

Document:-
A/CN.4/SR.995

Summary record of the 995th meeting

Topic:
Representation of States in their relations with international organizations

Extract from the Yearbook of the International Law Commission:-
1969, vol. I

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end of the chapter, a separate article of a general character setting forth the right of the organization to secure fulfilment by the host State of its obligations concerning the facilities, privileges and immunities to be accorded to the sending State and its permanent mission.

57. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed that articles 22 and 23 should be referred to the Drafting Committee as proposed by the Special Rapporteur.

*It was so agreed.*¹¹

ARTICLES 24 TO 26

58. *Article 24*

Inviolability of the premises of the permanent mission

1. The premises of the permanent mission shall be inviolable. The agents of the host State may not enter them, except with the consent of the head of the mission.

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

3. The premises of the permanent mission, their furnishings and other property thereon and the means of transport of the permanent mission shall be immune from search, requisition, attachment or execution.

Article 25

Exemption of the premises of the permanent mission from taxation

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

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

Article 26

Inviolability of archives and documents

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

59. Mr. EL-ERIAN (Special Rapporteur) said he had grouped articles 24 to 26 together and had attached a joint commentary to them because all three related to certain immunities and exemptions concerning the premises of the permanent mission and its archives and documents. There was general recognition of the duty of the host State to ensure the inviolability of the premises, archives and documents of permanent missions, and in paragraph (2) of the commentary he had quoted a significant passage from a letter by the Legal Counsel on the subject.

60. In paragraphs 3, 4 and 5 of the commentary, he had referred to the relevant provisions of various headquarters agreements and of the Convention on the Privileges and Immunities of the United Nations. Under those provisions, the property and assets of the United Nations and of the specialized agencies, wherever located and by whomsoever held, were immune from search, requisition, confiscation, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative action.

61. The replies of the United Nations and the specialized agencies to the questionnaires sent to them had shown that there was general recognition of the principle of exemption of the premises of permanent missions from taxation. He had therefore included a provision on the subject in article 25.

The meeting rose at 12.55 p.m.

995th MEETING

Monday, 9 June 1969, at 3.10 p.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Ago, Mr. Bartoš, Mr. Bedjaoui, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Ruda, Mr. Tabibi, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/218 and Add.1)

[Item 1 of the agenda]

(continued)

ARTICLE 24 (Inviolability of the premises of the permanent mission)

ARTICLE 25 (Exemption of the premises of the permanent mission from taxation) and

ARTICLE 26 (Inviolability of archives and documents)¹
(continued)

1. The CHAIRMAN invited the Commission to continue consideration of articles 24 to 26 in the Special Rapporteur's fourth report (A/CN.4/218).

2. Mr. NAGENDRA SINGH said that the articles closely followed the corresponding articles of the Vienna Convention on Diplomatic Relations² and reflected sound State practice with respect to both *lex lata* and *de lege*

¹ See previous meeting, para. 58.

² United Nations, *Treaty Series*, vol. 500, pp. 106 and 107, articles 22-24.

¹¹ For resumption of the discussion, see 1014th meeting, para. 1.

ferenda. He therefore proposed that they be referred to the Drafting Committee without further discussion.

3. Mr. KEARNEY said he wondered whether article 24, paragraph 1, should be modelled on article 22 of the Vienna Convention on Diplomatic Relations or on article 25 of the draft articles on special missions.³ The latter was substantially identical with article 22 of the Vienna Convention except for an additional sentence concerning the consent of the head of the mission, which read: "Such consent may be assumed in case of fire or other disaster requiring prompt protective action." That clause had been added because a special mission, owing to its indefinite duration, would in all probability occupy office space in a hotel or apartment building, where the danger of fire or other disaster would make it necessary to take immediate action to protect other people in the same premises. In drafting the articles on special missions, some members of the Commission had indicated their intention to equate a permanent mission to an international organization with a diplomatic mission. While he agreed with the principle of inviolability, he thought that it should not be followed slavishly and that the possibility of danger, which according to his own experience was very real both in New York and in Geneva, should not be overlooked.

4. The CHAIRMAN, speaking as a member of the Commission, said that the words "head of the mission" in article 24, paragraph 1, and article 25, paragraphs 1 and 2, should be replaced by the words "permanent representative", in order to keep to the terminology used in the articles the Commission had adopted the previous year.⁴ Subject to that reservation, he was in favour of retaining the present wording of the articles, which was based on the text of the corresponding articles of the Vienna Convention, and not referring in them to fire and other disasters or to cases of *force majeure*.

5. Mr. EL-ERIAN (Special Rapporteur) said he noted that Mr. Kearney favoured the inclusion in article 24, paragraph 1, of a sentence similar to that contained in article 25, paragraph 1, of the draft articles on special missions, which would provide that consent might be assumed in case of fire or other disaster requiring prompt protective action.

6. There had been a long discussion on that point in 1958 in connexion with the draft articles on diplomatic relations; some members had pointed out the absurdity of not permitting immediate protective action in case of fire, while others had been more concerned with strengthening the principle of inviolability. Paragraph (4) of the commentary on article 25 of the draft on special missions read: "The last sentence of paragraph 1 of article 25 provides that the necessary consent to enter the premises protected by inviolability may be assumed in case of fire or other disaster requiring prompt protective action. The Commission added this provision to the draft on the proposal of certain Governments,

although it was opposed by several members of the Commission as they considered that it might lead to abuses." Hence, while sympathizing with the practical difficulties referred to by Mr. Kearney, he, as Special Rapporteur, had the impression that the majority of the Commission was opposed to the inclusion of any provision which would tend to weaken the principle of inviolability.

7. He agreed with the Chairman that the words "head of the mission" in article 24, paragraph 1, and in article 25, paragraphs 1 and 2, should be replaced by the words "permanent representative".

8. Mr. EUSTATHIADES said he thought that, while there was no need to refer expressly to special circumstances such as fire or other disasters, cases of *force majeure* should be mentioned, even if only indirectly in the commentary. If they were not specially mentioned they would not be understood to be covered, since *force majeure* was not unquestionably a general principle of law and, moreover, when the question of circumstances constituting *force majeure* had arisen, there had been a tendency to argue that the principle of inviolability was sacrosanct. A reference in the commentary would remove all risk of ambiguity.

9. Mr. AGO said he could not agree with the Chairman's suggestion that the words "head of the mission" should be replaced by the words "permanent representative", in order to conform to the terminology used in the first twenty-one articles approved by the Commission; it was the contrary that should be done. The permanent representative to an international organization was not always the head of the permanent mission and several members of a permanent mission might be permanent representatives to different organizations. It was therefore preferable to refer to the person in charge of the mission unequivocally as "head of the mission".

10. The CHAIRMAN said he agreed with Mr. Ago on the principle, but thought it better to keep to the same terminology throughout the draft articles, even if it were subsequently decided to alter it.

11. Mr. EL-ERIAN (Special Rapporteur) said that at the previous session it had been suggested that the draft articles should refer to "the head of the mission" in order to bring them into line with the corresponding provisions of the Vienna Convention on Diplomatic Relations. But since twenty-one articles using the term "permanent representative" had already been approved, it would be difficult to make any change at the present time. At the second reading of the draft articles, the Commission might perhaps reconsider the matter after eliciting the views of Governments on that term.

12. Mr. CASTRÉN said that when the Sixth Committee had considered the Commission's draft on special missions on the first reading, at the twenty-third session of the General Assembly, it had declined to admit any exception to the rule of the inviolability of the premises of permanent missions other than cases in which the head of the mission gave his consent or it was impossible to reach him in an emergency. The Drafting Committee should bear that in mind if it was decided to amend the text.

³ See *Yearbook of the International Law Commission, 1967*, vol. II, p. 360.

⁴ *Op. cit.*, 1968, vol. II, Report of the Commission to the General Assembly, chapter II, section E.

13. Mr. EL-ERIAN (Special Rapporteur) said that if the Commission so agreed, he would include a paragraph in his commentary on the lines suggested by Mr. Eustathiades.

14. The CHAIRMAN said that Mr. Ustor, who was unable to be present, had asked him to inform the Commission that he had certain objections to article 25, paragraph 2, and would like to state his views on that provision later. He suggested that articles 24, 25 and 26 be meanwhile referred to the Drafting Committee.

*It was so agreed.*⁵

15. The CHAIRMAN suggested that in order to speed up its work the Commission should consider the subsequent articles of the draft without each one being introduced by the Special Rapporteur, since all the articles were largely modelled on the Vienna Conventions or other conventions drawn up by the Commission. The Special Rapporteur, who had agreed to his suggestion, would merely point out the passages where he had departed from those conventions and explain why he had done so.

It was so agreed.

ARTICLE 27

16.

Article 27

Freedom of movement

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

17. Mr. RUDA said he had no comments on article 27, which reproduced the provisions of article 26 of the Vienna Convention on Diplomatic Relations. He suggested that the article be referred to the Drafting Committee.

18. Mr. EUSTATHIADES said he wondered whether the special case referred to in paragraph (3) of the commentary, which was an aspect of the problem of reciprocity, did not belong to article 43, on non-discrimination, since non-discrimination and reciprocity were not the same.

19. Mr. EL-ERIAN (Special Rapporteur) agreed that the problem of reciprocity was dealt with in article 43 and should be discussed in connexion with that article. He had referred to restrictions on the movements of members of permanent missions in paragraphs (2) and (3) of his commentary in order to reflect the factual situation at the present time.

20. Mr. EUSTATHIADES said the question was whether or not the special case of *de facto* reciprocity considered in paragraph (3) of the commentary went beyond the rule of non-discrimination stated in article 43.

21. Mr. EL-ERIAN (Special Rapporteur) said he still thought that article 27 should be based on article 26 of the Vienna Convention on Diplomatic Relations,

and that all problems of reciprocity should be discussed in connexion with article 43.

22. Mr. BARTOŠ said there was a difference between non-reciprocity and discrimination. Non-reciprocity was when country A did not accord to the nationals and institutions of country B the same treatment as country B accorded to the nationals and institutions of country A, whereas discrimination was when a country took a position against the nationals and institutions of another country as a reprisal. Mr. Eustathiades had therefore been right to raise the question and the answer should be sought in article 43 on non-discrimination.

23. Mr. KEARNEY suggested that the problem might be solved by deleting paragraph (3) of the commentary; that paragraph was not a full statement of the situation, since restrictions on the movements of the representatives in question were imposed for reasons of national security.

24. Sir Humphrey WALDOCK said that the problem raised in paragraph (3) of the commentary was a very delicate one; he agreed with Mr. Eustathiades that it could not be solved by a mere reference to article 43 on non-discrimination. Paragraph (3) seemed to refer to the possibility of reciprocity in the treatment of diplomatic representatives on the one hand and representatives on permanent missions to international organizations on the other. That in itself seemed to raise a delicate legal issue, but it was to be noted that there were countries not having any general international organizations in their territory which imposed restrictions on the movements of members of diplomatic missions.

25. Mr. EL-ERIAN (Special Rapporteur) said that the relation between the possibility of reciprocity and the question of freedom of movement had been discussed by the Commission in connexion with the draft articles on special missions, but no reference to it had been included in the commentary. He was prepared to delete paragraph (3) of the commentary if the Commission considered it advisable.

26. Mr. RUDA suggested that article 27 be referred to the Drafting Committee.

*It was so agreed.*⁶

ARTICLE 28

27.

Article 28

Freedom of communication

1. The host State shall permit and protect free communication on the part of the permanent mission for all official purposes. In communicating with the Government and the diplomatic missions, consulates and special missions of the sending State, wherever situated, the permanent mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the host State.

⁵ For resumption of the discussion, see next meeting, para. 1 and 1015th meeting, para. 20.

⁶ For resumption of the discussion, see 1017th meeting, para. 16.

2. The official correspondence of the permanent mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The bag of the permanent mission shall not be opened or detained.

4. The packages constituting the bag of the permanent mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the permanent mission.

5. The courier of the permanent mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the host State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the permanent mission may designate couriers *ad hoc* of the permanent mission. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the permanent mission's bag in his charge.

7. The bag of the permanent mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a courier of the permanent mission. By arrangement with the appropriate authorities, the permanent mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

28. Mr. EL-ERIAN (Special Rapporteur) said that the text of article 28 closely followed that of article 27 of the Vienna Convention on Diplomatic Relations, except for two minor differences which were explained in paragraphs (4) and (5) of the commentary. The provisions of the article were in full conformity with existing practice.

29. Mr. YASSEEN said he thought that in the matter under consideration there was a perfect analogy between the situation of diplomatic missions and that of permanent missions. He therefore approved of the article, the terms of which had been established by the Vienna Convention on Diplomatic Relations, and proposed that it be referred to the Drafting Committee.

30. The CHAIRMAN, speaking as a member of the Commission, said that the phrase "By arrangement with the appropriate authorities", at the beginning of the last sentence of paragraph 7, was not to be found in the Vienna Convention on Diplomatic Relations and he wondered why the Special Rapporteur had thought it necessary to introduce it.

31. Mr. EL-ERIAN (Special Rapporteur) replied that the phrase in question was taken from paragraph 7 of article 28 of the draft on special missions; but no explanation of the reasons for its inclusion was given in the commentary to that article.

32. Mr. KEARNEY said he did not see how a member of a permanent mission could take possession of the bag without making arrangements with the appropriate authorities; such arrangements would be necessary before he could approach the ship or aircraft.

33. The CHAIRMAN said that, although the provi-

sion might be of some value for special missions, which were not permanent, the same was not true of permanent missions, which concluded such arrangements once and for all, not on each occasion.

34. Mr. YASSEEN said he feared that the phrase in question might give the impression that the very existence of the right depended on the conclusion of an arrangement, whereas that did not appear to be the Special Rapporteur's view. It was true that the assistance or authorization of the competent authorities was necessary for access to an aircraft, but the purpose of the arrangement was simply that the host State should facilitate for the permanent mission the exercise of a right recognized independently of the arrangement.

35. Mr. BARTOŠ said that the phrase had been added to the draft articles on special missions at the request of various delegations, which had pointed out that the authorities of the host State did not always know all the members of special missions by sight and that a problem of public order was involved. The problem did not, however, arise for permanent missions to international organizations, any more than it did for diplomatic missions. It would be better to keep to the text of the Vienna Convention, and he was therefore in favour of deleting the phrase "By arrangement with the appropriate authorities".

36. Mr. KEARNEY said he would have no objection to the deletion of those words provided that the difference between permanent missions and special missions in that respect was explained in the commentary. It should also be made clear in the commentary that the omission of those words did not imply that a member of a permanent mission could, for example, proceed to an aircraft at an airport without observing the normal precautions.

37. Mr. EUSTATHIADES said he too thought that the same solution should be adopted for permanent missions as for diplomatic missions. But since the articles on special missions had now been drafted with the phrase in question, the commentary should clearly bring out Mr. Yasseen's point that the administrative arrangements to be made by permanent missions with the host State did not affect the substance of the right accorded to them. It could also be stated in the commentary that while special missions might make *ad hoc* arrangements, permanent missions would, in principle, have general arrangements concluded once and for all.

38. Mr. EL-ERIAN (Special Rapporteur) said it was evident that there was general agreement to drop the words "By arrangement with the appropriate authorities". A passage would be included in the commentary explaining that permanent missions concluded general arrangements, whereas the arrangements made by special missions were of an *ad hoc* character.

39. With regard to the point raised by Mr. Yasseen, he did not think there was any danger of the right itself being made dependent on the arrangements referred to in the last sentence of paragraph 7. The right was stated unconditionally in the first sentence of the paragraph; the second sentence stated the duty of the per-

manent mission to give a clear indication that the bag contained official material. The arrangements of a practical character which were provided for in the last sentence clearly did not qualify the right in any way. Hence he did not think there was any need to explain that point in the commentary.

40. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to refer article 28 to the Drafting Committee.

*It was so agreed.*⁷

ARTICLE 29

41.

Article 29

Personal inviolability

The persons of the permanent representative and of the members of the diplomatic staff of the permanent mission shall be inviolable. They shall not be liable to any form of arrest or detention. The host State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity.

42. Mr. BARTOŠ said that that very important article had caused a great stir in the Sixth Committee during the examination of the draft articles on special missions. One delegation had even proposed that personal inviolability should not be recognized and that the matter should be left to the competent authorities. The majority had, however, been against that proposal.

43. The CHAIRMAN suggested that article 29 be referred to the Drafting Committee.

*It was so agreed.*⁸

ARTICLE 30

44.

Article 30

Inviolability of residence and property

1. The private residence of the permanent representative and the members of the diplomatic staff of the permanent mission shall enjoy the same inviolability and protection as the premises of the permanent mission.

2. Their papers, correspondence and, except as provided in paragraph 3 of article 31, their property, shall likewise enjoy inviolability.

45. Mr. NAGENDRA SINGH proposed that article 30 be referred to the Drafting Committee.

46. Mr. BARTOŠ said that his comments on article 30 were the same as those he had made on article 29.

47. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to refer article 30 to the Drafting Committee.

*It was so agreed.*⁹

⁷ For resumption of the discussion, see 1017th meeting, para. 51.

⁸ For resumption of the discussion, see 1018th meeting, para. 1.

⁹ For resumption of the discussion, see 1018th meeting, para. 4.

ARTICLE 31

48.

Article 31

Immunity from jurisdiction

1. The permanent representative and the members of the diplomatic staff of the permanent mission shall enjoy immunity from the criminal jurisdiction of the host State. They shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) a real action relating to private immovable property situated in the territory of the host State unless they hold it on behalf of the sending State for the purposes of the permanent mission;

(b) an action relating to succession in which the permanent representative or a member of the diplomatic staff of the permanent mission is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the permanent representative or a member of the diplomatic staff of the permanent mission in the host State outside his official functions.

2. The permanent representative and the members of the diplomatic staff of the permanent mission are not obliged to give evidence as witnesses.

3. No measures of execution may be taken in respect of a permanent representative or a member of the diplomatic staff of the permanent mission except in cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a permanent representative or a member of the diplomatic staff of the permanent mission from the jurisdiction of the host State does not exempt him from the jurisdiction of the sending State.

49. Mr. KEARNEY said he noted that article 31 reproduced the terms of article 31 of the Vienna Convention on Diplomatic Relations. He proposed that it be supplemented by introducing at the end of paragraph 1 the following further exception:

“(d) an action for damages arising out of an accident caused by a vehicle used outside the official functions of the person in question.”

That text appeared in the corresponding paragraph 2 of article 31 (Immunity from jurisdiction) of the draft on special missions. The Commission had introduced it because of the concern expressed by many Governments at the difficulties which arose in traffic accident cases as a result of diplomatic immunity.

50. Before including that provision in the draft on special missions, the Commission had considered a variety of legal and practical problems, one of which was the situation created when an insurance company took shelter behind the diplomatic immunity of an insurance holder involved in a traffic accident. The new provision had been inserted not because of the functional requirements of special missions, but in recognition of a general problem of international life. The problem had not been adequately dealt with in the Vienna Convention on Diplomatic Relations, as was clear from the numerous complaints which had since been received

about the consequences of diplomatic immunity for claims arising out of traffic accidents.

51. Mr. NAGENDRA SINGH said he supported Mr. Kearney's proposal. The new sub-paragraph would be a valuable addition to the draft on permanent missions. It stood to reason that a member of a permanent mission who was involved in a traffic accident while driving for his own private purposes should not enjoy diplomatic immunity.

52. Mr. CASTRÉN said he supported the text proposed by the Special Rapporteur. It would be dangerous to add the provision that had been included in the draft on special missions. There was a closer analogy between diplomatic missions and permanent missions to international organizations than there was between such permanent missions and special missions.

53. Mr. YASSEEN said he regretted that he could not approve of the addition of the proposed sub-paragraph (*d*) to article 31, paragraph 1. The Commission should not depart from the text of the Vienna Convention on Diplomatic Relations. The position of permanent missions in that respect was practically identical with that of diplomatic missions, and as diplomatic missions enjoyed the immunity in question, it should also be accorded to permanent missions. In practice, the problem was not very serious, since third party insurance was compulsory in nearly all host States.

54. Mr. BARTOŠ said that he too thought it was the text of the Vienna Convention on Diplomatic Relations which should be followed, rather than that of the future convention on special missions. Moreover, article 44 provided, as did the Convention on Diplomatic Relations, that persons enjoying such privileges and immunities had a duty to respect the laws and regulations of the host State. In the case of diplomatic relations, that provision had already been interpreted as including the duty of a diplomat to observe the compulsory insurance rule.

55. It should also be remembered that, in the Sixth Committee, there had been strong opposition to members of the mission being made subject to the jurisdiction of the host State, even for traffic accidents, since that might be dangerous in certain cases. The view stated by Mr. Yasseen was thus entirely correct and corresponded to that expressed at the General Assembly the previous year.

56. Mr. TABIBI said he appreciated Mr. Kearney's concern over the problem of claims arising out of traffic accidents, but it was better to keep the same régime as the Vienna Convention on Diplomatic Relations, because of the close similarity between diplomatic missions and permanent missions. If any difference were established between the two types of mission, complications would arise with regard to implementation. The tasks of the members of the two types of mission were similar, and often the same individual belonged both to a diplomatic mission and to a permanent mission. It was difficult to see how two different régimes could be applied simultaneously to the same person.

57. The Commission had introduced an exception for

traffic accident claims into the draft on special missions because those missions were subject to a different régime. In the circumstances, the best solution was to apply the Vienna régime, subject, of course, to the duty of the persons concerned to respect the laws and regulations of the host State, as stipulated in article 44.

58. Mr. RUDA said that he too was against including the proposed additional sub-paragraph (*d*). Apart from the reasons given by other members, actions for damages could arise out of accidents caused otherwise than by vehicles and there was no valid reason to treat such actions differently.

59. He therefore supported the retention of article 31 as it stood, on the understanding that it was qualified by article 44.

60. Mr. RAMANGASOAVINA said it was normal to accord, in principle, the same privileges and immunities to members of permanent missions as to members of diplomatic missions. Nevertheless, the problem of traffic accidents might not be so insignificant as Mr. Yasseen maintained. For though it was true that third party insurance was compulsory in most States, the State was its own insurer, so that government vehicles were not insured through an insurance company. The victim of an accident caused by a vehicle belonging to the sending State would have the greatest difficulty in obtaining compensation for injury if the vehicle was insured by that State itself and not with a local insurance company. The situation would only be otherwise if the vehicle was the personal property of a member of the permanent mission and had been insured locally. He was therefore in favour of adding the proposed sub-paragraph (*d*).

61. It was true that that would mean treating members of diplomatic missions differently from members of permanent missions, but it should be remembered that, with the multiplication of international organizations, many more people would be protected than in the case of diplomatic missions.

62. Perhaps, however, article 44, interpreted as indicated by Mr. Bartoš, would overcome the objection regarding the difficulty of obtaining compensation for accident victims.

63. Mr. KEARNEY said he had realized that his proposal would not receive unanimous support. The difficulties arising from diplomatic immunity were very real, however, and the last speaker had pointed out one of them.

64. From his own experience, he could say that in the United States of America, as also in the United Kingdom, many of the problems arose from the fact that an insurance company could not be directly sued by the victim of a traffic accident; it was the insured party who was primarily liable and, unless he could be sued, the victim was left without a remedy. Consequently, where an insured motorist enjoyed diplomatic immunity, it was possible for the insurance company to shelter behind that immunity and not satisfy the claim.

65. Mr. YASSEEN said it would be better to amend

certain national insurance laws than to confirm inequalities in regard to such situations.

66. The CHAIRMAN, speaking as a member of the Commission, said he approved of the text proposed by the Special Rapporteur, having regard, in particular, to the provision in article 33 of the draft, which had been adopted by the 1961 Vienna Conference in its resolution II,¹⁰ but had not been included in the text of the Vienna Convention on Diplomatic Relations. In his view, that provision would be sufficient to solve the problems raised by traffic accidents.

67. Mr. EL-ERIAN (Special Rapporteur) said that the question of traffic accidents had given rise to a good deal of controversy at the 1961 Vienna Conference, which had not incorporated any provision on the subject in the Convention on Diplomatic Relations, but had passed a resolution recommending that the sending State should waive immunity in order to facilitate the settlement of claims for damages arising out of such accidents.

68. In the present draft, he had included an article 33 relating to civil claims in general. That article required the sending State to waive immunity in respect of civil claims in the host State "when this can be done without impeding the performance of the functions of the permanent mission". The article added that "when immunity is not waived, the sending State shall use its best endeavours to bring about a just settlement of the claims". Those provisions would establish an obligation, instead of making a mere recommendation like the resolution adopted by the 1961 Vienna Conference.

69. The difficulties to which Mr. Kearney had drawn attention were very real; insurance problems could be extremely complex, and followed no uniform pattern. The general opinion was that no exception should be made to the principle stated in article 31, and he noted that that opinion was shared by six out of the nine members who had spoken during the present discussion.

70. He suggested that, considering the provisions of articles 33 and 44, article 31 should be retained without the proposed addition.

71. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to refer article 31 to the Drafting Committee.

*It was so agreed.*¹¹

The meeting rose at 6.5 p.m.

¹⁰ See *United Nations Conference on Diplomatic Intercourse and Immunities, 1961, Official Records*, vol. II, p. 90.

¹¹ For resumption of the discussion, see 1018th meeting, para. 7.

996th MEETING

Wednesday, 11 June 1969, at 10.10 a.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Ago, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eusta-

thiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Ruda, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ustor, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/218 and Add.1)

[Item 1 of the Agenda]

(continued)

ARTICLE 25 (Exemption of the premises of the permanent mission from taxation)¹ (*resumed from the previous meeting*)

1. The CHAIRMAN invited the Commission to continue consideration of the Special Rapporteur's fourth report (A/CN.4/218). Before it took up article 32, Mr. Ustor, who had been unable to be present when the Commission had discussed article 25, wished to state his views on that article.²

2. Mr. USTOR said he was aware that article 25 was modelled on the corresponding provision of the 1961 Vienna Convention on Diplomatic Relations³ and that it broadly reflected existing international practice in the matter. Nevertheless, he wished to draw attention to the inequality which would result from the provisions of paragraph 2 of the article, as between a State which was able to buy property to house its mission or mission staff, and a State which was obliged to lease premises for that purpose.

3. If the sending State had sufficient funds to purchase premises for its mission, they would be exempt from taxation under article 25. But paragraph 2 of the article ruled out such exemption if the premises were leased, since in most countries it was the owner who was liable for the tax, no matter whether he occupied the premises himself or leased them to another person. Consequently, the owner of premises leased to a sending State or to the head of its permanent mission would naturally take the tax into account when fixing the rent, so that the poorer sending States would indirectly pay a tax which was not paid by the richer ones. The Commission should consider whether it was possible to incorporate in article 25 an element of progressive development which would eliminate that unsatisfactory inequality.

4. In the Commission's 1958 draft on diplomatic intercourse and immunities, the article on exemption of mission premises from tax had consisted of only one paragraph which made it clear that the exemption applied to the premises "whether owned or leased".⁴ A similar text had been adopted as article 32 in the

¹ See 994th meeting, para. 58.

² See previous meeting, para. 14.

³ United Nations, *Treaty Series*, vol. 500, p. 108, article 23.

⁴ *Yearbook of the International Law Commission, 1958*, vol. II, p. 96, article 21.