Document:-

A/CN.4/SR.998

Summary record of the 998th meeting

Topic:

Representation of States in their relations with international organizations

Extract from the Yearbook of the International Law Commission:-

1969, **vol. I**

that requirement would provide a basic protection against abuse of the provision by the host State.

74. He realized that a provision of that type would impose and additional burden upon international organizations, and consideration might have to be given to the question whether it was necessary to lay down a special procedure. The Special Rapporteur had already introduced a general article on the question of consultation, but it might perhaps be necessary to introduce a more formal specific clause on consultation to cover the present case.

75. Unless a remedy of some kind were provided for the situation to which he had drawn attention, it was extremely unlikely that the draft articles would be accepted by States which were hosts to international organizations and, in the absence of such acceptance, the whole draft would become pointless.

The meeting rose at 1 p.m.

998th MEETING

Thursday, 12 June 1969, at 3.40 p.m.

Chairman: Mr. Nikolai USHAKOV

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

Relations between States and international organizations

(A/CN.4/218/Add.1; A/CN.4/L.137)

[Item 1 of the agenda]

(continued)

ARTICLE 44 (Obligation to respect the laws and regulations of the host State) [1] *(continued)*

1. The CHAIRMAN invited the Commission to continue consideration of article 44 in the Special Rapporteur's fourth report (A/CN.4/218/Add.1) and of the amendment submitted by Mr. Kearney.[2]

2. Mr. NAGENDRA SINGH said that the Special Rapporteur had been quite right to follow article 41 of the Vienna Convention on Diplomatic Relations,[3] and to omit paragraph 2, which was not relevant.

3. The important point in paragraph 2 of the Special Rapporteur's text was that the premises of the permanent mission must not be used in any manner incompatible with its functions in relation to the international organization to which it was accredited. That could be made clear by inserting the words "in relation to the international organization concerned" after the words "functions of the permanent mission". He was not proposing that as a formal amendment; it was just a drafting point which could be looked into by the Drafting Committee.

4. Mr. Kearney had raised a valid point and in general he agreed with his view. There were three ways of dealing with the problem: by accepting Mr. Kearney's amendment; by dealing with the problem in article 49, on consultations—that was probably the best solution; or by departing from the principle of absolute immunity, as had been done in the draft on special mission,[4] and permitting the criminal law of the host State to apply in cases of acts involving criminal responsibility by persons enjoying privileges and immunities under the convention. That solution would certainly be unpalatable to many, but it might be in the interests of the community to confine absolute immunity to activities connected with a person's functions as a member of the permanent mission.

5. Mr. TABIBI said he fully supported the underlying idea of article 44 and the way it had been presented by the Special Rapporteur. It was appropriate to include in the present draft the general rule in article 41 of the Vienna Convention on Diplomatic Relations, so that there would be a balance between the privileges and immunities granted to diplomats in bilateral and in multilateral diplomacy.

6. While he fully shared Mr. Kearney's concern, he doubted whether the solution he had suggested was the best one. To adopt the clause he proposed would create difficulties in applying the rule in force under the Vienna Convention on Diplomatic Relations. The role of a diplomat serving on a permanent mission was in many respects the same as that of a diplomat in bilateral diplomacy; he merely served in a different capacity. Moreover, in many cases the head of a diplomatic mission was also a member of his country's permanent mission to an international organization. In such cases, it would be difficult to determine which rule should apply.

7. The wording of the amendment proposed by Mr. Kearney also raised a number of problems. For example, the words "In the event of serious . . . violations" implied that a judgment would be made on what was a serious violation, but no indication was given as to who would make the judgment. If it was the host State, then serious violation of its criminal laws or regulations could be used by the host State as a pretext for obtaining the withdrawal of a diplomat on a permanent mission for political reasons.

8. He doubted, moreover, whether it was appropriate for a diplomat on a permanent mission to be recalled on the receipt of a notification from the organization

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[1] See previous meeting, para. 67.

[2] *Ibid.*, para. 71.

[3] United Nations, *Treaty Series*, vol. 500, p. 120.

[4] See *Yearbook of the International Law Commission, 1967*, vol. II, pp. 365 and 367, articles 41 and 48.

itself. Such a provision would be a departure from accepted practice and would create a precedent. Before notifying the sending State of serious or repeated violations of the laws of the host State by a member of its permanent mission, the organization would have to judge the seriousness of the offences, and that would alter the status of the organization. It was difficult to see how the prestige of the organization in the eyes of its members could co-exist with a duty to notify members of the need to withdraw one or more of their diplomatic representatives.

9. Article 44 as it stood was well-balanced and provided the host State with adequate safeguards.

10. Mr. BEDJAOUI said that he fully agreed with the Special Rapporteur's drafting and presentation of article 44, except that he doubted whether the final phrase in paragraph 2, "or by special agreements in force between the sending and the host State", was necessary.

11. It was true that the phrase was to be found in the corresponding articles of both the Vienna Convention on Diplomatic Relations and the draft on special missions, but those two texts were essentially concerned with bilateral relations between States. Admittedly also, in the case of a permanent mission to an international organization there might be special agreements between the sending State and the host State; but such agreements would probably deal with relations between the two States, so they could not govern multilateral relations. Moreover, the phrase in question appeared to revert to a point which had already been dealt with in the previous article, since the majority of the Commission had accepted the Special Rapporteur's proposal to omit all reference to the rule of reciprocity from article 43.

12. With regard to Mr. Kearney's amendment, he shared the views of the two previous speakers: there was a problem and it was a very real one, especially now that there were so many international organizations and representatives of States to those organizations. For that reason the proposed wording should be carefully considered.

13. But in addition to the risk of abuses by the host State, a point mentioned by Mr. Kearney himself, there was another danger: that of error by the host State. Since the accused representative enjoyed immunity from jurisdiction, he could not be brought before a court, so what authority would declare him guilty? A preliminary inquiry was certainly no safeguard against error.

14. Under Mr. Kearney's amendment, the organization would intervene to some extent between the host State and the member State whose representative was suspected, since it was the organization that made the notification following which the sending State had to remove its representative. In practice, the organization would confine itself to transmitting the protest of the host State to the sending State; it was doubtful whether it would have the means to carry out an inquiry. The amendment did not provide sufficient protection for the sending State, and its application would raise serious difficulties.

15. The problem which Mr. Kearney tried to solve in his amendment might possibly be dealt with in article 49, through the consultations which that article made compulsory between the sending State, the host State and the organization on any question arising out of the application of the articles of the draft, and in particular article 44.

16. Mr IGNACIO-PINTO said that article 44 met a real need, for the members of permanent missions were not all saints and some of them might behave in a manner that the host State found intolerable. The solution of the problem might lie in the idea that the representative of a State to an international organization was in the same situation as a diplomat in bilateral relations between States. In that case, it was probably unnecessary to go beyond the general idea expressed in article 44, the last phrase of which might be deleted, as suggested by Mr. Bedjaoui.

17. While he was not opposed to the spirit of Mr. Kearney's amendment, on reflection, it was hard to see how the organization could be made responsible for notifying the sending State that it must recall a member of its permanent mission. What was needed was a solution equivalent to a declaration of *persona non grata* in diplomatic relations. Perhaps Mr. Kearney could explain the procedure whereby his Government had been able to secure the almost instantaneous departure of certain persons from United States territory. Methods already used in practice might assist the Commission to find a solution.

18. Mr. CASTRÉN said he approved of the text of article 44 proposed by the Special Rapporteur.

19. On the other hand, he understood Mr. Kearney's concern; the host State must be protected against serious crimes committed by members of permanent missions. Article 49 provided for consultations in case of difficulties arising under article 44, but that might not be sufficient. The Drafting Committee should therefore examine Mr. Kearney's amendment very carefully and try to find a formula which could be accepted by all or the majority of the Commission.

20. He himself would like to propose a sub-amendment to the amendment, to provide that, in the cases contemplated by Mr. Kearney, the consultations required under article 49 should be held first, and that the measures indicated in Mr. Kearney's new paragraph 3 would only be taken if those consultations failed to achieve any result.

21. Mr. CASTAÑEDA said that Mr. Kearney's amendment dealt with an extremely serious problem which the Commission should not try to solve in the short time at its disposal before the Special Rapporteur had to leave. He would therefore confine himself to a provisional opinion.

22. In the first place, all matters connected with the peaceful settlement of disputes between States were very delicate; none of the United Nations organs which had examined that problem had yet found a real solution. When an international organization intervened in a dispute, the situation became still more complicated.

23. Mr. Kearney's amendment had the merit of throwing the problem into relief and seeking to provide a solution. It avoided simply giving the host State a right of expulsion, while at the same time it would prevent the host State from being left in a position in which it could not act if a member of the permanent mission was guilty of serious or repeated criminal offences.

24. Nevertheless, he supported Mr. Bedjaoui's view that, though there was a danger of abuse, there was an even greater danger of error on the part of the host State. Also, although it was not expressly stated, it was the international organization which, under the amendment, would have to establish the facts and take a decision, since it was the organization which had to make the notification to the sending State. And what organ of the international organization was required to act in those circumstances? If it was an organ consisting of States, that might be a sufficient guarantee; but if it was the secretariat, many countries might not be willing to entrust it with that role. Such a responsibility would be too heavy for a secretariat.

25. An even more serious defect of Mr. Kearney's amendment was that the State which had sent the incriminated representative was not consulted; yet such consultation was indispensable. Article 49, which provided for consultations between the sending State, the host State and the organization, regarding the application of article 44, offered the best safeguards for all. It instituted a new procedure which entailed not compulsory settlement, but the obligation to hold consultations.

26. Perhaps it would be possible to combine the two ideas—that contained in Mr. Kearney's amendment and that in article 49—taking the consultations as the basic means of settlement. If the consultations led to agreement between the three parties concerning the facts of which the representative was accused, the sending State would recall him. It was hardly possible to set up independent machinery by which the representative could be expelled if the consultations failed.

27. Mr. YASSEEN stressed that the Commission's task was to reconcile the interests of the sending State, the host State and the organization. It was right and logical that the vital and legitimate interests of the host State should be protected, and that State could not be required to retain in its territory a member of a permanent mission who broke its laws.

28. For most of the articles, the Commission had rightly taken the analogy with diplomatic relations as a basis. That analogy also applied to the case dealt with in article 44; the host State was no less injured if its internal law was broken by a member of a permanent mission to an international organization than if it was broken by a member of a diplomatic mission. Moreover, the abuse of privileges and immunities by a member of a permanent mission was harmful not only to the bilateral relations between two States, but also to the organization itself, and that was even more serious.

29. Mr. Kearney's amendment had great merits. It might be a good idea to appeal to the organization; such an appeal would be like asking it to arbitrate or at least to lend its good offices. But it was certainly not the secretariat of the organization which could be charged with such a grave responsibility in matters that were often of a highly political nature. The solution might be to make the competent organs of the organization intervene, but the procedure to be adopted would depend on the constitution or statute of the organization.

30. The problem required very thorough study and it would be foolish to try to find a solution in the short time remaining for the examination of sections III and IV of the draft.

31. Mr. EUSTATHIADES said that the question was very important; even if it could not take a final decision, the Commission should at least give the Special Rapporteur some general guidance before he left.

32. With regard to paragraph 2, he shared Mr. Bedjaoui's doubts about the advisability of including the last clause.

33. On the other hand, he was entirely in favour of Mr. Kearney's amendment; the draft should, in any event, contain a provision covering the case contemplated in that amendment. The fact that the Vienna Convention on Diplomatic Relations was silent on the subject did not prove much, for in bilateral relations States always came to some arrangement in the end; besides, the receiving State had declaration as *persona non grata* as a last resort. A similar right could not be accorded to the host State in respect of permanent representatives to an international organization. Mr. Kearney's amendment had the great advantage of placing the sending State under a duty with regard to the behaviour of its representatives. Its weakness lay in the question of the determination of serious violations, which would apparently be the responsibility of the host State.

34. To remedy that weakness, the drafting of the proposed new paragraph 3 might be amended so that the machinery contemplated came into action when a person enjoying immunity from criminal jurisdiction in the host State "was implicated in activities which could constitue serious violations of the laws or regulations of the host State ". Even under a rule so formulated, however, the starting point would always be a claim by the host State.

35. The matter did not concern only the sending State and the host State; it also concerned the organization, which could not keep suspect persons in its midst. Consequently, it was natural to bring in the international organization. But would the procedure for notification by the organization be a purely administrative one or, as various members appeared to think, would it entail an inquiry by the organization? The solution might be for the host State to put forward its request "after consultation with the organization, if necessary", which would be in accordance with the provisions of article 49 concerning compulsory consultations in certain cases, in particular those relating to the application of article 44.

36. A final danger in Mr. Kearney's amendment had been pointed out by several speakers: the question which organ of the international organization would be required to act. He did not think it was necessarily the secretariat. That question would arise again when the Commission took up article 49; it would then be neces-

sary to define what was meant by the "organization". The Commission should not, therefore, allow itself to be held up by that difficulty at the present stage.

37. Mr. RAMANGASOAVINA said that he was prepared to accept article 44, though he had a few comments to make on the drafting, particularly on the last phrase in paragraph 2, "or by special agreements in force between the sending and the host State". Such special agreements must be very rare.

38. It was perfectly natural that, after the rights of members of permanent missions had been enumerated, there should be a reminder that it was their duty to respect the laws and regulations of the host State; it should be made clear that, despite the privileges and immunities they enjoyed, they were not above the law. There had been cases in which members of permanent missions had paid no heed to the laws and regulations of the host State, and provisions should therefore be included to deal with such situations, which were prejudicial to good relations between States.

39. If bilateral diplomacy had to be excluded, as seemed to be the case, the answer was perhaps to be sought in article 49, provided it was explained in the commentary how the proposed system of tripartite consultations would work. It was essential to avoid any method of dealing with the problem that might in its turn be open to abuse. Like other speakers, he would like to see a system adopted whereby consultations would take place between the host State, at its request, the sending State and the organization concerned.

40. Mr. BARTOŠ said that the question was an important one. It had come before the United Nations General Assembly on a number of occasions, when the United States had requested that certain members of a delegation or certain United Nations staff members should leave the country. The question of the freedom enjoyed by members of a mission to an international organization and staff members of the organization had also arisen when an agreement had been concluded between the United Nations and the United States concerning nationals of countries with which the United States was in armed conflict. It had been decided that such persons would have to reside on the international territory ceded to the United Nations; the United States had not been given the right to ask the Secretary-General to expel them from its territory.

41. Consideration should also be given to the case in which diplomats were accredited both to a State and to an international organization. Some held the view that the duties attached to the two functions were entirely different. A distinction should also be made between a genuine crime and what might be merely described as a criminal act. Again, where criminal law was concerned, many countries distinguished between administrative offences and criminal offences; but the amendment also used the word "regulations", which was contrary to the basic principle of modern comparative criminal law and, in particular, to the United Nations Covenants, which laid down the rule that there could be no crime without a law—a crime could not exist by virtue of administrative regulations.

42. There was also the question of notification of a request by the host State to leave the territory and of the organ of the international organization which was required to make the notification. It would be difficult to ask a mere administrative organ of the international organization to do so, since that would give it the power to decide whether or not there had been a serious violation, and thus to act as judge in a dispute between States, a function which the Charter reserved for a particular organ of the United Nations.

43. The idea of Mr. Kearney's amendment was sound, for it was quite legitimate to protect the host State, which was often exposed to danger from people who were protected by their diplomatic immunity. Indeed, there was a tendency in modern international law to consider that diplomatic privileges and immunities were not granted in the interests of the person enjoying them, but in the interests of the international community; nevertheless, the 1961 Vienna Conference had been reluctant to distinguish between purely personal immunity and immunity that was essentially functional.

44. The idea should therefore be given practical form through the adoption of a reasonable solution which would make it possible to prevent members of permanent missions from committing abuses that were harmful to international relations and at the same time to protect the interests of the parties concerned without running the risk of involving international organizations. Perhaps tripartite consultations might offer such a solution, but the Commission would have to study that institution very carefully.

45. Mr. RUDA said that, in the case dealt with in Mr. Kearney's amendment, two interests were in conflict: the need to maintain the privileges and immunities of the diplomatic staff of permanent missions, and the legitimate interest of the receiving State not to have undesirable persons in its territory. It was difficult to imagine an appropriate formula which would strike a proper balance between those two interests.

46. As a basic principle, it could be laid down that, in the event of serious or repeated violations of the criminal laws or regulations of the host State, the sending State should withdraw the diplomat concerned. But there remained the question of the machinery by which that result was to be obtained.

47. Of the three possible approaches, the first—to leave the matter entirely in the hands of the host State—was out of the question: it would give the host State so much power that it could virtually annul the privileges and immunities provided for in the convention for the members of permanent missions. The second approach—to leave it to the organization to ask the sending State to withdraw the diplomat—would create more problems than it solved, because it would be extremely difficult to decide on which organ of the organization that responsibility fell. The third approach, the one the Special Raporteur had in mind, was recourse to the consultations prescribed in article 49, paragraph 1 of which referred specifically to questions arising out of the application of article 44.

48. Paragraph 2 of article 49 referred to "provisions

concerning settlement of disputes contained in the present articles" and implied that, if the consultations failed to provide a solution, recourse should be had to the general machinery for the settlement of disputes to be established at the end of the convention. Though perhaps more dramatic, the disputes which might arise out of the application of article 44 were not essentially different from any of the other disputes which might arise out of the application of the convention, and it was therefore appropriate that the same machinery should apply to all of them. The time to solve the problem, therefore, was when the general machinery for the settlement of disputes was being considered.

49. Sir Humphrey WALDOCK said there were only two main points he wished to make. First, he fully supported Mr. Bedjaoui's proposal concerning the last phrase in paragraph 2 of article 44. It seemed inconceivable that special agreements in force between the sending and host States would really be such as to affect the functions of permanent missions. There might be special agreements arising out of the constituent instruments of the organization on other subsequent agreements binding upon the members of the organization, but it would not be appropriate to refer to special agreements in force between the sending State and the host State.

50. The second was the main point arising out of Mr. Kearney's proposal. It was his understanding that during its consideration of the topic of relations between States and international organizations at the last session, the Commission had already had in mind the possibility of solving the problem raised by Mr. Kearney through consultation procedures, and it was on that basis that the Special Rapporteur had proceeded. Consultation procedures should be the main method of dealing with difficulties arising out of the application of the convention.

51. The basic point underlying Mr. Kearney's proposal would seem to be whether there should not be some procedure of last resort to replace the normal *persona non grata* procedure. There was a case for such a proposal, since the host State would have no means of applying a real sanction, such as declaring a person *persona non grata,* in respect of persons attached to permanent missions, nor would it be able to apply other sanctions available in normal diplomatic relations when a person's misbehaviour might be regarded by the host State as rendering him no longer acceptable as a negotiator, so that he could no longer usefully perform his functions with the government to which he was accredited.

52. Mention had been made of the possibility of abuses on the part of the host State, but abuses on the part of the members of permanent missions were equally possible. Nor were such abuses all of a kind that the host State could be expected to tolerate; espionage and irregular political activities by members of a permanent mission were among those that came to mind. Some procedure along the lines suggested by Mr. Kearney might be necessary as a last resort. The Commission might have to decide whether the problem should be covered by strengthening the provisions of article 49 on consultations, or whether it was necessary to provide for some ultimate sanction in that article or in one related to it.

53. He understood Mr. Kearney to be proposing a procedure to be used only in the last resort, if the consultation procedure failed; the normal procedure would be for the host State to take up with the sending State any question of the behaviour of one of the latter's representatives, but the possibility could not be overlooked that such consultations might fail, and the host State might be obdurate in asking for the recall of the representative. In such a case it would be useful to have the possibility of referring the dispute formally to a third party, within the organization: the Secretary-General in the case of the United Nations and some other similar official in the case of other international organizations. The Commission should not, however, become too much involved in details of the procedure in each organization.

54. He was inclined to agree that it was too early to reach a final conclusion on what was a very delicate problem.

55. Mr. USTOR said that the issue raised by Mr. Kearney was a valid one. He did not agree, however, that if the problem was not settled in the manner proposed, the convention would not be acceptable to States that wished to become hosts to international organizations. The convention would provide rules which would be subordinate to agreements between any international organization and a host State, and questions of the kind raised by Mr. Kearney would best be settled in such agreements.

56. A suitable formula for inclusion in the convention could doubtless be found, but there was not sufficient time available to study the matter properly. If he had to make a choice at the present stage, he would opt for the text of article 44 as it stood, for the reasons given by Mr. Castañeda.

57. Mr. TABIBI said that, for the protection of their own interests, it was essential that international organizations should not get involved in disputes between host and sending States arising out of violations, or alleged violations, of the laws of the host State by a member of a permanent mission. Mr. Kearney's amendment raised an important problem which should be studied and for which a solution should be found. But great care was needed because abuses might occur on both sides.

58. Some international organizations had a century or more of experience behind them and many cases of abuse had arisen during their history. The Special Rapporteur or the Secretariat should be authorized to ask the international organizations what their experience in such cases had been and what methods they had found most successful in dealing with them—consultations or any other method. It would not be appropriate to suggest a solution until a careful study had been made on those lines.

59. Mr. KEARNEY said he was grateful that all members had recognized that a serious problem existed and that an attempt should be made to solve it.

60. He wished to assure Mr. Ustor that what he had intended to say was not that, unless the convention included an amendment on the lines he had suggested, it would not be acceptable to host States, but that unless some solution to the problem was found host States would be reluctant to accept the convention. He had never imagined that his amendment was final; he had merely been trying to bring the various elements of the problem to the Commission's notice.

61. He was also aware that his amendment was linked to the consultation process and that, if such an amendment was accepted, it would be necessary to revise the consultation provisions of the convention. Possibly the two components—the principle and the machinery—were too telescoped in his amendment; it might be best to deal with them separately: the principle in article 44 and the machinery for applying it in article 49 or 50. There appeared to be general agreement on the principle that if a member of a permanent mission seriously or repeatedly violated the laws of the host State, there must be some method of removing him from its territory.

62. He agreed that there might not be time to work out the final language in the Commission, but he hoped the question would be referred to the Drafting Committee.

63. Mr. STAVROPOULOS (Legal Counsel) said that Mr. Kearney's amendment made a valid point, but did not have much chance of being accepted in its present form.

64. The United Nations Secretariat attached great importance to the retention or the strengthening of article 49. The necessity for a consultation procedure bringing in the organization was clearly illustrated by a whole series of cases within his own experience with the United Nations in New York, in which the Secretariat had been able to smooth over difficulties that had arisen between the police or other authorities of the host State and diplomats stationed in the United States. It was only reasonable, therefore, that the position of the organization should be strengthened. In the case of the United Nations, the organization could only mean the Secretary-General; otherwise, it would have to be the General Assembly, and no one would think of bringing a case concerning the behaviour of an individual diplomat before the Assembly.

65. The duty of intervention was not a pleasant duty for the Secretariat, but it was one which it had accepted and had continually performed—so much so that it might seem at times that the host State was almost beginning to resent such "uncalled for interference". The point was that the interference should be called for in the convention, in other words, that a system of consultations should be established which gave the organization a say in such matters. He hoped, therefore, that the Commission would retain article 49 either as it stood or in a strengthened form.

66. The CHAIRMAN, speaking as a member of the Commission, said that he supported article 44 as proposed by the Special Rapporteur.

67. With regard to the last phrase in paragraph 2, he was in agreement with Mr. Bedjaoui, but he would remind the Commission, that, at the 1961 Vienna Conference, that phrase and the words which preceded it, "or by other rules of general international law", had been included at the request of the Latin American countries, which would have to be consulted if it were proposed to delete the final phrase.

68. The procedure provided for in article 49 seemed to him entirely satisfactory, and it was reasonable to make it the responsibility of the organization to hold tripartite consultations. He regretted that he was unable to support Mr. Kearney's proposal to add a third paragraph to article 44, because the article as at present worded indirectly gave the organization power to declare a member of a permanent mission *persona non grata.*

69. Another most important point was notification: the decision should not be made by some secondary organ or by a director or secretary-general, but by the highest organ. Mr. Kearney's idea was sound, but the situation he envisaged seemed already to be covered by article 49.

70. Mr. BARTOŠ said that a State, even though it could adopt the course of declaring some one *persona non grata,* could not exclude from its territory a foreign diplomat accredited to an international organization; it could only deprive him of the status of a diplomat accredited to the host State. And yet, if the headquarters of the organization was on the State's territory, it might be considered that the State was being deprived of a right which it enjoyed vis-à-vis the representative of another State, since it could not compel him to leave its territory. He (Mr. Bartoš) had himself raised that question at the Vienna Conference, but the majority had refused to settle it, because they considered the interests of the international organization more important than those of the host State.

71. Mr. EL-ERIAN (Special Rapporteur) said there was general agreement that there must be an article laying down the duty of members of permanent missions to respect the laws and regulations of the host State. Such an article must strike the necessary balance between their enjoyment of privileges and immunities and their duty to respect the laws of the host State. It should make it clear that, while in many respects they were immune from the jurisdiction of the host State, they were subject to its laws; that situation became clear in the event of a waiver of immunity, which set in motion the practical enforcement of the laws.

72. Mr. Bedjaoui had proposed, and a number of members had supported, the deletion of the clause "or by special agreements in force between the sending and the host State" at the end of paragraph 2, on the ground that it was more appropriate to bilateral relations. That phrase, as the Chairman had pointed out, had been included in the Vienna Convention on Diplomatic Relations to accommodate a group of States which had special agreements on the matter dealt with in the paragraph.

73. Sir Humphrey Waldock had pointed out that it

was appropriate to refer to such agreements if they related to international organizations, but not otherwise, since that would inject an element of bilateral diplomacy into the economy of the article. The Drafting Committee should accordingly decide whether to delete the whole clause, inasmuch as it was covered by one of the general provisions at the beginning of the draft articles, or to retain the reference to special agreements, but delete the words "between the sending and the host State".

74. He sympathized with Mr. Kearney's amendment, which raised the universally recognized problem resulting from the absence of the "*persona non grata*" procedure in respect of members of permanent missions. The amendment, as Sir Humphrey Waldock had pointed out, was designed to replace that institution in extreme cases in which there had been serious or repeated violations of the laws of the host country. But while members agreed with the idea underlying the amendment, they recognized the difficulty of drafting a satisfactory text.

75. The general view was that the question should be taken up in connexion with article 49, and suggestions had been made for strengthening that article. Article 49 envisaged consultations between the sending and host States and the organization on all the everyday, practical questions that might arise between them. Since that was the case, the reference to the "organization" could only mean the secretary-general or principal executive official, as indeed was expressly stated in paragraph (4) of the commentary on the article. Only the secretary-general could conduct the sort of unobtrusive diplomacy which was necessary if the organization was to play its role of liaison between the host State and the sending State in dealing with practical matters which did not amount to a formal dispute.

76. Paragraph 2 of article 49 was a saving clause under which, if the consultations were unsuccessful, whatever other machinery was established for the settlement of formal disputes could be applied. The article as a whole was intended to overcome the practical difficulties which arose in multilateral diplomacy as a result of the absence of institutions which existed in bilateral diplomacy.

77. He suggested that article 44 be referred to the Drafting Committee, which should also consider the question raised by Mr. Kearney, namely, whether the principle and the machinery envisaged in his amendment might not be dealt with separately—the principle in article 44 and the machinery in article 49.

78. The CHAIRMAN suggested that article 44, with Mr. Kearney's amendment, be referred to the Drafting Committee on the terms indicated by the Special Rapporteur.

It was so agreed.[5]

The meeting rose at 6 p.m.

[5] For resumption of the discussion, see 1024th meeting, para. 1.

999th MEETING

Friday, 13 June 1969, at 10.10 a.m.

Chairman: Mr. Nikolai USHAKOV

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

Relations between States and international organizations

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

[Item 1 of the agenda]

(continued)

ARTICLE 45

1. *Article 45*

Professional activity

The permanent representative and the members of the diplomatic staff of the permanent mission shall not practice for personal profit any professional or commercial activity in the host State.

2. The CHAIRMAN invited the Commission to consider article 45 in the Special Rapporteur's fourth report (A/CN.4/218/Add.1). There being no comments, he suggested that the article be referred to the Drafting Committee.

It was so agreed.[1]

ARTICLE 46

3. *Article 46*

Modes of termination

The function of a permanent representative or a member of the diplomatic staff of the permanent mission comes to an end, *inter alia*:

(*a*) On notification by the sending State that the function of the permanent representative or the member of the diplomatic staff of the permanent mission has come to an end;

(*b*) If the membership of the sending State in the international organization concerned is terminated or suspended or if the activities of the sending State in that organization are suspended.

4. Mr. EL-ERIAN (Special Rapporteur) said that sub-paragraph (*b*) dealt with three cases in which the function of a permanent mission ended as a result of developments relating to the sending State's membership in the organization. The first was the case of

[1] For resumption of the discussion, see 1025th meeting, para. 1.