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in Their Relations with International Organizations**

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**15th meeting of the Committee of the Whole**

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moreover, that the situation contemplated by the amendment in document A/CONF.67/C.1/L.52 had already been taken into consideration in article 75. In addition, it would certainly be made clear in the preamble of the future Convention that the privileges and immunities granted to the members of missions were intended solely to enable them to perform their functions.

50. With regard to the Austrian amendment (A/CONF.67/C.1/L.49), he observed that the obligations of the sending State under the Convention were manifold and comprised not only the obligation to observe the laws and regulations of the host country, but also that of promoting co-operation with the organization. Thus, the host State might request the organization to assist it in getting the sending State to discharge the latter obligation. The Austrian amendment was not sufficiently precise, and the words "where necessary" were not enough to rule out all ambiguity. Nevertheless, if he had to choose between the two amendments, his preference would go to the Austrian amendment, which was formulated in more general terms, and the underlying idea of which he approved. He thought that the Committee might ask the Drafting Committee to render that idea in more precise language, and that it might include it in the provisions relating to consultations between the sending State, the host State and the Organization in article 81.

51. Mr. CALLE Y CALLE (Peru) noted that the Spanish text of article 22 did not correspond exactly to the French and English texts. He therefore proposed that the word "*enunciados*" be replaced by the word "*previstos*". In principle, he approved of the International Law Commission's text, but thought that it would be more complete and balanced with the addition of the two amendments under consideration. Those amendments seemed to him to be useful, as abuses of the privileges and immunities granted by the convention must be avoided. He therefore supported the two amendments to article 22.

52. The CHAIRMAN said that the Drafting Committee would take account of the Peruvian representative's comment concerning the Spanish text of article 22.

53. Mr. MOLINA LANDAETA (Venezuela) said that article 22 was very important, as it emphasized the role that the organization should play. It must not be

forgotten that the relations referred to in the Convention were tripartite relations, and that the balance between the three parties must be maintained. He therefore entirely approved of the International Law Commission's text of article 22. He also approved of the idea contained in the Austrian amendment (A/CONF.67/C.1/L.49), because it seemed to him that the organization should also be able to assist the host State in securing the discharge of obligations of the sending State. He wondered, however, whether that amendment did not belong, more properly, to part IV of the draft (General provisions), which dealt, *inter alia*, with respect for the laws and regulations of the host State and with the conciliation procedure in the event of a dispute. He also supported the amendment submitted by Belgium, Japan and the United States of America (A/CONF.67/C.1/L.52), although the word "abuses" seemed to be a little too strong.

54. Mr. EUSTHIADES (Greece) thought that the two amendments to article 22 were intended to strike a balance between the assistance which the organization should give the sending State, according to the text of the article, and the assistance it should give the host State. Such a balance would be in keeping with the tripartite character of relations between the international organization, the sending State and the host State. The organization should, in fact, assist the host State in the same way as it assisted the sending State. Since those two amendments roughly expressed the same idea, he thought that they could be combined in a single amendment, for it would be difficult to add two new paragraphs to the article, one concerning abuses of privileges and immunities and the other relating to the discharge of obligations of the sending State. But if he had to choose between the two, his preference would go to the Austrian amendment (A/CONF.67/C.1/L.49), which seemed to be more precise and at the same time less exacting than the amendment submitted by Belgium, Japan and the United States of America (A/CONF.67/C.1/L.52). He wondered, however, whether the words "under the present Convention" did not go beyond the scope of article 22, which was concerned solely with the privileges and immunities "provided for by the present articles".

*The meeting rose at 1.05 p.m.*

## 15th meeting

Friday, 14 February 1975, at 3.20 p.m.

Chairman: Mr. NETTEL (Austria).

**Consideration of the question of the representation of States in their relations with international organizations in accordance with resolutions 2966 (XXVII), 3072 (XXVIII) and 3247 (XXIX) adopted by the General Assembly on 14 December 1972, 30 November 1973 and 29 November 1974 (continued)**

*Article 22* (Assistance by the Organization in respect of privileges and immunities) (*concluded*) (A/CONF.67/4, A/CONF.67/C.1/L.49, L.52)

1. Mr. KUZNETSOV (Union of Soviet Socialist Republics) said that both amendments (A/CONF.67/C.1/L.49 and L.52) were broader in scope than the contents of the article of the International Law Commission (ILC) (see A/CONF.67/4) which was entitled "Assistance by the Organization in respect of privileges and immunities". Of the two amendments, his delegation preferred the Austrian amendment (A/CONF.67/C.1/L.49), which it found acceptable in principle. It applied, however, to the discharge of the whole

range "of obligations of the sending State under the present Convention". Should, therefore, the Committee of the Whole adopt the Austrian proposal, the Drafting Committee should place it in part IV (General provisions), which encompassed all the duties incumbent upon States under the future convention.

2. He was not very much impressed by the give-and-take argument of matching rights with obligations which had been advanced in support of the amendment contained in document A/CONF.67/C.1/L.52. In any event, the amendment as formulated really related not to article 22 but to article 75 (Respect for the laws and regulations of the host State). If its sponsors resubmitted their proposal in connexion with article 75, his delegation would consider it with the utmost attention.

3. Mr. DE YTURRIAGA (Spain) said that his delegation welcomed the intention of the sponsors of both amendments (A/CONF.67/C.1/L.49 and L.52) to introduce into the present text of article 22 an element of balance between the rights and obligations of States under the future convention.

4. His delegation preferred the Austrian amendment (A/CONF.67/C.1/L.49) to the one submitted by Belgium, Japan and the United States (A/CONF.67/C.1/L.52). The latter referred to the prevention of "abuses" of privileges and immunities—language which seemed to assume that sending States would commit them. His delegation objected to that approach on grounds of substance, for no-one, least of all a State, should be presumed guilty; presumptive innocence was a fundamental principle of law. Moreover, the amendment in question suffered from some drafting defects, as already pointed out by the Venezuelan representative (14th meeting). It was not at all clear when and how the Organization would be "invited" to act and, above all, by whom.

5. Mr. RITTER (Switzerland) said that his delegation supported the idea underlying both amendments (A/CONF.67/C.1/L.49 and L.52). From the point of view of substance, the adoption of either or both of them would introduce into article 22 a useful element: that of the assistance to be given by the organization to the host State in securing the discharge of obligations of the sending State in relation to privileges and immunities. That element would serve to balance the concept, present in the text of article 22, of the assistance to be given by the organization to the sending State in securing the enjoyment of privileges and immunities.

6. From the point of view of drafting, however, his delegation preferred the Austrian amendment (A/CONF.67/C.1/L.49) which was couched in more general terms and was at the same time more precise than the other (A/CONF.67/C.1/L.52). His delegation nevertheless believed that the two amendments were not mutually exclusive. If both were accepted by the Committee of the Whole, the Drafting Committee might well wish to place them in separate parts of the draft, bearing in mind their difference in scope.

7. Mr. RAČIĆ (Yugoslavia) welcomed the attempt by the sponsors of both amendments to supplement the

existing provisions of article 22 in a manner which would result in a better-balanced text. The proposed additional paragraph would have much practical value in preventing difficulties and possibly avoiding disputes. From the point of view of drafting, however, his delegation had a preference for the Austrian amendment (A/CONF.67/C.1/L.49) but would be prepared to leave the question of the choice of wording to the Drafting Committee.

8. Mr. SMITH (United States of America) said that there was an error in the English and Spanish versions of the original French text of the amendment proposed by the delegations of Belgium, Japan and his country (A/CONF.67/C.1/L.52). In the text, the words "be invited" and "to" in the beginning had to be deleted. The beginning of the proposed new paragraph should therefore read: "The Organization shall, where necessary, assist the host State in preventing abuses . . .".

9. His delegation appreciated the point made by the USSR representative regarding the placing of the proposed provision in article 75. That solution, however, would not achieve the desired balance because article 75 did not deal only with privileges and immunities, and article 22 covered some aspects which were not pertinent to article 75.

10. It was accordingly proper and reasonable to introduce into article 22, for the sake of balance, the concept of the assistance to be rendered by the organization to the host State in the prevention of abuses of privileges and immunities. As to the point raised in that connexion by the Spanish representative, there was no implication in the proposed text that abuses would be committed. One had to live, however, in a world of reality in which abuses did in fact occur and an international organization could not properly function if abuses occurred too frequently.

11. In practice, most international organizations did precisely what was stated in the proposed new paragraph. To take the example of the United Nations, the committee which dealt at the Headquarters of the Organization in New York with problems connected with the implementation of privileges and immunities under the 1947 Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations<sup>1</sup> benefited from the services of the Office of Legal Affairs. The Secretariat of the United Nations thus lent its effective assistance both to the host State and to the sending States in furthering the work of that committee.

12. Again, the concept of the assistance to be given by the international organization to the host country in ensuring the observance, and even the enforcement, of the host State's domestic legislation, was contained in article X of the Agreement between the Organization of African Unity (OAU) and Ethiopia regarding the OAU headquarters at Addis Ababa. The article also specified that such assistance would be given by OAU to the host State in preventing abuses with regard to the facilities, privileges and immunities specified in the Agreement in question.

<sup>1</sup> General Assembly resolution 169 B (II).

13. He said that the proposed new paragraph was entirely logical, absolutely fair and based on clear existing practice.

14. Mr. TAKEUCHI (Japan), speaking as one of the sponsors of the joint amendment (A/CONF.67/C.1/L.52), said with reference to the suggestion by the USSR representative about placing it in article 75, that it was perfectly appropriate to include the proposed provision in article 22, since article 22 related to assistance by the Organization in respect of privileges and immunities.

15. While his delegation agreed in principle with the text proposed by Austria (A/CONF.67/C.1/L.49), it was concerned at the absence of any reference in it to "privileges and immunities".

16. He was somewhat surprised at the criticism of the word "abuses" because it was a legal term used very frequently. Moreover, in article IV, section 13, of the 1947 Headquarters Agreement between the United Nations and the United States, the second sentence of subparagraph (b) began with the words: "In case of abuse of such privileges . . .".

17. The CHAIRMAN said that, with regard to the title of article 22, the Committee could follow the precedent set in connexion with other articles and leave it to the Drafting Committee to find proper language for the title in consonance with the final contents of the article.

18. Mr. LANG (Austria) said that, following the discussion which had taken place and informal consultations between his delegation and a number of other delegations, he wished to revise his delegation's amendment (A/CONF.67/C.1/L.49) by inserting the words "concerning privileges and immunities" before the words "under the present Convention".

19. His delegation continued to believe that article 22 was the proper place for the paragraph it proposed. The purpose was precisely to strike a balance between rights and obligations in the trilateral relationship—between the Organization, the host State and the sending States—underlying the draft articles. His delegation, however, was not wedded to the actual wording of its proposal and was quite willing to leave it to the Drafting Committee to bring the language into line with that of the other articles.

20. Mr. SHELDON (Byelorussian Soviet Socialist Republic) noted the substantial significance of the oral revision made in the Austrian amendment (A/CONF.67/C.1/L.49). The change adequately restricted the formulation of the original text. The proposed new paragraph could now have its place in article 22. His delegation accordingly had no objection to the Austrian amendment as revised.

*The Austrian amendment (A/CONF.67/C.1/L.49), as revised by its sponsor, was adopted unanimously.*

21. The CHAIRMAN said that, following the unanimous decision thus taken by the Committee, it seemed doubtful to him whether the joint amendment in document A/CONF.67/C.1/L.52 should be put to the vote.

22. Mr. SMITH (United States of America) said that

he might have agreed with that remark if it were based on the premise that it was an obligation of the sending State in relation to privileges and immunities to prevent abuses of those privileges and immunities. Otherwise, the joint amendment (A/CONF.67/C.1/L.52) co-sponsored by his delegation and the Austrian amendment (A/CONF.67/C.1/L.49) were not mutually exclusive and the latter could not be said to encompass the former.

23. The CHAIRMAN said that it was not for him to interpret any text before the Committee. He was, nevertheless, of the opinion that it was one of the obligations of the sending State to avoid abuses of privileges and immunities enjoyed by its officials under the future convention. Lastly, he wished to know from the sponsors of the joint amendment whether they might be prepared to withdraw it.

24. Mr. SMITH (United States of America) said that his delegation was only one of the three sponsors of the joint amendment (A/CONF.67/C.1/L.52). It would be prepared to withdraw it if the others agreed to do so.

25. Mr. TAKEUCHI (Japan) and Mr. DE VIDTS (Belgium), speaking as sponsors of the joint amendment (A/CONF.67/C.1/L.52), agreed to its withdrawal.

*Article 22 as a whole, as amended, was adopted unanimously.*

*Article 23 (Inviolability of the premises) (A/CONF.67/4, A/CONF.67/C.1/L.46, L.50, L.53)*

26. Mr. KUZNETSOV (Union of Soviet Socialist Republics), introducing the joint amendment (A/CONF.67/C.1/L.46) on behalf of its six sponsors, said that they attached great importance to the provisions of article 23 in the interests of the normal discharge of the functions of the permanent mission.

27. The inviolability of the premises of a permanent mission was as important as the inviolability of a diplomatic mission. The sponsors had therefore proposed an amendment to paragraph 1 of article 23 which would place the inviolability of a permanent mission on the same level as that of an embassy. Clearly, the head of the permanent mission, like the head of a diplomatic mission, was in a position to give his co-operation to the agents of the host State in the event of fire or other disaster.

28. Mr. BIGAY (France), introducing his delegation's amendment (A/CONF.67/C.1/L.50), said that, as stressed by the ILC itself in paragraph 1 of the commentary (see A/CONF.67/4), the third sentence of paragraph 1 of article 23 was modelled on the third sentence of paragraph 1 of article 25 of the Convention on Special Missions.<sup>2</sup> The purpose of the French amendment was to replace the words "that seriously endangers public safety" in that sentence by the phrase "requiring prompt protective action", which was taken from the corresponding passage of article 31 (Inviolability of the consular premises) of the 1963 Convention on Consular Relations.<sup>3</sup>

<sup>2</sup> General Assembly resolution 2530 (XXIV), annex.

<sup>3</sup> United Nations, *Treaty Series*, vol. 596, No. 8638, p. 261.

29. The formula "requiring prompt protective action" was much more correct and much more precise than the formula "that seriously endangers public safety". The criterion of seriousness was subjective; moreover, it did not lay stress on the essential point which was rather whether prompt action was called for in the situation envisaged in the provision under discussion. In the event of fire or other disasters such as flooding, it was clearly essential to take immediate action. The better language to use in connexion with such a situation was therefore that of the 1963 Convention on Consular Relations as proposed in the French delegation's amendment.

30. Mr. SMITH (United States of America), introducing his delegation's amendments to article 23 (A/CONF.67/C.1/L.53), said that in the amendment to paragraph 3 his delegation attempted to make allowance for those special circumstances when necessary to move a vehicle such as when a diplomatic car was in a wreck, stolen, completely obstructing traffic or parked by a fire hydrant. He noted in an aside that the privilege of being a host State was an honour which his country held in high regard and it would not use the possibility envisaged in the amendment to paragraph 3 lightly, but after consultations with other delegations, his delegation had concluded that the amendment was not really necessary since paragraph 3 as drafted was a technical formulation which was not applicable to the examples mentioned. Accordingly, his delegation would withdraw it.

31. His delegation's proposed amendment to paragraph 1 was intended to replace the third sentence by a new sentence which was in line with the amendment proposed by France, which was based on the 1963 Vienna Convention on Consular Relations. His delegation agreed with the purpose of the text proposed by the ILC, but feared that it might lead to practical difficulties. In case of fire, for example, it would have to be decided how much time should be devoted to finding the head of mission in order to obtain his express consent to enter the premises of the mission and what would happen if the head of mission refused to give his permission to the authorities of the host State. His delegation therefore hoped that the Committee could vote in favour of its amendment to paragraph 1.

32. Mr. MITIĆ (Yugoslavia) said that the wording of paragraph 1, which was based on the wording of article 25, paragraph 1, of the Convention on Special Missions, was unacceptable because it was ambiguous and did not provide an absolute guarantee of the inviolability of the premises of the mission. His delegation was of the opinion that the wording of paragraph 1 should be based on that of article 22, paragraph 1, of the 1961 Vienna Convention on Diplomatic Relations.<sup>4</sup> In view of the essential difference between permanent missions accredited to international organizations and special missions, his delegation could not agree that the standard of inviolability of special missions would be adequate. In that connexion, he pointed out that, during the consideration of article 23, the

opinions of the members of the ILC had been divided. Some members and, in particular, Mr. Bartoš, had expressed strong doubts that the proposed wording of paragraph 1 could meet the requirements of the draft convention and had supported the wording of the 1961 Vienna Convention. For all those reasons, his delegation would vote in favour of the amendment to paragraph 1 contained in document A/CONF.67/C.1/L.46.

33. Mr. CALLE Y CALLE (Peru) said that there seemed to be three main positions with regard to the question of the inviolability of the premises of missions. The sponsors of the joint amendment (A/CONF.67/C.1/L.49) had adopted the position of principle that the text proposed by the ILC should be replaced by categorical wording based on the wording of article 22, paragraph 1, of the 1961 Vienna Convention. The text proposed by the ILC was based on the wording of article 25, paragraph 1, of the Convention on Special Missions and clearly stated the principle that the consent of the head of mission was required for entry into the premises of the mission and that such consent could be assumed in certain cases and only in the event that it had not been possible to obtain the express consent of the head of mission. There was also the position of less absolute inviolability, based on article 31 of the 1963 Vienna Convention on Consular Relations.

34. His delegation was of the opinion that the question of the inviolability of the premises of missions accredited to international organizations was similar to the question of the inviolability of special missions and therefore had no difficulty in accepting the principle that, in certain cases, the consent of the head of mission could be assumed. As to the amendment proposed by France, it introduced the concept of circumstances which required prompt protective action and the same concept underlay the amendment proposed by the United States. Although he supported the well-balanced text proposed by the ILC he could vote in favour of the United States amendment if it could be amended to include the words "in case of fire or other disaster that seriously endangers public safety" in order to take account of the fact that such cases required prompt protective action precisely because they seriously endangered public safety. Since he could not fully agree with the principle of absolute inviolability, he would not be able to support the amendment contained in document A/CONF.67/C.1/L.46.

35. Mr. MEISSNER (German Democratic Republic) said that his delegation attached great importance to the development of the privileges and immunities granted to missions as the representatives of States. It therefore welcomed the fact that the text proposed by the ILC was designed to grant diplomatic status to missions to international organizations and to delegations sent to organs and conferences. The granting of privileges and immunities to missions and delegations as representatives of States was closely linked to respect for the sovereignty and equality of all States in international relations.

36. His delegation considered that rules relating to

<sup>4</sup> *Ibid.*, vol. 500, No. 7310, p. 95.

the inviolability of the premises of missions accredited to international organizations should be identical to the rules contained in the 1961 Vienna Convention on Diplomatic Relations. It could therefore not agree to the limitation on the inviolability of the premises of the mission provided for in the third sentence of paragraph 1 of article 23. All States were entitled to the inalienable right of the absolute inviolability of the premises of their missions and they alone could decide whether and to what extent they were willing to waive that right. The principle of inviolability could be limited only by an explicit waiver, which could not be replaced by assumed consent.

37. In his delegation's view, the Committee must reach agreement on a rule which excluded all activities which might be of a discriminatory nature and affect the sovereignty of States. In that connexion, he pointed out that the 1946 Convention on the Privileges and Immunities of the United Nations<sup>3</sup> and the 1947 United Nations Headquarters Agreement provided for the absolute inviolability of the premises of the United Nations and its specialized agencies. Those conventions constituted agreements among States and it would be a contradiction of those agreements not to grant to the missions of States at least the same rights as States were willing to grant to international organizations. Finally, his delegation was of the opinion that the requirement for the explicit waiver of the State in case of limitation of the principle of inviolability should be provided for in article 23 since they were provided for in articles 28 and 31. For all those reasons, his delegation supported the six-Power amendment to paragraph 1 (A/CONF.67/C.1/L.46).

38. Mr. KABUAYE (United Republic of Tanzania) said that, in stressing the inviolability of the premises of the mission, article 23 recognized the representative character of the mission. Thus, it embodied the principle that, as the representative of the sending State, the mission required the same treatment as the host State, whose frontiers could not be crossed without specific formalities. That principle had also been recognized in the amendments proposed to article 23.

39. Referring specifically to the United States amendment (A/CONF.67/C.1/L.53), he said that his delegation had carefully considered the legal concept that necessity was sometimes a justification for disobeying the law. For that reason, it was sympathetic to the United States amendment and wondered whether it might not, after all, be possible to combine the ideas contained in documents A/CONF.67/C.1/L.46 and L.53.

40. His delegation considered that the proposed convention should also contain a provision covering possible cases of sabotage, for which the express or assumed consent of the head of mission would be necessary to enter the premises of the mission. In order to take account of that possibility, he suggested that the words "or a responsible member of the mission" should be added at the end of paragraph 1 of the article and that the paragraph might be reworded to give priority

to the exhaustion of the possibility of obtaining consent. Without such a provision, the paragraph seemed to imply that suspicion and mistrust were normal characteristics of relations between States. If the wording he had suggested could be incorporated into paragraph 1, his delegation would be able to support either the United States Amendment or the text proposed by the ILC.

41. Mr. ELIAN (Romania) said that, as a sponsor of the amendment to paragraph 1 contained in document A/CONF.67/C.1/L.46, he wished to point out that paragraph 1 as proposed by the ILC placed a limitation on the principle of the inviolability of the premises of the mission and that such a limitation could, in practice, lead to the virtual negation of that principle. It therefore seemed to his delegation that, even in case of disaster, no derogation from the inviolability of the premises should be allowed without the express consent of the head of mission concerned. In other words, an objective and specific legal prerogative, namely, the inviolability of the premises of the mission, could not be dependent on the subjective judgement of the authorities of the host State. Moreover, the words "Fire or other disaster that seriously endangers public safety" in the text proposed by the ILC could be very broadly interpreted and his delegation therefore thought that there was no reason for the Committee not to use the corresponding wording of article 22, paragraph 1, of the 1961 Vienna Convention.

42. Mr. MOLINA LANDAETA (Venezuela) said that the question of the inviolability of the premises of the mission had also been the subject of controversy in the past. Although the subject had not been closely examined during the adoption of the 1961 Vienna Convention, a limit had been placed on the inviolability of the premises of consular posts in the 1963 Vienna Convention on Consular Relations in order to take account of practical situations which might arise in the event of fire or other disaster. In the Convention on Special Missions, an even greater limitation had been placed on the concept of inviolability in view of the fact that public safety could be endangered if provision was not made for assumption of the consent of the head of mission.

43. Referring to the inviolability of the premises of permanent missions accredited to international organizations, he said that it would be contrary to the good-faith principle, which normally governed all relations between States, to provide that there could be no exceptions to the principle of inviolability. Consequently, his delegation supported the text of paragraph 1 proposed by the ILC, which placed only a relative limitation on the principle of inviolability. It would abstain from the vote on the amendment proposed by the United States, which, in his opinion, was adequately covered by the text of the ILC. It would also abstain from the vote on the amendment proposed in document A/CONF.67/C.1/L.46, because it followed the principle of not voting against proposals made by other Latin American countries except in matters of great importance.

44. Mrs. SLÁMOVÁ (Czechoslovakia) said that ar-

<sup>3</sup> General Assembly resolution 22 A (I).

article 23 was one of the most important provisions of the proposed convention and that the principle of the inviolability of the premises of the mission was a necessary guarantee against interference by the host State in the affairs of the sending State and a guarantee of the ability of the mission to discharge its functions. Her delegation could therefore not agree with any restriction which might be placed on the principle of the inviolability of the premises of the mission and fully supported the amendment to paragraph 1 contained in document A/CONF.67/C.1/L.46.

45. Mr. TODOROV (Bulgaria) said that his delegation fully supported the principle of ensuring the absolute inviolability of the premises of the mission, particularly in view of the representative character of missions and their functions. It therefore saw no reason for not following the provisions of article 22, paragraph 1, of the 1961 Vienna Convention on Diplomatic Relations. The last sentence of paragraph 1 of the article placed a restriction on the inviolability of the premises of the mission which could ultimately lead to the total negation of the principle of inviolability. His delegation therefore fully supported the amendment to paragraph 1 proposed in document A/CONF.67/C.1/L.46 and would vote against the amendments proposed by France and the United States because they might lead to arbitrary interpretations of the permission or consent of the head of mission by the authorities of the host State. The amendment did not even seek such a permission or consent.

46. Mr. WARNOCK (Ireland) said that although he upheld the principle of inviolability of premises, he was inclined to support the United States amendment to paragraph 1 of article 23 (A/CONF.67/C.1/L.53) in order to make provision for an emergency situation in which the head of mission withheld his consent to entry or could not be contacted. Although he agreed with the Romanian representative that there was a possibility of an arbitrary decision by the fire brigade, that had to be balanced against the risk to public safety.

47. If the International Law Commission's text of paragraph 3 was retained, it should also be made clear that the right of the host State to take charge of a vehicle creating a serious public hazard was not excluded.

48. Mr. WILSKI (Poland), speaking as one of the sponsors of the amendment in A/CONF.67/C.1/L.46, said that it sought to rectify the retrograde character of the International Law Commission's text of article 23 as compared with the corresponding article 22 of the Vienna Convention on Diplomatic Relations. He did not consider that any distinction should be made with regard to inviolability of premises as between traditional diplomatic missions and permanent missions to international organizations. Notwithstanding the explanation given in paragraph 5 of the commentary of the ILC to article 23 (see A/CONF.67/4), the existing text seemed to assume that the sending State might act *mala fide* and not allow agents of the host State to enter the mission's premises in the event of a disaster. The amendment he was sponsoring (A/CONF.67/C.1/L.46) would remove any possibility of such a

misunderstanding. From experience and common sense, the full co-operation of the sending State in combating disaster should be assumed.

49. The joint amendment affirmed a generally recognized principle of international law; and it did not rule out the possibility of agents of the host State entering the mission's premises, but it made such entry fully conditional on the express consent of the head of mission. In his view, the host State did not really require—at least within the context of article 23—any guarantee other than the presumption of good faith on the part of the sending State.

50. Mr. DE YTURRIAGA (Spain) disagreed with the Peruvian representative's comments; as their name implied permanent missions were closer in character to diplomatic missions than to special missions. They were in fact almost identical and the tendency throughout the convention under consideration had been to apply to them the standards which had been codified in the Vienna Convention on Diplomatic Relations. Different treatment with regard to inviolability of premises would, as had been pointed out by the Venezuelan representative, give rise to the problem of incompatibility of régimes, since permanent missions often shared premises with diplomatic missions. He understood the desire of host States to include a safeguard clause to cover cases of *force majeure* but the exception should not become the rule: it was preferable in exceptional circumstances for the authorities of the host State to violate the convention rather than to introduce a clause into the convention opening the door to possible misuse. He therefore supported the amendment contained in A/CONF.67/C.1/L.46.

51. He considered that, in paragraph 5 of its commentary, the International Law Commission's interpretation of the words "head of mission" as meaning "any person authorized to act on his behalf" was too wide; he would therefore support, in the event of either the International Law Commission's text or that in A/CONF.67/C.1/L.46 being adopted, the Tanzanian representative's suggestion to add to the end of the first sentence of paragraph 1 a reference to "head of mission or a responsible member of the mission".

52. Mrs. KONRAD (Hungary) said that, like the ILC her delegation accepted the view of the Legal Counsel, expressed in paragraph 2 of the commentary of the ILC, that the diplomatic status of premises arose from the diplomatic status of a resident representative and his staff. It therefore followed that there should be no departure from the text of the Vienna Convention on Diplomatic Relations, which had become the standard text in that field. That Convention did not admit of any exception to the rule that the consent of the head of mission was required to allow agents of the host State to enter the mission's premises. The amendment contained in A/CONF.67/C.1/L.46 sought to delete the exception contained in paragraph 1 of article 23. She therefore supported the amendment for two reasons: to uphold the principle that the protection of permanent missions should not be inferior to that of diplomatic missions and because the effective

functioning of permanent missions depended on complete inviolability of its premises.

53. Mr. WERSHOF (Canada) said that he supported the purport of the French and United States amendments to article 23 (A/CONF.67/C.1/L.50 and L.53). If article 23 were read in conjunction with article 1, paragraph 1, subparagraph 26, article 29, paragraph 7 of the commentary thereto and article 36, paragraph 2, it would be clear that the term "premises" covered both the office and living accommodation of a large number of people. Under modern conditions, such accommodation would tend to be in buildings also used by other people. It could scarcely be argued that the right to life was of less importance than the doctrine of inviolability of premises; it was a case of balancing one right against another in the event of an emergency. He did not anticipate that a head of mission would ever arbitrarily refuse permission to enter the mission's premises but he might not always be readily available. It was very unlikely that a host country would ever misuse the exception provided for in the United States amendment (A/CONF.67/C.1/L.53) because the rule of inviolability was a solemn principle.

54. The supporters of the amendment in A/CONF.67/C.1/L.46 had laid much stress on the corresponding provision of the Vienna Convention on Diplomatic Relations. Time had shown however, that that provision was inadequate and would probably be revised when the occasion arose. Modified provisions on the subject appeared in the Vienna Convention on Consular Relations and in the Convention on Special Missions, which had been adopted later.

55. Mr. SHELDON (Byelorussian Soviet Socialist Republic) said that, as his Government had made clear in its written comments (see A/CONF.67/WP.6, p. 72), it attached very great importance to the principle of inviolability of premises. In adopting article 6 of the convention under consideration, the Committee had expressed its views on the functions of permanent missions, pointing out that they included representation, liaison, and participation in the international organization, in question, which could be described as the functions of multilateral diplomacy. The complete inviolability of the premises of missions was an important condition of their normal functioning. It was not possible to admit any limitations to the rule since, as the actual situation demonstrated, they might be used to the detriment of the normal discharge of the functions of missions and the activities of international organizations, and might also give rise to complications in the relations between States. The third sentence of paragraph 1 of article 23 of the International Law Commission's draft permitted entry virtually without the consent of the permanent representative. There was no justification for departing from the wording of the provisions of article 22 of the Vienna Convention on Diplomatic Relations, which had already entered into force with respect to 111 States. The argument advanced in the discussion that the premises of missions might be situated in buildings which were also used by other bodies was not well founded. Despite the many instances of embassies occupying premises which were

also occupied by other bodies, the 1961 Vienna Convention established clearly and precisely the principle of complete inviolability of premises. In so doing, the 1961 Vienna Convention based itself quite correctly on the principle of the sovereignty of States, which must never be disregarded in the convention under consideration.

56. There had been references to the Vienna Convention on Consular Relations; that Convention, however, had entered into force with regard to only 63 States and could not be used as a model for the present convention since permanent representatives differed from consuls in status.

57. The extremely rare situations arising as a result of fires or other natural disasters could not be used to justify any limitation of the inviolability of the premises of missions. If relations between an embassy and the host country were conducted normally without any such exception to the inviolability of premises, it followed that the principle of inviolability should likewise be strictly observed with regard to permanent missions to international organizations. The majority of the members of the ILC had firmly maintained the principle of the inviolability of premises. For the reasons he had given, he fully endorsed the amendment to article 23 in document A/CONF.67/C.1/L.46 and would vote against the amendments in document A/CONF.67/C.1/L.50 and L.53.

58. Mr. SMITH (United States of America) said that to meet the point made by the Peruvian representative and others, he wished to revise the concluding part of his amendment to paragraph 1 of article 23 (A/CONF.67/C.1/L.53) to read: "or other disaster seriously endangering public safety and requiring prompt protective action".

59. He had listened with sympathy to the points made by the Tanzanian representative. His amendment had started from the assumption that a mission's premises were inviolable and that agents of the host State could not enter without the consent of the head of mission. It was necessary to assume good faith on both sides. As the Canadian representative had said, however, it was a question of balancing the principle of inviolability, to which he subscribed, against the possibility of loss of life if no exceptions were allowed. The dangers of misuse by the host State were not such as to justify no protection being afforded against potentially disastrous situations. He was sure that all present and future host States would take their responsibilities seriously.

60. Mrs. MIRANDA (Cuba), speaking as one of the sponsors of A/CONF.67/C.1/L.46, said that here delegation had disagreed with the text of paragraph 1 of article 23 when it had been under discussion in the ILC. In her view, it could lead to the negation of the principle of inviolability of premises, which was essential to diplomatic functions. Inviolability would become dependent upon the subjective judgement of low-ranking agents of the host State such as policemen or firemen, who might disturb the mission when the gravity of the situation did not really warrant it. The corresponding article of the Vienna Convention on Diplo-

matic Relations had worked well and there had been no tragic incidents.

61. In discussion of the subject, it should be clearly understood that permanent missions were not to be compared with Special Missions, which, as their name implied, were of a temporary nature, nor with consular officials whose functions as defined in article 5 of the Vienna Convention on Consular Relations, were not those of diplomatic representation. The proper comparison was with diplomatic missions. The amendments proposed in A/CONF.67/C.1/L.50 and 53 subtly detracted from the status of head of mission, which was based on the Legal Counsel's opinion, given in 1958, on the development of the institution of permanent missions, reproduced in part in paragraph 4 of the commentary of the ILC to article 6 (see A/CONF.67/4). A provision relating to such an important aspect of the permanent mission's status should be so drafted as to avoid all possible ambiguity.

62. Mr. EUSTATHIADES (Greece) said that the ILC had examined very carefully the arguments adduced for and against exceptions to the rule of inviolability. Indeed, article 23 was one of the most important articles in the draft convention. It was not only in the field of law that exceptions to fundamental principles were accepted; all religions also accepted such exceptions. Writers on international law accepted only one exception, which had been called a state of necessity, to the principle of the inviolability of premises. By reason of its vagueness and subjectivity, that notion was dangerous and should not be included in this convention unless examples were given of entirely exceptional situations. The Commission had tried to give an example of an exceptional situation, namely, that of fire or other disaster that seriously endangered public safety. Of course, both rules and exceptions were open to abuse. In the case under discussion, however, the Commission had stated in paragraph 5 of its commentary to the article (see A/CONF.67/4) that it assumed that the provision in the third sentence of paragraph 1 would be applied in good faith.

63. The argument that a mission might be deliberately set on fire in order to permit derogation from the principle of inviolability did not seem tenable, for it was unlikely that anyone would go to such lengths in order to gain access to the premises of a mission. Accordingly, in the case of fire, there would be a state of necessity which would not affect the mission's premises but would also endanger human lives and other property than the mission's. The provision proposed by the Commission must therefore be interpreted in good faith. A balance must be struck between the basic principle of the inviolability of premises and actual circumstances in the real world. It was, perhaps, because the Commission had wished to reach a compromise in the matter that it had included the last phrase of the third sentence of paragraph 1, beginning with the words "and only in the event . . .". That phrase was, however, questionable. It was possible that a head of mission might refuse to give his consent on the grounds that, in his opinion, the principle of the inviolability of the premises took precedence

over the safety of the building as a whole. Therefore, although it had not yet formed a final opinion on it, his delegation viewed with sympathy the United States amendment, which would delete that phrase. He could accept the addition of the words "requiring prompt protective action" proposed by the United States delegation, provided the sentence was well drafted and it was clearly stated that the action would be taken in the interests of public safety.

64. Mr. TAKEUCHI (Japan) said that the United States amendment in document A/CONF.67/C.1/L.53 was well balanced and it concerned only exceptional cases. Its adoption would help to obviate disasters of the type referred to by the Canadian representative. Complete omission of the third sentence of paragraph 1 might cause the authorities of the host State to hesitate before taking protective action. Tragedies must not occur simply because a provision such as contained in the third sentence of paragraph 1 had not been included in the convention.

65. Mr. AVAKOV (Union of Soviet Socialist Republics) said that the Conference was supposed to prepare legal norms. Some representatives had advanced very emotional arguments in favour of the United States proposal; emotion was, however, a poor counselor. Surely the provisions of the articles should be based on the assumption that conditions would be normal. If a mission were to catch fire, the head of mission would, normally, give the authorities of the host State permission to enter the premises. It had been suggested that the provisions of the article should be applied in good faith. It would be interesting to know who, in the case in question, would determine what was good faith and what was not. The representative of Greece had suggested that no one would deliberately set fire to a mission. As all members were aware, however, there had been cases in which bombs had been thrown at missions and cases in which missions had been subjected to other acts of vandalism. His delegation was therefore firmly of the view that the third sentence of the Commission's text should be deleted.

66. Mr. UNGERER (Federal Republic of Germany) said that his delegation was in a position to support the United States amendment (A/CONF.67/C.1/L.53), particularly in its revised form. He realized that the third sentence of paragraph 1 covered exceptional cases only; normal situations were covered by the first and second sentences of that paragraph. He would find it difficult to support the argument that a convention should provide for normal situations only. Law makers must provide for exceptions where necessary. Recalling that only a few days previously the premises of one of his country's missions had been seriously damaged, he said that his delegation particularly welcomed paragraph 2 of the article, because the danger was that the authorities of the host State would be unduly tardy, in taking protective action.

67. The CHAIRMAN suggested that the Committee should vote first on the joint amendment farthest removed from the article (A/CONF.67/C.1/L.46). Adoption of that amendment would mean that there would be no need to vote on the amendments submitted

by France (A/CONF.67/C.1/L.50) and the United States (A/CONF.67/C.1/L.53). If the joint amendment was rejected, the Committee would vote on the United States amendment. If that amendment was rejected, the Committee would then vote on the French amendment.

68. Mr. KUZNETSOV (Union of Soviet Socialist Republics) asked how the Spanish delegation's oral subamendment to the amendment in document A/CONF.67/C.1/L.46 would be dealt with.

69. The CHAIRMAN said that the Tanzanian and Spanish delegations had suggested, but not formally proposed, that the second sentence of the amendment in document A/CONF.67/C.1/L.46 should be completed by the inclusion of the words "or any other person acting on his behalf" after the words "head of mission".

70. Mr. DE YTURRIAGA (Spain) said that his delegation wished its proposal to be considered as formal. If approved, the phrase should be added to any text adopted by the Committee.

71. The CHAIRMAN said that if the Spanish proposal was to be considered as formal, members must be given an opportunity to discuss it.

72. Mr. DE YTURRIAGA (Spain) observed that members could have commented on his delegation's proposal—which had been made much earlier in the meeting—if they had wished. To facilitate matters, however, his delegation would not insist that its proposal be put to the vote.

73. The CHAIRMAN suggested that the attention of the Drafting Committee should be drawn to the fact that in the Committee of the Whole the opinion had been expressed that not only the head of mission but any other authorized person should be able to consent to the authorities of the host State entering the premises.

74. Mr. KUZNETSOV (Union of Soviet Socialist Republics) requested that the meeting be suspended in order to enable the sponsors of the amendment in document A/CONF.67/C.1/L.46 to consider the Spanish proposal.

*The meeting was suspended at 5.50 p.m. and resumed at 5.55 p.m.*

75. The CHAIRMAN put to the vote the joint amendment (A/CONF.67/C.1/L.46).

*At the request of the representative of the Union of Soviet Socialist Republics, a vote was taken by roll-call.*

*Austria, having been drawn by lot by the Chairman, was called upon to vote first.*

*In favour:* Bulgaria, Byelorussian Soviet Socialist Republics, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Egypt, German Democratic Republic, Hungary, India, Iraq, Ivory Coast, Lebanon, Libyan Arab Republic, Mali, Mongolia, Morocco, Poland, Romania, Spain, Ukrainian Soviet Socialist Republics, Union of Soviet Socialist Republics, Yugoslavia.

*Against:* Austria, Belgium, Brazil, Canada, Ecuador,

Finland, France, Germany (Federal Republic of), Greece, Ireland, Israel, Italy, Japan, Liberia, Netherlands, Nigeria, Norway, Philippines, Republic of Korea, Republic of Viet-Nam, Sweden, Switzerland, Thailand, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Australia.

*Absentions:* Holy See, Indonesia, Khmer Republic, Kuwait, Madagascar, Malaysia, Mexico, Niger, Pakistan, Peru, Turkey, United Republic of Cameroon, Venezuela, Argentina.

*The joint amendment was rejected by 27 votes to 22, with 14 abstentions.*

76. The CHAIRMAN put to the vote the amendment to paragraph 1 of article 23 proposed by the United States (A/CONF.67/C.1/L.53) as orally revised.

*The amendment was adopted by 33 votes to 18, with 12 abstentions.*

*Article 23, as a whole, as amended, was adopted by 41 votes to 13, with 8 abstentions.*

77. Mr. KUZNETSOV (Union of Soviet Socialist Republics), speaking on behalf of the delegations of the Socialist countries and Iraq in connexion with the voting on article 23, said that, with respect to the inviolability of the premises of a mission, no limitations were admissible since they might be used to the detriment of the normal functioning of the mission and of the fruitful activities of international organizations of universal character, and might also give rise to complications in inter-State relations.

78. Mr. OSMAN (Egypt), speaking in explanation of vote, said that because of the attacks and acts of vandalism committed against the Egyptian mission in New York, which might have been deliberately intended to set fire to the premises of the mission, he had voted in favour of the joint amendment to paragraph 1 and against the amendment proposed by the United States.

79. Mr. TANKOUA (United Republic of Cameroon), speaking in explanation of vote, said that his delegation had abstained from all the votes on the amendments to article 23 and from the vote on article 23 as a whole because it considered that the article was not sufficiently broad in scope. It regretted that the suggestions made by the representatives of the United Republic of Tanzania and Spain had not been taken into account in the amendments to article 23.

80. Mr. CALLE Y CALLE (Peru) said that his abstention in the roll-call vote did not imply that he did not fully endorse the principle of inviolability of premises, but it was necessary to specify some cases in which consent could be assumed. There was no violation of principle in making such exceptions.

81. Mr. DE YTURRIAGA (Spain) said that he had abstained from the vote on the article as a whole because he would have preferred a text similar to article 22 of the Vienna Convention on Diplomatic Relations, as he had already explained.

*The meeting rose at 6.25 p.m.*