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Summary record of the 571st meeting

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92. Mr. ERIM, thanking Sir Gerald Fitzmaurice for his explanation, observed that there was no real disagreement between them. His only concern was that the Commission should not adopt a clause enabling the consul to force the landlord to agree to the flying of the national flag or to the display of the coat-of-arms on the leased premises. He noted that the analogous provision in article 10 of the Consular Convention between the United Kingdom and Sweden was permissive.

93. Mr. EDMONDS said that he had not been reassured by Sir Gerald Fitzmaurice's argument that article 22 would not give rise to practical difficulties. He pointed out that in many urban areas in the United States, many, perhaps even most, large office buildings had rules prohibiting the display of signs or flags by tenants.

94. The CHAIRMAN, observing that there was a real divergence of opinion, asked the Commission to decide by a vote whether the opening words of article 22, paragraph 1, should be amended to read, as suggested by Mr. Edmonds, "The receiving State shall place no restriction on the right of the consulate to fly the national flag . . ."

The amendment was rejected by 11 votes to 7, with 1 abstention.

95. The CHAIRMAN put to the vote the Drafting Committee's text for article 22.

Article 22 was adopted by 14 votes to 3, with 2 abstentions.

The meeting rose at 1 p.m.

571st MEETING

Friday, 24 June 1960, at 9.30 a.m.

Chairman: Mr. Luis PADILLA NERVO

Planning of future work of the Commission

[Agenda item 10]

1. The CHAIRMAN invited discussion on item 10 of the agenda.

2. Mr. ŽOUREK said that although in the past the Commission had decided to allow two years to elapse between the first and second reading of a draft so as to allow Governments more time to comment, since it had undertaken to complete its work on consular intercourse and immunities by 1961 it must of necessity make an exception to that rule and resume consideration of the draft articles on consular intercourse and immunities at its next session. If the work was well organized four or five weeks at the beginning of the next session would be sufficient for the purpose.

3. Mr. GARCÍA AMADOR agreed with Mr. Žourek that the first topic on the next session's agenda should be consular intercourse and immu-

nities, but considered that, as a great deal of time had been taken up with it at the previous and current sessions, no more than four weeks should be assigned to it. In order to make progress with its general programme of work the Commission should then devote the following five weeks to state responsibility.

4. After further discussion, the CHAIRMAN suggested that, at its thirteenth session, the Commission should decide to complete its work on consular intercourse and immunities and then take up state responsibility.

It was so agreed.

Date and place of the thirteenth session

[Agenda item 9]

5. The CHAIRMAN invited discussion on item 9 of the agenda.

6. Mr. LIANG, Secretary to the Commission, said that the Commission's thirteenth session was scheduled to last for ten weeks, from 24 April to 30 June 1961.

7. The plenipotentiary conference on diplomatic intercourse and immunities was scheduled to meet at Vienna from 2 March to 14 April 1961, so that there would be an interval of ten days before the opening of the Commission's session. It had not proved feasible, as hoped, to allow for a longer interval.

8. Mr. GARCÍA AMADOR asked whether the opening date of the thirteenth session could be postponed for one week so as to allow a longer interval between the end of the Vienna conference and the opening of the Commission's own session, even though in that event the last week of the Commission's session would overlap with the first week of the Economic and Social Council's summer session at Geneva.

9. Mr. LIANG, Secretary to the Commission, drew attention to the terms of General Assembly resolution 694 (VIII), paragraph 1 (c), under which the Commission's sessions at Geneva should not overlap with the summer session of the Economic and Social Council. If Mr. García Amador's request were accepted, the Commission would lose one week of its session. The thirty-second session of the Economic and Social Council was scheduled to begin at Geneva on Tuesday, 4 July 1961.

10. Sir Gerald FITZMAURICE observed that the stipulation quoted by the Secretary from General Assembly resolution 694 (VII) had repeatedly given rise to difficulties. He did not object to the principle but only to the rigid manner in which it had been applied. The overlap in 1961 would only be four working days, which he would not have thought could cause serious inconvenience, whereas it would make a great deal of difference to members of the Commission if its session could start one week later.

That fact should be conveyed by the Secretary to the appropriate authorities.

11. The CHAIRMAN, speaking as a member of the Commission, said that on previous occasions the Commission had always conveyed its wishes concerning the dates of future sessions to the Secretary-General through its secretary. In the present instance, if members thought that some modification in the application of General Assembly resolution 694 (VII), paragraph 1 (c) was required, perhaps the better procedure would be to raise the matter in the Sixth Committee.

12. Mr. LIANG, Secretary to the Commission, said that in the past the Commission had conveyed its wishes to the General Assembly in its reports. For example, in its report on the ninth session (A/3623, paragraph 34) it had again referred to the difficulties already mentioned in the report on its fifth session (A/2456, paragraph 175), created by the requirements contained in resolution 694 (VII). The general Assembly had originally approved a programme of conferences for the years 1954 to 1957 and when that programme had been reviewed in 1957 the matter had not been raised in the General Assembly. The present pattern of conferences as approved by General Assembly resolution 1202 (XII) covered the five-year period 1958 to 1962, and any modification of the pattern would have to be approved by the Assembly.

13. Sir Gerald FITZMAURICE said the point he had raised was a different one. He had not suggested that the Commission should try to get the General Assembly's decision reversed, but that the requirements enunciated in resolution 694 (VII), paragraph 1 (c) should not be applied so strictly that the Commission was not permitted to sit concurrently with the Economic and Social Council even for a few days.

14. Mr. TUNKIN said that another consideration in favour of postponing the opening of the Commission's session for one week was that, judging from the experience of the two Conferences on the Law of the Sea, the Vienna conference on diplomatic intercourse and immunities might last longer than foreseen. In that event, there would be practically no time at all between the end of that conference and the opening of the Commission's own session. It was far more important that there should be no overlap at that time than that the Commission should not overlap with the Council, for about half of the Commission's members would probably be attending the conference, in which case there might be no quorum at the beginning of the Commission's session. Perhaps the Chairman of the Commission could take up the question with the Secretary-General.

15. Mr. LIANG, Secretary to the Commission, said that the considerations mentioned by Mr. Tunkin had already been brought to the attention of the appropriate authorities at Headquarters. He (the Secretary) would immediately bring them to their notice again, indicating that the Com-

mission was anxious that an interval of at least two weeks should elapse between the end of the Vienna conference and the beginning of its own session, and inform the Commission later of their reply.

16. Much as he would like to be able to interpret more liberally the rule in General Assembly resolution 694 (VII), as suggested by Sir Gerald Fitzmaurice, unfortunately, in the opinion of the headquarters authorities responsible for the planning of conferences, financial and technical problems made that impossible.

17. Mr. ŽOUREK suggested that, since circumstances would be exceptional in 1961, the Commission might ask that the opening of the Economic and Social Council's thirty-second session be postponed for one week and that the Chairman explain the Commission's predicament to the General Assembly.

18. Mr. LIANG, Secretary to the Commission, with regard to Mr. Žourek's suggestion, said that in previous years efforts had been made in that direction but it had been found impossible because, under rule 2 of the Council's rules of procedure, its summer session had to end at least six weeks before the regular session of the General Assembly so that the Council must open by a certain date in July.

19. The CHAIRMAN, speaking as a member of the Commission, said that, if any results were to be obtained, it was most important that the Commission's wishes should be conveyed through the proper channel. The Secretary-General should certainly be consulted as to whether it lay within his power and resources to meet the exceptional situation in 1961.

20. Mr. TUNKIN proposed that the Chairman be requested to raise the matter with the Secretary-General on the understanding that the Commission was not seeking to modify the decision taken by the General Assembly but only to meet the exceptional circumstances that were likely to arise in 1961.

21. Mr. YOKOTA supported Mr. Tunkin's proposal but considered that the Commission should clearly indicate that it was not unaware of the difficulties involved in postponing the opening of its thirteenth session.

22. The CHAIRMAN suggested that the Commission should adopt Mr. Tunkin's proposal as qualified by Mr. Yokota's remarks.

It was so agreed.

23. Mr. GARCÍA AMADOR asked whether that decision meant that the Commission was completely abandoning the idea, which had been strongly supported, that its sessions should start a month later than was its current practice.

24. Mr. LIANG, Secretary to the Commission, explained that the present pattern of conferences covered the years 1958 to 1962. He doubted

whether repetition of the request that the Commission's sessions be held later in the summer would meet with much success.

25. Mr. GARCÍA AMADOR said it would be regrettable if the Commission renounced the possibility of its sessions being held later in the summer. He suggested that in due course the Commission might request an amendment of the provisions of its Statute concerning the dates of its sessions.

26. The CHAIRMAN said he did not consider that any action was required at that stage on the point raised by Mr. García Amador, which would have to be dealt with by representatives to the General Assembly at some future time.

**Representation of the Commission
at the Fifteenth Session of the General Assembly**

27. Mr. LIANG, Secretary to the Commission, observed that it was customary for the Chairman of the Commission to be available for consultation at the General Assembly, particularly when the Sixth Committee discussed the Commission's report.

28. The CHAIRMAN suggested that that procedure should be followed at the fifteenth session of the General Assembly.

It was so decided.

**Co-operation with other bodies
(resumed from the 559th meeting)**

[Agenda item 8]

29. Mr. LIANG, Secretary to the Commission, pointed out that the Commission had not as yet taken a decision on the question of sending an observer to the fourth session of the Asian-African Legal Consultative Committee, to be held at Tokyo in March 1961. The letter of invitation from the Secretary of the Committee had been read out at the 559th meeting. It should be borne in mind that the Commission had on two occasions been unable to send an observer to the Committee's sessions, mainly because they had conflicted with the dates of the General Assembly's sessions. The Secretariat would ascertain the agenda of the session and the financial implications of sending an observer. That latter information would have to be included in the Commission's report, as the budget estimates for 1961 had already been prepared for submission to the Assembly, and a supplementary appropriation would be needed if the Commission decided to send an observer.

30. In principle, he would advise acceptance of the invitation, especially since the Commission had been unable to send observers to previous sessions of the Committee and since some of the topics to be discussed at the session, such as diplomatic protection of nationals abroad and

state responsibility, were of particular interest to the Commission.

31. Mr. GARCÍA AMADOR recalled that, during the debate on state responsibility, he had had occasion to comment on the value of close collaboration between the Commission and the Inter-American Council of Jurists and the Inter-American Juridical Committee, and also to express the hope that similar collaboration would be established with other regional bodies, including the Asian-African Legal Consultative Committee. Furthermore, since the fourth session of that committee would be discussing the topic of state responsibility, to which the Commission would be devoting a considerable part of its thirteenth session, it would be desirable for practical reasons, apart from considerations of courtesy, to send an observer to Tokyo. The opinions of the many newly independent countries of Asia and Africa on state responsibility would be of great interest to the Commission.

32. Mr. MATINE-DAFTARY endorsed those views.

33. Mr. TUNKIN thought that, while it might be desirable to send an observer to Tokyo, he was not sure that it was indispensable from the practical point of view. Considerable expense would be involved and, to judge by previous experience, the value of such representation to the Commission as a whole was doubtful. Perhaps the Commission might ask the Asian-African Legal Consultative Committee to send an observer to the Commission's thirteenth session to explain the Committee's views; the value of that procedure had been proved by the contribution made by the observer for the Inter-American Juridical Committee to the debate on state responsibility at the current session.

34. The CHAIRMAN thought that Mr. Tunkin's suggestion was sound. The only function that the Commission's observer could perform at the session of the Asian-African Legal Consultative Committee would be to express the Commission's interest in the matters discussed, since the Commission had not as yet studied most of the topics on the Committee's agenda.

35. Mr. MATINE-DAFTARY did not think that Mr. Tunkin's and Mr. García Amador's suggestions were mutually exclusive. The Commission might decide to send an observer to Tokyo and also to invite the Asian-African Legal Consultative Committee to send its representative to the Commission's thirteenth session.

36. Mr. YASSEEN thought that a question of principle was involved. The Commission had sent observers to meetings of some intergovernmental bodies, and if it failed to do so in the case of the Asian-African Legal Consultative Committee it might lay itself open to a charge of discrimination, particularly since the Committee intended to discuss topics with which the United Nations would ultimately be concerned.

37. Mr. EDMONDS pointed out that an observer would be able to make only a limited contribution to the work of the Asian-African Legal Consultative Committee, since the Commission had not yet dealt with the subject of state responsibility in detail.

38. Mr. ERIM said he could not understand why there was any hesitation in sending an observer to the fourth session of the Asian-African Legal Consultative Committee, in view of the precedent established in the case of the Inter-American Council of Jurists. Moreover, the Committee had on its agenda the topic with which the Commission would be dealing at its thirteenth session.

39. Mr. BARTOŠ endorsed the views expressed by Mr. Yasseen and Mr. Erim. He had supported the recommendation to enter into co-operation with the League of Arab States and the Inter-American Council of Jurists, and did not believe there should be any discrimination with respect to the Asian-African Legal Consultative Committee. The Commission should recommend the General Assembly to approve the sending of an observer to Tokyo. No other course was open, not only for reasons of courtesy, but also because the Commission should take into account legal opinions throughout the world.

40. The CHAIRMAN said it appeared that the consensus of opinion in the Commission was in favour of sending an observer to the fourth session of the Asian-African Legal Consultative Committee.

41. Mr. TUNKIN agreed that an observer should be sent, but wished to raise a further point with regard to co-operation. Appropriate steps should be taken to ensure that the organization with which the Commission was in consultative relationship supplied their documentation to all the members of the Commission.

42. Mr. LIANG, Secretary to the Commission, pointed out that the secretary of the Asian-African Legal Consultative Committee had already stated in his letter of invitation that the summary report of the proceedings of the third session (January 1960) of the Committee, which was expected to be ready by July, would be forwarded to the Commission (559th meeting, paragraph 96).

43. Mr. ŽOUREK agreed that it was important for the Commission to send observers to meetings of regional intergovernmental bodies, which discussed subjects germane to those treated by the Commission. Nevertheless, he agreed with Mr. Tunkin that what was more important was that organizations should supply their documents, including draft codes, relevant to the subjects in question. The documents supplied by the Inter-American Council of Jurists had been extremely useful to the Commission in its work on the law of the sea, but since then little if any material had been received. He considered the regular exchange of documents with regional intergovern-

mental organizations concerned with international law even more important than sending observers, provided, of course, that these documents were distributed to the members of the Commission.

44. Mr. BARTOŠ agreed with Mr. Žourek. He had found it difficult to obtain regional organizations' documents on codification, and had in fact applied to the Asian-African Legal Consultative Committee, which had replied that the summary report of its third session would be forwarded to the Commission. That would be of little practical use, however, if the documents concerned were kept in the archives at United Nations Headquarters; it was the members of the Commission who should receive the material.

45. The CHAIRMAN thought the Commission would agree to ask the Secretariat to express the Commission's wish to receive the documents of intergovernmental organizations. A number of copies of such documents were supplied to members through the Secretariat, but the Secretariat might be requested to prepare extra copies for distribution, where that was possible.

46. Mr. GARCÍA AMADOR said that documentation presented no problem so far as the Inter-American Council of Jurists was concerned, all of whose documents were available in Spanish, English, French and Portuguese. The Secretariat should apply to the legal department of the Pan-American Union for copies in the appropriate languages and then forward them to members at their private addresses.

47. The CHAIRMAN invited the Commission to appoint an observer to attend the fourth session of the Asian-African Legal Consultative Committee.

48. Mr. ERIM proposed Mr. García Amador as the logical choice, in view of his position as Special Rapporteur on the topic of state responsibility.

49. Mr. JIMÉNEZ DE ARÉCHAGA, Mr. SCALLE, Mr. PAL, Mr. BARTOŠ, Mr. TUNKIN and Mr. EDMONDS supported the proposal.

It was unanimously decided to appoint Mr. García Amador as the Commission's observer at the fourth session of the Asian-African Legal Consultative Committee.

50. The CHAIRMAN, speaking on behalf of the Commission, congratulated Mr. García Amador on his appointment and expressed the conviction that his attendance of the session would be most valuable. He asked Mr. García Amador to convey an invitation to the Asian-African Legal Consultative Committee to send an observer to the Commission's thirteenth session and also to request the Committee to supply its documents to the Commission at regular intervals.

51. Mr. GARCÍA AMADOR thanked the Commission for the confidence it had placed in him.

It was understood that, in representing the Commission at Tokyo, he would not speak on behalf of the Commission on matters of substance, but would limit himself to communicating the two requests mentioned by the Chairman. He would report to the Commission at its thirteenth session on the deliberations of the Asian-African Legal Consultative Committee.

Consular intercourse and immunities
(A/CN.4/L.86, A/CN.4/L.90)

[Agenda item 2]

**PROVISIONAL DRAFT ARTICLES
ON CONSULAR INTERCOURSE
AND IMMUNITIES (A/CN.4/L.90)**
(*resumed from the previous meeting*)

52. The CHAIRMAN invited the Commission to resume its debate on the draft articles on consular intercourse and immunities prepared by the Drafting Committee (A/CN.4/L.90).

ARTICLE 25 (*Inviolability of consular premises*)

53. Mr. ŽOUREK, Special Rapporteur, said that the wording of article 25 had been brought into line with that of article 20 of the Commission's 1958 draft on diplomatic intercourse, in accordance with the view expressed by several members. Consular premises, like the premises of a diplomatic mission, housed official correspondence, documents and archives and the reasons for their inviolability were the same in both cases.

54. Mr. ERIM thought article 25 was too absolute in its terms; it went much further than the corresponding provisions of both the Harvard Draft and the Havana Convention of 1928. In the course of the discussion of article 25, attention had been drawn to the case of consular premises which also housed such services as information offices and travel agencies (530th meeting, paras. 7, 26, 31, 43 and 51). It was essential to limit inviolability to premises used exclusively for the exercise of the consular function. He accordingly proposed that the words "used exclusively for the exercise of consular functions" should be inserted in paragraph 1, immediately after the words "The consular premises".

55. He further proposed the addition of a new paragraph 4, based on article 19 of the Havana Convention, to read as follows:

"Consuls are obliged to deliver, upon the request of the local authorities, accused or convicted persons who may have sought refuge in the consulate."

56. With those two amendments, the provisions of article 25 would reflect existing international law and reflect contemporary state practice. He realized that the new version of article 46 (*Duty to respect the laws and regulations of the receiving State*) covered, in paragraphs 2 and 3,

some of the points he had raised, but he still thought that the principle of inviolability should not be stated in unduly categorical terms in article 25.

57. Sir Gerald FITZMAURICE said that paragraphs 2 and 3 of article 46 completely covered the points raised by Mr. Erim, although they did not go into great detail. He drew particular attention to the last sentence of paragraph 3, by virtue of which non-consular offices would not benefit from the inviolability laid down in article 25.

58. As in the draft on diplomatic intercourse, the principle of inviolability should be stated quite categorically and the duties of the sending State in the matter of the use of the consular premises should be laid down in a separate provision.

59. Mr. PAL agreed with Sir Gerald Fitzmaurice and drew attention to the definition of consular premises in article 1 (b) of the Special Rapporteur's draft, "any building or part of a building used for the purposes of a consulate". That definition covered the points raised by Mr. Erim; the provision of article 46 afforded an additional safeguard. At that stage, therefore, it was unnecessary for the Commission to go further into those questions.

60. Mr. SCALLE said that although in his opinion consular premises should be as inviolable as diplomatic premises, it seemed to him that the terms of article 25 were too absolute and categorical. He accordingly proposed that the first sentence of paragraph 1 should open with the qualifying proviso "Subject to the provisions of article 46".

61. Mr. ŽOUREK, Special Rapporteur, said that inviolability of the premises, freedom of communication and inviolability of the official archives and correspondence constituted the three fundamental principles of international law concerning consular intercourse and immunities. He could not support Mr. Erim's amendments for they would weaken the entire draft. With regard to Mr. Scelle's amendment, the relationship between the provisions of article 46 and those of article 25 could be explained in the commentary.

62. It would be advisable to leave untouched the text of article 25 as worded by the Drafting Committee and await the comments of governments. If those comments suggested that the article was too absolute in its terms, it could then be amended.

63. Mr. ERIM said that the explanations given by Sir Gerald Fitzmaurice and the Special Rapporteur had not fully convinced him. Article 46, paragraph 3, did not provide any remedy in cases where the non-consular office was not kept separate from the premises used for consular purposes. He therefore maintained his first amendment, which implied the sanction of loss of inviolability in such cases.

64. As regards his second amendment, he asked whether article 46, paragraph 2, covered the case of a fugitive criminal taking refuge in a consulate.

65. Mr. BARTOŠ said that article 25 would be unacceptable to him without some qualification along the lines either of Mr. Erim's or of Mr. Scelle's amendment. If neither of those amendments was accepted, the article 46, paragraph 3, could be construed as expressing a purely internal requirement and as not affecting the absolute rule laid down in article 25.

66. Speaking on a more general point, he said he must reject the Special Rapporteur's conception of the Commission's duty and competence. It was not the Commission's duty to submit questionnaires to governments and then to draft texts in the light of their replies. It was the Commission's duty to submit to governments solutions of problems of international law.

67. Mr. EDMONDS agreed with Mr. Bartoš. It was the duty of the Commission to define the rules of existing international law and to make suggestions for the progressive development of that law. That duty would clearly not be satisfactorily performed by merely asking governments for their opinions and framing a text on the basis of their answers. The Commission should not shrink from formulating its draft articles in the form which it determined, by a majority vote, was correct.

68. Mr. SANDSTRÖM proposed that, in paragraph 1, after the words "The consular premises", the following words should be inserted: "as defined and limited in articles 1 (b) and 46, paragraph 3". That amendment should, he thought, satisfy Mr. Erim without in any way weakening the provisions of the article.

69. Mr. SCELLE supported Mr. Sandström's amendment and withdrew his own.

70. Mr. MATINE-DAFTARY said that the terms of article 25 were much too categorical; in the case of the premises of a diplomatic mission such sweeping language was justifiable, but there was a great difference between diplomatic premises and consular premises. He agreed with the purpose of the first amendment proposed by Mr. Erim: it was essential to provide some sanction for the enforcement of article 46, paragraph 3. He accordingly favoured the amendment proposed by Mr. Scelle, which would make the inviolability of consular premises subject to the provisions of article 64.

71. Lastly, referring to the immunity from search provided for in article 25, he suggested that an exception should be made in the case of a search ordered by a court. He did not think that a consul, on being duly notified of a search order issued by a court, should resist such an order.

72. Mr. YOKOTA said that, in his view, paragraphs 2 and 3 of article 46 provided a sufficient guarantee against any abuse of inviolability.

However, to satisfy certain members, he suggested that in the definition of consular premises in article 1 (b), the word "exclusively" should be inserted before the words "used for the purpose of a consulate".

73. That amendment would bring the definition into line with the provisions of article 46, paragraph 3, and would also render unnecessary any inelegant addition to the provisions of article 25.

74. Mr. ŽOUREK, Special Rapporteur, replying to Mr. Erim on the subject of fugitive criminals, said that under article 46, paragraph 2, the sending State was under a clear duty to deliver to the local authorities any accused or convicted person who sought refuge in the consulate.

75. With regard to Mr. Erim's suggestion that a sanction was necessary to enforce the provisions of article 46, paragraph 3, such sanction could never be permitted to extend to violation of consular premises. The question of sanctions arose also in connexion with the rules relating to the inviolability of diplomatic premises. The Commission had taken the view that the authorities of the receiving State could never enter the premises of a diplomatic mission forcibly even if those rules had been violated by the sending State or its officers; it should state the same rule in the case of consular premises. If a consular official disregarded, for example, the provisions of article 46, the receiving State's remedy was either to request his recall or, in extreme cases, to declare him unacceptable.

76. Lastly, he could not accept Mr. Matine-Daftary's suggestion that the immunity of consular premises from search should be subject to an exceptions in the case of a search ordered by the court. He drew attention in that connexion to comment 6 to article 20 of the draft on diplomatic intercourse and said that the exception suggested by Mr. Matine-Daftary would defeat the whole purpose of inviolability. It would reduce consular premises to the same level as any private dwelling, for in many States, even private houses could not, as a general rule, be entered by the authorities except under a court order.

77. Mr. ERIM said that the purpose of his first amendment was to state expressly that under the draft inviolability attached only to those premises which were used exclusively for the exercise of consular functions. Accordingly, any of the amendments proposed by Mr. Scelle, Mr. Sandström and Yokota would be acceptable to him.

78. He asked what would be the position if non-consular activities were carried on in the same room as the consular function, instead of being kept separate.

79. Sir Gerald FITZMAURICE replied that in the case mentioned by Mr. Erim, there would clearly be a violation of the provisions of the draft articles.

The meeting rose at 1.5 p.m.