

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

Vienna, Austria  
4 February - 14 March 1975

Document:-  
**A/CONF.67/C.1/SR.28**

**28th meeting of the Committee of the Whole**

*Extract from Volume I of the Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

meetings of organs of international organizations were held in places where a sending State had neither a diplomatic mission nor a permanent mission but did have a consular post. In such cases, the delegation could communicate with the sending State through the consular bag, which was provided for in article 35 of the 1963 Vienna Convention on Consular Relations.<sup>3</sup>

50. The second part of the United Kingdom amendment concerned paragraph 4 of the article and related to the procedure to be followed when the authorities of the host State had reason to believe that the delegation's bag was being misused. It would replace the present paragraph 4 by a text which was similar to that which had been proposed by Kuwait (A/CONF.67/C.1/L.54) as an amendment to article 27 on freedom of communication for permanent missions; that amendment had been adopted at the 18th meeting by 37 votes to 8, with 21 abstentions. It was unnecessary to repeat the arguments expressed at that meeting of the Committee by the delegations of Kuwait and other countries; he needed only to say that those arguments were equally valid in the context of article 58. He hoped that his delegation's proposal would receive the same support as the amendment by Kuwait to article 27.

51. Mr. MEISSNER (German Democratic Republic) said that article 58 was based on the premise that any restriction of freedom of communication could be a serious obstacle to the performance of the functions of a permanent mission or of a delegation.

52. The purpose of privileges and immunities was not to benefit individuals but to ensure the efficient performance of the functions of a mission or a delegation. On that premise, his delegation could not possibly accept the proposal, embodied in the United Kingdom amendment, that a mere belief on the part of the authorities of the host State would constitute a legal basis for taking measures that could seriously hinder the performance of the duties of representatives of States in their relations with international organizations. The proposed amendment would open the door to restrictive measures based on purely subjective considerations. It was significant that neither the 1961 Vienna Convention on Diplomatic Relations<sup>4</sup> nor the 1969 Convention on Special Missions contained any provision on the lines now proposed by the United Kingdom delegation.

<sup>3</sup> United Nations, *Treaty Series*, vol. 596, No. 8638, p. 261.

<sup>4</sup> *Ibid.*, vol. 500, No. 7310, p. 95.

53. For those reasons, he urged the Committee to reject the United Kingdom amendment.

54. Mr. DOREN (Israel) said that the system embodied in the Austrian amendment (A/CONF.67/C.1/L.84) would work out quite well in practice for the outgoing bag of a delegation but not for an incoming bag because the courier bringing it from the sending State would not be able to have in advance the authentication mentioned in the amendment. The proposed amendment would thus seem to be capable of creating difficulties and he would welcome some clarification on that point from its sponsor.

55. Mr. ESSY (Ivory Coast) said that the Austrian amendment, which was intended to deal with a practical problem, could be of assistance to countries which did not have a mission at the site of the conference or meeting. It was his feeling, however, that the matters dealt with in the Austrian amendment were more in the nature of practical measures to be taken by the authorities of the host State to facilitate the work of delegations. In the case of international meetings at Abidjan, for example, it was customary to provide delegations with forms issued by the Ministry of Foreign Affairs to enable them to send couriers at any time.

56. In view of those considerations and bearing in mind the fact that couriers were invariably sent in cases of urgency, he was inclined to feel that the Austrian proposal would introduce an element of complication and that the matter was perhaps best left to be settled in practice by means of arrangements made by the competent authorities of the host State.

57. Mr. RAOELINA (Madagascar) said that, apart from the complications to which the previous speaker had referred, the Austrian amendment had the drawback of conferring upon the officials of the organization or of a conference secretariat what amounted almost to supranational powers. Official documents issued by sovereign States would have to be countersigned by an official of the organization or secretariat concerned in order to take effect.

58. On those grounds of practice and of principle, his delegation would be unable to support the Austrian amendment.

59. As to the United Kingdom amendment (A/CONF.67/C.1/L.89/Rev.1) his delegation would welcome further clarification on the extent to which that amendment would be of assistance to States which had no mission at the place of meeting.

*The meeting rose at 1 p.m.*

## 28th meeting

Tuesday, 25 February 1975, at 3.15 p.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 58 (Freedom of communication) (concluded)*  
(A/CONF.67/C.1/L.84, L.89/Rev.1)

1. Mrs. SLÁMOVÁ (Czechoslovakia) said that article 58 proposed by the International Law Commission (ILC) (see A/CONF.67/4) was worthy of considerable attention. In the interest of adopting the right solu-

tion it was therefore necessary that the article itself and the amendments to it should have certain objectives. With this in mind, the Czechoslovak delegation asked the Expert Consultant in particular on what the ILC had based itself in formulating the text of the article; in connexion with the comment made by the United Kingdom delegation on its amendment (A/CONF.67/C.1/L.89/Rev.1), it wished to know why the Commission had mentioned consulates in paragraph 1 of article 58, and not in paragraph 3. Was it perhaps because consular mail could be opened?

2. In regard to the United Kingdom amendment to paragraph 4, the Czechoslovak delegation agreed with the position of the German Democratic Republic, since it could not in any way agree with any limitation on the inviolability of a delegation's mail.

3. Mr. EL-ERIAN (Expert Consultant) said that the aim of article 58 was to accord to delegations as complete as possible a freedom of communication, because such freedom was indispensable to the performance of their functions. Delegations had to communicate not only with their Governments, but also sometimes with permanent diplomatic missions, permanent missions, permanent observer missions, special missions and consular posts. That was why consular posts were mentioned in paragraph 1. He did not think that any significance should be attached to the fact that consular posts were not mentioned in paragraph 3. The International Law Commission's commentary (see A/CONF.67/4) did not, in any case, contain any information on that subject.

4. Mr. TANKOUA (United Republic of Cameroon) said he would be able to accept the amendment by Austria to paragraph 6 (A/CONF.67/C.1/L.84), subject to clarification of the exact meaning of the words "authenticated by the Organization or the secretariat of the Conference". He assumed that they meant that the courier of the delegation would be the holder of an identity document issued by the organization or the secretariat of the conference and intended for presentation to the Customs authorities. He could also accept the United Kingdom amendment to paragraph 3 (A/CONF.67/C.1/L.89/Rev.1), since the delegation of a State which did not have a diplomatic mission, but only a consular post, in the host country should be able to use the bag of the consular post to send or receive mail.

5. On the other hand, he would vote against the United Kingdom amendment to article 58, paragraph 4 (A/CONF.67/C.1/L.89/Rev.1), although a similar provision had been introduced into article 27. He considered that the situation of a delegation to an organ or a conference was entirely different from that of a permanent mission. It was obvious that, in the case of a fairly short conference, the return of the bag to the sending State might prevent the participation of the delegation in the conference, by depriving it of its Government's instructions.

6. Mr. AVAKOV (Union of Soviet Socialist Republics) said he considered article 58 to be very important. Freedom of communication was connected with the inviolability of the premises and of the archives and documents, and it was an essential condition for the efficient performance of the functions of the delegation.

The ILC had based itself on existing practice when drawing up article 58; in practice, the delegation used the diplomatic bag or a special courier. He thought that the inviolability of the bag was a very important issue, and that the adoption of the Kuwaiti amendment to article 27 (A/CONF.67/C.1/L.54) should not automatically entail the inclusion of the same formula in article 58, as had been claimed by the representative of the United Kingdom. The argument that the notion of the diplomatic bag was badly defined, in particular with regard to dimensions, appeared to him unconvincing, since it was impossible to specify the dimensions of the bag in advance. Moreover, those dimensions had nothing to do with the abuses that could be committed. He therefore shared the view of the Czechoslovak representative and of all those who had spoken against the amendments to article 58. The International Law Commission's text seemed to him to be well-balanced and he would vote for it.

7. Mr. CALLE Y CALLE (Peru) said that article 58 was extremely important, as was article 27, which, however, had been the subject of a very rapid consideration. The amendment by Kuwait to article 27, paragraph 3 (A/CONF.67/C.1/L.54) had been adopted without having been sufficiently discussed. The Committee now had before it a similar amendment, submitted by the United Kingdom to article 58, paragraph 4 (A/CONF.67/C.1/L.89/Rev.1). That amendment ought, therefore, to be considered with the greatest care.

8. In his opinion, the principle of the freedom of communication, set forth in articles 27 and 58 of the draft convention, was one of the most absolute principles of the representation of States. In that connexion, the ILC had based itself on article 27 of the Vienna Convention on Diplomatic Relations.<sup>1</sup> It had stated in paragraph 2 of its commentary to article 27 (see A/CONF.67/4) that "Missions to the United Nations, the specialized agencies and other international organizations enjoy in practice freedom of communication on the same terms as the diplomatic missions accredited to the host State", namely, without any restriction. It was on that analogy between permanent missions to the international organizations and the diplomatic missions that all the work of the ILC was based. That was a case of a principle that was already recognized within the United Nations. The Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies<sup>2</sup> both provided that the members of permanent missions should enjoy exactly the same privileges and immunities as the members of diplomatic missions, in particular with regard to "facilities in respect of communications". He recalled that when the draft convention on diplomatic relations had been considered in Vienna in 1961, the Special Rapporteur, in introducing the International Law Commission's text, had envisaged the possibility that the bag might be opened. That had been followed by a long debate on the interests of the accrediting State and the receiving State, which led to the conclusion that the absolute inviolability of the diplomatic bag was indispensable to the per-

<sup>1</sup> United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

<sup>2</sup> General Assembly resolutions 22 A (I) and 179 (II).

formance of the functions of the mission. The Swiss lawyer, Philippe Cailler, though belonging to a host State, had reached the same conclusion. In affirming the principle of the inviolability of the diplomatic bag, the ILC had set forth a principle which respected the representative character of the mission or of the delegation and the absolute independence which the representatives of States should enjoy for the performance of their functions. In that connexion, article 27 of the Vienna Convention on Diplomatic Relations had established a right and a practice. It had not created a new rule; it had only taken up a long-standing and generally admitted rule of international customary and written law. That right had been curtailed in the Vienna Convention on Consular Relations,<sup>3</sup> but that was because the functions of consuls were fairly limited. On the other hand, the principle of the absolute inviolability of the bag had been proclaimed anew in article 28, paragraph 4, of the Convention on Special Missions.<sup>4</sup> The ILC had reaffirmed that same principle in articles 27 and 58 of the present draft convention. Governments had submitted no written comments on those two articles, except for the United Kingdom, which had proposed adding to article 27 a new paragraph of an essentially practical character (A/CONF.67/WP.6, p. 78), a proposal that it had not repeated, moreover, in the form of an amendment during the consideration of article 27.

9. By introducing a restriction to the inviolability of the bag, the United Kingdom amendment to article 58, paragraph 4, would deprive delegations of the right to refuse to open the bag, since it was quite obvious, as the representative of the United Republic of Cameroon had said, that if the bag was returned to the sending State, the delegation would remain without its Government's instructions and could not therefore participate usefully in the conference.

10. He considered that if the Conference really wanted to help codify international law, it should reaffirm, without any restriction, the principle of the absolute inviolability of the bag laid down in the Vienna Convention on Diplomatic Relations. The bag remained inviolable; it could neither be opened nor detained, and any inspection would constitute a derogation from that principle and from the practice followed in the matter.

11. On the other hand, the United Kingdom amendment to article 58, paragraph 3, which provided for the mention of consular posts as well, was entirely acceptable, because a fair number of countries represented at conferences did not have permanent diplomatic missions in the host country.

12. With regard to the amendment by Austria to article 58, paragraph 6 (A/CONF.67/C.1/L.84), he thought that the proposed authentication procedure, far from resolving the problem, was liable, on the contrary, to create difficulties at the time of the entry of the courier. He would, therefore, abstain in the vote on that amendment.

13. He urged the Committee not to distort, by restricting it, a principle which was essential to the free

representation of States. He requested a roll-call vote on the United Kingdom amendment to article 58, paragraph 4 (A/CONF.67/C.1/L.89/Rev.1).

14. Mr. RICHARDS (Liberia) said he thought that the provision proposed in the amendment in document A/CONF.67/C.1/L.84 would be difficult to apply in practice. The expression "official document" described a document issued by the competent authority of the sending State, without its being necessary to add to it the details proposed by the Austrian delegation.

15. Mr. KHASHBAT (Mongolia) said he had doubts about the advisability of the paragraph 4 proposed by the United Kingdom in document A/CONF.67/C.1/L.89/Rev.1. The basic principle of the freedom of communication, which was generally accepted, should be proclaimed and applied without ambiguity. The rare cases of abuse of infringements could not justify a weakening of that principle. For that reason, the Mongolian delegation supported the text prepared by the ILC and asked that the two parts of the United Kingdom amendment should be put to the vote separately.

16. With regard to the Austrian amendment (A/CONF.67/C.1/L.84), it introduced a requirement which could only be a source of difficulties. Moreover, that amendment would entail an increase of work for the secretariats of the organizations or conferences, which were already overburdened.

17. Mr. OSMAN (Egypt) said that the question dealt with in the amendment in document A/CONF.67/C.1/L.84 related rather to the practical and administrative arrangements which a host State and the secretariat of the organization or the conference should make. That amendment would unnecessarily overload the text of article 58, paragraph 6.

18. The Egyptian delegation was not opposed to the addition of the words "of a consular post" to paragraph 3 of the article under consideration, as proposed by the United Kingdom delegation (A/CONF.67/C.1/L.89/Rev.1). With regard to the new paragraph 4 proposed in the same document, he considered that, although the Committee of the Whole had accepted a similar amendment to article 27, that new wording was not suitable in the case of delegations, whose existence was essentially temporary. The amendment imposed an excessive requirement, which could be a source of difficulties for delegations.

19. Mr. MARESCA (Italy) said he thought the Austrian amendment (A/CONF.67/C.1/L.84) had the merit of specifying that the organization had not only rights but also duties. The organization could not be thought of as solely a beneficiary; it had a duty to see to it that the bag of the delegation was respected. Unlike a permanent mission, a delegation had no direct relationship with the territorial law, and its bag was in a different situation.

20. With regard to the United Kingdom's amendment (A/CONF.67/C.1/L.89/Rev.1), he considered that the addition proposed to paragraph 3 filled a gap in the International Law Commission's text. Among the means of communication to which the delegation might have recourse, there was unquestionably the consular post, which had the right to have its own bag.

<sup>3</sup> United Nations, *Treaty Series*, vol. 596, No. 8638, p. 261.

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

21. As regards the new paragraph 4 proposed in the United Kingdom amendment, he noted that the provision was taken over from the 1963 Vienna Convention on Consular Relations, in which the inviolability of the diplomatic bag was not absolute. It might happen that the host State had such serious suspicions that the sending State could not object to the opening of the bag. If the suspicions of the host State were unfounded, the latter need only present its apologies to the sending State. The rule contained in the new paragraph 4 proposed by the United Kingdom had been wrongly omitted from the other codification conventions. In any case, that rule had a place in the future convention, since the members of a delegation were not subject to the procedure of *agrément*. Moreover, that rule did not enable the host State to interfere in the affairs of the sending State, since it was laid down that it only applied when the host State had reason for believing that a bag contained articles other than those intended for the official use of the delegation. The host State would confine itself to determining the nature of those articles, without trying to penetrate their secrets. Confidence had to reign between States, and when it was absent it had to be re-established.

22. Mr. ZEMANEK (Austria) withdrew his delegation's amendment (A/CONF.67/C.1/L.84), which seemed to constitute a source of difficulty for delegations. He pointed out, however, that in the absence of an express provision which would have facilitated the sending of couriers by delegations, thanks to the authentication of official documents by the organization or the secretariat of the conference, the Austrian authorities would apply the same practice to delegations as to diplomatic missions and permanent missions. According to that practice, the documents which accompanied the courier or the diplomatic bag had to be authenticated by the Ministry for Foreign Affairs of the host State. If the host State was not in a position to make such authentication because it had not received the necessary notifications, the courier or the bag would not be able to leave Austrian territory. It was thus the sending State that would suffer from the difficulties that might arise.

23. Mr. MOLINA LANDAETA (Venezuela) said he was anxious about the trend of the work. The large number of amendments submitted were liable to distort little by little the content of the draft convention. When article 27 had been considered and the delegation of Kuwait had submitted its amendment, the Venezuelan delegation had refrained from intervening in the debate. That amendment had been adopted by 34 votes to 8, with 21 abstentions, including that of the Venezuelan delegation. Now that another delegation was proposing a similar amendment to article 58, he wanted to warn the Committee against substantive modifications of the International Law Commission's text, which would run the risk of making the future convention unacceptable for some countries. The amendment under consideration would have the effect of modifying an established principle of international law, which the ILC had never contemplated weakening. The only derogation from that principle had been admitted in the very special case of

consular relations, but in the draft convention under consideration the ILC had returned to the general principle. The amendment by the United Kingdom delegation (A/CONF.67/C.1/L.89/Rev.1) was not in keeping with the process of codification of international law.

24. The Venezuelan delegation would not, however, see any objection to the introduction into article 58, paragraph 3 of the expression "*de un puesto consular*", or still better "*de una oficina consular*", which was the expression appearing in the Vienna Convention on Consular Relations, as was proposed in the first part of the United Kingdom amendment. In any case, the Venezuelan delegation would vote against the proposed new paragraph 4, because it could not agree to the restriction of the principle of inviolability of the bag. Its position with regard to the addition to paragraph 3 would depend on the result of the vote on paragraph 4.

25. Mr. PESHKOV (Byelorussian Soviet Socialist Republic) said that freedom of communication was an essential prerequisite for the equal participation of all the member States in the activities of an international organization. The United Kingdom amendment seemed to detract from that principle. It should not be forgotten that the existence of the delegations to which part III of the draft referred would be limited to only a few days or a few weeks. If the bag were to be detained, as provided in the amendment under consideration, those delegations might then be deprived of the documentation they required for participation in the work of the organ or of the conference to which they had been sent. It went without saying that such a result would be contrary to the objectives of the organization and would be an obstacle to the participation of the States members in the activities of the organization. The amendment under consideration (A/CONF.67/C.1/L.85/Rev.1), which on the whole likened the delegation's bag to the personal baggage, dealt with in article 66, paragraph 2 of the draft, was unacceptable. The Byelorussian delegation would therefore support the International Law Commission's article 58.

26. Mr. MITIĆ (Yugoslavia) said that, for the reasons already explained by his delegation, he could not support the new paragraph 4 proposed in the United Kingdom amendment. He was, however, in favour of adding the words "of a consular post" in paragraph 3.

27. Mr. DO NASCIMENTO E SILVA (Brazil) said that he shared the misgivings voiced by other delegations concerning the new paragraph 4 proposed in the amendment in document A/CONF.67/C.1/L.89/Rev.1, since its effect would be to reduce to nothing a rule of international law which had taken a long time to become accepted.

28. The amendment to paragraph 3 seemed useful in the event of a conference being held in a locality where the sending State did not have a diplomatic mission but only a consulate. If, in that case, a delegation used the bag of a consular post, article 35 of the Vienna Convention on Consular Relations would apply. According to that provision, the consular bag could be opened if there were serious suspicions as to the nature of its contents. Nevertheless, as some members of the

Committee had pointed out, that article applied to the performance of consular functions and not to the very different case of the functions of delegations. Other members had observed that it was not a question, as far as the sending State was concerned, of giving instructions to a diplomatic mission, but simply to a delegation. In some cases, however, the instructions given to a delegation might be even more important than those given to a diplomatic mission. That applied, in particular, to the instructions sent to a delegation to the Security Council. Such instructions called for very special protection. For that reason, he appealed to those delegations that might be prepared to accept the amendment to paragraph 3 to reconsider their position. If that amendment were adopted, it would entail, in practice, acceptance of the amendment to paragraph 4.

29. Mrs. MIRANDA (Cuba) pointed out that in providing in paragraph 3 of article 58 for the possibility of using the means of communication of a consular post, the amendment in document A/CONF.67/C.1/L.89/Rev.1 modified the International Law Commission's text in a quite inappropriate manner, for it had not been owing to an oversight that the Commission had omitted to mention in that paragraph the means of communication of the consular post. Moreover, the proposed amendment to paragraph 3 was on a par with the proposed amendment to paragraph 4, in which the bag of the delegation was assimilated to the consular bag. Despite the apparently positive aspect of the amendment to paragraph 3, her delegation was unable to accept it, and would therefore vote against the amendment in document A/CONF.67/C.1/L.89/Rev.1 as a whole.

30. Mr. KUZNETSOV (Union of Soviet Socialist Republics), citing the Vienna Convention on Diplomatic Relations and the Convention on Special Missions, maintained that "The diplomatic bag shall not be opened or detained", and that the principle of the inviolability of the bag counted as one of the most important privileges and immunities. He saw no reason why a different régime should be applicable, for example, to delegations to the present Conference, as was provided in the United Kingdom amendment. What difference was there between special missions and delegations to organs or to conferences? While the former were sent to one or more countries, the latter were sent to an organ or to a conference. He could not understand how, while being inviolable, the bag could be opened, which would be the effect of the amendment in A/CONF.67/C.1/L.89/Rev.1.

31. Article 58 was based on the principle of the absolute inviolability of the bag and on the principle that the sending State was honest. Any State that proposed to act dishonestly would find means other than the bag for carrying out its plan. The amendment in document A/CONF.67/C.1/L.89/Rev.1 was supposed to be modelled on article 35 of the Vienna Convention on Consular Relations, but since that Convention had been ratified by only a very small number of States, his delegation considered that the precedent invoked carried very little weight.

32. Some representatives had referred to the fact that the bag was sometimes used to transport heroin and hashish. Of course, he deplored that use, but States which engaged in those activities could perfectly well use the diplomatic bag of an embassy for the purpose. If the host State opened a bag and found nothing suspicious, it would have to apologize to the sending State. He wished to say, however, that in the case of the Soviet Union, there would be no occasion for any host State to apologize, for his country would never allow its bag to be opened.

33. From the practical angle, if the authorities of the host State requested the opening of the bag of a delegation arriving to attend a meeting of an organ or a conference of short duration, the delegation concerned would necessarily refuse; if that bag contained anything really suspicious, it would prefer to return it to the sending State, and if the bag did not contain anything suspicious, it would refuse to submit, for reasons of principle, to such procedures. What would that delegation then do after being deprived of the documentation it needed in order to participate in the meeting of an organ or a conference? In his delegation's view, the amendment in document A/CONF.67/C.1/L.89/Rev.1 was based on a presumption of culpability on the part of the sending State and made it possible to create artificial difficulties for a delegation, which would no longer be able to perform its functions normally.

34. His delegation considered that the International Law Commission's text was the only reasonable one and it would therefore vote against the amendment in document A/CONF.67/C.1/L.89/Rev.1.

35. Sir Vincent EVANS (United Kingdom) said he thought that the Conference should take account of the realities of life and the interests of the host State. Some representatives had claimed that the United Kingdom amendment was a trap, but he could only note that he had heard no really serious argument against it. Unfortunately, it was well known that bag services were from time to time abused. The representative of the Soviet Union had himself referred to the smuggling of drugs. There were also cases of smuggling of currency notes and even arms. No member of the Committee who had spoken on the question had denied the existence of such abuses. But according to them, the host State should tolerate them, even if its security or interests were at stake. In his view, that showed a lack of realism, and the amendment was aimed at introducing an appropriate procedure to deal with such situations.

36. His delegation recognized the importance of freedom of communication and had absolutely no intention of impairing that freedom. But it was difficult seriously to maintain that the procedure envisaged in its amendment, and which the Committee had deemed acceptable in the case of article 27, constituted a threat to freedom of communication. In its view, if the authorities of the host State requested the opening of a bag in circumstances in which its suspicions were not well founded, there was no reason why the delegation concerned should not co-operate with them.

37. Mr. MOLINA LANDAETA (Venezuela) proposed that the United Kingdom amendment to paragraph 4 of article 58 (A/CONF.67/C.1/L.89/Rev.1) should be put to the vote first, so that delegations could take a decision on the amendment to paragraph 3 in the light of the results of the first vote.

38. The CHAIRMAN invited the Committee to vote on the amendment to paragraph 4 of article 58 (A/CONF.67/C.1/L.89/Rev.1).

*At the request of the Peruvian representative, a roll-call vote was taken.*

*Czechoslovakia, having been drawn by lot by the Chairman, was called upon to vote first.*

*In favour:* Denmark, France, Germany (Federal Republic of), Greece, Ireland, Israel, Italy, Kuwait, Liberia, Netherlands, Norway, Sweden, Switzerland, United Kingdom, United States of America, Australia, Austria, Belgium, Canada.

*Against:* Czechoslovakia, Egypt, El Salvador, German Democratic Republic, Guatemala, Holy See, Hungary, Iraq, Lebanon, Libyan Arab Republic, Mali, Mexico, Mongolia, Morocco, Niger, Pakistan, Peru, Poland, Romania, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Cameroon, United Republic of Tanzania, Venezuela, Yugoslavia, Zaire, Argentina, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Colombia, Cuba.

*Abstentions:* Finland, India, Indonesia, Ivory Coast, Japan, Khmer Republic, Madagascar, Malaysia, Nigeria, Oman, Philippines, Qatar, Republic of Korea, Republic of Viet-Nam, Spain, Thailand, Turkey.

*The amendment was rejected by 34 votes to 19, with 17 abstentions.*

39. The CHAIRMAN put to the vote the amendment to paragraph 3 of article 58 (A/CONF.67/C.1/L.89/Rev.1).

*The amendment was adopted by 41 votes to 14, with 13 abstentions.*

40. The CHAIRMAN put to the vote article 58, as amended.

*Article 58, as amended, was adopted by 57 votes to none, with 14 abstentions.*

41. The CHAIRMAN said that article 58 would be referred to the Drafting Committee.

42. Mr. WERSHOF (Canada) said that his delegation had voted in favour of the amendment to paragraph 4 in document A/CONF.67/C.1/L.89/Rev.1, which was a reasonable proposal, but had abstained in the vote on article 58 as a whole. Since the Committee had adopted the Kuwait amendment to article 27, his delegation had assumed it would proceed according to the same logic in the present case. He wished to point out that the provisions of the Vienna Convention on Diplomatic Relations relating to privileges and immunities did not represent the last word on the subject.

43. Mr. SMITH (United States of America) said that his delegation had voted in favour of the United Kingdom amendment in document A/CONF.67/C.1/L.89/Rev.1 and abstained in the vote on article 58 as a whole, because it had considered that the amendment was reasonable and that its adoption would be in keeping with the decision taken at the time when article 27 had been considered. The Committee now found itself in the strange situation of having accorded greater privileges to delegations than to permanent missions. His delegation was disturbed by the allegations of some members that the real purpose of the United Kingdom amendment had been concealed from the Committee. It had already had occasion to refer to the importance of good faith in international relations, and it wished to repeat, in the present instance, that without good faith anything that the Conference might accomplish would be of no more than minor value.

44. Mr. PHOBA DI M'PANZU (Zaire) said that his delegation had abstained in the vote on article 58, as amended, and wished to stress that the principle of the inviolability of communication constituted a guarantee of the satisfactory functioning of an embassy, consulate or delegation. The International Law Commission's commentary to article 58 (see A/CONF.67/4) contained no reference to the last sentence of paragraph 1 and, while stipulating that the bag of the delegation should not be opened or detained, had omitted to deal with the problem of radio communication. But the sending State was sometimes required to obtain the consent of the host State to install a wireless transmitter or to use a given frequency or wavelength. Thus the host State could manage to pick up messages sent by the sending State to its delegation, and it was a fact that the Vienna Conventions on Diplomatic Relations and on Consular Relations, and the Convention on Special Missions had been frequently violated on that point. He wondered, therefore, whether the present convention was not also liable to suffer the same fate.

45. Mr. ESSY (Ivory Coast) said he had abstained in the vote on the amendment to paragraph 4 of article 58. His delegation upheld the principle of the inviolability of freedom of communication and thought that observance of that principle should be ensured on the basis of mutual trust between States.

46. Mr. VON KESSEL (Federal Republic of Germany) said he had voted for the amendment in document A/CONF.67/C.1/L.89/Rev.1 for the same reasons as those given by the Canadian representative. He had abstained in the vote on article 58 as a whole, as he had been unable to accept an illogical situation where two articles dealing with analogous questions did not contain similar provisions. Such a situation merely increased the risk of making the Convention unacceptable.

47. Mrs. DAHLERUP (Denmark) said that she had voted in favour of the amendment in document A/CONF.67/C.1/L.89/Rev.1 and had abstained in the vote on article 58 as a whole, because she considered that the same rules ought to apply to permanent missions and to delegations.

*Article 59 (Personal inviolability) (A/CONF.67/4, A/CONF.67/C.1/L.92, L.94, L.96)*

48. Mr. BABIY (Ukrainian Soviet Socialist Republic) said that the personal inviolability provided for in article 59 of the draft convention was an essential condition for the performance of a delegation's functions and constituted a fundamental principle of diplomatic law. Many delegations were keenly interested in the question and deemed it essential that a provision relating thereto should be included in the draft convention.

49. The amendment which his delegation had submitted (A/CONF.67/C.1/L.92) was based on the proposal it had made when the Committee had considered article 28 (A/CONF.67/C.1/L.58). The Committee had decided, at the time (19th meeting), that article 59 should include provisions similar to the ones contained in the amendment in document A/CONF.67/C.1/L.58, and had finally adopted, for article 28, the compromise proposal submitted orally by the Egyptian representative for the insertion after the word "prevent" of the words "prosecute and punish".

50. Therefore his delegation's amendment to article 59 textually reproduced the Egyptian oral amendment to article 28. The purpose of its proposal relating to article M of the annex, concerning the personal inviolability of observers, was to enable them to enjoy the same protection as delegations.

51. Sir Vincent EVANS (United Kingdom), before introducing his delegation's amendment to article 59 (A/CONF.67/C.1/L.94), said that it was necessary, to begin with, to know the precise purpose and tenor of the article under consideration. He therefore asked the Expert Consultant to explain what was meant by the first sentence of article 59, which article preceded two others dealing, respectively, with inviolability of private accommodation and property, and immunity from jurisdiction.

52. In the first sentence of article 59 it was said: "The persons of the head of delegation and of other delegates and members of the diplomatic staff of the delegation shall be inviolable", and in the second sentence it was added: "They shall not be liable to any form of arrest or detention". It might therefore be wondered what the first sentence added to the second. If reference were made to the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies, it would be noted that, according to those Conventions, representatives certainly enjoyed immunity and inviolability, but not complete and personal inviolability or an inviolability other than that which enabled them to escape all form of arrest or detention. He would therefore ask the Expert Consultant to explain what was added by the first sentence of article 59.

53. Mr. EL-ERIAN (Expert Consultant) replied that, in drafting article 59, the ILC had not based itself on the Convention on the Privileges and Immunities of the United Nations, but more especially on the Convention on Special Missions, which contained provisions on the inviolability of the members of special missions.

54. Sir Vincent EVANS (United Kingdom) said he did not quite understand what the scope of the first sentence of article 59 would be and he thought it should be deleted. The International Law Commission's text was of course modelled on the 1961 Vienna Convention on Diplomatic Relations and on the Convention on Special Missions. But his Government thought it possible to depart from the text of those conventions in the case of delegations to organs or to conferences. The Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies determined the extent of the privileges and immunities to be enjoyed by the representatives who participated in meetings, and there seemed to be no reason for departing from those precedents, the more so as several delegations had stressed, during the consideration of article 59, that the ILC should base itself as much as possible on existing practice.

55. In adopting the Convention on the Privileges and Immunities of the United Nations in 1946, the General Assembly had made it clear that the privileges and immunities of the United Nations were, as a general rule, to be regarded as a maximum within which the specialized agencies were to enjoy the privileges and immunities needed for the performance of their functions, and that they should not request privileges and immunities that were not really necessary. The United Kingdom Government was of the opinion that the extent of the privileges thus defined had proved satisfactory in practice and that it was advisable to keep to those provisions. Accordingly, he was proposing an amendment to article 59 (A/CONF.67/C.1/L.94), providing for the replacement of the first two sentences of that article by the following: "The head of delegation, other delegates and members of the diplomatic staff of the delegation shall enjoy immunity from personal arrest or detention and from seizure of their personal baggage". In the view of the United Kingdom delegation, those were the only essential matters which should be included at the beginning of article 59.

56. Mr. SURENA (United States of America) said that his delegation did not at all agree, at that stage of the discussion, to the consideration of article M of the annex at the same time as article 59, as envisaged in the Ukrainian amendment (A/CONF.67/C.1/L.92). From paragraph (5), subparagraph (a) of the general comments of the ILC concerning article A of the annex (see A/CONF.67/4) it appeared that the term "observer delegation" related to a very small number of delegations, namely those that participated in conferences in the most passive manner without the right to speak or to distribute documents. If that was in fact the meaning of the Commission's comment, the scope of article A of the annex would have to be clearly determined before article M could be considered. He would therefore be glad if the Expert Consultant would give some explanations on that point and he reserved the right to speak again later.

57. Mr. EL-ERIAN (Expert Consultant), replying to the question of the representative of the United States of America, observed that the term "delegate" was

defined, in paragraph 1 (19) of article 1, as “any person designated by a State to participate as its representative in the proceedings of an organ or in a conference”. It was the word “participate” which expressed the criterion adopted by the ILC for defining delegates. In the corresponding provision relating to observer delegations (*ibid.*, article A (e)) the term “observer delegate” was used to mean “any person designated by a State to attend as an observer the proceedings of an organ or of a conference”. It would be seen that, in that definition, there was no reference to a State not member of the organization, a condition which was specified in the case of the “permanent observer mission” defined in paragraph 1 (7) of article 1; the criterion of State not member had therefore not been retained in the case of observer delegates referred to in the annex.

58. The representatives of States to organs or to conferences were delegates or observer delegates, as the case might be. To consider one possible situation: if a State that was a member both of the organization and of the organ concerned sent a representative, the latter would obviously be a delegate. But it might happen that a State which was a member of an organization was not a member of the organ, as for example the Security Council. Such representatives sometimes participated in the work of organs or of conferences as quasi-observers, as had occurred for instance at the session of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, held at Mexico City. He agreed that the general comments of the ILC at the beginning of the annex (*ibid.*, paragraph (5), subparagraph (a))

allowed for some ambiguity, since they related to active participation or to passive attendance at meetings. Actually, a distinction should be drawn between participation as full members in the formulation and taking of decisions, on the one hand, and participation by delegates who simply attended meetings but who might have documents distributed, on the other.

59. In another situation—that of States not members of the organization—it might happen that a non-member State participated in certain meetings of an organ—as in the case of elections to the International Court of Justice—and the representatives of that State would then have to be considered as delegates. Lastly, it might happen that a non-member State sent representatives to observe the proceedings of an organ, and that case was covered by the annex.

60. To sum up, provision had to be made in the draft for the situation of temporary observers; and, although the present wording of the International Law Commission's text was a little ambiguous, it nevertheless made it possible to cover most cases.

#### Statement by the Chairman

61. The CHAIRMAN announced that the delegations which wished to be able to sign the convention to be adopted by the Conference should communicate their credentials to the Secretariat, if they had not already done so. In conformity with the Organization's practice, the Final Act could be signed by duly accredited delegates, without their necessarily possessing full powers.

*The meeting rose at 6.05 p.m.*

## 29th meeting

Wednesday, 26 February 1975, at 10.55 a.m.

Chairman: Mr. NETTEL (Austria).

*In the absence of the Chairman, Mr. Wershow (Canada), Vice-Chairman, took the Chair.*

**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 59 (Personal inviolability) (continued) (A/CONF.67/4, A/CONF.67/C.1/L.92, L.94, L.96)*

1. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation had re-examined the relationship of the articles in the annex with part III of the draft articles submitted by the International Law Commission (ILC) (see A/CONF.67/4), in the light of the comments made by the Expert Consultant at the end of the previous meeting and in the light of the International Law Commission's general comments on the draft art-

icles in the annex (*ibid.*). It was the understanding of his delegation that the great majority of observer delegations would be covered by the provisions in part III of the convention; only in very exceptional cases would the status of such delegations have to be regulated by the provisions in the annex. Accordingly, his delegation suggested that the scope of the definitions in article 1, paragraph 1, subparagraphs 9 and 10 should be enlarged in such a way as to render the annex entirely superfluous and to ensure that the provisions in part III applied to all observer delegations. If the Committee could adopt that suggestion many procedural difficulties would be avoided.

2. His delegation also had the impression that many delegations wished the privileges and immunities provided for in part III to be confined to those a delegation would require in order to be able to perform its functions. It suggested, therefore, that the Committee should consider the possibility of deciding that under part III all delegations, both delegations proper and