

**United Nations Conference on the Representation of States
in Their Relations with International Organizations**

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16th meeting of the Committee of the Whole

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16th meeting

Monday, 17 February 1975, at 10.50 a.m.

Chairman: Mr. NETTEL (Austria).

Consideration of the question of the representation of States in their relations with international organizations in accordance with resolutions 2966 (XXVII), 3072 (XXVIII) and 3247 (XXIX) adopted by the General Assembly on 14 December 1972, 30 November 1973 and 29 November 1974 (continued)

Article 9 (Appointment of the members of the mission) (continued) (A/CONF.67/4, A/CONF.67/C.1/L.18, L.27, L.28, L.35)*

1. Sir Vincent EVANS (United Kingdom) said that the issues arising in articles 9 and 75 of the draft articles of the International Law Commission (ILC) (see A/CONF.67/4) were of vital importance. Unless a proper balance was established between the interests of the host State, the sending State and the organization, the convention was likely to remain ineffective. The articles following article 9 in part II established a régime granting very extensive privileges and immunities to the representatives of the sending State which not only derogated from the ordinary law of the host State, but might also impinge on its internal security and public order. It must also be borne in mind that although, in any given situation, there was only one host State and many sending States, nevertheless every sending State was at least a potential host State. Furthermore, even those States which considered that they would be exclusively sending States must be prepared to take account of the interests of host States if they wished to obtain a balanced convention which would have any chance of being put into effect in practice.

2. Article 9 provided that "the sending State may freely appoint the members of the mission", subject only to the provisions of articles 14 (Size of the mission) and 72 (Nationality of the members of the mission or the delegation). Apart from those provisions, the right of the sending State freely to appoint the members of the mission was absolute, and was not qualified by any right on the part of the host State either to refuse to accept in its territory a member of the mission so appointed or to require his departure in any circumstances whatever. Thus, the draft articles not only disregarded established practice in the matter, but utterly failed to take account of the legitimate interests of the host State. While recognizing the principle enunciated in article 9, everyone knew that a person representing a State could by his actions affect security and internal order in the host State. The headquarters agreements concluded in the United Nations system provided that, if a member of a mission was guilty of abusing his privileges, the host State had the right to require him to leave in accordance with the procedure applicable in diplomatic relations. The present draft contained no such provision and was therefore at variance with existing practice. The provisions of

paragraph 2 of article 75 did not take account of that practice, for they conferred no right on the host State but imposed only limited obligations on the sending State in particular circumstances. Under those provisions the host State could request the recall of a member of a mission in two circumstances only: in case of grave and manifest violation of the criminal law of the host State and in case of grave and manifest interference in the internal affairs of that State; except in these cases, a member of a mission could apparently abuse his privileges of residence with impunity. That was not acceptable.

3. If, as the Cuban representative had said, the draft articles were based on the diplomatic character of permanent missions and their staff (15th meeting), it was logical to incorporate in article 9 the rule of non-acceptability, which was well established in international law, and which had already been incorporated in article 9 of the Vienna Convention on Diplomatic Relations;¹ article 23 of the Vienna Convention on Consular Relations² and article 12 of the Convention on Special Missions.³ It was on those precedents that the Canadian and United Kingdom amendment to article 9 (A/CONF.67/C.1/L.18) was based. Since part II of the draft articles was modelled closely on the Vienna Convention on Diplomatic Relations, it should also follow it with regard to the rights of the host State.

4. The argument that the members of a mission to an international organization were not accredited to the host State in whose territory the seat of the organization was situated, unlike the situation in bilateral diplomacy, was not valid, since, so far as the internal security of the host State was concerned, there was obviously no difference between the members of a permanent mission and the members of a diplomatic mission. The absence of provisions such as those contained in the proposed amendment would mean that a member of a diplomatic mission declared *persona non grata* because of spying and required to leave the territory of the host State could be sent back as of right by the sending State as a member of a permanent mission to an international organization—a situation that no host State could accept.

5. The amendment proposed by Canada and the United Kingdom did, however, depart in one respect from the precedents in the Vienna Conventions in that they provided for prior consultation between the host State, the sending State and the organization, since it was to the organization that the members of the organization were accredited.

6. He accepted the subamendment submitted by France (A/CONF.67/C.1/L.35).

* Resumed from the 10th meeting.

¹ United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

² *Ibid.*, vol. 596, No. 8638, p. 261.

³ General Assembly resolution 2530 (XXIV), annex.

7. Mr. SMITH (United States of America) said that the question raised by articles 9 and 75 was perhaps the most important of all the questions that the Committee would have to decide. In his opinion, article 9 took no account of the right that the host State should have to protect itself against the abuse of privileges by members of a mission. The question raised in that article had two facets: the abuse of privileges could occur before or after the appointment of the member of the mission. The first case was not considered in the draft articles, but it had occurred in the United States, where a diplomat who had been requested to leave the country had simply been appointed a member of a permanent mission to an international organization whose seat was in the United States. Was the host State to be left without protection against such manoeuvres? The second case was dealt with in paragraph 2 of article 75 but, unlike the corresponding article of the Vienna Convention on Diplomatic Relations, article 75 contained no provision according the host State the right to protect itself against abuse of privileges. The provisions of paragraph 2 of article 75 were entirely inadequate in that respect, since the host State could request the recall of a member of a mission only in case of "grave and manifest violation" of the criminal law of that State. But the existence of a "grave and manifest" violation could only be established by a court—at least under the legal system of his country—and the person concerned might well be immune from the prosecution required. Furthermore, the host State and the sending State might not agree as to what constituted a "grave and manifest violation of the criminal law of the host State". After 25 years of United Nations practice, the concept of abuse of privileges was now sufficiently well delineated not to give rise to any misunderstanding. It was incorporated in article VII of the Convention on the Privileges and Immunities of the Specialized Agencies⁴ and in the United Nations headquarters Agreements. Paragraph 2 of article 75 provided no role for the host State or the organization in determining that there had been a grave and manifest violation of the criminal law of the host State or grave and manifest interference in the internal affairs of that State; only the sending State was mentioned. Articles 81 and 82, on the settlement of disputes, did not fill that gap, since the conciliation procedures provided for in article 82 might last more than a year and a half, and the decision taken did not have binding force.

8. It was essential to establish a balance between the roles assigned to the sending State, the host State and the organization. The absence or presence of such balance might be the determining factor so far as his Government's accession to the convention was concerned. In his opinion, the draft convention imposed enormous obligations on the host State, without any corresponding rights. His delegation therefore strongly believed that the amendment submitted by his delegation or that submitted by Canada and the United Kingdom would be a major step in providing a balance in the draft articles that he regarded as essential.

9. Mr. MUSEUX (France) said he agreed entirely with the views of the United Kingdom and United States representatives. In working from the idea that the sending State might freely appoint the members of the mission, the ILC had declared an entirely just principle, since the members of the mission were accredited not to the host State but to the organization. However, it was impossible to stop at that point and not to take into consideration certain legitimate interests of the host State. Article 9 would be acceptable in the case of members of a mission who had never previously been to the host State; but it was possible that those concerned might already have been in the host State privately, on the occasion of international conferences or as members of diplomatic missions, and that they had been declared *persona non grata*. In such a case should they be granted the unconditional right of entry into the territory of the host State? No host State could commit itself to giving such a free hand. He therefore subscribed to the Canadian and United Kingdom amendment (A/CONF.67/C.1/L.18). He had wished, however, to restrict it so as to pressure those who feared that the powers granted to the host State would give rise to abuses. The subamendment to the Canadian and United Kingdom amendment submitted by France (A/CONF.67/C.1/L.35) was designed to reconcile the different positions by specifying that the host State could only declare a person unacceptable if it had personal reasons for so doing.

10. Mr. GOBBI (Argentina) said that he would vote for the principle laid down by the ILC in its article 9. He considered that a State had the absolute right to appoint its representatives to an international organization and that that right could not be qualified by conditions. On the other hand, he considered that an international organization had a personality of its own, and that any limitation of the right stated in article 9 would be a limitation of its autonomy. Moreover, he did not consider that the relations between the sending State and the organization could be impaired by conditions external to those relations. Lastly, he feared that the term "not acceptable" which appeared in the amendments in documents A/CONF.67/C.1/L.18 and L.28 would introduce a new notion into the sphere of contemporary international law of international organizations. To claim that there was a similarity between the receiving State and the host State was, in his view, contrary to the very nature of relations between States and international organizations. The amendments in documents A/CONF.67/C.1/L.18 and L.28 would have dangerous consequences, since they would give considerable powers to the host State, thus creating an imbalance between States members of an international organization and giving a tripartite character to bilateral relations which should remain bilateral. It might be asked, moreover, whether the host State would exercise its right objectively in all cases. For his part, he considered it would be wiser to keep to the present text of article 9, refraining from any dangerous innovation.

11. Without agreeing on that account that the principle of freedom to appoint the representatives of States to the international organizations should be called in

⁴ General Assembly resolution 179 (II).

question, he accepted without reservation the principle of the responsibility of those representatives in case of violation of the laws of the host State. He was prepared to seek practical solutions to the problem entailed by those violations and, in that connexion, approved the provision contained in paragraph 2, subparagraph (b) of the amendments in documents A/CONF.67/C.1/L.18 and L.28. Such violations should be severely punished, but in his view that was only a case of exceptional situations, which should be treated as such. It should be assumed that States were of good faith and that their representatives to international organizations were desirous of performing their functions efficiently. It did not seem logical, therefore, for the sake of a few exceptions to derogate from a principle which declared the freedom and sovereignty of States in the choice of their representatives to international organizations.

12. Mrs. OESER (German Democratic Republic) said she noted that the amendments in documents A/CONF.67/C.1/L.18 and L.28 both aimed at enabling the host State to declare a person not acceptable, whereas such a possibility did not appear in the agreements between host States and organizations. Those amendments would place the host State in much too privileged a position; they would be contrary to the fundamental principle of the sovereign equality of States and to the principle set forth in article 105, paragraph 2, of the Charter of the United Nations, according to which the representatives of States members of the Organization should enjoy "such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization". For that reason the delegation of the German Democratic Republic could not subscribe to the proposed amendments and approved the International Law Commission's article 9.

13. Mr. TAKEUCHI (Japan) said he supported the amendment in document A/CONF.67/C.1/L.18, which did not confer excessive powers on the host State but took due account of the necessity for tripartite relations. The sending State and the host State should co-operate to achieve their common objective, namely, fulfilment of the organization's goals. To be sure, the mission of the sending State was not accredited to the host State, but to the organization. However, it was not the organization but the host State which granted the privileges and immunities. For that reason, it was only right to take account of the interests both of the grantor of the privileges and immunities and of the grantee. It was obvious that the purely bilateral relations between the accrediting State and the receiving State, as codified in the Vienna Convention Diplomatic Relations, could not be compared with the concept of relations between the sending State and the host State. It should be remembered, however, that the Vienna Convention to which the draft articles referred frequently established a fair balance between the interests of the grantor of privileges and immunities and interests of those to whom they were granted. What should be established in part II of the draft convention was the fair balance between the interests of the grantor and the grantee of privileges and immunities.

14. Paragraph 2, subparagraph (a), of the amendment in document A/CONF.67/C.1/L.18 enshrined the principle of tripartite relations by introducing the concept of tripartite consultation. The sponsors of that amendment did not dispute the fact that the mission was accredited to the organization, and they took due account of the respective interests of the grantor and the grantee of privileges and immunities. For that reason, the Japanese delegation fully supported the draft amendment in document A/CONF.67/C.1/L.18 and the subamendment relating thereto submitted by the French delegation (A/CONF.67/C.1/L.35).

15. Mr. WOLSKI (Poland) considered that the amendment proposed by Canada and the United Kingdom (A/CONF.67/C.1/L.18) was out of place in the future convention. In giving the host State the right to declare a member of a mission not acceptable, the amendment introduced an innovation. It brought in a notion which related to an entirely different sphere, that of bilateral diplomacy. That was the opinion which the United Nations Legal Council had expressed at the 1016th meeting of the Sixth Committee on 6 December 1967, and that had always been the Organization's practice. The amendment in question seemed to be based on the idea that the sending State might abuse its freedom. In his view, bad faith on the part of the sending State should not be assumed. It was in the interests of every State to contribute to the development of international co-operation, and it was with that in view that it appointed the members of its missions. To enable the members of missions to perform their functions efficiently, it was essential that the sending State should have the right freely to choose and appoint them. Moreover, it was important to protect not only the interests of the host State, but also those of other States and of the international organizations. It should be noted, furthermore, that the draft convention contained provisions on the settlement of possible disputes. Consequently, the Polish delegation could support neither the Canadian and United Kingdom amendment (A/CONF.67/C.1/L.18), nor that of the United States of America (A/CONF.67/C.1/L.28).

16. Mr. APRIL (Canada), speaking as a sponsor of the amendment in document A/CONF.67/C.1/L.18, stressed the fact that his delegation resolutely supported the principle enshrined in the International Law Commission's article 9. He pointed out, however, that that article had no counterpart: the right of the sending State freely to appoint the members of the mission was not counterbalanced by a right of the host State to declare a member of the mission not acceptable. That was a serious omission, which several States had pointed out in their written comments, and which the amendment in document A/CONF.67/C.1/L.18 aimed precisely at remedying. If the future convention was to be viable, it was essential for it to accord some protection to the host State under article 9. It should be remembered that the term "host State" referred not only to States which were currently host States, but also to all those which might become such.

17. To justify that omission in its draft, the Commission placed emphasis on a basic principle of interna-

tional law: unlike the case bilateral diplomacy, the members of a permanent mission were not accredited to the host State and did not enter into direct relationship with it. None the less it was the host State which accorded to the members of the mission the privileges and immunities they enjoyed. That second basic principle of multilateral diplomatic law should not be disregarded: it constituted the juridical basis for the draft amendment in document A/CONF.67/C.1/L.18. The International Law Commission's reasoning would be acceptable if it were the organization which accorded the privileges and immunities. Not only was that not the case, but the organization itself enjoyed privileges and immunities only because the host State accorded them to it. Hence the ILC reached a conclusion which the premises did not justify, because it had overlooked a basic factor in the problem.

18. In bilateral law, the receiving State could declare a person not acceptable because it was that State which accorded to that person immunity from its jurisdiction; it was therefore normal that it should be able to protect itself against the abuse of immunities. The Canadian delegation did not understand why that balancing element was absent from multilateral diplomatic law. It hoped that the host State, which accorded privileges to the members of a mission, would, in return, be able to safeguard its public order and guarantee its security in an effective manner. According to present practice in multilateral diplomacy, as codified in several headquarters agreements, the host State could protect itself. Among such agreements, he cited the agreement between the United Nations and the United States of America, the International Labour Organisation and Switzerland, the International Atomic Energy Agency (IAEA) and Austria, and the United Nations Educational, Scientific and Cultural Organization and France. It could not therefore be claimed, as the Argentine representative had done, that the draft amendment in document A/CONF.67/C.1/L.18 would establish a new rule. If the future convention were not to contain such a rule, it would not reflect present practice, nor would it promote the progressive development of international law. The provision prepared by the Commission would not be universally applicable and it would give rise to more problems than currently existed.

19. The headquarters agreement between the International Civil Aviation Organization and Canada recognized fully the Canadian authorities' right to protect the country's security. If the future convention deprived the host State of that right, Canada would doubtless hesitate to ratify an instrument that accorded it less extensive protection than the headquarters agreement in force. The amendment in document A/CONF.67/C.1/L.18 was necessary to the proper balance of the future convention, and it was because it wished to see a viable convention adopted that the Canadian delegation, jointly with the United Kingdom delegation, had submitted that amendment.

20. Mr. CAMCIGIL (Observer for the International Atomic Energy Agency) said that the preparatory work of the ILC and its Commentaries to the draft articles seemed to indicate that it had meant to produce a work

of codification. However, a tendency to consider the future convention as a tripartite arrangement between the sending State, the host State and the organization was now noticeable. That tendency had led the Conference to adopt an amendment to article 2, paragraph 1, and certain delegations to submit amendments to article 9 which had been issued under the reference numbers A/CONF.67/C.1/L.18 and L.28. In each case, the aim was to protect the interests of the host State. He pointed out, on the one hand, that those interests were protected by the headquarters agreements, and, on the other hand, that article 4 expressly recognized that the headquarters agreements would prevail over the future convention. When such agreements were negotiated, the host State defended its own interests and the organization defended both its interests and those of the member States. The draft convention had been prepared in accordance with practice and precedents, so that there was no need to worry over the situation of the host State. In that connexion, no dispute seemed to have marked the history of international organizations. It was also understood by the IAEA that the draft convention was based on a very different concept from the one which prevailed in bilateral diplomacy.

21. Mr. JOEWONO (Indonesia) said he considered it essential that the future convention, and in particular its article 9, should ensure a fair balance between the interests of the sending State, the host State and the organization. The principle of freedom of choice by the sending State of the members of the mission was very important, but it must not be prejudicial to the host State. A provision that disregarded the interests of the host State would be prejudicial not only to existing host States but also future ones. A State which became a host State could not be expected to renounce the right to take the necessary measures to protect its interests, in particular its security and public order. For that reason, the Indonesian delegation supported the amendments in documents A/CONF.67/C.1/L.18 and L.28, which provided for tripartite consultations. It was ready to support any amendment to that effect, which would establish a fair balance between the interests of the three parties concerned, but it had no preference for one wording over another.

22. Mr. RAČIĆ (Yugoslavia) supported the article 9 prepared by the ILC and subscribed to its reasoning. It appeared from articles 6 and 7 that the functions of missions did not extend to relations between the sending State and the host State. In the absence of direct relations between those two States, the institution of the *agrément* was therefore not justified.

23. That being the case, the two amendments submitted (A/CONF.67/C.1/L.18 and L.28) aimed at enabling a host State to declare a person not acceptable even before his arrival in the territory of that State. Those amendments were drafted in sufficiently vague terms to cover situations only remotely connected with the need to protect the national security of a host State. Thus, a person might be declared not acceptable because of past activities or statements of a political character. But the future convention was not supposed to

regulate diplomatic relations between States but relations between States and international organizations, and it would be regrettable if the work of the Conference produced such a result.

24. The two amendments under discussion were related to article 75. Provisions specifying that the member of a mission could not be considered as acceptable because of his activities or because of an abuse of his privileges and immunities could not be inserted in article 9, which dealt with the appointment of the members of the mission. In fact, those were cases that could not arise until after the appointment of a member of a mission. The Yugoslav delegation could not accept the amendments submitted.

25. The Yugoslav delegation, however, understood the reasons that had motivated those amendments. It recognized that the host State had to be protected when the presence of a member of a mission could be detrimental to its legitimate interests. It was for that reason that, at the 15th meeting of the Committee of the Whole, it had supported the amendment to article 22 submitted by the Austrian delegation (A/CONF.67/C.1/L.49), designed to oblige the organization to assist the host State in securing the discharge of obligations of the sending State in relation to privileges and immunities. The Yugoslav delegation was therefore prepared to consider, in connexion with article 75, any provision that expressly conferred on the host State the right to take action in case of serious offence or interference in its internal affairs.

26. Mr. KABUAYE (United Republic of Tanzania) pointed out that the ILC had deemed it wise to devote a special provision, article 75, to respect for the laws and regulations of the host State, so as to cover cases of abuse of privileges and immunities. In fact, the two amendments to article 9 merely reproduced, with some slight improvement (in so far as they provided for tripartite consultations), the content of article 75. His delegation was strongly opposed to those amendments, which were superfluous and could only lead to confusion. Article 15 concerning notifications which the sending State was required to give to the organization had been adopted by the Committee after a lengthy discussion. As a matter of courtesy, the organization transmitted to the host State the notifications referred to in paragraphs 1 and 2 of that article. That seemed to imply that a member of a mission might arrive before the host State had been informed thereof by the organization. In such a case, a person could not be declared not acceptable before his arrival. What was more, in the amendments under consideration, the words "is no longer acceptable" seemed to indicate prior approval. It was obvious that, generally speaking, the case of perpetrators of international offences would have to be left aside; that case was the subject of special treatment.

27. His delegation was in favour of the principle of tripartite consultations, which could not but strengthen understanding and co-operation between the parties. In its view, the Commission's article 9 should not be changed, but the idea of tripartite consultations might be introduced into article 75. If the amendments under

consideration were put to the vote, his delegation would ask for a separate vote on the last phrase of subparagraph 2(a) of paragraph 2 of document A/CONF.67/C.1/L.28 and on the corresponding provision in document A/CONF.67/C.1/L.18.

28. Mr. RAJU (India) said that his delegation approved of the International Law Commission's version of article 9. It could not support the amendment in document A/CONF.67/C.1/L.18, which reproduced the corresponding provisions of the Vienna Convention on Diplomatic Relations. Those provisions were out of place in a convention concerning multilateral relations. In fact, the members of permanent missions to international organizations were not accredited to the host State and did not enter into direct relationship with it. Moreover, the amendment in document A/CONF.67/C.1/L.28 introduced the principle of *persona non grata*, whereas in his delegation's view, the interests of the host State were already satisfactorily protected by the provisions of articles 81 and 82 and paragraph 2 of article 75. Consequently, his delegation would vote in favour of the International Law Commission's text.

29. Mr. SUY (Legal Council of the United Nations) said that, as the representative of the Secretary-General, he could not declare for or against the amendments submitted to article 9; he would confine himself to a procedural aspect. The amendments in question provided that the host State should organize consultations with the sending State and the organization. That tripartite character of the consultations did not, however, correspond to existing practice or law. On that subject, members of the Committee had cited various texts and treaties but, as far as the organization was concerned, the basic text remained the headquarters agreement—for example, the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations.⁵ Section 13 of that Agreement dealt with a question at present before the Committee, namely the obligation laid upon the permanent representatives and members of the missions as well as upon the members of the Secretariat of the Organization to respect the laws and regulations in force in the United States; but according to that same section, in paragraph (b), subparagraph 1, "No proceedings shall be instituted under such laws or regulations to require any such person to leave the United States except with the prior approval of the Secretary of State of the United States. Such approval shall be given only after consultation with the appropriate Member in the case of a representative of a Member (or a member of his family) or with the Secretary-General" in the case of a member of the Secretariat. He emphasized that the Secretary-General intervened only in the case of a member of the secretariat.

30. With regard to practice, it was a fact that whenever the host State wished to take measures against a member of the mission of a sending State, the host State informed the organization of the measures contemplated and the reasons for such action, so as to enable the organization to apply the provisions stated

⁵ General Assembly resolution 169 B (II).

in article 22 of the draft convention and to make sure that the action contemplated by the host State was in conformity with the provisions of the headquarters agreement.

31. It was difficult for the organization to intervene in that situation. But there were other solutions, including recourse to article 22 which the Committee had adopted, and according to which "The Organization shall, where necessary, assist the host State in securing the discharge of obligations of the sending State concerning privileges and immunities under the present Convention". That provision should suffice to meet the requirements but, if the problems remained unsolved, it would still be possible to have recourse to the procedures provided for in articles 81 and 82. Moreover, he had not heard in the course of the debate any argument which justified a more active participation of the organization in the event of a dispute between the host State and a sending State concerning a member of a permanent mission. Further, when the Committee had considered article 14, it had rejected an amendment aimed at organizing tripartite consultations and had preferred to adopt the International Law Commission's text without mentioning a procedure implying a commitment of the organization. Consequently, he wished to stress the point that it would be extremely difficult, if not impossible, for the organization to intervene in relations between host States and sending States.

32. Mr. CALLE Y CALLE (Peru) said he thought that article 9 clearly stated the principle of the freedom of the sending State to appoint the members of the mission. The Commission's commentary to article 9 (see A/CONF.67/4) said on that subject that the freedom of choice by the sending State of the members of the mission was a principle basic to the effective performance of the functions of the mission. There was thus no question of innovating but of recognizing the principle whereby the choice of the persons best fitted to represent the State was a matter for the internal law of the sending State. In that respect, neither the organization nor the host State played any role in the process of appointment, which was not subject to the *agrément* of the organization or of the host State, unlike what happened in the case of bilateral diplomatic relations. That was why article 9 differed fundamentally from the corresponding articles of the Vienna Convention on Diplomatic Relations and the Convention on Special Missions. In addition, relations between member States and international organizations did not have the same political character as relations between States. The sending State did not consult the organization and did not request its consent for the appointment of a member of its mission. It merely notified the organization of the action it was taking.

33. It seemed that, during the debate, too much importance had been attached to the tripartite character of the relations which existed *de facto* in that respect but which had no juridical basis. Moreover, the International Law Commission's commentary to article 9 showed that that provision had not given rise to a diversity of views but, on the contrary, had been the subject of unanimous agreement. His delegation was

therefore in favour of adopting the International Law Commission's text.

34. It could not support the amendment in document A/CONF.67/C.1/L.18, which introduced the idea of *persona non grata* and provided for the legal consequences of that situation. Without denying that problems might arise in practice, it thought they could be solved otherwise than by establishing a rule whereby the host State would have the right to declare a member of a mission not acceptable and to refuse to recognize that person as a member of the mission. The ILC had nevertheless provided safeguards for the host State in the provisions relating to the size of the mission and the nationality of the members of the mission.

35. The amendment in document A/CONF.67/C.1/L.28 dealt with the abuse of privileges and immunities by a member of a mission and provided for the organization of tripartite consultations. But the Legal Counsel had pointed out that that provision did not correspond to existing practice or law. Further, while article 22 did not suffice to solve the problems, the question of the violation of the laws and regulations in force in the host State and of the abuse of privileges and immunities was provided for in article 75 and articles 81 and 82.

36. In his third report, the Special Rapporteur cited the opinion of one expert, according to which:

"The representatives of Members, however, are not accredited to the Government of the United States in any way. . . . Representatives of Members to the United Nations have no business to transact with the United States. Representatives to meetings of the General Assembly or to other organs of the United Nations bear credentials which are scrutinized by those organs. Permanent delegates, although they present their credentials to him, are not accredited to the Secretary-General for this would imply control and the right to reject persons appointed by Members. No such right had been conceded by the sovereign Members to the Secretary-General." *

* See Leo Gross "Immunities and Privileges of Delegations to the United Nations", in *International Organization*, vol. XVI, No. 3 summer 1962, p. 491.⁶

37. If the organization itself did not enjoy the right to give or refuse its *agrément* to the appointment of a member of a mission, that applied all the more to the host State. In bilateral diplomatic relations, the receiving State had certain powers because it had a role to play, but since that role was not accorded in multi-lateral relations to international organizations, the latter could not avail themselves of the powers in question.

38. With reference to the comments by Finland on article 9 (see A/CONF.67/WP.6, p. 55), he said he agreed with the idea there expressed that "it should be prevented that the host State could practically dictate the composition of the staff of the mission or the delegation", while taking into consideration the criticism made by some States with regard to the absence of provisions on the possibility of declaring a person *non grata*.

⁶ See Yearbook of the *International Law Commission*, 1968, vol. II, document A/CN.4/203 and Add.1-5, p. 136.

39. His delegation did not subscribe to the subamendment in document A/CONF.67/C.1/L.35, as the words "is not acceptable" were equivalent to the expression "*persona non grata*", in the case of persons who did not have diplomatic status. His delegation would therefore vote against the two amendments and the subamendment to article 19, and in favour of the International Law Commission's text.

40. Mr. TODOROV (Bulgaria) said he thought that the ILC had recognized, in article 9—one of the most important in the draft convention—the fundamental difference that existed between permanent missions to international organizations and traditional diplomatic missions in the case of which the freedom of the sending State to choose the members of its mission was limited by the rules relating to *agrément*. Those rules could not, and should not, apply to the permanent missions to international organizations, since their representatives were not accredited to the host State and did not enter into direct relationship with it.

41. He drew the Committee's attention to paragraph 3 of the International Law Commission's commentary to article 9 (see A/CONF.67/4), according to which, in the case of bilateral diplomacy, "the diplomatic agent is accredited to the receiving State in order to perform certain functions of representation and negotiation between the receiving State and his own. That legal situation is the basis of the institution of *agrément* for the appointment of the head of the diplomatic mission". He also wished to emphasize that, while basing himself on the provisions of the Vienna Convention on Diplomatic Relations in the matter of privileges and immunities, the Secretary-General was unable to apply some of its provisions—such as those relating to *agrément*, nationality or reciprocity—to the situation of representatives to the United Nations. How, for instance, in the case of relations between the sending State and the organization, could the right of intervention be accorded to a third party—by consent of the host State?

42. His delegation could not support the amendments to article 9 and would vote in favour of the International Law Commission's text, which was in conformity with a well-established practice.

43. Mr. LANG (Austria) stressed the need to establish a balance between the rights and obligations of host States, sending States and organizations. In some cases, the host State should have the right to compel a member of a permanent mission to leave its territory. It might happen that a host State declared *persona non grata* a member of a diplomatic mission who for some time past had not paid his debts and that, despite the action taken by the host State, that person, as a member of a mission to an international organization of universal character, remained in the territory of the host State. His delegation therefore saw no reason why the members of permanent missions to international organizations should enjoy more favourable treatment than the members of diplomatic missions, and it thought that no consideration of functional necessity could justify such different treatment.

44. His delegation welcomed with satisfaction the idea that the organization should have a role to play in the case of abuse of privileges and immunities by a mem-

ber of a permanent mission. Having regard to the provisions of the headquarters agreements between Austria and the International Atomic Energy Agency and the United Nations Industrial Development Organization, his delegation was prepared to agree to the organization of consultations between sending States and host States before a member of a mission was requested to leave the territory of the host State. In view of the extreme complexity of the procedures provided for in articles 81 and 82, it seemed essential to provide for a swift and effective procedure which would enable friendly relations between States to be preserved and would prevent the action of one individual from assuming undue proportions and causing serious friction between States.

45. Mr. SOGBETUN (Nigeria) said that for the time being he could not commit himself one way or the other on the amendments submitted, but thought that they presented a certain interest. The host State was entitled to ensure its national security but it should show tolerance. In that connexion, he cited the basic principle of United Kingdom criminal law, under which a man was presumed to be innocent until he was found guilty. If it were proved that a member of a mission had abused his privileges and immunities, the host State was entitled to declare him not acceptable even before he arrived in its territory.

46. To overcome the difficulties which had arisen during the debate, he proposed replacing paragraph 2 of article 75 by the following:

"2.(a) In case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from jurisdiction, the sending State shall, at the request of the host State, recall him, terminate his functions with the mission or the delegation;

"(b) The host State may, after consultation with the sending State and the Organization, notify the sending State and the organization that any member of the mission is not acceptable on the grounds that he has previously abused his privileges in the host State. A person may be declared as [personally] unacceptable before arriving in the territory of the host State;

"(c) If the sending State refuses or fails within a reasonable period to recall or terminate the functions of the person concerned, after due consultation the host State may refuse to recognize that person as a member of the mission."

47. He also proposed replacing article 9 by the following text:

"Subject to the provisions of articles 14, 72 and 75, the sending State may freely appoint the members of the mission."

48. His delegation could only accept a text which contained provisions to that effect.

49. The CHAIRMAN pointed out that the Nigerian representative had submitted his amendment after the time-limit fixed for the submission of amendments had expired.

The meeting rose at 1.05 p.m.