

Document:-  
**A/CN.4/SR.1025**

**Summary record of the 1025th meeting**

Topic:  
**Representation of States in their relations with international organizations**

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81. Mr. ALBÓNICO said he could accept paragraph 1 as formulated by the Drafting Committee.

82. With regard to paragraph 2, he supported the suggestions made by Mr. Jiménez de Aréchaga, which would safeguard existing regional treaty provisions on the right of diplomatic asylum.

83. With regard to the new paragraph 3, he agreed that the sending State whose diplomatic agent had committed a serious offence could, instead of recalling him, waive his immunity and allow the local courts to deal with him. The Government of Chile had on one occasion discharged from its diplomatic service a diplomatic agent who had committed an offence in a foreign country where he was not accredited, and had allowed justice to take its course in that country.

84. He supported the proposal to refer paragraph 3 to the Drafting Committee, which should endeavour to find a formulation that would adequately cover the various situations.

85. The CHAIRMAN asked whether there were any objections to Mr. Ustor's proposed amendment to the title of article 44. ✓

86. Mr. BARTOŠ said he was opposed to it because the title proposed was incomplete.

87. The CHAIRMAN said that the majority of the Commission seemed to be in favour of the change and he therefore suggested that the Commission adopt the title as amended.

*The title of article 44, as amended, was adopted.*

88. The CHAIRMAN said that no proposal had been made to amend paragraph 1 of the text prepared by the Drafting Committee. He therefore suggested that the Commission adopt that paragraph.

*Paragraph 1 was adopted.*

89. Mr. JIMÉNEZ de ARÉCHAGA said that he withdrew his suggestion for the amendment of paragraph 2, on the understanding that Mr. Castañeda's explanation would be included in the commentary to the article.

90. The CHAIRMAN said that Mr. Ustor and Mr. Rosenne had proposed the deletion of the phrase in brackets in paragraph 2 and that no member had formally proposed its retention. Mr. Rosenne had also proposed two drafting amendments.<sup>1</sup> He suggested that the Commission adopt paragraph 2 thus amended and without the phrase in brackets.

*Paragraph 2, as amended, was adopted.*

91. The CHAIRMAN suggested that the Commission approve the new paragraph 3 of article 44 in principle and refer it to the Drafting Committee for consideration of the wording. Article 44 as a whole would be adopted after the Drafting Committee had sent the text of paragraph 3 back to the Commission.

*It was so agreed.<sup>12</sup>*

The meeting rose at 1.10 p.m.

## 1025th MEETING

*Wednesday, 23 July 1969, at 10.10 a.m.*

*Chairman: Mr. Nikolai USHAKOV*

*Present: Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Elias, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tammes, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.*

### Relations between States and international organizations

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

[Item 1 of the agenda]

*(continued)*

#### DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

##### ARTICLE 45 (Professional activity)<sup>1</sup>

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the text proposed by the Drafting Committee for article 45.

2. Mr. CASTAÑEDA (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text:

##### *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.

3. The Drafting Committee had made no change in the text of the article and the Commission had made no comment on it at the first reading.

*Article 45 was adopted.*

#### SECTION IV (End of the functions of the permanent mission or of its members)

##### ARTICLE 46 (Modes of termination)<sup>2</sup>

4. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the Drafting Committee's text for article 46.

5. Mr. CASTAÑEDA (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text:

<sup>1</sup> For previous discussion, see 999th meeting, para. 1.

<sup>2</sup> For previous discussion, see 999th meeting, para. 3.

<sup>11</sup> See para. 59 above.

<sup>12</sup> For resumption of the discussion, see 1029th meeting, para. 16.

## Article 46

*Modes of termination*

The functions of a member of the permanent mission come to an end, *inter alia*:

(a) On notification by the sending State to the Organization or to the host State that the functions of the member of the permanent mission have come to an end;

(b) If the membership of the sending State in the Organization is terminated or suspended.

6. In the Special Rapporteur's draft (A/CN.4/218/Add.1), article 46 had dealt only with the permanent representative and the members of the diplomatic staff. The Special Rapporteur had modelled his draft on article 43 of the 1961 Vienna Convention,<sup>3</sup> which only mentioned diplomatic agents. The Committee had considered, however, that it would be more logical to deal in the article with the end of the functions of all members of a permanent mission. It had therefore replaced the words "of a permanent representative or a member of the diplomatic staff of the permanent mission" by the words "of a member of the permanent mission", and had given section IV the title: "End of the functions of the permanent mission or of its members". The section dealt not only with the end of the functions of a member of a permanent mission, but also with the end of the functions of the mission itself, as was clear from article 48.

7. In view of the provisions of article 17,<sup>4</sup> the Committee had inserted the words "to the Organization or to the host State" in sub-paragraph (a) of article 46, after the words "on notification by the sending State".

8. The Committee had made one purely drafting change in sub-paragraph (b), consisting in the use of the term "the Organization" with a capital "O", instead of "the international organization concerned", with a small "o". Article 1 (c)<sup>5</sup> stated that "the 'Organization' means the international organization in question".

9. The Committee had also deleted the last phrase in sub-paragraph (b), namely, "or if the activities of the sending State in that organization are suspended". It had considered that the suspension of the activities of a State in an organization did not necessarily entail the end of the functions of its permanent mission. That would depend on the circumstances of each particular case.

10. It was not necessary to mention the suspension of activities expressly in article 46, even if in some cases there really was termination of the functions of a permanent mission, for such termination might be the result of the withdrawal from the organization already referred to in the first part of sub-paragraph (b). The use of the phrase "*inter alia*" at the end of the introductory sentence of the article showed clearly that the article did not list all the reasons for which the functions of

a member of a permanent mission might come to an end.

11. The Drafting Committee had asked that the reasons for deleting the last phrase in sub-paragraph (b) should be explained in the commentary.

12. Mr. JIMÉNEZ de ARÉCHAGA said he had serious doubts about the provision in sub-paragraph (a) for notification to the host State, as an alternative to notification to the organization, where such an important matter as termination of functions was concerned. That provision constituted a departure from the system already adopted by the Commission in article 17, the basic article on notifications. The rule formulated in paragraphs 1 and 3 of article 17 was that notifications were to be made by the sending State to the organization and that those notifications were transmitted to the host State by the organization.

13. In paragraph (7) of the commentary to article 17,<sup>6</sup> it was explained that the rule in article 17 was "based on considerations of principle", and that the option of addressing notifications directly to the host State, set forth in paragraph 4 of article 17, provided "a supplement to and not an alternative or a substitute for the basic pattern prescribed in paragraphs 1 and 3 of the article".

14. Mr. CASTRÉN said he approved of the Drafting Committee's changes in the text of article 46.

15. He had no fixed views on the point about notification raised by Mr. Jiménez de Aréchaga.

16. Perhaps the words "*ou temporairement*" in the French version of subparagraph (b) should be deleted. If a State temporarily ceased to be a member, it might be argued that the functions of the permanent representative were merely suspended.

17. Mr. ROSENNE said he shared all the doubts expressed by the two previous speakers.

18. The text proposed by the Drafting Committee did not deal with the case in which for any reason, the sending State withdrew its permanent mission. That case had occurred in practice. For example, in 1965, Indonesia, regardless of its precise status as a member of the United Nations, had in fact withdrawn its permanent mission. It had even requested the United Nations Secretariat to make arrangements to enable the members of its permanent mission to remain in New York for the period of time necessary to wind up their affairs.

19. Since the establishment of the United Nations and its various specialized agencies, there had been more than one case of a State suspending its participation in the work of an organization. In all cases, every effort had been made in the organization concerned to avoid any formal cessation of membership. The purpose of that approach was clearly to avoid difficulties when the State concerned wanted to resume participation in the work of the organization.

20. The Commission should not endorse the concept of temporary cessation of membership in an organization. In his view it was not legally possible for a State

<sup>3</sup> United Nations, *Treaty Series*, vol. 500, p. 122.

<sup>4</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, Report of the Commission to the General Assembly, chapter II, section E.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

to cease to be a member of an organization temporarily, as was suggested by the French version of sub-paragraph (b), which read "*cesse définitivement ou temporairement d'être membre*".

21. He would be prepared to accept the English version of sub-paragraph (b), which referred to membership in the organization being "terminated or suspended", if a suitable French translation could be found. The term "suspension" clearly implied that the State did not cease to be a member of the organization.

22. He would support any attempt to reword sub-paragraph (b) so as to cover the case in which, for any reason, a member State of an organization withdrew its permanent mission. A formulation of that type would be consistent with the terms of article 6, which stated that "Member States may establish permanent missions . . .";<sup>7</sup> that provision implied the right of the State concerned to terminate its mission. In fact, the possibility of termination of the functions of the permanent mission itself was clearly envisaged in paragraph 1 of the proposed article 48,<sup>8</sup> which opened with the words "When the functions of the permanent mission come to an end".

23. Mr. RUDA said he supported the new title of section IV, which was in keeping with the contents of article 48.

24. He also supported the idea of broadening the scope of article 46 so as to cover all the members of the permanent mission.

25. With regard to sub-paragraph (b), he fully agreed with Mr. Rosenne. He could not accept the idea that it was legally possible for a State to cease temporarily to be a member of an organization. He could accept the English version of sub-paragraph (b), because suspension did not imply cessation of membership but he could not accept either the French or the Spanish versions, which referred to temporary cessation. The language services of the Secretariat should be requested to bring the French and Spanish versions into line with the English.

26. Mr. CASTAÑEDA (Chairman of the Drafting Committee) said that the change in sub-paragraph (a) proposed by the Drafting Committee was consequential on the change in article 41, which the Commission had adopted without objection.<sup>9</sup> That article provided that a person who was already in the territory of the host State should enjoy privileges and immunities "from the moment when his appointment is notified to the host State by the Organization or by the sending State". It had seemed logical, therefore, to provide similar alternatives in connexion with the end of his functions. There might, however, be some difference from the procedures set out in article 17, paragraph 4, where the notification was a supplement to, and not a substitute for, the notification which the sending State must transmit to the organization under article 17, paragraph 1.

27. With regard to sub-paragraph (b), it was first necessary to eliminate, as a possible justification for the

phrase used in the Special Rapporteur's version, "or if the activities of the sending State in that organization are suspended", the case of suspension from the exercise of the rights and privileges of membership mentioned in Article 5 of the Charter, because a State remained a Member in the situation there contemplated. The Charter made no provision for suspension from membership of the Organization. The Drafting Committee had not wished to take into account the special case mentioned in Article 5, since, in the first place, it was exceptional and, in the second place, the General Assembly would specify the rights and privileges whose exercise was suspended in the resolution by which it took the decision.

28. The phrase could not apply either to a case such as that of Indonesia, since Indonesia had in fact ceased to be a member of the United Nations and had notified the Organization of its withdrawal. The legal consequence of the failure to apply strictly the procedure laid down in Article 4 of the Charter, in readmitting that State, had not been to convert its termination of membership in the Organization into suspension.

29. It might even be argued that when a State ceased to be a member of an organization, the fact that it resumed its membership after an interval, which might be long or short, had no legal implications *per se*. The words "*ou temporairement*", which were indeed an allusion to the Indonesian case, might therefore be omitted.

30. In any event, the explanation did not lie in a bad translation of the English phrase "if the membership . . . is . . . suspended". On the contrary, the English phrase had been used for want of a better rendering of the French. If it were decided to keep the words "*ou temporairement*", some other English translation would have to be found. If, on the other hand, they were deleted, the problem would solve itself.

31. Mr. REUTER said that one thing was certain: the English and French versions of sub-paragraph (b) did not have the same meaning. The Commission must therefore decide which should be taken as the basis for establishing the final text.

32. The question was whether the Commission wanted a text which was juridically correct or whether it wanted a text of practical utility, and that was not necessarily the same thing. It would be understandable if the Commission tried to find a text which was juridically rather vague, in order to avoid raising legal questions which in practice the organizations had no wish to decide.

33. The word "membership" had a precise meaning and was hard to translate into French. He wondered whether it might not be better to speak of participation in an international organization. Obviously, the term was imprecise. The Indonesian case apart, other cases of non-participation had occurred in the past and no one knew, or even wanted to know, what had been the effects of non-participation on the legal status of the States in question.

34. Mr. BARTOŠ said that, in trying to find out whether or not membership of an organization was

<sup>7</sup> *Ibid.*

<sup>8</sup> See next meeting, para. 2.

<sup>9</sup> See 1023rd meeting, paras. 53-58.

suspended, the Charter of the United Nations was not the only instrument to be taken into consideration, since express provision for suspension was made in the constituent instruments of other organizations too. The draft did not concern the United Nations alone.

35. Though he had no strong views about the retention or deletion of the words "*ou temporairement*" in the French version and the words "or suspended" in the English, he could not agree with the interpretation of the Indonesian case put forward by the Chairman of the Drafting Committee. It would be remembered that, when Indonesia had returned to the United Nations, a legal interpretation of the position had been given and generally accepted, to the effect that it was not possible to leave the United Nations. Indonesia, therefore, had not withdrawn; it had merely abstained from participating in the Organization's activities. In the telegram addressed to the Secretary-General on 19 September 1966 by the Ambassador of Indonesia at Washington, the Indonesian Government had stated 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".<sup>10</sup> Indonesia had not, therefore, lost its status as a Member during its absence.

36. To delete the words "or suspended" would be to leave each situation to be interpreted on the facts, as it occurred. Obviously that could cause difficulties. On the other hand, if provision were made for suspension of membership in an organization, there could be all sorts of confusion. In the first place, the exercise of the rights of a member State might be suspended, but it might be only a partial suspension—suspension of the right to vote, for instance. During the period of suspension, the legal position of the mission of the State to the international organization concerned might be disputable. Secondly, if the suspension was total, would there be any reason for a permanent mission at all?

37. Personally, he was not sure that the State in question ought to be deprived of the possibility of retaining a permanent mission to the organization, which would enable it to maintain contact with the organization and the other members with a view to remedying the situation. Would it be possible to say that the functions of the permanent representative terminated in such a case and to keep the words "or suspended" in sub-paragraph (b), but without going so far as to say that the State could no longer have a permanent mission? He would, however vote for the Drafting Committee's text, whether those words were omitted or not.

38. Mr. CASTRÉN said he still thought it would be better to delete the words "or suspended" in sub-paragraph (b). The Chairman of the Drafting Committee had said that those words were an allusion to an exceptional situation. But, since article 46 was not limitative, as was shown by the use of the expression "*inter alia*", only the main cases need be mentioned in it.

39. The case of Indonesia had aroused a great deal of

controversy. The Charter made no provision for withdrawal from the United Nations, but the preparatory work showed that there were two or three grounds at least on which withdrawal was possible. The ground on which Indonesia had relied was not one of them. Nevertheless, and despite the position taken by the United Nations, he was rather inclined to accept the argument advanced by the Chairman of the Drafting Committee. But the solution was far from obvious, and other members might hold other opinions, as Mr. Bartoš did. It would be better, therefore, not to mention the situation at all.

40. Mr. USTOR, referring to the point about notification raised by Mr. Jiménez de Aréchaga, said that the Drafting Committee had not intended to depart from article 17, which was the basic article on the subject. The purpose of the reference to notification to the host State in sub-paragraph (a) was to cover the case in which the sending State omitted to notify the organization, but did notify the host State that the functions of a member of its permanent mission had come to an end. It had been thought that, in that case, the notification could not be left without any legal significance.

41. In sub-paragraph (b), the Drafting Committee had deleted the concluding words of the original text, "or if the activities of the sending State in that organization are suspended"; but it had not wished to go so far as also to delete the previous two words, "or suspended", because it had envisaged the possibility of a temporary cessation of membership.

42. Article 5 of the Charter did not seem to him to be relevant. It did not refer to suspension of membership itself; it referred to the case in which a Member State was "suspended from the exercise of the rights and privileges of membership". In such a case, the State concerned would still have its duties as a Member; it was only the exercise of its rights and privileges that was suspended.

43. The relevant article of the Charter was Article 6, which made provision for the possibility that a State might be expelled from the United Nations for having persistently violated the Principles of the Charter. The Drafting Committee had considered that since the General Assembly was empowered by the Charter to expel a Member on the recommendation of the Security Council, it was also empowered to take the less drastic action of conditional expulsion. The State to which such a measure was applied would cease temporarily to be a Member of the United Nations, but would resume its membership on fulfilling the conditions laid down by the organs of the United Nations.

44. Sub-paragraph (b) had been drafted in French for the purpose of covering that case, which was theoretically possible. The term "suspended", which was used in the English version, did not perhaps reflect that idea sufficiently. In any case, he saw no difficulty in dropping the words "or suspended" at the end of sub-paragraph (b) and the corresponding words in the French and Spanish versions.

45. Article 46 was intended to give only two examples of modes of termination, on the pattern of the

<sup>10</sup> See General Assembly document A/6419, also issued as Security Council document S/7498.

corresponding provisions of the 1961 Convention on Diplomatic Relations; the use of the words "*inter alia*" in the opening sentence of the article made it clear that sub-paragraphs (a) and (b) did not contain an exhaustive enumeration of the modes of termination. They did not deal, for example, with the case of the death of a member of the permanent mission.

46. For the same reason, he did not consider it necessary to cover specifically the case mentioned by Mr. Rosenne of the withdrawal of the permanent mission itself, which clearly constituted a case of termination of the functions of its members.

47. He would suggest that the title of the article be amended to read "Termination of the functions of a member of the permanent mission", on the pattern of article 25 of the 1963 Vienna Convention on Consular Relations.<sup>11</sup> That title was preferable to the more general "Modes of termination", bearing in mind that article 48 dealt with termination of the permanent mission itself; for article 46 dealt only with termination of the functions of members of the mission.

48. The CHAIRMAN, speaking as a member of the Commission, said he was completely opposed to the Drafting Committee's text, since it no longer had the same meaning as the Special Rapporteur's article.

49. The Special Rapporteur had drafted an article which corresponded to article 43 of the Vienna Convention on Diplomatic Relations. The expressions "function" and "*inter alia*" made the meaning perfectly clear. The article was about function, not about privileges and immunities, and the expression "*inter alia*" meant that the case for which provision was made in sub-paragraph (a) was one of those in which the function of a permanent representative came to an end. It was the case in which a permanent representative claimed still to represent the sending State, against its wishes. It was then that the sending State notified the organization that the function of the permanent representative had come to an end.

50. The duration of privileges and immunities was a separate question and was dealt with in article 39 of the Vienna Convention on Diplomatic Relations. There was no reason for a sending State to notify the ending of the functions of a member of the private staff or of the service staff. Article 46 should deal only with the permanent representative and the members of the diplomatic staff, since they alone represented the sending State and it was in their case alone that the sending State must notify the organization, and only the organization, when it put an end to their functions. Notifications to the host State concerned privileges and immunities only.

51. Section IV of the Special Rapporteur's draft (A/CN.4/218/Add.1) was entitled "End of the function of the permanent representative". The phrase "and of the members of the diplomatic staff of the permanent mission" might perhaps have been added, but the Drafting Committee had proposed that the section be entitled "End of the functions of the permanent mis-

sion or of its members". He could see no merit in that change. The end of the functions of the permanent mission entailed the termination of the permanent mission itself, and there was no need for any article on that situation. Besides, article 46, despite the section's new title, did not deal with the end of the functions of a permanent mission. It dealt with the end of the functions of the permanent representative and of the members of the diplomatic staff, not the end of the functions of the mission.

52. Obviously, in the cases contemplated in sub-paragraph (b) there might be a cessation of the functions of the permanent mission, but not necessarily from the legal point of view. When a State declared that it no longer considered itself a member of an organization, it might be arguable whether the functions of its permanent mission did or did not come to an end. In any event, there was no reason to make provision for the case in which the permanent mission had ceased to exist, since obviously there would then be no more permanent representative, members of the diplomatic staff or functions. It was the fact that the permanent mission no longer existed, not the legal fact that the sending State had ceased to be a member of the organization, which entailed the termination of the functions of the permanent representative and of the members of the diplomatic staff. But if a sending State could establish its mission to an international organization at its discretion, it was that State, and that State alone, which could decide to withdraw its mission at its discretion. He wondered why that situation had not been taken into account.

53. Article 46 should deal solely with the functions of a permanent representative and of members of the diplomatic staff, and the expression "*inter alia*" should relate only to cases in which the sending State put an end to the functions of a permanent representative or of a member of the diplomatic staff by notifying the organization that the person in question no longer represented it. He therefore proposed that the Commission go back to the text in the Special Rapporteur's draft, but with the deletion of sub-paragraph (b). It would then remain consistent with the meaning and wording of article 43 of the Vienna Convention on Diplomatic Relations.

54. Mr. KEARNEY said that if there was any difference between the French and English versions of the original text of article 46, which appeared in the Special Rapporteur's fourth report (A/CN.4/218/Add.1), the meaning of the English version, especially with regard to the word "suspended", conveyed the Special Rapporteur's original idea. He assumed, therefore, that the Special Rapporteur was not referring solely to suspension as a result of the operation of the constitutional provisions of the organization, but also to a suspension of its membership by the sending State itself. In his opinion, it was impossible for the Commission to consider the question whether the suspension was constitutionally justified or not; consequently, if that question did arise in connexion with the French version, he would suggest that the French version be amended to bring it into conformity with the English.

<sup>11</sup> United Nations, *Treaty Series*, vol. 596, p. 282.

55. One of the problems which had been raised in connexion with article 46 was the difference between it and article 43 of the Vienna Convention on Diplomatic Relations. He himself assumed that that difference was due merely to the different nature of a permanent mission to an international organization. Article 17, paragraph 1 (a) of the present draft provided that the sending State should notify the organization of: "The appointment of the members of the permanent mission . . . their arrival and final departure or the termination of their functions with the permanent mission". Sub-paragraph (a) of article 46 did not refer to the "final departure" of members of the permanent mission, but only to the notification that their functions had come to an end. The reference in article 17 to both their final departure and the termination of their functions was obviously intended to cover the difference between members who were nationals of the host State and those who were not. Some mention of "final departure", therefore, might also be included in sub-paragraph (a) of article 46, although in view of its inclusion in article 17, it could be deemed superfluous.

56. With regard to sub-paragraph (b), he saw certain advantages in retaining the words "or suspended", in order to take unusual situations into account. On the other hand, as the Chairman had pointed out, what was said there was self-evident.

57. On balance, he would favour deleting article 46 altogether, though if the Commission believed that it served some useful purpose, he could agree to its retention, provided that the French version of sub-paragraph (b) was brought into line with the English.

58. Mr. YASSEEN said that article 46 had the disadvantage of dealing with two different things: the direct ending of the functions of a member of the mission and the indirect ending of his functions as a result of the *de facto* or *de jure* cessation of the permanent mission's existence. All the difficulties caused by the article were due to the fact that it departed from the Vienna Convention on Diplomatic Relations, article 43 of which contemplated only the case in which the sending State notified the receiving State that the function of a diplomatic agent had come to an end. It referred neither to the closing of a mission nor to the termination of a mission as a result, for instance, of the breaking off of diplomatic relations.

59. As it now stood, article 46 provided that the functions of a member of a permanent mission came to an end not only because of the position of the person concerned, but also for reasons connected with the sending State's participation in the organization. In the latter case, there might be termination or suspension of the State's membership, or there might be suspension of activities and closure of the mission. In view of those distinctions, article 46 might be divided into two.

60. Like the Chairman, he doubted whether it was advisable to extend the application of article 46 to members of the mission other than the permanent representative and the members of the diplomatic staff.

61. Sir Humphrey WALDOCK said that to some

extent he agreed with Mr. Yasseen that article 46 appeared to cover two different things, although in that respect it was in conformity with the title of Section IV, which Mr. Ustor, incidentally, had said was incorrect.

62. What, after all, was the purpose of article 46? Essentially it was to establish the exact time for the commencement of the "reasonable period" referred to in article 41, within which the individual concerned could still enjoy his privileges and immunities before leaving the country. The analogous provision in the Vienna Convention on Diplomatic Relations was article 43, though that article did not deal with certain cases which might arise in connexion with permanent missions to international organizations. The Vienna Convention, however, also contained article 45, which covered the case of the breaking off of diplomatic relations—a situation which in some respects was analogous to that of the suspension of membership referred to in article 46, sub-paragraph (b). In article 45 of the Vienna Convention, of course, there was a clear understanding that the members of the mission were going to leave the country, since provision was made for entrusting the custody of the premises and property of the mission to a third State.

63. Article 46 of the present draft was mainly concerned with the question of privileges and immunities, and the Commission should avoid becoming too involved with the question of membership. As Mr. Yasseen had suggested in connexion with sub-paragraph (b), it should perhaps think in terms of the "cessation" of the mission, which might be due to a variety of causes, such as the expense of maintaining it or the belief that it was not justifying its existence.

64. Mr. JIMÉNEZ de ARÉCHAGA said he supported the Chairman's suggestion that the Commission should go back to the Special Rapporteur's original draft of article 46, subject to the deletion of sub-paragraph (b).

65. The first need was to ask what purpose the article was intended to serve. In his view, its purpose was not to cover the privileges and immunities of the members of the permanent mission, which were already dealt with in articles 17 and 41, but, as the Chairman had said, to give the sending State the right to put an end to the functions of members of the mission.

66. He agreed with Mr. Yasseen that the scope of sub-paragraph (a) should be restricted to members of the permanent mission, since it was only in respect of them that notification was necessary. That would be in conformity with article 43 of the Vienna Convention on Diplomatic Relations, which referred only to "the diplomatic agent", and not to the administrative and service staff.

67. He also agreed with Mr. Yasseen that sub-paragraph (b) dealt with an entirely different subject; it should, therefore, either become a separate article or be deleted. Personally, he favoured deleting it and retaining only sub-paragraph (a) of the Special Rapporteur's original text.

68. Mr. CASTRÉN said he supported the Chairman's

proposal to go back to the text proposed by the Special Rapporteur, excluding sub-paragraph (b), which could either be made into a separate article or be omitted altogether, since the proposition it contained was self-evident.

69. Mr. KEARNEY, referring to the proposal to restrict the scope of sub-paragraph (a) to the diplomatic staff of the permanent mission, pointed out that article 17 required that notification be given of the final departure not only of members of the permanent mission, but also of persons belonging to their family and of persons employed on their private staff. It would seem strange if article 46 had a different scope from article 17.

70. The CHAIRMAN, speaking as a member of the Commission, said that under article 17, paragraph 1 (a) of the draft, the sending State notified the organization of the arrival and departure of members of the mission and of the termination of their functions. The sending State could notify the arrival and the departure only of its own nationals; in the case of nationals of the host State it would notify the termination of their functions.

71. There was a distinction between a notification of that kind and a communication stating that the function of a permanent representative or a member of the diplomatic staff of a permanent mission had come to an end. If a person claimed still to represent a sending State as a member of its permanent mission or as a diplomatic agent, the termination of his functions would have to be notified. That was the meaning of article 43 of the Vienna Convention and that should be the meaning of the present article.

72. Article 43, sub-paragraph (b) of the Vienna Convention on Diplomatic Relations dealt with the case in which the receiving State refused to recognize a diplomatic agent as a member of the mission. There was a similar provision in article 25 of the Vienna Convention on Consular Relations. But there was no need to make provision for that situation in the article under consideration, for the host State could not make such a notification to the sending State. The most closely related case was that dealt with in Mr. Kearney's amendment to article 44, which the Commission had considered at the previous meeting.<sup>12</sup>

73. He therefore maintained his proposal to go back to the version of article 46 proposed by the Special Rapporteur, with the omission of sub-paragraph (b). The most he could accept would be the insertion of the words "to the Organization" after the words "on notification by the sending State", at the beginning of sub-paragraph (a).

74. Mr. USTOR said that the Drafting Committee had considered that the purpose of article 46 was to specify the date on which the functions of a member of the permanent mission came to an end. Sir Humphrey Waldock had pointed out the connexion between that article and article 41, paragraph 2,<sup>13</sup> which stated that "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".

75. Article 53, paragraph 3, of the Vienna Convention on Consular Relations<sup>14</sup> went even further, however, since it referred not only to the privileges and immunities of a member of the consular post, but also to those of a member of his family forming part of his household or a member of his private staff. The Commission should therefore consider whether it would not be desirable to amend article 41, paragraph 2, to bring it into conformity with that provision. An additional sentence would also be required to provide for the case of members of the permanent mission who were nationals of the host State or permanent residents in its territory and who ceased to be members of the permanent mission.

76. In drafting the new text of article 46 the Drafting Committee had, in fact, relied heavily on the Vienna Convention on Consular Relations and had thought that the scope of the article should be extended to all members of the permanent mission, including diplomatic, technical, administrative and service staff.

77. Mr. ROSENNE said he had the gravest doubts whether the Commission should include article 46 in any manner, shape or form in the draft articles and whether it did, indeed, serve any useful purpose. The Commission should not slavishly follow the Vienna diplomatic and consular Conventions, since there was a fundamental difference between the legal status of diplomatic and consular agents and that of members of a permanent mission to an international organization.

78. He was also suspicious of the words "*inter alia*", which might open the door to what the Commission was most anxious to avoid, namely, that the host State should have any say in choosing the members of the permanent mission. Article 17 covered all the most important contingencies that might arise, including the cases of home-based members, locally recruited staff and members who were permanent residents in the host State. He therefore questioned whether the Chairman's proposal was really necessary and whether it would not be better to drop article 46 altogether.

79. Mr. ALBÓNICO said that he had understood the Special Rapporteur's original draft of article 46, but was completely at a loss to understand the new draft submitted by the Drafting Committee. That might be due to the fact that the new draft had been influenced by the Vienna diplomatic and consular Conventions, which were totally inapplicable to draft articles dealing with multilateral rather than bilateral relations. He therefore proposed that the Commission retain the original text of article 46 as submitted by the Special Rapporteur.

80. Sir Humphrey WALDOCK said he would like to state once again that the purpose of article 46 was to define the moment at which the functions of a member of the permanent mission came to an end,

<sup>12</sup> See para. 6.

<sup>13</sup> See 1023rd meeting, para. 54.

<sup>14</sup> United Nations, *Treaty Series*, vol. 596, p. 306.

in order to answer any questions which might arise in connexion with the articles concerning privileges and immunities. He did not agree with Mr. Rosenne that it was unnecessary to specify the exact time, since otherwise notification might take effect when given or when the person in question left the country.

81. The expression "*inter alia*" was merely a precautionary phrase designed to cover cases of death and the like, and thus to avoid the impression that other obvious cases had been overlooked.

82. Mr. ROSENNE said that, in his opinion, an article which stated only that the functions of a member of the permanent mission terminated when the sending State said they did was entirely useless.

83. The CHAIRMAN, speaking as a member of the Commission, said that article 46 ought to be retained in the wording he had proposed. Article 17 did not expressly provide that the sending State must notify the termination of the functions of a permanent representative or of a member of the diplomatic staff if the person concerned claimed still to represent the sending State. There were probably other situations also which were not covered by article 17.

84. Speaking as Chairman, he suggested that the Commission refer article 46 back to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*<sup>15</sup>

The meeting rose at 1 p.m.

<sup>15</sup> For resumption of the discussion, see 1034th meeting, para. 1.

## 1026th MEETING

Thursday, 24 July 1969, at 10.15 a.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Elias, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tammes, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

### Relations between States and international organizations

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

[Item 1 of the agenda]  
(continued)

#### DRAFT ARTICLES

PROPOSED BY THE DRAFTING COMMITTEE

ARTICLE 47 (Facilities for departure) and

ARTICLE 48 (Protection of premises and archives)<sup>1</sup>

1. The CHAIRMAN invited the Chairman of the

Drafting Committee to introduce the Drafting Committee's texts for articles 47 and 48 together.

2. Mr. CASTAÑEDA (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following texts:

#### Article 47

##### Facilities for departure

The host State must, even in 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 the permanent mission come to an end, the host State must, even in 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 case of armed conflict, facilities for removing the archives of the permanent mission from the territory of the host State.

3. No comment had been made on those articles at the first reading and only minor changes in them had been made by the Drafting Committee. In the English version the Committee had deleted the word "the" before "case of armed conflict", as it was unnecessary and did not appear in the corresponding provisions, articles 44 and 45, of the 1961 Vienna Convention on Diplomatic Relations.<sup>2</sup> In article 48, the Committee had substituted the definite for the indefinite article in the English and French versions, before the words "permanent mission" and "*mission permanente*" respectively.

4. Mr. ROSENNE proposed, in order to bring the English text of article 47 into line with the French text, that the words "its territory" be inserted after the words "to leave".

5. The CHAIRMAN, speaking as a member of the Commission, said that articles 47 and 48 were barely intelligible.

6. What was wrong with the opening phrase of article 48, "When the functions of the permanent mission come to an end", was that it placed the stress on the functions of the permanent mission, not on the mission itself. The real intention in article 48 was to deal with the situation where a mission was permanently or temporarily recalled. Article 45 of the 1961 Vienna Convention on Diplomatic Relations covered the breaking off of diplomatic relations between the two States as well, but that was not relevant to permanent missions to international organizations.

<sup>1</sup> For previous discussion, see 999th meeting, para. 21.

<sup>2</sup> United Nations, *Treaty Series*, vol. 500, p. 122.