Document:-
A/CN.4/SR.456

Summary record of the 456th meeting

Topic:
Diplomatic intercourse and immunities

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emergency, expressed entire agreement with Mr. Tunkin, Sir Gerald Fitzmaurice and Mr. Bartos on the point. Once exceptions were admitted the principle would be completely undermined. He would prefer the text adopted at the ninth session to stand, with the possible addition of a reference to Mr. Yokota's point in the commentary.

Paragraph 1 was adopted unanimously.

Paragraph 2 was adopted unanimously.

The meeting rose at 1.5 p.m.

456th MEETING

Wednesday, 4 June 1958, at 9.45 a.m.

Chairman: Mr. Radhabinod PAL.

Diplomatic intercourse and immunities (A/3623, A/CN.4/114 and Add.1-6, A/CN.4/116 and Add.1-2, A/CN.4/L.72, A/CN.4/L.75) *(continued)*

[Agenda item 3]

DRAFT ARTICLES CONCERNING DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/3623, PARA. 16; A/CN.4/116/ADD.1-2) *(continued)*

ARTICLE 16 *(continued)*

1. Mr. YOKOTA, enlarging upon his proposal that the commentary to article 16 should contain a reference to the duty of heads of diplomatic missions to co-operate with the local authorities in case of fire or other extreme emergencies, said that such a comment would leave the principle of the absolute inviolability of the premises of the mission intact. Even if the head of a mission failed to co-operate with the authorities in an emergency, the latter were not at liberty to enter the mission without his consent. The only recourse then open to the authorities was to express regret at his attitude, or even lodge a formal protest.

2. Mr. FRANÇOIS said that, after hearing Mr. Yokota's interpretation of his proposal, he was resolutely opposed to it. It was not always possible to get in touch with a responsible member of a diplomatic mission at short notice, and it was inconceivable that in such a case buildings must be left to burn down, or, for example, a madman allowed to fire upon passers-by from a mission window without any intervention of the authorities. If the draft was to provide for no exception to the rule in such extreme cases of emergency, he would prefer to have no reference to such cases at all.

3. Mr. TUNKIN pointed out that the question had been thoroughly discussed at the Commission's ninth session and the views then put forward by Mr. François had not been accepted. What was proposed now was merely that a comment should be added concerning the obligation of heads of missions to co-operate with the authorities, which involved no departure from the rule of absolute inviolability.

4. The CHAIRMAN pointed out that in the original draft the corresponding provisions were in article 12. At the ninth session, the Special Rapporteur, after some discussion, had withdrawn the part of the article providing for exceptions in cases of emergency, suggesting that the scope of the exceptions could perhaps be explained in the commentary.[1] When considering the commentary, the Commission had not at first reached any decision. At its 395th meeting the Special Rapporteur had said that the Commission could hardly decide whether it was necessary to refer to exceptions to the principle of inviolability in the commentary until it had his draft of the commentary before it.[2] At its 425th meeting the Commission had adopted without protest a commentary on article 16 which contained no reference to the question of exceptions.[3] Accordingly, the Commission had in effect endorsed the view just expressed by Mr. François that it would be better to say nothing on the subject.

5. Mr. YOKOTA observed that, since several Governments had expressed some apprehension at the absence of any reference to the action to be taken in extreme emergencies, he felt strongly that the subject should be mentioned, and several members of the Commission had supported his proposal to insert an appropriate reference in the commentary. He drew a parallel with the case of the expropriation of the land on which the premises of a mission stood, where the Commission, while enunciating the principle that such land could be expropriated only with the consent of the sending State, had added, as a counterpoise, that it was the duty of the sending State to co-operate.

6. Sir Gerald FITZMAURICE supported Mr. Yokota's proposal. His impression was that the Commission had accepted the text of paragraphs 1 and 2 of article 16 on the tacit understanding that some reference on the lines proposed by Mr. Yokota would be added in the commentary. Perhaps the comment could take the form of a reference to article 33, paragraph 1, which enunciated the duty of diplomatic agents to respect the laws and regulations of the receiving State, without prejudice to their diplomatic privileges and immunities.

7. Mr. TUNKIN said that he was not particularly anxious that any such comment should be included but, on the other hand, would not object to its inclusion.

8. Mr. AMADO thought that it was impossible to make provision for every contingency in the draft. It was hardly conceivable that a head of mission would fail to co-operate with the authorities in an emergency and he was opposed to the idea of a body of international

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[1] *Yearbook of the International Law Commission, 1957*, vol. I (United Nations publication, Sales No.: 1957.V.5, vol. I), 395th meeting, para. 2.

[2] *Ibid.*, para. 41.

[3] *Ibid.*, 425th meeting, paras. 60-65.

lawyers solemnly telling heads of missions what their elementary duties as human beings were.

9. Mr. FRANÇOIS said that the grounds for Mr. Yokota's proposal were logical enough but there was a grave danger that the comment, especially in the light in which Mr. Yokota had presented it, might be interpreted as implying that the authorities were in no case permitted to enter mission premises without the consent of the head of the mission.

10. Mr. SANDSTRÖM, Special Rapporteur, said that the Commission could either say nothing on the question or point out that cases of extreme emergency were very rare and that it was difficult to frame a rule to fit them. After all, only three Governments had referred to the matter, two of them taking it as axiomatic that in extreme cases entry could be made without consent, and only the Government of Japan had asked for an explicit provision on the question. He would prefer the subject not to be touched on in the draft.

11. Mr. BARTOS said that he adhered to the views he had expressed on the substance of paragraph 1 of the article at the previous meeting (455th meeting, paras. 71-73). In an analogous case of refusal of a diplomatic agent to co-operate with the authorities in a matter unconnected with entry into mission premises, the Yugoslav Government, after giving formal satisfaction to the mission concerned for the action taken by the police, had declared the agent *persona non grata* on the ground that he was lacking in human feeling. And the Foreign Office of the country concerned, though not the mission itself, had acknowledged the correctness of the Yugoslav action.

12. Mr. ZOUREK said that Mr. Yokota's proposal was perfectly consistent with international practice. The permission of the head of the mission or, in his absence, of a member of the mission must be sought by the authorities, even in an emergency, before they entered mission premises, and to admit of any exception to that rule would weaken it.

13. Faris Bey EL-KHOURI agreed that the inviolability of a mission's premises must take precedence over all other considerations and the consent of the head of the mission to an entry by the authorities was clearly necessary. On the other hand, it was generally in the sending State's own interest that the local authorities should be allowed to enter the building in emergencies. It would be better, however, to make no reference to the subject than to insert a comment which, by introducing such debatable concepts as *force majeure* or "extreme emergency", would be open to different interpretations.

14. The CHAIRMAN put to the vote the proposal that no reference be made to cases of extreme emergency either in the article or in the commentary.

The proposal was adopted by 8 votes to 6, with 2 abstentions.

15. Mr. SANDSTRÖM, Special Rapporteur, drew attention to the comments of the United States Government on paragraph 3 of article 16 and to his own observations thereon (A/CN.4/116). The Government of Finland considered paragraph 3 to be somewhat superfluous and suggested reformulating article 16 in such a way that its paragraphs 1 and 3 were more closely connected (A/CN.4/114/Add.2). He was not in favour of the latter suggestion, since to place paragraph 3 immediately after paragraph 1 would reduce it to a mere gloss on the first paragraph. The substance of paragraph 3 had its own *raison d'être,* independently of paragraph 1.

16. The CHAIRMAN, after recalling the course of the discussion on article 16, paragraph 3, at the Commission's ninth session, said that, in effect, the Special Rapporteur was asking the Commission to adopt unchanged the paragraph as then drafted.

17. Mr. BARTOS said it was by no means uncommon for the head of the mission actually to request the intervention of the judicial authorities. In one case, for example, a head of mission had asked for a search to be made of the residence of a mission employee in connexion with an alleged theft; in another the local authorities had been asked to conduct the necessary inquiries in connexion with the suicide of a Yugoslav national on mission premises; and in a third, the authorities had been asked to evict a national of the sending State of the mission who, after renouncing allegiance to that State, had refused to vacate the premises he occupied. Perhaps the Drafting Committee could be requested to consider the insertion of some such proviso as "unless the head of the mission requests such action" in paragraph 3.

18. Mr. ALFARO said that, for the purpose of emphasizing the connexion between paragraphs 1 and 3, paragraph 3 should perhaps begin with the words: "In consequence of the foregoing provisions".

19. Mr. YOKOTA considered that some definition of the "premises of the mission" should be given, for the effect of the cross-references in articles 23 and 28 was to extend the inviolability of the premises of the mission to the private residences of the administrative and technical staff of the mission and of the members of their families forming part of their respective households.

20. The CHAIRMAN suggested that a more appropriate place for Mr. Yokota's point would be article 23. The point had no relevancy to the article under discussion.

21. Mr. SANDSTRÖM, Special Rapporteur, remarked that the amendments which he would be proposing to article 28 might well dispose of Mr. Yokota's point.

Paragraph 3 was adopted by 15 votes to none, with 1 abstention.

22. Mr. SANDSTRÖM, Special Rapporteur, drew attention to the observation of the United States Government on paragraph 2 of the commentary on article 16 and to his own comments on that observation (A/CN.4/116).

23. In his opinion the observation was based on a misunderstanding, since paragraph 2 was intended to deal only with writs to be served on diplomatic agents by a process server. For the reasons he had given in his own comments, he saw no objection to the procedure mentioned in the last sentence of paragraph 2 of the commentary. He would suggest that the Commission should merely take note of the United States Government's observation.

24. Sir Gerald FITZMAURICE thought there was some justification for the observation. The last sentence in paragraph 2 of the commentary was unnecessarily categorical in saying that all judicial notices of that nature must be served through the Ministry of Foreign Affairs of the receiving State. There was in fact no reason why judicial notices should not be sent through the post. They might have no effect, owing to the immunity from jurisdiction of the diplomatic agent to whom they were addressed, but to send them through the post would involve no infringement of diplomatic immunity. He suggested that the sentence might be reworded to read:

> "All judicial notices of this nature should be delivered in some other way, e.g., through the post, or, in the last resort, through the Ministry for Foreign Affairs of the receiving State."

25. Mr. SANDSTRÖM said it was his understanding that the cases to which paragraph 2 of the commentary related were those in which writs had to be served by a process server.

26. Mr. YOKOTA supported Sir Gerald Fitzmaurice's suggestion, which he recalled had also been made at the ninth session, when it had been understood that the possibility of sending writs through the post should not be excluded. As drafted, paragraph 2 would cause difficulty, since it did not allow for that possibility. In Japan, for example, in cases where civil actions were brought against diplomatic agents, the procedure was to notify diplomatic agents through the post, and his country would be in some difficulty if no allowance was made for that procedure. Furthermore, as stated in the summary records of the ninth session, it had been clearly understood that the serving of notices through the post would not infringe the inviolability of a mission's premises.

27. Mr. LIANG, Secretary to the Commission, agreed with the Special Rapporteur that the United States Government's observation was based on a misunderstanding, since paragraph 2 of the commentary related only to a specific kind of judicial notice. Such notices were valid only if served by a process server, and they could therefore not be sent through the post.

28. The possibility of serving notices at the home of the diplomatic agent, or at some other appropriate place, was a matter which should not be dealt with in connexion with article 16, since that article related only to the inviolability of mission premises.

29. He therefore felt that paragraph 2 of the commentary should be retained, as drafted.

30. Mr. MATINE-DAFTARY said that it was not clear from the wording of paragraph 2 whether the immunity to be protected was the immunity of the mission premises, or the immunity of the diplomatic agents themselves, or both. He agreed that in some countries writs could not lawfully be sent through the post, and in such cases the only way of serving a writ on a diplomatic agent was to have it delivered through the Ministry for Foreign Affairs of the receiving State.

31. The Drafting Committee should be asked to reconsider the wording of the paragraphs so as to remove the ambiguities.

32. The CHAIRMAN referred to the discussion on the same point at the previous session.[4]

33. Mr. EDMONDS said it was a general rule of judicial procedure that a writ must be served personally. Paragraph 2 of the commentary said that such writs should not be served on the premises of a mission, or even at the door. It was the last sentence of the paragraph, relating to the delivery of judicial notices through the Ministry for Foreign Affairs of the receiving State, which raised a difficulty. The United States Government had pointed out that if the person on whom the writ was to be served was subject to the jurisdiction of the receiving State, the writ should be served upon him personally away from the mission premises, and the Ministry of Foreign Affairs should not be involved unless diplomatic immunity was claimed. The best course would therefore be to delete the last sentence of paragraph 2 of the commentary, and he made a proposal to that effect.

34. Sir Gerald FITZMAURICE said that, though the explanation given by Mr. Liang was correct in substance, he still thought the paragraph was likely to lead to confusion.

35. Paragraph 2 of the commentary should begin with the words "A special application of this principle it that no writ requiring personal service shall be served on the premises of the mission..." for otherwise the expression subsequently used — "All judicial notices of this nature" — might cover even writs which could be sent through the post.

36. The last sentence of the paragraph was not strictly relevant. The real aim of the paragraph was negative — to state that certain types of writ could not be served on mission premises. A difficulty was involved, because in many countries the nature of a writ might change as far as service was concerned. In the United Kingdom, for example, it was the general rule for all writs to be served personally, but if such service was impossible, an order for substituted service might be obtained from the court, and the writ could then be sent through the post or inserted in a notice published in the press, or communicated in some other way. A Ministry for Foreign Affairs would be embarrassed if it had to deal with such matters, and would probably return the writ and refuse to serve it. The best solution would be to delete the last sentence of the paragraph.

[4] *Yearbook of the International Law Commission*, 1957, vol. I, 396th meeting, paras. 28-48.

37. Mr. ZOUREK said that he thought the answer to Mr. Matine-Daftary's question was that paragraph 2 related only to the inviolability of the mission premises. The Special Rapporteur had explained the scope of the text and had shown that the observation of the United States Government was based on a misunderstanding. The paragraph meant that only in cases where the writ would otherwise have to be served by a process server should it be delivered through the Ministry for Foreign Affairs. The last sentence, he felt, was useful, and should not be deleted, because it sometimes happened that a writ was sent to a diplomatic agent by mistake, and in such cases the Ministry for Foreign Affairs was best qualified to stop the writ from being served and to return it to the court. Perhaps the difficulty to which the sentence gave rise might be overcome by an amendment on the following lines:

> "All judicial notices which, under the legislation of the receiving State, must be served by a process server should be delivered through the Ministry for Foreign Affairs."

38. Mr. SANDSTRÖM, Special Rapporteur, observed that the procedure of the service of writs differed from country to country. In his own country, for example, writs could be served by affixing them to the door of the home or office of the person concerned. Such cases were covered by the second sentence of the paragraph. While not indispensable, the last sentence, he felt, was worth retaining. Perhaps the objections to it could be met by saying that in some countries notices of that nature were delivered through the Ministry for Foreign Affairs.

39. Mr. ALFARO supported the proposal that the last sentence should be deleted.

40. Paragraph 2 of the commentary related only to the inviolability of mission premises, but the last sentence would affect also the immunity of the diplomatic agents themselves from civil and penal jurisdiction. If considered indispensable, the sentence might perhaps be transferred to some other context.

41. Mr. BARTOS said that under some national legislations, as for example the Italian, a writ could be delivered by the postman if the process server was not allowed to enter the premises. In cases where writs were served on diplomatic agents, the immunity of the sending State, as well as of the diplomatic agent himself, was involved. He referred to a dispute between the Yugoslav and Italian Governments concerning the delivery to an embassy by post of documents which, under Yugoslav law, only the competent government department in Yugoslav was authorized to receive. The Yugoslav Government had requested the Italian Government to submit to international arbitration the question whether that procedure was irregular and the Italian Government had found means of annulling the notification in question.

42. The commentary on article 16 rightly stressed that all communications from State to State should be made through the diplomatic channel, and he was therefore in favour of the retention of the last sentence of paragraph 2.

43. Mr. MATINE-DAFTARY supported the proposal that the last sentence of paragraph 2 should be deleted, since it was a possible source of confusion inasmuch as both the immunity of diplomatic agents and the inviolability of mission premises were involved. He thought, however, that there should be some sentence in the draft or in the commentary dealing with the procedure to be observed in the service of writs not affecting the immunity of diplomatic agents.

44. Sir Gerald FITZMAURICE, referring to the reason given by Mr. Zourek for wishing the last sentence of paragraph 2 to stand, said he thought the scope of the sentence was much wider than would be required for dealing with cases in which writs were returned to the court by the Ministry for Foreign Affairs. The implication of the sentence was in fact that writs must be passed on by the Ministry for Foreign Affairs, and that was simply not correct. In most cases, a Ministry for Foreign Affairs would refuse to forward such writs.

45. He still thought it would be better to delete the sentence, but in deference to those members who desired it to stand he would be prepared to accept it if it were reworded on the following lines:

> "Any person wishing to serve a writ on a foreign mission should get into touch with the Ministry for Foreign Affairs of the receiving State."

46. The CHAIRMAN put to the vote the proposal that the last sentence of paragraph 2 of the commentary on article 16 should be deleted.

The proposal was adopted by 10 votes to 6, with 1 abstention.

47. Mr. SANDSTRÖM, Special Rapporteur, referred to the observations of the Governments of the United States of America, Luxembourg, Sweden and Switzerland on paragraph 4 of the commentary on article 16, and to his own comments on those observations (A/CN.4/116). He also referred to the discussion at the previous session, when Mr. François had submitted a proposal concerning expropriation of mission premises in the public interest.[5]

48. In the light of the observations of Governments he had prepared a draft provision which, if adopted, would become paragraph 4 of article 16 (A/CN.4/116/Add.1).

49. He was not, however, entirely satisfied with the draft he had proposed, and he suggested that the provision might more suitably read:

> "If a building of a mission, or a part of such building, is required for the purpose of the carrying out of public works, such as the widening of roads, it shall be the duty of the sending State, notwithstanding the inviolability of the premises, to co-operate."

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[5] *Yearbook of the International Law Commission*, 1957, vol. I, para. 49 ff., and 397th meeting, paras. 1-26.

50. Sir Gerald FITZMAURICE pointed out that at the ninth session the Commission had decided that the principle of the inviolability of mission premises was of such importance that no qualification should be permitted to appear in the text of the article concerning it. It had also been decided that ancillary matters, such as the serving of processess and the requirements of public works, should properly be dealt with in the commentary. Although there was no implication in the Special Rapporteur's proposal that the mission premises could be taken over by force, he still felt that the addition of such a paragraph to the article would introduce a qualification of the principle that he himself would regret. For that reason, he would prefer any reference to public works affecting mission premises not to be included in the article itself, but in the commentary, where it could be amplified, if necessary.

51. Mr. GARCIA AMADOR agreed with Sir Gerald Fitzmaurice. The case of public works constituted an exception and a limitation to the principle of inviolability, and if a paragraph concerning that case were inserted in the article the principle would be weakened. Furthermore, it would not be easy to define the extent of the compensation payable under the Special Rapporteur's proposed new paragraph (A/CN.4/116/Add.1). He would therefore prefer the question of expropriation of mission premises for the purpose of public works to be mentioned in the commentary.

52. Mr. VERDROSS agreed with Sir Gerald Fitzmaurice and Mr. García Amador.

53. Mr. FRANÇOIS pointed out that during the recent United Nations Conference on the Law of the Sea many observations made in the commentaries to the Commission's draft on the law of the sea had been transferred to the body of the articles, on the ground that they dealt with important principles. It seemed obvious the observations of the Governments which had commented on paragraph 4 of the commentary on article 16 that, if the draft on diplomatic intercourse and immunities were considered at a similar conference, many passages at present in the commentaries would similarly be transferred to the body of the articles. Accordingly, inasmuch as paragraph 4 dealt with an important question — the limitation of the principle of inviolability dictated by the needs of public works — he considered that the question should be dealt with in the article itself. For that reason he supported the Special Rapporteur's proposal.

54. Faris Bey EL-KHOURI said he preferred the original proposal of the Special Rapporteur, or, rather, the first sentence of his original proposal (A/CN.4/116/Add.1). The second sentence was unnecessary, as the premises of the mission would naturally be subject to the laws of the receiving State, and compensation would be paid according to those laws. To leave that sentence, therefore, would be tantamount to extending to missions privileges not accorded to other persons or bodies in the receiving State whose property was affected by the public works. If the second sentence was deleted, he would support the insertion in the article of the Special Rapporteur's proposed new paragraph.

55. Mr. YOKOTA agreed with the views of Mr. François. He had some doubts, however, about the draft proposed by the Special Rapporteur. At the ninth session it had been decided that Mr. François' original proposal conferred a unilateral right on the receiving State to expropriate the premises of the mission, and it was felt that the consent of the sending State was an essential preliminary to the expropriation. The wording of the paragraph adopted for the commentary accordingly stressed both the consent of the sending State and its duty to co-operate. The Special Rapporteur's proposal, however, appeared to lay greater stress on the duty of the sending State to co-operate than on the necessity of obtaining its consent. He considered, therefore, that it required redrafting; in particular, the last sentence of the Special Rapporteur's original draft (A/CN.4/116/Add.1) should be retained, in order to keep a just balance between the duty of the receiving State and that of the sending State.

56. Mr. TUNKIN doubted whether it was necessary or advisable to insert in the article the additional paragraph proposed by the Special Rapporteur. On the one hand, it referred to the duty of the sending State to co-operate; such a duty was universally recognized. On the other hand, the paragraph as drafted was liable to cause misinterpretations, and any ambiguity in a legal text was to be avoided.

57. Mr. EDMONDS said that all the members of the Commission had agreed at the ninth session on the importance of the principle of the inviolability of mission premises. The question now before the Commission was whether the limitation of inviolability for the purposes of public works should be mentioned in the commentary to the article or become the subject of a provision in the article itself. In his view, inviolability did not extend so far as to enable the sending State, by insistence on the absoluteness of the principle, to hinder the natural growth of a city. The limitation was important, and should therefore be mentioned in the text of the article. He preferred the Special Rapporteur's original text to that proposed orally in the meeting, but had no particular objection to the latter.

58. Mr. HSU said that no doubt the Special Rapporteur's proposed new paragraph would be acceptable to a majority of delegations in a conference of plenipotentiaries; the same was true of many passages which the Commission had decided to include in the commentaries to the various articles. That was not, however, a convincing reason for inserting the proposed paragraph in the text of the article. The principle of the inviolability of mission premises was so important that it should be subject to the smallest possible number of exceptions. Accordingly, he considered that it would be better to deal with the subject of public works affecting mission premises in the commentary than in the article itself.

59. Mr. ALFARO said that it was universally recognized that where expropriation of mission premises was necessary for the purpose of public works it was admissible. But the formulation of a rule such as that proposed by the Special Rapporteur gave rise to serious difficulty. For example, the proposed paragraph imposed upon sending States the duty to co-operate; such terminology was rather too vague for a rule of international law.

60. The Special Rapporteur's draft suffered from other faults. The example of public works given — the widening of roads — should not be mentioned, because it might give rise to difficulties of interpretation; indeed, he thought, no illustrative examples should be given. Nor should compensation be mentioned, for it was a rule in all municipal law that expropriation gave rise to a claim for compensation. In any case, he thought it would be very difficult to frame a rule limiting the inviolability of mission premises in clear and unmistakable terms. In the circumstances, therefore, he would prefer the substance of the limitation to be referred to in the commentary only.

61. Mr. AMADO said that if the Special Rapporteur's proposal was adopted, article 16 would have a paragraph which in effect merely gave advice to States. It was true that public works were of importance and had to be carried out, but the international community was based on the idea of co-operation, and it was surely sufficient to leave in the commentary suggestions that would be adopted by all countries in a co-operative spirit.

62. Mr. PADILLA NERVO said that questions involving public works affecting mission premises would automatically be the subject of negotiation and agreement between the sending State and the receiving State, and the adoption of the Special Rapporteur's proposal would not only not change the existing situation but would also break the general harmony of the draft articles. A similar question had arisen in connexion with the inviolability of the diplomatic bag, and the Commission had rightly decided to deal with it in the commentary to article 21 rather than in the article itself. He therefore opposed the Special Rapporteur's proposal.

63. Sir Gerald FITZMAURICE agreed with Mr. Hsu that there was no reason to insert the substance of paragraph 4 of the commentary in the text of the article merely because a conference of plenipotentiaries would do so. The Commission should adhere to the principle that only essentials — in other words, concrete obligations — should be dealt with in the articles.

64. He did not deny the obligation of the sending State to co-operate with the receiving State in the carrying out of public works, but he was anxious that it should not be so expressed as to appear as a qualification of the principle of the inviolability of mission premises. If the Commission decided that it was desirable to make such a provision in an article, it would be more appropriately made in article 33, which dealt with the conduct of the mission towards the receiving State, rather than in an article concerned with the inviolability of mission premises. But he did not think that it was necessary to insert any such provision in an article, for obviously a receiving State would not expropriate mission premises without preliminary negotiation and agreement with the head of the mission or with the sending State. No known case existed of an expropriation having taken place without agreement on both sides. In any case, the receiving State was not helpless in such a matter; if the sending State was unreasonable, the receiving State could in many ways make life uncomfortable for the mission. Accordingly, there was no good reason for accepting the Special Rapporteur's proposal.

65. The CHAIRMAN put to the vote the question whether a paragraph on public works affecting mission premises should be inserted in the text of the article.

It was decided, by 9 votes to 6, with 1 abstention, that a paragraph on public works affecting mission premises should not be inserted in the article.

Article 16 as a whole, as drafted at the ninth session (A/3623, para. 16) was adopted unanimously.

The meeting rose at 1 p.m.

457th MEETING

Thursday, 5 June 1958, at 9.45 a.m.

Chairman: Mr. Radhabinod PAL.

Diplomatic intercourse and immunities (A/3623, A/CN.4/114 and Add.1-6, A/CN.4/116 and Add.1-2, A/CN.4/L.72, A/CN.4/L.75) *(continued)*

[Agenda item 3]

DRAFT ARTICLES ON DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/3623, PARA. 16; A/CN.4/116/ADD.1-2) *(continued)*

ARTICLE 17

1. Mr. SANDSTRÖM, Special Rapporteur, said that in his redraft of article 17 (A/CN.4/116/Add.1) he had taken into account observations made by the Governments of the United States of America, Belgium, Chile and Luxembourg (A/CN.4/114 and Add.1). The Italian Government had suggested an amendment (A/CN.4/114/Add.3) which omitted the important point that the mission premises would be exempt from tax by reason of the sending State's ownership or lease of the premises, and for that reason the Italian amendment was unsatisfactory. The United States Government's proposal seemed merely to complicate the text, and he felt that the proper context for the amplifications and definitions proposed by that Government was the commentary rather than the article itself. Some observations, such as that of the Luxembourg Government (that the term "specific services rendered" was