

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

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**32nd meeting of the Committee of the Whole**

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## 32nd meeting

Thursday, 27 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 61 (Immunity from jurisdiction) (A/CONF.67/4, A/CONF./67/C.1/L.69, L.95)*

1. Mr. MAAS GEESTERANUS (Netherlands), introducing his delegation's amendment to article 61 (A/CONF.67/C.1/L.95), recalled that the International Law Commission (ILC) had originally prepared two drafts for the article, as explained in its commentary (see A/CONF.67/4). Article 61 was based on the International Law Commission's alternative A. His delegation's amendment was largely based on the International Law Commission's alternative B; it did not constitute a completely new text.

2. In his delegation's view, it was sufficient to provide for immunities in respect of all acts performed in the exercise of official functions. Alternative A had been based on the Convention on Special Missions,<sup>1</sup> but the activities of delegations to conferences were not concerned with relations between the sending State and the host State but with the aims and procedures of an international organization. A functional approach should therefore be adopted to the question of immunities. Furthermore, rules governing the immunities of delegations already existed both in the Convention on Privileges and Immunities of the Specialized Agencies.<sup>2</sup> There was no need to deviate from those rules to the extent contemplated in article 61.

3. His delegation did not regard the extension to delegations of privileges and immunities beyond those necessary for the performance of their functions as being a progressive development of international law. Unnecessary privileges and immunities might easily be used for the personal benefit of the members of delegations to which a growing number of persons, including officials of international organizations, could lay claim. The creation of a fairly numerous privileged group from which the local population was excluded was a matter of concern to the public authorities in host countries, as had been correctly pointed out, nowadays all States were potential host States. It was an anomaly in modern society where classes were tending to disappear.

4. In paragraph 5 of his amendment (A/CONF.67/C.1/L.95) the intention was not to limit immunity with regard to criminal jurisdiction but only with regard to civil and administrative jurisdiction in connexion with claims for damages. The text reflected the decision taken by the Committee in accepting the United King-

dom amendment (A/CONF.67/C.1/L.61) to article 30, paragraph 1, subparagraph (d).

5. Mr. HAQ (Pakistan), introducing his proposal to delete paragraph 1, subparagraph (d) of article 61 (A/CONF.67/C.1/L.69), said that he was aware that it had already been discussed in connexion with article 30. The intention was to restrict the jurisdiction of the host State in cases of accidents occurring outside the performance of official functions. Limitation of immunity in such cases would put members of delegations at the mercy of the host State with regard to claims for damages. In some countries, insurance companies accepted liability only up to a certain limit above which the claim lay against the person concerned in the accident. Moreover, it was difficult to draw the line between official and unofficial activities: the text of paragraph 1, subparagraph (d) was vague and paragraph 5 of the Netherlands amendment (A/CONF.67/C.1/L.95) was unduly rigid.

6. Mr. KUZNETSOV (Union of Soviet Socialist Republics) said that he could not support the Netherlands amendment (A/CONF.67/C.1/L.95) which unduly restricted the grant of immunity from jurisdiction. He was, however, in favour of the Pakistani proposal (A/CONF.67/C.1/L.69).

7. Mr. PREDA (Romania) agreed with the reasons given in paragraph 4 of the International Law Commission's commentary to article 61 for preferring alternative A (see A/CONF.67/4). He particularly endorsed the view that delegations to organs and conferences occupied, in the system of diplomatic law of international organizations, a position similar to that of special missions within the framework of bilateral diplomacy.

8. He felt, however, that the provisions of paragraph 1, subparagraph (d), which restricted immunity with regard to accidents, might be abused by third parties or insurance companies. He therefore supported the Pakistan proposal to delete that subparagraph.

9. Mr. SMITH (United States of America) supported the Netherlands amendment (A/CONF.67/C.1/L.95). He agreed with the Netherlands representative that the provisions of article 61 and other articles would tend to create a privileged class, which would be ironic in view of the present concern for equality. Furthermore, there had been no indication that immunities granted in conformity with paragraph 105 of the Charter of the United Nations had proved inadequate. Paragraph 5 of the Netherlands amendment, which was in line with the amended version of article 30 adopted by the Committee, would provide for a limitation of immunity to deal with an increasingly common problem, having regard to the number of automobile accidents.

10. Mr. FODHA (Oman) said that the wording of article 61, particularly its paragraph 1, subparagraph

<sup>1</sup> General Assembly resolution 2530 (XXIV), annex.

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

(d), required further clarification. It was difficult to define official duties precisely and the effect might be to give a diplomat two kinds of status, one official and the other unofficial, with the result that the principles of immunity itself would be undermined. Concern for the victims of accidents was not a reason for inserting the subparagraph which did not increase their chances of obtaining compensation since that depended on the relevant insurance regulations. He therefore supported the Pakistan proposal to delete the subparagraph.

11. Mr. DO-HUU-LONG (Republic of Viet-Nam) said that paragraph 1, subparagraph (d) was not an essential provision in the case of delegations to conferences. During a short stay, delegates would either rent cars or use vehicles belonging to their permanent delegations or embassies, all of which would be appropriately insured. He therefore supported the Pakistan proposal to delete the subparagraph. He also supported paragraphs 1 to 4 of the Netherlands amendment (A/CONF.67/C.1/L.95).

12. Mr. GÜNEY (Turkey) said that in general the existing article, which was based on a selective merger of the pertinent provisions of the Convention on Special Missions and the provisions in part II of the convention under consideration, provided adequate protection for delegations. Paragraph 1, subparagraph (d), however, provided for an important exception to immunity from civil jurisdiction, which had no precedent in the Vienna Convention on Diplomatic Relations.<sup>3</sup> In most countries, victims of automobile accidents had a direct claim against the insurer. The phrase "where those damages are not recoverable from insurance" would introduce an undesirable element of doubt and he therefore supported the Pakistan proposal to delete the subparagraph.

13. The Netherlands amendment (A/CONF.67/C.1/L.95) was based on the draft, alternative B (see A/CONF.67/4, foot-note 162), which had finally been discarded by the ILC. The immunities granted in the existing text were better suited to modern requirements and more in line with recent developments in the codification of diplomatic law. His delegation could not therefore support the Netherlands amendment.

14. Mr. RITTER (Switzerland) said that he sympathized with the idea underlying the Netherlands amendment (A/CONF.67/C.1/L.95) and considered that functional need was the correct criterion for privileges and immunities. With regard to criminal jurisdiction, however, which so closely affected the personal dignity of the delegate, he was of the opinion that immunity should be complete and not limited to acts performed in the exercise of official functions. He therefore proposed, as an oral subamendment, the following reformulation of paragraph 1 of the Netherlands amendment:

"The head of delegation and other delegates and members of the diplomatic staff of the delegation shall enjoy immunity from the criminal jurisdiction of the host State, and immunity from its civil and

administrative jurisdiction in respect of all acts performed in the exercise of their official functions."

15. Mr. MAAS GEESTERANUS (Netherlands), accepted the oral subamendment proposed by the Swiss representative.

16. Mr. RAJU (India) said that the International Law Commission's article 61 was similar to the corresponding article 31 of the Convention Special Missions, but paragraph 1, subparagraph (d) was a useful and realistic innovation and his delegation could not support the Pakistan proposal to delete it (A/CONF.67/C.1/L.69). The Netherlands amendment (A/CONF.67/C.1/L.95), on the other hand, was too restrictive in character, and he therefore supported the International Law Commission's text.

17. Mr. CALLE Y CALLE (Peru) said that, generally speaking, he was in favour of uniformity of status for the representatives of States whether they belonged to permanent missions, delegations or observer delegations. There were, however, some points of difference between permanent and temporary appointments. With regard to immunities, he felt that the exceptions provided for in paragraph 1, subparagraphs (a), (b) and (c) were not very relevant in the case of a delegate staying for only a few weeks. He therefore thought there was some merit in the simplified text of the Netherlands amendment (A/CONF.67/C.1/L.95). The essential elements of that text had already been considered by the ILC and it was similar to article O of the annex relating to observer delegations. That was appropriate in view of the close similarity between delegations and observer delegations. The Swiss subamendment was useful because it separated criminal jurisdiction from civil and administrative jurisdiction.

18. With regard to the Pakistan amendment to paragraph 1, subparagraph (d), it was true that after considerable discussion, the ILC had removed certain safeguards from paragraph 1, subparagraph (d) and from the corresponding provision of article 30, which it could be argued should be retained in order to protect delegations from excessive claims and problems of insurance cover. However, since the ILC had adopted the text for article 61 which had been preferred by the majority, he would uphold that choice and abstain from the vote on the amendments.

19. Mr. MARESCA (Italy) said that one of the basic principles of the rules governing the representation of States to international organizations was that the privileges and immunities granted to such representatives should be in keeping with their functional requirements. To require a host State to provide safeguards over and above those needed for the proper functioning of delegations would be excessive. The Netherlands amendment (A/CONF.67/C.1/L.95) took account of that fact and was, therefore, acceptable to his delegation. By distinguishing between the criminal, and the civil and administrative jurisdictions of the host State, the Swiss subamendment improved the Netherlands text. Accordingly, it, too, was acceptable to his delegation. After a long discussion, the participants in the United Nations Conference on Diplomatic Intercourses and

<sup>3</sup> United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

Immunities had decided that immunity from civil and administrative jurisdiction should be accorded in the case of accidents. They had strongly recommended, however, that immunity should be waived in cases where an accident was caused by a vehicle used by a diplomat outside his official functions. As to the argument that it was difficult to differentiate between official and unofficial functions, it should be noted that, according to a decision of the European court in Luxembourg, car-driving was clearly not among the official duties of a diplomat. He hoped, therefore, that the Committee would adopt the Netherlands proposal, as subamended by Switzerland, and thus strengthen the idea that diplomats should be prepared to accept liability in a civil or administrative action.

20. Mr. WERSHOF (Canada) recalled that although the Committee had rejected the Pakistan delegation's amendment (A/CONF.67/C.1/L.69) to paragraph 1, subparagraph (d) of article 30—the provisions of which were identical with those of paragraph 1, subparagraph (d) of article 61—it had adopted the United Kingdom amendment to that article (A/CONF.67/C.1/L.61), as subamended by Peru. It was true that the Committee could vote in a certain manner when dealing with a clause applicable to permanent missions and in another manner when dealing with a clause applicable to delegations. In the case under discussion, however, unless it adopted the provision in paragraph 5 of the Netherlands amendment to article 61 (A/CONF.67/C.1/L.95) the Committee would be affording delegations greater immunities than permanent missions. That did not seem logical. In the opinion of his delegation, the Committee should take a clear decision on the question of immunity from actions for damages from the accidents referred to in paragraph 5 of the Netherlands amendment. Accordingly, if the Pakistan amendment (A/CONF.67/C.1/L.69) was put to the vote first and was rejected, his delegation would request a separate vote on paragraph 5 of the Netherlands amendment.

21. His delegation also supported the modifications proposed in paragraphs 1 to 4 of the Netherlands amendment, as subamended by Switzerland, and would vote in favour of them. Several speakers had argued that, by adopting alternative A, which was based on article 31 of the Convention on Special Missions, the ILC had acted wisely. It should be noted, however, that alternative B was based on article IV, section 11, of the Convention on the Privileges and Immunities of the United Nations, an instrument which many countries had ratified and the provisions of which had been in force longer than those of the Convention on Special Missions. The immunities accorded under alternative B, and under the Netherlands amendment, were more than adequate in relation to the needs and functions of a delegation to a conference.

22. Mr. MOLINA LANDAETA (Venezuela) said that the effect of the Netherlands amendment, as subamended by Switzerland, was to place the Committee in the same situation the Commission had been in when it had to choose between alternatives A and B, for the text of the Netherlands amendment was almost identical

with that of alternative B while the Commission's text, apart from the provisions of paragraph 1, subparagraph (d), was identical with alternative A. Although his delegation had no objection to the Netherlands amendment, it had a preference for the text alternative A, because that text, like the Convention on Special Missions, represented a step forward in international practice. He agreed that members of delegations should enjoy immunity from the criminal jurisdiction of the host State. The question whether immunity from civil and administrative jurisdiction should be complete or subject to the exceptions listed in article 61, was, however, debatable. In that connexion, he was not convinced that the Peruvian representative's arguments concerning subparagraphs (a) and (b) of paragraph 1 were tenable. It was quite possible, for instance, that during the six-week period of the current Conference, certain representatives would encounter problems related to the provisions of those subparagraphs.

23. He could not agree with the proposal that subparagraph (d) should be deleted. In so far as the Commission's text of that subparagraph was concerned, however, it seemed necessary to determine the meaning the Commission had intended to give to the word "used". It would not be proper that a delegate driving a vehicle for his own pleasure should claim immunity in case of an accident. On the other hand, it would not be proper that a delegate who was a passenger in a chauffeur-driven hired car should be held responsible in case of an accident. He suggested, therefore, that in subparagraph (d) and in paragraph 5 of the Netherlands amendment, the word "used" should be replaced by the word "driven". His delegation had not yet decided whether it would support the Commission's text of the article or the Netherlands amendment, as subamended by Switzerland. In any case, it could not support the Pakistan amendment (A/CONF.67/C.1/L.69).

24. Mrs. SLAMOVA (Czechoslovakia) said that her delegation would be unable to support the Netherlands amendment, the purpose of which was to restrict the immunities accorded to delegations. The Swiss subamendment improved the text of the Netherlands amendment, but did not render it wholly satisfactory. On the other hand, the amendment submitted by the delegation of Pakistan was acceptable to her delegation.

25. Mr. PLANNA (Philippines) said that his delegation generally supported the Commission's text. In the case under consideration, however, the Pakistani amendment to the Commission's text had some merit. Adoption of that amendment would mean that delegates who were involved in road accidents and who were covered by insurance would not be detained in the host State because of civil or administrative actions for damages. Careful consideration should therefore be given to the Pakistani amendment.

26. Mr. EUSTATHIADES (Greece) said that even in the case of special missions it had appeared that there was no need to accord immunities over and above those required to enable members of the missions to function effectively. Thus, there was no reason why the Conference should be bound to accord fuller immunities to delegations. It should also be remembered that the Con-

ference was not engaged solely in a task of codification of pre-existing rules; the rules it was adopting were for the most part new rules. It was, therefore, the task of the Conference to ensure that the rules it adopted were realistic, while contributing to a realistic development of international law, and also that they might encourage more States to become host States. His delegation therefore viewed with sympathy the Netherlands amendment to article 61, particularly since the amendment was in line with version B of the Commission's draft and had been duly amended by the Swiss delegation, a liberal country which had much experience in that regard. There was no reason why members of delegations should be accorded immunity from civil and administrative jurisdiction for acts performed outside the exercise of their official functions. He assumed, however, that it was not the intention of the delegation of the Netherlands that diplomats forming a part of a delegation should lose the privileges and immunities they enjoyed under the Vienna Convention.

27. Mr. JOEWONO (Indonesia) said that there were merits in the amendments to article 61 submitted by the Netherlands and by Pakistan. After serious consideration, however, his delegation had come to the conclusion that the Commission's text on the article was the best. In that text, due account had been taken of the privileges and immunities necessary to enable a delegation to function effectively. Account had also been taken of the interests of the host State and of the victims of accidents. Accordingly, his delegation would vote for the Commission's text and abstain from the votes on the amendments.

28. Mr. BIGAY (France) said that the ILC had included paragraph 1, subparagraph (d) in article 61 in order to enable the victim of an accident caused by a vehicle used by a member of a delegation to obtain the financial compensation to which he was entitled. In that connexion, he noted that some delegations had stated that the exception provided for in paragraph 1, subparagraph (d) could be replaced by a provision enabling the victim of an accident to take direct action against the insurance company concerned, but nothing in the proposed convention made such direct action effective especially against insurance companies, which might try to use the delegate's immunity from jurisdiction as a pretext for not compensating the victim. Moreover, insurance companies were much more powerful than private individuals and could use every possible procedural device to delay the payment of compensation.

29. The text of paragraph 1, subparagraph (d) proposed by the ILC gave rise to some doubts because, in cases where the damages were recoverable from insurance, it did not specify how long the victim would have to wait until the insurance company decided to compensate him. Moreover, it provided that the member of the delegation would still enjoy immunity from civil and administrative jurisdiction if the accident occurred while he was performing the tasks of the delegation. It was, however, very difficult to draw a distinction between accidents occurring outside the performance and during the performance of the tasks of the delegation and, in

any case, such a distinction made absolutely no difference to the victim. In view of those considerations, his delegation could not support the text of the ILC and would vote in favour of the amendment proposed by the Netherlands delegation.

30. Mr. JELIĆ (Yugoslavia) said it was evident that the immunity from jurisdiction of the member of the delegation was not absolute. In accordance with article 61, such a person enjoyed immunity only from the criminal jurisdiction of the host State and, in some cases, also from its civil and administrative jurisdiction. Such a person did not, however, enjoy immunity from the jurisdiction of his own country. Moreover, the reason why members of delegations enjoyed immunity from the jurisdiction of the host State was that they were often in possession of important and confidential information vital to the interests of the sending State. That reason, which had been recognized in the 1961 Vienna Convention and in the Convention on Special Missions, was also valid in the case of delegations to organs and conferences. His delegation could therefore not support the Netherlands amendment. It would vote in favour of the Pakistani amendment, which would improve the text proposed by the ILC.

31. Mr. YAÑEZ-BARNUEVO (Spain) said that his delegation would vote in favour of the Commission's text of article 61 and could not support the Netherlands amendment because it considered that there was no reason to depart from what had been provided on that subject by the Convention on Special Missions.

32. In that connexion, he cited the case of *Stahel v. Bastid*, which had been decided by the Court of Civil Justice of the Republic and Canton of Geneva on 14 May 1971.<sup>4</sup> In that case, a personal claim had been brought by Mr. Stahel against Mr. Bastid, a member of the French delegation to the Governing Body of the International Labour Organisation and the Court of Civil Justice had decided that the immunity from jurisdiction enjoyed by the members of the Governing Body could be claimed during the meetings in which they had to take part, and for that reason the proceedings had been suspended.

33. With regard to the amendment proposed by Pakistan, his delegation was in a difficult situation because that amendment corresponded to the one his delegation and the Pakistan delegation had submitted in connexion with article 30, paragraph 1, subparagraph (d). Since delegations to conferences were, however, different from permanent missions, his delegation considered that part III could contain a provision along the lines of article 61, paragraph 1, subparagraph (d), and it would therefore abstain from the vote on the Pakistan amendment and vote in favour of the text prepared by the ILC.

34. Mr. ABDALLAH (Tunisia) requested the Expert Consultant to give some practical examples of cases when the member of the delegation was considered to be performing the tasks of the delegation and cases when he was not because his delegation was not sure to what extent the members of delegations would enjoy

<sup>4</sup> United Nations *Juridical Yearbook*, 1971 (United Nations publication, Sales No. E.73.V.1), p. 247.

immunity from the civil and administrative jurisdiction of the host State. For example, he wondered whether he, as a member of his country's delegation to the present Conference, would enjoy immunity from Austrian civil and administrative jurisdiction if he hired a car, which would, of course, be insured, and was involved in an accident where the damages were recoverable from insurance. Since it might be rather difficult to find suitable answers to those questions, his delegation would support the Pakistani amendment to delete paragraph 1, subparagraph (d) of article 61.

35. Mr. EL-ERIAN (Expert Consultant) said that it was indeed difficult to give practical examples of the cases to which the representative of Tunisia had referred because there were no specific criteria for determining exactly when the member of the delegation was acting in his official capacity and when he was not. It would therefore be necessary for the courts of the host State to decide on that matter according to the particular circumstances of the case.

36. Mr. SANGARET (Ivory Coast) said his delegation considered that, as stated in the first sentence of paragraph 1 of article 61, there could be no exception to the principle of immunity from the criminal jurisdiction of the host State. His delegation did, however, consider that there could be some exceptions to the principle of immunity from civil and administrative jurisdiction, as clearly stated in the second sentence of paragraph 1 of the International Law Commission's text. It had no difficulties with subparagraph (a) to (c), but as the representative of France had stated, difficulties could arise with regard to subparagraph (d) because it concerned the protection of the victim of an accident caused by a vehicle used by a member of a delegation. His delegation considered that it was important to ensure such protection and could therefore not support the Pakistani amendment to delete that subparagraph.

37. Having listened to the statement by the representative of France, his delegation also had some doubts with regard to insurance companies and wondered whether it would not be better to replace subparagraph (d) by the paragraph 5 of the Netherlands amendment (A/CONF.67/C.1/L.95). It therefore proposed separate votes on the various parts of the Netherlands amendment.

*Mr. Wershof (Canada), Vice-Chairman, took the Chair.*

38. Mr. HAQ (Pakistan) said that his delegation supported the Ivory Coast proposal for separate votes on the parts of the Netherlands amendment, provided that paragraph 5 would be voted upon first. His delegation could not support that paragraph of the Netherlands amendment because it considered that delegations attending conferences for a short time needed greater protection than members of permanent missions, who could be considered as residents of the host State.

Moreover, account should be taken of the fact that, in some accidents, the member of the delegation himself was the victim, not the party at fault. In view of those considerations, his delegation maintained its proposal for the deletion of paragraph 1, subparagraph (d) but would support the rest of the text prepared by the ILC.

39. Mr. PHOBA DI M'PANZU (Zaire) said that he understood the concern of delegations for the victim of an accident caused by a vehicle used by a member of a delegation outside the performance of the tasks of the delegation where the damages were not recoverable from insurance in whole or in part. It was, however, difficult to make a distinction between cases when a delegate was performing the tasks of the delegation and cases when he was not. Moreover, his delegation considered that the member of the delegation in question continued to perform his functions until he left the host State and returned to his own country and was of the opinion that, if the damages arising out of an accident were not recoverable from insurance, the protection of the victim could still be ensured because the host State could always refer the case to the Ministry of Foreign Affairs of the State whose delegation was involved. In view of those considerations, his delegation supported the Pakistani amendment to delete paragraph 1, subparagraph (d) and would vote against the Netherlands amendment.

40. Mr. GOBBI (Argentina) said that, on the whole, his delegation supported the text proposed by the ILC, but would be able to support the Netherlands amendment, as orally amended by the Swiss delegation, if the words "where those damages are not recoverable from insurance" were added at the end of paragraph 5 of the Netherlands amendment. It considered that insurance was a useful means of solving problems arising with regard to compensation for damages and that any claims concerning abuses by insurance companies could be settled by the internal law of the host State.

*Mr. Nettel (Austria) resumed the Chair.*

41. Mr. DORON (Israel) said that, with regard to the question of immunity from civil and administrative jurisdiction, a member of a delegation could be responsible for damages arising out of an accident caused by a vehicle which he had been using, although not driving himself. As the representative of Venezuela had stated, it would therefore be unfair to restrict the scope of paragraph 1, subparagraph (d) to cases where a delegate was driving the vehicle himself. During the discussion of article 30, paragraph 1, subparagraph (d) (19th meeting), it had been decided to add the words "or owned" after the word "used" in order to take account of the concern expressed by the representative of Peru and he suggested that the same wording should be used in the text of paragraph 1, subparagraph (d) of article 61.

*The meeting rose at 1 p.m.*