

Document:-  
**A/CN.4/SR.1026**

**Summary record of the 1026th meeting**

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

Extract from the Yearbook of the International Law Commission:-  
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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 Waldoock, 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.

7. The 1961 Vienna Convention placed certain obligations on the receiving State "even in case of armed conflict". He was not at all sure that that exception should be retained in the draft articles.

8. As the permanent or temporary recall of a permanent mission was the only situation contemplated in article 48, the consequences should be those stated in article 45 of the 1961 Vienna Convention. Article 45, sub-paragraphs (a) and (b) which provided first for the obligation to respect and protect the premises, property and archives of the mission and, secondly, for the possibility of entrusting the custody of those premises, property and archives to a third State, should have their counterpart in article 48; there was no need to reproduce the provisions of sub-paragraph (c).

9. The drafting of articles 47 and 48 should be improved in the light of the wording of articles 44 and 45 of the 1961 Vienna Convention and, if necessary, the articles should be combined.

10. Mr. ALBÓNICO said that the phrase "other than nationals of the host State", in article 47, required some clarification; it seemed to mean that nationals of the host State would not be entitled to the same facilities for departure.

11. He was prepared to accept the text of article 48 proposed by the Drafting Committee.

12. Mr. JIMÉNEZ de ARÉCHAGA said that the Chairman's suggestion that the expression "even in case of armed conflict" be deleted from both article 47 and article 48 had some merit.

13. He could agree to the addition in article 47 of the words "its territory", proposed by Mr. Rosenne.

14. With respect to the point raised by Mr. Albónico, he would prefer to leave the text as it was, since the right of nationals of the host State to leave its territory was a matter of internal law.

15. With regard to article 48, he agreed with the Chairman that the opening phrase of paragraph 1 should be replaced by some such wording as "When the permanent mission is permanently or temporarily recalled". He could not agree, however, that the practice in bilateral diplomacy of placing the premises and archives of the permanent mission in the custody of a third State should apply in multilateral diplomacy.

16. Mr. RAMANGASOAVINA said he agreed with Mr. Rosenne that the words "its territory" should be added in the English version of article 47.

17. The distinction drawn in article 47 between nationals of the host State and members of the families of persons enjoying privileges and immunities was correct. It was quite normal that nationals of the host State should not be able, merely by virtue of their functions, to leave the territory of the host State together with nationals of the sending State, particularly in case of armed conflict. To leave the host State then would look like desertion, since the presumption was that they would be going to the sending State. On the other hand, it was normal that facilities should be granted for members of the family to leave, irrespective of their nationality. That distinction did not mean that nationals

of the host State would be prevented from leaving the territory of that State; they would simply be treated in the same way as any other citizens of the host State. Articles 47 and 48, like articles 44 and 45 of the Vienna Convention, dealt primarily with the situation of armed conflict, though in the drafting it was presented merely as an incidental situation.

18. He agreed with the Chairman that it would be desirable to include in the draft a provision modelled on sub-paragraph (b) of article 45 of the 1961 Vienna Convention. As article 48 now stood, the sending State must withdraw its property and archives within a reasonable time, but was not offered the alternative of transferring them to the diplomatic mission of a friendly country.

19. Mr. CASTRÉN said he was in favour of retaining the words "even in case of armed conflict", which were also to be found in the 1961 Vienna Convention. To omit them might give the impression that the host State was not obliged to grant facilities in such cases for the persons in question to leave.

20. He was also in favour of retaining the present wording of article 47 concerning nationals of the host State, since it was similar to that used in article 44 of the Vienna Convention.

21. He supported the Chairman's view that the opening phrase of article 48 should be amended.

22. He agreed with Mr. Jiménez de Aréchaga that it was not necessary to mention the question of the custody of the mission's archives by a third State in article 48, though there was a similar provision in article 45 of the Vienna Convention.

23. Mr. BARTOŠ said that the situations contemplated in the draft articles were very different from those for which provision was made in the Vienna Convention on Diplomatic Relations. That Convention applied to bilateral diplomacy, and it would be wrong to follow it slavishly in every detail of relations between the host State and the sending State with regard to permanent missions to international organizations; even in the Vienna Convention on Consular Relations it had been found necessary to adopt a different provision. For instance, the host State must tolerate the consequences of the presence of the permanent mission of a State which was a member of an international organization, even though it might be in armed conflict with that State.

24. It was not a question of permitting members of a permanent mission who were nationals of the host State to leave the territory of that State freely; on the other hand, it was the normal and usual practice to grant facilities for the departure of the members of the family of persons enjoying privileges and immunities, even if the members of the family were nationals of the host State. Unless it was absolutely necessary, however, it would be wrong to go further than the Vienna Conventions in the substance of the articles, though the possibility should always be reserved of making changes, *mutatis mutandis*, in view of the difference in character between permanent missions and diplomatic missions.

25. With regard to the premises, property and archives

of the permanent mission, the sending State should be given full guarantees and be permitted to entrust their custody to the mission of another State or to the organization itself, if the latter agreed. That practice, which was unknown in bilateral diplomacy, lent force to the idea that it would be wise not to follow the Vienna Conventions too often and too closely.

26. Mr. ALBÓNICO said that there was a certain ambiguity about the phrase in article 47, "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". It would seem that either the facilities for departure did not apply to nationals of the host State, or that such persons were not obliged to leave its territory. In the case of families, however, it would seem that members of them would have to leave, even if they were nationals of the host State. He would welcome an explanation of that phrase.

27. Mr. YASSEEN said that the notion of "family" was very hard to define, as the Commission itself and several conferences had realized. The application of article 47 was likely to lead to difficulties. To give one illustration, in Switzerland non-discrimination with regard to women had led to some discrimination against men. The husband of a woman diplomat did not enjoy any privileges or immunities and even had to pay residence tax. It was of course possible to place some limits on the notion of family, but it should at least cover the spouse. Nevertheless, under the instructions of the Swiss Federal Government, the husband of a woman diplomat enjoyed no privileges or immunities, even those most essential for the performance of family duties.

28. Mr. EUSTATHIADES said that articles 47 and 48 carried the analogy with diplomatic relations too far. Also, the commentaries to those articles needed to be much fuller; they failed to mention whether there was any practice of international organizations, which could offer some guidance.

29. The results of too close an adherence to the Vienna Convention were apparent in the inferences drawn from the case of armed conflict. The principle there should be that of the continuity of the organization's existence and even of the belligerent State's participation, in principle, in its activities. Articles 47 and 48 should not give the impression that armed conflict was the normal reason for the ending of the participation of States in an organization.

30. Article 48 as now worded gave the impression that a sending State must withdraw its property and archives within a given time. It should be stated clearly that it would no longer receive protection from the host State after that time had expired. The Special Rapporteur should ponder all those questions and mention them in the commentary.

31. Mr. REUTER said he agreed in principal with the Chairman and he also agreed with Mr. Bartoš that the Commission must be careful to recast any rules transferred from bilateral to multilateral diplomacy.

32. It was quite understandable that it should be thought desirable to keep the expression "in case of armed conflict", in order not to fall short of the Vienna Convention. But it should be remembered that, for the Vienna Convention, armed conflict was the worst situation conceivable.

33. In multilateral relations, on the other hand, armed conflict might seem almost innocuous in comparison with two other situations, namely, the breaking off of diplomatic relations and the non-recognition of a government. The second situation occurred when the host State of an organization, for example, recognized government A of a member State of the organization as the legitimate government. The host State might, however, change its policy and cease to recognize government A in favour of government B, while the organization still recognized government A. It was obvious that it was government A which should continue to enjoy the privileges to which the articles referred. Those two other situations should be borne in mind, at least for mention in the commentary, if not for amendment of the text of the articles.

34. The CHAIRMAN said that a form of words which might meet the points raised by some members of the Commission was "The host State must in all circumstances, even in case of armed conflict, grant facilities...".

35. Mr. KEARNEY said that, in his opinion, the phrase "even in case of armed conflict" did serve a protective purpose with respect to action which might be taken by the host State, but he fully understood the problems referred to by other members. In order, therefore, to avoid any implication of bilateral relations which that phrase might have, he suggested that it be amended to read "even if it is engaged in an armed conflict"; that would emphasize the unilateral duty of the host State.

36. He thought that the phrase "other than nationals of the host State", in article 47, should be retained.

37. With respect to the duty of the sending State, referred to in article 48, paragraph 1, to withdraw the property and archives of the permanent mission, he agreed that the host State could not be placed under an unlimited burden of preserving that property and those archives. A reference should be included to the possibility of placing them in the custody of a third State. He agreed with Mr. Bartoš that custody could be assumed by the organization as well as by a third State, since in many cases the organization was the entity best equipped to undertake that responsibility.

38. On the question of the definition of the word "family", in article 47, he noted that it was not defined in article 1, the definitions article, but that article 39 referred to "the members of the family of the permanent representative forming part of his household". He assumed that the phrase "forming part of his household" would also apply in the case of article 47, but the Commission should consider the desirability of including a corresponding definition of the word "family" in article 1.

39. Mr. RUDA said that article 47 should refer primarily to the normal case of a person enjoying privileges and immunities who was recalled to his country of origin

either permanently or temporarily. As drafted at present, however, article 47 seemed to place the chief emphasis not on the normal case, but on cases arising in connexion with such contingencies as armed conflict. That was logical enough in bilateral diplomacy, and such cases were covered by article 44 of the Vienna Convention on Diplomatic Relations.

40. In the case of permanent missions to an international organization, however, he largely agreed with Mr. Eustathiades that the armed conflict would be between the host State and a member State. In such an event it was not clear to him whether the normal practice would be for the members of the permanent mission of a belligerent State to remain in the host State with a view to reaching some solution or presenting their case to the organization. Consequently, he was in favour of deleting the phrase "even in case of armed conflict", although the Commission should give careful consideration to the Chairman's suggestions to use the words "in all circumstances".

41. With regard to article 48, paragraph 1, he found no difficulty over the duty of the host State to protect the property and archives of the permanent mission and the corresponding duty of the latter to withdraw them within a reasonable time.

42. Mr. BARTOŠ said that the question of finding a definition of the term "family" which would be valid in international law had been discussed during the consideration of the draft convention on diplomatic intercourse and immunities at Vienna, but it had not been settled because delegations had failed to agree even in principle on the concepts involved. Foreign Ministries construed the notion of "members of the family" fairly strictly, in accordance with their own particular view. Thus, the Swiss authorities considered that the husband of a female diplomat was not a member of the family entitled to privileges and immunities, whereas the wife of a male diplomat was. The matter had also arisen in connexion with the Yugoslav Consul at Geneva, who at the time had been a woman.

43. It might perhaps be as well at least to mention in the commentary the principal of the equality of the sexes in international law, since it was recognized by the United Nations, even if it were not thought desirable to go so far as to offer a solution to the problem in the text of the articles themselves.

44. It was quite clear, so far as the substance was concerned, that the phrase "irrespective of their nationality" applied only to the members of the family of persons not having the nationality of the host State who enjoyed privileges and immunities. It was a general rule that persons in the service of the sending State but having the nationality of the host State could not, any more than the members of their family, ask to leave its territory under the protection of diplomatic privilege and immunity. Consequently, the only nationals of the host State who might have that possibility open to them, if need be, were those who were members of the family of a person enjoying privileges and immunities who was not himself a national of the host State. To ask for anything further would be going too far. It was for those

members of the Commission whose mother tongue was one of the languages in which the articles were being drafted to say whether that principle was expressed clearly in the text proposed.

45. The wording suggested by the Chairman was quite satisfactory and he supported it.

46. Mr. USTOR said he wished, first of all, to make it clear that the Drafting Committee had not gone into the merits of articles 47 and 48, since they had been referred to it by the Commission without comment. The text was, therefore, the one originally submitted by the Special Rapporteur, based on articles 44 and 45 of the Vienna Convention on Diplomatic Relations.

47. It was regrettable that, even in the Vienna Convention, it had been necessary to maintain the reference to armed conflict, since had States complied with their obligations under the Charter to settle their disputes by peaceful means, such a reference could have been avoided. The type of conflict which the Drafting Committee had had in mind was armed conflict between the sending State and the host State. He agreed that to refer to armed conflict three times in articles 47 and 48 was perhaps excessive and he would have no objection to the formula "in any circumstances", which had been suggested, and which would cover the case of armed conflict.

48. He supported the Chairman's suggestion that a provision similar to that in sub-paragraph (b) of article 45 of the Vienna Convention on Diplomatic Relations be included in the text, and Mr. Bartoš' idea that the property and archives of the permanent mission might be entrusted either to a third State or to the organization itself.

49. He was not against attempting to define the concept of "the family", but in the light of the experience of the Vienna Conference, he doubted very much whether such an attempt would be successful.

50. Mr. ROSENNE said he fully supported Mr. Ustor's remarks concerning the nature of the present debate: the summary record of the Commission's 999th meeting showed that no member had wished to comment on articles 47 and 48. It had perhaps been unavoidable, but in his view extremely undesirable, that at the present session the debate on substance had in most cases taken place in connexion with the text proposed by the Drafting Committee and not during the initial discussion. The debate should not, therefore, be taken as either overt or implicit criticism of the Drafting Committee.

51. With regard to articles 47 and 48, if the term "armed conflict" had to be used at all, it should be used in a very precise manner. The armed conflict might be between the host State and the sending State, or possibly between one or other of those two States and a third State, but conflict between two third States would not usually be relevant. To refer, therefore, only to "armed conflict" was far too general. A general article on the effects and implications of the severance of diplomatic relations between the host State and the sending State, or the complete non-existence of such relations, along the lines suggested by Mr. Reuter and

Mr. Ruda, would perhaps make it possible to reduce, or remove entirely, the references to armed conflict in articles 47 and 48.

52. The question of the severance of diplomatic relations was partly dealt with in article 2, paragraph 3 of the Vienna Convention on Consular Relations, and although that paragraph was not relevant to the articles now under consideration, the fundamental idea was a valid one. The position should be referred to the Special Rapporteur for his consideration and should be mentioned in the Commission's report, since it would also apply to the articles to be submitted on permanent observer missions and delegations to conferences.

53. It would clearly be necessary to change the wording of article 47, perhaps along the lines suggested by the Chairman.

54. The Chairman's suggestion for the inclusion of the provision contained in sub-paragraph (b) of article 45 of the Vienna Convention on Diplomatic Relations was also a useful one, but it should be remembered that the present draft was concerned with multilateral, not with bilateral, relations and that there could therefore be no question of the third State having to be acceptable to the host State. He did not, however, support the suggestion by Mr. Bartoš that the property and archives of the mission might be entrusted to the organization as well as to a third State.

55. On the question of the concept of family, he agreed with Mr. Ustor that the Commission should refrain from trying to produce an international legal definition of such a controversial term.

56. The CHAIRMAN, speaking as a member of the Commission, said he noted that several members of the Commission had expressed their approval of the wording: "The host State must, in all circumstances, and even if it is engaged in armed conflict, grant facilities".

57. The most important question, however, was article 48. In drafting that article, the Special Rapporteur had in fact drawn on article 47 of the draft on special missions.<sup>3</sup> But special missions were temporary, so that when the functions of a special mission came to an end, the receiving State might request the sending State to withdraw the special mission's property and archives. The problem of premises, property and archives arose with permanent missions to international organizations in the case of temporary or final recall, just as it did with permanent diplomatic missions. Therefore, no matter whether the recall was temporary or final, a permanent mission was not bound to sell its premises or to withdraw its archives and property within a reasonable time. As the situation was similar to that of permanent diplomatic missions, the provision in article 45 of the Vienna Convention on Diplomatic Relations was the provision that ought to be adopted instead of paragraph 1 of the proposed article, except that the sending State would not have to concern itself with the question whether the third State referred to in sub-paragraph (b)

of article 45 of the Vienna Convention, was acceptable to the host State

58. There was no good reason for retaining paragraph 2 of article 48 either. The requirement to grant facilities for removing the archives was merely the corollary of the requirement that a State sending a special mission must withdraw its property and archives within a reasonable time, a requirement which ought not to be imposed upon a State sending a permanent mission. The provisions of article 45 of the Vienna Convention should therefore be followed, *mutatis mutandis*.

59. He would like to make it clear that his comments were not directed to the Drafting Committee's work, but to the text originally submitted to the Commission (A/CN.4/218/Add.1).

60. Mr. YASSEEN said that the problems raised by article 47 showed once again that resemblances between multilateral and bilateral diplomacy might be deceptive. The basic idea was acceptable; a host State must certainly grant facilities for the departure of a permanent mission. The wording, however, prejudged the reply to questions of importance.

61. It might be inferred from the phrase "in case of armed conflict" that the sending State must recall its permanent mission if that case occurred. But neither the breaking off of diplomatic relations nor the withdrawal of recognition, nor even armed conflict with the host State could oblige the sending State to withdraw its permanent mission from the host State's territory. Such an obligation was conceivable only in bilateral diplomacy. The sending State might wish to bring its dispute with the host State before the international organization concerned. Some neutral wording must therefore be found—a form of words which dealt with the departure of a permanent mission without prejudging other matters.

62. Mr. ELIAS said he agreed that, while the subject matter of articles 47 and 48 was important, their formulation left something to be desired. The very titles of those articles indicated that the emphasis should be on the facilities to be granted to permanent missions rather than on the question of armed conflict, and he supported the suggestion by the Chairman that the general principle be stated first and that it then be stated that the obligations also applied in the case of armed conflict, the severance of diplomatic relations and other exceptional circumstances.

63. He was opposed to any attempt to define the concept of "family", less because it was extremely unlikely that any acceptable definition could be found than because the mere formulation of a definition would not solve the important issues raised by Mr. Yasseen. Even if the convention defined the family as including the spouse, whether husband or wife, that was no guarantee that governments would comply.

64. He supported the Chairman's suggestion that the provision in sub-paragraph (b) of article 45 of the Vienna Convention on Diplomatic Relations be included in article 48, since it was not always easy for permanent missions to make the necessary arrangements in time.

65. He agreed that the last sentence of paragraph 1

<sup>3</sup> See *Yearbook of the International Law Commission, 1967*, vol. II, p. 366.

of article 48 was inappropriate; it did not necessarily follow that property and archives had to be withdrawn.

66. Sir Humphrey WALDOCK said that, although article 44 of the Vienna Convention on Diplomatic Relations might be regarded as somewhat misleading, it was not correct to interpret it as implying that the sending State was obliged to remove its mission. The emphasis on armed conflict in that Convention was very understandable, because in the case of bilateral relations armed conflict was the one situation in which difficulties really arose in practice. In the past, when war had broken out, diplomats had sometimes been held by receiving States for the purpose of applying pressure on sending States, and it was that kind of experience which the Vienna Conference had had in mind when drafting article 44.

67. At the same time, it was an element which could not be entirely neglected in the present draft, and the reference to armed conflict should not be omitted altogether. A host State was just as likely to cause difficulties for a permanent mission as it was for diplomats. Nevertheless, the point raised by Mr. Yasseen regarding the need for the permanent mission to protect the interests of the sending State in the organization itself would have to be taken into account, although it was unlikely that those problems could be entirely solved at the present time.

68. He supported the suggestion by Mr. Elias that the reference to armed conflict be deleted from the first sentence of article 47 and that a new final sentence be added; that would remove the misunderstanding regarding the primary objective of article 47. The inclusion of the phrase "to leave at the earliest possible moment" was quite understandable in the Vienna Convention on Diplomatic Relations, but the same considerations did not apply in an ordinary case of departure and the phrase was therefore inappropriate.

69. He agreed with the Chairman's approach to article 48. The article should cover two cases parallel to those contemplated in the Vienna Convention on Diplomatic Relations: the permanent and the temporary recall of the permanent mission; sub-paragraphs (a) and (b) of article 45 of the Vienna Convention would then be appropriate to article 48.

70. He was not, however, convinced that paragraph 2 could be dispensed with altogether. The question of the fate of the archives might be of some importance, since they might well contain material of great political significance, as well as material which related only to the organization. He agreed with the suggestion by Mr. Bartoš that the organization might be added to the possible custodians in the provision corresponding to sub-paragraph (b) of article 45 of the Vienna Convention on Diplomatic Relations.

71. Lastly, he agreed that the Commission should not attempt to define the concept of family.

72. Mr. RAMANGASOAVINA said that he too found the wording of articles 47 and 48 unsatisfactory. Although the expression "even in case of armed conflict" was presented as an incidental situation and as

one case among others, the impression was given that that was the main object of concern.

73. It would be a mistake to follow the text of the Vienna Convention blindly when the situation was very different. In the case of article 47 the formulation suggested by the Chairman would not suffice, since there would still be the references to leaving "at the earliest possible moment" and to placing at their disposal "the necessary means of transport", and the requirement to withdraw the property, all of which seemed to relate to the extreme situation of armed conflict. Some other wording must therefore be found which would show that the article applied simply to the temporary or final closure of a permanent mission. In particular, provision must be made for the sending State to entrust the custody of its permanent mission's property and archives to another permanent mission, or even to place them under the protection of the international organization.

74. The Commission should not shirk the difficulties of defining the term "family". A rough definition had already been attempted by a reference to the persons forming part of the household, but even that approximation was debatable; it had not made possible any satisfactory regulation of the position of the husband of a female diplomat. It was for the Commission to seek a minimum definition, as it were, of the family, based on the modern western concept, that was to say, comprising the husband and wife, the children and perhaps even orphaned grandchildren for whom their grandparents were responsible. A definition which even covered certain exceptional cases would be preferable to compelling diplomats to resort to subterfuges such as engaging their grown-up daughter as a children's nurse in order to enable her to enjoy privileges and immunities.

75. Mr. USTOR suggested that the Commission consider the possibility of a separate article which would state that, in case of armed conflict, all the privileges and immunities accorded under the convention must be granted. If armed conflict was to be referred to at all, it was not enough to mention it only in connexion with the departure of the permanent mission. The permanent mission might well need to go on functioning, in which case it was essential to ensure the continuation of other facilities, such as freedom of movement and communication. The considerations which arose in the case of a permanent mission to an international organization were quite different from those applying in the case of bilateral relations between States.

The meeting rose at 1.10 p.m.

#### 1027th MEETING

Friday, 25 July 1969, at 11.30 a.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Elias, Mr. Eustathiades, Mr. Jiménez de Aréchaga, Mr. Kearney,