

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

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7th meeting of the Committee of the Whole

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63. With regard to the joint amendment, his delegation had no objections to deleting the words "if possible" in paragraph 3.

64. Mr. SUY (Legal Counsel) noted that with the deletion of the words "if possible", organizations would be required to notify to the host State the institution of a mission. That was generally done by the Secretariat at United Nations Headquarters, but it did not make any distinction between the institution and the establishment of a mission. Once a State had become a Member of the Organization, or had acquired the status of observer it normally informed the Secretary-General of the establishment of a mission, without any distinction being made between the institution and the establishment of the mission. If such a distinction were to be made, the host State would have to be informed accordingly. It would be difficult for the organization to notify to the host State the institution of a mission when it was informed of the establishment of a mission.

65. Mr. MUSEUX (France) said that the support given to the amendment proposed by his delegation showed that its concern was largely shared. In submitting its amendment (A/CONF.67/C.1/L.23), his delegation had by no means intended to restrict the existing practice, but had simply wished to draw attention to the difficulties which the International Law Commission's text might cause. In the light of the Expert Consultant's explanations, his delegation withdrew its draft amendment, but pointed out that, in the words of paragraph 5 of the commission's commentary

on article 3 (A/CONF.67/4), "the expression 'relevant rules of the Organization' is broad enough to include all relevant rules whatever their nature: constituent instruments, certain decisions and resolutions of the organization concerned or a well-established practice prevailing in that organization". That passage showed that no unconditional right to establish a mission existed, but that a mission must be established in conformity with the relevant rules of the organization, comprising, *inter alia*, the practice of that organization. His delegation intended to propose an appropriate amendment to article 1 in due course.

66. The CHAIRMAN put to the vote the Czechoslovak amendment to paragraph 2 of article 5 (A/CONF.67/C.1/L.20).

The amendment was rejected by 36 votes to 18, with 8 absentions.

67. The CHAIRMAN put to the vote the oral amendment submitted jointly by Belgium, the Federal Republic of Germany and the United Republic of Cameroon concerning paragraph 3 of article 5.

The amendment was adopted by 58 votes to none, with 6 abstentions.

68. The CHAIRMAN put to the vote article 5 as a whole, as amended.

Article 5 as a whole, as amended, was adopted by 53 votes to none, with 10 abstentions.

The meeting rose at 1.05 p.m.

7th meeting

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

1. Mrs. KONRAD (Hungary) said that her delegation had abstained from the vote on article 5 as a whole at the previous meeting because of the rejection by the Committee of the important Czechoslovak amendment (A/CONF.67/C.1/L.20).

2. Mrs. MIRANDA (Cuba) said that she had abstained from voting on article 5 as a whole because her delegation was in full agreement with the Czechoslovak amendment (A/CONF.67/C.1/L.20), which had been rejected.

Article 6 (Functions of the permanent mission) (A/CONF.67/4, A/CONF.67/C.1/L.4, L.17, L.24)

3. Mr. DE YTURRIAGA (Spain), introducing his

delegation's amendment (A/CONF.67/C.1/L.4), said he agreed only in part with the International Law Commission's statement in the first sentence of paragraph 6 of its commentary to article 6 (see A/CONF.67/4). Any problems which arose in the bilateral relations between a sending State and the host State should, of course, be settled by the usual channels of bilateral diplomacy.

4. There could and did arise, however, problems concerning the protection of the interests of the sending State in relation to the organization itself. In a well-known Advisory Opinion,¹ the International Court of Justice had held that international organizations were subjects of international law, and as such were active subjects of diplomatic protection and were accordingly entitled to exercise diplomatic protection for the benefit of their officials.

5. It followed that international organizations should likewise be held to be passive subjects of diplomatic protection. If the actions of an organ of an international

¹ See case concerning *Reparation for injuries suffered in the service of the United Nations*, Advisory Opinion: I.C.J. Reports 1949, p. 174.

organization harmed the interests of a sending State, that State was entitled to protect those interests, using its permanent mission for that purpose.

6. It was for those reasons that his delegation, by its amendment proposed the insertion in article 6 of a new subparagraph which would recognize that function of protection of the interests of the sending State in relation to the organization. The function itself was not of vital importance, but his delegation felt that it was necessary to specify it in article 6 because it was one of the five functions mentioned in the corresponding provision (article 3, paragraph 1) of the 1961 Vienna Convention on Diplomatic Relations² and the inclusion in article 6 of only four of those five functions might result in a misleading interpretation of the effect of article 6. It might be argued *a contrario* that the omission was deliberate and that the intention of article 6 was to rule out the function of protection of the interests of the sending State in relation to the organization itself.

7. Mr. UNGERER (Federal Republic of Germany), introducing his delegation's amendment to article 6 (A/CONF.67/C.1/L.17), said that it embodied four proposals.

8. The use of the expression "*inter alia*" in the Commissions text placed the functions that were specified in the four subparagraphs of the article on a par with functions which were not specifically mentioned. The adoption of his delegation's proposal to insert the word "main" and delete the words "*inter alia*" would make it clear that the various functions to which specific reference was made constituted the more important functions of a permanent mission, the others being left out of the enumeration.

9. The purpose of the second proposal, which he was now orally amending to read: "(a) representing the sending State and its interests vis-à-vis the Organization", was to eliminate the linguistically inelegant and substantively unsatisfactory formula "ensuring the representation". That formula did not reflect accurately the situation described in paragraph 2 of the commentary to the article (see A/CONF.67/4). It was the task of the Government of the sending State to ensure representation, i.e. to determine who would represent its interests; while the permanent mission had the task to represent the sending State.

10. A second effect of his delegation's proposed reformulation of subparagraph (a) would be similar to that which would result from the adoption of the Spanish amendment (A/CONF.67/C.1/L.4), and his delegation would have no objection to dropping that part of its reformulation, provided that the new paragraph which the Spanish amendment would insert were placed not at the end of the article but immediately after subparagraph (a), in line with the structure of article 3 of the 1961 Vienna Convention on Diplomatic Relations. Should the Spanish delegation accept that idea, his own delegation's reformulation of subparagraph (a) would then read: "(a) representing the sending State to the Organization".

11. His delegation's third proposal was that the word "necessary" should be deleted from subparagraph (b) as redundant.

12. His delegation proposed the reformulation of subparagraph (e) in order to fill an important gap in the International Law Commission's text. Bearing in mind that an international organization was an entity distinct from its member States but composed of those member States, the permanent mission had a dual function: first, it represented the sending State and defended its interests; secondly, it should contribute to the realization of the purposes and principles of the Organization.

13. The purpose of the proposed rewording of subparagraph (e) was to make it clear that "co-operation" meant co-operation with the organization and with other permanent missions.

14. Mr. RITTER (Switzerland), introducing the joint amendment put forward by France and Switzerland (A/CONF.67/C.1/L.24), said that it referred to a very important function of the permanent mission, and one which could even be described as its essential function. The States members of an organization participated in the decisions of its organs, normally through the staff of their permanent mission, although they were sometimes represented by an official sent from the capital of the country.

15. Specific mention should therefore be made somewhere in article 6—not necessarily at the end of the article—of that important function, which marked the only important difference between a permanent mission and a permanent observer mission. Article 6, which dealt with permanent missions, and article 7 (Functions of the permanent observer mission) were couched in somewhat similar terms. The adoption of the joint amendment in addition to clarifying the meaning and purpose of article 6, would also bring out more clearly the sense of article 7 by underlining the main difference between the functions of the two types of missions.

16. Mr. PASZKOWSKI (Poland) said that article 6 represented perhaps the most valuable part of the work in the field of codification and progressive development of rules governing the representation of States in international organizations, for it specified the functions of the permanent mission.

17. After studying the amendments proposed to article 6 his delegation wished to stress that permanent missions performed their functions in a context of international co-operation, defined primarily by the provisions of the constituent instrument of the organization concerned. Perhaps it was true that, from the point of view of an individual State, one of the main functions of its permanent mission was to protect its interests. Every Government might tell its permanent mission to protect the national interests but the mission could only do so by respecting the rules of the organization in question and by taking into account the legitimate interests of the other States and of the organization as a whole.

18. If the interests of the individual member States were to be pursued to the extreme, there would be no co-operation within the framework of the international organization. Therein lay the dilemma. A permanent

² United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

mission represented the interests of the sending State by performing such functions as representing that State and maintaining liaison with the organization. The question could therefore well be asked whether it was at all necessary to mention the protection of national interests as a separate function, in the manner proposed in the amendments of Spain (A/CONF.67/C.1/L.4) and the Federal Republic of Germany (A/CONF.67/C.1/L.17).

19. Examples could of course be given of permanent missions maintaining relations among themselves and co-operating both on matters within the competence of the organization and on other matters of interest to the States concerned. That type of co-operation would continue in the future but that aspect was not suitable for regulation by legal norms, for co-operation between permanent missions was largely a reflection of the state of relations between their respective countries and cases existed in which no such relations were possible because the States concerned had no diplomatic relations between them.

20. On careful consideration, his delegation felt that it would be better to leave subparagraph (e) as it stood. The essence of the function was to promote co-operation for the realization of the purposes and principles of the Organization. Methods of co-operation would depend in the future, as they did at present, on the particular circumstances of each individual case.

21. With reference to the joint amendment of France and Switzerland (A/CONF.67/C.1/L.24), he felt that the question of participation in the activities of the organization was easily covered by the rules of procedure of its organs and by the credentials issued to permanent representatives. The mere fact that a person was a permanent representative was not always sufficient for him to participate in the meetings of individual organs. In any case, the question of participation appeared to be covered by the function of representation in conjunction with the other functions mentioned in the article.

22. Mr. DORON (Israel) suggested that a drafting change should be made in subparagraph (d) of article 6, and also in subparagraph (b) of article 7, so as to replace the unsatisfactory opening words "ascertaining activities in . . ." by a more suitable expression, such as: "following the activities of the Organization . . .".

23. He also proposed reversing the sequence of subparagraphs (c) and (d), so that they would present in a logical order the three ideas of: first, "following the activities of the Organization"; secondly, "reporting thereon" and, thirdly, "negotiating in the Organization".

24. The CHAIRMAN said that those suggestions would be referred to the Drafting Committee.

25. Mr. UNGERER (Federal Republic of Germany) stressed that his delegation's proposed reformulation of subparagraph (e) was intended to reflect the dual function of a permanent mission: first, to defend the interests of the sending State; and secondly, to contribute to the realization of the purposes and principles of the organization. From experience he could say that the

purposes of an organization could not be promoted by the representatives of member States working in its decision-making organs without the elements of co-operation between those representatives. Every decision taken implied contacts and compromises between those representatives.

26. In response to the comments of the Polish representative, he would reword the concluding part of the reformulation of subparagraph (e) proposed by his delegation (A/CONF.67/C.1/L.17) to read: ". . . by co-operating with the Organization and with representatives of other States".

27. Mr. OSMAN (Egypt) said that he had participated for a very long time in United Nations proceedings and could say from his experience that article 6 as it stood was a sound reflection of the functions of permanent missions. There existed of course other activities which a permanent mission could perform, such as co-operating with other permanent missions, but no useful purpose would be served by specifying them.

28. The general structure of article 6 was very satisfactory. Its text covered the essentials without entering into unnecessary detail. He therefore fully supported the text prepared by the International Law Commission (ILC).

29. Sir Vincent EVANS (United Kingdom) said he had understood the representative of the Federal Republic of Germany to say that he might be prepared to accept the Spanish amendment (A/CONF.67/C.1/L.4) in lieu of that of the Federal Republic of Germany to subparagraph (a) (A/CONF.67/C.1/L.17).

30. For his part, he much preferred the original amendment of the Federal Republic of Germany on that point because the Spanish amendment seemed to introduce a suggestion of adversary relationship between the sending State and the Organization. It was really much better to refer, as had the original amendment of the Federal Republic of Germany, to "representing" the interests of the sending State than to "protecting" those interests.

31. Mr. MUSEUX (France), speaking as a sponsor of the joint amendment in document A/CONF.67/C.1/L.24, said that its adoption would introduce a new and important element into article 6. As the article now stood, it specified in its five subparagraphs those functions which the permanent mission performed in relation to the organization. No mention was made of the significant function of participation in the actual decision-making process within the organization itself.

32. It was essential not to lose sight of the duality of functions which was a characteristic feature of permanent missions. Under the Charter of the United Nations, for example, members of permanent missions who acted as representatives of States members of the Security Council participated under Article 23, paragraph 3 of the Charter in the decision-making of the Organization. Another interesting example was provided by the International Civil Aviation Organization (ICAO). Only those States members of ICAO which were members of its Council maintained permanent missions at

Montreal; the heads of those permanent missions constituted the Council.

33. Failure to mention such an important function of permanent missions would leave a serious gap in the draft, and France and Switzerland had therefore proposed the addition of a new subparagraph to specify that function.

34. Mr. AL-ADHAMI (Iraq) said his delegation was of the opinion that the text of article 6 prepared by the ILC was excellent and that there was no need to amend it.

35. Mr. MOLINA LANDAETA (Venezuela) said that the amendments proposed to the text of article 6 did not seem to alter the spirit of the text proposed by the ILC. Some delegations might, of course, have some doubts concerning the wording of subparagraph (a) because it was quite obvious that, if a State had a permanent mission, its representation would be ensured. Although his delegation agreed with the text proposed by the ILC, it could, if necessary, agree to the deletion of the word "ensuring" in subparagraph (a).

36. Referring to subparagraph (b), he said that his delegation could not agree that the word "necessary" should be deleted because one of the main functions of a permanent mission was to maintain a minimum of liaison with the organization.

37. The text of subparagraph (c), relating to negotiations with or in the organization was sufficiently clear. With regard to subparagraph (d), he pointed out that, in the discussions on article 5 (c) of the 1963 Vienna Convention on Consular Relations,³ some delegations had stated that it was a principle of legal morality to include a reference to the ascertainment "by all lawful means" of conditions and developments in the life of the receiving State. It would therefore be appropriate to include a similar reference to "lawful means" in article 6 (d) of the proposed convention in order to ensure that permanent missions could ascertain activities in the organization only by such means.

38. His delegation considered that subparagraph (e) was sufficiently clear, but could agree to include in it the ideas contained either in the Franco-Swiss amendment or in the amendment proposed by the Federal Republic of Germany. Even if the concept of the promotion of co-operation was not defined in the proposed convention, it would at least be necessary to ensure the co-operation of States with international organizations for the realization of the purposes and principles of the United Nations.

39. Mr. GOBBI (Argentina) said that his enthusiasm for the basic text prepared by the ILC increased as the discussion went on. Thus, with regard to the amendment to subparagraph (a) proposed by the Federal Republic of Germany, he agreed with the representatives of Venezuela and Poland, because it was obvious that if a permanent mission represented a country, it defended that country's interests. His delegation therefore supported the text prepared by the ILC, but could agree to the incorporation of the amendment proposed by France and Switzerland.

40. Mr. OSMAN (Egypt), referring to subparagraph (a), said that, in the light of United Nations practice, he could not understand how it could be suggested that the function of representation did not include the function of protecting and defending the interests of the sending State. His delegation considered that the subparagraph was satisfactory as it stood and would fully support it.

41. Mr. SMITH (United States of America) said he understood that some delegations had proposed amendments to the text of article 6 because they had been concerned to ensure that the proposed convention would be as clear and precise as possible. His delegation found some merit in the amendment to subparagraph (a) proposed by the Federal Republic of Germany, although it could be argued that the point raised with regard to representation might be referred to the Drafting Committee.

42. One could probably discuss indefinitely possible refinements to the text prepared by the ILC, but his delegation wondered whether such refinements really related to substance, particularly in the light of the wording of the introductory phrase of the article, which made it clear that the article dealt only with the main functions of the permanent mission. He agreed with the representative of Argentina that the International Law Commission's text became more attractive as the debate continued.

43. Mr. DE YTURRIAGA (Spain), referring to the question whether it was necessary to refer specifically to the protection of the interests of the sending State, said that if the draft articles referred to representation, they would also have to refer to the protection of the interests of the State, particularly since article 3, paragraph 1, subparagraphs (a) and (b) of the 1961 Vienna Convention on Diplomatic Relations contained a precedent for referring separately to the two concepts. Since the 1961 Vienna Convention referred specifically to the function of protection, his delegation considered that a similar reference should be included in the proposed convention in order to avoid any possible misinterpretation to the effect that permanent missions did not have the function of diplomatic protection in their relations with international organizations.

44. His delegation agreed with the comments of the representative of Poland concerning subparagraph (d) and therefore thought that it might be better to leave the text as it stood. He agreed with the representatives of the Federal Republic of Germany, Argentina and Venezuela that the words "ensuring the representation" in subparagraph (a) should be replaced by the word "representing". Referring to the Spanish text of subparagraph (c), he said that the words "*celebrar negociaciones*" should be replaced by the word "*negociar*", which was closer to the word "negotiating" used in the English text and the word used in the 1961 Geneva Convention.

45. With regard to the Franco-Swiss amendment (A/CONF.67/C.1/L.24), he said that the function of ensuring the participation of the sending State in the activities of the organization was not an autonomous function of a permanent mission and that the concept

³ *Ibid.*, vol. 596, No. 8638, p. 261.

embodied in the proposed new subparagraph (f) could be included in subparagraph (b).

46. Mr. EL-ERIAN (Expert Consultant), referring to the points made by the representative of Spain concerning the functions of representation and protection, said that, historically, the institution of the permanent mission had developed in order to ensure liaison with international organizations and that the function of negotiating had developed later, when permanent missions had begun to conclude more and more technical and social agreements with international organizations. He stressed, however, that the permanent mission had, and needed to have, a representative nature in order to maintain the necessary liaison and negotiate with the organization. The ILC had therefore considered it appropriate to include the function of representation in the first subparagraph of article 6.

47. The Commission had also considered it necessary to make a very careful distinction between the functions of the permanent mission and the functions of delegations at the meetings of organs of international organizations. Permanent missions did not participate as such in meetings. For example, members of delegations were appointed to take part in the meetings of the General Assembly, but they might not necessarily be members of their country's permanent mission to the United Nations. The four main functions of diplomacy, namely, representation, information and protection, had been defined in article 3 of the 1961 Vienna Convention. The fifth function referred to in article 3, paragraph 1 (e) of that Convention had been added as a result of the development of international relations and the commitment of States to international peace, friendly relations and co-operation. The function of the promotion of co-operation for the realization of the purposes and principles of the organization had therefore also been included in article 6 (e) of the proposed convention. In reality, all the activities and functions of permanent missions were directed towards the fulfilment of the purposes and principles of the organization. In that connexion, he referred to article 1, paragraph 4, of the Charter, which stated that the United Nations should be a centre for the harmonization of the actions of nations.

48. The ILC had therefore not considered that the functions of a permanent mission included the function of ensuring diplomatic protection. Rather, it was the inter-State diplomatic mission which was entrusted with the task of protecting the interests of the State and its nationals residing abroad. He himself had found that distinction convenient because, as the Permanent Representative of Egypt to the United Nations Office at Geneva, he had nothing to do with diplomatic protection in the traditional sense. That function was carried out by the Egyptian Ambassador accredited to the Government of Switzerland at Berne.

49. In that context, he also wished to point out that, in subparagraph (c), the ILC had used the words "negotiating with or in the Organization" in order to stress that one of the main developments which had taken place in the last 20 or 30 years had been the

growth of multilateral diplomacy. Difficult problems could be solved as a result of preliminary consultations between the permanent missions of States, and negotiations were sometimes held between permanent missions when the States concerned had no diplomatic relations.

50. He was of the opinion that the introduction in the proposed convention of the idea of protection might give rise to confusion because the ILC understood protection only as diplomatic protection, which belonged to bilateral diplomacy. Moreover, because of the importance of the negotiating function, the ILC had decided in draft article 12 to make the head of the permanent mission the representative of the State for the purpose of concluding treaties with the organization. Thus, the head of the permanent mission was considered as the representative of the State in negotiations with the organization.

51. Mr. BARAKAT (Yemen) said that although the amendments proposed by the Federal Republic of Germany (A/CONF.67/C.1/L.17) had great merit, he considered that most of the proposed additions and reformulations were already embodied in the text of article 6 prepared by the ILC. With regard to the amendment proposed by France and Switzerland (A/CONF.67/C.1/L.24), he said that the participation of the State in the activities of an organization was the prerogative of the State itself. Thus, the State could decide whether or not it wished to participate in a specific activity of an organization by sending a representative. It would therefore not be appropriate to stipulate in article 6 that the permanent mission was obliged to participate in the activities of an organization.

52. Referring to the amendment to article 6 proposed by Spain (A/CONF.67/C.1/L.4) and in the light of the explanation given by the Expert Consultant, he said that the word "protection" conveyed the idea of confrontation since the question of the protection of the interests of a State arose when the State had severed its diplomatic relations with another State and had appointed a third State to protect its interests. His delegation could therefore not support the Spanish amendment.

53. Mr. MOLINA LANDAETA (Venezuela), referring to the comments of the representative of Spain concerning the protection of the interests of the sending State, recalled that the Expert Consultant had said that the words "the protection of the interests of the sending State" had not been included in draft article 6 in order to avoid confusion with the concept of bilateral diplomatic protection. He wondered, however, whether the term "diplomatic protection" could not also relate to the protection of the interests of the sending State in its relations with an international organization. His delegation was of the opinion that the function of protection was not carried out only by inter-State diplomatic missions. For example, when problems arose about budgetary quotas, it would obviously be the function of the permanent mission to defend the interests of the sending State, but, in such a case, it would not be defending the interests of the nationals of the State. His delegation therefore considered that the con-

cept of the protection of the interests of the State should be included in one of the subparagraphs of article 6.

54. Referring to subparagraph (*d*), he said that he wished to ask the Expert Consultant why the ILC had not used the wording of article 3, paragraph 1 (*d*) of the 1961 Vienna Convention, which stated that one of the functions of a diplomatic mission was to ascertain "by all lawful means" conditions and developments in the receiving State. His delegation was of the opinion that the words "by all lawful means" should be included in article 6 (*d*) in order to avoid the interpretation that it was possible for States to ascertain activities in the organization by unlawful means.

55. Mr. CALLE Y CALLE (Peru), referring to the amendments which had been proposed by Spain, the Federal Republic of Germany, and France and Switzerland, said he thought that all delegations agreed that the list of functions given in article 6 was not exhaustive. Reference was made in that article only to the main functions of permanent missions, the first of which was representation, as indicated in the very title of the proposed convention. The amendment proposed by France and Switzerland introduced the concept of the participation of States in the activities of international organizations, but as the representative of Yemen had rightly pointed out, a State could, even while maintaining its permanent representation, decide not to participate in certain activities of an organization.

56. The amendments proposed by the Federal Republic of Germany (A/CONF.67/C.1/L.17) did not really make any basic changes in the functions enumerated in article 6, but related mainly to the drafting of the article. Its amendment to subparagraph (*a*) was quite similar to the Spanish amendment (A/CONF.67/C.1/L.4/), which referred to the protection of the interests of the sending State. The Spanish amendment was interesting because it made a very clear distinction between the function of the protection of the interests of the sending State in relation to the organization and the other functions of the permanent mission. In that connexion, he referred to the comment on article 6 made by Romania in document A/CONF.67/WP.6, in which Romania had expressed the view that mention should also be made of the function of defending the interests of the sending State in its relations with the international organization. Of course, a State's interests could be "represented" only by a third State, but its interests could be defended and protected by a permanent mission. Thus, protection did not necessarily have to be understood as the classical diplomatic protection, in which the rights of the nationals of a State were defended, because the rights of nationals had now come to be considered as the rights of the State. For those reasons, his delegation considered that the amendment proposed by Spain was extremely interesting and could support its inclusion in the text of article 6.

57. Mr. EL-ERIAN (Expert Consultant) said that he agreed with the Venezuelan representative that although diplomatic protection in the traditional sense

was the work of the diplomatic missions, it was possible to envisage situations in which permanent missions might exercise functions containing an element of protection. He did not think however that it was necessary to make that aspect explicit in the text since, as some speakers had observed, it was implied in representation. In paragraph 6 of its commentary on article 6 (see A/CONF.67/4), the ILC referred to the fact that it had been pointed out during the discussion that permanent missions might in certain circumstances perform functions in relation to the host State with the latter's consent. There was nothing against an arrangement whereby in exceptional circumstances, the host State agreed to accept permanent missions as diplomatic missions.

58. With regard to the Venezuelan representative's enquiry about the omission from subparagraph (*d*) of the phrase "by all lawful means", the latter was right in recalling that it had been used in the corresponding paragraph 1 (*d*) of article 3 of the 1961 Vienna Convention on Diplomatic Relations. The circumstances were not however identical: the activities in an international organization were different from those in a receiving State which covered an entire territory and which might involve delicate borderline cases between legality and illegality, such as contact with a political opposition.

59. Mr. JOEWONO (Indonesia) said that although the intention of the proposed amendments to article 6 was to make the text more precise, they would only succeed in making it more complicated. Some delegations thought that it was necessary to make explicit mention of the protection of the sending State's interests. As a matter of practical experience, however, all permanent missions participated in the work of international organizations on the basis of instructions from their Government and their activities could therefore be assumed to reflect the interests of the sending State. He could not therefore support proposals to add to the text a reference to defending the interests of the State. With regard to the Franco-Swiss amendment (A/CONF.67/C.1/L.24), States were not required to participate in all the work of an organization but only insofar as they might wish and require to do so. The amendment was therefore redundant. He affirmed his support for the International Law Commission's text of article 6.

60. Mr. OSMAN (Egypt) said that the key to a solution lay in the representative character of permanent missions. They might even afford diplomatic protection in the traditional sense as, for example, in ensuring with the secretary-general of the organization and with the host State that the privileges and immunities of their members were respected. Permanent missions also conducted a whole range of activities within the organization to protect the interests of the State they represented such as voting in accordance with those interests on various subjects, contact with the secretary-general and membership in a group to sponsor draft resolutions.

61. Mr. DE YTURRIAGA (Spain) remained con-

vinced that the function of protecting the sending State's interests was a distinct function although it came within the general framework of representation. Furthermore, it included an element of traditional diplomatic protection not only in the cases of the protection of the interests of the sending State cited by the representative of Venezuela, but also in cases of the protection of its nationals. He mentioned as an example the hypothetical damage which might be caused by the United Nations peace-keeping forces.

62. Mr. UNGERER (Federal Republic of Germany) said that article 3 of the 1961 Vienna Convention on Diplomatic Relations made a distinction between representation and the protection of interests. Representation of a State might be largely a matter of protocol; protection of its interests vis-à-vis the organization would involve action on matters such as the quota of materials on the secretariat staff and the choice of venue for conferences. He was prepared to leave it to the Drafting Committee to decide whether a reference to protection of the State's interests should be inserted in subparagraph (a), as he had suggested in his amendment (A/CONF.67/C.1/L.17), or in an additional subparagraph as proposed in the Spanish amendment (A/CONF.67/C.1/L.4).

63. Again, there was a considerable difference between co-operation and negotiation; the Expert Consultant had referred to consultations with or in an organization but they were not necessarily negotiations, which always had a formal aspect; at recent meetings of United Nations Industrial Development Organization, one group of States had attached considerable importance to the distinction between consultations and negotiations. The International Law Commission's draft of subparagraph (e) was not clear enough. The point of his amendment to that subparagraph was that permanent missions should be involved in co-operation, which often occurred between missions. To facilitate agreement, he would revise his reformulation of subparagraph (e) to read:

"To promote the realization of the purposes and principles of the Organization by co-operating with and within the Organization".

64. Mr. RITTER (Switzerland), speaking as one of the sponsors of the joint amendment (A/CONF.67/C.1/L.24), said that he agreed with those who had pointed out that nothing obliged a member State to participate in all or any of the activities of an international organization and that its form of participation would be defined by the rules of procedure of that organization. The permanent mission however was the instrument whereby the State could participate in accordance with its rights and wishes.

65. The CHAIRMAN said that in the light of the remarks which had just been made by the representative of the Federal Republic of Germany, he did not propose to take a decision on the latter's amendment to subparagraph (a) until a vote had been taken on the Spanish amendment (A/CONF.67/C.1/L.4). He put to the vote the amendment proposed by the Federal Republic of Germany to the first line of article 6, which would insert the word "main" before the word

"function" and delete the words "inter alia" (A/CONF.67/C.1/L.17).

The amendment was rejected by 21 votes to 20, with 24 abstentions.

66. The CHAIRMAN put to the vote the amendment proposed by the Federal Republic of Germany to delete the word "necessary" from subparagraph (b) (A/CONF.67/C.1/L.17).

The amendment was adopted by 30 votes to 6, with 28 abstentions.

67. The CHAIRMAN put to the vote the amendment proposed by the Federal Republic of Germany to subparagraph (e) as orally revised.

The amendment as orally revised, was adopted by 39 votes to 4, with 22 abstentions.

68. The CHAIRMAN put to the vote the Spanish proposal to add a new subparagraph to article 6 (A/CONF.67/C.1/L.4).

The amendment was adopted by 20 votes to 13, with 29 abstentions.

69. The CHAIRMAN put to the vote the Franco-Swiss proposal to add a new subparagraph to article 6 (A/CONF.67/C.1/L.24).

The amendment was adopted by 34 votes to 3, with 26 abstentions.

70. The CHAIRMAN put to the vote article 6 as a whole, as amended, on the understanding that the Drafting Committee would take into consideration the amendment proposed by the Federal Republic of Germany to subparagraph (a) and would decide on the sequence of subparagraphs.

Article 6 as a whole, as amended, was adopted by 60 votes to none, with 4 abstentions.

71. In reply to a question by Mr. KUZNETSOV (Union of Soviet Socialist Republics) the CHAIRMAN said that the Soviet proposal in document A/CONF.67/C.1/L.27, to the effect that the amendment to article 9 proposed by Canada and the United Kingdom should be examined when draft article 75 was being examined, could be taken as applying also to the United States amendment, to that article (A/CONF.67/C.1/L.28), which was similar in nature.

72. Mr. MOLINA LANDAETA (Venezuela) requested that in his report the Rapporteur should note the fact that, in reply to a question put by one delegation, which considered that there should be uniformity between the text of the future convention and those of the Conventions on Diplomatic Relations and on Consular Relations, the Expert Consultant had said that it was not necessary to insert the words "by all lawful means" after the word "ascertaining" in subparagraph (d) of article 6, it being understood that activities in the organization would be ascertained by lawful means.

73. Mr. EUSTATHIADES (Greece) said that he had abstained in the vote on article 6 as a whole not because his delegation had any doubts about the article but in order to appeal to his colleagues to bear the time factor in mind. The amendments proposed to

article 6 had added very little to the original text of the ILC, so very carefully worked out, and a great deal of time had been spent discussing them. It would be interesting to know whether provision had been made for a second conference on the subject or if the Conference was supposed to complete its work in one session.

Article 7. (Functions of the permanent observer mission) (A/CONF.67/4, A/CONF.67/C.1/L.5, and L. 22)

74. Mr. DE YTURRIAGA (Spain) said that his delegation supported the Commission's text of the article. The words "when required" in subparagraph (c) might, however, give rise to confusion. Would it be the State sending the permanent observer mission or the organization which would decide when the permanent observer mission could negotiate with the organization? Permanent observer missions had the right to negotiate with the organization, and that was sufficient. It was for that reason that his delegation had submitted the amendment proposed in document A/CONF.67/C.1/L.5.

75. Mr. SMITH (United States of America) said that his delegation believed it desirable to explain the theories underlying the amendment to article 7 it had proposed in document A/CONF.67/C.1/L.22. He had listened with interest to the statement made by the representative of Switzerland when introducing document A/CONF.67/C.1/L.24. He had not commented on that statement when it was made because he felt it more appropriate to reserve his views until the discussion on article 7.

76. His delegation questioned whether an observer mission could be regarded as representing its sending State in the usual sense. Certain observer missions did at times engage in representational activities. It was questionable, however, that it was appropriate to view as an inherent function of an observer mission that of representing its sending State in an international organization. The Conference was in the process of drafting a general convention in which the subject would be dealt with on a broad scale for the first time. Thus, adoption of the representational function by observer missions could result in the international community regarding representation as an inherent function of all observer missions established by a State. Such a conclusion would be too sweeping and general and would pose the question whether there was any real differences between the status and functions of permanent missions and those of observer missions. His delegation believed that there were substantial differences. The main difference was that observer missions in general were not intrinsically representational in character, and their functions were therefore less encompassing than those of permanent missions. His delegation's amendment to subparagraph (a) sought to demonstrate that difference. His delegation did not insist that the actual words it had proposed in its amendment to subparagraph (a) should be used; it was primarily interested in the principle those words sought to convey.

77. His delegation's proposal concerning subparagraph (c) had been presented for much the same rea-

sons. The United States did not consider it an inherent function of observer missions to negotiate; their inherent function was to observe the activities of the organization and report thereon to its sending State.

78. Mr. STUART (Australia) said that in general his delegation welcomed the Commission's draft of part II of the articles. The draft proposed that permanent missions to international organizations should be broadly equated with permanent diplomatic missions to States, and from the point of view of functional necessity that seemed to be reasonable. His delegation, however, had difficulty in accepting the basis proposed for permanent observer missions.

79. In its approach to the convention, his delegation had been impressed by the need to preserve the principle of functional necessity to which he had just referred. It believed that the efficient conduct of business in the international community, and the effective formulation of contributions to international law regulating that conduct, depended upon protection for that principle and respect for the existing body of international practice. Those considerations should govern the Committee's approach to article 7.

80. In comments made on the draft articles as early as 1971, his Government had expressed its concern at the possibility that observer missions might, in its view unnecessarily, be equated with the permanent missions of States members of an international organization.⁴ His delegation now reiterated that concern. Article 7 of the draft articles could have the effect of assimilating permanent observer missions to permanent missions to such an extent as to lose sight of the difference between them. His delegation believed that that should be avoided. By the very nature of the words, a permanent observer mission was appointed to observe and report; it was not appointed to negotiate. It was not subject to the rules of the organization it was observing; its role was an independent and an informal one. The role of the permanent mission was formal, and it was responsible to the organization, whose rules it followed. To secure a proper balance between permanent missions and permanent observer missions it would be better to limit the status, privileges and immunities of permanent observer missions rather than to extend them, as article 7 appeared to do.

81. When the Committee came to discuss the privileges and immunities of permanent observer missions in further articles of part II, his delegation would have to examine how far they could be allowed to extend beyond article V of the Convention on the Privileges and Immunities of the Specialized Agencies.⁵ First, however, it was concerned with the question of what purpose a permanent observer mission was intended to serve. As drafted, article 7 went well beyond what his delegation would have thought necessary. Subparagraph (c) of the article, for example, would give to an observer mission the right to negotiate as well as to observe. His delegation failed to see that an observer

⁴ See *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 10, annex I, paras. 9 to 11.*

⁵ General Assembly resolution 179 (II).

mission was required to negotiate, and it would like to see the subparagraph amended as suggested by the United States in document A/CONF.67/C.1/L.22. Although it did not feel so strongly on that point, it also believed that the amendment proposed in the same document to subparagraph (a) gave a more exact description of what an observer mission should seek to concern itself with. His delegation would be happy to see both those amendments adopted by the Committee.

82. Monsignor ROVIDA (Holy See) said that the amendments to article 7 submitted by the Spanish delegation (A/CONF.67/C.1/L.5) and the United States delegation (A/CONF.67/C.1/L.22) sought very different objectives. In so far as the amendments to subparagraph (c) were concerned, for instance, that submitted by Spain was consistent with the title and language of the convention and rightly emphasized that a function of permanent observer missions was to negotiate with the organization, whereas according to the United States amendment permanent observer missions would not have that function; thus, the very substance of article 7 concerning the concept and status of observer was affected. The observer, as a concept in international law, had come to have very precise characteristics, including that of negotiating with—and not merely in—the organization. In that connexion, it was sufficient to note that the intention of the United Nations and its specialized agencies in accepting permanent observer missions from non-member sending States was precisely to enable them from the diplomatic point of view to take part in the work of the organization and make it easier for them to accede to the organization's constituent instrument. That supposed that the permanent observer mission was empowered to conduct, or at least to initiate, negotiations with a view to the non-member observer State becoming a member State. Negotiation was therefore, an essential and fundamental function, without which some of the States represented at the Conference might not have succeeded in becoming member States. Furthermore, it was obvious that, by the very fact that it could not ignore its basic characteristic of representing its sending State, the permanent observer mission conducted, had conducted and would conduct formal negotiations for the purpose of promoting co-operation with the organization in such matters as literacy campaigns, the protection of cultural property, development programmes and so forth. It should be noted, too, that the results of the negotiations conducted with the organization benefited not only the organization itself but, and above all, its member States. That, for instance, was the case with Switzerland and the United Nations. It was also the case of other past, present or future permanent observer missions to the United Nations and/or its specialized agencies, and it was the case of the Holy See.

83. The reason the United States delegation wished to limit the functions of permanent observer missions seemed apparent in that delegation's amendment to subparagraph (a) of article 7, the effect of which was practically to remove the *raison d'être* of permanent observer missions. It should be borne in mind that the amendment to subparagraph (a), as it appeared in

document A/CONF.67/C.1/L.22, was intimately and substantially connected with article 1 of the draft convention and, therefore, with the amendment to article 1, paragraph 1, subparagraph (7) proposed by the United States in document A/CONF.67/C.1/L.12. The United States proposal would remove the essential concept of representation of the sending State by the permanent observer mission. In his delegation's opinion that could not be done without seriously jeopardizing established practice and the essential characteristic of a permanent observer mission. As the Italian representative had emphasized at a previous meeting (5th meeting), the function of the permanent observer mission was essentially diplomatic, perhaps even more diplomatic than that of the permanent representative if account was taken of the fact that it had to represent a non-member State. On the one hand, it was recognized that one of the functions of the permanent observer mission was to promote co-operation with the organization but, on the other hand, there was an attempt to disregard the fact that the permanent observer mission represented its sending State. That was obviously inconsistent. To promote co-operation implied action based of necessity on a line of action of either the sending State or the organization. How could it be argued, therefore, that a permanent observer mission, which promoted co-operation and which acted, did not in so doing represent its sending State? In practice, it would be very difficult, if not impossible, for a permanent observer mission to be, or to be regarded as being, so disconnected from its sending State as not to be able to represent it in its work. Furthermore, it was always the sending State which was responsible for promoting co-operation with international organizations, and the permanent observer mission was nothing more nor less than the instrument used by the non-member State. Accordingly, the permanent observer mission necessarily represented its sending State in its relations with the organization. The same was true with regard to the function of co-ordination or liaison. Since that function applied to the pursuit of a line of action with respect to the international organization it was closely related to the representative functions of the State sending the permanent observer mission. Adoption of the amendment proposed by the United States delegation would undermine the very text of the convention, for provision was made in that instrument for different forms of State representation, namely, representation of member States and of non-member States. The convention did not provide for a single, exclusive form of representation of member States; to do so would obviously run counter to reality, to established practice and to a basic principle of international law.

84. That principle was the sovereign right of every State to be represented in another State or in an international organization, where the other State or organization was prepared to establish official relations, in accordance with the principle established in the Charter of the United Nations of the sovereign equality of States. If the Conference wished to give that principle meaning in its debates, it was essential to recognize that no State could be denied the possibility of establishing relations with an international organization in

the only manner consistent with its dignity as an independent member of the international community, namely, through representation in an organization by a mission enjoying all the necessary facilities to safeguard the dignity and interests of its sending State.

85. Those were the reasons why his delegation endorsed the International Law Commission's text of article 7. It could, however, accept the amendment proposed by the Spanish delegation, because the very fact of conducting negotiations supposed that those negotiations were necessary.

86. He requested the Expert Consultant to explain, from a much more legal point of view and from a point of view based on obvious and incontrovertible practice, the reasons which had led the Commission to prepare such a sound draft on the question he had just analysed.

87. Mr. ESSY (Ivory Coast) said that he fully en-

dorsed the statement made by the representative of the Holy See. He had listened with interest to the statement made by the representative of the United States of America. He realized that a distinction must be made between the functions of a permanent mission and those of a permanent observer mission but failed to understand how a permanent observer mission could be denied the capacity to represent its sending State. As to the United States amendment to subparagraph (c), he would be interested to know what was the role of, say, the Swiss mission to the United Nations if it could not negotiate with the organization on matters concerning Switzerland.

88. The CHAIRMAN said that amendments to articles 14 to 20 should be submitted by noon on the following day.

The meeting rose at 6 p.m.

8th meeting

Tuesday, 11 February 1975, at 10.45 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 7 (Functions of the permanent observer mission) (concluded) (A/CONF.67/4, A/CONF.67/C.1/L.5, L.22)

1. Mrs. THAKORE (India) emphasized the importance of article 7 in relation to the principle of universality in the activities of international organizations of universal character. Since permanent observer missions were established by non-member States, the International Law Commission (ILC) had rightly devoted a separate article to the functions of missions in that category. Among the said functions, it had mentioned those of representing the sending State, maintaining liaison with the organization, reporting to the sending State, and promoting co-operation with the organization. Although permanent observer missions could not be assimilated to permanent missions, they nevertheless performed a function of representation, as the ILC had pointed out in its commentary to article 7 (see A/CONF.67/4). Consequently, her delegation could not support the United States amendment (A/CONF.67/C.1/L.22). On the other hand, she supported the Spanish amendment (A/CONF.67/C.1/L.5), as it was a fact that permanent observer missions conducted negotiations with organizations.

2. Mr. AVAKOV (Union of Soviet Socialist Republics) said he approved of draft article 7. As permanent observer missions were established by non-member States, they necessarily performed different functions from those of the permanent missions of member States. It was therefore important to define their functions in a

separate provision. An observer did not have any functional links with the organization, he did not speak in the debates or participate in the voting, but he pursued certain clearly-defined aims.

3. His delegation could not approve of the United States amendment (A/CONF.67/C.1/L.22). The main function of an observer was of course to observe and to report to his Government, but the United States amendment would have the effect of unduly limiting the rights of observers. As the representative of the Holy See (7th meeting) had demonstrated, the Commission's article 7 was entirely satisfactory. His delegation did, however, support the Spanish amendment (A/CONF.67/C.1/L.5), for the same reason as that given by the Indian delegation.

4. Mr. CALLE Y CALLE (Peru) considered it logical that there should be a certain parallelism between articles 6 and 7, since it had been recognized, in article 5, that member States had the right to establish permanent missions, and non-member States to establish permanent observer missions. The methods of representation might differ in respect of one and the other, but in every case the missions represented sovereign States. As members of the international community, those States were entitled to participate in the activities of the international organizations, all the more so as those under consideration were organizations of universal character. Some States were full members, while others were only potential members.

5. The object of the Spanish amendment (A/CONF.67/C.1/L.5) was to abolish a restriction, made in subparagraph (c) of article 7, on the exercise of negotiating functions by the permanent observer missions. On the other hand, the amendment submitted by the United States delegation in the second part of document A/CONF.67/C.1/L.22 was aimed at securing the