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.42

42nd 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)*

40. Mrs. THAKORE (India) thought that the proposed new article was logical since it corresponded to paragraph 1 (*d*) of article 30 in respect of missions and to paragraph 5 of article 61 in respect of delegations. It sometimes happened, that for one reason or another, the victim did not obtain damages from the insurance company. The new article would therefore fill a gap and contribute towards diminishing the risks of lawsuits between a diplomat and residents of the host State.

41. The Drafting Committee might consider incorporating the content of article 75 *bis* in article 75. Also, in the English version of that provision, the word "boat" should be replaced by the word "vessel".

42. Mr. CALLE Y CALLE (Peru) observed that some States obliged the owners of vehicles to take out a third-party liability insurance. To take account of that obligation, it would be expedient to introduce into the proposed article 75 *bis* the idea of ownership of the vehicle.

43. Mr. TEPAVAC (Yugoslavia), without declaring himself opposed to the new article, wondered whether it was really necessary. Article 75 stipulated that "it is the duty of all persons enjoying [such] privileges and immunities to respect the laws and regulations of the host State", which doubtless implied respect for the laws and regulations relating to third-party liability insurance.

44. Mr. FODHA (Oman) thought that article 75 *bis* was useful in that it completed and clarified the other provisions relating to accidents of which the members of a mission or a delegation might be victims in the performance of their functions. He would therefore vote for that provision.

45. Mr. MARESCA (Italy) recalled that the corresponding provision of the Vienna Convention on Consular Relations had been well received, because it was the necessary complement of certain provisions relating to privileges and immunities. Similarly, article 75 *bis* had its rightful place in the convention under consideration.

46. The CHAIRMAN said that, in the absence of objections, he would take it that the Committee of the Whole decided to adopt the new article 75 *bis* proposed by Belgium (A/CONF.67/C.1/L.62) and to refer it to the Drafting Committee.

It was so decided.

Article 76 (Entry into the territory of the host State) (A/CONF.67/4, A/CONF.67/C.1/L.140)

47. Mr. SMITH (United States of America), introducing his delegation's amendment (A/CONF.67/C.1/L.140), said that it had been submitted before the Committee of the Whole had considered and adopted article 75. In view of the form in which article 75 had been adopted, his delegation would not insist that a vote be taken on its amendment to article 76, but he suggested that the Drafting Committee should consider whether a modification to that effect would still be justified.

48. Mr. DORON (Israel) pointed out that, under paragraph 2 of article 76, "visas, when required, shall be granted as promptly as possible" to the persons concerned. That did not happen in practice, and the expression "as promptly as possible" might be a source of misunderstanding. For that reason, he proposed that it be replaced by the word "immediately" and that, at the end of the paragraph, the following words be added: "upon confirmation to the host State by the Organization or the conference concerned, that that person is one to whom paragraph 1 of this article applies".

The meeting rose at 5.55 p.m.

42nd meeting

Wednesday, 5 March 1975, at 8.50 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 76 (Entry into the territory of the host State) (*concluded*) (A/CONF.67/4)

1. Mr. SURENA (United States of America) said that the reasons given by the delegation of Israel (41st meeting) in support of its oral amendment to paragraph 2 were valid but its wording could be improved.

2. Accordingly, he proposed a subamendment to replace the word "immediately" by the words "in adequate time". That phrase would better reflect the idea that the host State should punctiliously fulfil its obligation to provide the necessary visas.

3. Mr. DORON (Israel) accepted the United States subamendment.

4. Mr. RICHARDS (Liberia) said that his delegation found both the original oral amendment and its subsequent revision unacceptable.

5. Mr. ALMODÓVAR SALAS (Cuba) said that the International Law Commission's text (see A/CONF. 67/4) was perfectly adequate to cover all essential requirements. His delegation would therefore vote against all attempts to alter it, even though on several occasions visas required by Cuban representatives to attend conferences or meetings of organs had not been granted either "immediately" or "in adequate time".

6. Mr. RAOELINA (Madagascar) said that the revised oral amendment was no improvement over the text of paragraph 2. It would have the effect of imposing burdens upon the organization in the matter of visas whereas it was for the sending State to apply directly to the host State for a visa for the representative concerned.

7. Mr. KUZNETSOV (Union of Soviet Socialist Republics) expressed his delegation's strong support for the International Law Commission's formulation of article 76, which was well balanced.

8. At the same time, he wished to express his delegation's impatience at the undesriable practice, at variance with the rules of procedure, of introducing oral amendments and subamendments without any notice. In the present case, he felt that the Israel delegation could well have submitted its amendment in writing in good time.

9. The CHAIRMAN said that the Committee had, until now, agreed to discuss oral amendments emerging from the discussion without observing the time-limit set for the submission of written amendments. It would be for the Committee to decide whether it wished to discontinue that practice.

10. Mr. SOGBETUN (Nigeria) noted that the oral amendment and its revision had been exhaustively discussed. He therefore moved the closure of the debate.

11. The CHAIRMAN said that, if no delegation asked for the floor to object to the motion, he would take it that the Committee agreed to close the debate on article 76.

It was so decided.

12. The CHAIRMAN put to the vote the Israel oral amendment, as revised, and the text of article 76.

The amendment was rejected by 31 votes to 15, with 11 abstentions.

Article 76 was adopted by 57 votes to none, with 2 abstentions.

13. Mr. TAKEUCHI (Japan), explaining his vote, said that his delegation had voted against the oral amendment because it required confirmation to the host State of the status of the person concerned "by the Organization or the conference". The introduction of that unnecessary requirement would complicate the granting of visas and impose burdens upon the secretariat of the conference or meeting.

Article 77 (Facilities for departure) (A/CONF.67/4, A/CONF.67/C.1/L.133)

14. Mr. YÁÑEZ-BARNUEVO (Spain), introducing his delegation's amendment to article 77 (A/CONF. 67/C.1/L.133), said that the International Law Commission's text differed in a number of significant respects from article 44 of the 1961 Vienna Convention on Diplomatic Relations [1] and article 45 of the 1969 Convention on Special Missions.[2]

15. First, there was the omission of the proviso "even in case of armed conflict"; secondly, the omission of the words "at the earliest possible moment" qualifying the verb "to leave".

16. An even more important difference was the omission of the second sentence which appeared in article 44 of the 1961 Convention and in article 45 of the 1969 Convention, which stated that the receiving State must, in case of need, place at the disposal of persons protected by privileges and immunities "the necessary means of transport for themselves and their property".

17. Since article 77 dealt with situations arising in multilateral diplomacy, it was understandable that such elements as the reference to armed conflict, which were more appropriate to situations arising in bilateral diplomacy, should have been dropped. However, the omission of the second sentence which had made it clear that the facilities referred to were essentially material travel facilities, altered the meaning of the first sentence.

18. In that situation, his delegation had felt that it would be going too far to maintain in the text the words "if requested" and therefore proposed the deletion of those words, so as to make it clear that the host State must be prepared to give the necessary facilities to the persons concerned without the need for any request.

19. Mr. HIRAOKA (Japan) orally proposed the insertion of a new opening phrase reading: "In case of emergency". That phrase would serve to indicate, as paragraph 3 of the commentary to the article (see A/CONF.67/4) made clear, that article 77 was intended to deal with such emergencies as a case of *force majeure* or the outbreak of hostilities affecting the situation at the headquarters of the Organization or at the place of meeting. As it now stood, it seemed to refer to normal cases.

20. Mr. SURENA (United States of America) asked the Expert Consultant to explain the consequences of the adoption of the Spanish amendment (A/CONF.67/C.1/L.133) which he thought might have been proposed partly because of a somewhat different meaning in Spanish of the word "facilities". As far as the original English text was concerned, the deletion of the words "if requested" would seem to detract from the clarity of the obligation placed upon the host State to grant certain facilities.

21. Mr. EL-ERIAN (Expert Consultant) said that the United States representative's understanding of the effect of removing those words was correct.

22. In its commentary, the International Law Commission (ILC) had made it clear that the text of article 77, although modelled on the precedents of the 1961 Vienna Convention on Diplomatic Relations and the 1969 Convention on Special Missions, had been couched in different language because it dealt with situations which were not similar to those encountered in bilateral relations.

23. Normally, the sending State did not need any help from the host State with regard to facilities for departure for the persons concerned. Situations could occur, however, where such help would be needed; in those cases, however, the sending State should request that help.

[1] United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.
[2] General Assembly resolution 2530 (XXIV), annex.

24. Mr. HAQ (Pakistan) said that, in the light of that explanation given by the Expert Consultant, his delegation could not accept the Japanese oral amendment which would confine the effect of article 77 to situations of emergency.

25. Furthermore, he proposed, as an oral amendment, that the opening words of article 77 should be redrafted to read: "The host State shall, if requested, normally grant all necessary facilities to enable persons. . .".

26. Mr. SURENA (United States of America) expressed surprise at that oral proposal, considering that the ILC had made it clear in its commentary that the purpose of article 77 was to deal with exceptional circumstances and not with normal situations, a fact which was taken into account by the Japanese oral amendment.

27. He requested the Pakistan delegation to explain the exact meaning of its amendment. If the intention was to specify that the host State should not place any obstacle in the way of the departure of the persons concerned, that point would seem to be already appropriately covered by the text of article 77 as it stood.

28. Mr. HAQ (Pakistan) pointed out that article 77 was entitled "Facilities for departure" without any indication that it referred only to situations of emeregency.

29. The purpose of his delegation's oral amendnment was to make it clear that, in all circumstances, whether normal or abnormal, it was the normal duty of the host State to grant the facilities in question.

30. Mr. EL-ERIAN (Expert Consultant) drew attention to the important verb "to enable" used in article 77. In normal situations, no formality would be needed to enable the persons concerned to leave. There would only be duties of courtesy, such as accompanying the person concerned to the airport.

31. He also pointed out that, in the commentary to article 77, and especially its paragraph 3, cases of emergency were cited only as an example of the situations in which the host State had a duty to grant facilities for departure. Difficulties with regard to the departure of a person could well occur in situations other than emergencies and article 77 should be broad enough to cover all those situations.

32. Mr. SOGBETUN (Nigeria) noted that the various issues at stake had been thrashed out during the discussion. He therefore moved the closure of the debate.

33. The CHAIRMAN said that, in accordance with rule 26 of the rules of procedure, he would offer the floor to two speakers opposing the motion.

34. Mr. YÁÑEZ-BARNUEVO (Spain) said that he wished to reserve the right to reply to the objections to the Spanish amendment (A/CONF.67/C.1/L.133) made during the discussion.

35. The CHAIRMAN said that, even if the motion for closure was carried, the sponsor of each amendment would, in accordance with the practice followed heretofore, be allowed to speak in order to withdraw or revise his amendment, or in exercise of the right of reply. If there were no other comments, he would take it that the motion of closure was carried.

It was so decided.

36. Mr. HAQ (Pakistan) said that, following the explanations given by the Expert Consultant, his delegation wished to withdraw its oral amendment.

37. Mr. HIRAOKA (Japan) withdrew his oral amendment.

38. Mr. YÁÑEZ-BARNUEVO (Spain) said that while his delegation would have opposed the Japanese oral amendment as unduly restricting the scope of article 77, it would have welcomed the amendment by Pakistan. Following its withdrawal, he would reintroduce it into what would now be his delegation's oral amendment, designed to replace the opening words of article 77 by following words: "The host State shall normally grant all necessary facilities to enable persons. . .".

39. That proposed rewording would, among other things, meet the preoccupations of the United States representative.

40. Mr. SURENA (United States of America), exercising his right of reply, said that the new Spanish proposal did not in any way meet the preoccupations of the United States delegation. In fact, if the Spanish revised oral amendment were to be adopted, new and greater difficulties would arise.

41. The CHAIRMAN put to the vote the Spanish oral amendment, as revised, and the text of article 77.

The amendment was rejected by 28 votes to 17, with 16 abstentions.

Article 77 was adopted by 61 votes to none, with 2 abstentions.

Article 78 (Transit through the territory of a third State) (A/CONF.67/4)

42. The CHAIRMAN observed that no amendments had been submitted to article 78.

43. Mr. PINEDA (Venezuela) drew attention to the concluding words of paragraph 1: "to ensure his transit or return". The corresponding provisions of article 40 of the Vienna Convention on Diplomatic Relations and article 42 of the Convention on Special Missions concluded with the words "or return to their country". His suggestion to the Drafting Committee would be simply to drop the words "or return" which were redundant in the context, since the term "transit" would cover both transit during a journey from the sending State to the host State and transit on a return journey.

44. The CHAIRMAN said that, if there were no further comments, he would take it that the Committee agreed to adopt article 78 on the understanding that the point raised by the Venezuelan representative would be referred to the Drafting Committee.

It was so decided.

Article 79 (Non-recognition of States or Governments or absence of diplomatic or consular relations) (A/CONF.67/4)

45. Mr. OSMAN (Egypt) said that he wished to place on record that his Government reserved its position on that article, since, in the way in which it was drafted, it did not take into consideration certain situations which—according to the Charter of the United Nations

—placed certain responsibilities and obligations on Member States that must be complied with.

46. Mr. KHASHBAT (Mongolia) said that article 79 dealt with some of the most complex problems of international law. The question of recognition of States and Governments was governed in contemporary international law by some definite rules, of which perhaps the most important was that of the sovereign equality of States. Those rules, enshrined in the Charter of the United Nations, partook of treaty law more than of customary law.

47. The recognition of States and Governments had been included by the ILC [3] as the first item in the list of topics selected by it for codification at its very first session in 1949. Unfortunately, the Commission had not undertaken work on that topic and, when it had reviewed its long-term programme of work in 1973, it had not given priority to the topic of recognition of States and Governments,[4] although it remained on its long-term programme of work.

48. In the course of its work on the codification of diplomatic and consular law, the ILC had given some attention to the impact on that law of the rules governing recognition of States and Governments. The Commission, however, had not seen fit to make provision for that question in the drafts which had served as a basis for the formulation of the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

49. In the draft articles now under discussion, the ILC had acted wisely in including the provisions of article 79, not only because the question of recognition was connected with the question of relations between States and international organizations but mainly because, in accordance with the principle of sovereign equality of States enshrined in the Charter of the United Nations, it was a rule of international law that no State could be denied the right to be represented at an international organization.

50. It was the strongly held view of his delegation that non-recognition of a State or Government should be branded as a breach of international law.

51. He drew attention to an error in the Russian text of the article, in which the word "government" had been erroneously used to render the English word "delegation".

52. Mr. JALICHANDRA (Thailand) drew attention to what he believed to be a mistake in paragraph 1, where the word "governments" should read "government" in the singular.

53. The CHAIRMAN said that, if there were no objections, he would take it that the Committee agreed to adopt article 79 on the understanding that the points of translation and drafting mentioned by the previous two speakers would be dealt with by the Drafting Committee.

It was so decided.

[3] *Official Records of the General Assembly, Fourth Session, Supplement No. 10*, para. 16.

[4] *Ibid., Twenty-eighth Session, Supplement No. 10*, paras. 171 and 172.

Article 80 (Non-discrimination) (A/CONF.67/4)

54. The CHAIRMAN observed that no amendments had been proposed to article 80.

55. Mr. PREDA (Romania) said that the ILC was to be congratulated for its formulation of the article in broad terms which covered the obligations incumbent upon the host State, the sending States, the organization and third States.

56. The article was of great importance because it was based on the principle of the sovereign equality of States, which had been proclaimed in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in 1970 as resolution 2625 (XXV).

57. A non-discriminatory application of a particular rule implied that all the States concerned were entitled to the same treatment under that rule. His delegation would therefore vote in favour of the International Law Commission's text of article 80.

58. Mr. HAQ (Pakistan) asked the Expert Consultant whether article 80 had been drafted by the ILC before or after the formulation of the annex.

59. Mr. EL-ERIAN (Expert Consultant) said that the annex had been prepared by the ILC in 1971 at the very last session at which it had dealt with the topic of representation of States in their relations with international organizations. Article 80 had formed part of the articles which had received the normal treatment of adoption on first reading by the ILC, submission to Governments for comments and final adoption on second reading by the ILC. It had been included in part IV (General provisions), which governed all the draft articles.

60. If the articles of the annex on the subject of observer delegations were finally incorporated into the convention under consideration, they would be governed by the general provisions, including article 80.

61. The CHAIRMAN said that, if there were no further comments, he would take it that the Committee agreed to adopt article 80 in the form in which it had been submitted by the ILC.

It was so decided.

Article 81 (Consultations between the sending State, the host State and the Organization) and *Article 82* (Conciliation) (A/CONF.67/4, A/CONF.67/C.1/L.145)

62. Mr. RITTER (Switzerland), introducing his delegation's amendments to articles 81 and 82 (A/CONF. 67/C.1/L.145), said that they related to a delicate issue. Their point of departure was that disputes arising from the application of the articles, although likely to be minor, could poison the atmosphere in the city where an international organization had its headquarters or office. Likewise, a host State's refusal to grant a privilege or immunity, or its assertion that a certain act had been committed outside the exercise of official functions, could lead to considerable irritation.

63. It was paradoxical that while two States could continue to entertain excellent relations in spite of a

dispute on, for instance, a question of responsibility involving huge sums of money, disputes of the kind just mentioned could do disproportionate harm to the relations between two countries. Disputes of the latter sort, unlike the others, involved individuals who had to meet and collaborate daily and who might deeply resent what they regarded as a breach of their rights. Consequently, his delegation agreed that provisions for the settlement of disputes were also necessary to ensure the satisfactory operation of the international organization.

64. It was in the interests of every sending State that provision should be made for the settlement of disputes by means of consultations and conciliation, since otherwise the host State would in practice be in a position virtually to impose its own solution. A host State would also be interested in a system for the settlement of disputes, but its interest related more to a question of principle. It migh find it very advantageous to show in a dispute that it had not committed any breach of the provisions of the convention, if and when it became a party to it.

65. In view of the fact that the disputes would be minor, the system proposed by his delegation's amendments placed the emphasis on simplicity and speed. Clearly, the type of dispute that could arise from the application of the convention's articles would generally not be suitable for determination by arbitration or by the International Court of Justice.

66. Accordingly, his delegation's amendments to articles 81 and 82 would have two effects as far as the International Law Commission's text was concerned: to reduce the various time-limits and to introduce changes in the arrangements that would make for a speedier procedure.

67. As far as article 81 was concerned, the main difference between his proposal and the ILC text related to the role assigned to the organization in the consultations. In his delegation's proposal, the organization would join in the consultations only at the request of one of the parties because in certain delicate questions such as problems of security in the host State, the parties concerned might well wish to settle the dispute directly and discreetly without involving the organization in any way. His amendment, however, would still leave it open to either of the parties to invite the organization at any time to join in the consultations.

68. The formula "dispute between one or more sending States and the host State", used in article 81, had been replaced in the Swiss amendment by a reference to a dispute between "parties" in order not to exclude the admittedly rare case of a dispute between two sending States.

69. He then compared the paragraphs of his proposed text of article 82 with the corresponding paragraphs of the International Law Commission's text. In paragraph 1, the period set for the disposal of the dispute by means of consultations had been reduced from three months to one. The reference to the possibility of submitting the dispute to any settlement procedure "as may be established in the Organization" had been dropped, because his delegation had felt that any such internal procedure would not be appropriate for a dispute of the kind envisaged in articles 81 and 82. Such a dispute would involve the host State as host State and not as a member of the organization.

70. In paragraph 2, certain changes had been made in order to achieve a speedy settlement procedure. In the Swiss proposal, each party to the future convention would be required to designate a person to serve as member of a future conciliation commission. In that way, the commission could be set up without delay to deal with a specific case—a much more practical and less time-consuming scheme than that envisaged in the paragraph 2 of article 82.

71. Although his delegation considered that each of the parties to the future convention would have a legal obligation to designate a person to serve as a member of a possible conciliation commission, a liberal attitude had been adopted towards failure to fulfil that obligation: the last sentence of his proposed paragraph 2 stated that the State concerned could designate its member during the conciliation procedure, up to the moment when the commission began to draft the report which would bring the proceedings to an end.

72. In the interests of simplification, he had dropped the second sentence of the International Law Commission's text of paragraph 2, whereby two or more sending States could agree to act jointly in the appointment of a member of a conciliation commission. His delegation had no objection to such joint appointment but felt that the same result would be achieved with its own text. When there were several parties to a dispute, two possibilities existed. The first was that two of them made common cause; in that case, they could not but appoint a single member to the conciliation commission, since that commission consisted only of three members—one designated by each side to the dispute and a chairman. If, however, the sending States involved did not succeed in coming to an agreement on a common position there would clearly have to be separate sets of proceedings taking place in parallel. That was the system followed in the International Court of Justice, where two parties pleading the same cause could either appoint a single *ad hoc* judge and act jointly in a single set of proceedings or else appoint separate *ad hoc* judges for the purpose of separate proceedings leading to separate judgements.

73. In place of the system set forth in paragraph 3 of the International Law Commission's text, his amendment made provision, in case of disagreement, for the designation of the third member of the commission by the President of the International Court of Justice or, if need, by the Vice-President or the senior judge of that Court who was not a national of one of the parties to the dispute. In paragraph 3, as elsewhere, the time-limit had been reduced to one month.

74. Paragraph 4 had been left unchanged although, in his delegation's view, the existing language could be improved. It was not accurate to say that any vacancy would be filled "in the same manner" as the original appointment had been made. The correct expression would be: "in accordance with the same rules as the original appointment".

75. His deleglation's proposed paragraph 5 was new. It specified, in the interests of a speedy settlement of the dispute, that the commission would function as soon as its chairman had been appointed.

76. His paragraph 6 was the same as paragraph 5 of the International Law Commission's text, except that in his text, it was the organization and not the conciliation commission itself which could request an advisory opinion from the International Court of Justice in those rare cases where a dispute involved important legal issues.

77. Paragraph 7 of the Swiss proposal was essentially the same as paragraph 6 of the International Law Commission's text, except that the time-limit for the appointment of the chairman of the conciliation commission had been reduced to two months.

78. In the Swiss amendment, it was expressly stated that the conclusions of the report of the conciliation commission "shall not be binding on the parties unless all the parties to the dispute have accepted it". It was added, however, that any party could "declare unilaterally that it would abide by the conclusions of the report so far as it is concerned". In fact, as the situation that had given rise to the dispute would usually persist, in the event that they disagreed about the recommendations, the parties would have to decide what attitude to adopt in practice. It should therefore be stated that an attitude which was consistent with the recommendations could not be invalid, even if it was unilaterally adopted. It should, however, be clearly understood that such unilateral acceptance by one party would not entitle it to claim that the other party must also accept the conclusions.

79. The existing paragraph 7 had been dropped as unnecessary, since virtually no conferences lasted long enough for the provisions of that paragraph to be of any practical value.

80. His paragraph 8 was identical with the International Law Commission's paragraph 8.

81. The CHAIRMAN noted that the Swiss proposal related to both articles 81 and 82. If there was no objection, he would invite comments on its impact on both articles.

82. Mr. MAAS GEESTERANUS (Netherlands) welcomed the Swiss proposal, which represented an improvement on the present text of articles 81 and 82, although in substance it did not depart very much from them.

83. He wished to know whether the phrase "conclusions of the report" in the penultimate sentence of paragraph 7 of the Swiss amendment to article 82 was intended to refer to whatever recommendations the conciliation commission might make. He suggested that the Drafting Committee should consider replacing the word "conclusions" by the word "recommendations" in that passage.

84. He also wished to asked the Expert Consultant what was the final stage of the conciliation procedure. The two texts now before the Committee seemed to indicate that it could end either in an agreement of the parties or in a report of the conciliation commission containing recommendations. In a number of conciliation systems which had come to his knowledge, the proceedings normally ended with a report setting forth a recommendation.

85. Mr. KUZNETSOV (Union of Soviet Socialist Republics) expressed regret that the important Swiss proposal should have been submitted only two days previously. He was giving it careful consideration but, at the present stage, he only wished to ask the Expert Consultant what the role of the organization in the conciliation proceedings should be. The Swiss amendment appeared to reduce the role to almost nothing.

86. Mr. EL-ERIAN (Expert Consultant) said that the ILC had drafted articles 81 and 82 having in mind a dispute between one or more sending States on the one side and the host State on the other. It had left the question of a possible dispute between sending States to the ordinary rules on the settlement of disputes.

87. In adopting articles 81 and 82, the ILC had departed from its tradition of not including in its drafts any provisions on the settlement of disputes. The only other exception had been in its 1966 draft on the Law of Treaties. The Commission had included articles 81 and 82 because it was aware that the host State did not have at its disposal the kind of remedies which were available to a receiving State in bilateral diplomacy. Accordingly, it had been felt necessary to include as an integral part of the draft articles an elaborate machinery to deal with any attempt to frustrate the application of the future convention. In so far as the role of the organization was concerned, paragraph 3 of article 82 specified that the request for the appointment of a chairman for the conciliation commission had to be made to "the chief administrative officer of the Organization", i.e. to the Secretary-General in the case of the United Nations or his counterpart in the case of a specialized agency.

88. In that connexion, he drew attention to paragraph 3 of the comentary to article 82 (see A/CONF.67/4) which, with regard to the duty of the organization to ensure the application of the provisions of the future convention, referred to article 22.

89. In reply to the question by the Netherlands representative, he explained that paragraph 6 of article 82 was based on the traditional concept of conciliation, as distinct from arbitration and other means of settlement of disputes such as negotiation, good offices and mediation. A conciliation procedure had the advantage of enabling conclusions to be reached on the facts of the case. That point was very important, because sometimes the facts were themselves in dispute.

90. The conciliation commission could also reach conclusions on questions of law and could go a step further and make recommendations to the parties.

91. He drew attention to paragraph 6 of the commentary which stressed that the purpose of the conciliation procedure was to facilitate the settlement of the dispute. In the International Law Commission's preliminary draft articles, adopted on first reading, no provision had been included on the settlement of disputes. Articles 81 and 82 had been introduced on second reading in

response to the comments of Governments on the preliminary draft.

92. The two articles really constituted a safeguard for the host State. In multilateral diplomacy, that State did not have the remedies of *agrément*, declaration of *persona non grata* and reciprocity. It had therefore been felt essential to provide a remedy through a conciliation system that followed the general principles of international law governing the settlement of disputes between States. Conciliation in the traditional sense represented a sort of half-way house between mediation on the one hand and arbitration or judicial settlement on the other. It did not lead to a settlement of the dispute binding upon the parties but it did generate a certain pressure on them to arrive at an accommodation.

93. Mr. MARESCA (Italy) said that a serious weakness in the great work of codification of diplomatic and consular law represented by the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations and the 1969 Convention on Special Missions was the absence of an organic rule for the implementation of the rules of diplomatic law. An attempt had been made to incorporate such a rule in the 1961 Vienna Convention but it had ultimately been relegated to an optional protocol. The same had occurred in the 1963 and 1969 Conventions. An optional protocol, however, constituted a very weak instrument for ensuring the observance of the rules of diplomatic law.

94. An encouraging precedent had been set by the incorporation into the 1969 Vienna Convention on the Law of Treaties [5] of article 66 (Procedures for judicial settlement, arbitration and conciliation) and by the annex setting forth an elaborate conciliation procedure.

95. Admittedly, a conciliation procedure remained diplomatic in character; unlike arbitration or judicial proceedings, it did not lead to a binding decision. Nevertheless, it facilitated the process of reaching an accommodation between the parties.

96. Drawing on that experience, the ILC had introduced into the present draft a well-balanced conciliation system. Its main defect was the lengthy time periods specified in article 82, which ran counter to the obvious need to avoid prolonged disputes.

97. Another defect was that the conciliation system involved the organization at several stages of the proceedings. That was undesirable because the organization was in fact a party to the dispute, since its role was to defend the status of those who participated in its lawful work.

98. A third defect was that the conciliation procedure envisaged concluded with a report, without referring to the efforts which should be made to arrive at an accommodation between the parties.

99. In the circumstances, his delegation welcomed the Swiss proposal (A/CONF.67/C.1/L.145), which by reducing the time-limits and introducing a number of other useful elements, greatly improved the proposed conciliation system.

100. Mr. CALLE Y CALLE (Peru) said that the Swiss proposal did not differ greatly in substance from the International Law Commission's text. Nevertheless, his delegation requested that separate votes should be taken on the Swiss amendments to article 81 and article 82.

101. While his delegation might be able to accept the Swiss amendment to article 82, it had very serious misgivings regarding the changes proposed for article 81. Those changes would reduce the role of the organization in consultations to a purely marginal one, whereas it should have the vital role, as established in article 22, of assisting the sending State in securing enjoyment of the privileges and immunities provided for in the convention.

102. His delegation preferred the International Law Commission's formulation empowering the conciliation commission itself rather than the organization as in the Swiss amendment, to request an advisory opinion from the International Court of Justice if so authorized in accordance with the Charter of the United Nations.

103. Nor did his delegation favour the idea in the second sentence of paragraph 2 of the Swiss amendment, that each party to the future convention should designate in advance a member of the conciliation commission. The adoption of such a scheme would oblige each organization to maintain a special register for the purpose and would create problems for the States Members of the organization.

104. Mr. MUSEUX (France) said that his delegation favoured the principle embodied in the International Law Commission's text of articles 81 and 82, which would constitute an expression of the obligation of States, under Chapter VI of the Charter of the United Nations, to settle their disputes by pacific means.

105. The disputes which were likely to arise in connexion with the application of the future convention would relate to practical day-to-day problems and would not affect major questions of international law. Every effort should therefore be made to arrive at a speady and effective settlement of those disputes by means of a simple and flexible procedure. The Swiss amendments by improving the International Law Commission's text, offered a satisfactory solution.

106. He recalled in that connexion the adoption by the Committee at its 41st meeting of a French amendment (A/CONF.67/C.1/L.134 and Corr.1) to article 75 inserting a new paragraph 4 which would afford an important safeguard to the host State but which specifically reserved the provisions of articles 81 and 82.

The meeting rose at 11.10 p.m.

[5] See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.