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Summary record of the 1018th meeting

Topic:
Representation of States in their relations with international organizations

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article 27, without restricting their scope more than was necessary.

60. Mr. RUDA said he could accept the text proposed by the Drafting Committee, subject to the amendment proposed by Mr. Rosenne.

61. Mr. NAGENDRA SINGH said the Drafting Committee was to be congratulated on having produced a new text which satisfied all members of the Commission. He was prepared to accept that text, subject to the amendment proposed by Mr. Rosenne, which be fully endorsed.

62. The CHAIRMAN, speaking as a member of the Commission, said he agreed that it might be useful to mention other permanent missions in paragraph 1. It might be as well to specify, however, that what was meant was permanent missions to other international organizations.

63. With regard to possible abuses and the protection of the host State against them, under article 44 (A/CN.4/218/Add.1) it was the duty of members of a permanent mission to respect the laws and regulations of the host State, which meant that they must not take advantage of the privileges and immunities conferred upon them by the articles to contravene those laws and regulations. That gave the host State sufficient protection, at least in law. The Commission might bear Mr. Ramangasoavina's suggestion in mind, however, when it came to consider article 44.

64. Mr. USTOR, referring to Mr. Rosenne's amendment, said that the question arose what precisely was meant by the words "other permanent missions". Such missions might conceivably be not only permanent missions to international organizations, but also any other permanent missions of the sending State. In the interests of clarity, therefore, he suggested that the beginning of the second sentence of paragraph 1 be amended to read: "In communicating with the Government of the sending State, its diplomatic missions, its other permanent missions, its consular posts and its special missions, wherever situated . . .".

65. Mr. ROSENNE said that he could accept that amendment.

66. The CHAIRMAN, speaking as a member of the Commission, said he wondered whether the expression "permanent mission" without further qualification might not denote something other than a permanent mission to an international organization and whether it would not therefore be preferable to insert the qualification he had proposed.

67. Mr. ROSENNE said perhaps the Chairman had overlooked article 1 (d),¹³ which stated that a permanent mission was "a mission of representative and permanent character sent by a State member of an international organization to the Organization". That was obviously the meaning to be given to the expression in paragraph 1.

¹³ *Yearbook of the International Law Commission, 1968*, vol. II, Report of the Commission to the General Assembly, chapter II, section E.

68. Mr. ELIAS, supported by Mr. TSURUOKA, proposed that Mr. Rosenne's amendment be adopted, subject to the deletion of the word "other" in the expression "other permanent missions".

69. Mr. ROSENNE and Mr. USTOR said that they could accept that further amendment.

70. The CHAIRMAN suggested that, if there were no objection, the Commission adopt article 28, with the insertion in paragraph 1 of the words "its permanent missions" after the words "its diplomatic missions".

Article 28, thus amended, was adopted.

The meeting rose at 12.50 p.m.

1018th MEETING

Thursday, 10 July 1969, at 10.25 a.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Elias, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Rosenne, Mr. Ruda, Mr. Tammes, Mr. Tsuruoka, Mr. Ustor.

Relations between States and international organizations

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

[Item 1 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (continued)

ARTICLE 29 (Personal inviolability)¹

1. The CHAIRMAN, in the temporary absence of the Chairman of the Drafting Committee, invited Mr. Ustor to introduce the Drafting Committee's text for article 29.

2. Mr. USTOR said that the Drafting Committee proposed the following text:

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.

¹ For previous discussion, see 995th meeting, para. 41.

3. That text followed the lines of the corresponding provisions of the Vienna Convention on Diplomatic Relations² and the draft on special missions.³

Article 29 was adopted without comment.

ARTICLE 30 (Inviolability of residence and property)⁴

4. The CHAIRMAN invited Mr. Ustor to introduce the Drafting Committee's text for article 30.

5. Mr. USTOR said that the Drafting Committee proposed the following text:

Article 30

Inviolability of residence and property

1. The private residence of the permanent representative and of 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.

6. Mr. ROSENNE said that there was a certain linkage between paragraph 2 of article 30 and paragraph 3 of article 24; he suggested, therefore, that when the Drafting Committee considered the observation he had made regarding the property of the permanent mission in connexion with article 24,⁵ it should be free to propose a modification of article 30 if necessary.

Subject to possible modification as suggested by Mr. Rosenne, article 30 was adopted.

ARTICLE 31 (Immunity from jurisdiction)⁶

7. The CHAIRMAN invited Mr. Ustor to introduce the Drafting Committee's text for article 31.

8. Mr. USTOR said that the Drafting Committee proposed the following text:

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 the person in question holds it on behalf of the sending State for the purposes of the permanent mission;

(b) An action relating to succession in which the person in question is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

² United Nations, *Treaty Series*, vol. 500, p. 110, article 29.

³ See *Official Records of the General Assembly, Twenty-third Session, Annexes*, Agenda item 85, document A/7375, annex I, article 29.

⁴ For previous discussion, see 995th meeting, para. 44.

⁵ See 1015th meeting, para. 50.

⁶ For previous discussion, see 995th meeting, para. 48.

(c) An action relating to any professional or commercial activity exercised by the person in question in the host State outside his official functions;

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

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 sub-paragraphs (a), (b) [and] (c) [and (d)] 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.

9. The word "they" in sub-paragraph 1 (a) of the Special Rapporteur's draft (A/CN.4/218) had been replaced by the words "the person in question" for the sake of greater clarity; the latter expression had also been used in sub-paragraphs (b) and (c).

10. One member of the Drafting Committee had proposed the inclusion of paragraph 1 (d), enclosed in square brackets, which reproduced the text of article 31, paragraph 2 (d) of the draft on special missions. The Commission would have to decide whether it wished to approve that particular exception.

11. Mr. RUDA said he could not agree to the inclusion of paragraph 1 (d), since in his opinion article 31 should be based on article 31 of the Vienna Convention on Diplomatic Relations rather than on article 31 of the draft on special missions. Actions for damages could arise out of many other accidents than those caused by vehicles, and it would not be appropriate for the Commission to single out one special case.

12. Mr. ROSENNE said that the problem which paragraph 1 (d) attempted to solve was a very important one, but it would have to be approached with caution, since in some States, a civil action for damages arising out of a motor vehicle accident could be joined with a criminal or quasi-criminal charge. While reserving his own position on the matter, therefore, he proposed that the Commission approve paragraph 1 (d) on first reading, with a view to obtaining the views of Governments.

13. Mr. RAMANGASOAVINA said that the proposed sub-paragraph (d) would be a useful addition to paragraph 1. The public must be protected against loss or damage caused by traffic accidents. Admittedly, the result would be that members of permanent missions would be treated differently from members of diplomatic missions; but on the other hand, the Vienna Convention on Consular Relations⁷ and the draft on special missions both contained a similar provision. He had already drawn attention at an earlier meeting

⁷ United Nations, *Treaty Series*, vol. 596, p. 298, article 43.

to some of the disadvantages of omitting a provision of that kind.⁸

14. However, since the members of a permanent mission must be expressly protected against criminal actions, he was in favour of specifying that sub-paragraph (*d*) referred to civil actions.

15. Mr. CASTRÉN said he was not in favour of a provision which modelled the legal status of permanent missions on that of special missions and consular posts, when they ought rather to be assimilated to diplomatic missions. Sub-paragraph (*d*) should therefore be deleted.

16. In any case there was no need to specify that the sub-paragraph related to civil actions, since full immunity from criminal jurisdiction was already provided by the first sentence of paragraph 1, and the list of exceptions related to civil actions exclusively.

17. Mr. ALBÓNICO said that he had two objections to article 31 as proposed by the Drafting Committee. First, paragraph 1 provided that the permanent representative and the members of the diplomatic staff of the permanent mission should enjoy immunity from the civil and administrative jurisdiction of the host State, but it made no mention of the host State's jurisdiction over commercial and trade matters, which in many States were of equal importance.

18. Secondly, if sub-paragraph (*d*) of paragraph 1 were adopted, it would jeopardize the whole system of immunities embodied in the Vienna diplomatic and consular Conventions. He therefore proposed that sub-paragraph (*d*) be deleted.

19. Mr. NAGENDRA SINGH said that, as a matter of sheer legal logic, he agreed with Mr. Ruda that article 31 should be based on article 31 of the Vienna Convention on Diplomatic Relations.

20. On the other hand, he agreed with Mr. Raman-gasoavina that it was necessary to protect the common man of the host State against damage arising out of traffic accidents. He was inclined, therefore, to accept Mr. Rosenne's proposal that the Commission, instead of deleting paragraph 1 (*d*) at the present stage, should approve it on first reading, with a view to obtaining the views of Governments.

21. He hoped Mr. Ustor would provide some clarification regarding the precise scope of criminal and civil jurisdiction.

22. Mr. USTOR said that the basic idea of article 31 was that the head and members of a permanent mission to an international organization should, as far as possible, be placed on the same footing as the head and members of a permanent diplomatic mission. In his opinion, therefore, it would be dangerous to introduce the notion, expressed in paragraph 1 (*d*), that a member of a permanent mission to an international organization could be liable for damages arising out of an accident caused by a vehicle "used outside the official functions of the person in question". The immunity of diplomats from both criminal and civil jurisdiction,

as established in the Vienna Convention on Diplomatic Relations, was complete. It was true that there had been a trend at the beginning of the present century towards making a distinction between the official and unofficial acts of diplomats, particularly in the Italian courts, but as a result of protests by the diplomatic corps, it was now generally accepted that immunity applied to acts performed by diplomats both within and outside their official functions.

23. With regard to the question of protecting the interests of the people of the host State, he believed that adequate protection was provided by the laws on compulsory third-party insurance which were already in force in most States and which diplomats also were obliged to respect.

24. In reply to Mr. Nagendra Singh's question concerning the distinction between criminal and civil jurisdiction, he would say that that distinction was generally clear, but that certain difficulties might arise in connexion with administrative jurisdiction, which in some countries, including his own, might permit the imposition of fines for minor violations of traffic regulations.

25. Mr. ELIAS said that Mr. Albónico's suggestion regarding the inclusion of a third category of jurisdiction in paragraph 1, namely, commercial and trade jurisdiction, would only complicate the text and make it too unwieldy. He was, therefore, in favour of retaining the first part of paragraph 1 as it stood.

26. With respect to sub-paragraph (*d*), he agreed with Mr. Ustor that it was undesirable, because it introduced the idea of a distinction between the official and the unofficial functions of the permanent mission. Such a distinction was already hard enough to make in ordinary commercial law and would be even more difficult to make in diplomatic law.

27. He could not agree with Mr. Rosenne's proposal that the Commission should adopt sub-paragraph (*d*) on first reading in order to obtain the views of Governments, since it would not be right for the Commission to circulate a text about which it was not absolutely sure.

28. Mr. TSURUOKA said everyone agreed that victims of accidents should not be left helpless; there was no question about that. On the other hand, the immunity from jurisdiction should be as full as possible. The problem was to reconcile those two requirements. In his opinion, a provision such as that added in sub-paragraph (*d*) would do so, but the wording was perhaps not entirely satisfactory. The Commission should remember that the number and speed of vehicles was constantly growing, with a corresponding increase in the risk of accidents.

29. Perhaps a passage could be included in the commentary on article 44, on the obligation to respect the laws and regulations of the host State (A/CN.4/218/Add.1), to the effect that the host State might require all members of permanent missions to take out insurance against third-party risks.

30. Mr. KEARNEY said that he favoured the inclusion of paragraph 1 (*d*). It had been argued that that

⁸ See 995th meeting, paras. 60 and 61.

sub-paragraph would tend to place members of a permanent mission to an international organization in a less advantageous position than members of a permanent diplomatic mission, but he could see no substance in that approach. Recent discussions in connexion with the Vienna diplomatic and consular Conventions and the draft articles on special missions had shown that Governments were deeply concerned about the problem of road traffic accidents and that there was a growing feeling that the immunities of diplomats should be curtailed when the individual concerned was not acting in his official capacity. It would be short-sighted to evade such an obvious problem on the pretext that a corresponding clause had not been included in the Vienna Convention on Diplomatic Relations.

31. It has also been argued that it was difficult to distinguish between the official and unofficial functions of a permanent mission. Such distinctions, however, frequently arose in municipal law. For example, in connexion with the law of agency, the law of master and servant, and such like, a considerable body of precedents already existed and it should not be difficult to adapt them to the present case.

32. A number of special problems did arise in connexion with compulsory third party liability insurance, particularly in his own country and other States with a federal form of government, where the insurance requirements might vary considerably from one state to another. It must also be borne in mind that quite often the amount of compulsory insurance was not sufficient to compensate an injured party to the full extent of his injuries and that in such cases the uninsured portion of damages had to be collected by a court judgement against the individual responsible for them. That was particularly true today, when the negligence of a single individual on a crowded highway might result in injuries to several road users.

33. With regard to Mr. Tsuruoka's suggestion that the Commission should include some clause on the question of insurance—a suggestion which had also been made in the Drafting Committee by Mr. Ago—he feared that a rather complicated separate article would be needed to ensure that innocent persons were really protected in cases where the individual responsible for their injuries had not taken out the necessary insurance policy.

34. Mr. EUSTATHIADES said he agreed with Mr. Tsuruoka that some means should be found to reconcile the protection of the privileges and immunities enjoyed by the agents of a sending State with the protection of individuals. Accidents were so frequent that the matter required special regulation. It had already been provided for in the Vienna Convention on Consular Relations, in article 31 of the draft on special missions and in the special clauses in the Council of Europe's draft on State immunity. To the considerations put forward by Mr. Tsuruoka he would add the need to protect the agents of a sending State from the hostility of public opinion. The fact that the Vienna Convention on Diplomatic Relations did not contain any parallel provision was no hindrance.

35. The main difficulty was how to distinguish clearly between official functions and private activities. That was why any proposal based on that distinction aroused opposition. He himself would be in favour of keeping paragraph 1 (*d*), if only to learn the views of Governments, but most members of the Commission did not seem to agree. If that sub-paragraph were deleted, the only other possible solution would be a provision on compulsory insurance, but he was not sure that the proper place for a provision of that kind was in article 44, on the obligation of permanent missions to respect the laws and regulations of the host State. It would be better to introduce it into article 31 and to ask the Special Rapporteur to emphasize the importance of the matter in the commentary by saying that the Commission had wished to draw the attention of Governments to the need to make insurance compulsory and even to the possibility of a special agreement requiring them to do so. If a mention in the commentary was not enough, a special request to Governments to consider such an agreement should be prepared.

36. If the Commission decided to retain sub-paragraph (*d*) and if it thought that the drafting should be reviewed more closely, it might follow Mr. Rosenne's suggestion. He certainly agreed with Mr. Castrén that the present text made it quite clear that immunity from criminal jurisdiction was complete. If some members still thought the text was ambiguous, however, it might perhaps be sufficient to make the second sentence of paragraph 1 into a separate paragraph.

37. With regard to Mr. Albónico's observation, it might be stated in the commentary that civil jurisdiction was to be understood in the broad sense, as including commercial jurisdiction.

38. Mr. BARTOŠ said that the question of territorial jurisdiction over actions for damages arising out of traffic accidents had been raised at the first Vienna Conference by the Netherlands delegation⁹ and had been discussed at length on several occasions since. From what he had been able to learn, insurance for damage caused by motor vehicles was always more expensive for diplomats than for ordinary citizens and in some countries insurance companies would not insure a diplomatic agent unless he first waived his immunity from territorial jurisdiction.

39. Compulsory insurance of motor vehicles already existed in many countries, but it did not apply *ipso jure* to diplomatic vehicles, because of the immunity from jurisdiction. If the Commission wished insurance to be made effectively compulsory also for members of permanent missions to international organizations, he thought it would have to include an express provision in the draft for the future convention. A provision of that kind already existed in a similar Convention binding the countries of the Council of Europe,¹⁰ which made it mandatory to insure all vehicles in the country in which they were registered and contained a clause

⁹ See *United Nations Conference on Diplomatic Intercourse and Immunities, 1961, Official Records*, vol. I, pp. 166 and 170.

¹⁰ *European Treaty Series*, No. 29, Strasbourg, 1969.

making all disputes relating to traffic accidents subject to the territorial jurisdiction, even when diplomats were concerned.

40. In view of the present trend, he was in favour of an express rule in the text rather than a mere recommendation. The provision proposed by the Drafting Committee was not adequate; it was too difficult in practice to make a clear distinction between the use of vehicles for official functions and for private activities. The question deserved closer study and should be dealt with in a separate article.

41. For the moment, however, the Commission had only to decide the general question whether it should recognize that diplomatic agents enjoyed immunity from jurisdiction in that special field too, or whether it should not. If the Commission decided to recognize such immunity, it would have to find a more precise form of words that would leave no doubt about the scope of the immunity, and it should therefore avoid such ambiguous expressions as "official functions".

42. Perhaps Mr. Tammes would explain the precise meaning of the Netherlands proposal, which had been discussed on many occasions in the United Nations General Assembly and at international conferences.

43. Mr. IGNACIO-PINTO said that paragraph 1 (*d*) should be retained, because it was especially important to protect the citizens of the country in which diplomatic agents had to perform their functions. It was to be regretted that the Vienna Convention on Diplomatic Relations contained no such provision, but the Commission now had an opportunity to improve on what had been done in 1961.

44. With regard to the drafting, it would be better not to mention "official functions", because of the inevitable difficulties that expression would lead to in practice. Nevertheless, he agreed with some other members of the Commission that the text could be submitted to Governments as it stood in order to test their reactions, with a view to subsequently proposing a separate agreement on rules for compulsory insurance. Merely to mention that possibility in the commentary would not be enough; the Commission should submit a definite proposal to Governments that they consider drawing up a separate agreement on the subject.

45. Mr. ROSENNE said he was very concerned over the problem of traffic accidents, which was one of exceptional delicacy. It was the duty of the Commission to strike a balance between the conflicting interests involved—a point to which Mr. Tsuruoka had drawn attention. Before it could reach a decision, however, the Commission would need much more information, particularly on insurance law and practice. It was not a subject on which the Secretariat could be expected to produce a paper; members would have to conduct some private research themselves.

46. There was a strong feeling that there had been a serious gap in the Commission's 1959 draft on diplomatic intercourse and immunities and that it had not been filled in the 1961 Vienna Convention on Diplomatic Relations. At the 1961 Vienna Conference, the delegation of Israel had sponsored a draft on

"Consideration of Civil Claims" which had been adopted as resolution II of the Conference—¹¹ the resolution to which the Special Rapporteur had referred both at an earlier meeting and in paragraph 1 of his commentary on article 33, on consideration of civil claims (A/CN.4/218). The problem had become much more serious since 1961, and in most cities, the volume of traffic and the number of accidents were continually increasing.

47. He had not been at all convinced by the argument that the proposed paragraph 1 (*d*) introduced the functional concept, which was claimed to be destructive of the principle of immunity. That concept appeared in several other places in the draft.

48. A much more important point was what action governments would have to take to deal with the grave problem of traffic accidents involving diplomatic agents. Reference had been made during the discussion to the question of insurance and to the system of compulsory insurance. From his experience of handling claims for damages arising out of traffic accidents, he could say that the main difficulty was that insurance companies usually required proof of liability before paying any damages. In normal circumstances, proof of liability was provided by the judgement of a competent court; but the existence of diplomatic immunity prevented the insurance system from operating in the normal way. Compulsory insurance could not settle that problem, which was the crucial one.

49. Another serious difficulty was that of determining the proper defendant or respondent in a claim. There were several systems: in some countries, it was the motorist alone; in others it was the individual or individuals jointly or singly responsible for the tort; in yet others, action could be taken against the motorist jointly with the insurance company; lastly, in some legal systems, action could be taken against the insurance company alone.

50. The problem was further complicated by the trend, apparent in some countries, towards bringing insurance for road accidents within the scope of the State insurance system, because of the widespread character of the risks. Nevertheless, even under that system, some judicial determination of the party liable could be required. Moreover, that kind of insurance did not always cover the whole of the damage, which could be very considerable in the case of multiple accidents; and where additional coverage was made available in the form of private insurance, the problem posed by immunity would continue to arise.

51. All things considered, he still thought it was important to include a text on the lines of paragraph 1 (*d*) in order to put the issue squarely before Governments. In the light of government comments on that sub-paragraph and of the research to be made by members of the Commission, it would be possible to take a decision on second reading. He recognized, however, that members were divided on the question, and if the majority ultimately decided against retaining

¹¹ See *United Nations Conference on Diplomatic Intercourse and Immunities, 1961, Official Records, vol. II, p. 90.*

paragraph 1 (d) he would urge that the Commission follow its normal practice of including in the commentary an adequate summary of the present discussion of the text proposed by the Drafting Committee.

52. Mr. ELIAS said that while he agreed with Mr. Kearney on the problem of enforcing the system of compulsory insurance, he did not think an analogy could be drawn between sub-paragraphs (c) and (d) of paragraph 1. Sub-paragraph (c) dealt with the well-known distinction in international law between the acts performed by a diplomatic agent in the exercise of his normal functions and those performed by a diplomatic agent while engaged in trade or in a private professional activity. In sub-paragraph (d), on the other hand, it was proposed to draw a distinction between driving a vehicle in the course of official functions and driving outside those functions. It would be extremely difficult to determine, for example, whether driving by a diplomatic agent to visit a colleague should be considered as part of his official functions. For those reasons, he still believed that the best course was to drop sub-paragraph (d) altogether.

53. Mr. RAMANGASOAVINA said the Commission must find a middle course between two imperative needs: to ensure that the provisions it adopted did not indirectly permit abuse of privileges and immunities to go unpunished, and to ensure that the victims of accidents were protected. An attempt had been made in paragraph 1 (d), as in the preceding articles, to strike a balance by distinguishing between official functions and non-official activities.

54. The compulsory insurance solution would cause serious problems, for in many countries, including Switzerland, insurance companies paid claims only on the strength of a judgement by a competent court. To obtain a judgement when a diplomat was involved, either he had to be asked to waive his immunity, which he was not always willing to do, or the sending State had to be asked to withdraw his immunity, which it was not always willing to do either, or proceedings had to be instituted in the sending State, making use of the *exequatur* which was a very complicated procedure. Moreover, the competence of the court of the sending State might be contested by virtue of the rule *locus regit actum*. Public opinion was against immunity from jurisdiction because so many victims of accidents received no compensation.

55. He was therefore in favour of retaining paragraph 1 (d) provisionally to see how Governments reacted. A provision of that kind was already to be found in the draft on special missions and in the Vienna Convention on Consular Relations and its absence from the Vienna Convention on Diplomatic Relations was regrettable.

56. Mr. CASTAÑEDA (Chairman of the Drafting Committee) said he was in favour of retaining paragraph 1 (d) for the reasons given by several members of the Commission.

The meeting rose at 1.5 p.m.

1019th MEETING

Friday, 11 July 1969, at 10.15 a.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Elias, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Rosenne, Mr. Ruda, Mr. Tammes, Mr. Tsuruoka, Mr. Ustor.

Relations between States and international organizations

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

[Item 1 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (continued)

ARTICLE 31 (Immunity from jurisdiction) (continued)¹

1. The CHAIRMAN invited the Commission to continue consideration of article 31 as proposed by the Drafting Committee.

2. Mr. USTOR said that article 31 represented the codification of existing law, in that it provided for complete immunity from criminal and civil jurisdiction.

3. Article 33 (A/CN.4/218), however, added a very important safeguard, for under its provisions, States would undertake 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". Furthermore, the host State could always impose the requirement of compulsory insurance and the persons enjoying privileges and immunities would have to comply with that requirement by virtue of article 44 (A/CN.4/218/Add.1), which obliged them to respect the laws and regulations of the host State. Those two articles together afforded sufficient protection to the private interests at stake, especially as many countries had a complete social security system which was available to the victims of traffic accidents.

4. It had been asserted that insurance companies might be unwilling to pay compensation to the victim of a traffic accident in the absence of judicial recognition of liability. In those countries where insurance was not in the hands of private enterprise, State-controlled insurance institutions performed a social function and took the necessary steps to ascertain whether a claim was well-founded. The supporters of paragraph 1 (d) of article 31 pursued the commendable aim of providing a solution to the problem which might arise in countries where private insurance companies did not perform that function.

¹ See previous meeting, para. 8.