organizations, which it was in the process of considering, seemed more difficult and more extensive every day. It was not based on any long-established practice, like diplomatic relations between States. To be hasty would be unwise; before making specific recommendations to the United Nations, it might be better to wait until the Commission had studied the topic from several angles and, in particular, until it had decided whether it should be the subject of more than one instrument.

59. The other two topics were State succession and State responsibility. The former would doubtless involve major difficulties; attempts to deal with the latter in the League of Nations had failed, and he was anxious that it should not suffer the same fate again now that he was the Special Rapporteur for it. He was convinced that State responsibility, together with the law of treaties, was the most difficult problem in the codification of international law, since it gave rise to the most acute conflicts of interests and ideas. There again, undue speed would jeopardize the chances of success.

60. The Commission would be grateful if the Legal Counsel could act as its spokesman in the United Nations in order to ensure that everything possible was done to facilitate its work and ensure the continuity it needed.

61. Mr. AMADO said he fully endorsed Mr. Ago's remarks, which showed a notable concern for efficiency. He too believed that Geneva, with its long tradition and prestige, was the most suitable place for the Commission's meetings.

The meeting rose at 1.10 p.m.

958th MEETING

Thursday, 20 June 1968, at 10 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Review of the Commission's Programme and Methods of Work

[Item 4 of the agenda]
(continued)

Organization of future work

[Item 6 of the agenda]
(continued)

1. The CHAIRMAN invited the Commission to continue consideration of items 4 and 6 of the agenda.

2. Mr. EL-ERIAN said he was very grateful for the help he had received from the Office of Legal Affairs, particularly the Codification Division, in his work on relations between States and inter-governmental organizations. He hoped that the Secretariat study on the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities (A/CN.4/L.118 and Add. 1-2) would eventually be printed, since it contained a lot of extremely valuable information.

3. Mr. CASTAÑEDA, referring to the suggestion made by the Legal Counsel at the previous meeting concerning the regularity of the Commission's output, said there were bound to be difficulties in speeding up the work of codification. Some of them were material, such as the impossibility of lengthening the Commission's sessions, and some were inherent in the codification process itself; but there were still other factors which must be considered in planning the work of the Commission.

4. One such factor was the more or less urgent character of the topics examined. Succession of States, for example, was a new topic with political overtones of outstanding importance, since over fifty States had acquired independence in the last fifteen years or so. To give priority to such a topic owing to its urgency was in no way incompatible with a desire to study it with the necessary care. Similarly, in his first report on succession of States and governments in respect of treaties (A/CN.4/202), the Special Rapporteur had indicated that a wish to sólve problems concerning new States in the light of the principles of the United Nations Charter should not preclude a detailed study of earlier precedents.

5. Another factor was the choice of topics considered ripe for codification. It had frequently been maintained

that a topic was not ripe for codification until there was a fairly large body of concordant practice on the subject, if possible treaties, and certainly some considerable uniformity of doctrine. But if that rule had always been strictly observed, some topics would not have been studied at all. The question of the continental shelf, for example, had fulfilled none of those conditions. The topic had nevertheless been studied, and a convention on it had been adopted almost unanimously. The convention was now in force, had already proved very useful and would certainly prove even more useful in the future. That showed that it was sometimes necessary to depart from established routines, and to place greater emphasis on the needs of the international community as the decisive factor.

6. The process of codification called for constant collaboration between the Commission and the General Assembly. The Assembly did not confine itself to selecting topics, inviting the Commission to consider them and waiting for it to submit the results of its work for approval or rejection. The General Assembly could and should exert its influence at all stages. When considering the law of the sea, for example, the Commission had at one time been inclined to deal separately, in successive stages, with the questions of the continental shelf and conservation of the living resources of the sea. The revolutionary concept of the special interest of riparian States, which would allow them to act unilaterally on the high seas under certain conditions, and which had emerged at the International Technical Conference on the Conservation of the Living Resources of the Sea, held at Rome in 1955, had been considered a highly controversial matter which should not be linked with the process of codification of the more traditional rules concerning the high seas and some aspects of the territorial sea. But the General Assembly had not accepted that view; it had stressed the fundamental unity of the whole topic and requested the Commission to finalize a comprehensive draft at short notice. Events had proved the Assembly right.

7. Mr. AMADO said that, as the senior member of the Commission, he wished first to pay a tribute to the Legal Counsel for his devotion to his task, his concern for efficiency and the harmony he succeeded in creating around him.

8. With regard to Mr. Castañeda's remarks, which he fully endorsed, he stressed that the first consideration must be the quality of the Commission's work. At the risk of occasionally displeasing the Sixth Committee of the General Assembly, the International Law Commission should pursue its work on those topics which it regarded as the least forbidding and continue to produce only texts of a high quality, as it had always done hitherto. In that way, it would be doing its duty to itself, to the General Assembly and to the international community.

9. The CHAIRMAN invited the Legal Counsel to reply to the points which had been raised during the discussion.

10. Mr. STAVROPOULOS (Legal Counsel) said he regretted that his remarks at the previous meeting, on a possible timetable for the codification of international law, should have been misunderstood. It had never been his intention to suggest that the Commission should speed up its work at the expense of quality.

11. The Commission had established itself as one of the more important United Nations organs precisely because it had succeeded in producing drafts that had proved acceptable to the international community as a whole. Perhaps that was, to some extent, because the topics it had dealt with so far had been readily accepted by the international community as being ripe for codification. In future, however, the Commission would have to deal more and more with topics less amenable to codification, such as State responsibility; that was why he had thought that it should perhaps aim at submitting a codification draft, say, once every four or five years. If more than five years elapsed without a product of the Commission being accepted by the international community, there was a danger that its magnificent reputation might be forgotten.

12. Of course, the aim of producing a draft every few years must be pursued in the knowledge that the codification of international law as a whole was a very long-term undertaking. The Commission should perhaps select, from the various topics before it, one which it could hope to complete within the time he had suggested. The situation of 1968, when there would be two conferences of plenipotentiaries, one on the law of treaties and another on special missions, could not be expected to recur.

13. Another matter of interest to members of the Commission was the movement to convene, within the next two or three years, a conference to revise the 1958 Geneva Convention on the Continental Shelf and a further conference to establish the breadth of the territorial sea in the light of developments in recent years.

14. On the question of the place for meetings, he himself had always thought that the Commission, while giving priority to considerations of efficiency, should nevertheless endeavour to meet elsewhere than at Geneva from time to time. It might perhaps meet once every five years at Headquarters in New York, or arrange to hold any extraordinary session it might find necessary away from Geneva. There was no doubt that the Palais des Nations Library and other facilities available at Geneva contributed greatly to the efficiency of the work, but the Commission should also bear in mind the advantages that might be derived from an occasional meeting elsewhere.

15. With regard to the term of office of members, he himself had always believed that a nine-year period, with elections every three years for one-third of the membership, on the lines of the system adopted for the election of judges to the International Court of Justice, would be an improvement on the present five-year period. Experience had shown, however, that most members of the Commission were re-elected at the end of their five-year term, so that, in practice, the present system had not so far had any serious drawbacks. If, after considering the matter, the Commission decided that it should suggest an amendment to its Statute on the question of the term of office of members, it should make its recommendation one year before the next election.

16. With regard to the discussion of the draft on special missions in the Sixth Committee of the General Assembly, the Secretariat would send governments a reminder that the session would not be an ordinary one, but would, in fact, constitute a diplomatic conference for the purpose

of concluding a treaty on special missions; the attention of States would thus be drawn to the need to send specialists in the subject to represent them in the Sixth Committee.

17. At the second session of the Vienna Conference on the Law of Treaties, it should be possible to complete the work in six weeks. To achieve that result, however, it was essential that discussions should take place in the autumn, during the General Assembly's session, to find compromise solutions for the major outstanding problems, such as those relating to the proposed article 5 *bis*, on participation in general multilateral treaties, and 62 *bis*, on procedure for settlement of disputes.[1] Unless some solution could be found for those problems before the opening of the Conference, there was a danger that part of the six weeks might be lost.

18. On the question of the daily subsistence allowance at Geneva, raised by Mr. Bartoš, he could inform the Commission that the General Assembly was due to make a general study, at its next session, of the whole question of the *per diem* allowances applicable to the various United Nations bodies.

19. The Secretary of the Commission would look into the questions of documentation raised by Mr. Albónico.

20. He was very grateful to members for their kind words of appreciation of the work of the Secretariat. The Codification Division was always glad to respond to requests by the Commission for background information; the papers it produced had proved useful to Special Rapporteurs, to the Commission and to students of international law generally. Great interest had been expressed in the Secretariat study on the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities (A/CN.4/L.118 and Add.1-2), which would be included in volume II of the 1967 *Yearbook of the International Law Commission*; after revision, it could also be issued as a separate United Nations publication.

21. The various conventions concluded as a result of the Commission's work had had a remarkable degree of success. For example, the 1963 Vienna Convention on Consular Relations had come into force much sooner than expected, considering that consular relations were often governed by bilateral treaties. It was, of course, true that the number of ratifications had been considerably less than for the 1961 Convention on Diplomatic Relations.

22. The Secretariat published a printed volume showing the status of multilateral treaties for which the Secretary-General acted as depositary. The latest issue of that publication (ST/LEG/SER.D/1) listed the signatures, ratifications and accessions at 31 December 1967 for all such treaties, including, of course, the various codification conventions that had resulted from the drafts prepared by the International Law Commission.

23. The Secretariat could not do much to promote ratifications, although for obvious reasons it did urge as many States as possible to ratify the 1946 Convention on the Privileges and Immunities of the United Nations. So far, that Convention bound no less than 100 States; only twenty-five Member States of the United Nations had not yet ratified it. Undoubtedly, however, some action would seem desirable, as suggested by Mr. Ago, particularly in order to stimulate interest in countries which had failed to ratify the codification conventions merely through an oversight.

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

24. Mr. AGO said he wished to give further thought to the question the Legal Counsel had just referred to, so as to be able to deal with it more thoroughly at a later meeting. In the meantime, he had three comments to make.

25. The first related to what should be done before the second session of the Conference on the Law of Treaties. He would strongly urge the Secretariat and all members of the Commission who would be taking part in the work of the Sixth Committee, at the twenty-third session of the General Assembly, to do their utmost to help find compromise solutions for the outstanding problems, particularly the question of universality and the procedure for settling disputes regarding the invalidity of treaties. If the second session of the Conference was to achieve success, some sort of "gentlemen's agreement" must be reached beforehand, and must be respected. Rules of vital importance to the whole international community were being formulated, so that a decision taken by even a qualified majority of a few votes would be of little value; the solutions proposed must be acceptable to all.

26. His second comment related to a point raised by Mr. Bartoš. The International Law Commission was not just a group of experts called upon to give an occasional opinion on particular questions; it was a permanent and extremely important organ whose role was nothing less than to prepare international legislation. That role might not have been envisaged for it originally, but it was now well established and should be recognized by the other United Nations organs.

27. The Legal Counsel had mentioned the possibility of revision of two existing conventions, and the Commission should be prepared to play its part. The effect of codification was to stabilize what was shifting and set down in writing what was as yet unwritten; it therefore engendered some measure of immobility, which was a disadvantage as compared with the evolving nature of customary law. Hence, all codification raised the problem of possible future revision. But the utmost caution was needed. The fact that States wished to revise a convention that no longer satisfied them was not a sufficient justification for revising it; it must be ascertained objectively that revision was necessary because of changes in the realities of the situation to which the rules of the convention applied and in the needs resulting from that situation. The extremely cautious attitude of the International Labour Organisation regarding the revision of ILO conventions was an example of how to tackle what was going to become one of the major problems of international law.

28. Mr. BARTOŠ said that the codification entrusted to the International Law Commission required substantial preparatory work by members between sessions. The work of the Special Rapporteurs was only a starting-point. They expected members either to confirm the ideas they

expressed and to support the proposals made in their reports or to suggest new and better solutions.

29. Codification was sometimes accompanied by valuable legislative work in international law. That had been noticeable in the codification of the law of the sea, particularly in the Conventions on Fishing and Conservation of the Living Resources of the High Seas and on the Continental Shelf.

30. It was often forgotten in the United Nations that members of the Commission not only had to apply the experience and knowledge of a lifetime of study and professional work during its sessions; they also had to do a lot of preparatory work on the topics on the agenda before the sessions. That was why the Commission's plan of work should not simply be a list of deadlines to be met at all costs; it must also include a programme of each member's contribution to its work.

31. The change in the membership of the Commission at the end of each term of office undoubtedly disrupted its work. That was where the Secretariat performed a very useful co-ordinating function. Continuity in the Commission's work could not be ensured unless its Statute was amended, but any proposal to that effect must be carefully considered, and made in good time with the agreement of the Secretariat. He was glad that there was no conflict between the Commission and the United Nations administration. It was important that that state of affairs should continue.

32. Mr. EUSTATHIADES said he cordially associated himself with the praises ascribed to the outstanding qualities of his compatriot, Mr. Stavropoulos, at which he felt a certain national pride—permissibly, since the Charter recognized the existence of nations.

33. He strongly supported Mr. Castañeda's remarks on the subject of State succession. It was high time that that subject was tackled, and as much time as possible should be allocated to it during the present session. The urgency of the problem needed no stressing; if necessary, it would justify an extraordinary session, to enable the Commission to dispose of the subject before the end of its present term of office.

34. Mr. TABIBI said that the Commission would in due course have to deal more thoroughly with items 4 and 6 of its agenda, so that the Legal Counsel should not consider the present discussion as a full exploration of the points raised after his statement at the previous meeting.

35. The CHAIRMAN said that the interesting debate which had followed the Legal Counsel's statement should be regarded as a preliminary discussion of items 4 and 6. He understood that the Legal Counsel would endeavour to be present later in the session, when the Commission would devote two or three of its meetings to further discussion of those items. The conclusion to be drawn from the present preliminary discussion was that the Commission was unanimous in considering that, while it should take into account the urgency of certain topics, it should not endeavour to speed up its work at the expense of quality.

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]
(resumed from the 956th meeting)

36. The CHAIRMAN invited the Commission to resume consideration of item 2 of the agenda.

ARTICLE 14

37. *Article 14*

Size of the permanent mission

The sending State should observe that the size of its permanent mission does not exceed what is reasonable and normal, having regard to the circumstances and conditions in the host State, and to the needs of the particular mission and the organization concerned.

38. Mr. EL-ERIAN (Special Rapporteur), introducing article 14, explained that it contained a recommendation to the sending State to keep its permanent mission to a reasonable size, whereas article 11, paragraph 1, of the 1961 Vienna Convention on Diplomatic Relations [2] gave the receiving State the right to "require that the size of a mission be kept within limits considered by it to be reasonable and normal". It was worth noting that the 1967 draft articles on special missions did not contain any provision limiting the size of the mission, the Commission having considered that the interests of the host State were sufficiently safeguarded by article 8 of that draft,[3] which placed the sending State under an obligation to inform the receiving State in advance of the size of the mission and the persons it intended to appoint.

39. In paragraphs 3 and 4 of the commentary, he had given an account of the practice of the United Nations family, which indicated that some upper limit to the size of permanent missions was assumed to exist, but that no difficulties had arisen on the point. There had been a disagreement between FAO and the Italian Government in 1953 concerning the interpretation of the FAO Headquarters Agreement, but that had related mainly to the composition of permanent missions and only indirectly to their size. The Italian Government had pointed out, in support of its restrictive interpretation, that the relevant provisions of the FAO Headquarters Agreement had been taken from those of article V, section 15, of the Headquarters Agreement between the United States of America and the United Nations.[4] That argument had evoked some comments by the Legal Counsel of the United Nations, extracts from which were given at the end of paragraph 4 of the commentary. The Legal Counsel had stressed that article V, section 15, of the United Nations Headquarters Agreement did not relate to the designation of individual members of permanent missions and had pointed out that consultation with the host Government before the appointment of members of such missions "does not purport

[2] See United Nations, *Treaty Series*, vol. 500, p. 102.

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

[4] General Assembly resolution 169 (II).

to correspond to practice at the Headquarters of the United Nations".

40. Article 14 differed from the approach adopted in the Vienna Convention in that it did not provide that the organization or the host State could refuse to accept a mission of a size exceeding what it considered reasonable and normal. The reason was that, unlike diplomatic agents in bilateral diplomacy, the members of permanent missions were not accredited to the host State; nor were they in fact accredited to the international organization itself in the strict sense.

41. Lastly, because of the tripartite interests involved, article 14 mentioned the needs of the organization as a criterion for limitation of the size of the mission, in addition to the two criteria adopted in article 11 of the Vienna Convention, namely, conditions in the host State and the needs of the particular mission.

42. Mr. REUTER said he agreed with the spirit of the article proposed by the Special Rapporteur, but wished to raise three questions regarding its presentation.

43. First, should the article lay down a strict rule, or merely a general directive or principle? The use of the conditional in both the English and the French versions suggested that the Special Rapporteur's proposal should be read in the latter sense. He approved of that choice, but would prefer the idea to be expressed otherwise than by the conditional. The article could perhaps begin with the words: "The sending State shall ensure that, in principle, the size ...".

44. Secondly, with regard to the limit on the size of the permanent mission, he was not opposed to a rule based on what was reasonable and normal. The Special Rapporteur had, more precisely, specified three factors: the circumstances and conditions in the host State, the needs of the particular mission and the needs of the organization concerned. He approved of those criteria, but thought that the needs of the organization concerned should predominate and should therefore be mentioned first.

45. Thirdly, assuming that the first question was decided in favour of a principle or general directive, the question arose whether there would not be special agreements, procedures or machinery for applying the general principle in each specific case. All that could be said—and, in his opinion, it must be said—was that the conditions for applying the principle were settled in agreements between the international organization concerned and the host State, not between the sending State and the host State.

46. Mr. TAMMES said that the Special Rapporteur's commentary showed that there were various methods of limiting the size of a permanent mission. First, article 11, paragraph 1, of the Vienna Convention on Diplomatic Relations provided that such limitation was subject to a discretionary decision by the host State as to what it considered to be "reasonable and normal".

47. Secondly, in the commentary on article 8 of the draft articles on special missions, the sovereign rights of the receiving State were said to be "fully safeguarded by the opportunity given to that State to raise objections, after receiving the information provided for in article 8, to the size of the special mission and to the persons selected to serve on it". The commentary went on to say that: "The Commission did not include any express provision on the right of the receiving State to raise such objections, for it considered that this right necessarily derives both from the terms of article 8 and from the legal principles underlying the draft articles".

48. Thirdly, in article V, section 15, paragraph 2, of the United Nations Headquarters Agreement, the composition of a permanent mission was made dependent on agreement between the Secretary-General of the United Nations, the Government of the United States and the Government of the sending State. That was also the practice followed *mutatis mutandis* in the Headquarters Agreement between FAO and the Government of Italy.

49. While the first of those methods depended on a discretionary decision by the host State, the others required that its agreement should be obtained in advance. He himself preferred an objective rule such as that formulated in article 14, which would be binding on the host State as well as on the sending State. The guidelines given in article 14 were, to be sure, somewhat vague, but they could be applied without too much uncertainty as to their interpretation. They should be reasonably interpreted as a rule which was intended to be generally valid and was not laid down for purely arbitrary reasons.

50. It was somewhat surprising that there should be so many differences between the various texts which dealt with the size of diplomatic missions, special missions and permanent missions to international organizations. The same interests were at stake in all cases, and he hoped that with the further development of international law, it would be possible to merge all the different provisions in a single code.

51. Mr. USTOR said that the rule laid down in article 14 was a reasonable one and should be adopted, subject to certain drafting changes. The article should not merely enunciate a guiding principle, but should establish a strict rule; he therefore agreed with Mr. Reuter that it would be better to replace the conditional tense of the operative verb by some more positive expression.

52. Although the size of the mission should be primarily determined by its own needs and those of the organization in question, he thought that the interests of the host State should also be taken into consideration.

53. The rule in article 14 might be described as *lex imperfecta,* since it stated the obligation of the sending State, but said nothing about what would happen if that obligation was not fulfilled. In the case of permanent diplomatic missions and special missions, the problem was solved by the right of the receiving State to declare a member of the mission *persona non grata* if the sending State did not fulfil its obligation. As stated in paragraph 5 of the commentary, however, "remedy for the grievances which the host State or the organization may have against the permanent mission or one of its members ... must be sought in consultations between the host State, the organization concerned and the sending State". In his opinion, a provision to that effect should also be embodied, in some appropriate place, in the draft articles themselves.

54. Mr. CASTRÉN said he agreed with the Special Rapporteur that the needs of the international organiza-

tion should be taken into account in determining whether the size of a permanent mission was reasonable. He supported the view that the needs of the organization should come before those of the host State.

55. On the other hand, the words "the sending State should observe" had the disadvantage of not imposing any real obligation. Consultations between the host State, the organization concerned and the sending State were the only sanction mentioned in the commentary. But paragraphs 3 and 4 of the commentary showed that difficulties did in fact arise regarding the size of permanent missions to international organizations.

56. A rule of conduct such as that formulated in article 14 was therefore insufficient. A strict legal rule should be laid down. For that reason, he proposed that the word "should" be replaced by the words "is required to".

57. Mr. TABIBI said he regretted that he could not support either the text of article 14 or the Special Rapporteur's commentary on it. The Special Rapporteur had drawn up article 14 on an analogy with the provisions relating to permanent diplomatic missions and to special missions, but the present draft articles dealt with an entirely different matter; instead of relations between States, they concerned relations between States and international organizations.

58. He agreed with Mr. Reuter that article 14 seemed to take more account of the interests of the host State than of those of the organization and the sending State. If the article was to be included at all, it should be drafted in such a way as not to hamper the functioning of the organization and the permanent mission. The interests of the host State should, of course, be safeguarded, but they would in any case be covered by a headquarters agreement such as that concluded between the United Nations and the United States of America.

59. There was a danger that the phrase "having regard to the circumstances and conditions in the host State" might be interpreted by the latter in its own interests, in such a way as to give it what would be practically a power of veto. In view of the present competition among States to act as host to international organizations, such a power might be very dangerous. He proposed, therefore, that the phrase "having regard to the circumstances and conditions in the host State ..." be deleted.

60. Mr. KEARNEY said that for some years he had dealt with the problems arising in his country as a receiving State and had sometimes felt that, to paraphrase the biblical saying, it was more blessed to send than to receive. In his opinion, the Special Rapporteur had succeeded in striking a reasonable balance between the interests of the host State, the sending State and the organization concerned. He did not think it had been his intention to emphasize the interests of any one of the parties more than those of another, but he would not object to their rearrangement in some different order.

61. He could not agree with Mr. Tabibi that the phrase "having regard to the circumstances and conditions in the host State" was undesirable; surely, it would be a one-sided approach to assume that the interests of the host State were not to be taken into account. Since there was a wide variety among host States, sending States and organizations, however, it was obviously necessary to frame the article in general language and with a reasonable degree of tolerance.

62. As to the United Nations Headquarters Agreement referred to in paragraphs 3 and 4 of the Special Rapporteur's commentary, he thought that there had probably been no concurrence by the United States Government in the interpretation placed on article V, section 15, by the Secretary-General. In practice, however, that had never prevented them from working out amicable solutions in consultations such as those referred to in the last sentence of paragraph 5. Mr. Ustor had suggested that a reference to consultations as a method of resolving difficulties should be included in the draft articles themselves. He had no objection to that, but he did not consider it essential.

63. He agreed with Mr. Reuter that it might be desirable to replace the conditional tense used in article 14 by more positive language. Alternatively, the reference to the sending State could be omitted altogether; the first part of article 14 would then merely state that the size of a permanent mission should not exceed what was reasonable and normal.

64. Mr. RAMANGASOAVINA said he agreed that the article only had the force of a recommendation and that its utility could therefore be questioned. In his view it was useful, because it affirmed the right of the sending State to determine the size of its permanent mission itself. That was a standing principle. It was normal, however, for the host State to have its say, because the permanent mission was established in its territory.

65. In deciding the substantive question whether the size of a permanent mission was normal or excessive, the main consideration obviously seemed to be the needs of the international organization. But if the size of the permanent mission was excessive, it was scarcely an inconvenience to the organization. It was the host State which might be inconvenienced. The paradoxical result was that despite its status as a third party, it was the host State which had reason to complain of excessive size. Hence the contents of the article gave no ground for objection.

66. With regard to the drafting, he agreed with Mr. Reuter about the use of the conditional, which was not generally employed in conventions. The Commission could adopt the formula proposed by Mr. Reuter, or the article could begin: "The sending State must ensure ...". That more imperative wording would be in the nature of a firm recommendation.

The meeting rose at 1.5 p.m.

959th MEETING

Friday, 21 June 1968, at 10.5 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney,