

Document:-  
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**Summary record of the 1112th meeting**

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

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expression, though the formula used in article 11, paragraph 1, of the 1961 Vienna Convention on Diplomatic Relations<sup>17</sup> was slightly different, the words "*qui règnent*" being used instead of the word "*existent*". He preferred the wording proposed by the Drafting Committee.

88. The CHAIRMAN said that, if there were no objections, he would take it that the Commission provisionally approved article 16 as proposed by the Drafting Committee.

*It was so agreed.*<sup>18</sup>

The meeting rose at 12.55 p.m.

### 1112th MEETING

Thursday, 3 June 1971, at 10.5 a.m.

Chairman: Mr. Senjin TSURUOKA

*Present:* Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

#### Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 6; A/CN.4/241 and Add.1 to 6; A/CN.4/L.162/Rev.1; A/CN.4/L.168 and Add.1)

[Item 1 of the agenda]

(continued)

#### DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

1. The CHAIRMAN invited the Commission to continue consideration of the draft articles proposed by the Drafting Committee.

#### ARTICLE 17

2. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that, as suggested by the United Nations Secretariat (A/CN.4/L.162/Rev.1) the Committee had aligned paragraph 1 (a) of article 17 with the corresponding sub-paragraph of article 89, which was more concise.

<sup>17</sup> United Nations, *Treaty Series*, vol. 500, p. 103.

<sup>18</sup> For resumption of the discussion see 1132nd meeting, para. 104.

3. In paragraph 1 (b) the Committee had brought the English and French texts into line with the Spanish, by replacing the words "of a person" by the words "of any person" and the words "*d'une personne*" by the words "*de toute personne*". The same change would have to be made in paragraph 1 (b) of article 89. The new wording seemed to the Committee to be more consistent with normal legal usage.

4. Paragraph 1 (d), as adopted by the Commission in 1968, read:

"(d) The engagement and discharge of persons resident in the host State as members of the permanent mission or persons employed on the private staff entitled to privileges and immunities".

The Drafting Committee had considered that the expression "engagement and discharge" was too narrow; for instance, it did not cover the case of the death of one of the persons referred to. The Committee had therefore replaced that expression by the words "the beginning and the termination of the employment". Furthermore, in the case of a permanent representative that notification would duplicate the transmittal of credentials provided for in article 12. The Committee had therefore inserted the words "of the staff" between the words "members" and "of the permanent mission", so as to exclude permanent representatives. The Committee had also noted that under article 41, paragraph 2, persons on the private staff who were resident in the host State would enjoy privileges and immunities only to the extent admitted by the host State. It had therefore replaced the words "entitled to privileges and immunities" by "enjoying privileges and immunities".

5. The Drafting Committee had also made a few other minor changes in the English, French and Spanish texts. Although they were all merely drafting amendments, they would have to be explained in the commentary, because the text of article 17 now differed from the corresponding provisions of previous conventions.

6. The new text proposed for article 17 read:

#### Article 17

##### Notifications

1. The sending State shall notify the Organization of:

(a) the appointment, position, title and order of precedence of the members of the permanent mission, their arrival and final departure or the termination of their functions with the permanent mission;

(b) the arrival and final departure of any person belonging to the family of a member of the permanent mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the permanent mission;

(c) the arrival and final departure of persons employed on the private staff of members of the permanent mission and the fact that they are leaving that employment;

(d) the beginning and the termination of the employment of persons resident in the host State as members of the staff of the permanent mission or as persons employed on the private staff enjoying privileges and immunities.

2. Where possible, prior notification of arrival and final departure shall also be given.

3. The Organization shall transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

4. The sending State may also transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

7. The CHAIRMAN said that, if there were no comments, he would take it that the Commission provisionally approved article 17 as proposed by the Drafting Committee.

*It was so agreed.<sup>1</sup>*

#### ARTICLE 18

8. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that at first the Committee had seen no need to alter article 18; consequently the text in document A/CN.4/L.168 was identical with that adopted by the Commission in 1968. On reflection, however, and after examining the corresponding articles concerning permanent observer missions, the Committee had found that the last phrase of article 18 seemed to dissociate the sending State from the permanent representative, who was, after all, an organ of that State. The Drafting Committee therefore proposed that the last phrase, after the words "to the Organization", should be deleted; the essential point was that the notification should be given, no matter who gave it.

9. The text proposed for article 18 read:

##### *Article 18*

##### *Chargé d'affaires ad interim*

If the post of permanent representative is vacant, or if the permanent representative is unable to perform his functions, a *chargé d'affaires ad interim* shall act as head of the permanent mission. The name of the *chargé d'affaires ad interim* shall be notified to the Organization.

10. The CHAIRMAN said that, if there were no comments, he would take it that the Commission provisionally approved article 18 as proposed by the Drafting Committee.

*It was so agreed.<sup>2</sup>*

#### ARTICLE 19

11. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the Committee had accepted the opinion expressed by the Government of the United States of America in its written observations (A/CN.4/221/Add.1, section B.10) and supported by Mr. El-Erian, Mr. Nagendra Singh and Mr. Sette Câmara.<sup>3</sup> It had accordingly deleted the words "or according to the time and date of the submission of their credentials to the competent organ of the Organization". After that deletion, the words "in accordance with the practice estab-

lished in the Organization" had referred only to the words "alphabetical order", and the Committee had considered that, for the sake of clarity, it would be better to delete them and substitute the words "of the names of member States used in the Organization".

12. The text proposed for article 19 read:

##### *Article 19*

##### *Precedence*

Precedence among permanent representatives shall be determined by the alphabetical order of the names of member States used in the Organization.

13. Mr. ALBÓNICO said he found the new text, with its single criterion, an improvement on the former draft.

14. Sir Humphrey WALDOCK said he understood the word "used" to refer to the alphabetical order and not to the names of member States. He suggested that, in order to bring the English text closer to the French, that word should be replaced by the words "in use".

15. Mr. KEARNEY suggested that the article might be clearer if it was amended to read: "Precedence among permanent representatives shall be determined by the alphabetical order, in use in the Organization, of the names of member States."

16. Mr. ELIAS said he would prefer either the present wording or the text as amended by Sir Humphrey Waldock.

17. Mr. USHAKOV, speaking on behalf of the Drafting Committee, pointed out that a phrase similar to that proposed by the Drafting Committee for article 19 was used in the English text of article 16, paragraph 1, of the Convention on Special Missions.<sup>4</sup>

18. Mr. TESLENKO (Deputy Secretary to the Commission) suggested that the phrase in question should be amended to read: ". . . by the alphabetical order of the names of member States as it is used in the Organization".

19. After a short discussion in which Sir Humphrey WALDOCK, Mr. ELIAS and Mr. KEARNEY took part, the CHAIRMAN suggested that the Commission should adopt article 19 provisionally, in the form in which it was proposed by the Drafting Committee.

*It was so agreed.<sup>5</sup>*

#### ARTICLE 20

20. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that in the Committee's opinion paragraph 2 of article 20, as adopted by the Commission in 1968,<sup>6</sup> related to a wholly exceptional situation with which it seemed unnecessary to deal in the draft articles.

<sup>1</sup> For resumption of the discussion see 1132nd meeting, para. 107.

<sup>2</sup> For resumption of the discussion see 1132nd meeting, para. 110.

<sup>3</sup> See 1092nd meeting, para. 69 *et seq.*

<sup>4</sup> See General Assembly resolution 2530 (XXIV), Annex.

<sup>5</sup> For resumption of the discussion see 1132nd meeting, para. 114.

<sup>6</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 212.

The establishment of an office presupposed the existence of a permanent mission, and the Committee had found it difficult to imagine in what circumstances a State having a permanent mission in the territory of a host State would wish to establish an office of that mission in the territory of another State. The Committee had therefore deleted paragraph 2.

21. Accepting the suggestion made by Mr. Kearney during the previous discussion of the article,<sup>7</sup> the Drafting Committee had taken the view that paragraph 1 should be limited to the establishment of offices in the territory of the host State. It had therefore inserted the words "within the host State" after the word "localities". It had then decided to put the words "offices" and "localities" in the singular, since the paragraph was concerned with the establishment of the office of the mission, even if that office was spread over several buildings or premises.

22. The text proposed for article 20 read:

*Article 20*

*Offices of permanent missions*

The sending State may not, without the prior consent of the host State, establish an office of the permanent mission in a locality within the host State other than that in which the seat or an office of the Organization is established.

23. Mr. REUTER replying to a comment made by Mr. USTOR, said that he found no fault with the expression "*établir de bureau*" in the French text.

24. Sir Humphrey WALDOCK said that in the context of article 20 it was better to speak of "an office" than of "offices". The title of the article should also be put in the singular in order to correspond to that of article 15: "Composition of the permanent mission".

25. Mr. USHAKOV, speaking as a member of the Commission, said he thought the Commission should provisionally approve article 20, but that when the corresponding articles in the other parts of the draft had been considered, the Drafting Committee might perhaps have to align the wording with that of article 12 of the 1961 Vienna Convention on Diplomatic Relations<sup>8</sup>

26. The CHAIRMAN said that, if there were no objections, he would take it that the Commission provisionally approved article 20 as proposed by the Drafting Committee, taking note of Sir Humphrey Waldock's amendment to the title and Mr. Ushakov's comment.

*It was so agreed.<sup>9</sup>*

ARTICLE 21

27. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the Committee had made no change in article 21, the text of which read:

*Article 21*

*Use of flag and emblem*

1. The permanent mission shall have the right to use the flag and emblem of the sending State on its premises. The permanent representative shall have the same right as regards his residence and means of transport.

2. In the exercise of the right accorded by this article, regard shall be had to the laws, regulations and usages of the host State.

28. The CHAIRMAN said that if there were no comments, he would take it that the Commission provisionally approved article 21 as proposed by the Drafting Committee.

*It was so agreed.<sup>10</sup>*

ARTICLE 22

29. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the only change made in article 22 was a drafting amendment to then English text: in the first sentence, the words "full facilities" had been replaced by "all facilities". That change was a deliberate departure from the corresponding provision in article 25 of the Vienna Convention on Diplomatic Relations, in which the expression "full facilities" was used in English, "*toutes facilités*" in French and "*toda clase de facilidades*" in Spanish. The same wording had been used in the text of article 22 adopted by the Commission in 1969. On reflection, the Drafting Committee had decided that "all facilities" was a better rendering of the idea expressed by the French and Spanish texts.

30. The text proposed for article 22 read:

*Article 22*

*General facilities*

The host State shall accord to the permanent mission all facilities for the performance of its functions. The Organization shall assist the permanent mission in obtaining those facilities and shall accord to the mission such facilities as lie within its own competence.

31. The CHAIRMAN said that, if there were no objections, he would take it that the Commission provisionally approved article 22 as proposed by the Drafting Committee.

*It was so agreed.<sup>11</sup>*

ARTICLE 23

32. Mr. ALBÓNICO suggested that article 27 *bis* should be placed before article 23.

33. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said he thought the Commission should not consider the order of the articles until it had provisionally approved the whole draft. For the time being,

<sup>7</sup> See 1092nd meeting, para. 85.

<sup>8</sup> United Nations, *Treaty Series*, vol. 500, p. 104.

<sup>9</sup> For resumption of the discussion see 1132nd meeting, para. 119.

<sup>10</sup> For resumption of the discussion see 1132nd meeting, para. 123.

<sup>11</sup> For resumption of the discussion see 1132nd meeting, para. 127.

it would be better to leave article 27 *bis* where it had been placed by the Special Rapporteur.

34. Introducing article 23, he said that, as pointed out by the United Nations Secretariat (A/CN.4/L.162/Rev.1), the title adopted by the Commission at first reading was "Accommodation of the permanent mission and its members", whereas the text of the article referred to premises for the permanent mission and accommodation for its members, and the corresponding article in Part IV—article 93—was entitled "Premises and accommodation". In the interests of correctness and consistency, the Drafting Committee had therefore entitled article 23 "Premises and accommodation". In the French version of the title it had put the word "*logements*" in the plural, and intended to do the same in the title of article 93. At a later stage in its work, the Committee intended to review the titles of all the articles in order to ensure uniformity.

35. The Committee had also made a few drafting changes in the English, French and Spanish texts of the article itself.

36. The text proposed for article 23 read:

*Article 23*

*Premises and accommodation*

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

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

37. The CHAIRMAN said that, if there were no comments, he would take it that the Commission provisionally approved article 23 as proposed by the Drafting Committee.

*It was so agreed.*<sup>13</sup>

ARTICLE 24

38. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that in article 24 the Committee had made only minor drafting changes to the Spanish text.

39. The Committee had noted that, logically speaking the article should be placed at the end of the section dealing with facilities, privileges and immunities. It would examine the position of each article and the general arrangement of the draft at the last stage of its work.

40. The text proposed for article 24 read:

*Article 24*

*Assistance by the Organization in respect of privileges and immunities*

The Organization shall, where necessary assist the sending State, its permanent mission and the members of the permanent mission in securing the enjoyment of the privileges and immunities provided for by the present articles.

<sup>12</sup> For resumption of the discussion see 1132nd meeting, para. 130.

41. The CHAIRMAN said that, if there were no comments, he would take it that the Commission provisionally approved article 24 as proposed by the Drafting Committee.

*It was so agreed.*<sup>13</sup>

ARTICLE 25

42. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that in view of the change it had made in the title of article 23, the Committee had deleted the words "of the permanent mission" from the title of article 25.

43. In the body of the article, the provision which the Commission had discussed at the greatest length, both in 1969 and at the present session, was the last sentence of paragraph 1. That sentence did not appear in the Vienna Convention on Diplomatic Relations, but a similar provision, though differently worded, had been included in the Vienna Convention on Consular Relations.<sup>14</sup> The provision in article 25, as adopted by the Commission in 1969, was based on a text which had been submitted as an amendment by the Argentine delegation in the Sixth Committee, and had become the last sentence of article 25, paragraph 1, of the Convention on Special Missions.<sup>15</sup>

44. On 5 May 1971, after a fairly long discussion, the Commission had referred to the Drafting Committee a proposal by Mr. Elias "that the idea embodied in the third sentence of paragraph 1 should be retained, subject to the Drafting Committee's being able to improve the wording in order to make it more generally acceptable."<sup>16</sup>

45. Acting on that proposal the Drafting Committee had replaced the words "and only in the event that it has not been possible to obtain the express consent of the permanent representative" by the word "and only in the event that it has not been possible to contact the permanent representative in order to obtain his express consent". The Committee had considered that the wording adopted in 1969 might be open to the tendentious interpretation that refusal of consent constituted impossibility of obtaining consent. The Committee itself could not accept that interpretation, but had thought it advisable to amend the text as he had indicated. The Committee considered that the reasons for the amendment should be stated in the commentary, which should also state that no change had been made in the substance of the article. It further considered that the commentary should specify that, in the context of article 25, the words "permanent representative" were to be understood to mean any person authorized to act on behalf of the mission.

<sup>13</sup> For resumption of the discussion see 1132nd meeting, para. 133.

<sup>14</sup> United Nations, *Treaty Series*, vol. 596, p. 288, article 31, para. 2.

<sup>15</sup> General Assembly resolution 2530 (XXIV), Annex.

<sup>16</sup> See 1093rd meeting, paras. 64 and 93.

46. The text proposed for article 25 read:

*Article 25*

*Inviolability of the premises*

1. The premises of the permanent mission shall be inviolable. The agents of the host State may not enter them, except with the consent of the permanent representative. Such consent may be assumed in case of fire or other disaster that seriously endangers public safety, and only in the event that it has not been possible to contact the permanent representative in order to obtain his express consent.

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

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

47. Mr. KEARNEY asked whether he was right in understanding that the change proposed by the Drafting Committee in the last sentence of paragraph 1 meant that in the event of a fire on the premises of a permanent mission, wherever they might be situated, the authorities of the host State could not take the necessary measures to extinguish the fire if the permanent representative refused to allow them to enter those premises.

48. Mr. USHAKOV, speaking as a member of the Commission, said he thought that Mr. Kearney's interpretation was correct. The corresponding provision in article 25 of the Convention on Special Missions was open to the same interpretation. The Drafting Committee had merely improved the wording without changing the substance of the article.

49. Mr. ALBÓNICO said that to subordinate the safety of the premises of the permanent mission and any premises surrounding them to the express consent of the permanent representative was contrary to the real needs of practical life and to the rule of international law which had always affirmed the possibility of exceptions in cases of *force majeure*. He was entirely opposed to the final clause in the last sentence of paragraph 1 as proposed by the Drafting Committee; in his opinion, that sentence should be modelled on the second sentence in article 31, paragraph 2, of the Vienna Convention on Consular Relations.

50. Mr. EUSTATHIADES endorsed Mr. Albónico's remarks. In view of the texts of the previous Conventions, the Commission had a variety of possible solutions to choose from. The present text might give the impression that, by his refusal, the permanent representative could prevent the authorities from intervening. The principle that the express consent of the permanent representative was required must be subject to an exception when he was consulted and refused his consent even though public safety was endangered. Public safety and fire prevention must take precedence, for the paramount consideration was the common good—of the neighbours, of the host State, of the mission itself—not

the rule of consent, which could be assumed in such cases.

51. The wording proposed by the Drafting Committee had the disadvantage of being a fourth version, following the three which appeared in the existing Conventions. He would therefore prefer the wording used in article 31 of the Convention on Consular Relations.

52. Mr. REUTER, supported by Mr. YASSEEN, suggested that the word "contacter", in the French text of paragraph 1, should be replaced by the words "entrer en rapport avec".

53. Mr. TESLENKO (Deputy Secretary to the Commission) welcomed that suggestion; the word "contacter" had slipped into the text of article 25 in the heat of the Drafting Committee's debate.

54. Mr. KEARNEY said he fully agreed with Mr. Albónico. If he, as a lawyer, were asked to give legal advice to a host State, he would advise it to enter a reservation concerning article 25, paragraph 1, if it was worded in any way differently from the corresponding article in the Vienna Convention on Consular Relations. He could not accept the language proposed by the Drafting Committee.

55. Mr. ALCÍVAR said he could not agree to any provision which would limit the inviolability of the premises of the permanent mission. He preferred the language of article 22, paragraph 1, of the Vienna Convention on Diplomatic Relations.<sup>17</sup>

56. Sir Humphrey WALDOCK said that he would start from the position taken by Mr. Albónico, namely, that in the last resort it was a question of human rights—the fundamental right of persons to life and to freedom from personal injury. He realized, of course, that the article as originally framed might conceivably provide the basis for an abusive intervention by the host State, but it was necessary to state the rule in terms which assumed good faith in its application. In serious cases of fire or other disaster, the right of inviolability of the premises should not preclude the ultimate right of entry of the host State. There was obviously a conflict of principles, but he was reluctant to accept the text proposed by the Drafting Committee, which differed from the text adopted by the General Assembly in the Convention on Special Missions and might seem to weaken that Convention.

57. Mr. USTOR said he felt sure the Commission could agree that there was a basic rule that, if a fire broke out, all concerned must do their best to extinguish it. He did not know of any case in which that rule did not apply: it was an extreme, indeed an absurd, possibility, for which the Commission should not attempt to legislate. He submitted, therefore, that the best and simplest solution would be to follow the provisions of article 22, paragraph 1, of the Vienna Convention on Diplomatic Relations.

58. Mr. ELIAS said he was inclined to share Mr. Albónico's preference for a text which would not hamper

<sup>17</sup> United Nations, *Treaty Series*, vol. 500, p. 106.

the host State in discharging its responsibility towards the local community. He therefore favoured the language of article 31 of the Vienna Convention on Consular Relations, as being more in line with the realities of practical life. He proposed that article 25 should be referred back to the Drafting Committee with a request for reconsideration of the last sentence of paragraph 1 in the light of the observations made during the debate.

59. Mr. USHAKOV speaking as a member of the Commission, pointed out that the wording of article 25 of the Convention on Special Missions was a compromise that had been arrived at with great difficulty. Some members were now proposing that the Commission should attack a well-established principle of international law which was stated in article 25, paragraph 1: the principle of inviolability of the premises. To disregard the compromise adopted would be to flout reality.

60. Sir Humphrey WALDOCK explained that he was not in favour of going back to the formula used in article 31, paragraph 2, of the Vienna Convention on Consular Relations. That formula had been included by the Commission in article 25 of its 1967 draft articles on special missions<sup>18</sup> as the last sentence of paragraph 1. When the Sixth Committee had examined the draft articles, however, it had replaced that formula by what was now the last sentence in article 25, paragraph 1, of the Convention on Special Missions.

61. That provision of the Convention on Special Missions had, of course, been the basis of the last sentence of paragraph 1 of article 25, on the inviolability of the premises of the permanent mission, as adopted by the Commission at its twenty-first session.<sup>19</sup> He thought that the special missions formula, or some variant of it, must be used. On the substance of the matter, he was strongly in favour of retaining a provision on the subject of fire or other disaster presenting a serious danger to the public. For that purpose, the obvious starting point was the formula used in the Convention on Special Missions, but he could accept any improved version of it.

62. Mr. KEARNEY said that, until the 1969 Convention on Special Missions received as wide acceptance as the 1963 Vienna Convention on Consular Relations, it could not be said that the 1963 formula had been superseded by that of 1969.

63. One solution to the problem would be to retain part of the wording proposed by the Drafting Committee; he suggested that the closing words of the last sentence of paragraph 1 should be deleted, so that the sentence would read:

“Such consent may be assumed in the case of fire or other disaster that seriously endangers public safety.”

In that form, the text should dispel any fear that the provision might be so interpreted as to permit entry in the event of a minor incident; the emphasis would be

clearly placed on the criterion of danger to the public, which was the material one in the circumstances. If a fire or other disaster did not involve serious danger to the public, the head of the permanent mission could be allowed to decide for himself how to handle the situation.

64. Mr. ALCÍVAR said he considered it both unnecessary and dangerous to place any limitation on the important principle of inviolability of the premises. Moreover, any attempt to introduce a provision covering the case of fire or other disaster would create more problems than it solved. It was impossible to draft provisions dealing adequately with all the many problems involved. For example, the text proposed by the Drafting Committee implied that, if it was possible to contact the permanent representative, the authorities in the host State would not be allowed to take any action to deal with the disaster.

65. The approach adopted in article 22, paragraph 1, of the 1961 Vienna Convention on Diplomatic Relations was preferable in every respect. That text was completely silent on the subject of fire or other disaster; as a result, the general principle of *force majeure* would apply in such cases. If a similar approach was adopted in the present article 25, the host State would have the right to take action to protect life and property in the event of a disaster that seriously endangered the public.

66. He had been present throughout the Sixth Committee's discussions on the draft articles on special missions. The majority of delegations had not accepted the proposal that special missions should be placed on a par with consulates, and had urged that they should be treated in the same way as diplomatic missions. It had been stressed that the 1961 and 1963 Vienna Conventions were both in force, and that there was good reason to adopt the earlier of the two as a model for special missions. After difficult negotiations, a compromise solution had ultimately been found, in the form of the last sentence of article 25, paragraph 1, of the Convention on Special Missions. One of the main arguments advanced in its favour had been that special missions were normally of short duration, so that their members were usually accommodated in hotels, and the outbreak of fire in hotel rooms constituted a danger to other users of the hotel.

67. He strongly opposed the suggestion that the formula used in the 1963 Vienna Convention on Consular Relations should be introduced into article 25, and urged the Commission to delete the last sentence of paragraph 1, so as to follow the model of the 1961 Vienna Convention on Diplomatic Relations. If that sentence was to be retained, however, the corresponding provision of the 1969 Convention on Special Missions was the only one which could be taken as a precedent.

68. Mr. REUTER said he could not accept the wording proposed by the Drafting Committee for the last sentence of paragraph 1. He would be able to accept it if the words “in order to obtain his express consent” were replaced by the words “in order to request his express consent”. Alternatively, he could accept the

<sup>18</sup> See *Yearbook of the International Law Commission, 1967*, vol. II, p. 360.

<sup>19</sup> *Op. cit.*, 1969, vol. II, p. 208.

wording of the corresponding provision of the Vienna Convention on Diplomatic Relations, in which the last sentence of paragraph 1 did not appear, provided that it was clearly stated in the commentary that, in the event of a disaster, the application of the principle of inviolability was subject to the requirements of public safety and the protection of human life. That solution would have the advantage of eliminating a problem which had existed since the adoption of the Vienna Convention on Diplomatic Relations. If the members of the Commission believed in *jus cogens*, none of them would deny that the protection of human life and public safety were superior necessities ranking far above any form of inviolability.

69. He was therefore in favour either of deleting the last sentence of paragraph 1 altogether, on condition that the commentary left no doubt about the meaning of the provision, or of replacing the word "obtain", in that sentence, by the word "request". The closing words of the last sentence, as it stood, seemed to affirm the inviolability of the premises in cases—absurd perhaps, but still possible—in which agents of the host State had been able to get in touch with the permanent representative, but not to obtain his express consent. It should not be forgotten either, that article 25 would also govern the inviolability of private accommodation.

70. Mr. BARTOŠ endorsed Mr. Reuter's remarks.

71. Mr. CASTEÑEDA said he favoured the compromise formula proposed by the Drafting Committee, subject to the replacement of the word "obtain" by the word "request", as proposed by Mr. Reuter. From the strictly legal point of view the provisions of the last sentence of paragraph 1 were not indispensable, because the principles of *force majeure* would apply in their absence. Nevertheless, since that principle was not easy to apply, the provisions in question could provide useful guidance. It was necessary that they should appear in the text of the article itself and not merely in the commentary.

72. Mr. NAGENDRA SINGH reminded the Commission that he had stressed, by implication, the inherent character of the principle of *force majeure* when article 25 had first been discussed at the present session.<sup>20</sup> Even under the system instituted by the 1961 Vienna Convention on Diplomatic Relations, there could be no question of allowing the premises of a mission to burn simply because it had not been possible to contact the diplomatic agent concerned. If the authorities of the receiving State did not put out the fire, the sending State would clearly have a claim against it for negligence.

73. Unfortunately, however, the whole problem had been obscured by the adoption of the last sentence of article 31, paragraph 2, of the 1963 Vienna Convention on Consular Relations and the last sentence article 25, paragraph 1, of the 1969 Convention on Special Missions. The existence of those two provisions would create

difficulties of interpretation if the question was not specifically dealt with in the text under discussion.

74. He would not be opposed to the solution suggested by Mr. Kearney—that of deleting the last part of the last sentence of paragraph 1 and leaving it to provide only that the permanent representative's consent might be assumed in case of fire or other disaster that seriously endangered public safety. However, he could accept the approach adopted in the Vienna Convention on Diplomatic Relations if the commentary to article 25 clearly explained that the Commission interpreted the silence of article 22 of that Convention as to the assumption of consent as meaning that, in the event of fire or other disaster that endangered public safety, the receiving State was entitled to take appropriate protective measures.

75. Mr. ELIAS reiterated his view that article 25 should be referred back to the Drafting Committee so that it could consider whether to retain the present text or to amend it in the light of the various suggestions made during the discussion.

76. The CHAIRMAN, speaking as a member of the Commission, pointed out that in New York several permanent missions were often housed in the same building. Concern to safeguard the inviolability of one mission must not be allowed to endanger the interests of other missions or public safety in the host State.

77. Mr. USHAKOV observed that, in the event of a major disaster, all the missions concerned would be in the same situation. In view of recent advances in science and technology, however, there was every reason to believe that a mere incident, such as a fire, could now be easily contained.

78. Mr. SETTE CÂMARA said that the crux of the matter was the principle of inviolability of the premises; the cases under discussion constituted an exception to that principle. The text prepared by the Drafting Committee covered the needs of the present situation in that respect.

79. It should be remembered that fire was not the only emergency that could arise. There had recently been cases of the occupation of a mission by demonstrators; in such an event it was the delicate duty of the host State to preserve public safety. The situation was even more complicated when there were several permanent missions in the same building. Much had been said about the possibility of abuse of the principle of inviolability by a permanent representative who refused to co-operate in dealing with an emergency. That idea was rather far-fetched in the case of a fire. The situation was much more complicated in the case of a "sit-in" by demonstrators.

80. In the circumstances, he thought the Drafting Committee had been right in trying to preserve the principle of inviolability as far as possible, and he therefore supported the text it proposed.

81. The CHAIRMAN noted that opinions differed with regard to paragraph 1 of article 25. If there were no objections, he would take it that the Commission agreed to refer article 25 back to the Drafting Committee for

<sup>20</sup> See 1093rd meeting, para. 85.

reconsideration in the light of the views expressed during the discussion.

*It was so agreed.*<sup>21</sup>

The meeting rose at 12.55 p.m.

<sup>21</sup> For resumption of the discussion see 1117th meeting, para. 31.

## 1113th MEETING

Friday, 4 June, 1971, at 10 a.m.

Chairman: Mr. Senjin TSURUOKA

*Present:* Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Elías, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldo, Mr. Yasseen.

### Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 6; A/CN.4/241 and Add.1 to 6; A/CN.4/L.162/Rev.1; A/CN.4/L.168 and Add.1)

[Item 1 of the agenda]

(continued)

### DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

1. The CHAIRMAN invited the Commission to continue its consideration of the draft articles proposed by the Drafting Committee (A/CN.4/L.168 and Add.1).

#### ARTICLE 26

2. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the Committee had deleted the words "of the permanent mission" from the title of article 26.

3. For the reasons given by Mr. Kearney,<sup>1</sup> the Committee had amended the beginning of paragraph 1 to follow the model of article 32, paragraph 1 of the Vienna Convention on Consular Relations.<sup>2</sup> It could, indeed, be argued that the text of paragraph 1 adopted in 1969<sup>3</sup> referred only to taxes levied on persons and not to those levied direct on buildings.

<sup>1</sup> See 1094th meeting, para. 6 *et seq.*

<sup>2</sup> United Nations, *Treaty Series*, vol. 596, p. 288.

<sup>3</sup> See *Yearbook of the International Law Commission, 1969*, vol. II, p. 209.

4. It had been held that paragraph 2 established a difference in treatment between States which owned the premises of their permanent missions and States which only rented them. The Commission had stated in paragraph (3) of the commentary to article 26 that it intended to examine the matter again in the light of the views of governments. As the Special Rapporteur had observed in his sixth report, the comments of governments did not clearly indicate how to dispose of the question (A/CN.4/241/Add.3, para. 16 under article 26). The Drafting Committee had therefore made no substantive change in paragraph 2 and had confined itself to a minor drafting amendment to the Spanish text.

5. The Commission had asked the Drafting Committee to consider the inclusion of a passage in the commentary drawing attention to the present inequality of treatment as between owned and rented premises,<sup>4</sup> and the Special Rapporteur had asked the Committee to transmit to the Commission a proposal which read:

"A statement would be included in the commentary to this article drawing the attention of governments to the matter and suggesting to them that it would be desirable to avoid discriminating between owned and leased premises and to put an end to present inequality of treatment between them."

6. The text proposed by the Drafting Committee for article 26 read:

#### Article 26

##### *Exemption of the premises from taxation*

1. The premises of the permanent mission of which the sending State or any person acting on its behalf is the owner or the lessee shall be exempt from all national, regional or municipal dues and taxes other than such as represent payment for specific services rendered.

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

7. Mr. USTOR reserved his position on article 26, paragraph 2, but welcomed the proposal to include in the commentary a passage referring to the discussion on that paragraph and drawing the attention of governments to the matter.

8. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission provisionally approved article 26 in the form proposed by the Drafting Committee.

*It was so agreed.*<sup>5</sup>

#### ARTICLE 27

9. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the Committee had made no change in article 27, which read:

<sup>4</sup> See 1094th meeting, para. 15.

<sup>5</sup> For resumption of the discussion see 1133rd meeting, para. 1.