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Summary record of the 1034th meeting

Topic:
Representation of States in their relations with international organizations

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at the previous meeting that the words "within either the Organization or the premises of a permanent mission" be deleted.

The proposal was rejected by 9 votes to 5.

18. The CHAIRMAN said it had been proposed that the words "*au sein de l'Organisation*" should be substituted for "*à l'Organisation*" in the French version of the second sentence. There being no objection to that proposal, he put the second sentence to the vote, with the French version thus amended.

With that amendment to the French text, the second sentence of article 44, paragraph 3 was adopted by 9 votes to 5.

19. The CHAIRMAN put article 44, paragraph 3, to the vote as a whole.

Article 44, paragraph 3, as a whole, was adopted by 9 votes to 4.

20. The CHAIRMAN said it had been proposed that the order of paragraphs 2 and 3 of article 44 be reversed. He suggested that, in the absence of any objection, that proposal should be adopted.

It was so agreed.

21. The CHAIRMAN pointed out that the title of article 44 adopted by the Commission⁴ was "Respect for the laws and regulations of the host State". Paragraph 1 and the former paragraph 2 of article 44 had already been approved.⁵ He then put the article, as a whole, to the vote, as amended.

Article 44, as a whole, as amended, was adopted by 9 votes to 1, with 4 abstentions.

22. The CHAIRMAN, speaking as a member of the Commission, explained that he had voted against article 44 as a whole because paragraph 2 (formerly paragraph 3) was quite unacceptable to him.

The meeting rose at 4.55 p.m.

⁴ See 1024th meeting, paras. 69 and 85-87.

⁵ *Ibid.*, paras. 88 and 90.

1034th MEETING

Friday, 1 August 1969, at 9.40 a.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tammes, Mr. Tsuruoka, 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

Section IV: End of functions

ARTICLE 46 (End of the functions of the permanent representative or of a member of the diplomatic staff)¹

1. The CHAIRMAN, in the temporary absence of the Chairman of the Drafting Committee, invited Mr. Ustor to introduce the re-draft of article 46.

2. Mr. USTOR said that the Drafting Committee had reconsidered article 46 in the light of the Commission's discussion and proposed the following text:

Article 46

End of the functions of the permanent representative or of a member of the diplomatic staff

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

- (a) on notification to this effect by the sending State to the Organization;
- (b) if the sending State withdraws its permanent mission to the Organization.

3. The new text differed from the previous text in that it no longer referred to members of the permanent mission in general. The scope of its provisions had been confined to the permanent representative and to members of the diplomatic staff of the permanent mission.

4. In addition, the reference in sub-paragraph (a) to notification to the host State had been dropped. The paragraph now required notification of termination of functions to be made only to the organization. The provisions of article 17 would, of course, be applicable, but it was the notification to the Organization which brought to an end the functions of the individual concerned.

5. Sub-paragraph (b) had been completely reworded. It no longer mentioned the termination or suspension of membership in the organization and dealt only with the withdrawal of the permanent mission.

6. It should be emphasized that the cases mentioned in sub-paragraphs (a) and (b) were still only examples and did not constitute an exhaustive list of cases of termination.

7. In consequence of those changes in the text, the Drafting Committee now proposed the title "End of functions" for section IV and the title "End of the functions of the permanent representative or of a member of the diplomatic staff" for article 46 itself.

¹ For previous discussion and text, see 1025th meeting, paras. 5-84.

8. The CHAIRMAN, speaking as a member of the Commission, proposed that sub-paragraph (b) of the article be redrafted to read: "(b) if the permanent mission is temporarily or definitely recalled". That would be in line with the Drafting Committee's new text for article 48, paragraph 1.² It would also be better to use the word "recall" rather than "withdraw", in accordance with the accepted terminology.

9. Mr. CASTRÉN said he was prepared to accept the Drafting Committee's text with the Chairman's amendment.

10. Sir Humphrey WALDOCK said he was prepared to accept the changes of wording proposed by the Chairman, but would suggest that the word "definitely" should be replaced by "finally" in the English text of sub-paragraph (b).

11. Mr. ROSENNE said he would have to abstain from voting on article 46. It was illogical to include a provision on the effects of a notification of termination of functions in a draft which made no corresponding provision for an obligation to notify the commencement of those functions. The duty to notify the appointment had been specified elsewhere in the draft, but no obligation had been laid down to notify the commencement of the functions, either to the organization or to the host State.

12. Mr. RUDA said that he could accept article 46 with the changes proposed by the Chairman. On a point of drafting, he said he thought the words "to this effect" in sub-paragraph (a) were unnecessary, since they added nothing to the meaning.

13. Mr. USTOR said he was prepared to accept the Chairman's amendment and the change suggested by Sir Humphrey Waldoack.

14. In reply to the point raised by Mr. Rosenne, he explained that a provision similar to that in article 46 was contained in article 43 of the 1961 Vienna Convention on Diplomatic Relations,³ which also included an article on notification of appointment.

15. Mr. ROSENNE pointed out that there was a considerable difference between the present article 46 and article 43 of the 1961 Vienna Convention. The latter article referred, not to the "functions" of the individual concerned, but to the "function of a diplomatic agent" which, as he understood it, meant the appointment. If the intention was to take the 1961 Vienna Convention as a model, he would be prepared to accept that wording, but in that case the reference should be to the "function", not to the "functions".

16. Mr. TESLENKO (Deputy Secretary to the Commission) explained that the French text of article 43 of the 1961 Vienna Convention used the plural, "*fonctions*", and the Drafting Committee had thought that the discrepancy between the two versions should be resolved in favour of the plural.

17. Mr. ROSENNE said that the Drafting Committee

could not work on the assumption that the authentic English text of the 1961 Vienna Convention contained a mistake. He maintained his view on the meaning of that text.

18. Mr. CASTRÉN supported Mr. Ruda's proposal that the words "to this effect" be deleted.

19. Mr. TSURUOKA said he was not sure that the functions of a permanent representative did come to an end when a country recalled its mission temporarily. If so, did they come to an end permanently or temporarily?

20. Sir Humphrey WALDOCK said that Chairman's amendment introduced a useful distinction between the final and the temporary withdrawal of a permanent mission. Article 46 specified that the functions of the individual concerned came to an end on the withdrawal of the mission and that statement was true even where the withdrawal was temporary. The functions of the individual concerned could, of course, be revived when the mission was re-opened, but the fact remained that his privileges and immunities would end upon the temporary withdrawal of the mission.

21. The CHAIRMAN, speaking as a member of the Commission, said that he had been in favour of simply deleting sub-paragraph (b). If the sending State recalled its permanent mission, whether temporarily or finally, the functions of all members of the permanent mission, came to an end. When there was no permanent mission, there was no permanent representative. The important provision in the text of article 46 was sub-paragraph (a), which dealt with the case in which the sending State no longer wished to be represented by the person who had performed the functions of permanent representative and who might seek to retain those functions against the sending State's wishes. That was certainly the idea underlying article 43 of the Vienna Convention on Diplomatic Relations.

22. Mr. AGO said he was in favour of retaining sub-paragraph (b), since it was possible that, when a permanent mission was recalled, the permanent representative might assert that the recall was not in order. It would be clearer to specify that if the permanent mission was recalled, the functions of the permanent representative came to an end automatically.

23. Only the question of temporary recall raised a problem. Where that had taken place and the permanent mission had then resumed its functions, was it considered that the permanent representative had to be re-accredited or did he resume his post automatically?

24. The CHAIRMAN, speaking as a member of the Commission, observed that if reference was made to the recall of a permanent mission without including the words "temporarily or finally", the text would not be in line with the text proposed by the Drafting Committee for article 48. In any event, if notification of the permanent representative's recall had been given, notification must certainly be given of his subsequent re-accreditation.

25. Sir Humphrey WALDOCK stressed that the provisions of article 46 were closely connected with the

² See para. 49 below.

³ United Nations, *Treaty Series*, vol. 500, p. 122.

question of privileges and immunities. Paragraph 2 of article 41⁴ specified that privileges and immunities normally ceased at the moment when a person left the country on termination of his functions, or on the expiry of a "reasonable period" in which to do so. In view of that provision, it would not be wise to introduce a reference to the suspension of the permanent mission into article 46, since it would not be clear what the consequences of such a suspension would be from the standpoint of privileges and immunities.

26. He suggested that the text be adopted with the changes proposed by the Chairman. The article would thus make it clear that on withdrawal of the permanent mission, notification of the termination of the functions of the individuals concerned must be made to the organization. In the absence of such a clear-cut provision, there was some danger that an individual might stay on after the termination of his functions and continue to claim privileges and immunities.

27. Mr. BARTOŠ said that diplomatic practice was not consistent. When diplomatic relations were resumed, an ambassador sometimes simply resumed his functions and sometimes was re-accredited. In any case, where permanent missions to international organizations were concerned, he supported the view that the recall of a permanent mission put an end to the functions of the permanent representative and the members of the diplomatic staff of the mission, since the appointment of the permanent representative was not subject to *agrément*, as in ordinary diplomacy: the sending State merely transmitted a notification and the international organization took note of it. It must also be borne in mind that the period of temporary recall might vary, and when a certain time had elapsed, the persons concerned had often been appointed to other posts.

28. Mr. ROSENNE said it was undesirable for the Commission to seek a hasty solution to the delicate problem of re-accreditation of a permanent representative on the re-opening of a permanent mission which had been temporarily closed.

29. In article 1 (Use of terms), as adopted at the previous session,⁵ the Commission had included a sub-paragraph (e), in which the permanent representative was described as "the person charged by the sending State with the duty of acting as the head of a permanent mission". That established a link between the existence of a permanent mission and the description of an individual as a permanent representative. In the light of that provision, it was logical to say in article 46 that if the permanent mission was withdrawn, the functions of the permanent representative and of the members of the diplomatic staff of the mission came to an end.

30. The problem raised by the Chairman's amendment was whether the description in article 1 (e) should be carried to its logical conclusion in the case of a temporary withdrawal of the permanent mission. He himself believed that it would be better for the Commission to

avoid taking a decision on that difficult question. He also wished to place on record his request that, when the Commission came to re-examine article 1 (e) on second reading, it should carefully consider whether it wished to maintain such a close link between the description of a "permanent representative" and the existence of a permanent mission.

31. It had clearly been the Chairman's intention to propose wording for sub-paragraph (b) of article 46 which would be consistent with his amendment to paragraph 1 of article 48.⁶ In fact, the subject-matter of the two articles was entirely different. Article 48 dealt with the question of the protection of premises and archives, for which temporary withdrawal had very different implications. The fact that it was useful to introduce the concept of temporary recall into article 48 did not necessarily mean that that concept should also be introduced into article 46, which dealt with the functions of the permanent representative. He therefore suggested that the best course would be not to refer to temporary withdrawal in sub-paragraph (b), or perhaps even to drop that sub-paragraph altogether.

32. Mr. USTOR said that the question of re-accreditation would arise if a State were to declare that, as long as certain circumstances prevailed, it would not continue to participate in an organization's work and would withdraw its permanent mission until such time as those circumstances changed. In the case of such a conditional withdrawal, the problem of re-accreditation would arise when the conditions specified by the State concerned were fulfilled.

33. Mr. REUTER said that, to his great regret, he would have to abstain from voting on the article, as it was not clear to him in what circumstances the text, as it stood, would be applicable.

34. Mr. EUSTATHIADES said that the main purpose of the article was to stress the role of notification. Notification fixed the moment at which the functions came to an end.

35. At the present stage in the discussion, he would not be against retaining the Chairman's wording for sub-paragraph (b), but since, in the event of temporary recall, the functions of the permanent representative might not come to an end, the words "may come to an end" might be substituted for "come to an end" in the introductory sentence of the article. The best course might perhaps be simply to delete sub-paragraph (b) and the expression "*inter alia*" in the introductory sentence. That solution would have the advantage of stressing that it was by notification that the functions came to an end. Besides, article 43 of the Vienna Convention on Diplomatic Relations referred only to notification.

36. Mr. YASSEEN considered that the end of the functions might be the factor which brought about the cessation of the status enjoyed by the permanent representative or member of the diplomatic staff concerned. Sub-paragraph (a) was therefore necessary, since it was as a result of notification to the organization that the functions came to an end. Sub-paragraph (b) also served

⁴ See 1023rd meeting, para. 54.

⁵ See *Yearbook of the International Law Commission, 1968*, vol. II, Report of the Commission to the General Assembly, chapter II, section E.

⁶ See para. 56 below.

a purpose, because the temporary recall of the permanent mission as a whole temporarily ended the functions of the permanent representative and of the members of the mission's diplomatic staff.

37. Mr. BARTOŠ said that the question was whether the permanent representative and the members of the diplomatic staff constituted the permanent mission solely by their presence in the international organization or whether there could be a permanent representative without a mission. If, as seemed reasonable, the latter view was adopted, the end of the functions of a permanent representative should not be linked with the recall of the permanent mission. There were even cases in which States did not open a permanent mission in the strict sense, and the permanent representative only visited the organization's headquarters from time to time. In ordinary diplomacy an ambassador was not conceivable without an embassy, or a consul without a consular post. On the other hand, there could be a permanent representative without a permanent mission. One case was that of a government agent attached to the International Court of Justice. The agent must have a residence within a given distance of the Court, but it need only be an address, which might be that of a notary. The permanent mission, as an objective entity, must not be confused with the permanent representative.

38. The CHAIRMAN, speaking as a member of the Commission, pointed out that article 15 (Composition of the permanent mission) provided that, in addition to the permanent representative, a permanent mission might include members of the diplomatic and other staff.⁷ It followed that a permanent mission could exist with only a permanent representative.

39. Mr. BARTOŠ thought that reference should be made to article 6 (Establishment of permanent missions),⁸ not to article 15. That article provided that member States might establish permanent missions to the organization, which meant that, though they must have permanent representatives, they need not necessarily have permanent missions.

40. Sir Humphrey WALDOCK said that the Commission was becoming involved in unnecessary difficulties. The object of article 46 was very limited, namely, to fix the time at which the functions ended for the purpose of determining the "reasonable period" within which privileges and immunities would cease if the individual concerned did not leave the country. The obvious way of fixing that time was notification.

41. Bearing in mind that limited purpose, sub-paragraph (b) of the article served to indicate that the functions of the persons concerned terminated when the sending State decided that it no longer wished to have a permanent mission and notified the organization accordingly. The personnel of the mission would then automatically lose their privileges and immunities after the lapse of a reasonable period.

⁷ See *Yearbook of the International Law Commission, 1968*, vol. II, Report of the Commission to the General Assembly, chapter II, section E.

⁸ *Ibid.*

42. In practice, the case of withdrawal of the permanent mission would be largely covered by the provisions of sub-paragraph (a) because such a withdrawal would also involve the recall of the permanent representative and the notification of that recall. He believed, however, that it would be useful to retain sub-paragraph (b), with the change proposed by the Chairman, which would serve to cover temporary as well as final withdrawal.

43. Mr. YASSEEN said he would like to know whether Mr. Eustathiades considered that, when the sending State notified the recall of its permanent mission, but not the recall of the officials composing it, that meant that those diplomats continued to exercise their functions. In his own view, recall related to representation, not to the physical aspect of the permanent mission. It did not mean simply closing down the premises.

44. Mr. EUSTATHIADES thought the general opinion was that the functions of the permanent representative and the members of the diplomatic staff came to an end. In any case, he was not definitely opposed to sub-paragraph (b). His only concern was that the members of the Commission should reach agreement.

45. Mr. TSURUOKA said he was in favour of the Drafting Committee's wording for article 46.

46. Mr. RUDA said he accepted the Chairman's amendment, which would make sub-paragraph (b) cover both final and temporary withdrawal. That amendment was useful because it clearly showed that, in the event of temporary withdrawal, re-accreditation would be necessary if the same permanent representative returned to resume his post. The Drafting Committee's text did not make that clear.

47. The CHAIRMAN invited the Commission to vote on his amendment to sub-paragraph (b) of article 46.

The amendment was adopted by 11 votes to none, with 3 abstentions.

Article 46 as a whole, as amended, was adopted by 11 votes to none, with 3 abstentions.

ARTICLE 48 (Protection of premises and archives)⁹

48. The CHAIRMAN, in the temporary absence of the Chairman of the Drafting Committee, invited Mr. Ustor to introduce the redraft of article 48.

49. Mr. USTOR said that the Drafting Committee proposed the following new text:

Article 48

Protection of premises and archives

1. When the permanent mission is temporarily or definitely withdrawn, the host State must respect and protect the premises as well as the property and archives of the permanent mission. The sending State must take all appropriate measures to terminate this obligation of the host State within a reasonable time.

2. The host State is required to grant the sending State facilities for removing the archives of the permanent mission from the territory of the host State.

⁹ For previous discussion, see 1026th and 1027th meetings.

50. Paragraph 1 had been reworded. In the first sentence, the words "When the functions of the permanent mission come to an end" had been replaced by "When the permanent mission is temporarily or definitely withdrawn". The reference to "armed conflict" had been deleted, as that point would be covered by the new article proposed by Mr. Rosenne. The second sentence had been reworded because the Drafting Committee considered that withdrawal of property and archives might not always be necessary. There might be cases where the sending State did not wish to withdraw its property and archives because they were not of any great value. It might wish to sell or dispose of the property in some way, or it might wish to burn the archives. The Drafting Committee believed that the sending State should relieve the host State of its obligation in respect of the premises, property and archives of the permanent mission and therefore favoured the adoption of a more general provision.

51. The Drafting Committee had not thought it necessary to make any changes in paragraph 2, other than the deletion of the words "even in case of armed conflict".

52. The CHAIRMAN, speaking as a member of the Commission, asked why the second sentence of paragraph 1 also applied to cases in which a permanent mission was recalled temporarily. He would also like to know whether that sentence meant that the sending State could keep its permanent mission's premises and leave its property and archives in them, the host State being legally relieved of its obligation to respect and protect the premises, or whether it meant that the sending State must actually withdraw its property and archives and vacate the premises.

53. He noted that paragraph 2 referred to the archives, but not to the property.

54. Mr. USTOR confirmed that the second sentence of paragraph 1 also applied to the temporary withdrawal of the permanent mission. If the temporary withdrawal was for a fairly short period, the host State could be required to respect and protect the premises, property and archives of the permanent mission. But if the withdrawal continued for an indefinite period, the host State should be able, after a reasonable period, to request the sending State to make measures to terminate that obligation. It was for the sending State to decide what measures it wished to take for that purpose. It might decide to remove the property and archives of the permanent mission; it might decide to sell the premises or dispose of them in some other way, as a result of which they would cease to belong to the sending State.

55. He agreed that paragraph 2 should include a reference to the property, as well as the archives, of the permanent mission.

56. The CHAIRMAN, speaking as a member of the Commission, said he wished to propose the following text for article 48:

"1. When the permanent mission is permanently or temporarily recalled, the host State is required to respect the premises of the permanent mission and its property and archives.

"2. When the permanent mission is permanently recalled, the sending State shall withdraw the property and archives of the permanent mission within a reasonable time.

"3. The host State is required to grant the sending State the necessary facilities for removing the property and archives of the permanent mission from its territory."

57. With regard to paragraph 1, he believed that when a permanent mission was recalled temporarily, it could retain its premises and keep its archives and property in them until it resumed its functions. During that period, the host State was still required to protect the premises, property and archives of the mission.

58. The situation was different in the case of permanent recall; that was why he had devoted a separate paragraph to it. He had not mentioned the premises in that paragraph, since he considered that even in those circumstances the sending State might, if it owned the premises, keep them and put them to some other use, and the host State must therefore continue to protect them. If the sending State did not own the premises, their fate could be settled by negotiations between the host State and the sending State.

59. In paragraph 3, he had added a reference to property and made a minor correction in the wording.

60. Mr. KEARNEY, referring to paragraph 1, said that the Drafting Committee had wished to give the sending State a considerable degree of latitude in regard to the means adopted for the disposal of its premises, property and archives in the host State. The Chairman's proposal seemed more restrictive to the sending State. The Drafting Committee had believed that the sending State should be able to sell or let the premises, and to sell or store the property, if it wished; it might even ask a third Power to take over custody of the archives.

61. If the withdrawal was for a relatively short period, it was reasonable that the host State should continue to be required to protect the permanent mission's premises, property and archives. But when the withdrawal lasted for a year or more, a number of practical problems arose and the sending State might legitimately be expected to take steps to relieve the host State of that obligation within a reasonable period. He thought that the Drafting Committee's text provided a better balance between the responsibilities of the two States than the text proposed by the Chairman.

62. He supported the inclusion of a reference to the removal of property in paragraph 2.

63. The CHAIRMAN, speaking as a member of the Commission, objected that if the property and archives remained in the territory of the host State and that State was legally relieved of its obligation to respect and protect them, that was tantamount to saying that the property and archives might be broken into or destroyed. That was why he had provided, in paragraph 2 of his text, for physical withdrawal of the property and archives, and not for the purely legal termination of the host State's obligation.

64. Mr. RUDA said he approved of the deletion of

the reference to armed conflict in paragraph 1. With regard to the second sentence of that paragraph, it seemed a little strange to impose an obligation on one party to relieve another of its obligation. However, he was unable to suggest any better wording and would accept the Drafting Committee's text. It might be possible to combine paragraph 2 of the Chairman's proposed text with the second sentence of the Drafting Committee's text for paragraph 1, but on the whole he preferred the Drafting Committee's text.

65. He was in favour of mentioning "property" in paragraph 2.

66. Mr. USTOR said that the Drafting Committee had had some difficulty in expressing the idea that the sending State should not be obliged to withdraw the property and archives of the permanent mission, but could dispose of them in some other way if it wished. The purpose of the second sentence of paragraph 1 was to ensure that the host State would not be obliged to respect and protect the premises, property and archives of the permanent mission indefinitely.

67. He thought that the reference to the termination of liability in the case of temporary withdrawal should be retained. A situation might arise where a sending State found itself unable to maintain a permanent mission for a certain period; in those circumstances, the host State would expect to be relieved of its obligation after a reasonable time.

68. Mr. YASSEEN said it should be clearly understood that the second sentence of paragraph 1 was not intended to release the host State from its general obligation to protect and respect the property of persons, but only from its special obligation to respect and protect the premises, property and archives of permanent missions.

69. It was quite right to provide, as the Chairman had proposed in paragraph 3 of his amendment, that the host State should grant the sending State facilities for the removal of its property as well as its archives.

70. Mr. REUTER said he agreed with the Chairman that it would be appropriate to replace the word "withdrawn" by "recalled" in the first sentence of paragraph 1, and to provide for the granting of facilities for removing the property of permanent missions. In providing for the granting of the "necessary facilities", the Chairman's amendment imposed a more onerous obligation on the host State than did the Drafting Committee's text, but he saw no reason for not accepting that change.

71. He agreed with Mr. Ustor and Mr. Yasseen about the meaning of the second sentence of paragraph 1 of the Drafting Committee's text. The wording of that sentence obviously needed some modification.

72. He saw no objection to the idea expressed by the Chairman in connexion with paragraph 2 of his proposal, that the premises of permanent missions might remain available to the sending State for other uses, except that a foreign State's right to own or rent premises, directly or indirectly, depended on the local laws and regulations. Once a permanent mission was recalled, the rights of the sending State with regard to the premises no longer came under the rules governing diplomatic privileges and immunities, but under the ordinary

law of the land. Hence it might perhaps be more correct to say that, after the expiry of a reasonable time, the host State was bound, *vis-à-vis* the sending State, only by obligations arising from its national laws and regulations or from any other special bilateral commitments it might have entered into with the sending State.

73. Mr. BARTOŠ said he agreed with that view. The premises occupied by a permanent mission could not retain a privileged status indefinitely; when the mission was recalled or the premises were used for non-diplomatic purposes, they automatically came under the ordinary law of the land. That was so in Yugoslavia and in other countries, and in view of the principle of reciprocity and equality of treatment, it would be wrong to ask for a more liberal régime. The sending State must however be allowed a reasonable transitional period.

74. Mr. CASTRÉN said he agreed that the word "recalled" should be substituted for the word "withdrawn" in the first sentence of paragraph 1. He approved of the use of the term "necessary facilities" in paragraph 3 of the Chairman's proposal and agreed that the facilities should extend to the removal of property.

75. He preferred the second sentence of paragraph 1 of the Drafting Committee's text to paragraph 2 of the Chairman's proposal. It would be too cumbersome to combine the two texts, as Mr. Ruda had suggested, and too complicated to adopt wording on the lines suggested by Mr. Reuter. It was quite clear that the Drafting Committee's second sentence, which was very flexible, referred to the special obligation mentioned in the first sentence, that was to say, the protection provided for in article 24, on the inviolability of the premises.¹⁰

76. The CHAIRMAN, speaking as a member of the Commission, said he still could not accept the second sentence of the Drafting Committee's text for paragraph 1. First, a sending State which recalled its permanent mission could hardly be required to divest itself of the premises the mission had occupied. Secondly, the host State could not be legally relieved of the obligation to respect and protect the premises, property and archives of permanent missions. It might be accepted that it was materially relieved of the obligation, but it was in the legal sense that the second sentence in paragraph 1 must be understood. A sending State might withdraw its property and archives from the premises of its permanent mission within a reasonable time without necessarily removing them to its own territory, and the host State then remained legally bound to respect and protect them. In order to make that idea quite clear, he was prepared to add to paragraph 2 of his amendment, which dealt with the sending State's obligations when a permanent mission was permanently recalled, a provision to the effect that the sending State must also divest itself of its premises. If the mission was recalled temporarily, it seemed unnecessary to require the sending State to vacate the premises, as any abuse could be dealt with by negotiation.

77. Mr. CASTRÉN observed that in any event it was only the special protection which was removed; the pre-

¹⁰ See 1031st meeting, para. 34.

mises, property and archives of the permanent mission would remain under the protection of the ordinary law.

78. Mr. KEARNEY agreed. In order to clarify the legal position, he proposed that the word "obligation" in the second sentence should be replaced by the words "special duty", which were used in paragraph 2 of article 24.

79. Mr. ROSENNE said that although he shared Mr. Ruda's misgivings about the wording of the second sentence, he was prepared to accept it because of its flexibility. He supported Mr. Kearney's proposal that the word "obligation" be replaced by the words "special duty"; that change would further improve the text and result in a sufficiently realistic provision.

80. The CHAIRMAN invited the Commission to vote on article 48. There appeared to be general agreement that the word "recalled" should be substituted for the word "withdrawn" in the first sentence of the Drafting Committee's text, as he had proposed in the amended text he had submitted as a member of the Commission.¹¹ He suggested that the Commission should approve that sentence, thus amended.

The first sentence of the Drafting Committee's text, as amended, was approved.

81. The CHAIRMAN invited the Commission to vote on paragraph 2 of his amendment to article 48, which corresponded to the second sentence of the Drafting Committee's text for paragraph 1. As his own amendment was further removed from the Drafting Committee's text than Mr. Kearney's amendment replacing the word "obligation" by the words "special duty", he would put it to the vote first.

The amendment submitted by Mr. Ushakov was rejected by 7 votes to 2, with 6 abstentions.

82. The CHAIRMAN then invited the Commission to vote on Mr. Kearney's amendment. He explained that the words "special duty" would be rendered in French by "*obligation spéciale*", as in paragraph 2 of article 24.

The amendment submitted by Mr. Kearney was adopted by 12 votes to none, with 3 abstentions.

The Drafting Committee's text for the second sentence of paragraph 1, as amended, was approved by 14 votes to 1.

83. The CHAIRMAN, speaking as a member of the Commission, explained that he had voted against the Drafting Committee's text for the second sentence, because he could not accept the idea that the host State should be legally relieved of the obligation laid down in the first sentence.

84. He then put to the vote the Drafting Committee's text for paragraph 1 as a whole, as amended.

Paragraph 1 as a whole, as amended, was adopted by 14 votes to 1.

85. The CHAIRMAN, speaking as a member of the Commission, explained that he had voted against para-

graph 1 for the same reason as he had voted against the second sentence.

86. Speaking as Chairman, he invited the Commission to vote on paragraph 3 of his own amendment, which corresponded to paragraph 2 of the Drafting Committee's text.

87. Mr. ROSENNE observed that all the members of the Commission seemed to agree that a reference to the property of the permanent mission should be inserted in the Drafting Committee's text. The paragraph could thus be adopted without a vote if the Chairman would agree not to press his proposals to substitute the words "the necessary facilities" for "facilities" and the words "from its territory" for "from the territory of the host State".

88. The CHAIRMAN, speaking as a member of the Commission, said he would not press those amendments.

89. Speaking as Chairman, he suggested that the Commission should adopt the Drafting Committee's text for paragraph 2, with the insertion of the words "the property and" after the word "removing".

Paragraph 2, thus amended, was adopted.

90. The CHAIRMAN put article 48 as a whole, as amended, to the vote.

Article 48 as a whole, as amended, was adopted unanimously.

91. The CHAIRMAN explained that the adoption must be treated as provisional, since the final wording of article 48 depended on the decision taken by the Commission on the new article submitted by the Drafting Committee as the result of a proposal by Mr. Rosenne, and on Mr. Kearney's amendment to that article.¹²

ARTICLE 49 (Consultations between the sending State the host State and the Organization)¹³

92. The CHAIRMAN drew attention to the Drafting Committee's new text for article 49, which was as follows:

Article 49

Consultations between the sending State, the host State and the Organization

If any question arises between a sending State and the host State concerning the application of the present articles, consultations among those States and the Organization shall be held upon the request of either State or the Organization itself.

93. He explained that the purpose of the version of article 49 which he had submitted in his capacity as a member of the Commission¹⁴ was to make it clear that the consultations, in question were to be tripartite, and were not to be held only between the two States concerned. The final text of his version of the article was as follows:

"If any question arises between a sending State and the host State concerning the application of the

¹² For texts, see next meeting, paras. 9 and 13.

¹³ For previous discussion, see 1027th meeting, paras. 31-49, and 1028th meeting.

¹⁴ See 1027th meeting, para. 43 and 1028th meeting, para. 1.

¹¹ See para. 56 above.

present articles, consultations between the host State, the sending State and the Organization shall be held upon the request of either State or the Organization itself.”

94. Mr. BARTOŠ asked that it should be explained in the commentary that the provision also covered cases in which several sending States had a dispute with the host State.

95. Mr. ROSENNE said he would be unable to support either the Drafting Committee's text or the Chairman's amended version. Neither of those formulations made it clear that the article envisaged bilateral consultations between the two States concerned. The injection of the reference to the organization was contrary to existing practice and, he believed, contrary to the intention of the Special Rapporteur. He therefore requested a separate vote on the concluding words “or the Organization itself”.

The Commission decided by 8 votes to 1, with 4 abstentions, to retain the words “or the Organization itself”.

The text proposed by the Chairman for article 49 was adopted by 11 votes to none, with 3 abstentions.

96. Mr. RUDA explained that he had abstained from voting on article 49, because it was not yet known whether the draft would include a provision on the settlement of disputes and, if so, what the content of that provision would be. He reserved his decision on article 49 until that question was decided.

97. Mr. USTOR said that, before leaving the meeting, Mr. Tammes had requested him to place on record that he (Mr. Tammes) did not wish to press his proposal for the addition of a paragraph 2 to article 49.¹⁵

Article 1, new paragraph

98. The CHAIRMAN invited the Commission to consider the following proposal for a new sub-paragraph to be inserted after sub-paragraph (k) of article 1.¹⁶

“(l) The ‘premises of the permanent mission’ are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the permanent mission including the residence of the permanent representative.”

99. Mr. ROSENNE said he found the proposed new sub-paragraph completely acceptable, but he suggested that it should be numbered “(k bis)” so as to obviate any changes in the designation of the existing paragraphs of article 1 as adopted at the previous session.¹⁷ Article 1 had already been submitted to governments for their comments and any changes in the numbering would create confusion.

100. Mr. RUDA said he assumed that the Spanish text of the proposed new paragraph would be similar in

wording to article 1, paragraph (i), of the 1961 Vienna Convention on Diplomatic Relations,¹⁸ on which the proposal was modelled.

101. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to adopt the proposed new paragraph as paragraph (k bis) of article 1, on the understanding that the Spanish text would be as Mr. Ruda assumed.

It was so agreed.

New article

102. The CHAIRMAN said that the Commission still had to consider the new article proposed by the Drafting Committee. It also had before it an amendment to that new article proposed by Mr. Kearney.¹⁹

103. Mr. KEARNEY said that he had submitted his amendment because the Drafting Committee's proposed new article did not reflect any deep study of the problems arising out of the outbreak of hostilities. His purpose had been to provide the Commission with a list of the main problems. Clearly each one of them would require thorough discussion, for which the Commission had no time at the present session. He therefore suggested that at its next meeting the Commission should merely take an interim decision designed to draw the attention of governments to the matter and obtain their reactions.

The meeting rose at 1.25 p.m.

¹⁸ United Nations, *Treaty Series*, vol. 500, p. 98.

¹⁹ For texts of the new article and amendment, see next meeting, 4 paras. 9 and 13.

1035th MEETING

Monday, 4 August 1969, at 3.10 p.m.

Chairman : Mr. Nikolai USHAKOV

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Ustor Sir Humphrey Waldoock, Mr. Yasseen.

Organization of Future Work

[Item 6 of the agenda]

and

Dates and places of the Commission's meetings in 1970

[Item 7 of the agenda]

1. The CHAIRMAN announced that the Commission had taken the following decisions at a private meeting.
2. With regard to the organization of future work,

¹⁵ See 1028th meeting, para. 7.

¹⁶ See 1032nd meeting, para. 7.

¹⁷ See *Yearbook of the International Law Commission, 1968*, vol. II, Report of the Commission to the General Assembly, chapter II, section E.