

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

Vienna, Austria  
4 February - 14 March 1975

Document:-  
**A/CONF.67/SR.11**

**11th plenary meeting**

*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)*

*Article 100, as amended, was adopted, having obtained the required two-thirds majority.*

*Article 101 (Respect for the laws and regulations of the host State)*

65. Mr. MITIĆ (Yugoslavia) requested that paragraph 4 of article 101 should be voted on separately, for the reasons which his delegation had already explained at the 41st meeting of the Committee of the Whole during

the discussion of the article, which at that time was number 75, and, in particular, because of the ambiguity of that paragraph.

66. Mr. MUSEUX (France) recalled that article 101 had given rise to lengthy and complicated discussion in the Committee of the Whole. He therefore moved the adjournment of the debate on that article.

*The meeting rose at 5.45 p.m.*

## 11th plenary meeting

Thursday, 13 March 1975, at 11.10 a.m.

President: Mr. SETTE CÂMARA (Brazil).

**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)**  
[Agenda item 11]

CONSIDERATION OF THE TITLES AND TEXTS OF ARTICLES ADOPTED BY THE COMMITTEE OF THE WHOLE (continued) (A/CONF.67/11/Add.5)

*Article 101 (Respect for the laws and regulations of the host State) (concluded)*

1. The PRESIDENT invited the Conference to continue its consideration of article 101, with regard to which the only outstanding proposal was the request of the Yugoslav delegation for a separate vote on paragraph 4.

2. Mr. ESSY (Ivory Coast) said that the Committee of the Whole had experienced great difficulty with article 101, which was then numbered article 75. The text in document A/CONF.67/11/Add.5 was the result of a compromise which had only been adopted by a narrow majority. In the circumstances, his delegation wished to assist the Conference in making a further effort to bring the opposing views closer to each other and to arrive at an article which would be more generally acceptable.

3. He earnestly hoped that his amendment would avoid the mutilation of the text of the article that would result if a paragraph 4, on which a separate vote had been requested, was not adopted by the Conference. His amendment was to add a paragraph to article 101 which would be numbered 5 and which would read:

"5. The measures provided for in paragraph 4 of this article shall be taken with the approval of the Minister for Foreign Affairs or of any other competent Minister in conformity with the constitutional rules of the host State."

4. Mr. PINEDA (Venezuela) supported the Yugoslav delegation's request for a separate vote on paragraph 4.

5. Mr. ESSY (Ivory Coast), in reply to a question by

Mr. EUSTATHIADES (Greece), explained that the reference in his amendment to "any other competent Minister" under the constitutional law of the host State was merely intended to cover the case of certain States, where the Minister competent in the matter would be, under the relevant constitutional provisions, not the Minister for Foreign Affairs but another Minister.

6. Mr. MARESCA (Italy) said that his delegation whole-heartedly supported the Ivory Coast oral amendment, which had the great merit of bringing out clearly a concept which was *in re ipsa* of the article under discussion. He was firmly of the view that grave measures, such as those envisaged in paragraph 4 of article 101, could not possibly be conceived of otherwise than with the approval of the Minister for Foreign Affairs, or other competent Minister, of the host State, i.e. the organ of that State which was constitutionally responsible for its international relations.

7. Mr. WERSHOF (Canada) formally objected to a separate vote being taken on paragraph 4. The exhaustive debate which had taken place in the Committee of the Whole on what was now article 101 was linked in fact with the earlier debate on article 9. The article now under discussion had been finally adopted, albeit by a narrow majority, with a new paragraph 4 that was intended to afford host States some reasonable protection.

8. The retention of paragraph 4 was absolutely essential if the convention as a whole, which was not in any case very satisfactory as it now stood, was at all likely to prove acceptable to a great many States. As far as his own delegation was concerned, the article would certainly be totally unacceptable without paragraph 4.

9. He welcomed the oral amendment by the Ivory Coast delegation, the adoption of which would make article 101 more acceptable to many delegations. He earnestly hoped that the Conference would reject the proposal that a separate vote should be taken on paragraph 4.

10. Mr. RAOELINA (Madagascar) stressed that any State might one day be a host State. He supported the oral amendment submitted by the Ivory Coast, the adoption of which would improve the article under discussion. The provisions of the new paragraph would

give additional safeguards to future host States. For those reasons, his delegation opposed a separate vote on paragraph 4.

11. Mr. SYSSOEV (Union of Soviet Socialist Republics) expressed his delegation's strong support for the Yugoslav delegation's request for a separate vote on paragraph 4.

12. Mr. JALICHANDRA (Thailand) said that his delegation was opposed to a separate vote on paragraph 4, which could only destroy the delicate compromise that had been achieved when the Committee of the Whole had adopted article 101 with the inclusion of that paragraph.

13. The PRESIDENT announced that, in accordance with rule 41 of the rules of procedure, he would put to the vote the oral amendment by the Ivory Coast before putting to the vote the procedural motion for a separate vote on paragraph 4.

14. Mr. KUZNETSOV (Union of Soviet Socialist Republics), speaking in explanation of vote before the vote, said that the Committee of the Whole, by an overwhelming majority, had voted in favour of the article on respect for the laws and regulations of the host State, then numbered as article 75, in the form in which it had been framed by the International Law Commission (ILC) (see A/CONF.67/4). The Committee had rejected repeated attempts to amend that important text, realizing that such amendments would upset the delicate balance not only of the article but also of the whole set of draft articles. At the last moment, the Committee had unfortunately adopted by a very narrow majority a French oral amendment to paragraph 4 which destroyed the balance of the structure so carefully constructed by the ILC over many years of work.

15. The oral amendment which had now been made, again at a very late stage, did not change in any way the harmful effects of paragraph 4 as it now stood.

16. For those reasons, he appealed to the Conference to agree to a separate vote on paragraph 4 so as to be able to eliminate that paragraph and restore the text which had been so wisely formulated by the ILC.

17. Mr. MITIC (Yugoslavia), speaking in explanation of vote before the vote, said that the proposed new paragraphs made provision for a discretionary right on the part of the host State to deprive unilaterally members of a delegation of the privileges and immunities to which they were entitled under international law.

18. His delegation felt strongly that no such alleged safeguard was necessary for the host State because the provisions already included in the text of the convention on the subject of consultations and conciliation for the settlement of all disputes on the interpretation and application of the provisions of the convention were sufficient fully to protect all the legitimate interests of the host State.

19. For those reasons, his delegation, which had requested a separate vote on paragraph 4, would oppose the Ivory Coast oral amendment to add a new paragraph to the article.

20. The PRESIDENT put to the vote the Ivory Coast oral amendment.

*The result of the vote was 46 in favour and 13 against, with 15 abstentions.*

*The amendment was adopted, having obtained the required two-thirds majority.*

21. The PRESIDENT put to the vote the Yugoslav motion for a separate vote on paragraph 4.

*The motion was rejected by 37 votes to 24 with 10 abstentions.*

22. The PRESIDENT put to the vote article 101 as a whole, as amended.

*The result of the vote was 52 in favour and 11 against, with 10 abstentions.*

*Article 101 as a whole, as amended, was adopted, having obtained the required two-thirds majority.*

*Article 102 (Insurance against third-party risks)*

23. Mr. DE ROSENZWEIG-DIAZ (Mexico) orally proposed an amendment to add a new paragraph to article 102 on the following lines:

"2. The immunity from civil and administrative jurisdiction provided for in articles 30 and 60 may not be invoked with respect to an action for damages arising from an accident caused by a vehicle, vessel or aircraft, used or owned by the persons to whom the said articles refer, where those damages are not recoverable from insurance."

The adoption of that amendment would simply introduce into the "General provisions" an element which was not at all new, namely, the principle already accepted for delegations by the Conference when it had adopted paragraph 4 of article 60 (formerly article 61).

24. The adoption of the amendment he proposed would, of course, involve a consequential drafting change in article 60 but that change would be purely editorial. It would simply be a question of removing from that article a provision that would become unnecessary when his proposal was adopted, because the rule in question would be applicable to all the parts of the convention.

25. Mr. MARESCA (Italy) welcomed the Mexican oral amendment. It faithfully reflected a trend which had begun when the 1963 Vienna Conference had adopted the provisions of paragraph 2 (b) of article 43 of the Vienna Convention on Consular Relations,<sup>1</sup> which specifically stated that immunity from jurisdiction would not apply in respect of a civil action against a consular official or consular employee "by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft". Subsequently, and in the field of diplomatic law, the provisions of paragraph 2 (d) had been included in article 31 (Immunity from jurisdiction) of the 1969 Convention on Special Missions.<sup>2</sup> That paragraph stated a clear exception to immunity from the civil and administrative jurisdiction of the receiving State in the

<sup>1</sup> United Nations, *Treaty Series*, vol. 596, No. 8638, p. 261.

<sup>2</sup> General Assembly resolution 2530 (XXIV), annex.

case of "an action for damages arising out of an accident caused by a vehicle used outside the official functions of the person concerned".

26. The adoption of that last provision represented the most recent stage in that important trend in the development of international law on an extremely sensitive subject. The proposal now orally made by the Mexican delegation went in the same direction and represented a significant improvement on the existing text of article 102.

27. For those reasons, his delegation would vote in favour of the Mexican oral amendment.

28. Mr. GÜNEY (Turkey) said that, before the Conference could consider the Mexican oral amendment it would have to decide on a preliminary procedural issue.

29. When the Conference, at its 7th meeting, had discussed article 30, dealing with immunity from jurisdiction in the case of permanent missions, it had adopted that article without its paragraph 1 (*d*), which would have made an exception to the immunity from civil and administrative jurisdiction in the case of "an action for damages arising from an accident caused by a vehicle, vessel or aircraft used or owned by the person in question".

30. It would not escape the attention of the Conference that the oral amendment now introduced by the Mexican delegation could not be adopted without reconsidering that decision taken by the Conference at its 7th meeting. He therefore requested that, in accordance with rule 33 of the rules of procedure, the Conference should take a decision on the question of reconsideration by a two-thirds majority of the representatives present and voting.

31. Mr. BADAR (Pakistan) expressed his delegation's full support for the position taken by the Turkish representative.

32. Mr. DO NASCIMENTO E SILVA (Brazil) recalled that it was his delegation that had requested a separate vote on paragraph 1 (*d*) of article 30 at the 7th meeting. His delegation had pointed out in that connexion that in the Committee of the Whole it had voted against an amendment by Pakistan to delete what was an essential part of the text adopted by the ILC.

33. What the Mexican representative was now proposing in the form of an oral amendment was no more than the re-incorporation of a rule which the ILC had framed and which his delegation, for one, fully accepted and considered the best solution in the interests of protecting the unfortunate victims of accidents caused by vehicles.

34. His delegation had voted against paragraph 1 (*d*) of article 30 as it appeared in document A/CONF. 67/11 because the essential reference to the question of insurance had been eliminated from that provision, thereby completely nullifying it. The inclusion of a reference to insurance was of the utmost importance since third-party insurance was compulsory in a great many countries.

35. He did not believe that a vote on the Mexican

oral amendment would constitute reconsideration of an earlier decision by the Conference. Its adoption would simply entail some minor consequential drafting changes in articles 30 and 61. Nevertheless, he did not regard that problem as one of practical importance since the Mexican oral amendment could only be adopted by the Conference by a two-thirds majority, i.e. by the same majority required if the issue of alleged reconsideration were put to the vote.

36. Mr. MITIĆ (Yugoslavia) said that, like the Turkish representative, he firmly believed that the Mexican oral amendment to article 102 could not be adopted without reconsideration of the Conference's decision at its 7th meeting on article 30. Besides, the Mexican oral amendment was not directly relevant to article 102, which dealt only with the question of insurance.

37. Mr. STEPANOV (Ukrainian Soviet Socialist Republic) said that, at the 7th meeting, when a separate vote had been taken on paragraph 1 (*d*) of article 30, his delegation had voted against that provision. Accordingly, it would now vote against the Mexican oral amendment.

38. Mr. DE ROSENZWEIG-DÍAZ (Mexico) said that he agreed entirely with the remarks of the Brazilian representative.

39. His oral amendment was intimately related to the article since it referred to a question of insurance.

40. Mr. GOBBI (Argentina) said that he fully supported the Mexican oral amendment.

41. On the procedural issue, he felt that the simplest course, in order to save the time of the Conference, would be to put the issue of reconsideration to the vote—a course which would allay the legitimate preoccupations of the representatives of Turkey, Pakistan, Yugoslavia and the Ukrainian SSR.

42. The PRESIDENT said that he would put to the vote the procedural question, i.e. the motion for reconsideration of the decision taken at the 7th meeting on paragraph 1 (*d*) of article 30, inasmuch as the Mexican oral proposal had a similar phraseology.

*The result of the vote was 36 in favour and 24 against, with 13 abstentions.*

*The motion was not adopted, having failed to obtain the required two-thirds majority.*

43. Mr. RITTER (Switzerland), referring to rule 27 of the rules of procedure, moved that the meeting be suspended for 15 minutes.

44. Mr. DO NASCIMENTO E SILVA (Brazil), speaking on a point of order, referred to the provisions of rule 39 of the rules of procedure and suggested that it was not in order to interrupt the voting on article 102.

45. The PRESIDENT said that the Conference had voted only on a procedural motion. It could be argued that the vote on article 102 itself had not yet started.

46. Mr. KUZNETSOV (Union of Soviet Socialist Republics) said that in the opinion of his delegation the vote on the substance of article 102 had started, because doubts had been expressed on the principle of article 30. He proposed, therefore, that the Conference should continue its voting on article 102.

47. Mr. SOGBETUN (Nigeria) supported the Swiss motion for a short suspension of the meeting.

48. The PRESIDENT put to the vote the motion that the meeting should be suspended for 15 minutes.

*The motion was rejected by 34 votes to 30, with 6 abstentions.*

49. The PRESIDENT invited the Conference to resume its consideration of article 102. It followed from the Conference's decision on the motion for reconsideration of the action taken on article 30, that the Mexican amendment could not be voted on. He therefore invited the Conference to vote on the text of article 102 contained in document A/CONF.67/11/Add.5.

*The result of the vote was 71 in favour and none against, with 3 abstentions.*

*Article 102 was adopted, having obtained the required two-thirds majority.*

50. Mr. MARESCA (Italy) said that his delegation had voted in favour of article 102. It very much regretted, however, that by reason of a question of pure formalism, the Conference had been prevented from dealing with a very important question, settlement of which would have greatly facilitated the task which all representatives had to accomplish with their Governments.

*Article 103 (Entry into the territory of the host State)*

*Article 104 (Facilities for departure)*

*Articles 103 and 104 were adopted consecutively.*

*Article 105 (Transit through the territory of a third State)*

51. Mr. MUSEUX (France) said that his delegation would not ask for a vote on article 105. He wished to point out, however, that implementation of the provisions providing immunity for persons in transit would depend on the possibility of the authorities, particularly the frontier authorities, of the State being able to identify with reasonable certainty the beneficiaries of such immunities.

52. The PRESIDENT said that if he heard no further objection he would take it that the Conference wished to adopt article 105.

*Article 105 was adopted.*

*Article 106 (Non-recognition of States or governments or absence of diplomatic or consular relations)*

*Article 107 (Non-discrimination)*

*Article 108 (Consultations)*

*Articles 106, 107 and 108 were consecutively adopted.*

*Article 109 (Conciliation)*

53. Sir Vincent EVANS (United Kingdom) proposed that in the second line of paragraph 2, the words "each of whom" should be replaced by the word "who". That change would make the text clearer in English.

54. Mr. SOGBETUN (Nigeria) endorsed that proposal.

55. Mr. RAOELINA (Madagascar) proposed that

in the French text of the first sentence of paragraph 2, the colon should be deleted and the second and third lines amended to read: "*dont deux membres désignés respectivement par chacune des parties au différend et un président . . . paragraphe 3*".

56. Mr. GOBBI (Argentina) requested that the Spanish text be brought into line with the French text as amended by the representative of Madagascar.

57. The PRESIDENT said that those drafting changes had been noted by the secretariat. If he heard no objection, he would take it that the Conference wished to adopt article 109 with the drafting changes indicated.

*Article 109 was adopted.*

58. Mr. MAAS GEESTERANUS (Netherlands) said that if the article had been put to the vote, his delegation would have abstained. The article was constructed in such a way that it was appropriate particularly for the settlement of small difficulties which could and did arise; it was not, however, a settlement procedure appropriate for more complicated disputes of a legal nature. In the opinion of his delegation, an additional article might have been added to the convention.

#### **Report of the Credentials Committee (A/CONF.67/10 and Corr.1 and 2 and Add.1)**

59. Mr. PLANA (Philippines), Chairman of the Credentials Committee, introduced the report of the Credentials Committee (A/CONF.67/10 and Corr.1). Since that report had been issued, five more countries—Peru, Saudi Arabia, Bangladesh, Qatar, and Tunisia—had submitted formal credentials (see A/CONF.67/10/Add.1). The names of these countries should therefore be added to the list in paragraph 4 (b) of document A/CONF.67/10. The Credentials Committee had met on 6 March 1975 and examined the credentials of representatives to the Conference in accordance with rule 4 of the rules of procedure. The Committee had had before it a memorandum from the Executive Secretary containing the information reproduced in paragraph 4 of its report. Statements had been made concerning the credentials of two of the States mentioned in paragraph 4 (b). After a full discussion, the Committee had decided that the substance of the views expressed should be reflected in its report. In so far as concerned the note verbale and the cable referred to in subparagraphs (c) and (d) of paragraph 4, the Committee had been advised by the Legal Counsel of the United Nations that, in accordance with United Nations practice, the Committee could, as an exceptional measure, accept those communications in lieu of formal credentials. The Committee had therefore considered that, subject to the views expressed in the report, the delegations present at the Conference should be seated.

60. Mr. PREDA (Romania) reminded members that at the 1st plenary meeting, his delegation had said that the Provisional Revolutionary Government of South Viet-Nam should be invited to the Conference so that the convention to be adopted could be prepared with the widest possible participation. His delegation had also said that the extension of an invitation to the Pro-

visional Revolutionary Government would be consistent with the provisions of the Final Act of the Paris Conference on Viet-Nam. Since the Provisional Revolutionary Government had not been invited to the Conference, he wished to state that the representation of South Viet-Nam by the Saigon authorities only was unacceptable to his delegation. For those reasons, his delegation did not recognize the right of the Saigon authorities to attend the Conference or to sign the documents of the Conference on behalf of South Viet-Nam.

61. Similarly, his delegation did not recognize the right of the Lon Nol authorities to represent the Cambodian people. The only legitimate representative of that people was the Royal Government of National Union of Cambodia.

62. Mrs. KONRAD (Hungary) said that she was speaking on behalf of the delegates of the Byelorussian Soviet Socialist Republic, Bulgaria, Cuba, Czechoslovakia, the German Democratic Republic, the People's Democratic Republic of Korea, Mongolia, Poland, the Ukrainian Soviet Socialist Republic, and the Union of Soviet Socialist Republics, as well as her own. At the 1st plenary meeting, several delegations, including those she had just mentioned, had spoken in favour of sending an invitation to the representatives of the Provisional Revolutionary Government of the Republic of South Viet-Nam and had questioned the unilateral representation of South Viet-Nam by the Saigon régime. The Paris Agreement stipulated that until the establishment of the National Council of Reconciliation and Concord and until the people of Viet-Nam had achieved the right to self-determination, there were provisionally two administrations in South Viet-Nam, namely, the Provisional Revolutionary Government of the Republic of South Viet-Nam and the Saigon Administration. The Paris Agreement, its protocols and the Final Act of the Paris International Conference on Viet-Nam had been signed by both administrations, a fact which proved that both were empowered to represent South Viet-Nam. It was clearly recognized in the Agreement that both administrations had equal rights and obligations. That implied that neither of them had the juridical capacity to represent, on its own, South Viet-Nam in international organizations and conferences.

63. By its resolution 3247 (XXIX) the General Assembly had decided to invite all States to the Conference. The invitation extended unilaterally to the Saigon administration constituted discrimination against the Provisional Revolutionary Government and the representation of South Viet-Nam by the Saigon administration alone was an inadmissible violation of existing agreements.

64. For all those reasons, the delegations she had mentioned could not agree that the administration of the Saigon régime should, on its own, represent South Viet-Nam; they declared that the credentials of that administration could not be interpreted as authorizing it to represent, unilaterally, South Viet-Nam.

65. Mr. TEPAVAC (Yugoslavia) said that, contrary to existing international agreements, particularly the Paris Agreement, the Saigon authorities alone were

represented at the Conference. His delegation regretted the fact that the representatives of the Provisional Revolutionary Government of South Viet-Nam were not present at the Conference.

66. As representatives were aware, his Government recognized the Royal Government of National Union of Cambodia as the sole legitimate representative of the people of Cambodia.

67. Accordingly, his delegation was unable to recognize the credentials of the Lon Nol and Saigon administrations.

68. Mr. TANKOUA (United Republic of Cameroon) associated his delegation with the statement made by the Socialist countries concerning the representation of South Viet-Nam and of the Khmer Republic in the Conference. It was regrettable that the comments his delegation had made on the matter in the Credentials Committee had not been reflected in the report of that Committee. His Government recognized both authorities in South Viet-Nam. In Cambodia it recognized the Royal Government of National Union as the only legitimate representative of the people of Cambodia.

69. Mr. KOSSALAK (Khmer Republic) said that he was obliged to refute the statements made by previous speakers questioning the legitimacy of the Khmer Republic's representation at the Conference. He wished to emphasize, in that respect, that the Khmer Republic was a State and, furthermore, a State Member of the United Nations, and had been invited to participate in the Conference in accordance with the provisions of General Assembly resolution 3247 (XXIX). In other words, the presence of the members of his delegation at the Conference was the best proof of the legitimacy of the Khmer Republic's representation. His delegation did not question the sovereign right of every State to recognize any Government it wished, including a government in exile, such as the so-called "GRUNC" of Prince Norodom Sihanouk who was living in Peking. In no case, however, could it allow such a government, which rested on no sound juridical basis, to be imposed on the Khmer people. The Government of the Khmer Republic rested on bases which were democratic and popular and in accordance with constitutional provisions in force. In support of that statement, he said that on 30 April 1972, the Khmer people, by means of a country-wide referendum in which more than 80 per cent of electors had participated, had returned a massive vote in favour of the republican constitution. On 4 June 1972, by virtue of the new Constitution, Marshal Lon Nol had been elected, by direct universal suffrage, Prime Minister of the Khmer Republic for a term of five years. On 3 and 17 September 1972, the first National Assembly and the first Senate of the Republic had been elected, also by universal suffrage. The other institutions of the Republic—the Constitutional Court, the Supreme Court, and the High Court of Justice—had been instituted subsequently. Those were the essential facts which confirmed the legality of the Government of the Khmer Republic.

*The meeting rose at 1.10 p.m.*