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5th 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)*

5th meeting

Friday, 7 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 1 (Use of terms) (A/CONF.67/4, A/CONF.67/C.1/L.15)

1. The CHAIRMAN recalling the procedural discussion at the end of the previous meeting, put to the vote the amendment to article 1, paragraph 1(2), proposed by the United Kingdom and contained in document A/CONF.67/C.1/L.15.

The amendment was adopted by 48 votes to 2 with 8 abstentions.

Article 2 (Scope of the present articles) (*concluded*) (A/CONF.67/4, A/CONF.67/C.1/L.7, L.15, L.19)

2. The CHAIRMAN invited the Committee to take a decision on the joint amendment to article 2, paragraph 1, proposed by France, the Ivory Coast and Switzerland and contained in document A/CONF.67/C.1/L.7.

3. After a procedural discussion in which Sir Vincent EVANS (United Kingdom), Mr. MUSEUX (France), Mr. KABUAYE (United Republic of Tanzania), Mr. TODOROV (Bulgaria), Mr. UNGERER (Federal Republic of Germany) and Mr. DO NASCIMENTO E SILVA (Brazil) took part, the CHAIRMAN put the joint amendment to the vote.

The amendment was rejected by 26 votes to 14, with 20 abstentions.

4. The CHAIRMAN invited the Committee to take a decision on the amendment to article 2, paragraph 1, proposed by the United Kingdom and contained in document A/CONF.67/C.1/L.15.

5. Mr. TODOROV (Bulgaria) requested that a separate vote should be taken on the last part of the United Kingdom amendment reading "when the present convention has been accepted by the organization and by the host State in respect of that organization".

6. Sir Vincent EVANS (United Kingdom) said that his delegation could not agree that a separate vote should be taken on the second part of its amendment to article 2, paragraph 1. The amendment formed a whole and should therefore be considered as a whole.

7. The CHAIRMAN said that in view of the objection made to the request for a separate vote, he would have to apply rule 40 of the rules of procedure and put to the vote the Bulgarian motion for a separate vote on the last part of the United Kingdom amendment to article 2, paragraph 1.

The motion was rejected by 32 votes to 18, with 15 abstentions.

8. The CHAIRMAN put to the vote the United Kingdom amendment to article 2, paragraph 1, as contained in document A/CONF.67/C.1/L.15.

The amendment was adopted by 30 votes to 22, with 13 abstentions.

9. The CHAIRMAN said that no amendments had been proposed to article 2, paragraphs 2 and 3. He therefore suggested that the Committee should take a decision on the amendment to article 2, paragraph 4, proposed jointly by France, the Ivory Coast and Switzerland and contained in document A/CONF.67/C.1/L.7.

10. He drew attention to the fact that the delegation of the United Republic of Cameroon had proposed an oral amendment to the joint amendment. In accordance with that amendment, the words "in total or in part" should be inserted between the word "applicable" and the word "to" in the second line of the French amendment. The delegation of Madagascar had also proposed an amendment A/CONF.67/C.1/L.19 to the joint amendment to article 2, paragraph 4.

11. Mr. RAOELINA (Madagascar) observed that his delegation had accepted an oral amendment to its amendment proposed by the United Kingdom. Accordingly, the amendment in document A/CONF.67/C.1/L.19 should now read: "between the States concerned and the Organization".

12. The CHAIRMAN suggested that the Committee should first take a vote on the subamendment proposed by Madagascar, as orally revised, then on the oral subamendment proposed by the United Republic of Cameroon and, finally on the joint amendment to article 2, paragraph 4 proposed by France, the Ivory Coast and Switzerland.

13. Mr. MUSEUX (France) said that his delegation had a serious difficulty because the amendment to article 2, paragraph 4, of which it was a sponsor, was linked to the joint amendment to article 2, paragraph 1, which had been rejected. His delegation would therefore not take part in the vote on the amendment to article 2, paragraph 4 (A/CONF.67/C.1/L.7).

14. The CHAIRMAN put to the vote the subamendment proposed by Madagascar (A/CONF.67/C.1/L.19), as orally revised.

The subamendment, as orally revised, was adopted by 34 votes to 2, with 22 abstentions.

15. The CHAIRMAN put to the vote the oral subamendment proposed by the United Republic of Cameroon.

The subamendment was adopted by 29 votes to 1, with 28 abstentions.

16. The CHAIRMAN put to the vote the joint amendment to draft article 2, paragraph 4 (A/CONF.67/C.1/L.7) as amended.

The amendment, as amended, was adopted by 31 votes to 7, with 25 abstentions.

17. The CHAIRMAN put to the vote article 2 as a whole, as amended in paragraphs 1 and 4.

Article 2 as a whole, as amended, was adopted by 41 votes to 5, with 19 abstentions.

18. Mr. EUSTATHIADES (Greece), speaking in explanation of vote, said that he had voted for article 2, as amended, although the exact import of the final part of the United Kingdom amendment to paragraph 1 was not entirely clear and he hoped it would be clarified later on.

19. Mr. KUZNETSOV (Union of Soviet Socialist Republics) speaking in explanation of vote, said that, for the same reason, he had abstained from the vote on article 2 as a whole.

20. Mr. ELIAN (Romania), speaking in explanation of vote, said that he had abstained from the vote on article 2 as a whole because of the adoption of the United Kingdom text for paragraph 1. He did not understand that amendment and he would like the Drafting Committee to consider under what circumstances a convention could be accepted by an international organization.

21. Mrs. SLÁMOVÁ (Czechoslovakia) said that she had voted against the adoption of article 2 as a whole because she could not agree that the question of the participation of international organizations in the convention should be tackled prematurely.

22. The CHAIRMAN reminded the Committee that in his statement, the United Kingdom representative had suggested that the Drafting Committee should be given latitude to review the wording of the final part of his amendment to paragraph 1 of article 2.

Article 3 (Relationship between the present articles and the relevant rules of international organizations or conferences) *(concluded)**

23. The CHAIRMAN said that although no amendment to article 3 had been proposed, the Committee had found some difficulty in proceeding to a vote. He hoped that the position had been clarified by the discussion.

24. Mrs. SLÁMOVÁ (Czechoslovakia) said that as she understood article 3, the rules of an organization or the rules of procedure of a conference could not be in contradiction with the provisions of the convention, which, when adopted, would be a higher-ranking document, and it would constitute the general standard in modern international law on the subject of the relations of States with international organizations.

25. Sir Vincent EVANS (United Kingdom) said that he was in favour of retaining the whole of article 3 as drafted by the International Law Commission (ILC) (see A/CONF.67/4). The main reason for the article was stated in the International Law Commission's commentary to that article (*ibid.*) which had drawn attention to the diversity of international organizations and their heterogeneous character. It had been rightly foreseen that it might be desirable to have particular rules in particular organizations and to adopt certain rules of procedure for some conferences which might differ from the provisions in the draft articles. Article 3 was in the nature of a saving of such rules and as such it could avoid unnecessary argument and could not do any harm. But it was not to be interpreted to mean that an organization or conference could by a majority vote extend the application of the convention and thereby impose new obligations on the host State.

26. The CHAIRMAN put to the vote article 3 prepared by the ILC.

Article 3 was adopted by 59 votes to none, with 4 abstentions.

27. Mr. ZEMANEK (Austria), speaking in explanation of vote, said that the Austrian delegation accepted article 3 on the understanding that nothing in that article empowered an international organization or conference to extend, by decision or rules of procedure or otherwise, the application of the convention beyond the limits laid down by the terms of the convention.

28. Mr. SMITH (United States of America), Mr. RITTER (Switzerland) and Mr. VON KESSEL (Federal Republic of Germany) associated themselves with the statement made by the Austrian representative.

29. Mr. KABUAYE (United Republic of Tanzania) said that he had been obliged to abstain from the vote on article 3 because he did not fully understand the International Law Commission's commentary on the article.

Article 4 (Relationship between the present articles and other international agreements) *(concluded* (A/CONF.67/4, A/CONF.67/C.1/L.3, L.13)*

30. Sir Vincent EVANS (United Kingdom) observed that the Commission's text of the article was in two parts. Subparagraph (*a*) dealt with existing agreements and subparagraph (*b*) with the possible conclusion of future agreements. As to existing agreements, as was well known, in the case of all organizations of universal character there was already a régime governing the status, and the privileges and immunities, of representatives to those organizations and also, in most cases, of representatives to conferences convened by or under the auspices of those organizations. He would suggest that it could not be an effect of the adoption of the new convention, or even its entry into force, to displace existing régimes of that kind. Any such effect could lead to nothing but chaos because there was no guarantee that the new convention would be accepted by a majority of the States members of each organization. The only practical solution, therefore, was to recognize that existing régimes would remain in force. That was precisely the effect of subparagraph (*a*) of article 4.

* Resumed from the 3rd meeting.

* *Ibid.*

31. The main purpose of subparagraph (*b*) was explained in paragraph 5 of the Commission's commentary, and the idea expressed in its second sentence led back to the thought underlying articles 3 and 4, namely, the heterogeneous nature of international organizations. In the last sentence of its commentary, the Commission was saying that the international community must not be put in a strait-jacket for the future. Situations might arise in which it was desired to set up a new organization or to hold a conference in a State which had not ratified the convention. In such circumstances, it would no doubt be desirable to conclude with such a State an agreement on the privileges and immunities of representatives attending such a conference. Accordingly, both parts of article 4 were indispensable and should be retained.

32. The Spanish amendment (A/CONF.67/C.1/L.3) was too narrow in its terms and would tend to limit the possibilities open to the international community. As to the amendments proposed by Pakistan (A/CONF.67/C.1/L.13), it would be impractical to include in article 4 a provision which would have the convention displace existing régimes applicable to existing organizations. Those amendments were therefore not acceptable.

33. Mrs. SLÁNOVÁ (Czechoslovakia) said she had carefully considered all the comments and observations on article 4. She fully realized that the adoption of the draft convention would not mark the end of the development of diplomatic law relating to international organizations. Subsequent conventions however should not contain provisions stipulating a lesser scope of privileges and immunities than those to be codified in the present convention, which would undoubtedly constitute the general standard in modern international law. If such were not the case, legal uncertainty would arise and the door would be open to discrimination, which was inadmissible in international law.

34. She thought that her position was probably similar to that of the delegation of Pakistan in alternative 2 of its amendment to article 4 (A/CONF.67/C.1/L.13). She would, however, have preferred to see that effect achieved by the addition to article 4 of a further subparagraph stating that the provisions of the convention were also without prejudice to the rules of international law concerning the interpretation of agreements and the implementation of successive conventions.

35. Mr. EUSTATHIADES (Greece) speaking for the first time on a substantive matter, warmly congratulated the Chairman, whose singular talents and great competence he had appreciated for many years. He also congratulated the Vice-Chairman and welcomed the valuable co-operation of the Expert Consultant who, as Special Rapporteur of ILC, had made a remarkable contribution.

36. If he were to read the text of subparagraph (*b*) of article 4 on its own, he would, as a jurist, be inclined to propose its deletion. Juridically, that clause cast doubts on the value of the whole structure of the proposed convention. The Conference was, however, a diplomatic conference, and a diplomatic conference which took account only of legal considerations would not accomplish useful work. The main purpose was to enable States which wished to receive international organizations or conferences to do so, and not to discourage them from doing so by a body of rules not adapted to specific situations. He was convinced that in paragraph 5 of its commentary on the article, the Commission was not being entirely realistic. It must be noted that to some delegations "further development" meant maximum facilities for an international organization and maximum guarantees for participants. That, however, was not the question. The question was the possibility of being able to adapt to specific situations. It was a question of pure realism. Thus, his delegation would insist that subparagraph (*b*) should be maintained. From the legal point of view, it was a very questionable provision in a convention such as that under consideration, but it would make it easier for States to accede to the convention and would facilitate adoption of a convention which would, on the whole, mark an advance in the progressive development of international law.

37. Mr. DO NASCIMENTO E SILVA (Brazil) said that he associated himself with the comments made by the representative of Greece. In reality, subparagraph (*a*) was considered indispensable by host States and therefore should be accepted. He would add that the provisions of article 4 as drafted by the Commission could be dispensed with if it was recognized that the Vienna Convention on the Law of Treaties [1] already dealt with the problems raised.

38. The amendment of Pakistan (A/CONF.67/C.1/L.13) touched on the problem of conflicts between the new convention and other agreements. In that connexion, he stressed that it would be undesirable to adopt a new subparagraph (*c*) as proposed by the delegation of Pakistan. To begin with, the Conference would not be adopting rules as complete or precise as those found in the 1969 Vienna Convention on the Law of Treaties, and particularly its article 30. The question had been thoroughly examined and there were quite satisfactory rules on it in the 1969 Convention, and there was no doubt that in drafting article 4 the Commission had taken account of existing rules which were satisfactory in every respect. It would, therefore, be dangerous to meddle with the draft of article 4, which should be maintained.

39. Mr. MARESCA (Italy) said that in general international law and in diplomatic law in particular, all past work was the source of current work. Every State participating in the Conference had already concluded agreements with international organizations. If all those agreements were to be ignored, the Conference would run the risk of producing chaos. The negotiations as a result of which headquarters agreements had been concluded had been painstaking and had taken all aspects of the question into account. Those agreements must, therefore, remain in force. That was the purpose of subparagraph (*a*) of article 4, the merit and usefulness of which his delegation recognized.

[1] 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.

40. As to subparagraph (*b*), it should be noted that the codification of diplomatic law should not mean that such law should be petrified. Law was always a changing and evolving force. The work of codification in which the Conference was engaged could not ignore the fact that at particular times particular agreements might be concluded to govern relations between States and international organizations. Article 4 should, therefore, remain unchanged.

41. Mr. PASZKOWSKI (Poland) said that the draft articles were not intended to replace existing arrangements regulating relations between States and international organizations. Nor did they exclude the possibility of concluding new agreements in the future. Although his delegation would prefer to give the new convention a more prominent place among the many instruments on the same subject-matter, the solution proposed by the Commission in article 4 did reflect a legitimate concern not to undermine existing arrangements or to preclude the development of law in the area. The value of the convention would lie in its constituting a general standard and a primary point of reference for the regulation of the question of the representation of States in their relations with international organizations of universal character. It would constitute a development of Article 105 of the Charter of the United Nations and of analagous provisions of the constituent instruments of other organizations, and it would be a reflection of the practice of co-operation through international organizations.

42. It was worth bearing in mind that the new convention would contain provisions designed to regulate many important matters, such as the establishment of permanent missions and their functions and the matters covered by the general provisions of part IV, not dealt with in existing arrangements. The new convention would, therefore, have a *raison d'être* of its own. It was those considerations which had determined his delegation's view that there was no need to try to improve the existing draft of article 4.

43. Mr. MUSEUX (France) said that, in principle, his delegation approved article 4 as it stood. It hoped, however, that the Expert Consultant would further clarify the scope of subparagraph (*a*) in the light of the decisions which the Conference had taken on article 2. With respect to international agreements currently in force, different interpretations could be placed on the text before the Conference. In the first place, it could be said that when there was an agreement in force, the new convention would not apply at all. Secondly, it could be said that when there was an agreement in force, the new convention would apply in matters on which the agreement in force was silent. A third possibility was that when there was an agreement in force, the new convention would apply to questions not regulated by the agreement in force. All three interpretations were compatible with the French text of subparagraph (*a*), whereby the provisions of article 4 were without prejudice to other international agreements in force. The scope of subparagraph (*a*) was very important, bearing in mind the amendment the Conference had just adopted to paragraph 1 of article 2 (A/CONF.67/C.1/L.15). According to that amendment, the convention would not apply until it had been accepted by an organization and by a host State in respect of that organization. Assuming that there was an agreement already in force, the fact that, under subparagraph (*a*) of article 4, the new convention would be without prejudice to the agreement in force between a host State and an organization might, in the most restrictive interpretation, mean that the new convention would have no effect. It would seem, therefore, that the scope of subparagraph (*a*) should be clarified before the Conference took a decision on it.

44. Mr. HAQ (Pakistan) said that, as the Expert Consultant had said at the 3rd meeting, the draft articles had not been conceived as a model or code but as a convention applicable to international organizations of universal character. His delegation's amendment (A/CONF.67/C.1/L.13) reflected that spirit of idealism. His delegation proposed that article 4 should be amended so that the new convention might assume the character of an important régime, with universal applicability and acceptability. In paragraph 5 of its commentary (see A/CONF.67/4), the Commission recognized the overlapping nature of article 4. While recognizing that the headquarters agreement and general conventions on privileges and immunities might be considered as forming part of the rules of an organization within the meaning of article 3, the Commission took the view that it was preferable to include a specific provision on the point. As the Commission recognized in paragraph 4 of its commentary, existing agreements, by continuing to remain in force under subparagraph (*a*) of article 4, might detract from the practical applicability of the new régime. In paragraph 4, too, the Commission recognized situations where, in the case of conflicting provisions, parties might have to refer to the Vienna Convention on the Law of Treaties. It was with a view to resolving such situations that his delegation had proposed either the addition of a subparagraph (*c*) or the deletion of article 4.

45. However, as the representatives of Peru, Argentina, Switzerland and Canada had stated emphatically that the deletion of article 4, or its amendment in the manner proposed by his delegation, would lead to the disruption of existing agreements, circumscribe the role of host States and impede the progressive development of international law, his delegation would withdraw the proposals made in document A/CONF.67/C.1/L.13.

46. Mr. DE YTURRIAGA (Spain) said that, as he had already explained in submitting its amendment his delegation (3rd meeting) had started from the premise that the provisions of future agreements, those covered by subparagraph (*b*) of article 4, should not run counter to the provisions of the new convention. He agreed with the ILC which, in paragraph 5 of its commentary had stated that situations might arise in which States establishing a new international organization might find it necessary to adopt different rules more appropriate to the new organization. The point was that those different rules should not conflict with the rules in the convention. It was in order to prevent that possibility that his delegation following the language of the 1963

Vienna Convention on Consular Relations [2] had proposed that the new convention should not preclude States and international organizations from concluding agreements which confirmed, completed, extended or amplified its provisions. In the opinion of his delegation, a headquarter's agreement under which, for example, the head of a mission would not be accorded diplomatic immunity would represent regression, not the progressive development, of international law.

47. His delegation had reservations concerning the text which appeared to be emerging for the future convention. The Conference had, for instance, already adopted a text for article 2 which was very restrictive. According to the text which had been adopted for article 3, an organization could adopt rules which conflicted with the rules of the new convention, and according to the text proposed for article 4, a State party to the convention could enter into another agreement, the rules of which would conflict with those of the convention. In the circumstances, the object of the convention was questionable.

48. Nevertheless, for want of support, his delegation would withdraw the amendment it had submitted in document A/CONF.67/C.1/L.3.

49. Mr. EL-ERIAN (Expert Consultant), speaking in reply to the question of the French representative, said with reference to subparagraph (*a*) that when the ILC had embarked on the consideration of the topic dealt with by the draft articles, it had received many expressions of concern from specialized agencies regarding the effect which a codification and development of that topic might have on existing agreements. Those agreements were the result of long, careful and painstaking efforts and marked veritable landmarks in the evolution of the law of international organizations.

50. The Charter of the United Nations simply provided, in its article 105, paragraph 2, that "Representatives of the Members of the United Nations" would "enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization". As to the 1947 Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations,[3] it had been concluded well before the institution of permanent missions was consolidated. With regard to the United Nations Office at Geneva, the Swiss authorities had that same year enacted a law which gave full diplomatic status to representatives of States to that Office.

51. It had been pointed out by the United Kingdom representative during the present discussion that article 105 of the Charter, unlike the corresponding provision of the Covenant of the League of Nations, did not refer to "diplomatic" privileges and immunities but rather placed the emphasis on the privileges and immunities necessary for the independent exercise of the functions of the representatives concerned.

52. Nevertheless, a considerable body of practice had since developed and it had soon become clear that the representatives of States to international organizations, unlike the officials of those organizations, had a status which was based on more than merely functional considerations. In the case of representatives of States to international organizations, the functional theory had to be combined with the representative theory.

53. Accordingly, the ILC had had very much in mind the need to safeguard the representative character of those representatives of States, namely members of permanent missions and delegates to meetings. It had also taken into account the fact that the Headquarters Agreement, as well as the 1946 Convention on the Privileges and Immunities of the United Nations and the 1947 Convention on the Privileges and Immunities of the Specialized Agencies [4] left many questions unanswered. The draft articles, when transformed into a convention, would thus constitute a valuable contribution to international law in the matter. That contribution would not in any way be impaired by the clause safeguarding existing agreements which was embodied in subparagraph (*a*). The new convention would usefully supplement the 1946–1947 Agreements which, in particular, did not contain any provisions on the subject of permanent missions.

54. It was true that some missions had existed at the time of the League of Nations but the institution as it was now known had its origin in resolution 257A (III) of the General Assembly adopted in 1948. The institution had thus developed after the Agreement regarding the Headquarters of the United Nations and the two so-called General Conventions of 1946 and 1947.

55. The CHAIRMAN, noting that the proposed amendments had been withdrawn invited the Committee to vote on article 4 as a whole.

Article 4 was adopted by 62 votes to none, with 3 abstentions.

56. Mr. KABUAYE (United Republic of Tanzania) said in explanation of vote that his delegation had abstained from voting on article 4 because it gave States the option not only to retain existing agreements but even to contract out of the provisions of the future convention. In the circumstances, the convention would not constitute an affective international instrument.

Article 5 (Establishment of missions) (A/CONF.67/4, A/CONF.67/C.1/L.14, L.16, L.20, L.21)

57. The CHAIRMAN invited the Committee to consider article 5, which was the first one in Part II (Missions to international organizations).

58. Mr. TANKOUA (United Republic of Cameroon), introducing his delegation's amendment (A/CONF.67/C.1/L.14), said that it would alter the wording of paragraph 3 of article 5 in two respects. The first concerned the concluding words of the paragraph "prior to its establishment", which would be replaced by the words "prior to its opening". The language currently used in diplomacy employed the

[2] United Nations, *Treaty Series*, vol. 596, No. 8638, p. 261.
[3] General Assembly resolution 169 (II).
[4] General Assembly resolutions 22 A (I) and 179 (II).

term "establishment" for the declaratory stage, for example, when diplomatic relations were "established". The actual setting up of a mission was usually described as "opening" the mission. In the interests of speedy progress of the Committee's work, however, his delegation was not pressing that aspect of its amendment but was willing to leave the matter to the judgement of the Expert Consultant and the Drafting Committee.

59. The second change proposed by his delegation was the deletion of the words "if possible". It was essential that the host State should in all cases be advised of the institution of a mission before it was opened. In the same way, the State which was called upon to act as host to a conference convened by an organization had to receive the list of participants prior to the commencement of the conference.

60. Mr. DE VIDTS (Belgium), introducing his delegation's amendment to delete the words "if possible" in paragraph 3 (A/CONF.67/C.1/L.16), said it was essential that the notification should take place before the mission was set up on the territory of the host State. That State would be called upon to grant certain facilities and the establishment of a mission would impose upon it important obligations. It would greatly facilitate the host State's tasks to receive the notification in every case before the establishment of the mission. That would also make for smooth relations between the host State, the organization and the missions.

61. Mrs. SLÁMOVÁ (Czechoslovakia) introducing her delegation's amendment to paragraph 2 of article 5 (A/CONF.67/C.1/L.20), said that the amendment was self-explanatory. It was based on the principle of the sovereign equality of States and also on the principle of universality. Its adoption would serve the interests of the international community as a whole and of individual States as well as those of the organizations themselves.

62. If amended as proposed by her delegation, paragraph 2 would make it clear that whenever member States could establish permanent missions, non-member States would have the right to establish the permament observer mission. An international organization should not allow any of its rules to hamper non-member States in co-operating with it.

63. Mr. VON KESSEL (Federal Republic of Germany), introducing his delegation's amendment to article 5 (A/CONF.67/C.1/L.21), said that its purpose was to reword paragraph 3 to include a necessary clarification. Paragraph 3 as it stood laid down the requirement of notification but did not imply clearly enough that the permanent mission would be established in accordance with the rules of the organization concerned.

64. It was essential that the host State, which would be called upon to extend privileges and immunities to the permanent mission, should be protected against any attempt to create ambiguous situations. That result would be achieved by adopting his delegation's amendment, which required the organization, when it notified to the host State that a mission was to be established, to affirm at the same time "that it is established in accordance with the rules of the Organization".

65. Mr. CALLE Y CALLE (Peru) said that paragraph 1 of article 5 gave member States of an organization the faculty to establish permanent missions by using the verb form "may". That faculty, however, was based on a sovereign right: the right of representation. A State which was a member of an international organization had, under international law, the right to have a representative to that organization.

66. Paragraph 2 of the article laid down the same right for non-member States. With regard to that paragraph, his delegation fully supported the Czechoslovak amendment (A/CONF.67/C.1/L.20). The effect of that amendment would be to do away with the limitation embodied in the present wording: "if the rules of the Organization so admit". There was no need to include those words in paragraph 2; if the rules of the organization admitted the establishment of permanent missions for member States, the same right belonged to non-member States, which were members of the international community in the same way as member States.

67. With regard to paragraph 3, the amendments by Belgium (A/CONF.67/C.1/L.16) and by the United Republic of Cameroon (A/CONF.67/C.1/L.14) were virtually identical, except that the latter would introduce a minor change of wording by replacing the concluding word "establishment" by the word "opening". For his part, he preferred to retain the word "establishment" because the first two paragraphs of article 5 dealt with the actual establishment of the mission and not with the material operation of hoisting the flag and opening the doors of the premises of the mission.

68. He understood the intention of the delegation of the Federal Republic of Germany in proposing its amendment to paragraph 3 (A/CONF.67/C.1/L.21), but had doubts regarding the introduction of the concept of a sort of attestation by the organization that the permanent mission was being established in accordance with the rules of the organization.

69. The existing text of article 5 made it abundantly clear that a permanent mission could only be established if the rules of the organization concerned so admitted. There appeared to be therefore no need for the organization, at the time of notification to the host State, to specify that the permanent mission was established in accordance with the rules of the organization.

70. Mr. MARESCA (Italy) said that permanent missions accredited to international organizations were organs very similar to the traditional diplomatic organs. They had, however, certain special characteristics that conditioned the rules which governed them. Clearly, permanent missions had to function within the framework of the constituent instrument, and the rules, of the organization concerned.

71. The most important function of a permanent mission was to participate in the actual operation of the organization to which it was accredited. Paragraph 1 of article 5 was very well drafted and made it clear that the rules of the organization had to admit the establishment of permanent missions.

72. As for permanent missions of non-member States, they had more the character of diplomatic organs, since their functions were purely diplomatic in character. The

permanent mission of a non-member State did not participate in any way in the functioning of the organization. Nevertheless, before such a mission could be established, it was likewise necessary that the rules of the organization should admit of such establishment. His delegation therefore opposed any proposal to delete the words "if the rules of the Organization so admit" from paragraph 2.

73. In paragraph 3, his delegation strongly supported the proposals made by Belgium (A/CONF.67/C.1/L.16) and the United Republic of Cameroon (A/CONF.67/C.1/L.14) to delete the words "if possible". There could be no question of notification *ex post facto* in a matter which involved responsibilities and obligations for a host State. To give but one example, the establishment of a permanent mission imposed upon the host State a duty to protect that mission and its staff, a duty which could be quite onerous or delicate in certain circumstances. It was therefore essential that notification should in all cases take place prior to the establishment of a permanent mission.

The meeting rose at 6 p.m.

6th meeting

Monday, 10 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 5 (Establishment of missions) (*continued*) (A/CONF.67/4, A/CONF.67/C.1/L.14, L.16, L.20, L.21, L.23, L.26)

1. Mr. MUSEUX (France) introducing his delegation's amendment (A/CONF.67/C.1/L.23), said that its main purpose was to promote a discussion within the Committee of the Whole, so as to clarify ideas. From a reading of article 1, paragraph 1, subparagraph (12) of the draft articles of the International Law Commission (ILC) (see A/CONF.67/4) under the terms of which " 'host State' means the State on whose territory: (*a*) the Organization has its seat or an office", and of article 5, it would appear that a sending State could establish, without restriction, a mission not only at an organization's headquarters but also at other offices of that organization. In providing that missions must be established at the actual headquarters of an organization, the French amendment might be too categorical; he acknowledged that there were permanent missions at the United Nations Office at Geneva, for example, but the amendment aimed at defining more accurately the scope of article 5.

2. Mr. RITTER (Switzerland) informed the Committee that, after holding conversations with several delegations, his delegation had decided to withdraw the amendment contained in document A/CONF.67/C.1/L.26.

3. Mr. EL-ERIAN (Expert Consultant) reminded the Committee that the question of the office of the mission was dealt with at the theoretical level in article 5 and at the practical level in article 18. The ILC had not provided that a mission must be established at an organization's headquarters, as there were cases where permanent missions were established at the offices of an organization, for example at the United Nations Office at Geneva. That was why, in drafting article 5, the Commission had not specified the place at which a State might establish a mission and had confined itself to laying down the actual principle of the establishment of missions.

4. Mr. DE YTURRIAGA (Spain) said he would have supported the amendment in document A/CONF.67/C.1/L.26 if the Swiss delegation had not withdrawn it.

5. The Spanish delegation understood the concerns which had prompted the French delegation to submit the amendment in document A/CONF.67/C.1/L.23, but it considered the form in which that proposal was presented to be wrong; in fact, a State could be represented with an organization, but not at its headquarters. Furthermore, the question of the opening of offices of a mission should be studied in connexion with article 18.

6. The expression "the performance of the functions mentioned in article 6" which was used in article 5, paragraph 1, was liable to give the impression that the list contained in article 6 was exhaustive. It would be more exact to say: "the performance of its functions". He suggested that the Drafting Committee should consider that question.

7. The CHAIRMAN said that that suggestion related to substance, and did not therefore come within the competence of the Drafting Committee.

8. Mr. WERSHOF (Canada) said he endorsed the amendments contained in documents A/CONF.67/C.1/L.14 and L.16, since Canada, as the host State to an international organization, considered that an organization should be obliged to notify the host State of the institution of a mission prior to its opening.

9. As regards the amendment in document A/CONF.67/C.1/L.23, which had given rise to various comments, his delegation considered it reasonable. Its adoption could not entail the closing of missions established, for example, at Geneva, in the case of the United Nations Office. Although articles 5 and 18 did not stipulate that the member States had the right to establish missions at regional offices, they nevertheless enjoyed that right. The Canadian delegation therefore supported