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Chairman: Mr. Edvard HAMBRO (Norway).

Tribute to the memory of Mr. V. I. Kozlov, President of the Presidium of the Supreme Soviet of the Byelorussian Soviet Socialist Republic

On the proposal of the Chairman, the members of the Committee observed a minute's silence in tribute to the memory of Mr. Kozlov.

AGENDA ITEM 98

Question of diplomatic privileges and immunities (continued) (A/6832/Rev.1, A/6837, A/C.6/381, A/C.6/L.633, A/C.6/L.634):

- (a) Measures tending to implement the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations and the privileges and immunities of the staff and of the Organization itself, as well as the obligations of States concerning the protection of diplomatic personnel and property;
- (b) Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations

1. Mr. PRANDLER (Hungary) said that the question of diplomatic privileges and immunities was not only a very complex legal problem, but also a matter

which concerned the every-day life of diplomats and international civil servants.

2. The inclusion in the agenda of sub-item (b) had been proposed by the Secretary-General (A/6832/Rev.1) as a result of the dispute between Guinea and the Ivory Coast. While the Hungarian delegation wished to avoid accusations and recriminations, it nevertheless wished to point out that the provisions of Article 105 of the Charter of the United Nations and those of the Convention on the Privileges and Immunities of the United Nations^{1/} had been grossly violated: the arrest and detention of diplomats and international civil servants could not be justified by any argument or pretext whatsoever. His delegation agreed with the Guinean representative that that question of principle was a matter of concern to the entire international community. The Secretary-General himself had acknowledged its importance and had stressed the need to reaffirm the provisions concerning privileges and immunities if an undesirable precedent was to be avoided. His delegation would therefore give its unqualified support to draft resolution A/C.6/L.633.

3. Sub-item (a) of the agenda item had been proposed by the United States of America (A/6837) after the Secretary-General had himself made a request on similar lines. That aspect of the question of privileges and immunities should be given serious consideration, particularly since the principles involved were sometimes violated by the Organization's host country, i.e., by the very country which had requested the inclusion of the item in the agenda. The item covered a large number of problems including, to mention only a few, the scope of the privileges and immunities specified in Article 105 of the Charter, the legal status of the United Nations staff and the legal status of Member States which were not recognized by the host State. However, his delegation wished to draw attention to the highly important question of the legal status of the observers for non-member States to the United Nations. It was common knowledge that the question of observers was highly controversial since, throughout the existence of the United Nations, their status had always been determined according to partisan and discriminatory criteria.

4. In fact, in a memorandum of 22 August 1962 (see A/CN.4/L.118, part I, A, para. 174), the Legal Counsel had pointed out that the General Assembly had never taken specific action to provide an express legal basis for the institution of permanent observers. If there was no legal basis for that institution, it could well be wondered whether it was not first of

^{1/} United Nations, *Treaty Series*, vol. I (1946-1947), I, No. 4, p. 16.

all the arbitrary position of the United States that had been instrumental in providing observer status for certain countries and withholding it from others. The most striking example of that anomaly was the fact that, of the so-called divided countries, those which were recognized by the United States could send observers, while those which were not recognized could not do so. That politically motivated position, upheld by the Western majority until the late 1950's, had been incorporated in the so-called "Hammar-skjöld formula", which was also reflected in the memorandum to which he had referred. In applying that formula, it had been the policy of the Organization to accept as observers only representatives of States which, although not Members of the United Nations, were members of one or more specialized agencies and were generally recognized by Members of the United Nations. That obvious contradiction was very clear to everyone.

5. If there was no specific provision in the Charter, in the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations^{2/} or in General Assembly resolution 257 (III) on permanent missions to the United Nations, then the Organization's policy had been based on arbitrariness and discrimination. His delegation believed that, for lack of specific provisions, the United Nations and the host country should interpret the Charter broadly, particularly Article 1, paragraph 4 of which provided that one of the purposes of the United Nations was to be a centre for harmonizing the actions of nations in the attainment of common ends. That goal could be achieved only if the United Nations was universal in character, and the United Nations and the host country should allow every non-member State to observe the Organization's proceedings. In his Introduction to the Annual Report on the Work of the Organization which he had submitted to the nineteenth session of the General Assembly, the Secretary-General had recognized the value of enabling countries not yet represented in New York to maintain contact with the world body and to listen to its deliberations.^{3/} The Hungarian delegation fully endorsed that position.

6. There were numerous examples of violations of diplomatic privileges and immunities and the situation had to be remedied. To that end, it would be desirable for the Secretary-General, on the basis of information received from Governments and that available in the Secretariat, to present a report on the implementation of those privileges and immunities.

7. Hungary, for its part, was observing the provisions of the 1946 Convention on the Privileges and Immunities of the United Nations, to which it had acceded in 1956, and those of the 1961 Vienna Convention on Diplomatic Relations,^{4/} which it had ratified along with the majority of the States Members of the United Nations. It was surprising, to say the least, that the United States, the country which was host to the

Organization and which had proposed agenda item 98 (a) on the question of diplomatic privileges and immunities, had not yet acceded to the 1946 Convention on the Privileges and Immunities of the United Nations and had not ratified the 1961 Vienna Convention. One of the first measures to be taken should be to invite the United States to accede to and ratify those Conventions and to ensure in practice the strict observance of the Conventions, the Headquarters Agreement and the universally recognized rules of international law regarding the privileges and immunities of missions to the United Nations and those of the Organization itself.

8. Mr. KOZLUK (Poland) observed that the privileges and immunities enjoyed by State organs participating in international relations were covered by long-standing rules of customary international law and historically established usage which not only spelled out the legal protection which diplomats should enjoy, but also reflected the dignity of the sending State.

9. His delegation had purposely referred to the general rules of international law and to international usage because the legal status of international organizations and that of diplomatic missions presented many analogies with regard to privileges and immunities, owing no doubt to the need to ensure their unobstructed functioning. However, while the privileges of diplomatic missions had been established for several centuries, usage with regard to international organizations dated back only to their relatively recent establishment. Therefore, all the questions pertaining to the facilities which international organizations enjoyed on the territory of Member States and particularly on the territory in which the Headquarters was situated should be settled by the necessary legal acts, with all the resulting consequences. In that connexion, it was essential to stress the great importance of the principle *pacta sunt servanda*.

10. The illegal arrest of the Guinean delegation in the Ivory Coast was a very serious incident. The violation of the most important privilege—the right to personal inviolability of the representatives of a State Member of the United Nations—could create a dangerous precedent for the Organization's future activities. In view of the importance of the issue and since the incident in question was far from being an isolated case, a number of questions relating to the status of the United Nations Headquarters should be considered.

11. On the basis of the principle that, in order to be able to function, every international organization must have full freedom of action within the limits of its statute and must thus enjoy the indispensable immunities, and after studying the bilateral agreements which international organizations had concluded with the States concerned and which usually settled all such questions, his delegation had concluded that there were two separate periods so far as the legal status of the United Nations on United States territory was concerned. The first period had started with the adoption of the 1946 Convention on the Privileges and Immunities of the United Nations, often called the General Convention. The second period could be regarded as having begun on 27 November 1947, the date on which the Headquarters

^{2/} *Ibid.*, vol. 11 (1947), No. 147, p. 12.

^{3/} See *Official Records of the General Assembly, Nineteenth Session, Supplement No. 1A (A/5801/Add.1)*, section XVI.

^{4/} See *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, vol. II (United Nations publication, Sales No.: 62.X.I), p. 82.

Agreement had entered into force. By that date, it had become clear that the United States would not accede to the 1946 Convention. Thus, the bilateral Headquarters Agreement, instead of constituting a complementary instrument to the General Convention, as its article IX had intended, had remained the only international document governing the legal status of the Organization on the territory of the host country.

12. Nevertheless, the way of settlement of the legal status of the United Nations in the territory of the United States, as it had been intended in 1946, had not departed from international usage as applied in analogous situations in other countries, where the United Nations had settled its legal status through bilateral agreements with the States concerned, supplementing the General Convention of 1946. Wherever the Headquarters Agreement could not be considered complementary to the General Convention, the United Nations had concluded separate, additional agreements on privileges and immunities with the State concerned. However, the refusal of the United States to accede to the General Convention meant that the legal status of the United Nations in its territory was left in a vacuum. For instance, there were no provisions concerning the legal capacity of the United Nations in the Headquarters Agreement, although both the General Convention and the Interim Arrangement on Privileges and Immunities of the United Nations concluded between the Secretary-General of the United Nations and the Swiss Federal Council in 1946^{5/} contained provisions on that subject.

13. In the Headquarters Agreement there was also a lack of sufficient provisions dealing with the important question of the privileges and immunities of United Nations officials, whereas detailed provisions on that point were included in the General Convention, in the Arrangement with Switzerland, and in the Agreements between the Food and Agriculture Organization of the United Nations and Italy,^{6/} between the International Atomic Energy Agency and Austria^{7/} and between the International Civil Aviation Organization and Canada.^{8/} Under the existing conditions, United States legislation was applicable, and it was for the United States Secretary of State to determine which United Nations officials should be accorded privileges and immunities, and of what kind.

14. Another gap in the Headquarters Agreement was the absence of any provision defining the legal status of experts in the service of the United Nations. Again, according to both the General Convention and the Arrangement between the United Nations and Switzerland, all representatives of Member States—delegates, their alternates, advisers, technical experts and secretaries—enjoyed certain well-defined privileges and immunities. Under the Headquarters Agreement, privileges and immunities were limited to permanent

representatives with the rank of ambassador or minister and such other persons as might be agreed upon by the Secretary-General of the United Nations, the Government of the United States and the Government of the State concerned. Thus, Member States could be subjected by the Government of the host country to different treatment, discriminatory in comparison with the treatment accorded to other Member States. Lastly, the General Convention and bilateral agreements regarding the headquarters of other international organizations, unlike the Headquarters Agreement, made no difference in respect of representatives of States that were and were not recognized by the host State.

15. All those examples, which he could have multiplied endlessly, showed clearly the complexity of the problem and the urgent necessity of reviewing the whole situation. His delegation believed that the question of the responsibilities of the United States as host country to the United Nations should be resolved in the near future, and it would support any resolution aimed at the achievement of that objective.

Mr. Mwendwa (Kenya), Vice-Chairman, took the Chair.

16. Mr. SAHOVIC (Yugoslavia) said that his delegation welcomed the action taken by the Secretary-General to have the question of privileges and immunities included in the agenda of the General Assembly. It was an indication of the importance which the Secretary-General attached to the performance by States of the obligations incumbent on them in that respect. His action, which had been motivated by the deplorable incident in which persons enjoying diplomatic privileges and immunities had been detained by the Ivory Coast authorities, had given the General Assembly an occasion to consider the current trend towards more and more violations of the rules relating to diplomatic privileges and immunities. Yet those rules were codified in the 1961 Vienna Convention and, where the United Nations was concerned, in the Charter and the 1946 Convention. Respect for the privileges and immunities referred to in Article 105 of the Charter was a prerequisite for the application of all the provisions of the Charter. The rules which derived from the obligations incumbent on States with respect to privileges and immunities occupied a special place in the legal structure on which friendly relations and co-operation among States were based, and respect for them was particularly relevant to the application of the principle of sovereign equality of States.

17. Yugoslavia had a wealth of experience in connexion with the application of privileges and immunities, and it favoured a reaffirmation of the obligations involved. It agreed with the proposal that States which had not yet done so should be requested to accede to or ratify the relevant conventions as soon as possible. It hoped that the Committee would unanimously adopt a text which would make a new and genuine contribution to the strengthening of international law and of the legal order.

18. Mr. ALVAREZ TABIO (Cuba) observed that the principle underlying the provisions of Article 105, paragraph 2, of the Charter was a corollary of the

^{5/} United Nations, *Treaty Series*, vol. 1 (1946-1947), II, No. 8, p. 164.

^{6/} United Nations, *Legislative Series, Legislative Texts and Treaty Provisions concerning the legal status, privileges and immunities of international organizations*, vol. II (United Nations publication, Sales No.: 61.V.3), No. 17, p. 187.

^{7/} United Nations, *Treaty Series*, vol. 339 (1959), No. 4849, p. 152.

^{8/} *Ibid.*, vol. 96 (1951), No. 1335, p. 156.

principle of sovereign equality of States enunciated in Article 2 of the Charter, and that States Members of the United Nations therefore had equal rights to participate in the work of the Organization, even if they had no diplomatic relations with the country in which its Headquarters were situated. It was for precisely that reason that the 1946 Convention on the Privileges and Immunities of the United Nations guaranteed the representatives of Member States exemption from all restrictions on entering that country. No impediments should therefore be imposed to their transit, either on entry or on departure.

19. However precise the provisions in question might be, recent events showed that the principles involved must be reaffirmed, since, as stated in the explanatory memorandum attached to the Secretary-General's note requesting the inclusion of the item in the agenda of the Assembly (A/6832/Rev.1), a failure to do so could set an undesirable precedent. Apart from the incident referred to in that memorandum, reference should be made to the difficulties the United States authorities had caused the Cuban delegation on 19 September 1967, when it had been in transit through Nassau on the way to the twenty-second session of the General Assembly, an account of which was given in the letter dated 22 September 1967 from the Permanent Representative of Cuba to the United Nations, addressed to the Secretary-General (A/6806). The assertion by the United States Customs and immigration agents that they did not recognize the validity of Cuban diplomatic passports, and the improper demands they had made, were all part of the discriminatory policy which the United States Government continued to apply towards Cuba and which extended to international relations generally. In his view, any restriction of the immunities of the staff of a delegation to the United Nations jeopardized the work of the Organization and constituted intervention in a sphere which was within the authority of the United Nations. The freedom of movement of every representative of a Member State was a vital prerogative which was bound up with the attainment of the purposes of the United Nations. The Organization could not allow the nationality of representatives to affect in any way the privileges and immunities to which they were entitled.

20. The General Assembly must strongly reaffirm the principles and norms relating to privileges and immunities, and especially those set forth in sections 11, 12 and 13 of the Headquarters Agreement. Emphasis must also be placed on the necessity of providing proper protection for members of official delegations to the Organization. A bazooka had been fired at the United Nations building during the nineteenth session of the General Assembly, and a terrorist assault had been committed against a member of the Cuban delegation; no attempt had been made to find and punish the persons responsible for those criminal acts.

21. Mr. GILLENBERG (Norway) stressed that the item under discussion should be considered only as a matter of general principle within a legal and formal framework, in accordance with the suggestion made by the Secretary-General (A/6832/Rev.1). It did not seem appropriate, during the current debate, to try to define the situation in respect of privileges

and immunities connected with international organizations or to consider the general régime of diplomatic privileges and immunities. As far as the latter was concerned, the rules had perhaps been more fully respected before they had been codified, and any violation was due more to a passing lack of will to respect them than to ignorance of the rules, including those which applied to international organizations and persons connected with them; for, although precise rules on the latter point did not exist in customary law, fundamental principles which would offer sufficient protection in all important cases did exist in traditional law.

22. In any event, the reasons why the rules concerning privileges and immunities were as they were should be recalled. Those rules were intended to assure and to secure the functioning of the community of nations. They were as they were in order that people through their Governments might freely communicate with each other, negotiate with each other, protect within legal limits the interests of the States in the territories of each other, inform each other of the views of their Governments, and promote friendly relations with each other. It was those noble purposes which determined the protection to be given, in the interest of all—even, as stated in the Vienna Convention on Diplomatic Relations, in case of armed conflict—to the tools employed by Governments and international organizations, and particularly to the missions and representatives of States to international organizations and to their headquarters.

23. Mr. YASSEEN (Iraq) said it was important that the question of privileges and immunities should be discussed in general terms, despite the incident which had given rise to it. The fact that the Ivory Coast and Guinean delegations had accepted the appeal made to them by the Mauritanian delegation showed that the parties involved were anxious to maintain good relations among the peoples of Africa.

24. Both in traditional diplomacy and in connexion with international organizations, immunities were in principle accorded for the purpose of ensuring the proper functioning of international relations in the interest of the international community. He pointed out in that connexion that the functional theory was predominant in all the codification work done by the United Nations on the subject. The principal subject for whose benefit immunities were accorded was not a given State, but the international community as a whole in the case of traditional diplomacy and the international organization in the case of the multilateral diplomacy peculiar to the United Nations era. That being so, while it was true that the obligations with respect to immunities in traditional diplomacy might be either extended or restricted on a reciprocal basis, they could not be subjected to reprisals by one State against another, since the basis for reprisals was the identity of the State against which they were directed, whereas immunities involved the international community as a whole. In the case of the privileges and immunities of the United Nations, the notion was even clearer, because the principal subject was the Organization itself. In that case, the representative of a Member State, through a kind of functional duality, exercised his functions in the interest of the international community, and

any reprisals were an assault on the proper functioning of the Organization.

25. On the question of the force of the obligations with respect to the privileges and immunities of the United Nations, he pointed out that those obligations were set forth in the Charter and therefore prevailed over other obligations, in accordance with Article 103. Article 105 of the Charter, if interpreted in good faith, fully sufficed to guarantee the free exercise of functions in connexion with the Organization. Paragraph 2 of that Article, which included the words "such privileges...as are necessary", provided an objective criterion—namely, necessity.

26. The problem which the Committee was considering was one of respect for rules that were well established. The General Assembly would do well to urge States to comply with their obligations, and particularly those imposed on them by the Charter.

27. Mr. EL ARABY (United Arab Republic) said that his delegation was grateful to the Secretary-General for putting the present item before the General Assembly, because it regarded the privileges and immunities of representatives of States as prerequisites for the stability and progress of international co-operation. Those privileges and immunities, to which States attached the greatest importance, were an attribute to their sovereignty that had long been established in customary international law and, more recently, by such international agreements as the Charter, the 1946 Convention on the Privileges and Immunities of the United Nations, and the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963.^{2/} However, one could not overlook certain incidents which had had harmful repercussions. At the present stage, efforts should be directed mainly to ensuring observance by States of their obligations with respect to diplomatic privileges and immunities, for it was the whole international community which was harmed when such privileges and immunities were infringed. With that in view, it would be desirable to reaffirm the importance which all States attached to the privileges and immunities extended to their representatives as provided for in the relevant international agreements and to appeal to States which were not parties to the 1946 Convention and the 1961 Vienna Convention to accede to those Conventions and to ratify them.

28. Mr. STANKEVICH (Byelorussian Soviet Socialist Republic) said that like many other delegations his delegation considered the privileges and immunities of officials of the United Nations and of representatives accredited to it a basic condition for its proper functioning. What was more, those privileges and immunities, which no one questioned, were the subject of international conventions. Nevertheless, they were being regularly violated by certain States. On the basis of the principle *pacta sunt servanda* and of the principle of international security, representatives of all States must enjoy the privileges and immunities necessary for the exercise of their functions. Experience showed that the United

States, for example, scarcely bothered to meet its obligations in the matter. The Byelorussian delegation was deeply concerned by the threat to peace resulting from such laxity. Another example of such a threat was furnished by the incident which had given rise to the present debate, namely the illegal arrest by Ivory Coast authorities of Guinean representatives to the General Assembly, who under Article 105 of the Charter were immune from arrest. The Byelorussian delegation agreed with the delegation of Guinea in asserting that such a violation was absolutely inadmissible and in emphasizing the necessity of opposing any attempt to justify such illegal acts. For that reason, it supported draft resolution A/C.6/L.633.

29. He congratulated the Secretary-General on having taken the initiative of requesting the inclusion of the item in the General Assembly's agenda. The matter had long been a practical problem, for ever since 1960 and 1961 representatives of the socialist States had been subjected on United States territory to arbitrary discrimination, which had caused them, at the fifteenth and sixteenth sessions of the General Assembly, to raise the question of transferring the Headquarters of the United Nations to another country. At the time, not only the international community but also the United States Press itself had recognized the existence of such flagrant violations of the privileges and immunities of certain Member States and the necessity of considering whether the Organization's Headquarters should not be transferred. It would be a mistake to think that the problem no longer existed since only recently provocateurs had attacked the missions of Member States, the Syrian Mission in 1966 and the Cuban Mission during the very session of the General Assembly now in progress.

30. Accordingly, the Byelorussian delegation was prepared to support any proposal to guarantee the immunity from arrest and detention of representatives of Member States proceeding to or returning from United Nations meetings and to invite States to observe the obligations they had undertaken in that respect; it was also ready to support any measure to put an end to arbitrary action in relations between States.

Mr. Hambro (Norway) resumed the Chair.

31. Mr. MAYAKI (Niger) noted with satisfaction that most of the previous speakers had tried to deal with the question from the legal point of view.

32. His delegation attached equal importance to the specific problem which had precipitated the discussion, namely the dispute between the Ivory Coast and Guinea, and to the general problem it had raised, namely that of the privileges and immunities of diplomats and international officials. It believed that it was only in the light of the rules governing the general problem that the specific question could be usefully examined; otherwise, the debate might be limited to the expression of negative considerations since one of the two parties concerned had not acceded to the 1946 Convention, which was being cited, inasmuch as section 35 of that Convention could not of itself undo its contractual nature. Since it could be concluded that the country in question had no obligations under that instrument,

^{2/} See United Nations Conference on Consular Relations, Official Records, vol. II (United Nations publication, Sales No.: 64.X.I), p. 175.

it obviously followed that it could hardly invoke it to impose obligations on a third State which was a party to the Convention. What was more, the Convention provided for a settlement procedure which did not automatically involve the General Assembly, as could be seen from its section 30.

33. Some representatives had referred to Article 105 of the Charter, but that Article, which confined itself to laying down a principle and did not furnish a precise definition of the immunities of representatives of Member States, made mention of possible "recommendations" of the General Assembly and of "conventions" which it might propose to Member States. One was therefore compelled to return to the Convention on the Privileges and Immunities of the United Nations, which, it could be argued, was not applicable to the present case.

34. From a more general point of view, it was necessary that the United Nations should be able to function as efficiently as possible in pursuing its objectives, which were peace, international understanding and the economic and social progress of mankind. Observance of the privileges and immunities of representatives of States was, of course, like the observance of human rights, a prerequisite for its proper functioning. Those privileges and immunities and those rights should be reasserted especially when they were being violated with increasing frequency.

35. The dispute responsible for the present debate had been one between two African States, States

which were members of the Organization of African Unity and which were geographically and historically close to one another. Inasmuch as the dispute was now settled, it would be paradoxical, to say the least, if the United Nations were to help to revive it, especially as Africa had recently shown that it was united. While there was no denying the bitterness of the dispute, it had to be acknowledged that the two parties concerned had realized that the literal application of instruments must finally yield to respect for the spirit of African co-operation. In any case, the delegation of Niger fully supported the action being taken to reaffirm diplomatic privileges and immunities and, more generally, scrupulous observance of the relevant conventions.

36. As a co-sponsor with the delegations of Dahomey, Madagascar and Rwanda of draft resolution A/C.6/L.634, it expressed the hope that it would be adopted unanimously, since the interests of the international community would be served and the United Nations and its specialized agencies strengthened if all Member States decided to accede to, and observe, the conventions guaranteeing diplomatic privileges and immunities.

37. Mr. GON (Central African Republic) announced that with the consent of the sponsors of draft resolution A/C.6/L.634, his delegation had become a co-sponsor.

The meeting rose at 12.45 p.m.