

**conference**

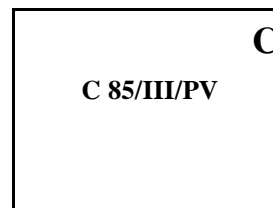
FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

**conférence**

ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE

**conferencia**

ORGANIZACION DE LAS NACIONES UNIDAS PARA LA AGRICULTURA Y LA ALIMENTACION



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Twenty-third Session  
COMMISSION III

Vingt-troisième session  
COMMISSION III

23º período de sesiones  
COMMISSION III

**Rome, 13-26 November 1985**

**VERBATIM RECORDS OF MEETINGS OF COMMISSION III  
OF THE CONFERENCE  
PROCÈS-VERBAUX DES SÉANCES DE LA COMMISSION III  
DE LA CONFERENCE  
ACTAS TAQUIGRAFICAS DE LAS SESIONES DE LA COMISION III  
DE LA CONFERENCIA**



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## conference

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

## conférence

ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE

## conferencia

ORGANIZACION DE LAS NACIONES UNIDAS PARA LA AGRICULTURA Y LA ALIMENTACION

C 85/III/PV/1

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Twenty-third Session  
COMMISSION III

Vingt-troisième session  
COMMISSION III

23° período de sesiones  
COMMISSION III

FIRST MEETING  
PREMIERE SEANCE  
PRIMERA SESION

(20 November 1985)

The First Meeting was opened at 14.45 hours

Gamal Mohamed Ahmed, Chairman of Commission III, presiding

La première séance est ouverte à 14 h 45

sous la présidence de Gamal Mohamed Ahmed, Président de la Commission III

Se abre la primera sesión a las 14.45 horas

bajo la presidencia de G.M. Ahmed, Presidente de la Comisión III

PART III - CONSTITUTIONAL AND ADMINISTRATIVE MATTERS  
TROISIEME PARTIE - QUESTIONS CONSTITUTIONNELLES ET ADMINISTRATIVES  
PARTE III - ASUNTOS CONSTITUCIONALES Y ADMINISTRATIVOS

- A. Constitutional and Legal Matters
- A. Questions constitutionnelles et juridiques
- A. Asuntos constitucionales y jurídicos
  
- 20. Other Constitutional and Legal Matters
- 20. Autres questions constitutionnelles et juridiques
- 20. Otras cuestiones constitucionales y jurídicas
  
- 20.3 Relations with the Host Government
- 20.3 Relations avec le Gouvernement hôte
- 20.3 Relaciones con el Gobierno del país huésped.
  - Immunities of the Organization
  - Immunités de l'Organisation
  - Inmidades de la Organización

CHAIRMAN (original language Arabic): I would like to thank you on behalf of myself and of the two Vice-Chairmen. Our Commission will be dealing with the legal and constitutional questions facing the Organization which, of course, are issues that have an impact on the task to be carried out by the FAO. As you know it has been proposed after consultations that we should elect the following countries - Gabon, Ethiopia, Jordan, People's Democratic Republic of Yemen, Malaysia, Indonesia, El Salvador, Costa Rica, the United States, Federal Republic of Germany, Italy, Switzerland and Poland to the Drafting Committee. It was also proposed that the representative of Malaysia would be Chairman of the Drafting Committee for Committee III. I take it that you all concur. We shall tell you at a later date when the Drafting Committee will be meeting. Allow me to inform you of the agenda of Commission III adopted by the Plenary included in Document C 85/INF/18 and that item 23 will not be examined by our Commission. We will be studying C 85/LIM/15 and C 85/LIM/28. I also hope that you have received C 85/LIM/29 and C 85/LIM/25. As regards our Commission's timetable we would suggest some alterations which we can discuss later on. However, I will first ask Mr Roche to introduce item 20.3 which deals with "Relations with Host Government."

LEGAL COUNSEL: There are two documents for this sub-item; C 85/LIM/15 which is an extract from the report of the Eighty-seventh session of the Council; and C 85/LIM/10 which consists of a detailed Note by the Director-General.

It would take too much of the Conference's time if I were to recount in detail the whole history of the question of FAO's immunity from legal process in Italy. The background to the problem is, however, summarized in paragraphs 1 to 9 of the Director-General's Note, while the position of the governing bodies - including the Conference at its last Session - as well as the position of the Host Government, are summarized in paragraphs 9 to 15 of the same document.

In a nutshell, in 1978, the landlords of Building F brought an action against FAO before the Italian courts claiming arrears of rent. FAO invoked its, I quote, "immunity from every form of legal process" unquote, laid down in Section 16 of the Headquarters Agreement. Nevertheless, in 1982, the Italian Corte di Cassazione gave, in general terms, an extremely restrictive interpretation of FAO's immunity and denied FAO's immunity in the specific action brought by the landlords. The Corte di Cassazione is the highest court in Italy. As a consequence, FAO is exposed to litigation in respect of almost any transaction it may conclude in Italy. And in fact, several actions were brought against FAO from 1982 onwards. Therefore the problem is by no means academic.

The Conference and Council have recognized that this untoward situation not only undermines the Organization's legal status in Italy, but is also prejudicial to the smooth administration of the Organization and the independent exercise of its constitutional functions.

Therefore, since 1982, the Council and the Conference have expressed their deep concern and have requested the Host Government to take measures to safeguard FAO's immunity in the future. These measures would have to be of a legislative nature if they were to nullify the effect of the Corte di Cassazione's judgement which the Italian authorities consider as binding on them. This problem has been discussed with the Host Government, even at the highest levels. As explained in paragraph 13 of the Director-General's Note, the Host Government has sought to attenuate the consequences of the Corte di Cassazione's judgement.

Nevertheless, the Organization's position at present is, for all intents and purposes, the same as the one in which it found itself three years ago when the Corte di Cassazione rendered its judgement. That is to say, the Host Government has not so far taken measures that will safeguard FAO's immunity in the future. Thus, FAO is still exposed to the jurisdiction of the Italian courts, notwithstanding the clear and unambiguous wording of Section 16 of the Headquarters Agreement. That, briefly, is the problem and the present legal situation.

Naturally, means of finding a way out of this impasse have been explored over the past three years. Ultimately, however, the Council, at its Eighty-sixth Session in November 1984, took up a suggestion that had first been made at the November 1983 session of the Conference. That is to say, the Organization should seek an Advisory Opinion from the International Court of Justice in The Hague on the interpretation of the Headquarters Agreement. The Council requested the Committee on Constitutional and Legal Matters to formulate the questions that might be submitted to the Court, if, in the meantime, no appropriate legal action had been adopted by the Host Government and the Conference decided to follow this course of action. The CCLM carried out this task, and at its Eighty-seventh Session, the Council forwarded the questions to the Conference for consideration. They are to be found on page 2 of the English version of document C 85/LIM/15 and also in paragraph 26 of document C 85/LIM/10.

Now I feel I must explain, in rather more detail, the principal aspect of the immunity question which requires action by the Conference.

The issue before the Conference is whether or not to seek an Advisory Opinion from the International Court of Justice. In this connection I wish to draw your attention to document C 85/LIM/10. After a review of developments over the past three years and all other solutions that might be envisaged, the Director-General felt that there were a number of arguments in favour of the Conference seeking an Advisory Opinion from the Court. In this way, the parties to the Headquarters Agreement could obtain authoritative guidance on their reciprocal rights and obligations concerning immunity from legal process.

There cannot be I believe the slightest doubt that the most appropriate authority to provide guidance on the parties' legal position is the International Court of Justice in The Hague, which is in fact the highest international judicial authority.

I have laid some emphasis on the word "guidance" because, as most delegations are no doubt aware, Advisory Opinions are not binding. But, of course, independent and authoritative guidance on the parties' legal position cannot fail to enable them to review their respective positions and open the way to a satisfactory solution.

In so far as some delegations have expressed the view in the Council that recourse to the Court should only be a last resort, I wish to mention that the Director-General has given consideration to a specific alternative solution - that is a solution other than legislative action taken by the Host Government - which has been mentioned by the Council and by the CCLM. This alternative is arbitration under Section 35 of the Headquarters Agreement. However this solution does not appear to commend itself for the various reasons set forth in paragraph 23 of document C 85/LIM/10.

Should the Conference consider that recourse to the International Court of Justice is still premature, the only remaining solution would be in the meantime, for FAO to explore with the Italian authorities, ways in which FAO's immunity could be safeguarded.

There are of course innumerable aspects to the immunity problem and it would be impossible for me to refer to them all in this introduction. However, most of these aspects, including those relating to the procedure for requesting Advisory Opinions and the authority of the Conference to do so, are covered in document C 85/LIM/10. In any event, I shall be pleased to provide any further information that delegates may request.

Therefore, just to conclude, may I say that in the absence so far of any legislative action to safeguard the Organization's immunity from legal process in the future, recourse to the International Court of Justice seems to be a practical course of action which merits consideration by the Conference.

E. PASCARELLI (Italy): May I be permitted a foreword. I am a newcomer in the Organization, and as Representative of Italy I have been serving for the last four and a half months after a long period abroad. If I am not yet very familiar with the regulations, perhaps you will forgive me if at times I violate inadvertently one of them.

When I assumed this function I found an atmosphere between FAO and Italy which was very encouraging and serene. As a matter of fact my first duty was to be Vice-Chairman of the National Committee on the 40th Anniversary Celebration, and at the same time I participated in some meeting concerning other gestures of goodwill by my Government toward FAO for the extension of these headquarters and in various manifestations - and as a matter of fact I am leaving tonight for another one. You might believe that this has nothing to do with the theme, but I wanted to convey to you my impression of the general and global atmosphere with the FAO, which we have been hosting for forty years formally, but actually for eighty years because it was initiated by David Lubin in 1905, if I am not wrong.

In this frame of excellent relations, between host and guest, I was surprised at the reading of document C 85/LIM/10 that Mr Roche just summarized in his brief opening of the subject. It caused me surprise and alternatively sorrow, and what is more important, it frankly displeased my Government. I want to add immediately that I do not feel to be on the defendant's bench today since there are in the documents some rare acknowledgements of what my Government has tried to do in the matter, but again I want to stress that from the reading of the document as a whole, one is led to believe that there is a great tension between the host and the guest. I do not think this is true at all, and I hope that the distinguished colleagues who reside in Rome, or who have come to Rome for the Conference, feel likewise. As a matter of fact, no controversy exists between FAO and my Government; the document makes it clear, so I do not feel more than the Representative of Italy, called upon to cooperate in the evaluation of a planned recourse to the Advisory Opinion of the International Court of Justice on a legal matter, and on the interpretation of a clause of the Headquarters Agreement concerning immunity in a country where there is a very rigid separation of powers between the judiciary, the executive and the legislative.

So I feel that only to justify its proposed step, the FAO Secretariat has issued a lengthy document which in our view is full of academic points, sometimes inaccurate, sometimes tendentious, with dramatic conclusions - we are on the brink of war! - and with serious omissions which we regret; so we would have been happier if it had never been written. However, since it is on the record we feel entitled to request to put also the Italian remarks on the record rather than dwell on the details tonight. Actually we believe that a debate would benefit none of the parties; it would not help in preserving the cordial relations and the constructive atmosphere of cooperation that the Secretariat sometimes does not detect or, at least, does not operate to strengthen.

Now what is the course of action that Mr Roche was finally proposing? The recourse to the Advisory Opinion of the International Court of Justice that apparently the Secretariat feels will be given overnight. We believe this is the wrong course of action and we are here, of course, to object to it. We have to give our opinion on what is the real and practical and constructive course of action. It is not the best course; not even a possible course. FAO contests that the Court of Cassazione's judgement was illegitimate in their view because of a different interpretation of the Organization's immunity under the Headquarters Agreement. This is the dispute. So the dispute is on the interpretation of a clause in the Headquarters Agreement by the highest Italian Court on one side, and the Organization and the Legal Office of the Organization on the other

side, with the backing of a Council motion. Now I think that the honourable colleagues, delegates of member countries, should know that the International Court of Justice, by Statute Article 34.1, if I am not wrong, cannot consider any case involving a party which is not a State. So this is a very firm point that the Conference should recall; it is prohibited to judge differences between non-States. Advisory Opinion is possible of course - although we do not believe it will take a day or two but some years - on a legal matter; but on a legal matter purporting a possible dispute where FAO would be the plaintiff or a party at least. It is clear in this proposed step before the International Court of Justice that you seek an opinion on a case that can become a dispute between FAO and Italy, and where FAO could never seek the help of the International Court because it is against the Statute of the International Court and it is against the Headquarters Agreement. I want, gentlemen, to consider this precise point. The International Court of Justice has no say in a dispute between an Organization and a State, and an Advisory Opinion on a case that can become a dispute is a way to dodge the Statute of the International Court of Justice. So it is the considered opinion of the Italian Government that the International Court of Justice would refuse to give an Opinion, and if given it will take some years, and we would not be asked to produce any documents, nor would FAO.

Now, what would be happening in between? In the case of refusal - that is a waste of time; in the case of a lengthy wait for an answer - loss of time; and the Advisory response, as Mr Roche was saying, would not be binding before the Italian Courts. The problem rather than being solved would be aggravated after spoiling goodwill, because you have to consider that we did not like this brilliant idea of going to the Court before exhausting the ways provided for by Article XVII, Section 35 of the Headquarters Agreement very much.

There is a second possibility; the Court would give a very doubtful answer - if ever an answer is given - which would leave the case as it is for up to five or six years, for three or four Conferences, or could tell you that the opinion of FAO is wrong which would encourage all Italian parties to go before the Court. Is that what we are aiming at? This is not what my Government wants; this is not what my Government has been doing in the past, and not what we are going to do in the future.

Now I mentioned a few moments ago the remarks that we would wish to make regarding the document, and again I ask the Chairman to give us permission to put them on the record. I do not want to read the remarks because I think that would be a loss of time, but one point is clear. I heard Mr Roche say that several cases arose after the judgement of the Court Decision. Gentlemen, this is not true. There were two cases only, both derived from one accident, where one settlement was made, whereas the second did not pursue the legal action. There is today - 20th November 1985 - no - I repeat - no single case pending before the Italian courts and none is likely to go before the Italian courts.

Now the second point of the arbitration clause - and may I again mention one of the remarks is not correct - that after the judgement of the Court of Cassation any sentence of the arbitration court would not be valid.

The Secretariat seems to ignore what the Italian representative said at the Eighty-sixth Session of the Council, namely, that Italy has become a party to the New York Convention of 6th October 1958 and that Parliament has approved, and the Corte di Cassazione has repeatedly maintained, that the arbitration clauses do have the power to derogate from the ordinary jurisdiction of the Italian courts.

I would like the Secretariat of the Organization to be a little better informed on our legislation. After 35 years, I think we can at least ask that.

As for execution, another inaccuracy has been brought to the attention of my colleagues and I think it is my duty to rectify that. The Headquarters Agreement protects FAO and its immunity has never been challenged by anyone in Italy. Even INPDAL, after the court judgement condemning FAO to pay, refrained from asking for execution. On this point I will tell you something new later.

Let us see what the only legal basis is for a sensible course of action that would please my Government, that has been helping FAO and is willing to continue helping it. The only possible course is dictated by our Headquarters Agreement.

There is no dispute between the Italian Government and FAO. As we understand, government, and as you know, government in Italy means executive power. In English, government means everything including Parliament and the judiciary. In Italy the judicial courts - potere giudiziario as we call them - are a different body. We consider them absolutely sovereign. The executive has no power over them. Only the legislative power can dictate because the law can modify the attitude of the Corte di Cassazione.

I want nobody to forget that we also have a Constitution which is above Parliament, and there is an article in the Constitution that the Secretariat also seems to ignore - Article 24, which establishes that all Italian citizens are guaranteed the full jurisdiction of the tutelage, that is the assistance. So to deny that assistance to an Italian, be it a citizen or a company, would mean to infringe the Constitution. Just for the record, I want to remind all delegates of this.

What is the suggestion of the Italian delegation? Article XVII, Section 35, is before me in the English text, and I will tell you that the only legal suit we are handling which made FAO possibly a little apprehensive of future happiness is the INPDAI case regarding the former increase of rent on a building that is not in this compound. As you may know, we are giving FAO financial assistance for the construction and extension of the premises here so that that building will no longer be needed by the FAO office. We will have one Government state property given to the Organization for one dollar a year, maybe updated to the present rate, and the new building will not be the cause of any payment of rents or possible legal suits.

Since the case concerns the interpretation of an article on immunity by the Italian Corte di Cassazione on the one side and FAO on the other side, I think we fall within the realm of this paper. Article XVII, Section 35, states that in a dispute between FAO and the Government - and I repeat Government in English means more than the executive - concerning the interpretation or application of this Agreement or any supplementary agreement, or any question affecting the Headquarters seat or the relationship between FAO and the Government which is not settled by negotiation or other agreed mode of settlement - I repeat which is not settled by negotiation or other agreed mode of settlement - shall be referred for final decision to a Tribunal of three arbitrators, one to be chosen by the Director-General, one to be chosen by the Minister of Foreign Affairs of the Italian Republic, and the third, who shall be Chairman of the Tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third, such arbitrator shall be chosen by the President of the International Court of Justice. And, of course, as you may have heard, this is the only mention of the International Court of Justice in this document which is the basis of the existence and of the welcome presence of FAO in Italy. So with the present state of things that would be time consuming and not binding and doubtful as to the effects, but also premature. Because I, personally, from what I have read, - because I took up my post only four months ago - do not find there has been an exhaustive effort for real consultations on the specific ways to prevent any future suits. I want to repeat that there have been no other suits since the one mentioned by Mr Roche. So we can sit down tomorrow if you want to, and I have already proposed that to FAO since the document came out, and together seek the way - because we are on your side; we are not on the other side. That means we cannot overcome the judgement of the Italian Court once it has been given but we can prevent the Italian Court from having anything to do with FAO since we believe that FAO has immunity. So we agree on that. The Corte di Cassazione considers that in a specific case FAO was not immune so opportune advice was given to FAO to prevent such cases in the future.

What in summary is the Italian Government's position? First of all we respect the immunity of the Organization in matters relating to the sovereign functions. So I think the document could have mentioned that never in 35 years have we interfered with the life of this Organization, never have we impaired the activities of this Organization. It has a side effect in that we spend hundreds of millions of dollars to promote the activities of this Organization and so we can actually say in all conscience that the immunity of FAO has been sacredly respected by the Italian authorities.

When FAO undertakes a contract that is another matter. Here the case arises which has been complained about. How does one go about that? I will give you details of the case and I will not ignore the time.

In matters of property law, what we call in Latin acta iure gestio, such acts as contractual arrangements entered into by FAO with Italian individuals or companies, the Corte di Cassazione has declared that immunity from legal process cannot be recognized on the basis of Section 16 of the

Headquarters Agreement. However, such immunity would be recognized on the basis of proper arbitration contracts stipulated in detail, such clauses would have to provide for formal arbitration awards in accordance with the New York Convention, which I mentioned before, of 6th October 1958 on the recognition and enforcement of foreign arbitration awards, of which Italy is a party.

The third point is if a law suit against FAO were carried out to its conclusion, i.e. judgement was given by a competent court, because, for instance, no correct arbitration clause had been included in the contract, no execution of the judgement would ever take place because FAO's immunity from measures of execution under Section 17 of the Headquarters Agreement is undisputed. So I do not want to follow you, Mr Roche, when you say you are facing that. You will never face such a danger, not only because Article XVII has never been disputed - may I recall that after winning for the second time the case mentioned by Mr Roche - the INPDAI - although the judge pronounced his judgement against FAO, they never even tried to initiate execution. So this is a case that I knew very well. Winning the case did not mean execution against the properties of FAO.

If this is litigation, as it is actually, the members of the Conference will agree with me that FAO's position in Italy is not so precarious or dangerous as portrayed in the document. We are not on the brink of the collapse of poor FAO, because you have lived with us for two happy weeks and you have seen that not one member of the law enforcement forces of Italy has approached the premises. You have had no legal case brought here and I do not think you have been harrassed by anybody. So FAO has never been harrassed by any Italian authorities because we respect the immunity.

Understandably, it is a nuisance for the Secretariat of the Organization to have to worry about possible losses before the Italian court, but may I remind you in this connection that the risk of such losses would be diminished if the Secretariat made, as I proposed, an increased effort to learn about the legal system of the host country, the country in which they have been for 35 years, and exerted greater care in trying to respect its rules.

I would like to note in passing, as I did before, that cases of execution never occur.

Now the Italian Government is willing to cooperate with the Secretariat by assisting it in all possible ways in order that it might obtain a better understanding of the Italian legal system and, as all lawyers know, not by any bad faith but by using ways to circumvent some of the laws that might impair or risk the immunity of FAO. So we can find legal ways to circumvent or other legal avenues, if I might express this concept in these legally correct words. So let us join together in looking for new legislation. I heard today that no new legislation has been issued, and I think that the FAO Secretariat should know, as other Italian newspaper readers know, that we have under discussion right now a law to protect foreign states of the Organization from execution, and although FAO is already protected, what would we do? We would find a way to reimburse the plaintiff who cannot exercise execution of the culprits with Government money.

To close these remarks, I am ready to come back to this point and suggest that we fully respect Section 35 of Article XVII by setting aside this idea of the International Court of Justice, which would bring no useful practical results in good time, and recommend to the Conference that as the Italian Government is prepared to sit down tomorrow and look for a way of helping FAO in cases where the courts could risk violating the immunity, which it is not our intention ever to violate, these discussions would certainly be constructive because we can even interpret this Article XVI concerning immunity. We might even be invited by FAO to suggest legislative action on the interpretation, because in the interpretation of that Article there are two different texts, one in English and one in French and they are not actually the same. We could spell out what it means and we could bring the case before Parliament. As I have said, the law is higher than the Corte di Cassazione.

Being the representative of the host country, I have had to try a little of your patience. I thank you very much.

A. RODRIGUES PIRES (Cap-Vert) : Il n'y a pas de doute qu'après l'intervention de M. Roche, l'intervention très claire présentée par mon collègue l'ambassadeur d'Italie, je pense que des efforts ont été déployés de la part du pays hôte; la présence du Président de la République dans cette salle, à l'occasion du 40ème anniversaire de notre Organisation et de la célébration de la Journée mondiale de l'alimentation en témoigne.

Ma délégation est consciente de l'importance du respect de l'immunité, telle qu'elle existe à Genève, à Paris, à New York et ailleurs, mais je suis tenté d'appuyer la proposition du représentant de l'Italie d'essayer de trouver une solution entre familles car il nous a très bien expliqué le mécanisme et les efforts de son gouvernement. D'ailleurs, n'oublions pas que l'Italie est un pays qui fait de grands efforts, à travers son gouvernement; et à travers la FAO, pour aider les pays en développement. Mon gouvernement appuie la proposition faite par l'honorable ambassadeur d'Italie.

A. ABDEL-MALEK (Liban) (langue originale arabe): La délégation libanaise aimerait saisir cette occasion pour remercier M. Roche qui nous a exposé les relations entre les pays hôtes et nous a parlé de la question de l'immunité conformément au document C 85/LIM/10. La délégation libanaise aimerait aussi saluer l'ambassadeur d'Italie auprès de la FAO pour toutes les informations utiles qu'il a bien voulu nous donner.

Nous avons eu l'occasion de traiter de ce sujet lors de la quatre-vingt-sixième session du Conseil au mois de novembre 1984, lors des réunions de la Commission du programme à laquelle j'ai eu l'honneur de participer et lors de la session de juin 1985 du Conseil et le sujet est encore à l'étude. Nous avons tous examiné les documents qui nous ont été présentés qui témoignent que le Gouvernement italien a fourni récemment des efforts louables évidents pour le bien de l'Organisation. Parmi ces démarches, il faut citer les efforts du Président de la République italienne, M. Cossiga, qui a bien voulu visiter l'Organisation le 16 octobre 1985, et ce pour fêter l'anniversaire de l'Organisation et poser avec M. Saouma, Directeur de l'Organisation, la première pierre du nouvel édifice que le Gouvernement italien a l'intention de construire pour donner plus de bureaux pour abriter les fonctionnaires de la FAO et pour "pouvoir se passer du bâtiment qui se trouve à l'extérieur de la FAO", comme l'a dit Son Excellence l'Ambassadeur d'Italie. Donc, il est certain que le Gouvernement italien ne veut que le bien de notre Organisation. Les excellentes relations qui existent entre l'Italie et la FAO incitent la délégation libanaise à proposer d'ajourner toute prise de décision concernant le Conseil consultatif que nous avons l'intention de demander à la Cour internationale de justice au sujet de l'interprétation des deux articles 16 et 17 de l'Accord de siège concernant l'immunité de l'Organisation. Ce sujet devrait être ajourné et toute latitude devrait être laissée à M. le Directeur général pour qu'il puisse se mettre en contact avec le Gouvernement italien dans le but de résoudre le problème d'une façon susceptible de donner l'immunité sollicitée par l'Organisation et accordée aux autres organisations internationales dans d'autres pays, façon qui permettrait de respecter l'indépendance du système judiciaire italien. Ce sujet pourrait être étudié ultérieurement si jamais il n'y a pas de solution possible avec le Gouvernement italien.

R.C. GUPTA (India): Mr Chairman, my delegation would like to express our pleasure at seeing you presiding at our deliberations.

With regard to the subject under discussion, we have carefully gone through these documents which have been presented by the Secretariat, namely C 85/LIM/10 and C 85/LIM/15. We have listened with great interest and close attention to a splendid intervention by His Excellency Ambassador Pascarelli.

I might mention, for the information of my distinguished colleagues here, that Ambassador Pascarelli was representing his country in India before he became the Permanent Representative of Italy to FAO. I have considerable personal regard and admiration for his great qualities, and in his first major intervention in FAO he has really proved his mastery over legal aspects and shown skill in his arguments. I really admire him. However, having said that, the present situation is that the immunity of the Organization is in some doubt. It has not been recognized by the highest court of justice in Italy in a matter which was brought before the court by the landlords of Building F.



We feel that this is a situation which renders the working of the Organization difficult, which would considerably detract from its efficacy and its mandate, which is of great importance the mandate to eradicate hunger and malnutrition from the poor areas and poor countries. If such organizations are engaged in lengthy litigations in courts, we feel that is not a happy situation. We are nevertheless aware of the fact that the Government of Italy lately has been taking an extremely positive attitude towards the Organization. We have considerable regard and admiration for recent steps which the Government has taken. It has announced a contribution of US\$ 18 million for the FAO building, for adding to the existing premises to ensure that all the offices of FAO in Rome are housed under one roof.

We also heard Ambassador Pascarelli saying that the Government is proposing legislation which would, to the extent possible, remedy the situation created by the judgment of the highest court of justice in Italy and would safeguard the immunity of the Organization. We have been hearing of such things for quite some time, but with the present mood in the Government and with the present representative of the host country in FAO, we have every hope that things will improve and that the situation which has been created by the judgement will be taken care of by fresh legislation.

Nevertheless, the immunity of the Organization, its effectiveness, its freedom from harassment, is extremely important and dear to us., and we would like to be doubly sure that no effort is spared to ensure this immunity.

If our distinguished colleague from Italy would like us to feel that FAO is completely immune from legal action and that legislation would be undertaken for that purpose, we would be very happy, but we felt that his statement left many things ambiguous, left many things vague, and - let me be very candid - we are not fully assured. In fact, the interpretation given to Section 16 of the Headquarters Agreement and the august interpretation of Section 17, under which FAO is immune from any measure of execution - these two are somewhat contradictory and somewhat difficult to interpret in the sense that, if Italian courts have the jurisdiction in the matter where FAO enters into private contracts with individuals but again if the same individuals cannot execute those orders because of the immunity granted by Section 17, it substantially detracts from the authority of the court. In India we attach the highest importance and honour to the independence of the judiciary, to ensure that their judgements are carried out; but this situation is not at all satisfactory in that what Section 16 gives to a citizen of Italy, Section 17 takes away. This is not a happy situation. We must have some kind of legislation to ensure that Sections 16 and 17 fall in line, and that the immunities of the Organization are clearly defined.

We feel that an advisory opinion is essential unless the Government of Italy categorically assures this Organization and this Conference that the fresh legislation would ensure that the Organization would have complete immunity, as other Specialized Agencies of the United Nations have in other countries where they have permanent headquarters.

Taking all these facts into consideration, we feel that the Conference may not at this immediate juncture decide to refer the matter to the opinion of the International Court of Justice at The Hague, but may perhaps like to delegate this authority to the FAO Council that, by watching the situation as it develops, could perhaps decide whether it is necessary to refer this matter to this court. I am making this suggestion in view of the fact that the Conference will have an opportunity of looking at this matter only two years hence, and if in the meantime the situation is not satisfactory we should have some way of finding recourse for some relief. My suggestion would be that this authority be delegated to the Council for the time being, that we should watch the situation, that we should honour the promise of the Government of Italy, and if we find a satisfactory solution it will not be necessary to refer the matter to the International Court; but if the Organization and its member countries are not satisfied, we would like to have the opportunity of seeking an Advisory Opinion.

J.P. ROLLIN (Federal Republic of Germany) (original language German): Mr Chairman, my delegation wishes you all success in your position.

My delegation shares the concern of FAO that still no solution has been found to the many years of dispute with the Government of the host country.

The document before us may lead us to the conclusion that two legal opinions are opposing one another, both of which appear dogmatically conclusive. One might argue that the interpretation following the letter of the Headquarters Agreement by FAO which has been under discussion for a long time and the revision of which is more than due, might also make room for a more flexible attitude. Such an attitude could follow more recent Headquarters Agreements which provide for fewer immunities in the ius gestionis area than in the ius imperii area, and which provide for an obligation to relinquish immunity in individual cases at the discretion of the Organization.

It could also be contended that the restrictive attitude of the Host Government might be more generous. Recently, it even raised a reservation concerning accession to the Convention on the Privileges and Immunities of the Specialized Agencies which appears to leave possibility in future Headquarters Agreements for restrictive granting of privileges and immunities. Nevertheless, more generous arrangements remain possible, as you have heard from the Italian Government and as we have also heard from the representative of the Italian Government who spoke just now. These two positions, which are apparently difficult to reconcile, could surely be overcome given some goodwill in seeking practical solutions.

My country is unaware of any other countries where international organizations have their head quarters having lengthy disputes such as those faced with in Rome. This presumably means that solutions are found in those countries whenever problems arise which are probably similar to those existing in Rome.

My country is not opposed to the idea of seeking an advisory opinion from the International Court of Justice.

Since such an opinion is not legally binding, we can only hope that it will encourage both parties to reflect on a way to solve the situation. Such a way could consist of adopting the Headquarters Agreement to immunity regulations that would appear appropriate to the present situation, which is presently being studied by the International Law Commission.

In any case, my delegation urges both parties to seek practical solutions such as those which, obviously, could be found in other places.

L.E. WILLIAMS (Trinidad and Tobago): Mr Chairman, I should like to join with previous speakers to express my appreciation at seeing you in the Chair. I also wish to thank the legal adviser for his lucid introduction of the subject.

The matter before us has been occupying the attention of the Council, the Finance Committee and the CCLM, as well as the Host Government, for a considerable time. Regrettably, no appreciable headway has been made with regard to the main issue which turns on the legal right of FAO and its property to enjoy immunity from every form of legal process.

The background to what has now become a contentious issue is well known. It is also well known that the Council has fully endorsed the views of the Director-General with regard to the interpretation of Sections 16 and 17 of the Headquarters Agreement.

The Government of Trinidad and Tobago shares the concern of the Director-General that this unhappy situation has continued for too long and should be expeditiously solved. In this context the delegation of Trinidad and Tobago would be inclined to favour the referral of the matter to the International Court of Justice. We feel, however, that this should be the last step to be taken and in spite of the fact that, as I have said before, this matter has been dragging on and on and on. We think that given the goodwill that has been shown by the Host Government, although admittedly this goodwill has not been translated into the positive type of action that we would wish to see, we should persevere in trying to arrive at a solution between FAO and the Host Government prior to going to the International Court of Justice. We are governed in this view by the thought that the decision of the International Court of Justice will not be binding in any event, and that by taking the matter there the results could well be counterproductive in the long run.

Therefore, at this stage we want to accept the idea in principle but to give the parties more time to come to an amicable settlement. This is the position of the Government of Trinidad and Tobago on this matter.

I.P. ALVARENGA (El Salvador): Muchas gracias, Sr. Presidente, nuestra delegación ha venido siguiendo con particular atención el problema que nos ocupa, dado que en él están involucrados algunos principios fundamentales para la existencia y el buen funcionamiento de nuestra Organización. Quisiera, antes de entrar a considerar las cuestiones de fondo, expresar una entusiasta felicitación al Sr. Asesor Legal por la exposición que nos ha hecho. Se ha limitado, como él decía, al proyecto presentado a la consideración de la Conferencia. No ha querido hacer una historia exhaustiva del caso, y de ahí que por eso no se ha referido a algunos pormenores. Por ejemplo, no ha mencionado todos los aspectos legales que el distinguido Embajador de Italia ha señalado, en cierto modo acusando a la Secretaría de no haberlos tenido en cuenta. Todo lo que el Sr. Embajador de Italia invoca está incluido en otros documentos elaborados por la Secretaría, expresa o implícitamente.

Yo pienso que no se trata de eso, no se trata de ignorar o querer ignorar la legislación italiana. El problema es mucho más profundo y voy a llegar a ello dentro de un momento. Sólo quisiera decir que, a nuestro juicio, no es necesario en manera alguna, de ningún modo, llegar a formular acusaciones más o menos drásticas en contra de nadie, ni de la FAO y mucho menos, subrayo profundamente, ni mucho menos, contra el Gobierno italiano. A nuestro juicio, ni siquiera se debe hablar de disputa, no se debe hablar de litigio; se trata - y en esto no nos cansaremos de insistir suficientemente - que lo que hay es un desacuerdo entre amigos. No existe ningún grupo humano, no existe ninguna institución donde no surjan opiniones discordantes. Eso es esencial de la naturaleza humana. Y aquí nos encontramos ante una discrepancia de opiniones que no tiene por qué llevar a ningún enfrentamiento de ningún tipo. Lo que tenemos que hacer es tratar de encontrar una solución satisfactoria para todos que respete la profunda dignidad del Gobierno italiano, a quien nadie, absolutamente nadie, al menos que nosotros sepamos, está pretendiendo poner en el banquillo de los acusados. Nosotros seríamos los primeros en protestar enérgicamente si alguien tuviese, así fuese remotamente, esa intención, y que al mismo tiempo respete los intereses y los derechos legítimos de la Organización para que pueda cumplir adecuadamente con sus fines.

Yo me permitiría, señor Presidente, una brevísima recapitulación de lo que ha ocurrido en este caso, no porque pretenda aburrir al auditorio, no porque crea que sea yo el llamado a hacerlo, sino que, debo necesariamente hacer referencia a algunos datos de hecho cuando intervenga para proponer una solución.

Como ustedes saben, el caso se originó a través del contrato de arrendamiento que existe entre la Organización y los edificios situados en la Via Cristoforo Colombo de la cual son propietarios una asociación de ejecutivos italianos en pensión. En el contrato de alquiler se señalaba que, conforme a un índice que, según en el mismo contrato "se establecía, el alquiler aumentaría con el incremento del costo de la vida o conforme al índice establecido. Cuando se dió la legislación de lo que en italiano se llama "equo canone", que sería algo así alquiler equitativo, con base en esa ley, la FAO estimó que no estaba obligada a pagar ese aumento en los alquileres, y se negó a pagarlo, tal como estaba establecido en el contrato. Los propietarios recurrieron ante los tribunales. No se había decidido todavía en los tribunales inferiores, cuando se recurrió a la Corte de Casación, a fin de que ésta dictaminase si la FAO tenía o no plena inmunidad de jurisdicción. La Corte de Casación dio un dictamen desfavorable a la FAO, tal como ha sido recordado por el Sr. Asesor Legal y por el distinguido Embajador de Italia, alegando fundamentalmente una cuestión que me permito referir porque es lo sustancial en todo el litigio. Según la Corte de Casación, la FAO goza de inmunidad de cualquier tipo de procedimiento cuando ejecuta actos que son destinados directamente a la ejecución de sus fines, y no tiene inmunidad cuando realiza actos que son propios de un particular. Nosotros suponemos, para aclarar con un ejemplo - perdonen si soy un poco redundante; seguramente todos los distinguidos delegados entienden la situación, pero quiero explicarla un poco más. A nadie se le ocurriría que la FAO podría llevar a los tribunales italianos por el nombramiento de la FAO en un país, supongamos. No cabe la idea de que eso pueda llevar a los tribunales italianos, porque es parte de la esencia de la FAO, pero si en la FAO se establecieran, por parte de la FAO, negocios privados, venta de artículos para el hogar, etc., que no tienen que ver en relación con la FAO, al menos en términos generales, entonces dice la Corte:

Esos actos que la FAO ejecuta como un privado, como una persona cualquiera, pero eso sí, no se puede impedir que el particular que contrata con la FAO recurra a los tribunales italianos, porque entonces se le niega la aplicación del derecho que la Constitución le señala de poder recurrir a la Justicia.

Cuando la Corte de Casación emitió su dictamen, se presentaron otros casos, no todos de los cuales fueron a los tribunales. En el litigio central con los propietarios del edificio F llegó incluso sentencia y la FAO fue condenada a pagar una fuerte suma a los propietarios del edificio F. En ese momento la Organización se encontraba en una posición de verdadera angustia, y no es exagerado afirmarlo porque se esperaba de un momento a otro que hubiera la ejecución por parte de un juez, de un juez ejecutor que es completamente autónomo en este país, como bien lo ha señalado el señor representante de Italia, donde los poderes gozan de una independencia constitucional. La FAO recurrió a todos sus organismos de gobierno y se analizaron tres posibles soluciones. Ya desde entonces se hablaba de tres posibles soluciones. Una, el arbitraje según señala el Convenio de Sede; dos, una nueva ley que declarara de forma categórica y para siempre que la FAO gozaba de inmunidad plena, y otra, una tercera posibilidad, que siempre se ha visto como un recurso de última instancia, de ir a la Corte Internacional de Justicia. Italia prometió que iba a dar una nueva legislación que resolviese el problema, pero cuando esta ley se promulgó, por así decirlo, porque realmente no fue hecho, sino que lo que ocurrió fue una reforma a una ley ya existente, la situación nueva quedó en que para que la FAO pudiera ser ejecutada, para que los bienes de la FAO pudiesen ser embargados por un juez, tenía que dar primero el Ministro de Justicia una autorización. Aquí ya quisiera referirme de pasada a unas de las afirmaciones que ha hecho el Sr. Embajador de Italia. Si la ley italiana, si la legislación italiana prevé la necesidad de recurrir al Ministerio de Justicia para pedir la autorización para embargar los bienes de la FAO, quiere decir que la legislación italiana prevé la posibilidad de que eso ocurra, y la única esperanza que hay en este momento es que el Ministro de Justicia niegue la ejecución; pero entonces es la ley italiana la que está autorizando a la ejecución, salvo que el Ministro de Justicia se oponga.

El problema de recurrir a la cláusula del arbitraje realmente no es menos disputa que ir a la Corte Internacional de Justicia. Dice el Sr. Embajador de Italia que ir a la Corte Internacional de Justicia es una disputa, yo creo que no es una disputa, no debe plantearse como una disputa, sino insisto como la solicitud de un consejo a un tercero para que dirima una diversidad de opiniones entre dos amigos, pero él dice vamos entonces al arbitraje y yo le preguntaría ¿y eso no es una disputa? Allí vamos a litigar. Vamos a presentar argumentaciones y vamos a tener un abogado que defienda la FAO ante el tribunal, y eso va a tomar años y años, porque no significa que un tribunal de arbitraje se pronuncie en 24 horas. Eso podría tardar incluso más que ir a la Corte Internacional de Justicia y es tan litigio como ir a la Corte. Realmente a nuestro modo de ver, y tal como se argumenta exhaustivamente en el documento presentado por el Director General, la única solución que queda es ir a la Corte Internacional de Justicia.

Nosotros por nuestra parte como delegación no vamos a insistir en que se haga por fuerza y que se haga constar antes. Creemos ante todo, y en esto queremos ser claros, que no se puede ir a la Corte contra la opinión de Italia, porque si vamos contra la opinión de Italia es como una declaratoria de guerra; claro que no es guerra, pero es la máxima instancia, la máxima discrepancia que puede haber entre dos entidades con personalidad internacional.

Cuando un país o un Estado llevan a otra entidad de personalidad internacional ante la Corte, obligándola a comparecer, realmente está haciendo el máximo de un acto amistoso, pero el máximo acto de presión que pueda hacer a nivel internacional que no sea la declaración de guerra o el rompimiento de hostilidades. De modo que yo creo que no podemos pensar en ir a la Corte Internacional de Justicia en contra de la voluntad de Italia, pero sí creemos que deberíamos convencer a nuestro amigo, a nuestro respetado, admirado, noble Gobierno italiano a que resolvamos ante la Corte un problema que será problema en la medida en que no encontremos una solución definitiva para siempre. Lo peor que podemos hacer es no buscar una solución que zanje de una sola vez esta cuestión porque la dificultad surge precisamente en arrastrar un año, otro año, más años el mismo tema de discusión.

Disculpe usted si hablo demasiado pero quisiera mencionar un caso que para nosotros tiene gran importancia ejemplificativa, aunque sea un poco fuera de lugar. Nuestro país tuvo con la hermana República de Honduras una guerra en 1979, una guerra total con enfrentamientos y con muchísimos muertos. La cual se dijo que había empezado por motivos banales. Los motivos realmente eran de fondo y muy graves y son problemas que siguen siendo actuales. Nuestros dos Gobiernos han firmado un tratado de paz en el cual se resolvían sus principales problemas, pero se dejaba una cuestión todavía sin resolver.

Nuestros dos Gobiernos están planeando en estos momentos ir a la Corte Internacional de Justicia de La Haya; no porque se consideran que tienen cuestiones completamente inconciliables y que la única solución sería la guerra, al contrario, para evitar las tensiones futuras para tener un tribunal imparcial autorizado que dicte una opinión que satisfaga a todos. Con ese mismo espíritu creemos nosotros que se debe afrontar esa cuestión. Me permito hacer algunas observaciones a las argumentaciones del Embajador de Italia, no porque quiera entrar en polémica con él, y le pido sinceramente disculpa, sino sólo para aclarar un poco el debate.

Dice el Embajador italiano que sería imposible ir a la Corte porque esto es una disputa y las disputas ante la Corte sólo las hacen los Estados. Perfecto, yo estoy de acuerdo pero entonces digamos que no sea una disputa, que sea como se dice en los textos de la Corte Internacional de Justicia una opinión consultiva. De eso se trata no de plantear una disputa. Entonces el argumento cae por su base. Depende cómo lo enfrentemos. Si nosotros decimos que vamos a una disputa claro que sería imposible, pero si vamos a resolver una cuestión entre amigos es perfectamente factible. Dice que el fallo no resuelve nada, no sirve, porque entre otras cosas, no sé si me equivoco, no vincularía al Poder Judicial italiano. Realmente el fallo sirve como sirven todas las cuestiones a nivel internacional. Los contratos, los pactos, cualquier acto judicial entre los Estados no tiene ni más validez que el papel donde está escrito si los que se han comprometido a ponerlo en práctica no lo cumplen, porque no hay manera de obligar a un Estado a cumplir con lo que ha pactado o con una sentencia de un tribunal internacional.

Esto es verdad pero es cierto también que la sentencia, que el fallo, que la opinión de la Corte tendría un inmenso valor moral, y lo que es más importante, si bien es cierto que no vincularía al Poder Judicial italiano, le daría al Gobierno italiano una base estupenda para presentar un proyecto de ley al Parlamento que pueda resolver la cuestión de una manera definitiva e inequívoca.

En cuanto al arbitraje lo primero hay que recurrir al arbitraje y después a la Corte Internacional de Justicia, pero él leyó el artículo y ustedes se habrán fijado en una frase muy significativa, dice que se recurrirá al arbitraje cuando se haya agotado (cito el texto en inglés) "or other mode of settlement" que fue lo que citó el señor representante de Italia, es decir, si hay otra forma de arreglar la disensión, esa forma se puede aplicar sin contravenir el convenio de Sede. Ese "or other mode of settlement" nada impide que no se pueda pedir a la Corte Internacional de Justicia una opinión esclarecedora.

En cuanto a que la inmunidad de la FAO está plenamente garantizada, nosotros no dudamos en lo más mínimo de que el Gobierno italiano tenga en este momento la más firme determinación de impedir la ejecución de los bienes de la FAO. Pero no depende del Gobierno, depende del Poder Judicial, depende de los pretorios, depende de los jueces inferiores sobre los cuales el Gobierno no tiene ninguna capacidad de control precisamente por la independencia de poderes que todos admiramos en este democrático país.

Por otra parte, ahora tenemos un gobierno, dentro de 10 años, dentro de 40 años, cuando la FAO esté cumpliendo de nuevo otros 40 años, ¿quién va a estar en el gobierno? ¿Quién nos lo garantiza que entonces habrá la misma decisión política? No es juzgar mal a los futuros gobiernos italianos, sobre los cuales no quiero emitir juicio, pero es un hecho que nadie nos garantiza que dentro de 5, de 10 años, de 50 años, vamos a tener la misma predisposición por parte del poder ejecutivo. Entonces de ahí lo lógico es que quede establecido de una manera para siempre y claramente cuál es la verdadera solución.

Me parece que el señor representante de Italia la ha esbozado, la ha propuesto concretamente. Una nueva Ley. Efectivamente, eso es lo que la FAO ha venido pidiendo. El Gobierno italiano se prometió a darla, pero después no pudo. Nosotros sabemos las dificultades gravísimas que existen

internamente en el Estado italiano para llegar a una solución: no pudo hacer lo que hubiera deseado seguramente y entonces lo que hizo fue reformar una ley que hoy, repito, no resuelve el problema de manera categórica. De modo que una nueva ley podría ser la solución. Pero mientras tanto la FAO, ¿qué hace? Primero, seguramente, como muy bien han aconsejado varios delegados que me han precedido en el uso de la palabra, continuar tratando con el Gobierno italiano, y eso es indiscutible. Nosotros pensamos que lo primero que debe hacer la Conferencia es pedir al Director General que agote todos los esfuerzos que estén a su alcance para lograr con el Gobierno italiano una solución negociada que no implique ningún tipo de proceso, ningún tipo de recurrir a tribunales de ninguna especie. Pero si eso no se realiza entonces yo creo que debemos dejar la posibilidad de que la Conferencia como ha propuesto el distinguido delegado de la India, faculte al Consejo para que, analizando los elementos de hecho o de derecho que estime oportunos decida entre esta Conferencia y la otra, naturalmente porque la próxima podrá decidir soberanamente si lleva el asunto a la Corte Internacional de Justicia.

Le ruego señor Presidente por tercera vez que me disculpe por la desmesurada extensión de esta intervención, pero es que como, repito, para nosotros este es un tema particularmente interesante en el cual nos preocupa por una parte, repito, la buena marcha de la FAO, y por otra la dignidad, el respeto que nos merece el Gobierno italiano, con el que estamos seguros que no obstante seguirán existiendo las excelentes relaciones que todos deseamos y que por fortuna en esta Conferencia se han mantenido.

C. di MOTTOLA BALESTRA (Costa Rica): Quisiera antes que todo alegrarme con el Sr. Roche no sólo por el brillante documento que él ha presentado, sino por la brillante exposición del tema. Quisiera alegrarme también con el Embajador de Italia porque con su estilo muy eficaz nos presentó muchos aspectos jurídicos interesantes del problema que tenemos a la vista. No estoy completamente de acuerdo con el título del documento que habla de relaciones entre la FAO y el Gobierno del país hospedante, porque las relaciones entre la FAO y el Gobierno del país hospedante son de las más buenas que puedan existir. Todos nuestros países están sumamente agradecidos por 40 años de hospitalidad y esto el Gobierno italiano lo sabe y lo ha demostrado con la calurosa celebración del 40 Aniversario de existencia de la FAO, con la visita del Presidente Cossiga, con lo que va a gastar por construir este nuevo edificio que es la ampliación del edificio existente. Con lo que nos enfrentamos en este momento no es un problema de relaciones, es un problema estrictamente técnico y de funcionalidad, es un problema jurídico desde el punto de vista de funcionalidad.

Todos sabemos que la totalidad de las agencias de las Naciones Unidas gozan de tratados de sede que les asegura plena inmunidad.

En este momento no existen problemas afortunadamente entre la FAO y ninguna organización italiana. La FAO ha demostrado también buena voluntad, como lo han demostrado sus representantes y todo lo que existía como lío en la mesa ha sido completamente resuelto.

Por lo tanto, existe solamente un problema de carácter teórico; el problema de carácter teórico se resuelve en la interpretación del Tratado de Sede; quisiera decir más bien, en un artículo del Tratado de Sede, que es el Artículo VIII.

El Tratado de Sede ha sido estipulado en Wáshington, pero en lo sucesivo ha sido transformado en ley italiana: es la Ley N° 11 de 9 de enero de 1951.

Ha sido transformado en Ley del Tratado de Sede porque se dice que ambos textos son auténticos. Por lo tanto, ambos se equivalen ahora en el texto inglés de esta Ley. En el Artículo VIII se dice que la FAO está exenta "enjoys immunity from every form of legal procedure." El fallo de la Corte di Cassazione es que no ha aceptado esta exposición literal. Ha aceptado una exposición restrictiva. Yo me permito decir, que a nuestra vez, esta disposición restrictiva deja muchísimas dudas. O sea, no es aceptable. ¿Por qué no es aceptable? Primero, porque contraviene a normas de derecho internacional.

Segundo, porque contraviene hasta normas de derecho internacional que son aceptadas por las leyes italianas.

Las leyes italianas, como ustedes saben, dicen que cualquier código civil está precedido por una parte que se llama Disposiciones sobre la Ley en General.

El Artículo VIII de las disposiciones sobre la ley en general dice exactamente: Aplicando la ley no se puede atribuir a la ley misma otro sentido que el expresado por las palabras mismas, o sea, no se puede absolutamente aceptar desde el punto de vista italiano, claro que el punto de vista italiano refleja un punto de vista que es la doctrina internacional. No se puede aceptar una interpretación restrictiva que esté ya clara. Esto en italiano suena así: "Interpretazione della legge nell'applicare la legge non si può ad essa attribuire altro senso che quello fatto palese del significato proprio delle parole".

El delegado de Alemania hablando hace unos minutos, con una intervención muy interesante, nos habló también que este Tratado de Sede, en ciertos puntos, no está conforme con una evolución sucesiva, ni convenciones que han seguido.

Yo me permito recordar al delegado de Alemania que en el Artículo XVII, en su Sección 35, subpárrafo b) está previsto el caso de evolución del Derecho y se descarta completamente la posibilidad de que lo que está previsto en este Tratado sea limitado por tratados sucesivos, o sea, dice que en tales casos lo que se tiene "the provisions of this agreement shall prevail". Esa es la versión inglesa y está traducida exactamente en el idioma italiano. No estoy muy de acuerdo con el párrafo 42 del documento tan brillante que nos ha presentado la Secretaría. La Secretaría dice que no hay discrepancia entre el texto inglés y el texto italiano. Esto puede ser interpretado restrictivamente y es lo que ha motivado el fallo de la Casazione. El texto inglés en cambio, que es ley italiana como puse de relieve antes, es mucho más preciso y excluye cualquier forma de restricción. A estas alturas yo creo que la única solución legal posible, porque me doy cuenta que el Gobierno italiano está vinculado por el fallo de la Casazione, es lo que ha sido propuesto aquí en esta misma Organización por la delegación italiana no sé si el año pasado, pues es un intercambio de cartas entre la Dirección General de la FAO y el Gobierno italiano, un intercambio de cartas interpretativo que sea ratificado por el Parlamento, y confío que a esto sea posible llegar y recomiendo que éste sea el camino a seguir. De todas maneras tenemos que tener presente que también esto puede no alcanzarse. Por lo tanto me permito apoyar firmemente la propuesta hecha por la delegación de India, apoyada por la delegación de El Salvador y por muchas otras delegaciones, de que se confíe al Consejo la decisión de pedir una opinión exclusivamente consultiva de La Haya, en el caso de que los esfuerzos del Director General y del Gobierno italiano para encontrar una solución no llegaran a la misma. Para ésta sería únicamente una opinión consultiva y por lo tanto no sería absolutamente una guerra; sería algo que daría una cierta fuerza moral a los negociadores para pedir después una solución al Parlamento italiano.

No sé si es necesario para esto una resolución.

Yo creo que sí o si es suficiente poner esto en el informe. Yo creo que el Sr. Roche debería darnos una opinión al respecto sobre en qué forma se podría llegar a delegar estos poderes al Consejo.

H. BENATTALLAH (Algérie): Brièvement nous tenons, Monsieur le Président, à nous associer aux félicitations pour votre accession à la présidence de notre Commission. Nous sommes persuadés que toutes vos qualités aideront chacun à un bon déroulement des travaux.

Nous remercions aussi Monsieur Roche pour l'excellent exposé introductif qu'il nous a présenté.

La position de l'Algérie sur cette question est celle contenue dans le rapport de la quarante-sixième session du CGCJ et de la quatre-vingt-septième session du Conseil, toutes deux réunies en juin 1985.

Nous appuyons donc ce qui a été dit par le délégué du Liban, notamment par le délégué du Cap-Vert, et avons été très attentifs à ce qu'a déclaré l'Ambassadeur d'Italie; nous préconisons nous aussi une ouverture dans ce sens.

Concernant les positions exprimées par le Comité juridique et le Conseil et que nous faisons nôtres, permettez-moi de les rappeler brièvement, parce que dans le document C 85/LIM/10, elles ne figurent pas. C'est à notre avis un élément relativement défavorable au vu de l'analyse très fouillée qui a été faite.

Le rapport du Comité juridique à ce sujet avait estimé qu'il serait encore prématuré de s'adresser à la Cour internationale de justice et a suggéré d'épuiser tous les recours en vue de parvenir à une solution à l'amiable, c'est-à-dire à une solution négociée.

Le Conseil également a estimé qu'il serait prématuré de s'adresser à la Cour internationale de justice et tout en reconnaissant qu'il était encore prématuré de saisir la Cour il a transmis cette question à la Conférence.

Comme membre du Comité juridique et au vu des décisions des recommandations du Comité juridique et du Conseil, nous supposons que cette question était pratiquement résolue, en tout cas dans son principe, et nous partageons un peu l'étonnement exprimé par le délégué de l'Italie devant la production de ce document.

Nous avons cependant un motif de satisfaction parce que c'est un document assez fouillé, extrêmement complet, auquel on ne nous avait pas habitué au Comité juridique bien que cette question ait été longuement analysée et discutée et bien souvent les membres du Comité juridique n'ont pas eu tous les compléments d'information qu'ils souhaitaient. En cela le document qui nous est présenté aujourd'hui mérite notre satisfaction.

Mais cependant nous sommes étonnés de la production de ce document car nous pensions que depuis quelques années la pression avait un peu baissé avec le Gouvernement de l'Etat hôte, et cela a été attesté - nous le supposons en tout cas - par le passage du Président de la République d'Italie, le Président du Conseil, et aussi le Ministre des affaires étrangères. Nous pensions que tous ces éléments réunis ainsi que les négociations qui se sont déroulées pendant ces dernières années avaient abouti ou contribué à clarifier et à assainir la situation. Le paragraphe 13 de ce document atteste néanmoins de la sérénité de l'atmosphère puisqu'il déclare et dispose que presque tous les différends ont été réglés. Partant de ces prémisses il nous semblait que remettre à jour cette question de l'opportunité de s'adresser à la Cour internationale de justice était un peu discutable.

A l'instar de l'Ambassadeur d'Italie, nous avons aussi été étonnés par le ton du texte sur certains points, notamment lorsqu'il parle de menaces permanentes, lorsque, s'adressant au délégué de l'Italie, il regrette une attitude préemptoire. Je trouve cela un peu déplaisant à l'égard d'un Etat Membre, de même lorsqu'il parle de mesures coercitives, je pense que le ton de ce document a été sans doute, volontairement ou involontairement, je l'ignore, gonflé pour une question qui, à notre avis, était déjà résolue.

Le document présente beaucoup de détails de procédure à notre avis mais il est aussi partial et aussi relativement incomplet. Relativement partial parce qu'il nous a semblé que toute la construction de ce document reposait sur le paragraphe 32 qui estime que toutes les conditions sont nécessaires pour se présenter à la CIJ. J'ignore à quelles conditions on fait référence; il s'agit de conditions de procédure, cela est un fait, mais si l'on se réfère à l'ensemble des négociations avec le pays hôte, à l'évolution positive des négociations, il ne me semble pas que toutes les conditions aient été remplies. Relativement incomplet, parce qu'au paragraphe 4 du document on dit que depuis que la FAO n'a pas comparu, depuis l'arrêt rendu par la Cour de cassation, il n'aurait pas été à notre avis inutile de préciser aussi qu'avant cet arrêt et malgré les recommandations des Etats Membres et des organes directeurs de la FAO, la FAO a quand même estimé utile de se présenter devant les tribunaux. Partant de cela il faudrait sans doute que la FAO considère très attentivement la position des Etats Membres et que si au Conseil on ait considéré comme inopportun encore ou prématuré d'aller à la CIJ, je pense que ce jugement devrait être mûrement réfléchi.

Concernant les lignes d'action proposées, grosso modo il y en a trois dont deux aboutissent à une impasse, et la troisième c'est le retour à la CIJ. Celles qui aboutissent à une impasse, c'est-à-dire les législations nationales et l'arbitrage, il me semble que cela est un peu hâtif, parce que, comme l'ont exposé le délégué de l'Italie, le délégué de la RFA et le délégué de l'Inde, des possibilités sont encore ouvertes dans ce sens et devraient à notre avis être exploitées.



Bien sûr, il n'y a pas de différend, mais y-a-t-il aussi divergence conceptuelle comme il en est fait état dans le document? Est-ce vraiment une divergence conceptuelle? Parce que la session 34 . de l'Accord de siège fait état de controverses. L'arbitrage, puisqu'il doit y avoir arbitrage au moins pour respecter une obligation contractuelle, devrait s'orienter\* non sur un différend mais pour résoudre la question à partir de la notion évoquée dans l'Accord de siège qui est celle des controverses. L'Accord de siège parle de controverses; une solution devrait être recherchée dans ce sens et non dans celui d'un différend. Impasse aussi du point de vue de la législation nationale, mais je pense qu'en cela le délégué de l'Italie a fort bien dégagé les perspectives qui s'ouvriraient dans ce sens, et il a été appuyé par d'autres délégations. Nous nous y joignons.

En conclusion, nous pensons que nous avons toujours été persuadés, et avons insisté à ce sujet au Comité juridique pour dire que la solution à ce problème se trouvait à Rome et non pas à la Haye, et par la voie de négociations, de solutions négociées.

Quelle que soit l'utilité d'un recours à la Cour internationale de justice, il faudrait aussi s'interroger sur les effets concrets qui pourraient découler d'un avis de la Cour internationale de justice, puisque de toutes façons, même si cet avis était favorable à la CIJ, il faut garder à l'esprit que la Cour de cassation estime que la primauté au plan interne revient aux règles internes et elle estime que quelles que soient les obligations internationales, quel que soit l'avis que pourrait rendre la Cour internationale de justice, elle ne sera jamais tenue par cet avis.

Autrement dit, sur le plan de la recherche des solutions, un avis de la Cour internationale de justice n'aurait pas un effet bénéfique évident.

Nous pensons, à l'instar d'autres délégations, qu'il faut continuer les consultations avec le pays hôte et estimons encore prématuré le recours à la Cour internationale de justice .

J.C. CLAVE (Philippines): My immediate reaction after the introduction of the subject before us by the Legal Advisor was to suggest that we defer pursuing the action recommended. I have known of the existence of this problem for some time, being a member of the Council.

Nevertheless, we cannot fail to take note of the fact that during this 40th Anniversary of FAO there has been a good deal of demonstration of goodwill, particularly from the Government of Italy. His Excellency, the President of Italy, was here to inaugurate or to lay the cornerstone of a new building that will house the Organization.

Only this morning, our colleague from Italy announced here that the City Government of Rome is making a park available to the Organization.

It was in the light of this goodwill that I thought we should prepare any projected referral of the problem to the International Court of Justice. Now in the light of the manifestations made by our colleague from Italy, I am inclined to recommend, furthermore, that we should withdraw the item from the Agenda of this Conference, to leave, in the meantime, no evidence that a dispute - as our colleague has described it - exists between this Organization and his Government, which I think was a legitimate aspiration on his part. So it would be the wish of my delegation that this matter be withdrawn from the Agenda of this Conference and that it be referred back to the Director-General to explore the possibilities now offered by the Government of Italy by its representative to this Organization. Should there be any further need for collective action on the part of Member States, then the Director-General should refer it to the Council for further action as may be determined on the basis of further developments.

I wish to call attention to the observations of our colleague from Italy to the effect that he is new in this Organization but, while he is new, he demonstrated today, I think, some seriousness, earnestness and optimism that this problem could be solved amicably. On this basis I am further strengthened to ask that this Conference - as I have suggested earlier, in line with the thoughts of many other delegations - should in fact refer this to the Director-General. By exploring all possibilities that are now open, we will hopefully be able to resolve the issue. But if there is any need, as I said, for further collective action he should then transmit this to the Council for that action.

I will close with this possibility too. I realize that this problem has arisen because it became necessary in the past for this Organization to lease some buildings to house its expanding offices. Time may solve that problem in the sense that when we have the new building, then we will probably not be leasing any premises which could give rise to a similar situation like the one we face today.

This is the simple, modest contribution of the Philippines to this discussion.

C. A. HARTMAN (Finland): I shall speak directly and briefly to the issue before us. I have listened with great interest to the introduction of this item by the Secretariat, and to the lengthy intervention by the delegate of Italy. That very long and exhaustive expose has already convinced me in my opinion that FAO should not proceed to seek an advisory opinion of the International Court of Justice. To choose such a course could be detrimental both to the interests of FAO and the Host Government.

My delegation takes note of the remarkable degree of goodwill that took place throughout the statement of the delegate of Italy and we trust that the goodwill will continue to be deployed in order to reach satisfactory solutions to the present dilemmas.

To seek an advisory opinion would, in my mind, bring rather unnecessary complications and would not meet at all the best interests of FAO, its member countries or the Host Government but, on the contrary, could be quite confusing.

The best and wisest way to proceed then is the one suggested by the Italian representative, that is to continue to pursue the dialogue, to calm down and to prove that the initial goodwill that clearly marked the relations between FAO and the Italian Government will produce viable solutions to legislation or otherwise.

I think the suggestions by the delegate of India, if I understood him correctly, that is, to leave the Council to follow up and decide on further action, is a sound one. That would mean no other decision is taken now but all best efforts will continue to be deployed in order to solve the present problem while the Council follows the problem from the ringside, as it were, in the hope of seeing it resolved through restraint so that no further discussions by the FAO governing bodies will be necessary.

A. Y. BUKHARI (Kingdom of Saudi Arabia) (original language Arabic): Mr Chairman, I should like to express my happiness at seeing you in the Chair of this august Commission, which is at present discussing very important legal matters, and I wish you most warmly every success in your endeavours. We hope that our decisions will be satisfactory to all under your able leadership.

The issue of the immunity of the Organization from legal process has been discussed time and again and we believe that the matter was closed. However, it seems to us now that it has been updated in one way or another, and is put forward now with more precision. We have this impression, especially after listening to the statement made by the distinguished delegate of Italy, which was an enthusiastic statement as well as a very sincere one. His enthusiasm shows beyond any doubt that Italy is sincere in its efforts to reach an amicable and permanent solution to this problem, a solution which will bring matters back to their normal course. This encourages us a great deal and will lead us to make decisions that are very clear and satisfactory to all.

My delegation feels that this controversy or this difference of opinion is something very natural, and we should not be afraid of it. It is merely a difference of opinion among friends - among friends who wish to serve the interests of poor, hungry countries.

The FAO, in asking for an implementation of full immunity, is not serving the interests of one party or of a group of individuals. FAO is concerned that its efforts should not be dispersed with the interest of all Member States. It does not wish to waste efforts in courts and tribunals on matters that can be avoided. The FAO feels very strongly about the importance of concentrating efforts in carrying out its main activities in order to serve member states and to implement the development programmes in various countries. We believe that this demand on the part of FAO is logical and legal.

As regards the host country, we should not believe that FAO's attitude is a hostile one directed against Italy. No representative of the host country should believe that FAO is working to provoke his Government or to belittle the importance, the sincerity and intentions of this Organization. This matter ought to be looked upon with tolerance and understanding. Tensions will not serve the interests of the parties involved, including Member States, in particular developing countries.

We should admit a fact which is obvious to all, that the Organization represented by the Director-General has shown more than once a positive attitude towards Italy, and it has shown its good intentions towards the developing and needy countries. We, in turn, would like to express to the representative of Italy my country's refusal to accept any doubt that may be cast on the intentions of the Italian Government and the stand adopted by the Italian Government on the international level, whether economically, politically or socially. We all know of the assistance that is provided by Italy, technical as well as material, to developing countries. We do not forget the great generosity of Italy and the warm welcome that it extends to all, and to us also. We will not forget these attitudes which have always won our respect.

However, we would like to stress that there is a real, continued, urgent and sincere need to look for a solution, but for a solution that preserves the immunity of FAO. We should like to stress this basic demand on our part on behalf of the Organization because full immunity for FAO is an extremely important matter. It is a necessary condition.

We support the statements made by the representative of India and Lebanon and some other representatives who call for referral of this question to the Council. We should also like everybody to note the goodwill that the representative of Italy has invoked, and hope it will help us reach the best solution.

Mrs K. TYCUS-LAWSON (Nigeria): While the Nigerian delegation sympathises with the various efforts made by the Italian Government to find a solution to the problem of immunities accorded to FAO as explained by the Italian Permanent Representative, we feel that the issue of the immunities should be settled as soon as possible and should not be left open-ended or in a precarious situation.

According to the records, this matter has dragged on since 1982. It is for that reason that this delegation has found it necessary to make an intervention here.

The Nigerian delegation notes the efforts and suggestions which the Italian Government has for solving this issue, but I am afraid from the explanations the Italian representative has given that it appears there are some problems which will arise from the solutions he has suggested. He says there is a proposal before the Italian Parliament to take care of the issue, but then he went on to say that the Italian Constitution does not allow for the legislative body to make laws to derogate from the rights of its citizens to resort to exercising their legal rights. He also implied that the Italian Government would prefer to resort to arbitration under Section 35 of the Headquarters Agreement rather than submit it to the ICJ opinion.

However, this presupposes that there is a dispute, and the Italian Ambassador agrees with FAO that there is no dispute. The Italian Government has not indicated at any time that the immunities that are being sought by the FAO, which are contained in Section 16 of the Headquarters Agreement, do not cover both public and private issues. Besides, resorting to arbitration would create a delay which I am sure is undesirable to both FAO and the Italian Government.

For the above reasons, and others already mentioned by some other delegates, the Nigerian delegation would support seeking the opinion of the International Court of Justice so as to clarify this issue. Although the opinion of the ICJ will not be binding on the Italian Government it would, however, have a persuasive effect on the Italian courts and the Italian Government. The opinion of the ICJ does not prevent both FAO and the Italian Government from continuing with whatever efforts have been made by the Italian Government to find a solution to the problem, since we are all seeking different means to the same end. The FAO will not be antagonizing the Italian Government by going to the ICJ, and this delegation wishes to appeal to the Italian Government at this forum that it should not see a recourse to ICJ opinion as an affront to it or as a declaration of a dispute.

As an alternative to this, however, in view of the objection of the Italian Government, and if we fail to persuade the Italian Government, and in view of its optimism that the matter will soon be resolved, we would recommend to the Conference that after a given period, if the issue has not been favourably resolved, then both parties, both FAO and the Italian Government, should seek the opinion of ICJ on the matter.

Abdel Moneim Mohamed EL-SHEIKH (Sudan) (original language Arabic): I should like to express our appreciation for the efforts that have been made so far to resolve the problem of immunity on the part of the Italian Government and on the part of FAO, represented by the various bodies and by the Director-General.

We admit that leaving this problem for a long time without a solution introduces an element of uncertainty. However, regarding the thorough and comprehensive explanation presented to us by the representative of Italy, I should like to mention four points in his presentation. First, in such issues to resort to the International Court of Justice, even if it is to obtain an opinion, takes years and years. This is true. And should the International Court of Justice decide in favour of Italy, this will open up the possibility for other Italian bodies to follow suit. This means that FAO will find itself in a very difficult situation legally, and will complicate matters. Furthermore, during the long years that have passed, as the representative of Italy said, many legal issues have been raised in order to explain the immunity of the Organization. However, the main idea is that there is still a possibility of explaining or interpreting Article XVI of the Headquarters Agreement either by a direct dialogue and exchange of opinion or through legislation.

Therefore, since we are sure of the goodwill of both parties, especially in the last few years, the Sudan delegation would like to give them both the opportunity to deepen the dialogue. In that way we will perhaps be able to arrive at a satisfactory solution. If this is not possible in the next two years, then we will be able to take this matter up again in the forthcoming Conference, and at that time decide whether to resort to the International Court of Justice.

Humberto CARRION McDONOUGH (Nicaragua): Brevemente después de haber escuchado las intervenciones de los delegados presentes a la luz de los documentos C 85/LIM/10 y 85/LIM/15 y de la introducción que hizo el Sr. Roche sobre el tema en cuestión, consideramos que la declaración del representante del Líbano es muy apropiada.

En pocas palabras, la delegación de Italia ha sido explícita y su Gobierno lo ha demostrado cuando mencionó la voluntad de encontrar una solución entre la Organización y el Gobierno de Italia.

Creemos que por ahora podemos poner a un lado el proyecto de resolución contenido en el documento C 85/LIM/10 e instamos a que continúen las negociaciones pertinentes para encontrar un resultado que satisfaga a las partes y que el Director General nos mantenga informados al respecto a través del Consejo.

Sólo me resta agradecer al delegado de Italia el espíritu conciliador y amistoso de la posición de su Gobierno y el apoyo que ha ofrecido y ofrece a la FAO. Estamos seguros de que este mismo espíritu es el que anima a la Dirección General de esta Organización al velar por los intereses de la FAO.

G. de KALBERMATTEN (Suisse): Tout d'abord. Monsieur le Président, mes félicitations pour votre élection à la présidence de cette Commission.

La Suisse en tant que pays siège de l'office des Nations Unies pour l'Europe attache beaucoup d'importance à l'octroi de conditions qui permettent aux organisations internationales d'exécuter leur tâche en toute indépendance et sérénité mais telle j'en suis sûr est également la position de l'Italie. Nul parmi nous ne peut souhaiter d'endosser une procédure qui pourrait encourager une détérioration de l'atmosphère, voire des relations entre notre Organisation et l'Etat hôte.

J'aimerais me rallier ici à l'excellente intervention de l'Algérie et rappeler l'idée suggérée dans le paragraphe 274 du document C 85/LIM/15. Il ménage une voie plus amiable que celle suggérée dans le document C 85/LIM/10. Que peut-on en effet attendre d'un avis consultatif de la Cour internationale de justice lorsque l'Etat qui est partie intéressée déclare un tel recours totalement inopportun?

A.M. QURESHI (Pakistan): Permit me first of all to extend my heartiest congratulations to you, Mr Chairman, on your assumption of the Chair of this very important Commission.

Unfortunately, we missed the brilliant presentation by Mr Roche to which I have heard some of my colleagues refer. It is my misfortune as I was tied up in Commission II. We have carefully gone into the documents which have been presented to this Commission, C 85/LIM/10 and C 85/LIM/15. We deeply appreciate the presentation by Ambassador Pascarelli on this very long and drawnout issue of immunity. We also share the concern of the Organization with the current situation regarding the FAO's immunity from legal process and measures of execution in Italy.

All of our efforts should be directed towards an expeditious, amicable and practical resolution of this problem. We are greatly encouraged by the statement of Ambassador Pascarelli to believe that the Italian Government is no doubt very seriously concerned with the problem. Therefore, we would like to join the delegates from Lebanon, Saudi Arabia and others to say that if concrete and firm assurances are forthcoming, as appears from the statement of Ambassador Pascarelli, then we would encourage the Director-General to postpone referral of the matter to the International Court of Justice, and to urge the Italian Government to resolve the problem in an expeditious manner. This also appears to be the unanimous view of this Commission.

In view of the explanations given by Ambassador Pascarelli and in line with the high traditions of great and generous hospitality of our Italian host, it is our confident hope that an early negotiated solution to the issue will be found in Rome and a progress report submitted to the next Council.

M. ABDELHADI (Tunisie) (langue originale arabe): Ma délégation est particulièrement heureuse de vous voir à la Présidence de cette Commission III qui est l'une des importantes commissions de la Conférence générale de la FAO. Je voudrais également exprimer mes vifs remerciements à Monsieur Roche, le Conseiller juridique, pour l'excellente façon dont il nous a présenté ces deux documents, présentation qui nous a permis de comprendre le problème. Je voudrais également féliciter le représentant de l'Italie de son excellent discours qui nous a donné une idée très complète de la position de ce pays sur cette question. Je voudrais féliciter le Gouvernement italien de tout ce qu'il a fait pour permettre aux locaux de notre Organisation de s'agrandir et je voudrais le remercier également pour sa participation active à la célébration du quarantième anniversaire de la FAO. La question dont nous discutons est apparue il y a longtemps. On en a discuté à plusieurs reprises mais on n'a pas encore trouvé de solution définitive. C'est un problème extrêmement sérieux.

Je ne crois pas qu'il soit juste que notre organisation ait été citée devant la Cour de cassation italienne. Le problème dont il s'agit est celui de l'immunité de l'Organisation, cette immunité doit être respectée. Un élément important à cet égard parmi d'autres est la suggestion d'avoir recours à la Cour internationale de justice. Nous croyons qu'avant de s'adresser à cette juridiction il faut avoir épuisé toutes les autres possibilités. Il faut demander au Directeur général d'approfondir le dialogue avec le Gouvernement italien; peut-être le Secrétariat pourrait-il arriver à une solution juste et satisfaisante qui pourra garantir à la fois l'immunité de notre Organisation et les intérêts du Gouvernement italien.

Nous pensons donc que cette question devrait être renvoyée au Conseil de la FAO. De cette façon nous pourrions peut-être arriver à une solution amiable, ce qu'avaient proposé les délégués de l'Inde et du Liban.

I. KABA (Guinée): La délégation guinéenne remercie le Secrétariat et plus particulièrement le Conseil juridique pour la présentation claire de la question dont nous sommes saisis. Le point qui nous préoccupe est d'ordre juridique, c'est donc affaire de spécialistes et des juristes talentueux sont intervenus. Mais tout ce qui touche notre Organisation nous concerne, et exige notre contribution. Ainsi les informations fournies par Monsieur l'Ambassadeur d'Italie nous rassurent, s'il en était encore besoin, sur les meilleures intentions du Gouvernement d'Italie pour le règlement du problème qu'il considère comme mineur.

Personne ici ne doute de l'esprit d'hospitalité du Gouvernement italien. Cependant notre Organisation doit avoir des garanties quant à son immunité. C'est pourquoi nous recourons une fois de plus à la sollicitude des autorités italiennes pour que des précisions soient apportées aux sections 16 et 17 de l'Accord de siège, ce dans le cadre de l'atmosphère cordiale qui existe entre le pays hôte et notre Organisation, comme l'a si bien souligné l'Ambassadeur d'Italie.

P. SKALIERIS (Grèce): Ma délégation souhaiterait que les deux parties en cause puissent épuiser toutes les possibilités afin de trouver une solution négociée, une solution amiable.

M. KARIC (Yugoslavia): The Yugoslav delegation regrets that the problem of the immunities and legal status of our Organization in Italy has not been settled although it has been discussed since 1982. Bearing in mind the existing friendly relations between Yugoslavia and Italy, and expressing our high appreciation for the remarkable commitment of the Italian Government to fostering multilateral cooperation, particularly in the field of agriculture, we should like to express our conviction that the existing problems will be settled in a friendly and satisfactory manner, namely, by ensuring the immunity of the Organization from all forms of legal process in accordance with the principles of the legal status of the United Nations Organization in host countries.

H. LAUBE (Austria) (original language German): The Austrian law is characterized by a relative enthusiasm for agreement. Therefore, I am fully satisfied that the vast majority in this hall is converging upon a solution of compromise, which I would very gladly endorse. However, I wish to point out that one of the essential prerequisites for such a recommendation for compromise would be a pledge on the part of our Italian colleague to arrive at a legal solution within the foreseeable future.

Beyond that, there is a thought I would like to develop here, to which I believe my German colleague has referred. He pointed out that this disagreeable situation does not exist in other countries in similar circumstances, and that is why I would like to suggest that the Secretariat carry out a study of the comparable legal situations, that is, in Geneva, in Vienna, and in New York. Perhaps such a study would give rise to some practical ideas.

A. H. ABDULLAHI (Somalia) (original language Arabic): I welcome you to the Chair and compliment you on your Chairmanship. The Host Government has shown its good will for over 30 years as stated by the Ambassador of Italy to this Organization: we believe that Italy has respected the position of the Organization. Therefore we feel that a reference to the ICJ at the Hague to obtain an advice should only be resorted to if there are no other possibilities of settling this problem.

Y. A. M. HAMDY (Egypt): Dear friend and colleague we are very pleased to see you in the Chair of Commission III and wish you every success. First of all, we thank Mr Roche for the very clear introduction to the item which we are now examining. We also thank the Italian Ambassador whose statement has made the Italian position very much clearer as it gives us the hope of arriving at a satisfactory solution to all concerned. At the same time we share the concern of the Secretariat regarding the non-existence of sufficient guarantees of immunity. Therefore we feel that if there

was more dialogue between the Organization and the host country this would enable us to arrive at the right solution. The Council should be informed of the progress of the contacts between the Host Government and the Organization. Once again we thank the Italian Government for its good will and beg it to make an even greater effort in order to arrive at a definitive solution. We hope that the new Ambassador will give the greatest support to this.

A. JEAN-LOUIS (Haiti): Ma délégation vous présente ses félicitations pour votre élection a la présidence de cette importante Commission.

Ma délégation voudrait d'une façon concise placer son mot dans le débat. A la vérité une bonne entente est toujours mieux qu'un long procès. Il est superflu de m'engager dans les méandres des doctrines, lois et jurisprudences, puisque d'éminents spécialistes ont déjà fait cet intéressant exercice.

De tous les exposés il ressort:

1. que le pays hôte a de bonnes dispositions, voire la volonté de trouver une solution heureuse,
2. que la majorité des délégués ici présents demandent un sursis sur l'action de l'Organisation auprès de la Cour de la Haye et croient à une solution négociée.

Certes, le jugement de la Cour de cassation d'Italie, décision juridique, lie le Gouvernement italien mais nous pensons qu'une décision intervenue entre le Gouvernement italien et la FAO, ratifiée par le Parlement italien, devrait peut-être apporter une solution définitive à cette question.

J.M. WATSON (Panamá): La delegación de Panamá sobre este debate, en particular, siente gran preocupación por el fallo de la Corte di Cassazione de Italia que puede afectar la inmunidad de la FAO.

Sobre el particular mi Gobierno desea dejar en claro que para la FAO no puede haber limitación sobre su inmunidad, ya que el Acuerdo de Sede así lo manifiesta.

Apoyamos las posiciones de Líbano, Costa Rica y Filipinas para que se le otorguen al Director General plenos poderes para dirimir estos problemas aquí, en Roma, y mi delegación recibe con beneplácito lo anunciado por el señor delegado de Italia al informar que el Parlamento italiano está elaborando una nueva ley. Sobre el particular, ya que estamos seguros allanará las diferencias hasta ahora presentadas, nos complace ampliamente el documento presentado al respecto, cuyo texto recoge, no sólo la opinión del Comité Jurídico, sino también la del anterior Consejo de la FAO.

H. AL-ZALTINI (Libya) (original language Arabic): First, I wish to congratulate you on your election to the Chair of this Commission. I thank Mr Roche and congratulate him on his very clear introduction to this item. Having listened to the views of the previous speakers including the representative of Italy we feel that the Italian Government is ready to discuss this issue and negotiate with the Organization in order to reach an appropriate solution instead of resorting to the International Court of Justice which may take a long time and which would not serve the good relations between FAO and the host country. Therefore we feel that it is better to engage even more in this exercise rather than put the matter to the International Court of Justice.

Bawa SAHADOU (Niger): La délégation du Niger voudrait tout d'abord vous féliciter pour votre remarquable preuve de patience dans la conduite de nos travaux.

Concernant cet épineux problème qui nous est soumis ce soir, la délégation voudrait aussi apporter sa pierre à l'édification de la solution constructive à laquelle il est à la fois souhaitable et indispensable d'aboutir.

A en croire l'intervention remarquable du distingué délégué de l'Italie, nous serions tentés de penser que ces problèmes mériteraient une solution interne. Depuis plus de trente ans déjà, l'Italie, beau pays plein de générosité, a accueilli notre Organisation à laquelle elle appartient également. Permettez-moi donc de dire, Monsieur le Président, qu'il s'agit là franchement d'un problème de famille et un vieil adage ne dit-il pas que "le linge sale se lave en famille."? C'est pourquoi la délégation du Niger, tout en souhaitant un règlement rapide à ce litige, estime cependant que la recherche de solutions devrait se faire sur place.

Nous nous permettons à cet effet de saluer tous les éminents orateurs qui nous ont précédés, qui ont plaidé en faveur d'un règlement pacifique et interne de ce problème. La célébration du quarantième anniversaire de la FAO nous a permis de voir une fois de plus combien l'Italie s'intéresse et concourt au bon fonctionnement de la FAO.

En conclusion, la délégation du Niger se joint à tous les pays qui font confiance à l'Italie pour sa disponibilité à mettre fin à ce problème. Des preuves concrètes témoignent de cette disponibilité italienne, nous n'avons nullement besoin de les énumérer.

MOHSIN ALI KHAN (Bangladesh): I congratulate you on your election. I am aware that I should be brief. We have gone very carefully through documents C 85/LIM/10 and C 85/LIM/15. I would also like to congratulate Mr Roche the distinguished Legal Counsellor of FAO. He has very lucidly and correctly given us the information in the documents. We are happy with the statement of His Excellency the Italian Ambassador that discussion may be held immediately to find a practical solution to the problem. We agree with this and feel it is a good idea. We also feel that due immunity should be granted to FAO to enable it to carry out its work. Given understanding, we believe that we can find a mutually acceptable solution. For the present we think that we may be able to postpone the idea of taking the matter to the International Court of Justice for their advisory opinion. I support the other delegations who have preceded me, in this respect.

Point of order

Point d'ordre

Punto de orden

A. ABDEL-MALEK (Liban) (langue originale arabe): M. le Président, il est déjà 17 h 30, heure à laquelle nous devons arrêter pratiquement les débats. Nous sommes en train de débattre de cette question depuis trois heures et j'avais avancé une proposition pour remettre à plus tard la discussion, et un grand nombre de pays sont d'accord avec moi pour dire que la question sera remise à plus tard et que le Directeur général sera chargé de poursuivre ces contacts et ces discussions avec le Gouvernement italien. Donc je propose, M. le Président, d'adopter ma proposition de clore le débat sur ce point, et qu'on passe à d'autres sujets de l'ordre du jour. Je vous remercie.

KOO BUM SHIN (Republic of Korea) (original language Korean): I will be very brief. My delegation has been carefully listening to the other previous speakers.

Some comments come from the side of FAO representing the Legal Counsel's voice on this matter, namely the immunity problem. Some optimistic comments come from the side of the Italian Government required by the executives of the Italian Republic through the Representative of Italy to FAO.

Mr Chairman, the problem raised does need to be solved because a pending problem always requires time. In this connection my delegation looks forward to the attainment of a solution between FAO and the Italian Government without resort to outside interference, i.e. Advisory Opinion, by the next Conference.



Abdul Wahab Naji Ismail AL-SAMURRAI (Iraq) (original language Arabic): On behalf of my delegation I would like in my turn to voice those remarks that have already been given a number of times, namely to safeguard above all the relationship between Italy and FAO. We have all followed the positive explanations given by the Ambassador of Italy, and we have listened to the proposals put forward suggesting that putting the issue before the International Court of Justice would have perhaps some negative effects; I do agree with that idea. Therefore we have to resort to discussion, dialogue and negotiation, we have to think in terms of arbitration or whatever - anything that will safeguard this relationship and bring about an amiable solution. We think that there is still time before asking for the legal opinion of The Hague and we wish to pay tribute to the host country, Italy, which has hosted so many conferences and has always given help and assistance. We are confident that this generous host country will find a solution. Therefore we ask the Director-General and Italy to be patient and perspicacious, to wait and to see to it that the new Bill of Immunity that His Excellency the Ambassador of Italy told us about is passed.

J. ORZESZKO (Poland): My delegation would like to thank Mr Roche for his excellent presentation. We have also heard with great interest the position of the Italian Government. In view of that my delegation believes that there are possibilities for solving the existing problems in direct dialogue between the host country and the Organization. We join the already expressed opinions that it is premature at this stage to turn to the International Court of Justice.

MAZLAN JUSOH (Malaysia): In complying with your request I will be very brief, but first let me take pleasure in congratulating you on chairing this important Commission.

I just wish to add my delegation's voice to the proposal of India which received wide support from other delegations, that is, to delegate this issue to the Council to determine whether it should or should not be referred to the International Court of Justice. We must recognize the goodwill and sincere efforts of the Italian Government to solve the problem in Rome, but at the same time we must also recognize the necessity and importance for this Organization to be guaranteed full immunity from any legal process. We are sure that such a solution will be found very soon and that it will not be necessary to raise this matter any more.

Sra. Doña Mercedes RUIZ ZAPATA (México): La delegación de México se siente muy complacida por verle a usted, Sr. Presidente, presidiendo nuestros trabajos. Le deseamos el mejor éxito en sus funciones.

La delegación mexicana reitera su posición, ya expresada en anteriores ocasiones, en el sentido de solicitar al gobierno italiano, al que reconocemos su buena intención y generosidad como miembro distinguido de la comunidad internacional, que garantice a nuestra organización al pleno derecho de la inmunidad que se desprende del Tratado de Sede.

Insistimos ante el Gobierno italiano para que promulgue una legislación que garantice a la FAO inmunidad de toda forma de procedimiento judicial, tal como se prevé en la Sección 16 de dicho Acuerdo de Sede. Nos pronunciamos, por tanto, a favor de que la FAO siga celebrando un diálogo exhaustivo y constructivo con el Gobierno de Italia para poder tener lo más pronto posible una solución favorable y negociada que haga innecesario el recurso de recabar la opinión de la Corte Internacional de Justicia.

En relación con la posible participación de la FAO en el futuro ante los tribunales italianos para dirimir cualquier diferencia, la delegación de México considera que se debe evitar toda participación de la Organización ante los tribunales italianos, por ser esto incompatible con su condición jurídica, que le concede inmunidad de jurisdicción.

Por último, señor Presidente, dado que la Conferencia se reunirá dentro de dos años, solicitamos que el Consejo siga analizando la situación para valorar los avances que se hagan.

CHAIRMAN: Now before giving the floor to the last speaker I have the following announcement to make. The African Group will meet tomorrow morning at 8.30 in the Malaysia Room.

O. R. da SILVA NEVES (Brazil): Mr Chairman, my delegation expressed in the Council its concern with the long standing lack of definition of this fundamental problem in the relationship between FAO and the host country. I would like to reiterate at this juncture that my delegation firmly believes an understanding can be reached through close cooperation among the parties involved, and I am pleased to verify that document C 85/LIM/10 recognizes that goodwill has been deployed by all concerned.

The Brazilian delegation believes that seeking an Advisory Opinion from the International Court of Justice on the interpretation of Section 16 of the Headquarters Agreement is a suitable course of action to follow. We understand, however, that further efforts can be made to find an amicable solution before turning to The Hague. We therefore urge FAO and the Host Government to continue to work on all possible steps in order to reach a complete and permanent solution to the question. On the other hand we are perfectly prepared to support the proposal advanced by India.

CHAIRMAN: (original language Arabic): I should like to ask the Representatives of Colombia, Cuba and Cyprus to hand in their statements in writing because we have used up our time for this item.

I will now invite the representative of the Director-General to respond to the statements made.

DEPUTY DIRECTOR-GENERAL: I will try to be very brief indeed. We certainly recognize the magnificent goodwill of the Host Government, but I think we have to recognize also fact and logic and we must cut through a lot of the points that have been made today in order to arrive at a conclusion.

There are only one or two points I would like to take up. One is that I really did not see anything in the document that we produced that was provocative or even obscure in meaning or tone. I feel it is a sober document, and it should not have given rise to agitation on anybody's part, and I certainly do not think that it is wrong on matters of fact.

On the question of the new building, well we are grateful for the new building but that does not dispose of the problem. We will not have a problem about rent but we could have a problem about all sorts of things in the new building - window cleaners or whatever contract is involved in that new building, so the question is really an irrelevance to this particular legal issue.

Above all I would like to say that it is not really a question of goodwill. If the Italian Government had been lacking in goodwill they would not be seeking to help us. It is not a question of a dispute; we do not have a dispute with them and we do not have a dispute with the Corte di Cassazione; we are not in a position to have a dispute. We have a problem, it is a legal problem and it is a serious problem, and it has to be solved. In order to solve it we prefer of course to do it together with the Host Government and not against them, so the goodwill comes in there and not as regards the existence or not of a dispute and so on. It is a complicated problem because here we are discussing Article 16, but the law to which reference has been made concerns Article 17 - Execution. The problem of Article 16 remains, and in that connection Ambassador Pascarelli really confirms it because he referred to the Article of the Italian Constitution that establishes the rights of Italian citizens. However, he did say that whatever law was passed by the Italian Parliament would prevail over the judgement. Well I think we have to wait and see what the Courts say about that. I hope it never comes to that but the question remains, what law? And here I would refer you to page 5 of our document which analyzes the law so far under discussion. As you see we do not think it would solve the problem.

However, as I have said, we would much rather do things together with the Italian Authorities than against them, or against their wishes, and I would certainly say that while I could not agree with everything he said, Ambassador Pascarelli convinced me of one thing; if I get into trouble with the Italian Courts I want him to be my lawyer!

Now as regards the situation as I see it, the problem of delegation to the Council is that in order to delegate to the Council you would have to do two things. One is that the Conference would have to approve now three questions because only the Conference can approve that, and then the resolution would have to be amended. So it is not as easy as it seems, and furthermore it would seem to be

the view of the majority who have spoken that it is too soon to jump to this, and therefore I would, on behalf of the Director-General, accept - and I hope this is how the Conference would see it -that there is a problem, it is analyzed in the document, they have heard the views of the host country, they have heard the views of other governments, and taking note of those views they decide not to proceed with the matter at this Conference. I hope they will not go into value judgements apart from that, and I hope the Host Government will accept this. We do not express value judgements in the report - who is right, who is wrong, or goodwill or otherwise, dispute or not. Let us just say that we have heard the views expressed which are to be found in the verbatim records, and let us just say that the Conference in the light of these decided not to proceed with this matter at this Conference. That would leave open the question of what it does at the next Conference. This is what I think the Director-General would be satisfied to accept in the light of the views expressed today and in particular in the light of the views of the host country.

CHAIRMAN (Original language Arabic): I think Mr West has in a very clear way described the stage we have reached in our discussions and I would like to take this opportunity of giving my warm thanks to those who participated in this discussion.

I think that all the speakers this afternoon have suggested we find a speedy solution to the problem so that FAO's immunity be settled very quickly once and for all. I feel we all agree as to the need to settle this problem in an amiable manner and solve it with the Italian Government in order to settle all further problems of immunity.

E. PASCARELLI (Italy): Simply ten seconds to agree fully with the Director-General's proposal that we should proceed by mentioning the problem and FAO 's not using the word "dispute". Once again I thank you and the colleagues who intervened and I want to confirm our preparedness to start negotiating with FAO.

5ra. Hilda LOPEZ DE MORAL (Colombia): Colombia desea unirse a los muchos votos de felicitación que le han sido dirigidos por ocupar la Presidencia de esta importante Comisión.

Nuestra Delegación se felicita, Señor Presidente por el ambiente que aquí se respira, que no es otro que el de entendimiento y comprensión.

Deseamos agradecer al Sr. Roche su clara y precisa exposición. También deseamos agradecer al Embajador Pascarelli su brillante exposición sobre la positiva posición que ha adoptado el Gobierno de Italia en relación con este delicado tema.

Colombia considera que debe definirse sin ningún lugar a dudas la absoluta necesidad de que la Organización goce de la más completa inmunidad para el adecuado desempeño de sus importantísimas funciones.

Si bien existen dos definiciones jurídicas que parecen contradecirse en los Artículos XVI y XVII que se oponen una a otra, en controversias de esta índole siempre hay formas de buscar y de encontrar una solución que satisfaga a ambas partes. En estos casos, ambas partes tienen que ofrecer alguna concesión y demostrar su buena intención de llegar a una solución negociada. El Embajador Pascarelli nos ha informado de todo lo que está haciendo el Gobierno de Italia, inclusive de promulgar una legislación idónea para llegar a una solución adecuada.

En 1951 cuando se estableció la FAO en Roma, en estos magníficos edificios, los funcionarios y sus familias que vinieron fueron objeto de la calurosa y generosa recepción del Gobierno de Italia y del pueblo de Roma.

El solo nombre de Roma contiene ya una garantía de que se encontrará una solución sabia y tan duradera como las piedras milenarias que nos rodean y que desde las terrazas de este edificio nos deleitamos en contemplar.

La FAO ha gozado durante todos estos años de la "generosa hospitalidad del Gobierno de Italia y nada puede hacernos dudar de que una vez más, este generoso país que acoge a nuestra Organización y alberga a sus funcionarios y a sus familias y en ocasiones como ésta, a eminentes Jefes de Estado, Ministros y a representantes del mundo entero, hará prueba de su sabiduría y sabrá encontrar con nuestro Director General y sus hábiles consejeros, una solución negociada.

Por todo lo anterior, Colombia apoya a los Delegados de la India de El Salvador, del Líbano y tantos otros que se han pronunciado en este mismo sentido, de que no se tome ahora una decisión al respecto, que se remita el asunto al Consejo para que se mantenga al corriente de la evolución de las negociaciones y que se informe al próximo Período de Sesiones de la Conferencia del resultado de las mismas para su decisión 1/.

Sra. Doña Silvia CARBALLO-VIVES (Cuba): Permítame felicitarlo en nombre de mi delegación por su elección para presidir los trabajos de esta Comisión.

Señor Presidente seré muy breve tomando nota de su sugerencia. Mi delegación, en relación con esce cerna, considera que se debe tener en cuenta la proposición de la distinguida delegación de la India y Costa Rica, las cuales apoyamos en cuanto a remitir al Consejo este tema para su reconsideración y que le otorgue al Director General plenos poderes para que pueda resolver las pequeñas diferencias existentes 1/.

H. ZANNETIS (Cyprus): Following so many speakers I can be very brief. After the explanation provided by Ambassador Pascarelli of Italy we believe that the matter should not at this stage be referred to the International Court of Justice but more time should be given for negotiations.

We understand that the matter has been discussed for several years now, without a satisfactory solution. But following the recent indications of good will by the Italian Government we believe that more time should be made available. We therefore support the suggestion of the delegation of India and others for the matter to be referred to Council so that this body can take any action if deemed necessary following negotiations that will in the meantime take place. Thank you 2/.

The meeting rose at 17.45 hours

La séance est levée à 17 h 45

Se levanta la sesión a las 17.45 horas

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1/ Texto incluido en las actas a petición exprssa.

2/ Statement inserted in the verbatim records on request.

## conference

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

## conférence

ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE

## conferencia

ORGANIZACION DE LAS NACIONES UNIDAS PARA LA AGRICULTURA Y LA ALIMENTACION

C 85/III/PV/2

C

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Twenty-third Session  
COMMISSION III

Vingt-troisième session  
COMMISSION III

23° período de sesiones  
COMMISSION III

### SECOND MEETING DEUXIEME SEANCE SEGUNDA SESION

(21 November 1985)

The Second Meeting was opened at 10.20 hours  
G.M. Ahmed, Chairman of Commission III, presiding

La seconde séance est ouverte à 10 h 20  
sous la présidence de G.M. Ahmed, Président de la Commission III

Se abre la segunda sesión a las 10.20 horas  
bajo la presidencia de, G.M. Ahmed, Presidente de la Comisión III

PART III - CONSTITUTIONAL AND ADMINISTRATIVE MATTERS (continued)  
TROISIEME PARTIE - QUESTIONS CONSTITUTIONNELLES ET ADMINISTRATIVES (suite)  
PARTE III - ASUNTOS CONSTITUCIONALES Y ADMINISTRATIVOS (continuación)

- A. Constitutional and Legal Matters (continued)
- A. Questions constitutionnelles et juridiques (suite)
- A. Asuntos constitucionales y jurídicos (continuación)
  
- 20. Other Constitutional and Legal Matters (continued)
- 20. Autres questions constitutionnelles et juridiques (suite)
- 20. Otras cuestiones constitucionales y jurídicas (continuación)
  
- 20.3 Relations with the Host Government (continued)
- 20.3 Relations avec le Gouvernement hôte (suite)
- 20.3 Relaciones con el Gobierno del país huésped (continuación)
  - Headquarters Agreement
  - Accord de siège
  - Acuerdo sobre la Sede

CHAIRMAN (Original language Arabic): I shall ask the Assistant Director-General to present item 20.3, which is the Headquarters Agreement, so that you are all aware of the contents of this document, C 85/LIM/29.

Dean K. CROWTHER (Assistant Director-General, Administration and Finance Department): The Commission has before it this morning document C 95/LIM/29 dealing with the Headquarters Agreement.

The Headquarters Agreement is an agreement between the Organization and the Host Government. It is a matter that has been under discussion for purposes of interpretation for some period of time. For your background information, we have attached appendices A and B to show extracts from reports of prior sessions of the Council that this matter has been brought before.

Secondly, I would like to inform the Conference that the question of the Headquarters Agreement and the interpretation under the Headquarters Agreement has been under active discussion with the Host Government since 1972.

During the past two years there has been much more active discussion and negotiation. More recently, the Director-General has received a letter from the Minister of Foreign Affairs of the Government of Italy, and it addresses the question of the Headquarters Agreement and does make certain proposals.

There are a couple of items included in this letter which give the Organization cause for concern, and these matters have previously been reported to the Finance Committee and to the Council.

You will notice in paragraph 3 of the document before you it mentions two of those matters. One is the proposal by the Minister of Foreign Affairs to exclude all Italian staff from dutyfree privileges. This is a privilege that was extended very graciously by the Host Government some ten years ago, and it is now being suggested that it be removed. Such an action would require that certain of the emoluments of the General Services Staff and a more limited amount of the Professional Staff would then most likely have to be reimbursed under the budget of FAO, and therefore increase its requirements.

There are two reasons why this is objectionable to the Organization. One is certainly the increased cost that is involved. The second is that it does cause discrimination among the staff. The Director-General has taken the position that he wishes not to have to discriminate between privileges among his staff.

The second point raised in the Minister's letter is concerning a limitation to be placed on the number of staff that would enjoy full diplomatic privileges in the first category. There is a suggestion that the number of persons in FAO who would be classified as first category, which are essentially P-5s and above, be limited to 11.5 per cent of the total. This would immediately mean a reduction in the number of staff that would be in that category. This position and proposal is also objectionable in the sense that it would limit the Director-General's ability to include people in the P-5 and above first category in that the selection criteria that he uses for placing people in that category is because they are senior management, because they do have major responsibility and therefore should be entitled to the same privileges as all the other staff. If limitation were placed upon the number in that category it would require that some discrimination among the staff be placed in order to meet the requirements as proposed by the Minister's letter. This, too, seems to be objectionable to us.

There are some other proposals that are contained in the letter. The Director-General's position is that we continue to negotiate and try to resolve the differences of opinion on the interpretation of the Headquarters Agreement and reach some amicable position that would be satisfactory to the Host Government and to the Organization without increasing costs and without requiring discrimination among the staff.

This document is placed before this Commission for the purposes of updating the information on a very sensitive issue, but at the same time for information only. It does not require action, but there may be some discussion. I would be pleased to answer any questions that may arise.

A. BACCHI (Italie): Le document C 85/LIM/29 ayant trait à l'accord de siège ne nous met pas en mesure d'évaluer toutes les démarches entreprises afin de conclure de façon constructive les pourparlers entre les deux parties pour envisager une interprétation de l'accord de siège plus appropriée aux exigences actuelles de la FAO et du Gouvernement du pays hôte.

En effet, un Comité conjoint FAO-Gouvernement italien a oeuvré très activement au fil des deux dernières années dans cet esprit. Toutes les questions concernant les privilèges des fonctionnaires de la FAO, surtout pour ce qui est des franchises, ont été à notre avis suffisamment explorées et examinées à fond.

Ces longs pourparlers au cours desquels on n'a jamais cessé de faire référence à l'attitude des autres pays hôtes d'organisations internationales ont abouti à la rédaction d'une lettre en date du 5 octobre écoulé, envoyée au Directeur général de la FAO par le Ministre italien des Affaires étrangères. Cette lettre reflète le maximum de l'effort que le Gouvernement italien est en mesure de garantir à la FAO en ce domaine. Jusqu'à présent la lettre en question n'a reçu aucune réponse.

Le Gouvernement italien estime que ce Comité ne peut pas être saisi d'une telle question car le Comité ne peut pas remplacer d'un jour à l'autre un Comité conjoint qui a travaillé pendant des années. N'oublions pas qu'il s'agit d'un comité de la Conférence et qu'il ne s'agit pas du Conseil.

En effet, la lettre du Ministre italien des Affaires étrangères n'affecte pas la souveraineté de la FAO ni de son Directeur général. Par contre elle affecte seulement des critères de gestion interne pour lesquels sont compétents, à l'intérieur de l'Organisation, des organes institutionnels tels que le Comité des questions juridiques et constitutionnelles, et le Conseil.

Nous ne voyons donc pas l'opportunité que la Conférence soit saisie de ces problèmes à ce stade, c'est-à-dire au moment où des négociations sont encore en cours entre les deux parties, car du point de vue italien les pourparlers, les conversations qui ont été entamés depuis longtemps pourront être considérés comme conclus au moment où un échange de lettres aura lieu à ce sujet. Si l'échange de lettres n'est pas concluant, on devra avoir recours aux moyens prévus par l'accord de siège même. En effet, l'accord stipule que lorsque surgit un différend entre le pays hôte et la FAO sur l'interprétation de l'accord de siège et que la voie des négociations ne s'est pas révélée fructueuse, on aura recours à un arbitrage. Mais à l'heure actuelle la prise de position de la Conférence est à notre avis prématurée.

Pour ce qui est du point spécifique qui constitue le fond du problème, il faut remarquer que l'exclusion des fonctionnaires italiens et de tous les ressortissants italiens des privilèges en matière fiscale et douanière est une mesure adoptée par la presque totalité des pays hôtes d'organisations internationales. Pour ne citer qu'un exemple, nous ne sommes pas sans savoir que le Secrétaire général d'une très importante Organisation internationale siégeant à Paris n'a pas le droit, en tant que citoyen français, à la plaque CD pour sa voiture personnelle. La Suisse et d'autres pays adoptent une attitude conforme à ces principes.

Pour ce qui est de la nomination de fonctionnaires jouissant des privilèges diplomatiques, nous estimons qu'un principe de caractère général est accepté suivant lequel le nombre de fonctionnaires ne peut pas dépasser une certaine proportion par rapport au nombre global du personnel, par rapport à la totalité du personnel de l'Organisation même. C'est en effet ce qui se passe en Suisse auprès des organisations internationales ayant leur siège à Genève. Le statut diplomatique en général doit être en outre proportionné à l'importance des fonctions exercées à la FAO.

En proposant de retenir un certain pourcentage qui constitue d'ailleurs une très légère diminution par rapport au chiffre actuel, nous n'avons pas voulu dire que la FAO ou son Directeur général devait exercer une souveraineté restreinte mais nous avons plutôt voulu proposer un critère d'ordre général duquel s'inspirer, et auquel des exceptions sont admises. Une période de grâce de deux ans serait prévue pour atteindre le pourcentage de 11,5 pour cent. D'ailleurs le Conseil même dans sa réunion de juin dernier - et je ne vois aucune mention d'une prise de position du Conseil lors de sa dernière session - a exhorté les deux parties à faire aboutir les négociations dans les plus brefs délais et c'est dans cet esprit qu'on attend une réponse de la part du Directeur général, réponse qui pourra constituer une base pour conclure ces négociations en cours.

A. ABDEL-MALEK (Liban) (langue originale arabe): La délégation de mon pays voudrait exprimer sa gratitude à M. Crowther qui nous a présenté ce document C 85/LIM/29 sur l'Accord de Siège. Nous sommes vraiment très surpris de voir que le Gouvernement italien n'a toujours pas trouvé une solution au problème en suspens à savoir le privilège de franchise, et les privilèges et immunité diplomatiques pour ce qui est des fonctionnaires de la première catégorie, et cela en dépit de tout ce qui a été dit à la quatre-vingt-sixième et à la quatre-vingt-septième session du Conseil. Je me souviens que le Directeur général, M. le Président, avait annoncé à la dernière session du Conseil, en juin 85, que les privilèges accordés aux fonctionnaires de nationalité italienne représentent à peu près 100 000 lires italiennes par mois et par personne et l'on considère que c'est une partie intégrante de leur traitement. Donc, si on leur retirait ces privilèges qui constituent une sorte d'émoluments, cela voudrait dire que les gouvernements, les Etats Membres de la FAO devraient subir un coût plus élevé, car il faudrait augmenter les traitements des personnes en question.

Pour ce qui est de la limite du nombre de fonctionnaires de la première catégorie jouissant de la totalité des privilèges et immunités diplomatiques, il faut absolument que cette question soit laissée à la discrétion du Directeur général, conformément à l'article XIII section 28 de l'Accord de Siège. Nous sommes absolument certains que le Directeur général appliquera ces règles qui lui sont imposées et ne dépassera pas les limites spécifiées. Il aurait à demander à la Conférence générale d'augmenter cette catégorie de fonctionnaires, parce que cela entraînerait une augmentation de coût. Nous ne pensons pas que le Gouvernement italien ait des raisons de craindre ce que pourrait faire le Directeur général en la matière.

M. le Président, hier nous avons écouté son Excellence l'Ambassadeur Pascarelli, qui nous a parlé de l'immunité de juridiction. Nous l'avons écouté avec un grand intérêt parce qu'il nous a donné tous les arguments juridiques. Je pense que l'ambassadeur Pascarelli devrait se voir confier la défense de la position de l'Organisation afin que ses frères de nationalité italienne continuent à jouir des mêmes privilèges dans cette Organisation. Ce serait un acte humanitaire et je souhaite que M. Pascarelli défende la position de l'Organisation pour ce qui est de la limite du nombre des fonctionnaires de la première catégorie jouissant de la totalité des privilèges et immunités diplomatiques.



N. R. KAMSVAAG (Norway): I do not want to go into a discussion about this matter, but I do have a question on our orientation. Perhaps in the introduction I missed some information given about the practices in other countries where similar international organizations are located. I would be happy if the Secretariat could tell us what is the practice in other countries when it comes to matters such as that.

CHAIRMAN (original language Arabic): If there are no other delegates who wish to take the floor, I shall give the floor once again to Mr Crowther in order that he may answer some of the questions raised.

Dean K. CROWTHER (Assistant Director-General, Administration and Finance Department): Firstly, regarding the question raised by the representative from Norway, I do not have all of the detailed information before me, but I do know that there is a mixture among the various Headquarters Agencies. You should realize that each Host Government that provides privileges and immunities to the various United Nations specialized agencies in various cities enters into a separate agreement depending upon what arrangements they can and are willing to accord to particular agencies. Austria, for example, has been very liberal and provides for a great deal of immunities and privileges for all staff. On the other hand, in New York probably some of the minimum immunities are provided for nationals. In Geneva, Paris and London the privileges provided are all quite different. There are some immunities provided to nationals in some cities which are not provided in others. It is not a uniform position in all countries. It is by all means subject to agreements that are entered into between the Host Governments and the respective United Nations agencies. We can look at both extremes and find that is a total mixture.

I think our concern here in Rome in the case of either the first category or the question of the removal of privileges from Italian nationals who have enjoyed those privileges is that we are now being faced with the position of taking away privileges previously offered over a long number of years. If the privileges had not been offered, that would be one thing, but they have been offered for at least the last decade. Now to reverse the position and take away the privileges makes it quite difficult and probably quite costly. Nonetheless, the Director-General is in a position where he would like very much to conclude the negotiations and work very closely with Italian representatives to find an equitable solution. However, he does not see that it would be appropriate for us to arbitrarily increase the cost to the Organization for removal of such privileges, and we are hopeful that we can find an equitable ground on which to conclude negotiations agreeable to the Host Government and to the Organization.

CHAIRMAN (original language Arabic): We have noted the contents of this document on Headquarters Agreement. Negotiations are indeed still going on between the Italian Government and the Organization. Therefore, I believe that it would be best to conclude those negotiations at the earliest possible moment for the benefit of the Organization.

I will ask Dean K. Crowther to introduce the second item on our Agenda for today, which is Item 23.1 Relations with the Host Government, Headquarters Accommodation, C 85/LIM/25.

- B. Administrative and Financial Matters
- B. Questions administratives et financières
- B. Asuntos administrativos y financieros
  
- 23. Other Administrative and Financial Matters
- 23. Autres questions administratives et financières
- 23. Otros asuntos administrativos y financieros
  
- 23.1 Relations with the Host Government
- 23.1 Relations avec le Gouvernement hôte
- 23.1 Relaciones con el Gobierno del país huésped
  
- Headquarters Accommodation
- Locaux du siège
- Locales de oficina en la Sede

Dean K. CROWTHER (Assistant Director-General, Administration and Finance Department): You have before you the document just referred to, entitled Headquarters Accommodation. There are two Appendices, A and B, which are extracts of previous Reports of Sessions of the Council.

In addition, I would like to report generally on an up-date on the question of headquarters accommodation. Here in the Caracalla Complex two projects are involved. The first is a project which was started some time ago to build an additional 70 rooms on the eighth floor of Building D. We are very pleased to say that the progress certainly is moving along quite well. With the last contract that was permitted for electrical, plumbing and heating works we believe that the project may continue as scheduled, and there is a possibility that it will be completed in the autumn of 1986.

This provision of an additional 70 rooms will ease the burden of overcrowding with which we are now faced. You may realize that in some instances we have found it necessary to install offices in corridors and in Conference Rooms in order to utilize every foot of available space.

Secondly, in order to avoid the situation of the FAO Organization split between two locations, one here at the Caracalla Complex and one at Building F, which is on the Cristoforo Colombo about five and a half kilometres from here, we have approached the Italian Government which has very graciously agreed to include in their Financial Bill a request for appropriations in the total amount of 25 000 million lire. That would provide additional accommodation here in the Caracalla Complex to house the staff now at Building F, and at that time we would have the entire Organization in one location. That does require the appropriations legislation to be completed; it does require authorization for letting the contracts. Only when that has been completed can the construction begin.

There are a number of steps that must take place, probably in three phases. There will be some change between Building A and Building B, and there will be a major new building between Buildings C and D that will connect those two buildings at the rear. Finally, the existing Building E, situated between Buildings C and D, was built as a temporary building 20 odd years ago and has long since served its capabilities. It must be torn down and a smaller building built to replace it. We believe that with the new appropriations legislation now on its way through the Italian Parliament that possibility now exists.

We are very appreciative of the Italian support for the accommodation that seems to be well on its way at this time.

The document before you describes those Reports on the progress, and we are very pleased to say that the Italian Government is very strongly supportive.

If there are any questions we would be very pleased to answer them.

CHAIRMAN (Original language Arabic): We have listened to the explanation given by Mr Crowther on the basic document. Are there any comments?

I should like to ask Mr Crowther to introduce Item 22, Scale of Contributions 1986-87, C 85/LIM/3, C 85/LIM/13.

22. Scale of contributions 1986-87

22. Barème des contributions 1986-87

22. Escala de cuotas, 1986-87

Dean K. CROWTHER (Assistant Director-General, Administration and Finance Department): Agenda Item 22, Scale of Contributions 1986-87, and the information concerning the scale is included in the documents before you.

Document C 85/LIM/3 is an extract from the Report of the Eighty-seventh Session of the Council, and it contains a recommended Draft Resolution for approval by the Conference. The Resolution provides that the FAO Scale of Contributions for 1986-87 should be derived directly from the United Nations Scale of Assessments currently in force for 1985 but adapted slightly for the different membership of FAO from that of the United Nations. The United Nations Scale has been

in force for the three-year period from that Scale. The only difference between the 1984-85 FAO Scale and that recommended for the 1986-87 Scale arises as a result of the admission of two new Member Nations during this Session of the Conference.

The practice of deriving the FAO Scale from the United Nations Scale was established in 1955 by a decision of the Eighth Session of the Conference that the FAO Scale for future biennia be derived directly from the UN Scale of assessment during the calendar year of each Conference session. This was confirmed after a thorough and detailed review by the 18th Session of the Conference in 1975. As will be noted from Document C 85/LIM/3 and C 85/LIM/13 the Resolutions Committee has examined the draft resolution and found it receivable. That document also contains, as an appendix to the Resolution, the proposed scale adjusted to take into account the admission of two new member nations which occurred on 9 November 1985.

I would draw attention to the consideration of the Council as set out in Document C 85/LIM/3, and it will be noted that the United Nations as well as the General Assembly have not yet completed their work on the UN Scale of Assessments from 1986-1988 which will be the next three year period. It is not expected that a decision will be forthcoming from the General Assembly before the conclusion of this Session of the FAO Conference and, of course, the scale is not available today for consideration by our Commission.

Under the circumstances and in accordance with the recommendation of the Council which noted the necessity for the Organization to have a known scale adopted by the Conference in order to promote the timely calling for the set contributions, the resolution is as shown in C 85/LIM/3, and as recommended by the Council it is suggested that the 1986-87 FAO scale should continue to be derived from the current UN Scale. If there are any questions from delegations I would be happy to respond to them.

A. ABDEL MALEK (Liban) (langue originale arabe): La délégation du Liban tient à remercier pour la deuxième fois M. Crowther pour avoir présenté les documents C 85/LIM/3 et C 35/LIM/13 sur le barème des contributions 1986/87. Nous approuvons la proposition du Secrétariat d'adopter le barème des quote-parts des Nations Unies en vigueur, et nous appuyons également les amendements proposés pour tenir compte de l'admission des deux nouveaux membres. Nous approuvons également la proposition qui a été faite d'établir le barème des contributions de la FAO pour 1986-87 sur la base de celui de l'ONU en 1985, et nous appuyons un projet de recommandation relatif à ce point.

J.P. ROLLIN (Federal Republic of Germany) (original language German): My delegation is basically in favour of the FAO Scale of Contributions being derived from the UN Scale of Assessments. However, additionally, we would favour having the differences in the number of members always being brought in line with each individual case.

Sra. Doña Silvia CARBALLO VIVES (Cuba): Nuestra delegación está de acuerdo con el proyecto de resolución presentado por la Secretaría de la FAO en el documento C 85/LIM/13, por considerar que las cuotas de los organismos especializados de Naciones Unidas se igualen para así mantener la armonía y coherencia dentro de la comunidad de naciones.

Dean K. CROWTHER (Assistant Director-General, Administration and Finance Department): The distinguished representative from Germany raised an important point of which everyone should be aware. The difference between the scale of contributions in the United Nations, which is currently in effect in the FAO scale, causes a slight deviation which we must amend each time. In this instance there are seven members of the UN who are not members of FAO and six members of FAO who are not members of the UN. We use precisely the same formula for deriving those scales, based directly on UN membership or on participation in other UN agencies or Commissions. We have to make this adjustment and have done so in the past. It is a very slight adjustment but is included in the formula, which otherwise remains the same in deriving it from the United Nations. That is all I have to say, and the resolution is available for the Commission.

CHAIRMAN: If there are no other speakers, we have approved the Resolution .../85 approving the scale of contributions for 1986-87.

- A. Constitutional and Legal Matters (continued)
- A. Questions constitutionnelles et juridiques (suite)
- A. Asuntos constitucionales y jurídicos (continuación)
  
- 19. Statutory Report on Status of Conventions and Agreements, and Amendments thereto
- 19. Rapport statutaire sur l'état des Conventions et Accords et sur les amendements y relatifs
- 19. Informe reglamentario sobre el estado de las convenciones y acuerdos y de las enmiendas a ellos

We now introduce item 19, which is the Statutory Report on the Status of Conventions and Agreements thereto. The documents are C 85/10 and C 85/10 Sup. 1. I ask Mr Roche the Legal Counsel to introduce this item.

LEGAL COUNSEL: In keeping with Rule XXI.5 of the General Rules of the Organization, the Director-General reports to the Conference whenever a convention, agreement, or a supplementary convention or agreement, concluded under Article XIV of the Constitution, comes into force or ceases to be in force, or has been amended and the amendments have come into force.

In addition, under established practice, the Director-General informs the Conference of any developments which may occur in connection with: treaties, if any, concluded between FAO and Member Nations under Article XV of the Constitution: treaties concluded outside the framework of FAO in respect of which the Director-General acts as depositary; and the status of the Convention on the Privileges and Immunities of the Specialized Agencies as applied to FAO.

The two documents before you contain the relevant information on the status of the treaties, as of 4 November 1985, to which I have just referred. There have been no further developments to report since C 85/10 Sup. 1 was issued

There is, however, one matter to which I should like to draw the attention of the Conference. At its 20th Session in 1979 the Conference adopted a revised version of the International Plant Protection Convention. Although the Conference has urged parties to the Convention to deposit instruments of acceptance of the amendments contained in the revised version, I am afraid response has been slow and the revised version has not yet entered into force. There are 85 parties to the Convention, and it is the FAO Convention with the greatest number of parties. So far, 37 parties have accepted the revised version. The revised version of this very important Convention will enter into force - as indicated in para. 22 of document C 85/10 - on the 30th day after acceptance by two thirds of the parties, i.e. 57. Therefore 20 more acceptances are still needed before the revised version of the Convention enters into force.

That is all I have to say by way of introduction to this item, and if delegates have any questions to ask, I am at their disposal.

CHAIRMAN: We thank Mr Roche for his introduction. We have taken note of what is included in these documents. Are there any questions, comments or requests from the floor? If there are none, after taking note of these documents I declare this Session adjourned until 2.30 p.m.

The meeting rose at 11.00 hours

La séance est levée à 11 heures

Se levanta la sesión a las 11 horas

## conference

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

## conférence

ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE

## conferencia

ORGANIZACION DE LAS NACIONES UNIDAS PARA LA AGRICULTURA Y LA ALIMENTACION

C 85/III/PV/3

C

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Twenty-third Session  
COMMISSION III

Vingt-troisième session  
COMMISSION III

23° período de sesiones  
COMMISSION III

### THIRD MEETING TROISIEME SEANCE TERCERA SESION

(21 November 1985)

The Third Meeting was opened at 15.15 hours  
G.M. Ahmed, Chairman of Commission III, presiding

La troisième séance est ouverte à 15 h 15  
sous La présidence de G.M. Ahmed, Président de la Commission III

Se abre la tercera sesión a las 15.15 horas  
bajo la presidencia de G.M. Ahmed, Presidente de la Comisión III

CHAIRMAN: Welcome to the third meeting of Commission III. I should like to start by asking the Drafting Committee to meet tomorrow in the Malaysia Room (B217) when we have finished our consideration of the agenda items.

It is now my pleasure to call on Mr Alvarenga, the Vice-Chairman of this Commission, to take the Chair. I wish you good luck in your deliberations.

I. P. Alvarenga, Vice-Chairman of Commission III, took the chair

I. P. Alvarenga, Vice-Président de la Commission III, assume la présidence

I. P. Alvarenga, Vicepresidente de la Comisión III, ocupa la presidencia

PART III - CONSTITUTIONAL AND ADMINISTRATIVE MATTERS (continued)

TROISIEME PARTIE - QUESTIONS CONSTITUTIONNELLES ET ADMINISTRATIVES (suite)

PARTE III - ASUNTOS CONSTITUCIONALES Y ADMINISTRATIVOS (continuación)

A. Constitutional and Legal Matters (continued)

A. Questions constitutionnelles et juridiques (suite)

A. Asuntos constitucionales y jurídicos (continuación)

20. Other Constitutional and Legal Matters (continued)

20. Autres questions constitutionnelles et juridiques (suite)

20. Otras cuestiones constitucionales y jurídicas (continuación)

20.1 Amendments to the Spanish Text of Rule XII-9(a) and Rule XII-17 of the General Rules of the Organization

20.1 Amendements à la version espagnole aux Articles XII-9(a) et XII-17 du Règlement général de l'Organisation

20.1 Enmienda del texto español del Artículo XII-9(a) y del Artículo XII-17 del Reglamento General de la Organización

EL PRESIDENTE: Señores delegados agradezco a nuestro Presidente la posibilidad que me da de dirigir nuestro debate, lo cual me resulta altamente honroso y satisfactorio.

Como se desprende del diario de reuniones, tenemos para esta tarde tres puntos:

Las reformas al texto español del Artículo XII-9(a) y del Artículo XII-17 del reglamento General de la Organización. Le diría al señor Asesor Legal, el Sr. Roche, que nos introduzca al tema. El Sr. Roche tiene la palabra.

LEGAL COUNSEL: This is a relatively straightforward point and it is a strictly linguistic one. You will notice from the document that you have, which is C 85/26, that the Committee on Constitutional and Legal Matters, at its Forty-fifth session which took place in October 1984, was reviewing certain rules governing voting procedures of the Council and Conference. In carrying out this task, it noted that the Spanish text of Rule XII paragraph 9(a) made use of the term which in Spanish is "por aclamación", and that this terminology did not entirely correspond with the words used in the English text which are "by clear general consent", and in the French text which are "par consentement général manifeste".

Therefore, the CCLM recommended that the Conference amend the Spanish text of Rule XII-9(a) of the General Rules by deleting the words "por aclamación" and replacing them with the words which, in Spanish, are an exact translation of the English and French texts, that is with the words "evidente consenso general".

On the same occasion the CCLM recommended that the Conference adopt a similar amendment to Paragraph 17 of Rule XII in which the words "por aclamación" should be replaced with the words "consenso general". In this way the Spanish text would be made consistent with the terms "by general consent" as used in the English text and "par consentement général" as used in the French text.

The Conference will then note that at its Eighty-Sixth Session in November 1984 the Council endorsed the recommendation of the CCLM that the Conference amend the Spanish text of the General Rules in the manner that I have just indicated. If the Conference at this present session agrees with the recommendations made by the CCLM, which have been endorsed by the Council, it may wish to adopt the Resolution amending the Spanish text of Rule XII.9(a) and paragraph 17. A Draft Resolution to that effect has been prepared and is circulated in document C 85/26 which you have before you.

I think that is all I need to say at this stage.

EL PRESIDENTE: Como los distinguidos delegados pueden observar se trata de una cuestión puramente gramatical que no incide en lo sustancial del Reglamento. Sólo se trata de poner de acuerdo las tres versiones del Reglamento. Si alguien desea hacer comentarios o alguna pregunta ofrezco la palabra.

J.M. WATSON (Panamá): La delegación de Panamá se siente verdaderamente emocionada con la Presidencia de usted, señor Embajador, ocupa y da las gracias al Sr. Roche por su magnífica exposición, y le comunica que está de acuerdo con la reforma al Artículo XII-9(a) y al Artículo XII-17 del Reglamento General de la Organización.

EL PRESIDENTE: ¿Alguna otra intervención? Si no la hay damos por entendido que queda aprobado el documento respectivo con la resolución correspondiente. Como ustedes saben hay un texto de una resolución propuesta; al quedar aprobado queda aprobada la resolución correspondiente, que se encuentra en el C 85/LIM/13. Si no hay alguna observación damos por terminado el punto con su respectiva aprobación.

20.2 Review of the Rules Governing Voting Procedures of Conference and Council

20.2 Examen des règles régissant les procédures de vote de la Conférence et du Conseil

20.2 Examen de los artículos que rigen los procedimientos de votación de la Conferencia y del Consejo

LEGAL COUNSEL: We are now on item 20.2, which relates to certain voting procedures of the Council and Conference that were raised at the Twenty-second Session of the Conference two years ago. At that Session some delegates expressed concern at the fact that Rule XII.9(a) of the General Rules of the Organization provided for a vote by secret ballot when there was the same number of candidates as places to be filled. They suggested that the election procedures be reviewed in order to study the possibility of not proceeding to a secret ballot in such cases, for instance, for the election of the Independent Chairman of the Council. The Conference agreed "that the Council should review the present rule governing the voting procedures where there were the same number of candidates as places to be filled in the Conference or Council of the Organization with a view to speeding up procedures and thus saving valuable time."

When this question was raised at the last Session of the Conference, it was raised exclusively in order to gain time as at that Session the Conference found itself at a certain moment rather hard pressed to fit in all of the items it had to consider within the schedule it had adopted.

The Conference requested the Council to report back to it at this Session. At its Eighty-fifth Session the Council decided that the question raised by the Conference should be submitted for examination to the Committee on Constitutional and Legal Matters before reporting back to you on this matter.

The matter was examined by the CCLM at its Forty-fifth Session in October, 1984. At that Session the CCLM noted that according to Rule XII.9(a) of the General Rules it was mandatory to have a secret ballot in four cases: firstly, for the appointment of the Independent Chairman of the Council; secondly, for the appointment of the Director-General; thirdly, for the admission of new Member Nations or Associate Members; and, fourthly, for the election of Council Members. The CCLM expressed the view that in the said four cases one was dealing with highly sensitive matters and the secrecy of the vote was intended to afford Member Nations the possibility of expressing their choice without any constraint or any embarrassment.

The CCLM also considered the advantages of the secret ballot as weighed against the disadvantages of spending valuable time by this method of voting. It admitted, of course, that this method of voting was time consuming. In this connection the CCLM was informed by the Secretariat that while it was impossible to state with any precision the time required for voting, the experience of recent years indicated that the election of the Chairman of the Council, for instance, would normally take about twenty minutes for voting and twenty minutes for counting the votes, while the election of Council Members would normally take about two hours for voting and about an hour and a half for the counting. Of course, the time required for Council elections depends very much on the number of ballots that may be required for a particular election.

The CCLM noted - I think this was particularly relevant - that previously in 1959 and between 1965 and 1967 the governing bodies of the Organization had already examined the advisability of amending Rule XII.9(a). On those occasions it was concluded that it was preferable to maintain the secret ballot in all the four cases I have just enumerated.

Under these circumstances the CCLM concluded that the present provision was appropriate to protect the interests of Member Nations, and did not feel that any amendment was called for. However, if the Conference should decide that an amendment was desirable, technically it would be quite easy to eliminate the requirement of a secret ballot by making very minor amendments to Rule XII.9(a). In its Report the CCLM indicated the amendments that would be necessary.

However, at its Eighty-sixth session, the Council agreed with the conclusion of the CCLM that the present provisions were appropriate to protect the interests of Member Nations and that no amendment to Rule XII.9(a) was necessary. However, the Council noted that the question whether or not the Rule should be amended involved a policy decision and that the final decision would have to be made by the Conference itself.

If the Conference endorses the views which it has expressed on two previous occasions and which have now been reiterated by the Council in its Report to you, the Conference would not be required to take any action at this Session. Of course, it is up to the Conference to decide whether or not it wishes to retain a secret ballot under Rule XII.9(a) in the interests of maintaining absolute freedom for Member Nations when voting on these four extremely sensitive matters.

EL PRESIDENTE: Como los miembros de la Comisión pueden advertir, se trata aquí de una cuestión relativamente importante, por cuanto se trata de decidir sobre el sistema de votación en los casos en que la Conferencia debe pronunciarse sobre materias muy delicadas.

Sin embargo el tema de revisión es muy sencillo. O se aprueba el informe del Consejo en el sentido de que las normas quedan como están o se propone una reforma, y en este caso habría que volver al texto elaborado al respecto.

Si los señores delegados tienen comentarios u observaciones que hacer ofrezco la palabra.

R.F.R. DEARE (United Kingdom): I would like to suggest that we should agree to accept the report of the Council and not pursue this matter.



A.D. WEYGANDT (United States of America): On behalf of my delegation I would like to support the view of the United Kingdom delegation. We feel that there is no compelling reason to change the Rule providing for a secret ballot, and unless a case can be made otherwise, we would prefer to see the Rule remain as it is.

J. GLISTRUP (Denmark): I think that when this matter was first raised during our last Conference it was raised in the interests of saving time as all of us had to remain here for quite a long time.

I would like to support very much the wise decision which was taken by the CCLM and later on endorsed by the Council that these matters are very serious matters, these four instances when we have to have a secret ballot, and in the interests of protecting Member Nations I would very much support the view that we maintain the Rule as it now stands.

20.4 Amendment to Rule XXV-6 of the General Rules of the Organization

20.4 Amendement de l'Article XXV-6 du Règlement général de l'Organisation

20.4 Enmienda del Artículo XXV-6 del Reglamento General de la Organización

LEGAL COUNSEL: This is a question relating to the reimbursement of travel expenses of Council Members. It was first raised at the Eighty-seventh session of the Council in June 1985. At that session of the Council questions were asked about the practice of the Organization regarding reimbursement of travel expenses of Members of the Council.

The Council was informed that under Rule XXV-6 of the General Rules of the Organization only the travel expenses incurred by the representative of each member of the Council were borne by the Organization.

Then the Council noted with some concern that Rule XXV-6 apparently precluded the reimbursement of travel expenses of any one member of a delegation attending the Council when a permanent representative residing in Rome was designated as the representative on the Council. Thus, with a view to the possibility of considering the reimbursement of travel expenses to any one member of a delegation, the Council referred the interpretation or possible amendment of Rule XXV-6 to the Committee on Constitutional and Legal Matters. That Committee at its session in October 1985 examined the matter and concluded that it was not possible to interpret the rule, as it is at present drafted, to permit the reimbursement of travel expenses to any one member of a delegation to the Council.

Therefore, the CCLM prepared an amendment to Rule XXV-6 which would permit such reimbursement. In doing this, the CCLM also noted that if the Conference decided to amend Rule XXV-6, then a consequential amendment should be adopted by the Council to Rule VII.2 of its own Rules of Procedure.

The question of reimbursement was also discussed by the Finance Committee at its Fifty-sixth session in September 1985. That Committee felt that to reimburse the travel expenses of any one member of a delegation could only have a positive effect on the Council's work, and the change of policy proposed would not entail an increase in budgetary appropriations. The Council, at its 88th Session - that is the Session that was just held - noted the views of the Finance Committee, agreed with the CCLM, and endorsed the CCLM's amendment to the Basic Texts. Therefore the Council recommended to the Conference that it should adopt a resolution which has been prepared by the CCLM. If the Conference now feels that it can agree, it may wish to adopt the resolution reproduced on the last page of document C 85/LIM/22.

A.D. WEYGANDT (United States of America): At the Eighty-eighth session of the Council my delegation stated that we do not support in principle the provision of paying for representatives from capitals to attend United Nations meetings. It is a question of principle which remains unchanged. So my delegation cannot support this draft resolution as contained in document C 85/LIM/22.

Pichai PONGPAET (Thailand): First of all may I thank Mr Roche for his introduction to this document. We can clearly see that this introduction gives the benefit of his knowledge to this Conference. We see that the amendment to Rule XXV-6 of the General Rules is useful for the work of the Council because of the presence of a member from the country. In the case of the small country, which has limited numbers of representatives in Rome, this amendment will certainly bring technical support from the capital to the Council, as explained by Mr Roche.

Lajos ZELKÓ (Hungary): I would like to remind the Commission that the overwhelming majority of the Council supported this amendment. I understand their points of view. Most of them are small countries and for them the travel expenses are sometimes by no means negligible. In order to make it possible for them to attend Council meetings, I think it is justified that this Rule be amended. Therefore, my delegation supports the amendment and we suggest that the Commission also give its full support to the amendment.

J.M. WATSON (Panamá): La delegación de Panamá apoya la enmienda al Artículo XXV.6 sobre Reposición de gastos de un miembro indistintamente, ya que puede tratarse de un funcionario de apoyo o de refuerzo a la delegación que está en Roma. Por lo tanto, apoyamos lo expuesto por la delegación de Tailandia y creemos que es de justicia que se le pague indistintamente al miembro que venga de un país pequeño, sobre todo la reposición de los gastos.

A. ALMEIDA RIBEIRO (Portugal): Tout simplement pour appuyer la modification qui nous est soumise maintenant.

J.C. LOEMBE (Congo): La délégation congolaise partage entièrement l'avis des délégations qui l'ont précédée et appuie l'amendement proposé.

P. SEBASTIAO (Angola): La delegação de l'Angola apporta son total soutien à la résolution qui nous est soumise.

J. ORZESZKO (Poland): Our delegation would also like to support the amendment.

G. STUYCK (Belgique): Avant de me prononcer sur cette question, je voudrais me permettre de poser une question à Monsieur le Conseiller juridique de l'Organisation pour lui demander si, parmi les institutions spécialisées des Nations Unies, il existe d'autres organisations que la FAO où cette pratique a été admise, c'est-à-dire, où les représentants du Conseil voient leur voyage jusqu'au Siège de l'Organisation financé par l'Organisation elle-même.

LEGAL COUNSEL: When we considered this matter of the amendment we looked at the governing bodies of a number of other organizations in the United Nations System, but it has to be realized that the structure of the governing body below the supreme body varies considerably from one organization to another. In quite a number, the executive board is not made up of states but of individuals. In others, such as the International Labour Organization, the representation is tri-partite, that is to say, it is made up of government, workers and employers representatives. Therefore it is not easy to make a direct comparison between the FAO Council and the equivalent body in other organizations.

G. STUYCK (Belgique): J'ai le plaisir et le privilège d'être représentant permanent de mon pays auprès de la FAO depuis plusieurs années et l'expérience que j'en ai acquise, et j'ai moi-même siégé d'ailleurs au Conseil, m'a permis de constater que la plupart des représentants au Conseil étaient des représentants permanents ou des personnes qui occupaient un poste dans l'ambassade de leur pays à Rome.

Dans ces conditions, je suis un peu indécis sur la question de savoir si, dans tous les cas, une indemnité de voyage devrait être prévue pour permettre aux délégués au Conseil de faire le voyage du pays d'origine jusqu'à Rome.

Il faudrait peut-être malgré tout un certain contrôle sur la mise en oeuvre d'une telle mesure qui peut se justifier dans le cas de pays ne disposant pas de moyens financiers importants et pour lesquels il est nécessaire qu'une aide soit apportée par l'Organisation. C'est une question de nuance, essentiellement.

El Hadj Mamy KOUYATE (Guinée): Je voulais tout à l'heure vous demander de faire admettre par notre assemblée le document qui nous est soumis étant donné que j'ai constaté qu'il y avait une certaine répétition de soutien qui signifiait que l'unanimité était pour l'adoption de ce document.

Avec les précisions qui viennent de nous être données par le premier responsable du Département juridique, je pense que nous devons absolument accepter que ce document soit tout de suite adopté par notre assemblée, surtout que la seule opposition n'est pas une opposition mais une question de nuance, comme l'a dit l'Honorable délégué de la Belgique.

J.A. SANTOS OLIVEIRA (Guinée-Bissau): Je veux seulement appuyer l'amendement proposé dans cette résolution.

G. de KALBERMATTEN (Suisse): Ma question est dictée par l'intérêt qu'il y aurait à avoir une réponse un peu plus précise de la part du Conseiller juridique à la question posée par le distingué représentant de la Belgique.

Puis je voudrais formuler la question de la manière suivante: est-ce qu'il y a des cas d'organisations dans le cadre des Nations Unies dont les organes directeurs sont composés d'Etats Membres et où il est admis que les voyages soient payés par l'Organisation?

Je crois savoir que dans certains cas les voyages, par exemple des pays les moins avancés, sont payés sur la base des contributions volontaires, mais nous parlons d'autre chose et il serait intéressant de savoir si c'est effectivement la première fois, dans l'enceinte des Nations Unies, qu'une telle mesure est introduite parce qu'effectivement, dans ce cas là, elle aura un caractère de précédent.

C'est pourquoi, dans mon ignorance, j'aimerais poser la question au Conseiller juridique.

LEGAL COUNSEL: I think with your permission, Mr Chairman, I will try to answer both the delegate of Belgium and the delegate of Switzerland, because I think there might be some slight misunderstanding relating to this matter on the part of the delegate of Belgium. I may be wrong, but I just want to be quite sure that the question is quite clear.

The present rule provides that the representative, that is the head of the delegation, attending the Council will have his travel expenses reimbursed if, of course, he has to travel to Rome to attend the Council. It so happens that over the years many Member Nations have appointed Permanent Representatives who are actually living in Rome, so the Permanent Representative being not always, but almost always, the head of the delegation, on an average over the last few years some 20-odd countries attending the Council out of 49, do not get a ticket reimbursed because the head of their delegation is actually a resident in Rome.

Any other members of a delegation supporting that Permanent Representative coming from their capital cities or other duty stations travel at the expense of the Government. As a result some Member Nations felt it was unfair that just because their Permanent Representative was the head of the delegation nobody got a ticket from their duty station or capital city at the expense of the Organization, whereas if in all those cases the Permanent Representative had, say, been the No. 2 member - since there is only one "representative", they would all have received one ticket.

That is just a little clarification in the event that the exact scope of the present proposal was not absolutely clear, or that maybe I did not make it absolutely clear in my introduction. So, the proposal now is to see that at least one member of a delegation attending the Council is reimbursed, provided always that he has to travel to Rome. Of course, if the delegation on the Council consists of one person only as head of the delegation, and that single person is resident in Rome, no ticket would be paid.

To return to the question raised also by the delegate of Switzerland, I am afraid I do not have detailed information at hand. We did not carry out a survey of all the organizations in the United Nations system, but I believe the Executive Board of the World Health Organization is made up of individuals. I believe that the equivalent body in Unesco is also made up of individuals, and as I said, the ILO is a rather different case. In the United Nations itself delegations pay their own tickets for I think all meetings, at least when attending all the principal organs of the United Nations; but I am ready to stand corrected on that. If the delegate of Switzerland would like more detailed information on this, I can certainly undertake the research. I think the general support for the proposal is fairly apparent from the interventions so far, but I can certainly provide this information for the edification of the delegate of Switzerland and the delegate of Belgium and perhaps other members of the Commission with a little bit of notice, so that we can go through the constitutional instruments of some more of the Organizations in the United Nations system.

T.E. KITLELI (Lesotho): After having heard more clarification from the Legal Counsel, my delegation raises its flag to support the resolution.

Sra. Doña Yolanda GAGO (Costa Rica): Mi delegación se une a las otras delegaciones para apoyar esta enmienda.

H. AL-ZALTINI (Libya): I should like to have more information from the Secretariat, if this is possible, in regard to the number of Council meetings over the next two years. Will they be held anywhere other than Rome?

LEGAL COUNSEL: I do not think the Council is planning to hold a session out of Rome in the next two years. Of course, it would only be done at the invitation of a Member Nation, and to my knowledge since the Council was established in 1948 it has - at least in the last twenty or twenty-five years - only once held a session outside Rome. It held a session in Madrid I think sometime in the

late fifties. Otherwise it has invariably met in Rome and, as you know, in non-Conference years there is a Council in November. In Conference years there is a Council in June, and one immediately before and another immediately after the Conference. So generally, unless there is a special session, there are four sessions in each biennium, and I think we can foresee that they will all be held in Rome.

H. AL-ZALITINI (Libya) (original language Arabic): I am obliged to the Legal Counsel for filling us in on those points. I support the amendment proposed.

R. MARTINEZ MUÑOZ (Colombia): Sr. Presidente: La delegación de Colombia apoya la enmienda propuesta, por las siguientes consideraciones: Una mayoría abrumadora de países aprobó esta enmienda. Hay que permitirles asistir a las reuniones del Consejo a pequeños Estados que, dentro de las misiones no tienen personal suficiente. Por otra parte, dentro de ese personal suficiente, a las reuniones del Consejo es preciso que asista en determinados momentos personal calificado en determinadas ramas de asuntos que se van a debatir en el Consejo.

Y por último, la delegación de Colombia quiere aprobar la enmienda, en vista de las amplias y justificadas explicaciones que ha dado el Sr. Consejero Jurídico.

Sra. Doña Silvia CARBALLO VIVES (Cuba): Gracias, señor Presidente: Solamente para expresar el apoyo de nuestra delegación a esta enmienda.

J. GLISTRUP (Denmark): I had no intention of involving myself in this discussion when I came here, but I think that during the course of the discussion I have had certain concerns on my mind. Let me try to address them in two ways. First we have been informed that in latter years more and more governments have been represented here by Permanent Representatives and therefore the existing rule on travel to Rome by a representative has been somewhat outdated. The matter has been examined by the Finance Committee, and now we are being faced with a proposal that any member of the FAO Council can bring a person to Rome at the expense of FAO.

In actual fact it will be at the expense of the member governments of FAO, and I would assume that this would mean that more people will come and attend the FAO Council. That in itself is a good thing. But I am somewhat puzzled that the Finance Committee has told us that this would not involve additional expenses for the Organization. I think the Legal Counsel said to us that out of the total number of Council Members about 20 were represented by the Permanent Representatives. Now those 20, if we take that as an average figure - and I assume it was an average figure - I assume most of those will bring in an additional member in their delegation and that means we will have to pay 20 more persons' travel expenses to Rome.

The other question I would like to raise is the fact that Belgium and Switzerland have asked for clarification of what the situation is in other United Nations bodies and we have received some kind of clarification. But perhaps I may point the question more clearly to the Secretariat through you, Mr Chairman, because I am still not clear on this. May I ask, with the knowledge that we now have, is there any other United Nations organization which reimburses travel expenses for member governments to come to the governing bodies of these organizations?

EL PRESIDENTE: Muchas gracias distinguido delegado de Dinamarca, pero realmente la misma pregunta se ha hecho aquí varias veces.

En este caso yo seguiría el sistema tradicional de responder al final a todas las preguntas. Si no resulta suficientemente claro, el Sr. Roche lo aclarará al final y por eso ruego al representante de Dinamarca esperar hasta el final a la respuesta de la Secretaría.

MOHSIN ALI KHAN (Bangladesh): My delegation supports the Resolution for the following reasons. As indicated by Mr Roche, this will not involve any additional expenditure, so we are not losing financially but rather will receive more benefit, because this will provide an opportunity for member countries to send the appropriate official actually dealing with the subject in the country, who may also have field knowledge. In view of this, I would like to support the Resolution.

Hasin ÖGÜT (Turkey): We support the amendment proposed regarding the reimbursement of travel expenses of one delegate from each member country of the Council, even if the delegate does not head his or her country's delegation. We endorse the Resolution in view of the fact that this foreseen amendment does not have any budgetary implications, as allocations are already made in the budget of FAO in anticipation that FAO will cover the cost of travel expenses of heads of delegations from 49 member countries. Another thing is that, as was mentioned by other delegates, this amendment will ensure the attendance of qualified experts from countries, together with the permanent representatives, at the sessions of the Council.

A.K. OSUBAN (Uganda): The Ugandan delegation would like to add its support to the amendment to this rule mainly for the reasons given by my neighbour from Turkey. We believe that when the rule was first made they had it in mind to make it possible for countries to send representatives to the Council meetings on a timely basis, and we all know that these days Council meetings deal with a lot of complex matters which usually require experts on various subjects. So that in the case of small countries this would still be added assistance. We believe that it is already budgeted for and would not necessarily entail an additional encumbrance on the Organization.

G.H. MUSGROVE (Canada): I do apologize that I was not in the room when this item was introduced and therefore may have missed part of its introduction, but I take the floor to respond in part to my colleague, the delegate of Denmark, who referred to the deliberation of this item in the Finance Committee and, as a member of that Finance Committee, I thought perhaps I could add some words on the view that was held at the time.

Our delegation is disposed towards this amendment and views it favourably. The reasons why we did so, both in the Finance Committee and now, are several. First of all, there is the question of additional financial cost. Our concerns in this connection were put somewhat to rest on the basis of the explanation that the budgetary process called for a financial appropriation to cover all anticipated costs under the existing provisions for providing travel and that while in recent years there has been some decline in the call upon this particular appropriation, the appropriation, for reasons of prudence, nevertheless, continued to be made on the basis of full anticipated costs. Of course, when it was not used in its entirety, those sums were absorbed within the budget, perhaps for other reasons. So in accepting the change, the appropriations process would not appreciably change. The same appropriation would be made, I believe - and I am speaking; only from memory - that in terms of actual expenditures this would be minimal over the biennium. I hesitate to name a number, but perhaps Mr Crowther or someone more familiar with it could do so, but I think the additional expenditure was in the vicinity of perhaps 40 to 50 thousand US dollars. But, as I say, that is not an additional appropriation or additional funds within the budget. It is merely expenditure for the item for which they were appropriated.

There were several other questions I heard raised today which were certainly raised in the Finance Committee. First of all, the concept of paying for travel at all is an old one and is embedded in the Basic Texts and in the very foundation of the Organization. I think this question arose once or twice today. While there may be merits in questioning the principle, I think there is considerable equity in that provision. Whenever a headquarters foreign organization is chosen, it is nearer to some and further from others. The equity in some small way recompenses a certain amount of travel to ensure adequate representation at Council sessions, and particularly for an organization that is located not in one part of the developing, but in the developed world, and I think the equity is even more relevant.

The other aspect of equity that I think entered partially into the discussion was the concept that where those countries have, at some considerable expense, established permanent representation in Rome, a matter I think is beneficial to the Organization and beneficial to us all - to have such permanent representation, they should not be further penalized because they have incurred such expenses by not having access to travel positions where the permanent representative is the head of delegation. Certainly, when there is such a permanent representation, sometimes for a matter of years there is a lack of close coordination between that permanent representative and his home government which cannot entirely be solved by modern communications methods. It is of benefit to those permanent representatives to have technical and other expert assistance available to them in the form of delegation representation which would not otherwise be available if travel funds could not be incurred.

So I think if I could just make those points on behalf of what I deem to be the case - and I am not able to sum up the position in the Finance Committee - but to review some of the points which have been raised and those points were such and the discussion was such that our delegation would view the change favourably - which may be somewhat surprising in view of our usual austere approach to management and financial expenditure patterns.

M. NKAKE NDOLO (Cameroun): Compte tenu des éclaircissements obtenus de la part de M. Roche, de la plupart des autres délégués et surtout des explications complémentaires que vient de nous fournir le délégué du Canada, la délégation du Cameroun ne peut qu'appuyer fermement la recommandation qui est faite, notamment en prenant l'exemple même du Cameroun qui vient de détacher, après le départ de son ancien délégué permanent auprès de la FAO, un nouveau délégué arrivé il y a seulement un mois à Rome. A supposer que cette faveur ne soit pas accordée, et en considérant les difficultés budgétaires de certains pays en voie de développement, je crois que notre délégation ne pourrait pas contribuer efficacement aux travaux des présentes assises.

Donc le Cameroun appuie, comme la majorité des autres délégations, la proposition qui est faite.

A.D. WEYGANDT (United States of America): I asked for the floor a second time essentially in an effort to save the Commission some time here.

Since I believe that my delegation is the only one that has spoken against this proposal, perhaps we can solve the matter when I say that we do not wish to oppose a consensus on this issue. Our opposition is a question of principle, and of principle only. We understand the merits of bringing additional technical representatives from capitals to the Council meetings, and we found, for example, the arguments of our Turkish colleague particularly persuasive in this regard. We were also impressed with the arguments of equity and other arguments that have been brought forward by our Canadian colleague, and we are certainly sensitive to the concerns of our Cameroonian colleague.

However, it is important to bear in mind that in fact, as was pointed out, additional expenditure is almost certainly to be involved in this proposal if the proposal is to serve any particular purpose, and it is on that basis, but not on that basis alone, that we oppose this. It is just a question of the precedential nature of paying for additional travel of government representatives to United Nations meetings. Although this question has been put to the Secretariat a number of times so far today, we have not received a direct answer.

If I am not mistaken, I do not believe there are a significant number of examples in the UN system where similar bodies to ours have travel paid for by that body. Nevertheless, as I stated, we would not stand in the way of the consensus as long as the record would reflect that our opposition is one of principle.

EL PRESIDENTE: Si no hay ninguna intervención daría la palabra a la Secretaría para que haga las consideraciones que estime oportunas.

LEGAL COUNSEL: I think the only question which has remained completely unanswered is how much this amendment would cost. The delegate of Canada is quite right that the estimate that we made was \$45 000, but that does have to be multiplied by three because this would apply in the biennium to three sessions of the Council. You might wonder why it is not four sessions of the Council. That is because the Council decided on a previous occasion some years ago that, for rather obvious reasons, it would not be within the spirit of Rule XXV, paragraph 6, to pay for the attendance of a representative of a member of the Council for the one-day post-Conference Council. Therefore, it would cost approximately \$120 000 to \$135 000 more in a biennium if all 49 Members of the Council availed themselves of the possibility of having one ticket from their home country.

On the question about which and how many organizations in the UN system pay for the attendance of governments attending their executive body which carries out the stewardship of the organization between sessions of its supreme body, I am not in a position to give a detailed answer to that, but since certain delegates have expressed an interest in this I will try to obtain some information and give it to them either privately, or at some later stage during the Conference.

EL PRESIDENTE: Muchas gracias Sr. Roche. Con esto queda concluido nuestro debate sin tener la más mínima intención de abrir la discusión de nuevo, y me permitiría formular como creo que se ha desarrollado la discusión de este tema. A mi juicio la Comisión aprueba, porque es evidente una amplísima mayoría, el informe del Consejo, la decisión del Consejo y especialmente aprueba la resolución propuesta de reforma.

Algunas delegaciones insistieron - hablo en este momento de las delegaciones que aprobaron - en que esta reforma no introdujese nuevos gastos a la Organización.

Algunas delegaciones observaron que deseaban saber cómo funciona este mecanismo en otros organismos de las Naciones Unidas para que se siga el mejor procedimiento posible.

Algunas delegaciones manifestaron la conveniencia de que la medida se aplique en modo tal que beneficiase únicamente a aquellos países que más necesitasen de un apoyo financiero.

Una delegación manifestó estar en contra de la reforma por razón de principio, aunque expresó que no desea oponerse al consenso y reconoce los beneficios de la reforma propuesta.

No pretendo reabrir el debate. Esta es una propuesta de síntesis que el Comité de Redacción elaborará en mejor forma. Si no hay ningún comentario queda terminado este punto, con lo cual creo que concluimos nuestra agenda del día y estimo que estamos dando un ejemplo, que las otras Comisiones pongan en práctica, de cómo se discute con velocidad y eficiencia.

The meeting rose at 16.15 hours

La séance est levée à 16 h 15

Se levanta la sesión a las 16.15 horas



## **conference**

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

## **conférence**

ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE

## **conferencia**

ORGANIZACION DE LAS NACIONES UNIDAS PARA LA AGRICULTURA Y LA ALIMENTACION

C 85/III/PV/4

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Twenty-third Session  
COMMISSION III

Vingt-troisième session  
COMMISSION III

23° período de sesiones  
COMMISSION III

### FOURTH MEETING QUATRIEME SEANCE CUARTA SESION

(22 November 1985)

The Fourth Meeting was opened at 10.30 hours

G.M. Ahmed, Chairman of Commission III, presiding

La quatrième séance est ouverte à 10 h 30

sous la présidence de G.M. Ahmed, Président de la Commission III

Se abre la cuarta sesión a las 10.30 horas

baio la presidencia de G.M. Ahmed, Presidente de la Comisión III

CHAIRMAN (original language Arabic): This is the fourth meeting session of Commission III. We have a few announcements to make.

F.M. MIFSUD (Secretary, Commission III): I should like to remind delegates that the first meeting of the Drafting Committee will take place immediately after the conclusion of our business this morning in the Malaysia Room, B-227.

Secondly, I have been asked by the Secretary-General of the Conference to read the following announcement concerning the inauguration of the FAO Park: "Delegates and Observers attending the FAO Conference are cordially invited to attend the inauguration of the FAO Park on Saturday, 23rd November at 12.00 hours in Piazza Silvio D'Amico located near FAO Building F on the Cristoforo Colombo. The Mayor of Rome and the Director-General of FAO will officiate. There will be no written invitation."

"For those who do not have private transportation, bus transportation will leave FAO in front of Building A at 11.30 hours."

CHAIRMAN (original language Arabic): It gives me great pleasure to introduce the distinguished Ambassador of Hungary, the Vice-Chairman of our meeting, who will take the Chair at this morning's meeting.

Lajos Zelko, Vice-Chairman of Commission III, took the chair

Lajos Zelko, Vice-Président de la Commission III, assume la présidence

Ocupa la presidencia Lajos Zelko, Vicepresidente de la Comisión III

CHAIRMAN: First of all may I welcome the distinguished delegates and the members of the Secretariat who are here to assist our work. The first item on our agenda is the Audited Accounts.

PART III - CONSTITUTIONAL AND ADMINISTRATIVE MATTERS (continued)

TROISIEME PARTIE - QUESTIONS CONSTITUTIONNELLES ET ADMINISTRATIVES (suite)

PARTE III- ASUNTOS CONSTITUCIONALES Y ADMINISTRATIVOS (continuación)

- B. Administrative and Financial Matters
- B. Questions administratives et financières
- B. Asuntos administrativos y financieros

- 21. Audited Accounts
- 21. Comptes vérifiés
- 21. Cuentas comprobadas

Dean K. CROWTHER (Assistant Director-General, Administration and Finance Department): As is customary, you have before you the audited accounts for the Organization for 1982-83. This includes three sets of accounts, one for the Regular Programme, one for the UNDP programme and the other for the World Food Programme for the same biennium. The details of the accounts, financial statements, and auditors' opinion are all contained in the three documents C 85/5; C 85/6 and C 85/7. In C 85/LIM/4 there is a resolution for your consideration and adoption regarding these accounts. The Council, as well as the Finance Committee, has reviewed these documents and prepared the resolution that you will see in C 85/LIM/4. This is now presented for your consideration and adoption. If there are any questions on the financial statements, the audited accounts or the resolution we will be happy to provide whatever answers we can give.

CHAIRMAN: I ask whether anyone wishes to speak on this item or to make comments? As I see that no one wishes to do so, this means that the Commission endorses the draft resolution.

- B. Administrative and Financial Matters
- B. Questions administratives et financières
- B. Asuntos administrativos y financieros
  
- 23. Other Administrative and Financial, Matters
- 23. Autres questions administratives et financières
- 23. Otros asuntos administrativos y financieros
  
- 23.2 Current Status of Contributions
- 23.2 Etat des contributions
- 23.2 Estado actual de las cuotas

- Problems of Late Payments and Arrears in Contributions
- Problèmes posés par les versements tardifs et les arriérés de contributions
- Problemas que plantean las demoras en los pagos y las cuotas atrasadas

D.K. CROWTHER (Assistant Director-General, Administration and Finance Department): If I may, I will make reference to the state of the contributions, at the same time referring to the problems of late payment.

The documents relevant to this item are C 85/LIM/12 and C 85/LIM/32. Document C 85/LIM/12 is an extract of the report of the Eighty-eighth session of the Council, which refers in paragraphs 96 through 104 to the "Status of Contributions" at 6 November 1985, and in paragraphs 105-106 to "Delayed Payments of Assessed Contributions".

C 85/LIM/32 updates the information to 19 November 1985. Subsequent to 19 November and up to this moment, the following has been received from Nicaragua: US\$18,670.10, representing partial payment of the balance of its current assessment for 1985.

As will be noted from Paragraph 4 of C 85/LIM/32, 92.32 percent of 1985 assessments had been received as at 19 November, which is somewhat more favourable than the percentage received at the same date during any of the previous four years. It is to be noted, however, that applications to 1985 assessments of the cash surplus for the 1982-83 biennium, amounting to some US\$41 million, represented 20.72 percent of 1985 assessments received.

Paragraph 5 of the same LIM document sets out the month-end cumulative percentages of 1985 assessments received during the first ten months of 1985, as compared to receipts during the previous four years. The application as of 1 January 1985 of the significant amount from the cash surplus of the previous biennium makes the statistics look favourable for 1985, as compared with the previous years.

While the position as of today may be considered relatively satisfactory, from paragraph 4 of C 85/LIM/32 it will be noted that 72 Member Nations have not yet paid in full their assessments for 1985, notwithstanding that the Financial Regulations of the Organization required payment in full within 30 days of the receipt of the communication of the Director-General calling for contributions, which, in fact, was sent on 20 December 1984, or as of 1 January 1985, whichever is the later. It is clear from the month-end cumulative percentages of current assessments received that most Member Nations are, unfortunately, not meeting this basic obligation of membership in the Organization.

I would also attract attention to the fact that 40 Member Nations continue to have arrears of contributions outstanding relating to 1984 and prior years. During 1985, there have, however, been significant receipts of contributions in arrears, reducing considerably the amount of arrears outstanding as of the beginning of this year.

The Conference may wish to endorse the appeal of the Council to those Member Nations with outstanding contributions to arrange to remit amounts due and overdue without further delay. The Conference may also wish to call upon all Member Nations to make immediately arrangements for the timely remittance of their 1986 assessments. A document setting out those assessments, which are at virtually the same level as the 1984-85 assessments, will be available in a day or two.

I would also draw attention to the deliberations of the Finance Committee and Council concerning alternative measures to deal with the problems of delayed payment of assessed contributions. The general approach of the Finance Committee, endorsed by the Council, is outlined in paragraph 105 of C 85/LIM/12. The Conference will also note that the problem is a particularly difficult one, with no simple solution which could be considered both equitable and effective on a continuing basis. The Finance Committee had requested the item again be on its Agenda for its next session.

CHAIRMAN: Does any delegation wish to speak on this matter? If not, I can conclude that the Commission has taken due account of the information given in the documents and in the introductory remarks by Mr Crowther. With this, we conclude our business today.

Our next meeting will deal with the acceptance of the Draft Report of the Commission. As of now we do not know the exact date of the next session, so I would just say that the date will be given in the next Journal of the Conference. You are asked to watch out for it and to attend in order that we may have a quorum.

The meeting rose at 10.45 hours

La séance est levée à 10 h 45

Se levanta la sesión a las 10.45 horas

## conference

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

## conférence

ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE

## conferencia

ORGANIZACION DE LAS NACIONES UNIDAS PARA LA AGRICULTURA Y LA ALIMENTACION

C 85/III/PV/5

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Twenty-third Session  
COMMISSION III

Vingt-troisième session  
COMMISSION III

23° período de sesiones  
COMMISSION III

### FIFTH MEETING CINQUIEME SEANCE QUINTA SESION

(25 November 1985)

The Fifth Meeting was opened at 15.45 hours

Gamal Mohamed Ahmed, Chairman of Commission III, presiding

La cinquième seance est ouverte à 15 h 45

sous la présidence de G.M. Ahmed, Président de la Commission III

Se abre la quinta sesión a las 15.45 horas

bajo la presidencia de G.M. Ahmed, Presidente de la Comisión III

ADOPTION OF REPORT  
ADOPTION DU RAPPORT  
APROBACION DEL INFORME

DRAFT REPORT OF COMMISSION III  
PROJET DE RAPPORT DE LA COMMISSION III  
PROYECTO DE INFORME DE LA COMISION III

CHAIRMAN (original language Arabic): We have discussed the various items in the Drafting Committee which has amended the report and I hope the Commission will be able to adopt it, after which we shall submit it to the Plenary.

PARAGRAPHS 1 to 3

PARAGRAPHERS 1 à 3

PARRAFOS 1 a 3

CHAIRMAN (original language Arabic): There are some corrections. It is a matter of language to be set straight.

F.M. MIFSUD (Secretary, Commission III): In the English version there is an omission in paragraph 3, line 6; before the word "majority" should be inserted "two-thirds", that is to say "to reach the two-thirds majority....". In the other texts, there is no omission.

CHAIRMAN (original language Arabic): Thank you, have you all got that?

Paragraphs 1 to 3, as amended, approved

Les paragraphes 1 à 3, ainsi amendes, sont approuvés

Los párrafos 1 a 3, así enmendados, son aprobados

Paragraphs 4 and 5, approved

Les paragraphes 4 et 5 sont approuvés

Los párrafos 4 y 5, son aprobados

Paragraph 6, including draft resolution, approved

Le paragraphe 6, y compris le projet de résolution, est approuvé

El párrafo 6, incluido el proyecto de resolución, es aprobado

Paragraphs 7 to 11 approved

Les paragraphes 7 à 11 sont approuvés

Los párrafos 7 a 11 son aprobados

Paragraphs 12 to 16 approved

Les paragraphes 12 à 16 sont approuvés

Los párrafos 12 a 16 son aprobados

Paragraphs 17 and 18 approved

Les paragraphes 17 et 18 sont approuvés

Los párrafos 17 y 18 son aprobados

Paragraphs 19 to 21 approved

Les paragraphes 19 à 21 sont approuvés

Los párrafos 19 a 21 son aprobados

Paragraph 22, including draft resolution, approved

Le paragraphe 22, y compris le projet de résolution, est approuvé

El párrafo 22, incluido el proyecto de resolución, es aprobado

Paragraph 23, including draft resolution, approved

Le paragraphe 23, y compris le projet de résolution, est approuvé

El párrafo 23, incluido el proyecto de resolución, es aprobado

Paragraphs 24 and 25 approved

Les paragraphes 24 et 25 sont approuvés

Los párrafos 24 y 25 son aprobados

Paragraph 26, including draft resolution, approved

Le paragraphe 26, y compris le projet de résolution, est approuvé

El párrafo 26, incluido el proyecto de resolución, es aprobado

Paragraphs 27 to 29 approved

Les paragraphes 27 à 29 sont approuvés

Los párrafos 27 a 29 son aprobados

Paragraphs 30 to 33, including Appendix, approved

Les paragraphes 30 à 33, y compris l'annexe, sont approuvés

Los párrafos 30 a 33, incluido el Apéndice, son aprobados

Draft Report of Commission III, as amended, was adopted

Le Projet de Rapport de la Commission III, ainsi amendé, est adopté

El proyecto de informe de la Comisión III, así emendado, es aprobado

CHAIRMAN (original language Arabic): After the adoption of this report, I would like to give the floor to the Chairman of the Drafting Committee.

MAZLAN JUSOH (Chairman, Drafting Committee): Let me thank you for giving me this opportunity to say a few words. First of all, I am very glad that the draft report as presented to you has been adopted unanimously without any amendment. I should like to thank you and the Commission for having had the confidence in me to ask me to chair the Drafting Committee. I am sure that this appointment and your confidence are more because of the stature of my country rather than my own personal merit.

I should also like to thank the Secretariat for their help and advice throughout our sessions. Most importantly, I must express my most sincere appreciation to all members of the Drafting Committee for having shown the utmost forbearance, patience and cooperation throughout our deliberations. All the members of the Drafting Committee have been very active, constructive and always ready and willing to cooperate and even to compromise on certain wording and phrases pertaining to certain sensitive issues.

The Drafting Committee comprised 13 member countries: Costa Rica, El Salvador, Ethiopia, Gabon, the Federal Republic of Germany, Indonesia, Italy, Jordan, Malaysia, Poland, Switzerland, the United States and the People's Democratic Republic of Yemen. The Committee had two meetings; the first was held right after the Commission's fourth meeting on the morning of Friday, 22 November.

A small contact group held a separate, informal discussion, to iron out a couple of difficult points. This informal discussion facilitated the reaching of agreement by the Drafting Committee on certain difficult parts of the draft text. I must say that the abundance of goodwill shown by all members of the group was most gratifying.

CHAIRMAN (original language Arabic): I wish to thank all the members of Commission III for their cooperation and for the efforts they put into the preparation of the report. I also wish to thank the Secretariat for their efforts in bringing our deliberations to a successful conclusion. I thank you all. We have now adopted the report and we shall submit it to the Plenary.

The meeting rose at 16.00 hours

La séance est levée à 16 heures

Se levanta la sesión a las 16.00 horas