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**Fourth report on relations between States and international organizations by
Mr. Abdullah El-Erian, Special Rapporteur**

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RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS

[Agenda item 1]

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by Mr. Abdullah El-Erian, Special Rapporteur

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I. Introduction

A. THE BASIS OF THE PRESENT REPORT

1. At the twentieth session of the Commission in 1968, the Special Rapporteur submitted a third report¹ containing a set of draft articles, with commentaries, on the legal position of representatives of States to international organizations and conferences. Those draft articles were divided into the following four parts:

- Part I. General provisions;
- Part II. Permanent missions to international organizations;
- Part III. Delegations to organs of international organizations and to conferences convened by international organizations;
- Part IV. Permanent observers from non-member States to international organizations.

2. As stated by the Special Rapporteur in the general comments with which he prefaced parts III and IV of his third report, the draft articles contained in these two parts (articles 47-52 and articles 53-56 respectively) were presented in a tentative form with a view to enabling the Commission to decide the preliminary question whether its draft articles on representatives of States to international organizations should be confined to permanent missions to international organizations, or should be broadened in scope to include delegations to organs of international organizations and to conferences convened by international organizations, as well as permanent observers of non-member States to international organizations.

3. At its 986th meeting, on 31 July 1968, the Commission adopted a provisional draft of twenty-one articles, with the Commission's commentary to each article.² The first five articles form part I (General provisions). They cover: the use of terms, the scope of the articles, their relationship to the relevant rules of international organizations and to other existing international agreements and derogation from the rules. The remaining articles make up the first section of part II (Permanent missions to international organizations). This section is entitled "Permanent missions in general". It regulates the following questions: establishment of permanent missions; functions of a permanent mission; accreditation to two or more international organizations and other related situations; appointment of the members of the permanent mission and their nationality; credentials of the permanent representative, his accreditation to organs of the organization and his full powers to represent the State in the conclusion of treaties; composition of the permanent mission and its size; notifications; *chargés d'affaires*; precedence; missions' offices and the use of the flag and emblem.

4. In accordance with articles 16 and 21 of its statute, the Commission decided to transmit the provisional

draft of twenty-one articles, through the Secretary-General, to Governments for their comments.³

5. In connexion with the examination of the provisional draft of twenty-one articles adopted by the Commission at its twentieth session, suggestions were made to the Special Rapporteur that he prepare additional articles relating to permanent missions to international organizations. Some members of the Commission proposed a provision on consultations between the host State, the organization concerned and the sending State. The purpose of the consultations in question would be to provide remedies for difficulties which may arise as a result of the non-application, between States members of international organizations and between States members and the organizations, of rules of inter-State bilateral diplomatic relations regarding *agrément*, the declaring of a diplomatic agent as *persona non grata* and reciprocity. In preparing the present revised text of the draft articles, the Special Rapporteur has also taken into consideration the views expressed on the subjects of delegations to organs of international organizations and to conferences convened by international organizations and of observers from non-member States appointed to international organizations in the course of the general discussion which preceded the examination of the draft articles by the Commission at its twentieth session. These suggestions and views are summarized in section B of this introduction.

6. Since the time when the Special Rapporteur's third report was considered by the Commission, discussions on the "Report of the International Law Commission on the work of its twentieth session" and on the "Draft Convention on Special Missions" have taken place in the Sixth Committee during the twenty-third session of the General Assembly. The discussions touched on a number of questions which relate to representatives of States to international organizations and conferences. The Special Rapporteur has deemed it appropriate to include a summary of those discussions in sections C and D of the introduction to the present report.

B. SUMMARY OF THE COMMISSION'S DISCUSSIONS AT ITS TWENTIETH SESSION

7. *Remedies for the host State.* This question was discussed by the Commission in connexion with its examination of articles 9 and 14, as presented in the Special Rapporteur's third report. Article 9, which was entitled "Appointment of the members of the permanent mission", provides that "The sending State may freely appoint the members of the permanent mission". Unlike the relevant articles of the Vienna Convention on Diplomatic Relations⁴ and the draft articles of the International Law Commission on special missions,⁵ article 9 did not make the freedom of the sending State in the choice of the

¹ *Yearbook of the International Law Commission, 1968*, vol. II, document A/CN.4/203 and Add.1-5, p. 119.

² *Ibid.*, document A/7209/Rev.1, p. 194, para. 21.

³ *Ibid.*, p. 195, para. 22.

⁴ United Nations, *Treaty Series*, vol. 500, p. 96.

⁵ *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, pp. 347 *et seq.*

members of its permanent mission to an international organization subject to the *agrément* of the host State for the appointment of the permanent representative or head of the permanent mission. Nor did article 9 make such freedom of choice subject to the right of the host State to notify the sending State that the head of the permanent mission or any member of the diplomatic staff of the mission is *persona non grata*. The reasons were stated by the Special Rapporteur in paragraph (2) of the commentary to article 9⁶ to be that:

The members of the permanent mission are not accredited to the host State in whose territory the seat of the organization is situated. They do not enter into direct relationship and transactions with the host State, unlike the case of bilateral diplomacy. In the latter case, the diplomatic agent is accredited to the receiving State in order to perform certain functions of representation and negotiation between the receiving and his own State. This legal situation is the basis of the institution of acceptance by the receiving State of the diplomatic agent (*agrément*) and of the right of the receiving State to request his recall when it declares him *persona non grata*.

The basic principle underlying the freedom of the sending State in the choice of the members of its permanent mission to an international organization, as reflected by the Special Rapporteur in article 9, was accepted by the Commission. Several members stated that the right of a sending State freely to appoint the members of a permanent mission was an essential concept of the law of international organizations. Some members pointed out, however, that the host State might need some protection, and that they assumed, therefore, that before completing the draft articles, the Commission would insert the necessary provisions to ensure that protection.⁷ Article 14 of the Special Rapporteur's draft, which was entitled "Size of the permanent mission", provided that:

The sending State should observe that the size of its permanent mission does not exceed what is reasonable and normal, having regard to the circumstances and conditions in the host State, and to the needs of the particular mission and the organization concerned.

Paragraph (5) of the Special Rapporteur's commentary to this article contained the following statement:

Article 14. . . does not provide that the host State or the organization may require that the size of the mission be kept within certain limits or that they may refuse to accept a size exceeding those limits, a prerogative which was recognized to the receiving State under article 11, paragraph 1, of the Vienna Convention on Diplomatic Relations. Unlike the case of bilateral diplomacy, the members of permanent missions to international organizations are not accredited to the host State. Nor are they accredited to the international organization in the proper sense of the word. As will be seen in different parts of these draft articles, remedy for the grievances which the host State of the organization may have against the permanent mission or one of its members cannot be sought in the prerogatives recognized to the receiving State in bilateral diplomacy, prerogatives which flow from the fact that diplomatic envoys are accredited to the receiving State and from the latter's inherent right in the last analysis to refuse to maintain relations

with the sending State. In the case of permanent missions to international organizations, remedies must be sought in consultations between the host State, the organization concerned and the sending State, but the principle of the freedom of the sending State in the composition of its permanent mission and the choice of its members must be recognized.⁸

Some members of the Commission expressed the opinion that the provision concerning consultations should not only be stated in the commentary but should also be embodied in the draft article itself (article 14). They pointed out that the rule as stated in article 14 might be described as *lex imperfecta*, since it stated the obligation of the sending State but said nothing about what would happen in the event of the sending State failing to abide by that rule.⁹ This suggestion was referred to the Drafting Committee. Other members thought that the provision concerning consultations deserved serious consideration and should be embodied, in some appropriate place, in the draft articles themselves. The Drafting Committee decided not to include a provision on consultations in article 14. The text as agreed on in the Drafting Committee was adopted by the Commission with the tacit understanding that the Special Rapporteur would prepare for the consideration of the Commission a provision of general application on the question of consultations between the sending State, the host State and the organization. This understanding was reflected in a statement by the Special Rapporteur to the effect that the Commission was going to consider a general provision for inclusion at the end of the draft concerning remedies available to the host State.¹⁰

8. *Delegations to organs of international organizations and to conferences.* On the treatment of this question within the framework of these articles opinion in the Commission was divided.¹¹ Some members thought that the draft should be confined to permanent missions and that it would be preferable to leave aside the question of delegations to organs of international organizations and to conferences. They suggested that the Commission should take something firm and concrete as a starting point and see later whether it should venture further. In support of this view one member pointed out that conferences could be regarded as temporary organizations so that the topic of conferences would form part of the diplomatic law of organizations themselves. The subject of delegations to organs was difficult to codify in view of the great differences between organizations and between their organs. Other members took issue with such a restrictive definition of the scope of the draft. They maintained that the Commission should encourage the Special Rapporteur to submit draft articles on delegations to organs of international organizations and to conferences. Intermediate positions were also reflected in the discussion. One of them was that the Commission would probably have to concern itself with delegations sent to sessions of international organizations, but it was

⁶ *Yearbook of the International Law Commission, 1968*, vol. II, document A/CN.4/203 and Add.1-5, p. 135.

⁷ *Ibid.*, vol. I, 953rd meeting, p. 58.

⁸ *Ibid.*, vol. II, document A/CN.4/203 and Add.1-5, p. 142.

⁹ *Ibid.*, vol. I, 958th and 959th meetings, pp. 87-99.

¹⁰ *Ibid.*, 984th meeting, p. 233.

¹¹ *Ibid.*, 943rd-945th meetings, pp. 3-20.

doubtful whether the draft should cover delegations sent to conferences convened by international organizations. One member stated that there was an international law of diplomatic conferences, which applied to conferences convened by States no less than to conferences convened by international organizations. He concluded that recent developments of that subject seemed to require that representatives to conferences be dealt with as a separate topic. Another member expressed the view that a distinction should be made between conferences convened by international organizations and other conferences. According to that view, which was supported by one or two more members, theoretical and practical considerations required the Commission to deal at once with the legal position of delegations to conferences held within or convened by international organizations. Other conferences were not connected with international organizations, and the Commission would be going beyond the limits of its subject (relations between States and inter-governmental organizations) if it concerned itself with them.

9. The decision of the Commission on this question was recorded in paragraph 28 of its report on the work of its twentieth session,¹² where it is stated:

Some members of the Commission were of the opinion that the scope of the draft articles should be confined to permanent missions to international organizations. In his third report the Special Rapporteur had included a number of articles on delegations to organs of international organizations and to conferences convened by international organizations and on permanent observers of non-member States to international organizations (parts III and IV). The Commission was of the opinion that no decision should be taken on that question until it had an opportunity to consider those articles. If the Committee were to decide to cover those two subjects in the draft articles, the title of the draft articles would have to be changed.

C. SUMMARY OF THE SIXTH COMMITTEE'S DISCUSSION AT THE TWENTY-THIRD SESSION OF THE GENERAL ASSEMBLY ON THE QUESTION OF RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS

10. The Sixth Committee considered the item entitled "Report of the International Law Commission on the work of its twentieth session" at its 1029th to 1039th meetings, held from 3 to 15 October 1968. Most of the observations on chapter II of the International Law Commission's report related to the twenty-one draft articles which are contained in that chapter and which constitute the first unit of the set of draft articles which the Commission intends to submit on relations between States and international organizations. Some representatives raised two further questions not covered in the twenty-one draft articles. The first was the question of delegations to sessions of organs of international organizations and to conferences convened by international organizations. The second was the "question of permanent

observers from non-member States to international organizations".¹³

11. Several representatives noted that the International Law Commission had expressed the intention of considering at a future session whether rules concerning delegations to organs of international organizations and to conferences convened by international organizations should be included in the draft articles. Some of those representatives expressed the opinion that that "should be done because the absence of such rules in the draft articles would leave an unfortunate gap".¹⁴ One delegation stated that it was looking forward with interest to a decision on that subject, and that accordingly it would seem premature to consider extending the scope of the draft convention on special missions to "delegations to sessions of organs of international organizations and to conferences convened by international organizations". Another delegation thought, however, that no decision should be taken on whether to include articles on delegations to organs and conferences of international organizations, since that question could be clarified in the work on special missions.¹⁵

12. Some representatives expressed the view that the Commission should take up the question of permanent observers from non-member States to international organizations. They maintained that this question was particularly urgent inasmuch as it had often been dealt with on a partisan and discriminatory basis.¹⁶ They recalled¹⁷ that in the study prepared by the Secretariat on the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities,¹⁸ the Secretariat had stated that neither the Charter nor the Headquarters Agreement nor the resolutions of the General Assembly contained any information on the status of observers.¹⁹

D. SUMMARY OF THE SIXTH COMMITTEE'S DISCUSSION AT THE TWENTY-THIRD SESSION OF THE GENERAL ASSEMBLY ON THE DRAFT CONVENTION ON SPECIAL MISSIONS

13. The Sixth Committee considered the item entitled "Draft Convention on Special Missions" at its 1039th to 1059th and 1061st to 1072nd meetings, held between 15 October and 15 November 1968 and at its 1087th to 1090th meetings, held on 5, 6 and 9 December 1968. In the course of the consideration of some of the articles of the draft convention, the discussion touched on the relationship between those articles and the subject of

¹³ *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 84, document A/7370, para. 18.

¹⁴ *Ibid.*, para. 36.

¹⁵ *Ibid.*, *Twenty-third Session, Sixth Committee*, 1032nd meeting.

¹⁶ *Ibid.*, *Twenty-third Session, Annexes*, agenda item 84, document A/7370, para. 37.

¹⁷ *Ibid.*, *Twenty-third Session, Sixth Committee*, 1033rd meeting.

¹⁸ Hereinafter referred to as "Study by the Secretariat", *Yearbook of the International Law Commission, 1967*, vol. II, documents A/CN.4/L.118 and Add.1 and 2, p. 154.

¹⁹ *Ibid.*, p. 190, para. 169, sub-para. 2.

¹² *Ibid.*, vol. II, document A/7209/Rev.1, pp. 195 and 196.

delegations to organs of international organizations and to conferences. A number of suggestions and amendments were submitted which have a bearing on that subject and in particular on the extent of the privileges and immunities to be accorded to representatives of States within the framework of *ad hoc* diplomacy, whether bilateral (special missions) or multilateral (organs of international organizations and international conferences).

14. Article 6: "*Sending of special missions by two or more States in order to deal with a question of common interest*". This article as drafted by the International Law Commission provided that: "Two or more States may each send a special mission at the same time to another State in order to deal, with the agreement of all of them, with a question of common interest." Several representatives stated that, although they had no objection to the substance of the text proposed by the International Law Commission, they nevertheless had misgivings as to its application.²⁰ They pointed out that the wording of article 6 seemed to contradict the contents of paragraph 17 of the historical background section preceding the draft articles, where it was stated that most of the members of the Commission had expressed the opinion that for the time being the terms of reference of the Special Rapporteur on Special Missions should not cover the question of delegates to congresses and conferences. In stressing the ambiguity of article 6, some representatives noted that the text failed to give a clear answer to the question whether the draft articles applied to delegates to international conferences convened by States. They stated that, if it was desired to retain the idea set forth by the Commission in the historical introduction, the question arose, in connexion with the application of article 6, where the distinction should be drawn between special missions, to which the draft would apply, and delegates to international conferences convened by States, to which it would not apply. They considered that the precise scope of article 6 must be made clear. Reference was made to the comments of the Austrian and Swedish Governments.²¹ In the view of the Austrian Government, "this article should clearly state if and to what extent the present draft articles shall apply to delegations to congresses and conferences convened by States"; while the Swedish Government had wondered which were the special cases provided for in article 6, since it was obvious from the commentary of the International Law Commission that the article had not been included in the draft in order to extend the scope of the proposed Convention to delegates to international conferences in general.

15. Another view was, however, expressed to the effect that it was obvious that the draft articles did not apply to delegates to international conferences convened by States, since such delegates could not be regarded as members of missions "to another State". The representative who expressed this view stated that his country availed itself of the opportunity to express the hope that the status of delegates to international conferences

convened by States would be regulated as soon as possible. In line with this trend of thought another representative suggested the inclusion in the draft, at a later stage, of an article which would deal in detail with the convening of *ad hoc* conferences.

16. The Expert Consultant (the Special Rapporteur on Special Missions) stated at the 1045th meeting of the Sixth Committee²² that article 6 was designed to cover cases of *ad hoc* diplomacy on subjects of common interest to a limited number of States, which could not be subsumed under the heading of collective diplomacy. The topics dealt with in such cases were not wide enough for consideration by international conferences and were often subjects of local interest only. The Commission had agreed that such cases should be regarded as relating more closely to the subject of special missions than to that of international conferences. The Commission had felt, the Expert Consultant continued, that the codification of the rules pertaining to such cases under the heading of special missions would be useful because it would provide for the settlement of questions of common interest to a limited number of States without the cumbersome arrangements normally required for an international conference.

17. The drafting committee of the Sixth Committee decided to retain the principle set forth in article 6 but to redraft the International Law Commission's text so as to make it clearer. The text of article 6 as adopted by the Sixth Committee at its 1089th meeting is worded as follows:

Two or more States may each send a special mission at the same time to another State, with the consent of that State obtained in accordance with article 2, in order to deal together, with the agreement of all of these States, with a question of common interest to all of them.²³

18. *A single set or different sets of privileges and immunities for different categories of special missions.* When the Sixth Committee began consideration of part II of the Draft Convention on Special Missions, which is entitled "Facilities, Privileges and Immunities", an extensive discussion took place on whether there should be one or more régimes according to a distinction between the different kinds of special missions.

19. Article 21 prepared by the International Law Commission provided that:

1. The Head of the sending State, when he leads a special mission, shall enjoy in the receiving State or in a third State, in addition to what is granted by these articles, the facilities, privileges and immunities accorded by international law to Heads of State on an official visit.

2. The Head of the Government, the Minister for Foreign Affairs and other persons of high rank, when they take part in a special mission of the sending State, shall enjoy, in the receiving State or in a third State, in addition to what is granted by these articles, the facilities, privileges and immunities accorded by international law.

²⁰ *Official Records of the General Assembly, Twenty-third Session, Sixth Committee, 1044th meeting.*

²¹ *Ibid., Twenty-third Session, Annexes, agenda item 85, document A/7156 and Add.1 and 2, p. 2, para. 6, and p. 7, para. 6.*

²² *Ibid., Twenty-third Session, Sixth Committee, 1045th meeting.*

²³ *Ibid., Twenty-third Session, Annexes, agenda item 85, document A/7375, para. 141.*

In paragraph 1 of the commentary on this article, the International Law Commission stated that it had “considered on several occasions whether there should not be a special régime for so-called ‘high-level’ missions, i.e. missions whose members include persons of high rank such as a Head of State, a Head of Government, or a Minister for Foreign Affairs. After a careful study of the matter, the Commission concluded that the rank of the head or members of a special mission does not give the mission any special status. In international law, however, rank may confer on the person holding it exceptional facilities, privileges and immunities which he retains on becoming a member of a special mission.”

20. One delegation stated that the Commission articles should be applied to “ministerial” special missions, while an alternative régime could be applied to other, “standard”, special missions.²⁴ It suggested that the scale given in the Convention on Privileges and Immunities of the Specialized Agencies (Functional immunities) should be selected for “standard” special missions, i.e. those not led by the highest officers of the State.²⁵ Some delegations expressed the view that the criterion of the person at the head of the mission was a purely formal and rather arbitrary criterion which did not take into account the importance of the mission’s task, though that should be the determining factor. Several delegations supported the basic approach of part II of the draft Convention on Special Missions as adopted by the Commission. They expressed themselves in favour of a uniform régime of privileges and immunities to be applied to special missions.

21. *Proposal for a new article on conferences.* The delegation of the United Kingdom suggested the inclusion in the draft Convention on Special Missions of a provision pertaining to conferences. It submitted an amendment (A/C.6/L.704) which would add a new article (article 0, entitled *Conferences*) before article 48 in the existing part III of the draft articles. The new draft article would read as follows:

1. A State may apply the provisions of part II or part III of the present articles, as appropriate, in respect of a conference attended by representatives of States or Governments which is held in its territory and which is not governed by similar provisions in any other international agreement.

2. Where a State applies the provisions of paragraph 1 of this article in respect of a conference held in its territory, officials of the secretariat of that conference shall:

(a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(b) Unless they are nationals or permanent residents of the receiving State, enjoy exemption from taxation on the emoluments paid to them in respect of their services to the conference;

(c) Be immune from immigration restrictions and from aliens’ registration;

(d) Be accorded the treatment in matters of exchange control which is accorded in the receiving State to a diplomatic agent of the State of which the official concerned is a national;

(e) Be given the same repatriation facilities as members of diplomatic missions of comparable rank;

(f) Have the right to import free of duty the personal baggage accompanying them at the time of first arriving in the receiving State to take up their duties in connexion with the conference.

3. Where a State applies the provisions of paragraph 1 of this article in respect of a conference held in its territory, the premises occupied for the purposes of the conference and all archives, papers and documents relating to the conference shall enjoy inviolability.

E. THE SCOPE AND ARRANGEMENT OF THE PRESENT GROUP OF DRAFT ARTICLES

22. The present group of draft articles covers the subjects of: facilities, privileges and immunities of permanent missions to international organizations; conduct of the permanent mission and its members; and end of the function of the permanent representative (sections II, III and IV of part II).

23. In revising the draft articles contained in section II of part II, the Special Rapporteur has endeavoured to bring them into harmony with the terminology used in the twenty-one articles contained in section I of part II as adopted by the Commission. New provisions have been added in response to suggestions made in the Commission, e.g., a provision of general application on consultations between the sending State, the host State and the organization.

24. In accordance with the practice of the Commission in dealing with other topics, the Special Rapporteur has not given the articles in the present group a separate set of numbers, but has numbered them in sequence after the last article of section I of part II—the first article being numbered 22.

II. Draft articles on the legal position of representatives of States to international organizations with commentaries

PART II: PERMANENT MISSIONS TO INTERNATIONAL ORGANIZATIONS (*continued*)

Section II. Facilities, privileges and immunities

General comments

(1) As a common feature, the headquarters agreements of international organizations, whether universal or regional, include provisions for the enjoyment by permanent representatives of the privileges and immunities which the host State “accords to diplomatic envoys accredited to it”. In general, these headquarters agreements do not contain

²⁴ *Ibid.*, Twenty-third Session, Sixth Committee, 1055th meeting.

²⁵ Formal amendments to this effect were submitted by the delegation of the United Kingdom. One amendment (A/C.6/L.697) would consist of a new paragraph 1 to article 21, reading:

“The privileges and immunities set out in this part shall be accorded to a special mission led by the Head of State, the Head of Government or the Foreign Minister or other Ministers of the Government on the sending State by whatever title they may be called. Any other special mission may be accorded the privileges and immunities set out in this part by agreement between the sending and receiving States.”

The other amendment (A/C.6/L.698 and Corr.1) would insert after article 47 a new part III consisting of five articles.

restrictions on the privileges and immunities of permanent representatives which are based on the application of the principle of reciprocity in the relations between the host State and the sending State. However, the relevant articles of some of the headquarters agreements include a proviso which makes it an obligation of the host State to concede to permanent representatives the privileges and immunities which it accords to diplomatic envoys accredited to it, "subject to corresponding conditions and obligations". Examples are provided by: article V, section 15, of the Headquarters Agreement of the United Nations;²⁶ article XI, section 24, paragraph (a), of the Headquarters Agreement of the Food and Agriculture Organization of the United Nations (FAO);²⁷ and article I of the Headquarters Agreement of the Organization of American States (OAS).²⁸

(2) In determining the rationale of diplomatic privileges and immunities the International Law Commission discussed, at its tenth session in 1958, the theories which have exercised an influence on the development of diplomatic privileges and immunities. The Commission mentioned the "extritoriality" theory, according to which the premises of the mission represent a sort of extension of the territory of the sending State, and the "representative character" theory, which bases such privileges and immunities on the idea that the diplomatic mission personifies the sending State. The Commission pointed out that "there is now a third theory which appears to be gaining ground in modern times, namely, the 'functional necessity' theory, which justifies privileges and immunities as being necessary to enable the mission to perform its functions".²⁹

(3) Functional necessity is one of the bases of the privileges and immunities of representatives of States to international organizations. Article 105, paragraph 2, of the Charter of the United Nations provides that "Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization".

(4) The representation of States in international organizations is the basic function of permanent missions as defined in article 7 of the twenty-one provisional articles adopted by the Commission. Article 1, sub-paragraph (d), of these articles, defines a "permanent mission" as "a mission of representative and permanent character sent by a State member of an international organization to the Organization".³⁰ Paragraph (2) of the commentary to article 7 states that:

Sub-paragraph (a) is devoted to the representational function of the permanent mission. It provides that the mission represents the sending State in the Organization. The mission, and in particular the permanent representative as head of the mission, is responsible for the maintenance of official relationship between the Government of the sending State and the Organization.³¹

(5) The representation of States within the framework of the diplomacy of international organizations and conferences has its particular characteristics. The representative of a State to an international organization does not represent his State to the host State. He does not enter into direct relationship and transactions with the host State, unlike the case of a diplomat accredited to the State. In the latter case, the diplomatic agent is accredited to the receiving State in order to perform certain functions of representation and negotiation between it and his own State. The representative of a State to an international organization represents his State to the organization as a collective organ which possesses a separate identity and legal personality distinct from those of the individual member States. In a sense it may be said that he also performs some kind of representation to the States members of the organization in their collegiate capacity as an organization of States and not in their individual capacity. The host State is included in such a community when it is a member of the organization. Such a situation cannot be said to exist when the host State is not a member of the organization.

(6) Another characteristic of representation to international organizations springs from the fact that the observance of juridical rules governing privileges and immunities is not solely the concern of the sending State as in the case of bilateral diplomacy. In the discussion on the "question of diplomatic privileges and immunities" which took place in the Sixth Committee during the twenty-second session of the General Assembly, it was generally agreed that the organization itself had an interest in the enjoyment by the representatives of Member States of the privileges and immunities necessary to enable them to carry out their tasks. It was also recognized that the Secretary-General should maintain his efforts to ensure that the privileges and immunities concerned are respected.³² In his statement at the 1016th meeting of the Sixth Committee the Legal Counsel, speaking as the representative of the Secretary-General, said:

... the rights of representatives should properly be protected by the Organization and not left entirely to bilateral action of the States immediately involved. The Secretary-General would therefore continue to feel obligated in the future, as he has done in the past, to assert the rights and interests of the Organization on behalf of representatives of Members as the occasion may arise. I would not understand from the discussion in this Committee that the Members of the Organization would wish him to act in any way different from that which I have just indicated. Likewise, since the Organization itself has an interest in protecting the rights of representatives, a difference with respect to such rights may arise between the United Nations and a Member and consequently be the subject of a request for an advisory opinion under Section 30 of the Convention [the

²⁶ United Nations, *Treaty Series*, vol. 11, p. 26.

²⁷ *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (ST/LEG/SER.B/11), p. 195.

²⁸ United Nations, *Treaty Series*, vol. 181, p. 147.

²⁹ *Yearbook of the International Law Commission, 1958*, vol. II, document A/3859, p. 95.

³⁰ *Yearbook of the International Law Commission, 1968*, vol. II, document A/7209/Rev.1, p. 196.

³¹ *Ibid.*, p. 200.

³² *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 98, document A/6965, para. 14.

Convention on the Privileges and Immunities of the United Nations of 1946]. It is thus clear that the United Nations may be one of the "parties" as that term is used in Section 30.³³

(7) The privileges and immunities of permanent missions to international organizations, being analogous to, if not identical with, those of diplomatic bilateral missions, the articles thereon are modelled on the corresponding provisions of the Vienna Convention on Diplomatic Relations. In view of this, there does not appear to be any need for an independent and elaborate commentary to this section, except in so far as it may be necessary to draw attention to certain departures from the Vienna text or to point to any particular application which a given rule may have had within one or more international organizations.

Article 22. General facilities

The organization and the host State shall accord to the permanent mission the facilities required for the performance of its functions, having regard to the nature and task of the permanent mission.

Article 23. Accommodation of the permanent mission and its members

1. The host State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its permanent mission or assist the latter in obtaining accommodation in some other way.

2. The host State and the organization shall also, where necessary, assist permanent missions in obtaining suitable accommodation for their members.

Commentary

(1) Article 22 is based on article 25 of the Vienna Convention on Diplomatic Relations³⁴ and article 22 of the draft articles on special missions.³⁵ It states in general terms the obligations of both the organization and the host State to accord to the permanent mission the facilities required for the performance of its functions.

(2) The reference in the text of article 22 to the nature and task of the permanent mission—a reference which does not appear in article 25 of the Vienna Convention—makes the extent of the obligations both of the organization and of the host State depend on the individual characteristics of the permanent mission according to the specific functional needs of the organization to which the mission is assigned.

(3) A permanent mission may often need the assistance of the host State, in the first place during the installation

of the mission and also in the performance of its functions. To an even greater extent, the permanent mission needs the assistance of the organization which has a more direct interest in the permanent mission being able to perform its functions satisfactorily. The organization can be particularly helpful to the permanent mission in obtaining documentation and information, an activity referred to in article 7, sub-paragraph (d), of the draft articles.

(4) Article 23 is based on article 21 of the Vienna Convention on Diplomatic Relations.³⁶ As observed by the International Law Commission in the commentary on the relevant provision (article 19) of its draft articles on diplomatic intercourse and immunities,³⁷ which served as the basis for the Vienna Convention, the laws and regulations of a given country may make it impossible for a mission to acquire the premises necessary to it. For that reason the Commission inserted in that provision a rule which makes it obligatory for the receiving State to ensure the provision of accommodation for the mission if the latter is not permitted to acquire it. These considerations equally underlie article 23, paragraph 1, of the draft articles.

Article 24. Inviolability of the premises of the permanent mission

1. The premises of the permanent mission shall be inviolable. The agents of the host State may not enter them, except with the consent of the head of the mission.

2. The host State is under a special duty to take all appropriate steps to protect the premises of the permanent mission against any intrusion or damage and to prevent any disturbance of the peace of the permanent mission or impairment of its dignity.

3. The premises of the permanent mission, their furnishings and other property thereon and the means of transport of the permanent mission shall be immune from search, requisition, attachment or execution.

Article 25. Exemption of the premises of the permanent mission from taxation

1. The sending State and the head of the permanent mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the permanent mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the host State by persons contracting with the sending State or the head of the permanent mission.

³³ *Ibid.*, document A/C.6/385, para. 8.

³⁴ United Nations, *Treaty Series*, vol. 500, p. 108.

³⁵ *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 359.

³⁶ United Nations, *Treaty Series*, vol. 500, p. 107.

³⁷ *Yearbook of the International Law Commission, 1958*, vol. II, document A/3859, p. 95.

Article 26. Inviolability of archives and documents

The archives and documents of the permanent mission shall be inviolable at any time and wherever they may be.

Commentary

(1) Articles 24 to 26 relate to certain immunities and exemptions concerning the premises of the permanent mission and its archives and documents. These articles reproduce, with the necessary drafting changes, the provisions of articles 22 to 24 of the Vienna Convention on Diplomatic Relations.³⁸

(2) The requirement that the host State should ensure the inviolability of permanent missions' premises, archives and documents has been generally recognized. In a letter sent to the Legal Adviser of one of the specialized agencies in 1964, the Legal Counsel of the United Nations stated that:

There is no specific reference to mission premises in the Headquarters Agreement and the diplomatic status of these premises therefore arises from the diplomatic status of a resident representative and his staff.³⁹

(3) The headquarters agreements of some of the specialized agencies contain provisions relating to the inviolability of the premises of permanent missions and their archives and documents (for example, article XI of the Headquarters Agreement of FAO;⁴⁰ articles XIII and XIV, section 33 (c), of the Headquarters Agreement of the International Atomic Energy Agency (IAEA)⁴¹ which recognize the inviolability of correspondence, archives and documents of the missions of member States.

(4) The inviolability of the premises of the United Nations and the specialized agencies were sanctioned in article II, section 3, of the Convention on the Privileges and Immunities of the United Nations⁴² and article III, section 5, of the Convention on the Privileges and Immunities of the Specialized Agencies⁴³ respectively. These texts provide that the property and assets of the United Nations and the specialized agencies, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action. The conventions also contain provisions on the inviolability of the archives and documents of the United Nations and the specialized agencies. Provision is made for the inviolability of all papers and documents of "Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United

Nations" and of "Representatives of members at meetings convened by a specialized agency".⁴⁴

(5) An explicit reference to the premises of permanent missions is made in the Headquarters Agreement of the International Civil Aviation Organization (ICAO). Article II, section 4 (1), of this Agreement provides that the "headquarters premises of the Organization shall be inviolable".⁴⁵ Article I, section 1 (b), defines the expression "headquarters premises" as follows:

The expression "headquarters premises" means any building or part of a building occupied permanently or temporarily by any unit of the organization or by meetings convened in Canada by the organization, including the offices occupied by *Resident Representatives of Member States*.⁴⁶ [Italics added by the Special Rapporteur.]

(6) Article 25 provides for the exemption of the premises of the permanent mission from taxation. The replies of the United Nations and the specialized agencies indicate that this exemption is generally recognized. Examples of provisions of headquarters agreements granting such exemption are to be found in article XI of the Headquarters Agreement of FAO and in articles XII and XIII of the Headquarters Agreement of IAEA.⁴⁷

Article 27. Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the host State shall ensure to all members of the permanent mission freedom of movement and travel in its territory.

Commentary

(1) This article is based on article 26 of the Vienna Convention on Diplomatic Relations.⁴⁸

(2) The replies of the specialized agencies indicate that no restrictions have been imposed by the host State on the movement of members of the permanent missions of member States.

(3) At United Nations Headquarters the host State has imposed limits on the movement of the representatives of certain Member States on the ground that similar restrictions have been placed on the representatives of the host State in the countries concerned.

(4) The problem of reciprocity will be dealt with in article 43 on non-discrimination. Suffice it to mention here that it has been the understanding of the Secretariat of the United Nations that the privileges and immunities granted should generally be those accorded to the diplomatic corps as a whole, and should not be subject to

³⁸ United Nations, *Treaty Series*, vol. 500, pp. 106 and 108.

³⁹ Study by the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, documents A/CN.4/L.118 and Add.1 and 2, p. 187, para. 154.

⁴⁰ *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (ST/LEG/SER.B/11), p. 195.

⁴¹ United Nations, *Treaty Series*, vol. 339, pp. 163-165.

⁴² *Ibid.*, vol. 1, p. 18.

⁴³ *Ibid.*, vol. 33, p. 266.

⁴⁴ *Ibid.*, vol. 1, p. 20; and *ibid.*, vol. 33, pp. 270 and 272.

⁴⁵ *Ibid.*, vol. 96, p. 160.

⁴⁶ *Ibid.*, p. 156.

⁴⁷ *Ibid.*, vol. 339, p. 163.

⁴⁸ *Ibid.*, vol. 500, p. 108.

particular conditions imposed, on a basis of reciprocity, upon the diplomatic missions of particular States.⁴⁹

Article 28. Freedom of communication

1. The host State shall permit and protect free communication on the part of the permanent mission for all official purposes. In communicating with the Government and the diplomatic missions, consulates and special missions of the sending State, wherever situated, the permanent mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the host State.

2. The official correspondence of the permanent mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The bag of the permanent mission shall not be opened or detained.

4. The packages constituting the bag of the permanent mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the permanent mission.

5. The courier of the permanent mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the host State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the permanent mission may designate couriers *ad hoc* of the permanent mission. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the permanent mission's bag in his charge.

7. The bag of the permanent mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a courier of the permanent mission. By arrangement with the appropriate authorities, the permanent mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Commentary

(1) This article is based on article 27 of the Vienna Convention on Diplomatic Relations.⁵⁰

(2) Permanent missions to the United Nations, the specialized agencies and other international organizations enjoy in general freedom of communication on the same terms as the diplomatic missions accredited to the host State.

⁴⁹ Study by the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, documents A/CN.4/L.118 and Add.1 and 2, p. 178, para. 96.

⁵⁰ United Nations, *Treaty Series*, vol. 500, pp. 109 and 110.

(3) The replies of the United Nations and the specialized agencies indicate also that the inviolability of correspondence, which is provided for in article IV, section 11 (b), of the Convention on the Privileges and Immunities of the United Nations⁵¹ and in article V, section 13 (b), of the Convention of Privileges and Immunities of the Specialized Agencies⁵² has been fully recognized.

(4) One difference between this article and article 27 of the Vienna Convention on Diplomatic Relations is the addition in paragraph 1 of the words "with special missions" in order to co-ordinate the article with article 28, paragraph 1, of the draft articles on special missions.⁵³

(5) Another difference is that paragraph 7 of article 28 provides that the bag of the permanent mission may be entrusted not only to the captain of a commercial aircraft, as provided for the diplomatic bag in article 27 of the Vienna Convention on Diplomatic Relations, but also to the captain of a merchant ship. This additional provision is taken from article 35 of the Vienna Convention on Consular Relations⁵⁴ and article 28 of the draft articles on special missions.

(6) On the model of article 28 of the draft articles on special missions, the article uses the expression "the bag of the permanent mission" and the "courier of the permanent mission". The expressions "diplomatic bag" and "diplomatic courier" were not used, in order to prevent any possibility of confusion with the bag and courier of the permanent diplomatic mission.

(7) The expression "diplomatic missions" in paragraph 1 of the article is used in the broad sense in which it is used in paragraph 1 of article 28 of the draft articles on special missions, so as to include other missions to international organizations. Paragraph 4 of the commentary of the International Law Commission on article 28 of the draft articles on special missions states that:

the Commission wishes to stress that by the expression "diplomatic missions", used in the second sentence of paragraph 1, it means either a permanent diplomatic mission, or a mission to an international organization, or a specialized diplomatic mission of a permanent character.⁵⁵

Article 29. Personal inviolability

The persons of the permanent representative and of the members of the diplomatic staff of the permanent mission shall be inviolable. They shall not be liable to any form of arrest or detention. The host State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity.

⁵¹ *Ibid.*, vol. I, p. 20.

⁵² *Ibid.*, vol. 33, p. 272.

⁵³ *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, pp. 360 and 361.

⁵⁴ United Nations, *Treaty Series*, vol. 596, pp. 290 and 292.

⁵⁵ *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 361.

Article 30. Inviolability of residence and property

1. The private residence of the permanent representative and the members of the diplomatic staff of the permanent mission shall enjoy the same inviolability and protection as the premises of the permanent mission.

2. Their papers, correspondence and, except as provided in paragraph 3 of article 31, their property, shall likewise enjoy inviolability.

Commentary

(1) Articles 29 and 30 reproduce, without change of substance, the provisions of articles 29 and 30 of the Vienna Convention on Diplomatic Relations⁵⁶ and of the draft articles on special missions.⁵⁷

(2) Articles 29 and 30 deal with two generally recognized immunities which are essential for the performance of the functions of the permanent representative and of the members of the diplomatic staff of the permanent mission.

(3) The principle of the personal inviolability of the permanent representative and of the members of the diplomatic staff, which article 29 confirms, implies, as in the case of the inviolability of the premises of the permanent mission, the obligation for the host State to respect, and to ensure respect for, the person of the individuals concerned. The host State must take all necessary measures to that end, including possibly the provision of a special guard where circumstances so require.

(4) Inviolability of all papers and documents of representatives of members to the organs of the organizations concerned is generally provided for in the Conventions on the Privileges and Immunities of the United Nations, the Specialized Agencies and other international organizations.

(5) In paragraph (1) of its commentary to article 28 (Inviolability of residence and property) of its draft articles on diplomatic intercourse and immunities adopted in 1958, the International Law Commission stated that:

This article concerns the inviolability accorded to the diplomatic agent's residence and property. Because this inviolability arises from that attaching to the person of the diplomatic agent, the expression "the private residence of a diplomatic agent" necessarily includes even a temporary residence of the diplomatic agent.⁵⁸

Article 31. Immunity from jurisdiction

1. The permanent representative and the members of the diplomatic staff of the permanent mission shall enjoy immunity from the criminal jurisdiction of the host State. They shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) a real action relating to private immovable property situated in the territory of the host State unless they hold

it on behalf of the sending State for the purposes of the permanent mission;

(b) an action relating to succession in which the permanent representative or a member of the diplomatic staff of the permanent mission is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the permanent representative or a member of the diplomatic staff of the permanent mission in the host State outside his official functions.

2. The permanent representative and the members of the diplomatic staff of the permanent mission are not obliged to give evidence as witnesses.

3. No measures of execution may be taken in respect of a permanent representative or a member of the diplomatic staff of the permanent mission except in cases coming under sub-paragraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a permanent representative or a member of the diplomatic staff of the permanent mission from the jurisdiction of the host State does not exempt him from the jurisdiction of the sending State.

Article 32. Waiver of immunity

1. The immunity from jurisdiction of permanent representatives or members of the diplomatic staff of permanent missions and persons enjoying immunity under article 39 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by a permanent representative, by a member of the diplomatic staff of a permanent mission or by a person enjoying immunity from jurisdiction under article 39 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

Commentary

(1) Article 31 is based on article 31 of the Vienna Convention on Diplomatic Relations.⁵⁹

(2) The immunity from criminal jurisdiction granted under paragraph 1 of article 31 is complete and the immunity from civil and administrative jurisdiction is subject only to the exceptions stated in paragraph 1 of the article. This constitutes the principal difference between the "diplomatic" immunity enjoyed by permanent missions and the "functional" immunity accorded

⁵⁶ United Nations, *Treaty Series*, vol. 500, p. 110.

⁵⁷ *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 361.

⁵⁸ *Yearbook of the International Law Commission, 1958*, vol. II, document A/3859, p. 98.

⁵⁹ United Nations, *Treaty Series*, vol. 500, p. 112.

to delegations to organs of international organizations and conferences convened by them, by the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies. Article IV, section 11 (a), of the Convention on the Privileges and Immunities of the United Nations⁶⁰ and article V, section 13 (a), of the Convention on the Privileges and Immunities of the Specialized Agencies⁶¹ accord to the representatives of Members to the meetings of the organs of the organization concerned or to the conferences convened by it "immunity from legal process of every kind" in respect of "words spoken or written and all acts done by them" in their official capacity.

(3) Article 32 is modelled on the provisions of article 32 of the Vienna Convention on Diplomatic Relations.⁶² The basic principle of the waiver of immunity is contained in article IV, section 14, of the Convention on the Privileges and Immunities of the United Nations which states:

Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.⁶³

This provision is reproduced *mutatis mutandis* in article V, section 16 of the Convention on the Privileges and Immunities of the Specialized Agencies and in a number of the corresponding instruments of regional organizations.

Article 33. Consideration of civil claims

The sending State shall waive the immunity of any of the persons mentioned in paragraph 1 of article 32 in respect of civil claims in the host State when this can be done without impeding the performance of the functions of the permanent mission, and when immunity is not waived, the sending State shall use its best endeavours to bring about a just settlement of the claims.

Commentary

(1) This article is based on the important principle stated in resolution II, adopted on 14 April 1961, by the United Nations Conference on Diplomatic Intercourse and Immunities.⁶⁴

⁶⁰ *Ibid.*, vol. 1, p. 20.

⁶¹ *Ibid.*, vol. 33, p. 270.

⁶² *Ibid.*, vol. 500, p. 112.

⁶³ *Ibid.*, vol. 1, p. 22.

⁶⁴ *Official Records of the United Nations Conference on Diplomatic Intercourse and Immunities*, vol. II, document A/CONF.20/10/Add.1, p. 90.

(2) The International Law Commission embodied this principle in article 42 of its draft articles on special missions

because [as stated in the commentary to that article] the purpose of immunities is to protect the interests of the sending State, not those of the persons concerned, and in order to facilitate, as far as possible, the satisfactory settlement of civil claims made in the receiving State against members of special missions.

This principle is also referred to in the draft preamble drawn up by the Commission.⁶⁵

Article 34. Exemption from social security legislation

1. Subject to the provisions of paragraph 3 of this article, the permanent representative and the members of the diplomatic staff of the permanent mission shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the host State.

2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of a permanent representative or of a member of the diplomatic staff of the permanent mission, on condition:

(a) That such employed persons are not nationals of or permanently resident in the host State, and

(b) That they are covered by the social security provisions which may be in force in the sending State or a third State.

3. The permanent representative and the members of the diplomatic staff of the permanent mission who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the host State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article does not exclude voluntary participation in the social security system of the host State where such participation is permitted by that State.

5. The provisions of the present article do not affect bilateral and multilateral agreements on social security which have been previously concluded and do not preclude the subsequent conclusion of such agreements.

Commentary

(1) This article is based on article 33 of the Vienna Convention on Diplomatic Relations.⁶⁶

(2) Paragraph 2 is modelled on paragraph 2 of article 32 of the draft articles on special missions in that it substitutes the expression "persons who are in the sole private employ" for the expression "private servants", which is used in article 33 of the Vienna Convention.

⁶⁵ *Yearbook of the International Law Commission*, 1967, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 365.

⁶⁶ United Nations, *Treaty Series*, vol. 500, pp. 112 and 114.

Referring to this change in terminology, the International Law Commission stated in paragraph 2 of its commentary to article 32 of the draft articles on special missions: "Article 32... applies not only to servants in the strict sense of the term, but also to other persons in the private employ of members of the special mission such as children's tutors and nurses".⁶⁷

(3) Permanent representatives are generally exempt from payment of social security contributions. Permanent missions to the International Atomic Energy Agency (IAEA) are exempt from paying employers' social security contributions by virtue of articles XII and XIII of the Headquarters Agreement; it is understood that in practice the employers' contribution has been paid by permanent missions on a voluntary basis.⁶⁸

Article 35. Exemption from dues and taxes

The permanent representative and the members of the diplomatic staff of the permanent mission shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) Indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) Dues and taxes on private immovable property situated in the territory of the host State, unless the person concerned holds it on behalf of the sending State for the purposes of the permanent mission;

(c) Estate, succession or inheritance duties levied by the host State, subject to the provisions of paragraph 4 of article 41;

(d) Dues and taxes on private income having its source in the host State and capital taxes on investments made in commercial undertakings in the host State;

(e) Charges levied for specific services rendered;

(f) Registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 25.

Commentary

(1) This article is based on article 34 of the Vienna Convention on Diplomatic Relations.⁶⁹

(2) The immunity of representatives from taxation is dealt with indirectly in article IV, section 13, of the Convention on the Privileges and Immunities of the United Nations which provides that:

Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a State for the discharge of their duties shall not be considered as periods of residence.⁷⁰

⁶⁷ *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 362.

⁶⁸ Study by the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, documents A/CN.4/L.118 and Add.1 and 2, p. 201, para. 46.

⁶⁹ United Nations, *Treaty Series*, vol. 500, p. 114.

⁷⁰ *Ibid.*, vol. 1, p. 22.

This provision is reproduced *mutatis mutandis* in article V, section 15 of the Convention on the Privileges and Immunities of the Specialized Agencies⁷¹ and in a number of the corresponding instruments of regional organizations. (3) Except in the case of nationals of the host State, representatives enjoy extensive exemption from taxation. In ICAO and UNESCO all representatives, and in FAO and IAEA resident representatives, are granted the same exemptions in respect of taxation as diplomats of the same rank accredited to the host State concerned. In the case of IAEA, no taxes are imposed by the host State on the premises used by missions or delegates, including rented premises and parts of buildings. Permanent missions to UNESCO pay taxes only for services rendered and real property tax (*contribution foncière*) when the permanent representative is the owner of the building. Permanent representatives are exempt from tax on movable property (*contribution mobilière*), a tax imposed in France on occupiers of rented or occupied properties, in respect of their principal residence but not in respect of any secondary residence.⁷²

Article 36. Exemption from personal services

The host State shall exempt the permanent representative and the members of the diplomatic staff of the permanent mission from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Commentary

(1) This article is based on the provisions of article 35 of the Vienna Convention on Diplomatic Relations.⁷³

(2) The immunity in respect of national service obligations provided in article IV, section 11 (d), of the Convention on the Privileges and Immunities of the United Nations⁷⁴ and article V, section 13 (d), of the Convention on the Privileges and Immunities of the Specialized Agencies⁷⁵ has been widely acknowledged. That immunity does not normally apply when the representative is a national of the host State.⁷⁶

Article 37. Exemption from customs duties and inspection

1. The host State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes and related

⁷¹ *Ibid.*, vol. 33, p. 272.

⁷² Study by the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, documents E/CN.4/L.118 and Add.1 and 2, p. 201, para. 45.

⁷³ United Nations, *Treaty Series*, vol. 500, p. 114.

⁷⁴ *Ibid.*, vol. 1, p. 22.

⁷⁵ *Ibid.*, vol. 33, p. 272.

⁷⁶ Study by the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, documents A/CN.4/L.118 and Add.1 and 2, p. 200, para. 37.

charges other than charges for storage, cartage and similar services, on:

(a) Articles for the official use of the permanent mission;

(b) Articles for the personal use of a permanent representative or a member of the diplomatic staff of the permanent mission or members of his family forming part of his household, including articles intended for his establishment.

2. The personal baggage of a permanent representative or a member of the diplomatic staff of the permanent mission shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host State. Such inspection shall be conducted only in the presence of the person enjoying the exemption or of his authorized representative.

Commentary

(1) This article is based on article 36 of the Vienna Convention on Diplomatic Relations.⁷⁷

(2) While in general permanent representatives and members of the diplomatic staff of permanent missions enjoy exemption from customs and excise duties, the detailed application of this exemption in practice varies from one host State to another according to the system of taxation followed by the country in question.

(3) At United Nations Headquarters the United States Code of Federal Regulations, Title 19—Customs Duties (Revised 1964) provides in section 10.30 b, paragraph (b), that resident representatives and members of their staffs may import "... without entry and free of duty and internal-revenue tax articles for their personal or family use".⁷⁸

(4) At the United Nations Office at Geneva the matter is dealt with largely by the Swiss Customs Regulation of 23 April 1952. Briefly, permanent missions may import all articles for official use and belonging to the Government they represent (article 15). Permanent representatives with a title equivalent to that of the head of a diplomatic mission and who have a *carte de légitimation* may import free of duty all articles destined for their own use or that of their family (article 16, paragraph 1). Representatives with a title equivalent to members of a diplomatic mission and who have a *carte de légitimation*, have a similar privilege except that the importation of furniture may only be made once (article 16, paragraph 2).⁷⁹

(5) The position in respect of permanent missions to specialized agencies having their headquarters in Switzer-

land is identical with that of permanent missions to the United Nations at Geneva. In the case of FAO, the extent of the exemption of resident representatives depends on their diplomatic status and is granted in accordance with the general rules relating to diplomatic envoys. Permanent representatives to UNESCO assimilated to heads of diplomatic missions can import goods at any time for their own use and for that of their mission free of duty. Other members of permanent missions may import their household goods and effects free of duty at the time of taking up their appointment.

Article 38. Acquisition of nationality

Members of the permanent mission not being nationals of the host State, and members of their families forming part of their household, shall not, solely by the operation of the law of the host State, acquire the nationality of that State.

Commentary

This article is based on the rule stated in the Optional Protocol concerning Acquisition of Nationality adopted on 18 April 1961 by the United Nations Conference on Diplomatic Intercourse and Immunities.⁸⁰

Article 39. Persons entitled to privileges and immunities

1. The members of the family of a permanent representative or of a member of the diplomatic staff of the permanent mission forming part of his household shall, if they are not nationals of the host State, enjoy the privileges and immunities specified in articles 29 to 37.

2. Members of the administrative and technical staff of the permanent mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 29 to 36, except that the immunity from civil and administrative jurisdiction of the host State specified in paragraph 1 of article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in article 37, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the permanent mission who are not nationals of or permanently resident in the host State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in article 34.

4. Private staff of members of the permanent mission shall, if they are not nationals of or permanently resident in the host State, be exempt from dues and taxes on the emoluments they receive by reason of their employment.

⁷⁷ United Nations, *Treaty Series*, vol. 500, p. 116.

⁷⁸ Study by the Secretariat, *Yearbook of the International Law Commission*, 1967, vol. II, documents A/CN.4/L.118 and Add.1 and 2, p. 238, para. 134. For details of the position in respect of the various federal and State taxes in New York, *ibid.*, pp. 185 and 186, paras. 144-147.

⁷⁹ *Ibid.*, p. 183, para. 136.

⁸⁰ *Official Records of the United Nations Conference on Diplomatic Intercourse and Immunities*, vol. II, document A/CONF.20/11, p. 89.

In other respects, they may enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the permanent mission.

Commentary

(1) This article is modelled on article 37 of the Vienna Convention on Diplomatic Relations.⁸¹

(2) The study by the Secretariat does not include data on the privileges and immunities which host States accord to members of the families of permanent representatives, to the members of the administrative and technical staff and of the service staff of permanent missions and to the private staff of the members of permanent missions. It is assumed that the practice relating to the status of these persons conforms to the corresponding rules established within the framework of inter-State diplomatic relations as codified and developed in the Vienna Convention on Diplomatic Relations. This assumption is corroborated by the identical legal basis of the status of these persons inasmuch as their status attaches to and derives from diplomatic agents or permanent representatives, who are accorded analogous diplomatic privileges and immunities.

(3) In paragraph 4 of the article the expression "private servants" which appears in paragraph 4 of article 37 of the Vienna Convention on Diplomatic Relations, has been replaced by the expression "private staff" on the model of articles 32 and 38 of the draft articles on special missions.⁸² Paragraph 2 of the commentary to article 32 of the draft articles on special missions explains this change as follows: "Article 32...applies not only to servants in the strict sense of the term, but also to other persons in the private employ of members of the special mission such as children's tutors and nurses". This explanation is also valid for permanent missions to international organizations.

Article 40. Nationals of the host State and persons permanently resident in the host State

1. Except in so far as additional privileges and immunities may be granted by the host State, a permanent representative or a member of the diplomatic staff of the permanent mission who is a national or a permanent resident of that State or is, or has been, its representative, shall enjoy immunity from jurisdiction, and inviolability, only in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the permanent mission and private staff who are nationals or permanent residents of the host State shall enjoy privileges and immunities only to the extent admitted by the host State. However,

the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Commentary

(1) This article reproduces, with the necessary drafting changes, article 38 of the Vienna Convention on Diplomatic Relations.⁸³ Here, too, the expression "private servants" has been replaced by "private staff".

(2) As mentioned in the third report submitted by the Special Rapporteur, a number of the conventions on the privileges and immunities of international organizations, whether universal or regional, stipulate that the provisions which define the privileges and immunities of the representatives of members are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative.⁸⁴

Article 41. Duration of privileges and immunities

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the host State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the host State.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the permanent mission, immunity shall continue to subsist.

3. In case of the death of a member of the permanent mission the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the permanent mission not a national or permanent resident of the host State or a member of his family forming part of his household, the host State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the host State was due solely to the presence there of the deceased as a member of the permanent mission or as a member of the family of a member of the permanent mission.

⁸¹ United Nations, *Treaty Series*, vol. 500, p. 116.

⁸² *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, pp. 362 and 364.

⁸³ United Nations, *Treaty Series*, vol. 500, p. 118.

⁸⁴ *Yearbook of the International Law Commission, 1968*, vol. II, document A/CN.4/203 and Add.1-5, p. 136, para. 35.

Commentary

(1) This article is based on the provisions of article 39 of the Vienna Convention on Diplomatic Relations.⁸⁵

(2) The first two paragraphs of the article deal with the times of commencement and termination of entitlements for persons who enjoy privileges and immunities in their own right. For those who do not enjoy privileges and immunities in their own right other dates may apply, viz. the dates of commencement and termination of the relationship which constitutes the grounds for the entitlement.

(3) Article IV, section 11, of the Convention on the Privileges and Immunities of the United Nations⁸⁶ and article V, section 13, of the Convention on the Privileges and Immunities of the Specialized Agencies⁸⁷ provide that representatives shall enjoy the privileges and immunities listed therein "while exercising their functions and during their journeys to and from the place of meeting". In 1961 the Legal Counsel of the United Nations replied to an inquiry made by one of the specialized agencies as to the interpretation to be given to the first part of this phrase. The reply contained the following: "You enquire whether the words 'while exercising their functions' should be given a narrow or broad interpretation . . . I have no hesitation in believing that it was the broad interpretation that was intended by the authors of the Convention".⁸⁸

(4) The duration of privileges and immunities of members of permanent missions gave rise to differences between the Secretariat of the United Nations and the host State both at Headquarters in New York and at the Geneva Office. One of the two host Governments contended that the commencement of privileges and immunities was dependent on the notification to it of the appointment of the members of the mission and the other required the prior consent of its authorities before giving diplomatic privileges and immunities to the individual concerned.⁸⁹

(5) Article IV, section 12, of the Convention on the Privileges and Immunities of the United Nations, which is reproduced *mutatis mutandis* in article V, section 14, of the Convention on the Privileges and Immunities of the Specialized Agencies,⁹⁰ provides that:

In order to secure, for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.⁹¹

⁸⁵ United Nations. *Treaty Series*, vol. 500, p. 118.

⁸⁶ *Ibid.*, vol. I, pp. 20 and 22.

⁸⁷ *Ibid.*, vol. 33, pp. 270 and 272.

⁸⁸ Study by the Secretariat, p. 176, para. 87.

⁸⁹ See the case of *B. v. M.*; *Arrêts du Tribunal fédéral suisse*, 85, 1959, II, p. 153; also study by the Secretariat, p. 176, para. 89 and the Santiesteban case, *ibid.*, p. 172, para. 56. For the differences of interpretation of section 15 (2) of the Headquarters Agreements of the United Nations, see paragraph (3) of the commentary to article 17. (*Yearbook of the International Law Commission, 1968*, vol. II, document A/7209/Rev.1, p. 209).

⁹⁰ United Nations, *Treaty Series*, vol. 33, p. 270.

⁹¹ *Ibid.*, vol. 1, p. 22.

Article 42. Duties of third States

1. If a permanent representative or a member of the diplomatic staff of the permanent mission passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the permanent representative or member of the diplomatic staff of the permanent mission or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the passage of members of the administrative and technical or service staff of a permanent mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the host State. They shall accord to diplomatic couriers who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the host State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to *force majeure*.

Commentary

(1) The provisions of this article are taken from article 40 of the Vienna Convention on Diplomatic Relations.⁹²

(2) Reference has been made in paragraph (3) of the commentary on article 41 to the broad interpretation given by the Legal Counsel of the United Nations to the provision of article IV, section 11, of the Convention on the Privileges and Immunities of the United Nations and article V, section 13, of the Convention on the Privileges and Immunities of the Specialized Agencies which stipulate that representatives shall enjoy the privileges and immunities listed in those provisions "while exercising their functions and during their journeys to and from the place of meeting".

(3) The study by the Secretariat mentions the special problem which may arise when access to the country in which a United Nations meeting is to be held is only possible through another State. It states that:

While there is little practice, the Secretariat takes the position that such States are obliged to grant access and transit to the representatives of Member States for the purpose in question.⁹³

⁹² *Ibid.*, vol. 500, pp. 118 and 120.

⁹³ Study by the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, documents A/CN.4/L.118 Add.1 and 2, p. 190, para. 168.

Article 43. Non-discrimination

In the application of the provisions of the present articles, no discrimination shall be made as between States.

Commentary

(1) Article 43 reproduces, with the necessary drafting changes, paragraph 1 of article 47 of the Vienna Convention on Diplomatic Relations.⁹⁴

(2) A difference of substance between the two articles is the non-inclusion in article 43 of paragraph 2 of article 47 of the Vienna Convention. That paragraph refers to two cases in which, although an inequality of treatment is implied, no discrimination occurs, since the inequality of treatment in question is justified by the rule of reciprocity.

(3) In general, the headquarters agreements of international organizations contain no restrictions on the privileges and immunities of members of permanent missions based on the application of the principle of reciprocity in relations between the host State and the sending State. Some headquarters agreements, however, include a clause providing that the host State shall grant permanent representatives the privileges and immunities which it accords to diplomatic envoys accredited to it, "subject to corresponding conditions and obligations". Examples of such clauses may be found in article V, section 15, of the Headquarters Agreement of the United Nations,⁹⁵ article XI, section 24, paragraph (a), of the Headquarters Agreement of the Food and Agriculture Organization⁹⁶ and article 1 of the Headquarters Agreement of the Organization of American States.⁹⁷

(4) The study by the Secretariat states that it has been the understanding of the Secretariat of the United Nations that the privileges and immunities granted should generally be those afforded to the diplomatic corps as a whole, and should not be subject to particular conditions imposed, on a basis of reciprocity, upon the diplomatic missions of particular States.⁹⁸ In his statement at the 1016th meeting of the Sixth Committee of the General Assembly, the Legal Counsel of the United Nations stated that:

The Secretary-General in interpreting diplomatic privileges and immunities would look to provisions of the Vienna Convention so far as they would appear relevant *mutatis mutandis* to representatives to United Nations organs and conferences. It should of course be noted that some provisions such as those relating to *agrément*, nationality or reciprocity have no relevancy in the situation of representatives to the United Nations.⁹⁹

⁹⁴ United Nations, *Treaty Series*, vol. 500, pp. 122 and 124.

⁹⁵ *Ibid.*, vol. 11, p. 26.

⁹⁶ *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (ST/LEG/SER.B/11), p. 195.

⁹⁷ United Nations, *Treaty Series*, vol. 181, p. 141.

⁹⁸ Study by the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, documents A/CN.4/L.113 and Add.1 and 2, p. 178, para. 96.

⁹⁹ *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 98, document A/C.6/385, para. 4.

Section III. Conduct of the permanent mission and its members**Article 44. Obligation to respect the laws and regulations of the host State**

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the host State. They also have a duty not to interfere in the internal affairs of that State.

2. The premises of the permanent mission must not be used in any manner incompatible with the functions of the permanent mission as laid down in the present articles or by other rules of general international law or by special agreements in force between the sending and the host State.

Commentary

(1) This article is based on the provisions of article 41, paragraphs 1 and 3, of the Vienna Convention on Diplomatic Relations,¹⁰⁰ and article 48 of the draft articles on special missions.¹⁰¹

(2) Paragraph 1 states that, in general, it is the duty of all persons enjoying privileges and immunities to respect the laws and regulations of the host State. This duty naturally does not apply when the member's privileges and immunities exempt him from it. With respect to immunity from jurisdiction, this immunity implies merely that a member of the permanent mission may not be brought before the courts if he fails to fulfil his obligations. Such a failure by a member of the permanent mission who enjoys immunity from jurisdiction does not absolve the host State from its duty to respect the member's immunity.

(3) Paragraph 2 stipulates that the premises of the permanent mission shall be used only for the legitimate purposes for which they are intended. Failure to fulfil the duty laid down in this article does not render article 24 (Inviolability of the premises of the permanent mission) inoperative. That inviolability, however, does not authorize a use of the premises which is incompatible with the functions of the permanent mission.

Article 45. Professional activity

The permanent representative and the members of the diplomatic staff of the permanent mission shall not practice for personal profit any professional or commercial activity in the host State.

Commentary

(1) This article reproduces, with the necessary drafting changes, the provisions of article 42 of the Vienna

¹⁰⁰ United Nations, *Treaty Series*, vol. 500, p. 120.

¹⁰¹ *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 367.

Convention on Diplomatic Relations¹⁰² and article 49 of the draft articles on special missions.¹⁰³

(2) In paragraph 2 of the commentary on article 49 of its draft articles on special missions, the Commission stated that:

Some Governments proposed the addition of a clause providing that the receiving State may permit the persons referred to in article 49 of the draft to practise a professional or commercial activity on its territory. The Commission took the view that the right of the receiving State to grant such permission is self-evident. It therefore preferred to make no substantive departure from the text of the Vienna Convention on this point.

Section IV. End of the function of the permanent representative

Article 46. Modes of termination

The function of a permanent representative or a member of the diplomatic staff of the permanent mission comes to an end, *inter alia*:

(a) On notification by the sending State that the function of the permanent representative or the member of the diplomatic staff of the permanent mission has come to an end;

(b) If the membership of the sending State in the international organization concerned is terminated or suspended or if the activities of the sending State in that organization are suspended.

Commentary

(1) Sub-paragraph (a) of this article reproduces, with the necessary drafting changes, the provisions of sub-paragraph (a) of article 43 of the Vienna Convention on Diplomatic Relations.¹⁰⁴

(2) Sub-paragraph (b) refers to those cases where the sending State recalls the permanent mission for reasons relating to the membership of the sending State in the organization to which that mission has been sent. In general, constituent instruments of international organizations contain provisions on expulsion of a member, withdrawal from membership and suspension of membership. Sub-paragraph (b) expressly provides also for the case of suspension of the activities of the sending State in the organization. The absence of Indonesia from the United Nations during the period from 1 January 1965 to 28 September 1966 has been interpreted by the United Nations as suspension of activities in the Organization and not as withdrawal from membership. On 19 September 1966, the Ambassador of Indonesia in Washington

transmitted a message to the Secretary-General from his Government, stating that it had decided

to resume full co-operation with the United Nations and to resume participation in its activities starting with the twenty-first session of the General Assembly.¹⁰⁵

At the 1420th plenary meeting of the General Assembly on 28 September 1966, the President, having read this communication, declared:

It would... appear that the Government of Indonesia considers that its recent absence from the Organization was based not upon a withdrawal from the United Nations but upon a cessation of co-operation. The action so far taken by the United Nations on this matter would not appear to preclude this view.¹⁰⁶

(3) This article does not contain a provision corresponding to sub-paragraph (b) of article 43 of the Vienna Convention on Diplomatic Relations, which provides as one of the modes of termination of the function of a diplomatic agent the "notification by the receiving State to the sending State that, in accordance with paragraph 2 of article 9, it refuses to recognize the diplomatic agent as a member of the mission".¹⁰⁷ Under paragraph 2 of article 9 of the Vienna Convention on Diplomatic Relations, the receiving State may refuse such recognition if the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 relating to the declaration of a diplomatic agent as *persona non grata*¹⁰⁸ by the receiving State. As mentioned in paragraph (3) of the commentary to article 10 of these draft articles,

the members of the permanent mission are not accredited to the host State in whose territory the seat of the organization is situated. They do not enter into direct relationship with the host State, unlike the case of bilateral diplomacy. In the latter case, the diplomatic agent is accredited to the receiving State in order to perform certain functions of representation and negotiation between the receiving State and his own. That legal situation is the basis of the institution of *agrément*, for the appointment of the head of the diplomatic mission.¹⁰⁹ It is also the basis of the right of the receiving State to request the recall of the diplomatic agent when it declares him *persona non grata*.

(4) Article VII, section 25 (1) of the Convention on the Privileges and Immunities of the Specialized Agencies provides that:

Representatives of members at meetings convened by specialized agencies, while exercising their functions and during their journeys to and from the place of meeting, and officials within the meaning of section 18, shall not be required by the territorial authorities to leave the country in which they are performing their functions on account of any activities by them in their official capacity. In the case, however, of abuse of privileges of residence committed

¹⁰⁵ *Official Records of the Security Council, Twenty-first Year, Supplement for July, August and September 1966*, document S/7498, p. 127.

¹⁰⁶ Study by the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, documents A/CN.4/L.118 and Add.1 and 2, p. 177, foot-note 39.

¹⁰⁷ United Nations, *Treaty Series*, vol. 500, p. 122.

¹⁰⁸ *Ibid.*, p. 102.

¹⁰⁹ *Yearbook of the International Law Commission, 1968*, vol. II, document A/7209/Rev.1, p. 203.

¹⁰² United Nations, *Treaty Series*, vol. 500, p. 120.

¹⁰³ *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 367.

¹⁰⁴ United Nations, *Treaty Series*, vol. 500, p. 122.

by any such person in activities in that country outside his official functions, he may be required to leave by the Government of that country...¹¹⁰

The following comment was made on this provision in the study by the Secretariat.

No corresponding provision is contained in the General Convention [the Convention on the Privileges and Immunities of the United Nations]. In the absence of any cases in which article VII of the Specialized Agencies Convention, or any similar provision in a headquarters agreement, has been applied, no practice has been developed regarding its interpretation.¹¹¹

Article 47. Facilities for departure

The host State must, even in the case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the host State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

Article 48. Protection of premises and archives

1. When the functions of a permanent mission come to an end, the host State must, even in the case of armed conflict, respect and protect the premises as well as the property and archives of the permanent mission. The sending State must withdraw that property and those archives within a reasonable time.

2. The host State is required to grant the sending State, even in the case of armed conflict, facilities for removing the archives of the permanent mission from the territory of the host State.

Commentary

The provisions of article 47 are substantially the same as those of article 44 of the Vienna Convention on Diplomatic Relations.¹¹² The provisions of article 48 are based on the provisions of article 45 of the same Convention.¹¹³ The Special Rapporteur considers that these two articles call for no special comment.

Article 49. Consultations between the sending State, the host State and the Organization

1. Consultations shall be held between the sending State, the host State and the Organization on any question arising out of the application of the present articles. Such consulta-

tions shall in particular be held as regards the application of articles 10, 16, 43, 44, 45 and 46.

2. The preceding paragraph is without prejudice to provisions concerning settlement of disputes contained in the present articles or other international agreements in force between States or between States and international organizations or to any relevant rules of the Organization.

Commentary

(1) Reference has been made before in this report to the fact that in connexion with the examination of the provisional twenty-one draft articles adopted by the Commission in the course of its twentieth session, suggestions were made by some members of the Commission that the Special Rapporteur prepare a provision of general scope of application on the question of consultations between the sending State, the host State and the organization.¹¹⁴ The purpose of the consultations in question would be to provide remedies for difficulties which may arise as a result of the non-application, between States members of international organizations and between States members and the organizations, of rules of inter-State bilateral diplomatic relations regarding *agrément*, the declaring of a diplomatic agent as *persona non grata* and reciprocity.

(2) Paragraph 1 of article 49 refers in particular to the following provisions of the present draft articles: Article 10 (Appointment of the members of the permanent mission); Article 16 (Size of the permanent mission); Article 43 (Non-discrimination); Article 44 (Obligation to respect the laws and regulations of the host State); Article 45 (Professional activity) and Article 46 (Modes of termination).

(3) Paragraph 1 is drafted in such a flexible manner as to envisage the holding of consultations between the Sending State and the host State or between either or both of them and the organization concerned. In the discussion on the "question of diplomatic privileges and immunities" which took place in the Sixth Committee during the twenty-second session of the General Assembly, it was generally agreed that the organization itself had an interest in the enjoyment by the representatives of member States of the privileges and immunities necessary to enable them to carry out their tasks. It was also recognized that the Secretary-General should maintain his efforts to ensure that the privileges and immunities concerned were respected.¹¹⁵ In his statement at the 1016th meeting of the Sixth Committee the Legal Counsel, speaking as the representative of the Secretary-General, stated that:

... the rights of representatives should properly be protected by the Organization and not left entirely to bilateral action of the States immediately involved. The Secretary-General would therefore continue to feel obligated in the future, as he has done in the past, to assert the rights and interests of the Organization on behalf of representatives of Members as the occasion may arise. I would not understand from the discussion in this Committee that the Members of the Organization would wish him to act in any way

¹¹⁰ United Nations, *Treaty Series*, vol. 33, p. 278.

¹¹¹ Study by the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, documents A/CN.4/L.118 and Add.1 and 2, p. 200, para. 36.

¹¹² United Nations, *Treaty Series*, vol. 500, p. 122.

¹¹³ *Ibid.*

¹¹⁴ See para. 7 above.

¹¹⁵ *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 98, document A/6965, para. 14.

different from that which I have just indicated. Likewise, since the Organization itself has an interest in protecting the rights of representatives, a difference with respect to such rights may arise between the United Nations and a Member and consequently be the subject of a request for an advisory opinion under section 30 of the Convention [the Convention on the Privileges and Immunities of the United Nations of 1946]. It is thus clear that the United Nations may be one of the "parties" as that term is used in section 30.¹¹⁶

(4) The term "Organization" as used in paragraph 1 of article 49 must be understood to refer to the principal executive official of the international organization in question, whether designated "Secretary-General", "Director-General" or otherwise. Practical considerations make it necessary that the consultations envisaged in article 49 be conducted with such an organ on behalf of the organization inasmuch as those consultations are designed to deal with practical difficulties which arise in the every day relationship between the permanent missions and the organization to which they are accredited and with which they maintain the necessary liaison.

(5) The provision for consultations is not uncommon in international agreements. It may be found for example in section 14 of article IV of the Agreement concerning the Headquarters of the United Nations;¹¹⁷ in article VII of the Treaty of Brussels of 17 March 1948, for collaboration in economic, social and cultural matters and for collective self-defence¹¹⁸ and article 6 of the Inter-American Treaty of Reciprocal Assistance of 2 September 1947.¹¹⁹

¹¹⁶ *Ibid.*, document A/C.6/385, para. 8.

¹¹⁷ United Nations, *Treaty Series*, vol. 11, p. 24.

¹¹⁸ *Ibid.*, vol. 19, p. 59.

¹¹⁹ *Ibid.*, vol. 21, pp. 97 and 99. For other examples, see P. Guggenheim, *Traité de droit international public* (Geneva, Librairie de l'Université, Georg et Cie S.A., 1954), vol. II, pp. 198-200.

(6) Paragraph 2 of article 49 contains a saving clause relating to provisions on the settlement of disputes. Its purpose is to make clear that the consultations envisaged in the article relate to difficulties of a practical character and not to disputes of a rather more formal character to which the interpretation of the articles may give rise and for which a specific mode of settlement may be provided for in the present articles or in other applicable international agreements or in the relevant rules of the organization concerned. An example of such provisions is section 30 of article VIII of the Convention on the Privileges and Immunities of the United Nations which reads:

All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with article 96 of the Charter and article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.¹²⁰

(7) The expression "relevant rules of the Organization" used in paragraph 2 of article 49 is broad enough to include all relevant rules whatever their source: constituent instruments, resolutions of the organization concerned or the practice prevailing in that organization.

¹²⁰ United Nations, *Treaty Series*, vol. 1, p. 30. Identical or similar provisions are embodied in the Convention on the Privileges and Immunities of the Specialized Agencies and the corresponding conventions of some regional organizations.