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REPORT OF THE COMMISSION TO THE GENERAL ASSEMBLY

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Report of the International Law Commission on the work of its twenty-second session,
4 May-10 July 1970

CONTENTS

<i>Chapter</i>	<i>Paragraphs</i>	<i>Page</i>
I. ORGANIZATION OF THE SESSION	1-11	272
A. Membership and attendance	2-5	272
B. Officers	6	272
C. Drafting Committee	7	272
D. Secretariat	8	273
E. Agenda	9-10	273
F. Exchange of letters concerning the problem of the protection and inviolability of diplomatic agents	11	273
II. RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS		
A. Introduction		
1. Summary of the Commission's proceedings	12-16	274
2. Arrangement of the draft articles	17-26	275
B. Draft articles on representatives of States to international organizations		
<i>Part III. Permanent observer missions to international organizations</i>		
Section 1. Permanent observer missions in general (general comments and articles 51 to 64)		276
Section 2. Facilities, privileges and immunities of permanent observer missions (general comments and articles 65 to 75)		282
Section 3. Conduct of the permanent observer mission and its members (article 76)		285
Section 4. End of functions (article 77)		285
<i>Part IV. Delegations of States to organs and to conferences</i>		
Section 1. Delegations in general (articles 78 to 90)		285
Section 2. Facilities, privileges and immunities of delegations (general comments and articles 91 to 111)		289
Section 3. Conduct of the delegation and its members (articles 112 to 113) ..		298
Section 4. End of functions (articles 114 to 116)		298
III. SUCCESSION OF STATES		
A. Introduction	27-36	299
B. Succession in respect of treaties		
1. Summary of proposals of the Special Rapporteur	37-48	301
2. Summary of the Commission's debate	49-63	303
IV. STATE RESPONSIBILITY	64-83	305
V. OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION		
A. Celebration of the twenty-fifth anniversary of the United Nations	84-85	309
B. Organization of future work	86	309
C. Review of the Commission's programme of work	87	309
D. The question of treaties concluded between States and international organizations or between two or more international organizations	88-89	309
E. Most-favoured-nation clause	90	310
F. Preparation of a new edition of the "Summary of the practice of the Secretary-General as depositary of multilateral agreements"	91	310
G. Relations with the International Court of Justice	92	310
H. Co-operation with other bodies		
1. Asian-African Legal Consultative Committee	93-95	310

CONTENTS (continued)

<i>Chapter</i>		<i>Paragraphs</i>	<i>Page</i>
	2. European Committee on Legal Co-operation	96-98	311
	3. Inter-American Juridical Committee.....	99-103	311
I.	Date and place of the twenty-third session	104	312
J.	Representation at the twenty-fifth session of the General Assembly	105	312
K.	Seminar on International Law	106-110	312
L.	Index of the Commission's documents	111	313

CHAPTER I

Organization of the session

1. The International Law Commission, established in pursuance of General Assembly resolution 174 (II) of 21 November 1947, in accordance with its Statute annexed thereto, as subsequently amended, held its twenty-second session at the United Nations Office at Geneva from 4 May to 10 July 1970. The work of the Commission during this session is described in the present report. Chapter II of the report, on relations between States and international organizations, contains a description of the Commission's work on that topic, together with 66 additional draft articles on representatives of States to international organizations, consisting of provisions on permanent observer missions to international organizations and delegations of States to organs and to conferences, and commentaries thereon. Chapter III, on succession of States, contains a description of the Commission's work on one of the headings of the topic, namely succession in respect of treaties. Chapter IV, on State responsibility, contains a description of the Commission's work on that topic. Chapter V deals with the organization of the Commission's future work and a number of administrative and other questions.

A. MEMBERSHIP AND ATTENDANCE

2. The Commission consists of the following members:

Mr. Roberto AGO (Italy);
 Mr. Fernando ALBÓNICO (Chile);
 Mr. Gonzalo ALCÍVAR (Ecuador);
 Mr. Milan BARTOŠ (Yugoslavia);
 Mr. Mohammed BEDJAOU (Algeria);
 Mr. Jorge CASTAÑEDA (Mexico);
 Mr. Erik CASTRÉN (Finland);
 Mr. Abdullah EL-ERIAN (United Arab Republic);
 Mr. Taslim O. ELIAS (Nigeria);
 Mr. Constantin Th. EUSTATHIADES (Greece);
 Mr. Richard D. KEARNEY (United States of America);
 Mr. NAGENDRA SINGH (India);
 Mr. Alfred RAMANGASOAVINA (Madagascar);
 Mr. Paul REUTER (France);
 Mr. Shabtai ROSENNE (Israel);
 Mr. José María RUDA (Argentina);

Mr. José SETTE CÂMARA (Brazil);
 Mr. Abdul Hakim TABIBI (Afghanistan);
 Mr. Arnold J. P. TAMMES (Netherlands);
 Mr. Doudou THIAM (Senegal);
 Mr. Senjin TSURUOKA (Japan);
 Mr. Nikolai USHAKOV (Union of Soviet Socialist Republics);
 Mr. Endre USTOR (Hungary);
 Sir Humphrey WALDOCK (United Kingdom of Great Britain and Northern Ireland);
 Mr. Mustafa Kamil YASSEEN (Iraq).

3. At its 1046th meeting, held on 11 May 1970, the Commission paid tribute to the memory of Mr. Gilberto Amado, who had served continuously as a member of the Commission since he was first elected in 1948.

4. On 21 May 1970, the Commission elected Mr. José Sette Câmara (Brazil), Mr. Gonzalo Alcívar (Ecuador), and Mr. Doudou Thiam (Senegal) to fill the vacancies caused by the death of Mr. Gilberto Amado and by the resignations of Mr. Eduardo Jiménez de Aréchaga and Mr. Louis Ignacio-Pinto on their election to the International Court of Justice.

5. All members attended meetings of the 22nd session of the Commission. The newly elected members attended the meetings of the Commission as follows: Mr. Sette Câmara from 27 May, Mr. Alcívar from 2 June and Mr. Thiam from 3 June onwards.

B. OFFICERS

6. At its 1042nd meeting, held on 4 May 1970, the Commission elected the following officers:

Chairman: Mr. Taslim O. Elias;
First Vice-Chairman: Mr. Richard D. Kearney;
Second Vice-Chairman: Mr. Fernando Albónico;
Rapporteur: Mr. Milan Bartoš.

C. DRAFTING COMMITTEE

7. At its 1046th meeting, held on 11 May 1970, the Commission appointed a Drafting Committee composed as follows:

Chairman: Mr. Richard D. Kearney;

Members: Mr. Roberto Ago; Mr. Jorge Castañeda; Mr. Erik Castrén; Mr. Nagendra Singh; Mr. Alfred Ramangasoavina; Mr. Paul Reuter; Mr. José María Ruda; Mr. Nikolai Ushakov; Mr. Endre Ustor and Sir Humphrey Waldock. Mr. Abdullah El-Erian took part in the Committee's work on relations between States and international organizations in his capacity as Special Rapporteur for that topic. Mr. Milan Bartoš also took part in the Committee's work in his capacity as Rapporteur of the Commission.

D. SECRETARIAT

8. Mr. Constantin A. Stavropoulos, Legal Counsel, attended the 1065th to 1969th meetings held from 8 to 12 June 1970, and represented the Secretary-General on those occasions. Mr. Anatoly P. Movchan, Director of the Codification Division of the Office of Legal Affairs, represented the Secretary-General at other meetings of the session, and acted as Secretary to the Commission, Mr. Nicolas Teslenko acted as Deputy Secretary to the Commission. Mr. Santiago Torres-Bernárdez, Mr. Eduardo Valencia-Ospina and Miss Jacqueline Dauchy served as assistant secretaries.

E. AGENDA

9. The Commission adopted an agenda for the twenty-second session, consisting of the following items:

1. Filling of casual vacancies in the Commission (article 11 of the Statute).
2. Relations between States and international organizations.
3. Succession of States:
 - (a) Succession in respect of treaties;
 - (b) Succession in respect of matters other than treaties.
4. State responsibility.
5. Most-favoured-nation clause.
6. Co-operation with other bodies.
7. Organization of future work.
8. Date and place of the twenty-third session.
9. Other business.

10. In the course of the session, the Commission held forty-five public meetings (1042nd to 1086th meetings) and two private meetings (on 21 May and 1 July 1970, respectively). In addition, the Drafting Committee held fourteen meetings and the Sub-Committee on treaties concluded between States and international organizations or between two or more international organizations (see para. 89 below) held two meetings. The Commission considered all the items on its agenda with the exception of sub-item 3 (b) (Succession of States: succession in respect of matters other than treaties) and item 5 (Most-favoured-nation clause).

F. EXCHANGE OF LETTERS CONCERNING THE PROBLEM OF THE PROTECTION AND INVIOLABILITY OF DIPLOMATIC AGENTS

11. The Commission received from the President of the Security Council a letter dated 14 May 1970 (A/CN.4/235)

transmitting a copy of document S/9789 which reproduced the text of a letter addressed to him by the representative of the Netherlands to the United Nations concerning the problem of the protection and inviolability of diplomatic agents. The Chairman of the Commission replied to the foregoing communication by a letter dated 12 June 1970 (A/CN.4/236). The texts of the above-mentioned letters were as follows:

Letter dated 14 May 1970 from the President of the Security Council addressed to the Chairman of the International Law Commission

I have the honour to transmit to you herewith a copy of document S/9789 which reproduces the text of a letter addressed to me by the Netherlands representative to the United Nations on 5 May concerning the problem of the protection and inviolability of diplomatic agents.

In the fourth paragraph of that letter, the Netherlands Government requests me to inform not only the members of the Security Council, but also appropriate organs of the United Nations, of its concern at recent infringements of the inviolability of diplomatic agents.

To meet that request, I have decided to transmit the text of the letter to the President of the International Court of Justice and to the Chairman of the International Law Commission for such purposes as may be desirable.

Accept, Sir, the assurances of my highest consideration.

(Signed) Jacques KOSCIUSKO-MORIZET
President of the Security Council

ANNEX

Letter dated 5 May 1970 from the Permanent Representative of the Netherlands to the United Nations addressed to the President of the Security Council

Upon instructions from my Government, I have the honour to bring the following to your attention in relation to the protection and inviolability of diplomatic agents.

The Government of the Netherlands wishes to recall that from ancient times peoples of all nations have recognized the status of diplomatic agents. Their immunity and inviolability have clearly been established by time-honoured rules of international law.

The increasing number of attacks on diplomats which have inflicted great danger and hardship and have, in some cases, resulted in loss of life, is a cause of alarm to the Netherlands Government. My Government is of the opinion that such incidents may endanger the conduct of friendly relations between States, and that attacks on the person, the freedom or dignity of diplomats could lead to situations which might give rise to a dispute and as such even could endanger the maintenance of international peace and security.

In view of these considerations, the Netherlands Government deems it proper to draw attention to the question raised above and expresses the hope that Your Excellency will inform members of the Security Council, as well as appropriate organs of the United Nations, of the existing preoccupations.

I kindly request Your Excellency that my letter be circulated as an official document of the Security Council.

Please accept, etc.

(Signed) R. FACK
Permanent Representative of the Kingdom of
the Netherlands to the United Nations

Letter dated 12 June 1970 from the Chairman of the International Law Commission addressed to the President of the Security Council

I have the honour to acknowledge the receipt of your letter dated 14 May 1970, transmitting a copy of document S/9789 which reproduces the text of a letter addressed to you by the Netherlands representative to the United Nations on 5 May 1970 concerning the problem of the protection and inviolability of diplomatic agents. Both letters were brought to the attention of the Commission and were circulated to members as document A/CN.4/235.

The question of the protection and inviolability of diplomatic agents has been of concern to the Commission in several instances of its work of codification and progressive development of international law. The Commission included provisions to that effect in its draft articles on diplomatic intercourse and immunities, which formed the basis for the Vienna Convention on Diplomatic Relations adopted in 1961. On that occasion the Commission stated in the commentary to Article 27 of its final draft:

"This article confirms the principle of the personal inviolability of the diplomatic agent. From the receiving State's point of view, this inviolability implies, as in the case of the mission's premises, the obligation to respect, and to ensure respect for, the person of the diplomatic agent. The receiving State must take all reasonable steps to that end, possibly including the provision of a special guard where circumstances so required. Being inviolable, the diplomatic agent is exempted from measures that would amount to direct coercion. This principle does not exclude in respect of the diplomatic agent either measures of self-defence or, in exceptional circumstances, measures to prevent him from committing crimes or offences."¹

In addition, provisions concerning the protection and inviolability of the representatives of the Sending State in a special mission and of the members of the diplomatic staff of the mission were included in the Commission's final draft articles on special missions, which formed the basis for the Convention on Special Missions adopted by the General Assembly in 1969. At the present time, the Commission is considering once again the question of inviolability and protection in the context of the relations between States and international organizations. The Commission expects to continue being concerned with this problem in the future.

Accept, Sir, the assurances of my highest consideration.

(Signed) T. O. ELIAS
Chairman of the
International Law Commission

¹ *Yearbook of the International Law Commission, 1958, vol. II, p. 97, document A/3859.*

CHAPTER II

Relations between States
and international organizations

A. INTRODUCTION

1. *Summary of the Commission's proceedings*²

12. At its twentieth and twenty-first sessions, the Commission adopted parts I and II of its provisional draft on representatives of States to international organizations, consisting of a first group of twenty-one articles on general provisions (part I) and permanent missions to international organizations in general (part II, section 1)³ and of a second group of twenty-nine articles on facilities, privileges and immunities of permanent missions to international organizations; conduct of the permanent mission and its members; and end of functions of the permanent representative (part II, sections 2, 3 and 4)⁴ The Commission decided, in accordance with articles 16 and 21 of its Statute, to submit the first and second groups of articles, through the Secretary-General, to governments for their observations. It also decided to transmit them to the secretariats of the United Nations, the specialized agencies, and the International Atomic Energy Agency (IAEA), for their observations. Bearing in mind the position of Switzerland as the host State in relation to the Office of the United Nations at Geneva and to a number of specialized agencies, as well as the wish expressed by the Government of that country, the Commission deemed it useful to transmit also both groups of draft articles to that Government for its observations.

13. At its twenty-first session in 1969 the Commission expressed its intention, as a matter of priority, to conclude at its twenty-second session in 1970 the first reading of its draft on relations between States and international organizations by considering draft articles on permanent observers of non-member States and on delegations to sessions of organs of international organizations and to conferences convened by such organizations.⁵ Also in 1969, the General Assembly, at its twenty-fourth session, adopted resolution 2501 (XXIV) which, *inter alia*, recommended that the Commission should "continue its work on relations between States and international organizations, with a view to completing in 1971 its draft articles on representatives of States to international organizations".

14. At the present session of the Commission, the Special Rapporteur, Mr. Abdullah El-Erian, submitted a fifth report (A/CN.4/227 and Add.1 and 2) containing draft articles, with commentaries, on permanent observers of non-member States to international organizations (part III) and delegations to organs of international

² An account of the historical background of the topic is contained in the report of the International Law Commission on the work of its twentieth session: *Yearbook of the International Law Commission, 1968, vol. II, pp. 193-194, document A/7209/Rev.1, paras. 9-20.*

³ *Ibid.*, p. 194, para. 21.

⁴ *Ibid.*, 1969, vol. II, p. 206, document A/7610/Rev.1, para. 13.

⁵ *Ibid.*, p. 206, para. 17 and p. 235, para. 93.

organizations and to conferences convened by international organizations (part IV). The Special Rapporteur also submitted a working paper on temporary observer delegations and conferences not convened by international organizations (A/CN.4/L.151) but the Commission did not consider that it should take up the matter at this time.

15. The fifth report also contained a summary of that part of the discussion in the Sixth Committee during the twenty-fourth session of the General Assembly on the agenda items entitled "Report of the International Law Commission on the work of its twenty-first session" (item 86)⁶ and "Draft Convention on Special Missions" (item 87)⁷ which touched on certain questions which may present some interest concerning representatives of States to international organizations and conferences.

16. The Commission considered the fifth report of the Special Rapporteur at its 1043rd to 1045th and 1047th to 1061st meetings and referred the draft articles contained therein to the Drafting Committee. At its 1061st to 1065th, 1067th, 1073rd, 1077th and 1078th meetings, the Commission considered the reports of the Drafting Committee. At those meetings and at its 1084th meeting the Commission adopted a provisional draft of articles on the subjects included in sections 1 (Permanent observer missions in general), 2 (Facilities, privileges and immunities of permanent observer missions), 3 (Conduct of the permanent observer mission and its members) and 4 (End of functions) of part III (Permanent observer missions to international organizations) and sections 1 (Delegations in general), 2 (Facilities, privileges and immunities of delegations), 3 (Conduct of the delegation and its members) and 4 (End of functions) of part IV (Delegations of States to organs and to conferences). The provisional draft of articles, together with commentaries, is reproduced below in part B of the present chapter. For the sake of convenience, the articles of the present group are numbered consecutively after the last article of the previous group. Accordingly, the first article of the present group is numbered 51.

2. Arrangement of the draft articles

17. As indicated above, the draft articles on permanent observer missions to international organizations follow immediately those on permanent missions to international organizations. Having the character of permanent missions rather than of special missions, permanent observer missions to international organizations should logically be dealt with after permanent missions of Member States.

18. In formulating the present group of articles the Commission gave careful consideration to the method of drafting the articles on facilities, privileges and immunities for both parts III and IV. Some members of the Commission were in favour of the preparation of general articles which would extend, *mutatis mutandis*, to permanent observer missions and to delegations of States to

organs and to conferences the relevant provisions of part II relating to permanent missions. Other members preferred for the purposes of the first reading the preparation of only those articles which were essential to permanent observer missions and to delegations of States to organs and to conferences, and to refer to the applicable provisions of part II in an explanatory passage in the Commission's report. As will be seen in the corresponding sections below, the Commission adopted a provisional solution which falls in between the two positions outlined above.

19. In the course of the preparation of the articles on facilities, privileges and immunities, the Commission developed a set of draft articles for part III based mainly on the provisions concerning permanent missions and a set of draft articles for part IV based mainly on the pertinent provisions of the Convention on Special Missions⁸ and part II of the present draft articles. In doing so, it examined each individual facility, privilege and immunity with reference to both permanent observer missions and delegations to organs of international organizations or to conferences convened by international organizations. In its review, the Commission was particularly concerned with determining what distinctions should be drawn, in specific cases, between special missions, permanent missions, permanent observer missions and delegations of States to organs and to conferences. It satisfied itself, in several instances, that such distinctions need not be drawn and, accordingly, concluded that it was not necessary to repeat in both parts III and IV the substance of the analogous articles, on permanent missions. Consequently, in parts III and IV, there are both specific articles, in those cases in which changes were required to take into account the differences existing between permanent missions and permanent observer missions or delegations of States to organs and to conferences, and articles which employ the technique of "drafting by reference".

20. In adopting the method described above for the purposes of its first reading of the present group of articles, the Commission also kept in mind the fact that two groups of articles, dealing with general principles and with permanent missions to international organizations, had already been transmitted to governments and international organizations for their observations. The Commission intends, during the second reading of the whole draft, to determine whether it would be possible to reduce the number of articles by combining provisions which are susceptible of uniform treatment.

21. The articles of the present group do not include provisions analogous to those of article 50 on consultations between the sending State, the host State and the Organization. In its report on the work of its twenty-first session⁹ the Commission stated that article 50 had been put provisionally at the end of the group of articles adopted at that session, its place in the draft as a whole

⁶ *Official Records of the General Assembly, Twenty-fourth Session, Sixth Committee, 1103rd to 1111th meetings.*

⁷ *Ibid.*, 1142nd, 1143rd and 1148th meetings.

⁸ *Ibid.*, *Twenty-fourth Session, Supplement No. 30 (A/7630)*, pp. 99 *et seq.*

⁹ See *Yearbook of the International Law Commission, 1969*, vol. II, p. 221, document A/7610/Rev.1, foot-note 44.

to be determined by the Commission at a later stage. The Commission intends article 50 to apply also to the articles on permanent observer missions and on delegations to organs and to conferences, and during the second reading will decide on a suitable place for the article.

22. The Commission also briefly considered the desirability of dealing, in separate articles within the present group, with the possible effects of exceptional situations—such as absence of recognition, absence or severance of diplomatic relations or armed conflict—on permanent observer missions and on delegations to organs of international organizations and to conferences convened by international organizations. In view of the decision taken at the twenty-first session,¹⁰ the Commission decided to examine at its second reading the question of the possible effects of exceptional situations on the representation of States in international organizations in general and to postpone for the time being any decision in the context of parts III and IV.

23. In preparing the present group of articles, the Commission has sought to codify the modern international law concerning permanent observer missions to international organizations and delegations of States to organs of international organizations and to conferences convened by international organizations. The articles formulated by the Commission contain elements of progressive development as well as of codification of the law.

24. In accordance with articles 16 and 21 of its Statute, the Commission decided to transmit the present group of draft articles, through the Secretary-General, to Governments of Member States for their observations. It also decided to transmit it to the secretariats of the United Nations, the specialized agencies and the International Atomic Energy Agency (IAEA) for their observations. Again bearing in mind the position of Switzerland as the host State in relation to the Office of the United Nations at Geneva and to a number of specialized agencies, as well as the wish expressed by the Government of that country, the Commission deemed it useful to transmit the group of articles also to that Government for its observations.

25. As stated in paragraph 86 below, the Commission, at its present session, has once again reaffirmed its view that it is desirable to complete the study of relations between States and international organizations before the expiry of the term of office of its present membership, and its aim to conclude its work on this topic at its twenty-third session in 1971. Consequently, the Commission has instructed the Secretariat to request the governments and the international organizations to which the present group of draft articles will be transmitted, in pursuance of paragraph 24 above, to submit their observations not later than 15 January 1971.

26. The text of articles 51 to 116, with commentaries, as adopted by the Commission at the present session on the proposal of the Special Rapporteur, is reproduced below.

B. DRAFT ARTICLES ON REPRESENTATIVES OF STATES TO INTERNATIONAL ORGANIZATIONS

Part III. Permanent observer missions to international organizations

SECTION I. PERMANENT OBSERVER MISSIONS IN GENERAL

General comments

(1) The establishment of permanent observer missions by non-member States of international organizations is well known in practice. Thus, at the present time, the following States non-members of the United Nations maintain permanent observer missions at Headquarters in New York: the Federal Republic of Germany, the Holy See, the Republic of Korea, Monaco, Switzerland and the Republic of Viet-Nam. Permanent observer missions at the United Nations Office at Geneva are maintained by the Federal Republic of Germany, the Holy See, the Republic of Korea, San Marino, Switzerland and the Republic of Viet-Nam. Austria, Finland, Italy and Japan sent permanent observer missions to the United Nations before they became members of the Organization. Permanent observer missions have also been sent to specialized agencies, for instance, by the Holy See to the Food and Agriculture Organization of the United Nations (FAO) and by San Marino to the International Labour Organization (ILO) and on some occasions to the United Nations Educational, Scientific and Cultural Organization (UNESCO).

(2) There are no provisions relating to permanent observer missions of non-member States in the United Nations Charter or the Headquarters Agreements or in General Assembly resolution 257 (III) of 3 December 1948 which deals with permanent missions of Member States. However, the Secretary-General referred to permanent observer missions of non-member States in his report on permanent missions to the fourth session of the General Assembly,¹¹ but no resolution made any mention of permanent observer missions. Their status, therefore, has been determined by practice.¹²

(3) In the Introduction to his Annual Report on the Work of the Organization covering the period 16 June 1965—15 June 1966, the Secretary-General of the United Nations stated:

... I feel that all countries should be encouraged and enabled, if they wish to do so, to follow the work of the Organization more closely. It could only be of benefit to them and to the United Nations as a whole to enable them to maintain observers at Headquarters, at the United Nations Office at Geneva and in the regional economic commissions, and to expose them to the impact of the work of the Organization and to the currents and

¹¹ *Official Records of the General Assembly, Fourth Session, Sixth Committee, Annex*, document A/939/Rev.1 and Rev.1/Add.1.

¹² See the memorandum dated 22 August 1962 of the Legal Counsel to the then Acting Secretary-General, reproduced in *Yearbook of the International Law Commission, 1967*, vol. II, p. 190, document A/CN.4/L.118 and Add.1 and 2, Part one, para. 169.

¹⁰ *Ibid.*, p. 206, para. 18.

cross-currents of opinion that prevail within it, as well as to give them some opportunity to contribute to that exchange. Such contacts and inter-communication would surely lead to a better understanding of the problems of the world and a more realistic approach to their solution. In this matter I have felt myself obliged to follow the established tradition by which only certain Governments have been enabled to maintain observers. I commend this question for further examination by the General Assembly so that the Secretary-General may be given a clear directive as to the policy to be followed in the future in the light, I would hope, of these observations.¹³

(4) A similar statement was again included in the Introduction to the Annual Report of the Secretary-General on the Work of the Organization covering the period 16 June 1966-15 June 1967.¹⁴

(5) Reference should also be made to the message of the Secretary-General of the United Nations to the twenty-third session of the Economic Commission for Europe,¹⁵ in which he stated:

It seems to me that the advances so far achieved in the field of economic development in Europe, laudable as they have been, would be even greater if the United Nations and its agencies could achieve the goal of universality of membership. As the attainment of this objective may, however, take some time, I should like to reiterate what I have underscored in the introduction to my last two Annual Reports to the General Assembly that all countries should be encouraged and enabled, if they so wish, to follow the work of the Organization more closely at the Headquarters and regional levels.

(6) The position of permanent observer missions as regards their privileges and immunities was stated as follows in the memorandum, dated 22 August 1962, sent by the Legal Counsel:¹⁶

Permanent observers are not entitled to diplomatic privileges or immunities under the Headquarters Agreement or under other statutory provisions of the host State. Those among them who form part of the diplomatic missions of their Governments to the Government of the United States may enjoy immunities in the United States for that reason. If they are not listed in the United States diplomatic list, whatever facilities they may be given in the United States are merely gestures of courtesy by the United States authorities.

(7) A number of States have not become members of the United Nations and, to a lesser degree, of the specialized agencies, notwithstanding the fact that the Charter of the United Nations and the constitutions of the specialized agencies are based on the principle of universality of membership. There are various reasons for such situation. Some States, like Switzerland, have chosen not to become members of the United Nations, although they became members of several specialized agencies. The "package deal" arrangement of simultaneous admission of eighteen States in 1955 which resolved the membership crisis in the United Nations did not include the "divided

countries" of Germany, Korea and Viet-Nam. Some of the constituent parts of those "divided countries" became members of specialized agencies, others did not.

(8) The establishment of permanent observer missions has been mentioned in recent years as one of the possible solutions for the problem of "micro-States". In the introduction to his Annual Report on the Work of the Organization covering the period 16 June 1966—15 June 1967, the Secretary-General of the United Nations stated:

... "micro-States" should ... be permitted to establish permanent observer missions at United Nations Headquarters and at the United Nations Office at Geneva, if they so wish, as is already the case in one or two instances. Measures of this nature would permit the "micro-States" to benefit fully from the United Nations system without straining their resources and potential through assuming the full burdens of United Nations membership which they are not, through lack of human and economic resources, in a position to assume.¹⁷

The Secretary-General reiterated that position in the Introduction to his Annual Report covering the period 16 June 1967—15 June 1968 when he stated:

I drew attention last year to the problem of the "micro-States". I can well understand the reluctance of the principal organs of the United Nations to grapple with this problem, but I believe it is a problem that does require urgent attention. The question has been considered by many scholars and also by the United Nations Institute for Training and Research. It seems to me that several of the objectives which micro-States hope to achieve by membership in the United Nations could be gained by some other form of association with the Organization, such as the status of observers. In this connexion, I should like to reiterate the suggestion that I made last year that the question of observer status in general, and the criteria for such status, require consideration by the General Assembly so that the present institutional arrangements, which are based solely on practice, could be put on a firm legal footing.¹⁸

The matter is under consideration by the Security Council following the initiative of the Permanent Representative of the United States of America to the United Nations in his letter of 18 August 1969 to the President of the Security Council.¹⁹ An interim report²⁰ of a Committee of experts established by the Council at its 1506th meeting has recently been submitted,²¹ but no recommendations have yet been made by that Committee.

Article 51. Use of terms

For the purposes of the present part:

(a) a "permanent observer mission" is a mission of

¹³ See *Official Records of the General Assembly, Twenty-first Session, Supplement No. 1 A* (A/6301/Add.1), p. 14.

¹⁴ *Ibid.*, *Twenty-second Session, Supplement No. 1 A* (A/6701/Add.1), pp. 20-21.

¹⁵ See *Official Records of the Economic and Social Council, Forty-fifth Session, Supplement No. 3* (E/4491), annex II, pp. 114-115.

¹⁶ See foot-note 12.

¹⁷ See *Official Records of the General Assembly, Twenty-second Session, Supplement No. 1 A* (A/6701/Add.1), para. 166.

¹⁸ *Ibid.*, *Twenty-third Session, Supplement No. 1 A* (A/7201/Add.1), para. 172.

¹⁹ *Official Records of the Security Council, Twenty-fourth Year, Supplement for July, August and September 1969*, document S/9397.

²⁰ *Ibid.*, *Twenty-fifth Year, Supplement for April, May and June 1970*, document S/9836.

²¹ See also the study by the United Nations Institute for Training and Research entitled *Status and Problems of Very Small States and Territories*, UNITAR, Series No. 3, New York, 1969.

representative and permanent character sent to an international organization by a State not member of that organization;

(b) the "permanent observer" is the person charged by the sending State with the duty of acting as the head of the permanent observer mission;

(c) the "members of the permanent observer mission" are the permanent observer and the members of the staff of the permanent observer mission;

(d) the "members of the staff of the permanent observer mission" are the members of the diplomatic staff, the administrative and technical staff and the service staff of the permanent observer mission;

(e) the "members of the diplomatic staff" are the members of the staff of the permanent observer mission, including experts and advisers, who have diplomatic status;

(f) the "members of the administrative and technical staff" are the members of the staff of the permanent observer mission employed in the administrative and technical service of the permanent observer mission;

(g) the "members of the service staff" are the members of the staff of the permanent observer mission employed by it as household workers or for similar tasks;

(h) the "private staff" are persons employed exclusively in the private service of the members of the permanent observer mission;

(i) the "host State" is the State in whose territory the Organization has its seat, or an office, at which permanent observer missions are established;

(j) the "premises of the permanent observer mission" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the permanent observer mission, including the residence of the permanent observer;

(k) an "organ of an international organization" means a principal or subsidiary organ and any commission, committee or sub-group of any of those bodies.

Commentary

(1) Since the article on the use of terms previously adopted by the Commission—article 1—cannot be applied to part III of the draft without modification, and certain additional terms used in this part require clarification, the Commission has placed at the beginning of the present part article 51 which states the meanings with which terms are used in part III. Those terms in article 1 which are not repeated in article 51—such as "international organization"—are used in the same sense when they appear in part III. Any exceptions are noted in the commentary. Being aware of a possible overlapping with article 1, the Commission will examine at the second reading whether and to what extent that overlapping can be eliminated. The Commission will also review what adjustments may be required in other articles in part I, such as article 2, in order to clarify their applicability to part III.

(2) Paragraph (a) of article 51 defines the permanent observer mission. The remaining paragraphs of the article

are based on paragraphs (e) to (m) and (k bis)²² of article 1.

Article 52. Establishment of permanent observer missions

Non-member States may, in accordance with the rules or practice of the Organization, establish permanent observer missions for the performance of the functions set forth in article 53.

Commentary

(1) This article lays down a general rule in accordance with which non-member States may establish permanent observer missions to effect the necessary association with an international organization when such establishment is permitted by the rules or practice of the organization.

(2) Underlying such a general rule is the assumption that the organization is one of universal character. As defined in article 1 (b), "an 'international organization of universal character' means an organization whose membership and responsibilities are on a world-wide scale". Paragraph (4) of the commentary on article 1 states that:

The definition of the term "international organization of universal character" in sub-paragraph (b) flows from Article 57 of the Charter which refers to the "various specialized agencies established by intergovernmental agreement and having wide international responsibility".

Given the central positions which organizations of universal character occupy in the present day international order and the world-wide character of their activities and responsibilities, it is of vital interest to non-member States to be able to follow the work of those organizations more closely. The association of non-member States with international organizations could also be of benefit to the organizations of universal character and conducive to the fulfilment of their principles and purposes.

(3) During the discussion of article 52, certain members of the Commission stated that it should be understood that "the rules or practice of the Organization" referred to in that provision must be in conformity with the principles of sovereign equality of States and of universality. Others, however, considered that no State was entitled to send an observer mission to an organization when the rules or practice of the organization did not provide for such a possibility.

Article 53. Functions of a permanent observer mission

The functions of a permanent observer mission consist *inter alia* in maintaining liaison and promoting co-operation between the sending State and the Organization, ascertaining activities and developments in the Organization and reporting thereon to the Government of the sending State,

²² Paragraph (k bis) relating to the term "premises of the permanent mission" was added to article 1 by the Commission at its twenty-first session (*Yearbook of the International Law Commission*, 1969, vol. II, p. 206, document A/7610/Rev.1, para. 14).

negotiating with the Organization when required and representing the sending State at the Organization.

Commentary

(1) The main function of a permanent observer mission is to ensure the necessary liaison between the sending State and the organization. In paragraph 168 of the Introduction to his Annual Report on the work of the Organization covering the period 16 June 1966-15 June 1967, the Secretary-General of the United Nations stated:

In my introduction to last year's annual report as well as in previous years, I have already expressed my strong feeling that all countries should be encouraged and enabled, if they wish to do so, to follow the work of the Organization more closely by maintaining observers at the Headquarters of the United Nations, at Geneva, and in the regional economic commissions. They will thus be exposed to the impact of the work of the Organization and the currents and cross-currents of opinion that prevail within it, besides gaining opportunities to contribute to that exchange.²³

(2) Permanent observers, being representatives of States non-members of the organization, do not perform functions identical with those of permanent missions of member States as set forth in article 7. They do not, in particular, represent the State "in" the Organization as stated in article 7 (a) in the case of permanent missions. Rather they represent it "at" the Organization. They may, however, perform some of the functions of permanent missions on an *ad hoc* basis; and article 53 accordingly provides that permanent observer missions may, besides ensuring the necessary liaison between their respective governments and the organization to which they are assigned, perform certain other functions of permanent missions. In particular, the function of negotiation can be exercised by permanent observers when an agreement with the international organization is under consideration. However, as such negotiation is not a regularly recurrent part of a permanent observer mission's activity, the Commission added in the text of article 53 the expression "when required" after the words "negotiating with the Organization".

Article 54. Accreditation to two or more international organizations or assignment to two or more permanent observer missions

1. The sending State may accredit the same person as permanent observer to two or more international organizations or assign a permanent observer as a member of another of its permanent observer missions.

2. The sending State may accredit a member of the staff of a permanent observer mission to an international organization as permanent observer to other international organizations or assign him as a member of another of its permanent observer missions.

Commentary

Article 54 is based on article 8 relating to the accredita-

tion of the same person or of a member of the staff of a permanent mission as permanent representative to two or more international organizations or the assignment of a permanent representative or of a member of the staff of a permanent mission to two or more permanent missions.²⁴

Article 55. Appointment of the members of the permanent observer mission

Subject to the provisions of articles 56 and 60, the sending State may freely appoint the members of the permanent observer mission.

Article 56. Nationality of the members of the permanent observer mission

The permanent observer and the members of the diplomatic staff of the permanent observer mission should in principle be of the nationality of the sending State. They may not be appointed from among persons having the nationality of the host State, except with the consent of that State which may be withdrawn at any time.

Commentary

(1) Article 55 is based on the provisions of article 10 relating to the appointment of the members of the permanent mission. It emphasizes the principle of the freedom of choice by the sending State of the members of the permanent observer mission. Article 55 expressly provides for two exceptions to that principle. The first is embodied in article 56 which requires the consent of the host State for the appointment of one of its nationals as a permanent observer or as a member of the diplomatic staff of the permanent observer mission of another State. The second exception relates to the size of the mission; that question is regulated by article 60.

(2) In paragraphs (2) and (3) of its commentary on article 10, the Commission stated that:

Unlike the relevant articles of the Vienna Convention on Diplomatic Relations and the draft articles on special missions, article 10 does not make the freedom of choice by the sending State of the members of its permanent mission to an international organization subject to the *agrément* of either the organization or the host State as regards the appointment of the permanent representative, the head of the permanent mission.

The members of the permanent mission are not accredited to the host State in whose territory the seat of the organization is situated. They do not enter into direct relationship with the host State, unlike the case of bilateral diplomacy. In the latter case, the diplomatic agent is accredited to the receiving State in order to perform certain functions of representation and negotiation between the receiving State and his own. That legal situation is the basis of the institution of *agrément*, for the appointment of the head of the diplomatic mission. As regards the United Nations, the Legal Counsel pointed out at the 1016th meeting of the Sixth Committee, on 6 December 1967, that:

²³ Official Records of the General Assembly, Twenty-second Session, Supplement No. 1 A (A/6701/Add.1).

²⁴ See above document A/CN.4/227 and Add.1 and 2, section II, Part III, "Note on assignment to two or more international organizations or to functions unrelated to permanent missions".

"The Secretary-General, in interpreting diplomatic privileges and immunities, would look to provisions of the Vienna Convention so far as they would appear relevant *mutatis mutandis* to representatives to United Nations organs and conferences. It should of course be noted that some provisions such as those relating to *agrément*, nationality or reciprocity, have no relevancy in the situation of representatives to the United Nations."

(3) Article 56 is based on article 11 which states that the permanent representative and the members of the diplomatic staff of the permanent mission should in principle be of the nationality of the sending State, and that they may not be appointed from among persons having the nationality of the host State, except with the consent of that State. The Commission decided to limit the scope of the provision to nationals of the host State and not to extend it to nationals of a third State. It therefore did not include in article 11 the rule laid down in paragraph 3 of article 8 of the Vienna Convention on Diplomatic Relations. The highly technical character of some international organizations makes it desirable not to restrict unduly the free selection of members of the mission since the sending State may find it necessary to appoint as members of its permanent mission nationals of a third State who possess the required training and experience.

(4) The Commission decided to take a similar approach in dealing with the problem of nationality of the members of the permanent observer mission and article 56 reflects this decision.

Article 57. Credentials of the permanent observer

1. The credentials of the permanent observer shall be issued either by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or by another competent minister if that is allowed by the practice followed in the Organization, and shall be transmitted to the competent organ of the Organization.

2. A non-member State may specify in the credentials submitted in accordance with paragraph 1 of this article that its permanent observer shall represent it as an observer in one or more organs of the Organization when such representation is permitted.

Commentary

(1) The study prepared by the Secretariat²⁵ refers only indirectly to the question of credentials of permanent observers, in the context of facilities accorded to them. In that respect, the study quotes the above-mentioned memorandum, dated 22 August 1962, sent by the Legal Counsel to the then Acting Secretary-General,²⁶ paragraph 4 of which states *inter alia*:

[...] Communications informing the Secretary-General of their [the permanent observers] appointment are merely acknowledged by the Secretary-General or on his behalf and they are not

²⁵ See *Yearbook of the International Law Commission, 1967*, vol. II, p. 154, document A/CN.4/L.118 and Add.1 and 2.

²⁶ See foot-note 12 above.

received by the Secretary-General for the purpose of presentation of credentials as is the case for Permanent Representatives of States Members of the Organization.

(2) Unlike permanent representatives of Member States, permanent observers of non-member States do not present credentials to the Secretary-General. The non-member State which wishes to maintain a permanent observer to the United Nations simply addresses a letter to the Secretary-General informing him of the name of its permanent observer.

(3) During the discussion of this question in the Commission some members were in favour of adhering to the present United Nations informal practice in accordance with which permanent observers do not present credentials. The majority of the members thought, however, that it would be preferable to provide, in the draft articles, for the submission of credentials. Moreover, inclusion of such a provision would help make as complete as possible the legal regulation of the institution of permanent observers to international organizations.

(4) Paragraph 1 of article 57 is based on article 12 relating to credentials of the permanent representatives, since the Commission believes that permanent observers should be able to present credentials in substantially the same form as permanent representatives.

(5) Paragraph 2 of the article is based on paragraph 1 of article 13 relating to permanent representatives. No provisions similar to those of paragraph 2 of article 13 (concerning the right of the permanent representative to represent the State in the organs of the organization for which there are no special requirements as regards representation) were included in part III of the draft, since there was no general rule in international practice that non-member States could be represented by permanent observers at meetings of organs of international organizations. The Commission will consider, at its second reading, the question of replacing the word "*préciser*" in the French text by the word "*spécifier*" both in this provision and in paragraph 1 of article 13.

Article 58. Full powers to represent the State in the conclusion of treaties

1. A permanent observer in virtue of his functions and without having to produce full powers is considered as representing his State for the purpose of adopting the text of a treaty between that State and the international organization to which he is accredited.

2. A permanent observer is not considered in virtue of his functions as representing his State for the purpose of signing a treaty (whether in full or *ad referendum*) between that State and the international organization to which he is accredited unless it appears from the circumstances that the intention of the Parties was to dispense with full powers.

Commentary

It is recognized in article 53 that one of the functions of the permanent observer mission is negotiating, when required, with the Organization. Since there are some

instances of agreements negotiated with organizations by permanent observers on behalf of the States they represented, the majority of the Commission thought it desirable to include in part III a provision similar to article 14 concerning permanent representatives.

Article 59. Composition of the permanent observer mission

1. In addition to the permanent observer, a permanent observer mission may include members of the diplomatic staff, the administrative and technical staff and the service staff.

2. When members of a permanent diplomatic mission, a consular post or a permanent mission, in the host State, are included in a permanent observer mission, their privileges and immunities as members of their respective missions or consular post shall not be affected.

Article 60. Size of the permanent observer mission

The size of the permanent observer mission shall not exceed what is reasonable and normal, having regard to the functions of the Organization, the needs of the particular mission and the circumstances and conditions in the host State.

Article 61. Notifications

1. The sending State shall notify the Organization of:

(a) The appointment of the members of the permanent observer mission, their position, title and order of precedence, their arrival and final departure or the termination of their functions with the permanent observer mission;

(b) The arrival and final departure of a person belonging to the family of a member of the permanent observer mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the permanent observer mission;

(c) The arrival and final departure of persons employed on the private staff of members of the permanent observer mission and the fact that they are leaving that employment;

(d) The engagement and discharge of persons resident in the host State as members of the permanent observer mission or persons employed on the private staff entitled to privileges and immunities.

2. Whenever possible, prior notification of arrival and final departure shall also be given.

3. The Organization shall transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

4. The sending State may also transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

Commentary

(1) Paragraph 1 of article 59 is based on article 15 relating to the composition of the permanent mission. It provides

that every permanent observer mission must include a permanent observer of the sending State, that is to say, a person to whom that State has assigned the task of being its representative in the mission.

(2) Paragraph 2 of article 59 is based on paragraph 2 of article 9 of the Convention on Special Missions. The provision is designed to deal with the frequent practice of permanent observers being at the same time members of diplomatic missions and of members of permanent observer missions being drawn from consular staff. No similar provision has been included in part II of the draft relating to permanent missions but it is the intention of the Commission to consider the inclusion of such a provision during its second reading of that part.

(3) The Commission reserved the question of the place in part III of paragraph 2 of article 59 and the question whether the final words of the French version should read "*n'en sont pas affectés*" rather than "*ne sont pas affectés*".

(4) Article 60 is based on article 16 relating to the size of the permanent mission. During the discussion in the Commission, concern has been expressed at the reference in article 60 to the "functions of the Organization". The Commission, however, came to the conclusion that those functions had some part in determining the proper size of a permanent observer mission.

(5) The provisions of article 61 are based on those of article 17. Some members of the Commission suggested that the references in both articles 17 and 61 to the host State, should, following the conventions on diplomatic relations, consular relations and special missions, be more precise and specify the Ministry of Foreign Affairs or such other Ministry as may be agreed. The Commission decided to consider this further at its second reading.

Article 62. Chargé d'affaires ad interim

If the post of permanent observer is vacant, or if the permanent observer is unable to perform his functions, a *chargé d'affaires ad interim* may act as head of the permanent observer mission. The name of the *chargé d'affaires ad interim* shall be notified to the Organization either by the permanent observer or, in case he is unable to do so, by the Minister for Foreign Affairs or by another competent minister if that is allowed by the practice followed in the Organization.

Commentary

(1) It is the practice of a number of permanent observer missions, in particular in Geneva, to appoint members of their staff to be *chargé d'affaires ad interim* in the case of a prolonged absence of the permanent observer. Accordingly it was thought desirable, again in order to make the regulation of the institution of permanent observers as complete as possible, to include a provision on this topic.

(2) The wording of the provision is based on that of article 18 relating to permanent representatives. There are two differences. The first is that, since non-member States are not obliged to send permanent observers, the first

sentence provides a faculty rather than imposes an obligation. In this connexion, the question was raised whether article 18 should be correspondingly revised in the second reading. Secondly, the expression "by the Minister for Foreign Affairs or by another competent minister if that is allowed by the practice followed in the Organization" replaces the words "by the sending State" appearing in article 18. At its second reading of part II, the Commission will consider the possibility of using the same expression in article 18.

(3) Some doubts were expressed about the appropriateness of the term "*chargé d'affaires ad interim*" when used in connexion with permanent observer missions. It was decided, however, that it was reasonable to use the term because of the representative functions performed by observers albeit on a limited scale. Moreover, as indicated above, the term is used, on occasion, in practice.

Article 63. Offices of permanent observer missions

1. The sending State may not, without the prior consent of the host State, establish offices of the permanent observer mission in localities other than that in which the seat or an office of the Organization is established.

2. The sending State may not establish offices of the permanent observer mission in the territory of a State other than the host State, except with the prior consent of such a State.

Commentary

(1) Article 63 is based on article 20 relating to the offices of permanent missions. In paragraph (1) of its commentary on article 20, the Commission stated:

The provisions of article 20 have been included in the draft to avoid the awkward situation which would result for the host State if an office of a permanent mission was established in a locality other than that in which the seat or an office of the Organization is established. The article deals also with the rare cases in which sending States wish to establish offices of their permanent missions outside the territory of the host State.

(2) Some members suggested that the Commission should consider during its second reading whether the word "localities" should be replaced by "a locality".

Article 64. Use of [flag and] emblem

1. The permanent observer mission shall have the right to use the [flag and] emblem of the sending State on its premises.

2. In the exercise of the right accorded by this article, regard shall be had to the laws, regulations and usages of the host State.

Commentary

(1) Article 21 provides that the permanent mission may use the flag and emblem on its premises and that the permanent representative has the same right as regards his

residence and means of transport. Some members argued that from a functional point of view these stipulations should also apply to permanent observer missions. They held that the value of the flag on the premises and means of transport was considerable, especially in the case of observers functioning in unsettled areas. Others considered, however, that permanent observer missions could not be fully equated for all purposes with permanent missions and, thus, in effect with diplomatic missions. Since their functions were different from those of permanent missions some reduction in the visible signs of their presence might be appropriate. Moreover, there was no established custom regarding the display of the flag either on the residence or the vehicles of permanent observers.

(2) Because of this division of views, the Commission placed between brackets the words "flag and" in article 64 in order to draw the attention of governments to the matter and to elicit their views. Furthermore, the Commission did not include in article 64 the second sentence of paragraph 1 of article 21. That sentence reads: "The permanent representative shall have the same right as regards his residence and means of transport".

(3) Some members suggested that the Commission should consider during its second reading whether the expression "regulations and usages of the host State" should be replaced by "regulations and usages in the host State".

SECTION 2. FACILITIES, PRIVILEGES AND IMMUNITIES OF PERMANENT OBSERVER MISSIONS

General comments

(1) The position as regards facilities accorded to permanent observers at United Nations Headquarters is summarized as follows in paragraphs 3 and 4, of the above-mentioned memorandum of the Legal Counsel:²⁷

Since Permanent Observers of non-Member States do not have an officially recognized status, facilities which are provided them by the Secretariat are strictly confined to those which relate to their attendance at public meetings and are generally of the same nature as those extended to distinguished visitors at United Nations Headquarters. The Protocol Section arranges for their seating at such meetings in the public gallery and for the distribution to them of the relevant unrestricted documentation. A list of their names is appended, for convenience of reference, to the List of Permanent Missions to the United Nations published monthly by the Secretariat, as Permanent Observers often represent their Governments at sessions of United Nations organs at which their Governments have been invited to participate.

No other formal recognition or protocol assistance is extended to Permanent Observers by the Secretariat. Thus no special steps are taken to facilitate the granting of United States visas to them and their personnel nor for facilitating the establishment of their offices in New York. Communications informing the Secretary-General of their appointment are merely acknowledged by the Secretary-General or on his behalf and they are not received by the Secretary-General for the purpose of presentation of credentials as is the case for Permanent Representatives of States Members of the Organization.

²⁷ See foot-note 12 above.

(2) The position as regards diplomatic privileges and immunities for permanent observers at United Nations Headquarters is summarized as follows in paragraph 5 of the above-mentioned memorandum:²⁸

Permanent Observers are not entitled to diplomatic privileges or immunities under the Headquarters Agreement or under other statutory provisions of the host State. Those among them who form part of the diplomatic missions of their Governments to the Government of the United States may enjoy immunities in the United States for that reason. If they are not listed in the United States diplomatic list, whatever facilities they may be given in the United States are merely gestures of courtesy by the United States authorities.

(3) At the Office of the United Nations at Geneva, the Federal Republic of Germany, the Holy See, the Republic of Korea, San Marino and the Republic of Viet-Nam maintain permanent observer missions. Their permanent observers enjoy *de facto* the same privileges and immunities as permanent representatives, except in the case of the permanent observer of San Marino, who is a Swiss citizen. In addition, Switzerland appointed in 1966 an "observateur permanent du Département politique fédéral auprès de l'Office des Nations Unies à Genève".

(4) In *Pappas v. Francisci*,²⁹ a claim by a member of the staff of the then Italian observer mission to the United Nations at Headquarters to immunity from giving evidence was rejected. The Court referred to the fact that the Department of State had not recognized the defendant as possessing immunity under any applicable statute or treaty. The Court referred in its decision to a letter of the Acting Chief of Protocol of the United Nations concerning the status of representatives of non-member nations maintaining observers' offices in New York, in which it was stated that the "Headquarters Agreement does not mention the observers' category and up until now the agreement has not been interpreted to confer diplomatic immunity on such persons and/or members of their staff". The Court remarked that the benefits of the International Organizations Immunities Act of the United States of America (i.e. functional privileges and immunities) are, however, granted to persons designated by foreign Governments to serve as their representatives "in or to" international organizations.

(5) Some members of the Commission pointed out that since permanent observer missions do not participate directly in the activities of the Organization, they do not have the relationship which permanent missions have with the Organization. As their functions differ, they should not be equated with permanent missions for the purposes of determining the facilities, privileges and immunities to be accorded to them.

(6) The majority of the members considered, however, that, notwithstanding the fact that permanent observer missions to international organizations are established by non-member States while permanent missions are established by member States, they both have a representative and permanent character. This is reflected in article 51 (a),

which defines a "permanent observer mission" as "a mission of representative and permanent character sent to an international organization by a State not a member of that organization". This definition is identical in substance with the definition of the permanent mission in article 1 (d), according to which a "permanent mission" is a "mission of representative and permanent character sent by a State member of an international organization to the Organization". Facilities, privileges and immunities are to be determined by reference not only to the functions of the permanent observer mission but also by reference to its representative character. On this view, the facilities, privileges and immunities to be accorded to permanent observer missions should be substantially the same as those accorded to permanent missions, with such differences as are dictated by differences in function.

(7) On the basis of the view reflected in the preceding paragraph, the Commission decided to draft provisionally all but two of the articles contained in the present section following the technique of "drafting by reference". Consequently, and in order to avoid unnecessary repetition, the commentaries on particular articles in this section, except those on articles 65 and 75, do no more than indicate the content of the corresponding provisions of part II referred to therein, on the assumption that reference will also be made to the text of the commentaries on the relevant articles of part II.

Article 65. General facilities

The host State shall accord to the permanent observer mission the facilities required for the performance of its functions. The Organization shall assist the permanent observer mission in obtaining those facilities and shall accord to the mission such facilities as lie within its own competence.

Commentary

Article 65 reproduces the provisions of article 22 except as regards the words "full facilities", which have been replaced by the words "facilities required" in the first sentence. In introducing this change, the Commission has sought to reflect the difference, both in nature and scope, between the functions, obligations and needs of permanent missions, on the one hand, and those of permanent observer missions, on the other, which makes it unnecessary for the latter to be given the same facilities as the former.

Article 66. Accommodation and assistance

The provisions of articles 23 and 24 shall apply also in the case of permanent observer missions.

Commentary

Article 23 concerns the accommodation of the permanent mission and its members. Article 24 refers to the assistance by the Organization in respect of privileges and immunities.

²⁸ *Idem.*

²⁹ *Supreme Court of the State of New York, Special Term, King's County, Part. V, 6 February 1953, 119 N.Y.S. 2d. 69.*

Article 67. Privileges and immunities of the permanent observer mission

The provisions of articles 25, 26, 27, 29 and 38, paragraph 1 (a), shall apply also in the case of permanent observer missions.

Commentary

Articles 25, 26, 27, 29 and 38, paragraph 1 (a), provide respectively for inviolability of the premises of the permanent mission, exemption of the premises of the permanent mission from taxation, inviolability of archives and documents, freedom of communication, and exemption from customs duties and inspection of articles for the official use of the permanent mission.

Article 68. Freedom of movement

The provisions of article 28 shall apply also in the case of members of the permanent observer mission and members of their families forming part of their respective households.

No commentary

Article 69. Personal privileges and immunities

1. The provisions of articles 30, 31, 32, 35, 36, 37 and 38, paragraphs 1 (b) and 2, shall apply also in the case of the permanent observer and the members of the diplomatic staff of the permanent observer mission.

2. The provisions of article 40, paragraph 1, shall apply also in the case of members of the family of the permanent observer forming part of his household and the members of the family of a member of the diplomatic staff of the permanent observer mission forming part of his household.

3. The provisions of article 40, paragraph 2, shall apply also in the case of members of the administrative and technical staff of the permanent observer mission, together with members of their families forming part of their respective households.

4. The provisions of article 40, paragraph 3, shall apply also in the case of members of the service staff of the permanent observer mission.

5. The provisions of article 40, paragraph 4, shall apply also in the case of the private staff of members of the permanent observer mission.

Commentary

Articles 30, 31, 32, 35, 36, 37 and 38, paragraphs 1 (b) and 2, provide respectively, as regards the persons of the permanent representative and of the members of the diplomatic staff of the permanent mission, for: personal inviolability; inviolability of residence and property; immunity from jurisdiction; exemption from social security legislation; exemption from dues and taxes; exemption from personal services; and exemption from customs duties and inspection as regards articles for personal use

and personal baggage. Article 40, paragraphs 1, 2, 3 and 4, regulate respectively the privileges and immunities of the following persons: members of the family of the permanent representative and of the diplomatic staff of the permanent mission; members of the administrative and technical staff of the permanent mission and their families; members of the service staff of the permanent mission; and the private staff of members of the permanent mission.

Article 70. Nationals of the host State and persons permanently resident in the host State

The provisions of article 41 shall apply also in the case of members of the permanent observer mission and persons on the private staff who are nationals of or permanently resident in the host State.

No commentary

Article 71. Waiver of immunity and settlement of civil claims

The provisions of articles 33 and 34 shall apply also in the case of persons enjoying immunity under article 69.

No commentary

Article 72. Exemption from laws concerning acquisition of nationality

The provisions of article 39 shall apply also in the case of members of the permanent observer mission not being nationals of the host State and members of their families forming part of their household.

No commentary

Article 73. Duration of privileges and immunities

The provisions of article 42 shall apply also in the case of every person entitled to privileges and immunities under the present section.

No commentary

Article 74. Transit through the territory of a third State

The provisions of article 43 shall apply also in the case of the members of the permanent observer mission and members of their families, and the couriers, official correspondence, other official communications and bags of the permanent observer mission.

No commentary

Article 75. Non-discrimination

In the application of the provisions of the present part, no discrimination shall be made as between States.

Commentary

Article 75 reproduces the provision of article 44 except as regards the word "articles" which has been replaced by the word "part". In making this change, the Commission wishes to indicate its intention to consider at its second reading whether that provision should be included in a general part covering all of the different parts of the draft articles.

SECTION 3. CONDUCT OF THE PERMANENT
OBSERVER MISSION AND ITS MEMBERS

Article 76. Conduct of the permanent observer mission and its members

The provisions of articles 45 and 46 shall apply also in the case of permanent observer missions.

Commentary

Articles 45 and 46 refer, respectively, to respect for the laws and regulations of the host State and professional activity.

SECTION 4. END OF FUNCTIONS

Article 77. End of functions

The provisions of articles 47, 48 and 49 shall apply also in the case of permanent observer missions.

Commentary

Articles 47, 48 and 49 regulate, respectively, the end of functions of the permanent representative or of a member of the diplomatic staff of the permanent mission, facilities for departure, and protection of premises and archives.

Part IV. Delegations of States to organs and to conferences

SECTION 1. DELEGATIONS IN GENERAL

Article 78. Use of terms

For the purposes of the present part:

(a) An "organ" means a principal or subsidiary organ of an international organization and any commission, committee or sub-group of any such organ, in which States are members;

(b) A "conference" means a conference of States convened by or under the auspices of an international organization, other than a meeting of an organ;

(c) A "delegation to an organ" means the delegation designated by a State member of the organ to represent it therein;

(d) A "delegation to a conference" means the delegation sent by a participating State to represent it at the conference;

(e) A "representative" means any person designated by a State to represent it in an organ or at a conference;

(f) The "members of the delegation" are the representatives and the members of the Staff of the delegation to an organ or to a conference, as the case may be;

(g) The "members of the staff of the delegation" are the members of the diplomatic staff, the administrative and technical staff and the service staff of the delegation to an organ or to a conference, as the case may be;

(h) The "members of the diplomatic staff" are the members of the delegation, including experts and advisers, who have been given diplomatic status by the sending State for the purposes of the delegation;

(i) The "members of the administrative and technical staff" are the members of the staff of the delegation to an organ or to a conference, as the case may be, employed in the administrative and technical service of the delegation;

(j) The "members of the service staff" are the members of the staff of the delegation to an organ or to a conference, as the case may be, employed by it as household workers or for similar tasks;

(k) The "private staff" are persons employed exclusively in the private service of the members of the delegation to an organ or to a conference, as the case may be;

(l) The "host State" is the State in whose territory a conference or a meeting of an organ is held.

Commentary

(1) Considerations similar to those stated in paragraph (1) of the commentary to article 51 apply in the case of article 78. The Commission has, therefore, placed at the beginning of the present part article 78 which states the meanings with which terms are used in part IV. As is the case with article 51, there is a possible overlapping with article 1. The Commission will also examine at the second reading whether and to what extent that overlapping can be eliminated.

(2) Paragraph (a), regarding the term "organ", reproduces in substance the definitions of the term contained in articles 1 and 51 with the addition of the expression "in which States are members". That expression excludes from the scope of part IV bodies composed of individual experts who serve in a personal capacity. In order to concentrate on the major aspects of the topic, the Commission considered it preferable to deal in part IV only with organs in which States form part or all of the membership. The term, as defined, would not exclude the somewhat unusual case of an organ in which individuals as well as States serve as members. The articles in part IV, however, deal only with the aspects of State participation.

(3) Paragraph (b), regarding the term "conference", uses the phrase "convened by or under the auspices of an international organization". This formulation is designed to include a conference to which a host State issues the invitations on behalf of an international organization.

(4) Paragraphs (c) to (e) define respectively the terms "delegation to an organ", "delegation to a conference" and "representative". The Commission wishes to point out that in paragraph (d) the word "participating" is used in the same general sense as that word is used in article 9 of the Vienna Convention on the Law of Treaties.⁸⁰

(5) Paragraphs (f) to (l) are based on the corresponding paragraphs of article 1.

(6) The article does not include a definition of the term "premises" along the lines contained in paragraph (j) of article 51 because the presence of a delegation in a host State is for a limited period of time and the nature of the accommodation reflects this.

Article 79. Derogation from the present part

Nothing in the present part shall preclude the conclusion of other international agreements having different provisions concerning delegations to an organ or a conference.

Commentary

Article 79 is supplementary to article 5 of part I. Since the latter article applies only to "representatives of States to an international organization" the Commission has included in part IV a similar provision concerning "delegations to an organ or a conference". The general provisions in articles 3 and 4, relating to relevant rules of international organizations and relationship with other existing international agreements, are applicable to part IV. Consequently, the articles in part IV should be considered as not affecting existing international agreement or any relevant rules of international organizations that may be in force now or in the future.

Article 80. Conference rules of procedure

The provisions contained in articles 81, 83, 86, 88 and 90 shall apply to the extent that the rules of procedure of a conference do not provide otherwise.

Commentary

Article 80 extends to the rules of procedure of conferences the general reservation stated in article 3 as regards the rules of international organizations. There is, however, an important difference in substance between the two provisions. While article 3 applies to all the articles of the present draft, article 80 concerns only some of the provisions of part IV. The Commission is of the opinion that, in view of their nature, rules of procedure should

not derogate from certain provisions, such as those relating to privileges and immunities or upon which the host State may have relied in making arrangements for the conference.

Article 81. Composition of the delegation

A delegation to an organ or to a conference shall consist of one or more representatives of the sending State from among whom the sending State may appoint a head. It may also include diplomatic staff, administrative and technical staff and service staff.

Commentary

(1) Article 81 makes it mandatory for the sending State to appoint at least one representative in every delegation which it sends to an organ or to a conference. Some members of the Commission thought that the appointment of a representative should be made permissive by substituting, in the first sentence of the article, the word "may" for "shall" before "consist". The majority of the Commission, however, was of the opinion that every delegation should include at least one person to whom the sending State has entrusted the task of representing it. Otherwise the delegation would be without a member who could speak on behalf of the State or cast its vote.

(2) While the appointment of at least one representative is mandatory under article 81, the appointment of other members, and in particular of the head of the delegation, is permissive.

Article 82. Size of the delegation

The size of a delegation to an organ or to a conference shall not exceed what is reasonable or normal, having regard to the functions of the organ or, as the case may be, the tasks of the conference, as well as the needs of the particular delegation and the circumstances and conditions in the host State.

Commentary

Like article 60 relating to the size of the permanent observer mission, article 82 is based on article 16 relating to the size of the permanent mission. There is, however, one difference between article 82, on the one hand, and articles 16 and 60 on the other. The latter refer to the "functions" of the Organization. While article 82 uses that term as regards organs, it uses the word "tasks" in referring to conferences. The Commission was of the opinion that the word "tasks" was more appropriate than "functions" in relation to conferences.

Article 83. Principle of single representation

A delegation to an organ or to a conference may represent only one State.

Commentary

(1) The majority of the Commission was of the opinion that the residual rule laid down in article 83 reflected the

⁸⁰ See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No.: E.70.V.5), p. 290.

practice of international organizations, as described by the Special Rapporteur in his fifth report.³¹ Some members, however, expressed reservations concerning the article. They pointed out that for reasons of economy or convenience a State may wish to be represented by another State in an organ or at a conference. The Commission will review the matter at the second reading of the draft articles in the light of the observations which it receives from governments and international organizations.

(2) The Commission considered whether a second paragraph should be added to article 83 providing that, in certain conditions, a member of a delegation might represent another State. It came to the conclusion that the situations envisaged were so varied that a general rule could well be only a complicating factor and that the subject should be left to the rules and practices of the various international organizations.

Article 84. Appointment of the members of the delegation

Subject to the provisions of articles 82 and 85, the sending State may freely appoint the members of its delegation to an organ or to a conference.

Commentary

Like article 55 relating to permanent observer missions, article 84 is based on article 10 relating to permanent missions. The basis for the rule as set out in the commentaries on articles 10 and 55 is likewise applicable with respect to delegations and the requirement of an *agrément* is eliminated for delegations to organs or conferences.

Article 85. Nationality of the members of the delegation

The representatives and members of the diplomatic staff of a delegation to an organ or to a conference should in principle be of the nationality of the sending State. They may not be appointed from among persons having the nationality of the host State, except with the consent of that State which may be withdrawn at any time.

Commentary

(1) Article 85 is based on article 11 relating to permanent missions, on which article 56 relating to permanent observer missions is also based.

(2) In its final clause reading: "except with the consent of that [the host] State which may be withdrawn at any time", article 11 lays down the requirement of the advance consent of the host State for the appointment to the permanent mission by the sending State of one of its nationals. Some members of the Commission thought that this requirement should be dispensed with in the case of dele-

gations in view of the temporary nature of those bodies. They therefore suggested that the final clause of article 85 should read: "if the [host] State objects, which it may do at any time". Other members expressed the view that article 85 should make it clear that the consent of the host State could be withdrawn only if that would not seriously inconvenience the delegation in carrying out its functions. The majority of the Commission, however, was of the opinion that no substantive change should be made in the language of article 11. The Commission therefore decided to reproduce the final clause of that article in article 85 without any modification. At the same time it expressed the view that the host State should withdraw its consent to the appointment of one of its nationals to a delegation only in the most serious circumstances and that every effort should be made not to disrupt the work of the delegation.

Article 86. Acting head of the delegation

1. If the head of a delegation to an organ or to a conference is absent or unable to perform his functions, an acting head may be designated from among the other representatives in the delegation by the head of the delegation or, in case he is unable to do so, by a competent authority of the sending State. The name of the acting head shall be notified to the Organization or to the conference.

2. If a delegation does not have another representative available to serve as acting head, another person may be designated as in paragraph 1 of this article. In such case credentials must be issued and transmitted in accordance with article 87.

Commentary

(1) Paragraph 1 of article 86 is based on article 18 concerning permanent missions. There are, however, two differences between that paragraph and article 18. In the first place, the expression "*chargé d'affaires ad interim*" appearing in article 18 has been replaced by "acting head" in order to conform to the terminology normally used in delegations. In the second place, since meetings of conferences and organs are sometimes of a very short duration, the second sentence of article 18 has been changed in order to provide the opportunity for more speed and flexibility in the notification of the appointment of an acting head of delegation.

(2) Paragraph 2, which corresponds to paragraph 2 of article 19 of the Vienna Convention on Diplomatic Relations,³² deals with the case in which no representative is available to replace the head of the delegation. It provides that in such a case "another person may be designated as in paragraph 1 of this article". However, because a delegation cannot function as a delegation in the absence of a representative empowered to act on behalf of the sending State, paragraph 2 of article 86 contains a requirement that such person must be designated as a representative through the issuance and transmittal of credentials in accordance with article 87.

³¹ See above document A/CN.4/227 and Add.1 and 2, section II, article 63. See also *Yearbook of the International Law Commission, 1967*, vol. II, p. 169, document A/CN.4/L.118 and Add.1 and 2, para. 40.

³² United Nations, *Treaty Series*, vol. 500, p. 95.

Article 87. Credentials of representatives

1. The credentials of a representative to an organ shall be issued either by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or by another competent authority if that is allowed by the practice followed in the Organization, and shall be transmitted to the Organization.

2. The credentials of a representative in the delegation to a conference shall be issued either by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or by another competent authority if that is allowed in relation to the conference in question, and shall be transmitted to the conference.

Commentary

(1) Paragraph 1 of article 87 concerns the credentials of representatives to an organ and paragraph 2 those of representatives to a conference. Both paragraphs are based on article 12 relating to permanent missions on which paragraph 1 of article 57, concerning permanent observer missions, is also based.

(2) It should be noted that the expression "another competent minister" in article 12 has been replaced in article 87 by "another competent authority". The Commission made this change in order to take into account the practice whereby credentials of representatives to organs or to conferences dealing with technical matters may be issued not by a minister but by the authority in the sending State directly concerned with those matters or by the permanent representative.

Article 88. Full powers to represent the State in the conclusion of treaties

1. Heads of State, Heads of Government and Ministers for Foreign Affairs, in virtue of their functions and without having to produce full powers, are considered as representing their State for the purpose of performing all acts relating to the conclusion of a treaty in a conference or in an organ.

2. A representative to an organ or in a delegation to a conference, in virtue of his functions and without having to produce full powers, is considered as representing his State for the purpose of adopting the text of a treaty in that organ or conference.

3. A representative to an organ or in a delegation to a conference is not considered in virtue of his functions as representing his State for the purpose of signing a treaty (whether in full or *ad referendum*) concluded in that organ or conference unless it appears from the circumstances that the intention of the Parties was to dispense with full powers.

Commentary

(1) The substance of article 88 is derived from article 7 of the Vienna Convention on the Law of Treaties. The Commission incorporated into article 88 those principles in article 7 which, in its view, are required to deal with the normal problems arising in connexion with the authority

of representatives to act on behalf of their States in the conclusion of treaties and the adoption of the treaty text.

(2) During the discussion of article 88, some members drew the attention of the Commission to the clause in paragraph 3 stating that a representative "... is not considered in virtue of his functions as representing his State for the purpose of signing a treaty...". They held that that clause, and hence the whole of paragraph 3, was redundant, since it was clear from paragraph 2 that the competence of a representative acting without full powers was limited to the adoption of the text of a treaty unless paragraph 1 (b) of article 7 of the Vienna Convention was applicable. The Commission, however, decided to retain paragraph 3 in order to elicit views of governments and international organizations regarding the value of this additional clarification for the purposes of its second reading of the draft articles.

(3) The Commission noted that in United Nations practice the credentials to participate in a conference had always been considered sufficient for the signature of the final act which had invariably been of a purely formal character. When the instruments adopted at a United Nations conference had been incorporated in the final act, those instruments had been signed separately and full powers had been required for their signature.

Article 89. Notifications

1. The sending State, with regard to its delegation to an organ or to a conference, shall notify the Organization or, as the case may be, the conference, of:

(a) The appointment, position, title and order of precedence of the members of the delegation, their arrival and final departure or the termination of their functions with the delegation;

(b) The arrival and final departure of a person belonging to the family of a member of the delegation and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the delegation;

(c) The arrival and final departure of persons employed on the private staff of members of the delegation and the fact that they are leaving that employment;

(d) The engagement and discharge of persons resident in the host State as members of the delegation or persons employed on the private staff entitled to privileges and immunities;

(e) The location of the premises occupied by the delegation and of the private accommodation enjoying inviolability under articles 94 and 99, as well as any other information that may be necessary to identify such premises and accommodation.

2. Whenever possible, prior notification of arrival and final departure shall also be given.

3. The Organization or, as the case may be, the conference, shall transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

4. The sending State may also transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

Commentary

(1) All the provisions of article 89, with the exception of paragraph 1 (e), are based on article 17 relating to permanent missions on which article 61, relating to permanent observer missions, is also based.

(2) Paragraph 1 (e) is based on paragraph 1 (f) of article 11 of the Convention on Special Missions. The reason for inclusion of this information is the desirability of giving the host State all information that will be valuable in connexion with its responsibilities toward the delegation. At the second reading of the draft, the Commission intends to consider the inclusion in articles 17 and 61 of a similar paragraph.

Article 90. Precedence

Precedence among delegations to an organ or to a conference shall be determined by the alphabetical order used in the host State.

Commentary

(1) Unlike article 19 which relates to precedence among permanent representatives, article 90 relates to precedence among delegations. Article 19 provides for two alternative methods of determining precedence: the first is the alphabetical order and the second the order of time and date of submission of credentials, in accordance with the practice established in the organization. The Commission retained only the first alternative for article 90. The second method would be of little, if any, assistance for delegations to organs or conferences since most of those delegations submit their credentials simultaneously, or at very short intervals on the first day of the conference or of the meeting of the organ.

(2) During the discussion of article 90 some members of the Commission criticized the use of the word "precedence" which in their view raised questions regarding the principle of sovereign equality of States. The Commission decided, however, to retain that word, as it had been used in the Vienna conventions on diplomatic and consular relations³³ and in the Convention on special missions. The word has thus acquired a special connotation, in conventions of this character, with respect to matters of etiquette and protocol.

**SECTION 2. FACILITIES, PRIVILEGES
AND IMMUNITIES OF DELEGATIONS**

General comments

(1) A substantial body of rules has developed in relation to privileges and immunities of representatives to organs of international organizations and to conferences convened by international organizations, based on the provisions of

Article 105 of the Charter. Paragraphs 2 and 3 of that Article provide as follows:

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

(2) At the San Francisco Conference, the Committee on Legal Questions stated that Article 105 "sets forth a rule obligatory for all members as soon as the Charter becomes operative".³⁴ Similarly, the Executive Committee on Legal Problems of the Preparatory Commission of the United Nations reported in 1945 that Article 105 is "applicable even before the General Assembly has made the recommendations referred to in paragraph (3) of the article, or the conventions there mentioned have been concluded".³⁵

(3) The Preparatory Commission of the United Nations instructed the Executive Secretary to invite the attention of the Members of the United Nations to the fact that, under Article 105 of the Charter, the obligation of all Members to accord to the United Nations, its officials and the representatives of its Members such privileges and immunities as are necessary for the fulfilment of its purposes, operated from the coming into force of the Charter. It recommended that "the General Assembly, at its First Session, should make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of Article 105 of the Charter, or propose conventions to the Members of the United Nations for this purpose."³⁶ It transmitted for the consideration of the General Assembly a study on privileges and immunities and, as working papers, a draft convention on privileges and immunities and a draft treaty to be concluded by the United Nations Organization with the United States of America, the country in which the headquarters of the Organization was to be located. It considered that the details of the prerogatives to be accorded to members of the International Court of Justice should be determined after the Court had been consulted, and that until further action had been taken the "rules applicable to the members of the Permanent Court of International Justice should be followed."³⁷ It recommended that the privileges and immunities of specialized agencies contained in their respective constitutions should be reconsidered and negotiations opened "for their co-ordination"³⁸ in the light of any convention ultimately adopted by the United Nations.

(4) The documents of the Preparatory Commission were considered by the Sixth Committee of the General Assembly at the first part of its session in January-February 1946.

³⁴ See *Documents of the United Nations Conference on International Organization*, IV/2/42 (2), vol. XIII, p. 704.

³⁵ Preparatory Commission of the United Nations, *Report by the Executive Committee* (PC/EX/113/Rev.1), Part III, chap. V, sect. 5, para. 2.

³⁶ *Report of the Preparatory Commission of the United Nations* (PC/20), chap. VII, sect. 1, para. 2.

³⁷ *Ibid.*, para. 4.

³⁸ *Ibid.*, para. 5.

³³ *Ibid.*, vol. 596, p. 261.

On the recommendation of the Sixth Committee, the General Assembly adopted the following resolutions concerning the privileges and immunities of the United Nations.

(a) A resolution relating to the adoption of the General Convention on Privileges and Immunities of the United Nations, to which the text of the convention is annexed [Resolution 22 A (I)];

(b) A resolution relating to negotiations with the competent authorities of the United States of America concerning the arrangements required as a result of the establishment of the seat of the United Nations in the United States of America, and text of a draft convention to be transmitted as a basis for discussion for these negotiations [Resolution 22 B (I)];

(c) A resolution on the privileges and immunities of the International Court of Justice [Resolution 22 C (I)];

(d) A resolution on the co-ordination of the privileges and immunities of the United Nations and the specialized agencies [Resolution 22 D (I)].

(5) The General Convention on the Privileges and Immunities of the United Nations³⁹ (hereinafter referred to as the General Convention) was approved by the General Assembly on 13 February 1946. On 1 July 1970 it was in force as regards 102 States.⁴⁰ A Convention on the Privileges and Immunities of the Specialized Agencies⁴¹ (hereinafter referred to as the Specialized Agencies Convention) was approved by the General Assembly on 21 November 1947. On 1 July 1970 it was in force as regards 70 States.

(6) The Specialized Agencies Convention is applicable, subject to variations set forth in a special annex for each agency, the final form of which is determined by the agency concerned, to nine specialized agencies expressly designated in the Convention—namely, the International Labour Organisation (ILO), the Food and Agricultural Organization of the United Nations (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Civil Aviation Organization (ICAO), the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), the World Health Organization (WHO), the Universal Postal Union (UPU), and the International Telecommunication Union (ITU), and to any other agency subsequently brought into relationship with the United Nations in accordance with Articles 57 and 63 of the Charter. In accordance with that last provision, the Convention has been applied to the World Meteorological Organization (WMO), the Intergovernmental Maritime Consultative Organization (IMCO) and the International Finance Corporation (IFC). An agreement on the privileges and immunities of the International Atomic Energy Agency (IAEA) was approved by the Board of Governors of the Agency on 1 July 1959, which “in general follows the Convention on the Privileges and Immunities of the Specialized Agencies”.⁴²

³⁹ United Nations, *Treaty Series*, vol. 1, p. 15.

⁴⁰ The most recent significant development has been the accession, on 29 April 1970, of the Government of the United States of America—the host country to the headquarters of the United Nations.

⁴¹ *Ibid.*, vol. 33, p. 261.

⁴² United Nations, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (United Nations publication, Sales No.: 61.V.3), p. 358.

(7) In addition to the General Convention, headquarters agreements have been concluded between the United Nations or the concerned specialized agency on the one hand, and the various States on whose territory headquarters are maintained on the other hand. Headquarters agreements have been concluded by the United Nations with the United States of America⁴³ and Switzerland,⁴⁴ by ICAO with Canada,⁴⁵ by UNESCO with France,⁴⁶ by FAO with Italy,⁴⁷ by IAEA with Austria,⁴⁸ and by the ILO,⁴⁹ WHO,⁵⁰ WMO,⁵¹ ITU⁵² and UPU⁵³ with Switzerland.

(8) Constitutional instruments of regional organizations also usually contain provisions relating to privileges and immunities of the organization. Such provisions are found, for instance, in article 106 of the Charter of the Organization of American States signed at Bogota on 30 April 1948; article 40 of the Statute of the Council of Europe of 5 May 1949; article 14 of the Pact of the League of Arab States of 22 March 1945; article XIII of the Statutes of the Council for Mutual Economic Assistance signed at Sofia on 14 December 1959; and article XXXI of the Charter of the Organization of African Unity of 25 May 1963. These constitutional provisions have been implemented by general conventions on privileges and immunities, largely inspired by the General Convention and the Specialized Agencies Convention, as is illustrated by the following agreements: the Agreement on Privileges and Immunities of the Organization of American States, opened for signature on 15 May 1949; the General Agreement on Privileges and Immunities of the Council of Europe, signed at Paris on 2 September 1949; the *Protocole sur les privilèges et immunités de la Communauté européenne du charbon et de l'acier*, signed at Paris on 18 April 1951; the Convention on the Privileges and Immunities of the League of Arab States approved by the Council of the League of Arab States on 10 May 1953; and the Convention concerning the juridical personality, privileges and immunities of the Council for Mutual Economic Assistance, signed at Sofia on 14 December 1959. A number of headquarters and host agreements have been also concluded by regional organizations with States on whose territory they maintain headquarters or other offices.

(9) Pursuant to Article 105 of the Charter and corresponding provisions applicable to the specialized agencies, the privileges and immunities of representatives to organs

⁴³ United Nations, *Treaty Series*, vol. 11, p. 11.

⁴⁴ *Ibid.*, vol. 1, p. 163.

⁴⁵ *Ibid.*, vol. 96, p. 155.

⁴⁶ United Nations, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (United Nations publication, Sales No.: 61.V.3), p. 240.

⁴⁷ *Ibid.*, p. 187.

⁴⁸ United Nations, *Treaty Series*, vol. 339, p. 110.

⁴⁹ *Ibid.*, vol. 15, p. 377.

⁵⁰ *Ibid.*, vol. 26, p. 331.

⁵¹ *Ibid.*, vol. 211, p. 277.

⁵² United Nations, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (United Nations publication, Sales No.: 61.V.3), p. 319.

⁵³ *Ibid.*, p. 321.

of the United Nations and the specialized agencies and to conferences convened by those international organizations are regulated by provisions in the General Convention, the Specialized Agencies Convention and the headquarters agreements referred to in paragraph (7) above.

(10) Article V, section 13, on "Representatives of members", of the Specialized Agencies Convention and article IV, section 9, on "The representatives of Members of the United Nations", of the Interim Arrangement concluded between the Secretary-General of the United Nations and the Swiss Federal Council⁵⁴ are modelled on article IV, section 11, of the General Convention, which reads as follows:

Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

(b) Inviolability for all papers and documents;

(c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;

(d) Exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions;

(e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys; and also,

(g) Such other privileges, immunities and facilities, not inconsistent with the foregoing, as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

(11) It is noteworthy that among the privileges and immunities listed in article IV, section 11 of the General Convention, immunity from jurisdiction is limited to words spoken or written and all acts done in the exercise of functions and during the journey to and from the place of meeting. This limited immunity from jurisdiction is in contrast with the full diplomatic immunities accorded by the General and Specialized Agencies Conventions to the Secretary-General (e.g. article V, section 19, of the General Convention). It is also in contrast with the full diplomatic immunities which the members of the permanent missions to the United Nations and the specialized agencies enjoy in accordance with the provisions of the Headquarters Agreement concluded between the United Nations and the United States of America on 26 June 1947 and with the decision of the Swiss Federal Council dated 31 March 1948.

(12) As regards the nature of the privileges and immunities envisaged in Article 105 of the Charter, at the San Francisco Conference the Committee on Legal Questions stated expressly that it had "seen fit to avoid the term

"diplomatic", in describing the nature of the privileges and immunities conferred under Article 105, and had "preferred to substitute a more appropriate standard, based . . . in the case of . . . representatives . . . , on providing for the independent exercise of their functions".⁵⁵

(13) Article 7, paragraph 4, of the Covenant of the League of Nations provided that:

Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.⁵⁶

(14) The Pan-American Convention regarding Diplomatic Officers, signed at Havana on 20 February 1928⁵⁷ contains the following provisions:

Article 1. States have the right of being represented before each other through diplomatic officers.

Article 2. Diplomatic officers are classed as ordinary and extraordinary.

Those who permanently represent the Government of one State before that of another are ordinary.

Those entrusted with a special mission or those who are accredited to represent the Government in international conferences and congresses or other international bodies are extraordinary.

Article 3. Except as concerns precedence and etiquette, diplomatic officers, whatever their category, have the same rights, prerogatives and immunities.

Etiquette depends upon diplomatic usages in general as well as upon the laws and regulations of the country to which the officers are accredited.

...

Article 9. Extraordinary diplomatic officers enjoy the same prerogatives and immunities as ordinary ones.

(15) Authors generally agree that representatives to international conferences enjoy full diplomatic status. The foundation of this position is sometimes given as being the diplomatic character of the representative's mission. Hesitation on the part of some writers to concede full diplomatic immunities to representatives to international conferences is prompted by the fact that as some of these conferences are of purely technical and of relatively secondary importance, such treatment would place them on a level higher than that of representatives of States to organs of the United Nations.

(16) As regards the nature and extent of privileges and immunities of members of delegations to organs of inter-

⁵⁵ See foot-note 34 above.

⁵⁶ Detailed arrangements concerning the privileges and immunities of the League of Nations were worked out between the Secretary-General of the League and the Swiss Government in the form of the "Modus Vivendi" of 1921 as supplemented by the "Modus Vivendi" of 1926. The "Modus Vivendi" of 1921 was embodied in a letter of 19 July 1921 from the Head of the Federal Political Department of the Swiss Government to the Secretary-General of the League of Nations on behalf of the Secretariat of the League and also of the International Labour Office. The "Modus Vivendi" of 1926 was submitted to the Council of the League for approval. For an account of the negotiations which led to the conclusion of these two agreements, see M. Hill, *Immunities and Privileges of International Officials—The Experience of the League of Nations* (Washington, Carnegie Endowment for International Peace, 1947), pp. 14-23.

⁵⁷ League of Nations, *Treaty Series*, vol. CLV (1934-1935), No. 3581, p. 259.

⁵⁴ United Nations, *Treaty Series*, vol. 1, p. 163.

national organizations and to conferences convened by international organizations, the Commission takes the position that these should be based upon a selective merger of the pertinent provisions of the Convention on Special Missions and the provisions regarding permanent missions to international organizations provided for in Part II of these articles. This position is derived from a number of recent developments which have taken place in the codification of diplomatic law. One of these developments is the evolution of the institution of permanent missions to international organizations and the assimilation of their status and immunities to diplomatic status and immunities. Another factor is that during the discussion and in the formulation of its provisional draft articles on special missions, the Commission expressed itself in favour of: (a) making the basis and extent of the immunities and privileges of special missions more or less the same as that of permanent diplomatic missions, and (b) taking the position that it was impossible to make a distinction between special missions of a political nature and those of a technical nature; every special mission represented a sovereign State in its relations with another State. The Commission is of the view that, owing to the temporary character of their task, delegations to organs of international organizations and to conferences convened by international organizations occupy, in the system of diplomatic law of international organizations, a position similar to that of special missions within the framework of bilateral diplomacy. It follows that the determination of their privileges and immunities should be made in the light of those of special missions. However, after taking into account adjustments required by the fact that their task is temporary, privileges and immunities of these delegations should reflect the essential role that the law of international organizations must play in their formulation.

Article 91. Status of the Head of State and persons of high rank

1. The Head of the sending State, when he leads a delegation to an organ or to a conference, shall enjoy in the host State or in a third State the facilities, privileges and immunities accorded by international law to Heads of State on an official visit.

2. The Head of the Government, the Minister for Foreign Affairs and other persons of high rank, when they take part in a delegation of the sending State to an organ or to a conference, shall enjoy in the host State or in a third State, in addition to what is granted by the present part, the facilities, privileges and immunities accorded by international law.

Commentary

Article 91 is based on article 21 of the Convention on Special Missions. It provides that a person belonging to one of the categories referred to in the article who becomes a member of a delegation to an organ or to a conference retains the facilities, privileges and immunities accorded to him by international law. The Commission felt it desirable to include this principle in the present part of the draft articles because on numerous occasions a delegation to an

organ or to a conference is headed or includes among its members a Head of State, a Head of Government, a Minister for Foreign Affairs or "other persons of high rank". For instance, such high level representation is quite common in delegations to the General Assembly of the United Nations and corresponding general representative organs of the specialized agencies. Also, Article 28, paragraph 2, of the Charter provides as follows:

The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.

The Security Council approved recently a statement expressing the consensus of the Council

that the holding of periodic meetings, at which each member of the Council would be represented by a member of the Government or by some other specially designated representative, could enhance the authority of the Security Council and make it a more effective instrument for the maintenance of international peace and security.⁵⁸

Article 92. General facilities, assistance by the Organization and inviolability of archives and documents

The provisions of articles 22, 24 and 27 shall apply also in the case of a delegation to an organ or to a conference.

Commentary

Articles 22, 24 and 27 provide respectively for general facilities, assistance by the Organization in respect of privileges and immunities and inviolability of archives and documents.

Article 93. Premises and accommodation

The host State shall assist a delegation to an organ or to a conference, if it so requests, in procuring the necessary premises and obtaining suitable accommodation for its members. The Organization shall, where necessary, assist the delegation in this regard.

Commentary

The first sentence of article 93 is based on article 23 of the Convention on Special Missions and the second sentence on paragraph 2 of article 23 of the present draft articles. The Commission has based the first sentence on the corresponding provision of the Convention on Special Missions because the temporary nature of a delegation to an organ or to a conference raises the same considerations with regard to premises and accommodation as in the case of a special mission. The second sentence of the article refers both to a delegation to an organ and a delegation to a conference. The Organization concerned with convening a conference should assist delegations to the extent of its ability.

⁵⁸ Statement approved in connexion with the question of initiating periodic meetings of the Security Council in accordance with article 28 (2) of the Charter. See *Official Records of the Security Council, Twenty-fifth Year, 1544th meeting*.

Article 94. Inviolability of the premises

1. The premises where a delegation to an organ or to a conference is established shall be inviolable. The agents of the host State may not enter the said premises, except with the consent of the head of the delegation or, if appropriate, of the head of the permanent diplomatic mission of the sending State accredited to the host State. Such consent may be assumed in case of fire or other disaster that seriously endangers public safety, and only in the event that it has not been possible to obtain the express consent of the head of the delegation or of the head of the permanent diplomatic mission.

2. The host State is under a special duty to take all appropriate steps to protect the premises of the delegation against any intrusion or damage and to prevent any disturbance of the peace of the delegation or impairment of its dignity.

3. The premises of the delegation, their furnishings, other property used in the operation of the delegation and its means of transport shall be immune from search, requisition, attachment or execution.

Commentary

Article 94 is based on article 25 of the Convention on Special Missions. The problems involved in the inviolability of the premises of delegations and those of the inviolability of the premises of special missions are identical since both are usually housed in hotels or other temporary quarters such as office space in the premises of a permanent diplomatic mission. Some members of the Commission, however, reserved their position with regard to the last sentence of paragraph 1. At the second reading, the Commission will consider whether to add to article 78 a definition of the "premises of the delegation".⁵⁹

Article 95. Exemption of the premises of the delegation from taxation

1. To the extent compatible with the nature and duration of the functions performed by a delegation to an organ or to a conference, the sending State and the members of the delegation acting on behalf of the delegation shall be exempt from all national, regional or municipal dues and taxes in respect of the premises occupied by the delegation, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the host State by persons contracting with the sending State or with a member of the delegation.

Commentary

Article 95 is based on article 24 of the Convention on

⁵⁹ Such a decision was taken by the Commission at its twenty-first session in connexion with the definition of the "premises of the permanent mission", as indicated in paragraph 4 of the commentary to article 25 of the present draft articles. In article 51 a definition of the "premises of a permanent observer mission" is found in sub-paragraph (j).

Special Missions. It differs from article 26 on permanent missions in that the exemption from taxation is related to the nature and duration of the functions performed by the delegation.

Article 96. Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the host State shall ensure to all members of a delegation to an organ or to a conference such freedom of movement and travel in its territory as is necessary for the performance of the functions of the delegation.

Commentary

Article 96 is based on article 27 of the Convention on Special Missions. Freedom of movement for members of a delegation is granted for travel necessary for the performance of delegation's functions.

Article 97. Freedom of communication

1. The host State shall permit and protect free communication on the part of a delegation to an organ or to a conference for all official purposes. In communicating with the Government of the sending State, its diplomatic missions, consular posts, permanent missions, permanent observer missions, special missions and delegations, wherever situated, the delegation may employ all appropriate means, including couriers and messages in code or cipher. However, the delegation may install and use a wireless transmitter only with the consent of the host State.

2. The official correspondence of the delegation shall be inviolable. Official correspondence means all correspondence relating to the delegation and its functions.

3. Where practicable, the delegation shall use the means of communication, including the bag and the courier, of the permanent diplomatic mission, of the permanent mission or of the permanent observer mission of the sending State.

4. The bag of the delegation shall not be opened or detained.

5. The packages constituting the bag of the delegation must bear visible external marks of their character and may contain only documents or articles intended for the official use of the delegation.

6. The courier of the delegation, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the host State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

7. The sending State or the delegation may designate couriers *ad hoc* of the delegation. In such cases the provisions of paragraph 6 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier *ad hoc* has delivered to the consignee the delegation's bag in his charge.

8. The bag of the delegation may be entrusted to the captain of a ship or of a commercial aircraft scheduled to

land at an authorized port of entry. The captain shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the delegation. By arrangement with the appropriate authorities, the delegation may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Commentary

Article 97 is based on article 28 of the Convention on Special Missions. In view of the limited requirements of a delegation, it differs from article 29 on permanent missions in that the Commission considered it advisable to insert, as paragraph 3, a provision similar to paragraph 3 of article 28 of the Convention on Special Missions. One difference between this article and article 28 of the Convention on Special Missions is the addition in paragraphs 1 and 3 of the words "permanent mission(s)" and "permanent observer mission(s)" in order to co-ordinate the article with the corresponding provisions of Parts II and III of the present draft articles. Another is the addition in paragraph 1 of the word "delegations", in order to enable the delegations of the sending State to communicate with each other. The Commission wishes to reiterate that the word "delegation", as used throughout the article, means a delegation to an organ or to a conference.

Article 98. Personal inviolability

The persons of the representatives in a delegation to an organ or to a conference and of the members of its diplomatic staff shall be inviolable. They shall not be liable to any form of arrest or detention. The host State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity.

Commentary

Article 98 is based on article 29 of the Convention on Special Missions, and article 30 on permanent missions.

Article 99. Inviolability of the private accommodation

1. The private accommodation of the representatives in a delegation to an organ or to a conference and of the members of its diplomatic staff shall enjoy the same inviolability and protection as the premises of the delegation.

2. Their papers, their correspondence and, except as provided in paragraph . . . of article 100, their property shall likewise enjoy inviolability.

Commentary

Article 99 is based on article 30 of the Convention on Special Missions. The blank space in paragraph 2 can be filled in only after a decision is reached on the alternative solutions as to jurisdiction proposed in article 100.

Article 100. Immunity from jurisdiction

ALTERNATIVE A

1. The representatives in a delegation to an organ or to a conference and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the host State.

2. They shall also enjoy immunity from the civil and administrative jurisdiction of the host State, except in the case of:

(a) A real action relating to private immovable property situated in the territory of the host State, unless the person concerned holds it on behalf of the sending State for the purposes of the delegation;

(b) An action relating to succession in which the person concerned is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) An action relating to any professional or commercial activity exercised by the person concerned in the host State outside his official functions;

(d) An action for damages arising out of an accident caused by a vehicle used outside the official functions of the person concerned.

3. The representatives in the delegation and the members of its diplomatic staff are not obliged to give evidence as witnesses.

4. No measures of execution may be taken in respect of a representative in the delegation or a member of its diplomatic staff except in the cases coming under subparagraphs (a), (b), (c), and (d) of paragraph 2 of this article and provided that the measures concerned can be taken without infringing the inviolability of his person or his accommodation.

5. The immunity from jurisdiction of the representatives in the delegation and of the members of its diplomatic staff does not exempt them from the jurisdiction of the sending State.

ALTERNATIVE B

1. The representatives in a delegation to an organ or to a conference and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the host State.

2. (a) The representatives and members of the diplomatic staff of the delegation shall enjoy immunity from the civil and administrative jurisdiction of the host State in respect of all acts performed in the exercise of their official functions.

(b) No measures of execution may be taken in respect of a representative or a member of the diplomatic staff of the delegation unless the measures concerned can be taken without infringing the inviolability of his person or his accommodation.

3. The representatives and members of the diplomatic staff of the delegation are not obliged to give evidence as witnesses.

4. The immunity from jurisdiction of the representatives and members of the diplomatic staff of the delegation does not exempt them from the jurisdiction of the sending State.

Commentary

(1) The Commission decided to bring to the attention of governments the foregoing alternatives for article 100. Alternative A is modelled directly on article 31 of the Convention on Special Missions. Alternative B is based on article IV, section 11, of the General Convention [see paragraph (10) of the General comments, above]; it follows that section in limiting immunity from the civil and administrative jurisdiction to acts performed in the exercise of official functions but goes beyond it in providing, as in alternative A, for full immunity from the criminal jurisdiction of the host State.

(2) The provisions concerning measures of execution laid down in paragraph 2 (b) of alternative B provide that such measures cannot be taken unless they would not infringe the inviolability of the person or accommodation of the representative in question. In alternative A, on the other hand, measures of execution can be taken only, subject to the same limitations, in the case of the four specific exemptions to the immunity from civil jurisdiction described in sub-paragraphs (a), (b), (c) and (d) of paragraph 2.

(3) A provision like that of paragraph 2 (d) of alternative A was placed in brackets by the Commission in article 32, concerning the immunity from jurisdiction of the permanent representative and the members of the diplomatic staff of the permanent mission. The different position taken by the Commission in the present instance is a result of the inclusion of a similar provision by the General Assembly in article 31 of the Convention on Special Missions. The Commission intends at the second reading to review its earlier decision taken in the context of Part II.

(4) The Commission did not reach any decision regarding inclusion of an article on settlement of civil claims similar to article 34 on permanent missions, pending a decision on alternative A or B at the second reading.

Article 101. Waiver of immunity

1. The immunity from jurisdiction of the representatives in a delegation to an organ or to a conference, of the members of its diplomatic staff and of persons enjoying immunity under article 105 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by any of the persons referred to in paragraph 1 of this article shall preclude them from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

Commentary

Article 101 follows the pattern of article 41 of the Convention on Special Missions and article 33 of the present draft articles. Paragraph 3 follows more closely paragraph 3 of article 41 of the Convention on Special Missions because it is thought that that formulation is clearer and more precise than paragraph 3 of article 33 of the present draft articles. When the Commission reviews article 33 at its next session it will consider making a similar change in it.

Article 102. Exemption from dues and taxes

The representatives in a delegation to an organ or to a conference and the members of its diplomatic staff shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) Indirect taxes of a kind which are normally incorporated in the price of foods or services;

(b) Dues and taxes on private immovable property situated in the territory of the host State, unless the person concerned holds it on behalf of the sending State for the purposes of the delegation;

(c) Estate, succession or inheritance duties levied by the host State, subject to the provisions of article 109;

(d) Dues and taxes on private income having its source in the host State and capital taxes on investments made in commercial undertakings in the host State;

(e) Charges levied for specific services rendered;

(f) Registration, court or record fees, mortgage dues and stamp duty, subject to the provisions of article 95.

Commentary

Article 102 is based on article 34 of the Vienna Convention on Diplomatic Relations, article 33 of the Convention on Special Missions and article 36 of the present draft articles. The Commission considered whether to insert a sub-paragraph which would add "excise duties or sales taxes" to the list of exclusions from exemption. Some members considered that such addition would be desirable because it would accord with the existing provision in the United Nations Convention on Privileges and Immunities and would reduce administrative difficulties in the host States. Other members considered that the nature and level of "sales taxes" varied according to the country concerned. Some members were of the opinion that "excise duties or sales taxes" were, at least to some extent, covered by sub-paragraph (a) of the article. The Commission decided it was desirable to adhere to the pattern originally laid down in the Convention on Diplomatic Relations.

Article 103. Exemption from customs duties and inspection

1. Within the limits of such laws and regulations as it may adopt, the host State shall permit entry of, and grant exemption from all customs duties, taxes, and related

charges other than charges for storage, cartage and similar services, on:

(a) Articles for the official use of a delegation to an organ or to a conference;

(b) Articles for the personal use of the representatives in the delegation and the members of its diplomatic staff.

2. The personal baggage of the representatives in a delegation to an organ or to a conference and of the members of its diplomatic staff shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host State. In such cases, inspection shall be conducted only in the presence of the person concerned or of his authorized representative.

Commentary

Article 103 is based on article 35 of the Convention on Special Missions. There are certain differences in formulation from article 38 on permanent missions which will be the subject of review in the course of the second reading.

Article 104. Exemption from social security legislation, personal services and laws concerning acquisition of nationality

The provisions of articles 35, 37 and 39 shall apply also in the case of a delegation to an organ or to a conference.

Commentary

Articles 35, 37 and 39 provide respectively for exemption from social security legislation, exemption from personal services and exemption from laws concerning acquisition of nationality.

Article 105.* Privileges and immunities of other persons

1. If representatives in a delegation to an organ or to a conference or members of its diplomatic staff are accompanied by members of their families, the latter shall enjoy the privileges and immunities specified in articles 98, 99, 100, 101, 102, 103 and 104 provided they are not nationals of or permanently resident in the host State.

2. Members of the administrative and technical staff of the delegation shall enjoy the privileges and immunities specified in articles 98, 99, 100, 101, 102 and 104, except that the immunities specified in paragraph 2 of article 100 from the civil and administrative jurisdiction of the host State, shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges mentioned in paragraph 1 of article 103 in respect of articles imported at the time of their entry into the territory of the host State to attend the meeting of the organ or conference. Members of their families who accompany

* Paragraph 2 will require revision if alternative B of article 100 is adopted.

them and who are not nationals of or permanently resident in the host State shall enjoy the same privileges and immunities.

3. Members of the service staff of the delegation shall enjoy immunity from the jurisdiction of the host State in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment, and exemption from social security legislation as provided in article 104.

4. Private staff of the members of the delegation shall be exempt from dues and taxes on the emoluments they receive by reason of their employment. In all other respects, they may enjoy privileges and immunities only to the extent permitted by the host State. However the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the delegation.

Commentary

Article 105 is based on articles 36 to 39 of the Convention on Special Missions and article 40 of the present draft articles. The final version of the article will depend on whether the Commission adopts alternative A or alternative B of article 100. For this reason, some members of the Commission suggested that two alternatives should be drafted for the present article. It was, however, considered sufficient to add to the article a footnote explaining that if alternative B of article 100 is adopted, paragraph 2 of the present article will require revision.

Article 106. Nationals of the host State and persons permanently resident in the host State

The provisions of article 41 shall apply also in the case of a delegation to an organ or to a conference.

No commentary

Article 107. Privileges and immunities in case of multiple functions

When members of a permanent diplomatic mission, a consular post, a permanent mission or a permanent observer mission, in the host State, are included in a delegation to an organ or to a conference, their privileges and immunities as members of their respective missions or consular post shall not be affected.

Commentary

Article 107 is based on paragraph 2 of article 9 of the Convention on Special Missions. It reproduces, with the necessary drafting changes, the provisions of paragraph 2 of article 59 on permanent observer missions.

Article 108. Duration of privileges and immunities

1. Every person entitled to privileges and immunities under the provisions of this part shall enjoy such privileges

and immunities from the moment he enters the territory of the host State in connexion with the meeting of an organ or conference or, if he is already in its territory, from the moment when his appointment is notified to the host State by the Organization, by the conference or by the sending State.

2. When the functions of a person entitled to privileges and immunities under this part have come to an end, the privileges and immunities of such person shall normally cease at the moment when he leaves the territory of the host State, or on the expiry of a reasonable period in which to do so, but shall subsist until that time. However, with respect to acts performed by such a person in the exercise of his functions as a member of a delegation to an organ or to a conference, immunity shall continue to subsist.

3. In the event of the death of a member of a delegation, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory of the host State.

Commentary

(1) Article 108 is based on article 43 of the Convention on Special Missions.

(2) A change has been made, however, in the final sentence of paragraph 1 along the lines of the corresponding sentence of article 42, paragraph 1, of the present draft articles. The words "by the conference" have been added in order to cover the case when notification is made by the conference itself and not by the Organization responsible for convening it or directly by the sending State.

(3) Because States sometimes notify the appointment of members of their delegations several months ahead of the beginning of a conference or a session of an organ, the Commission will examine at the second reading the possibility of inserting in the last part of paragraph 1 a reasonable time limit for the enjoyment of the privileges and immunities. The Commission does not intend that persons so appointed who were already in the territory of the host State should enjoy privileges and immunities for a long period when this is not justified by the functions of the delegation.

(4) The expression "even in case of armed conflict" used in paragraph 2 of article 43 of the Convention on Special Missions has not been included in the present article in view of the Commission's decision to examine at its second reading the possible effects of exceptional situations, such as an armed conflict, on the representation of States in international organizations in general and in the specific context of Parts III and IV of the present draft articles (see para. 22 of the present report).

Article 109. Property of a member of a delegation or of a member of his family in the event of death

1. In the event of the death of a member of a delegation to an organ or to a conference or of a member of his family accompanying him, if the deceased was not a national of or permanently resident in the host State, the host State shall

permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death.

2. Estate, succession and inheritance duties shall not be levied on movable property which is in the host State solely because of the presence there of the deceased as a member of the delegation or of the family of a member of the delegation.

Commentary

Article 109 is based on article 44 of the Convention on Special Missions. The corresponding provisions in Part II of the present draft articles are paragraphs 3 and 4 of article 42. In view of the fact that the General Assembly, after considering articles 44 and 45 of the draft articles on special missions, decided to keep each of them as a separate article in the Convention on Special Missions, the Commission has followed the same presentation in the present part. At the second reading it will also make paragraphs 3 and 4 of article 42 the subject of a separate article.

Article 110. Transit through the territory of a third State

1. If a representative in a delegation to an organ or to a conference or a member of its diplomatic staff passes through or is in the territory of a third State while proceeding to take up his functions or returning to the sending State, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the person referred to in this paragraph, whether travelling with him or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the transit of members of the administrative and technical or service staff of the delegation, or of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as the host State is bound to accord under the present part. Subject to the provisions of paragraph 4 of this article, they shall accord to the couriers and bags of the delegation in transit the same inviolability and protection as the host State is bound to accord under the present part.

4. The third State shall be bound to comply with its obligations in respect of the persons mentioned in paragraphs 1, 2 and 3 of this article only if it has been informed in advance, either in the visa application or by notification, of the transit of those persons as members of the delegation, members of their families or couriers, and has raised no objection to it.

5. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to the official

communications and the bags of the delegation, when the use of the territory of the third State is due to *force majeure*.

Commentary

Article 110 is based on article 42 of the Convention on Special Missions. The question of the possible effects of an armed conflict arises also in the context of the present article. The Commission will study it at the second reading in accordance with the decision recorded in paragraph 22 of the present report.

Article 111. Non-discrimination

In the application of the provisions of the present part, no discrimination shall be made between States.

Commentary

Article 111 is based on article 44 of the present draft articles.

SECTION 3. CONDUCT OF THE DELEGATION
AND ITS MEMBERS

**Article 112. Respect for the laws and regulations
of the host State**

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the host State. They also have a duty not to interfere in the internal affairs of that State.

2. In case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from criminal jurisdiction, the sending State shall, unless it waives this immunity, recall the person concerned, terminate his functions with the delegation or secure his departure, as appropriate. This provision shall not apply in the case of any act that the person concerned performed in carrying out the functions of the delegation in the premises where the organ or conference is meeting or the premises of the delegation.

3. The premises of the delegation shall not be used in any manner incompatible with the exercise of the functions of the delegation.

Commentary

Article 112 is based on article 45 of the present draft articles. The only difference between the two provisions is that the words "in carrying out the functions of the permanent mission within either the Organization or the premises of a permanent mission" used in the second sentence of paragraph 2 of article 45, have been replaced by the words "in carrying out the functions of the delegation in the premises where the organ or conference is meeting or the premises of the delegation". Several members of the Commission reserved their position with regard to the words in question. The Commission adopted the

present text on the basis that paragraph 2 of article 112 and paragraph 2 of article 45, will be reviewed at the second reading.

Article 113. Professional activity

The provisions of article 46 shall apply also in the case of a delegation to an organ or to a conference.

Commentary

Under this article, representatives and members of the diplomatic staff of a delegation will be prohibited from practising for profit any professional or commercial activity in the host State.

SECTION 4. END OF FUNCTIONS

**Article 114. End of the functions of a member
of a delegation**

The functions of a member of a delegation to an organ or to a conference shall come to an end, *inter alia*:

(a) On notification to this effect by the sending State to the Organization or the conference;

(b) Upon the conclusion of the meeting of the organ or the conference.

Commentary

(1) Article 114 is based on article 47 of the present draft articles. The differences are the addition of the words "or the conference" in sub-paragraph (a), the new formulation of sub-paragraph (b) and the use of the expression "a member of a delegation" in the introductory sentence and the title of the article.

(2) The formula used in sub-paragraph (b) of article 47 has been replaced by "upon the conclusion of the meeting of the organ or the conference". Some members of the Commission pointed out that in the English text the word "meeting" should be replaced by another word because, in the context of the rules and procedures and practice of organs and conferences, it normally has a particular meaning somewhat narrower than the words *réunion* and *reunion* used in the French and Spanish texts respectively. The Commission will review this question at the second reading.

(3) The expression "a member of a delegation" has been deliberately used in order to broaden the scope of the provision by covering all members of the delegation. A similar change will probably be necessary in article 47 when the Commission proceeds to revise it at its next session.

Article 115. Facilities for departure

The provisions of article 48 shall apply also in the case of a delegation to an organ or to a conference.

Commentary

The Commission considered the possibility of including in the draft, as a counterpart to article 115, a provision on the obligation of the host State to allow members of delegations to enter its territory to take up their posts. However, in view of the decision taken at the twenty-first session,⁶⁰ the Commission postponed its decision on this matter, in the context of part IV, until the second reading of the draft.

Article 116. Protection of premises and archives

1. When the meeting of an organ or a conference comes to an end, the host State must respect and protect the premises of a delegation so long as they are assigned to it, as well as the property and archives of the delegation. The sending State must take all appropriate measures to terminate this special duty of the host State within a reasonable time.

2. The host State, if requested by the sending State, shall grant the latter facilities for removing the property and the archives of the delegation from the territory of the host State.

Commentary

Article 116 is based on article 49 of the present draft articles. The only differences are in paragraph 1, where the words "When the meeting of an organ or a conference comes to an end," replace the words "When the permanent mission is temporarily or finally recalled" and the words "so long as they are assigned to it" have been inserted after the words "the premises of a delegation". If the word "meeting" were changed in article 114 it also might have to be changed in this article.

CHAPTER III

Succession of States

A. INTRODUCTION

27. At its nineteenth session in 1967, the International Law Commission made new arrangements for dealing with the topic "Succession of States and Governments".⁶¹ It decided to divide the topic among more than one special rapporteur, the basis for the division being the three main headings of the broad outline of the subject laid down in the report submitted in 1963 by the Sub-Committee on

⁶⁰ See *Yearbook of the International Law Commission, 1969*, vol. II, pp. 220-221, document A/7610/Rev.1, commentary to article 48.

⁶¹ For a detailed account of the historical background of the topic, see *Yearbook of the International Law Commission, 1968*, vol. II, pp. 213-216, document A/7209/Rev.1, paras. 29-42, and *ibid.*, 1969, vol. II, pp. 222-225, document A/7610/Rev. 1, paras. 20-34.

Succession of States and Governments and agreed to by the Commission the same year, namely: (i) succession in respect of treaties, (ii) succession in respect of rights and duties resulting from sources other than treaties,⁶² and (iii) succession in respect of membership of international organizations. Likewise, in 1967, the Commission appointed Sir Humphrey Waldock, Special Rapporteur for succession in respect of treaties and Mr. Mohammed Bedjaoui, Special Rapporteur for succession in respect of matters other than treaties. The Commission decided to leave aside, for the time being, the third heading of the division, namely "succession in respect of membership of international organizations", and did not appoint a special rapporteur for this heading.

28. The Commission's decisions referred to above received general support in the Sixth Committee at the General Assembly's twenty-second session. By its resolution 2272 (XXII) of 1 December 1967, the General Assembly, repeating the terms of its resolution 2167 (XXI), recommended that the Commission should continue its work on succession of States and Governments "taking into account the views and considerations referred to in General Assembly resolution 1765 (XVII) and 1902 (XVIII)". Subsequently, the General Assembly made the same recommendation in its resolutions 2400 (XXIII) of 11 December 1968 and 2501 (XXIV) of 12 November 1969.

29. In 1968, at its twentieth session, the Commission had before it a first report (A/CN.4/204) submitted by Mr. Mohammed Bedjaoui, Special Rapporteur for succession in respect of matters other than treaties, and a first report (A/CN.4/202) submitted by Sir Humphrey Waldock, Special Rapporteur for succession in respect of treaties. The Commission decided to have a preliminary discussion of the two reports, beginning with the report on succession in respect of matters other than treaties.

30. The Commission considered the report submitted by Mr. Mohammed Bedjaoui, the Special Rapporteur, at its 960th to 965th and 968th meetings. After a general debate on the report, the Commission requested the Special Rapporteur to prepare a list of preliminary questions relating to points on which he wished to have the Commission's views. In compliance with that request, the Special Rapporteur submitted to the Commission, at its 962nd meeting, a questionnaire on the following eight points: (a) title and scope of the topic; (b) general definition of State succession; (c) method of work; (d) form of the work; (e) origins and types of State succession; (f) specific problems of new States; (g) judicial settlement of disputes; (h) order of priority or choice of certain aspects of the topic. The Commission adopted a number of conclusions on the points listed in the Special Rapporteur's questionnaire which were reproduced in the Commission's report on its twentieth session together with a summary of the views expressed by the members of the Commission during the discussion preceding their adoption.⁶³ It decided to begin the study of succession

⁶² This title was modified by the Commission at its twentieth session to read: "succession in respect of matters other than treaties" (see *Yearbook of the International Law Commission, 1968*, vol. II, p. 216, document A/7209/Rev.1, para. 46).

⁶³ See *Yearbook of the International Law Commission, 1968*, vol. II, pp. 216-221, document A/7209/Rev.1, paras. 45-79.

in respect of matters other than treaties with the aspect of the topic relating to "succession of States in economic and financial matters" and instructed the Special Rapporteur to prepare a report on it for the twenty-first session of the Commission.

31. The Commission considered the first report on succession in respect of treaties by Sir Humphrey Waldock, the Special Rapporteur, at its 965th to 968th meetings. The report, which was of a preliminary character, included four introductory articles designed to define the use of certain terms, notably the use of the term "succession" in the draft, and the relation of the draft to certain categories of international agreements. The Commission endorsed the suggestion of the Special Rapporteur that it was unnecessary to repeat the general debate which had taken place on the several aspects of succession in respect of matters other than treaties which might also be of interest in regard to succession in respect of treaties. It would be for the Special Rapporteur to take account of the views expressed by members of the Commission in that debate in so far as they might also have relevance in connexion with succession in respect of treaties. Following the discussion of Sir Humphrey Waldock's report, the Commission concluded that it was not called upon to take any formal decision in regard to succession in respect of treaties. A summary of views expressed on questions such as the title of the topic, the dividing line between the two topics of succession and the nature and form of the work were, however, included for information in the Commission's report on the session.⁶⁴

32. At the twenty-first session of the Commission in 1969, Mr. Mohammed Bedjaoui submitted a second report (A/CN.4/216/Rev.1) on succession in matters other than treaties entitled "Economic and financial acquired rights and State succession". Sir Humphrey Waldock, Special Rapporteur on succession in respect of treaties, submitted also a second report (A/CN.4/214 and Add.1 and 2) containing an introduction and four draft articles designed to be a first group of substantive articles setting out general rules on succession in respect of treaties. Owing to the lack of time the Commission considered only the report submitted by Mr. Bedjaoui.

33. The Commission devoted nine meetings, from 1000th to 1003rd and 1005th to 1009th meetings, to the consideration of Mr. Bedjaoui's second report. As recorded in paragraphs 61 and 62 of the report of the Commission on its twenty-first session, at the end of the debate on Mr. Bedjaoui's second report, most members of the Commission were of the opinion that the codification of the rules relating to succession in respect of matters other than treaties should not begin with the preparation of draft articles on acquired rights. The topic of acquired rights was extremely controversial and its study, at a premature stage, could only delay the Commission's work on the topic as a whole. The efforts of the Commission should, therefore, be directed to finding a solid basis on which to go forward with the codification and progressive development of the topic, taking into account the differing legal

interests and current needs of States. Consequently, most members of the Commission considered that an empirical method should be adopted for the codification of succession in economic and financial matters, preferably commencing with a study of public property and public debts. Not until the Commission had made sufficient progress, or perhaps had even exhausted the entire subject, would it be in a position to deal directly with the problem of acquired rights. The Commission requested the Special Rapporteur to prepare another report containing draft articles on succession of States in respect of economic and financial matters, taking into account the comments of members of the Commission on the reports he had already submitted at the Commission's twentieth and twenty-first sessions, and took note of the Special Rapporteur's intention to devote his next report to public property and public debts. The Commission's report on the session gave likewise an account of the views expressed by the Special Rapporteur and other members of the Commission during the consideration of Mr. Bedjaoui's report.⁶⁵

34. At the present session of the Commission, Sir Humphrey Waldock submitted a third report (A/CN.4/224 and Add.1) on succession in respect of treaties which assumed the form of a continuation of the Special Rapporteur's previous report on the topic. It contained additional provisions on use of terms and eight new draft articles with commentaries on succession in respect of multilateral treaties. The Commission considered together, in a preliminary manner, certain draft articles contained in the second and third reports on succession in respect of treaties submitted by Sir Humphrey Waldock, at its 1067th, 1068th and 1070th to 1072nd meetings.

35. Mr. Mohammed Bedjaoui also submitted a third report (A/CN.4/226) on succession in respect of matters other than treaties, containing four draft articles with commentaries concerning certain aspects of the subject of succession to public property. Unfortunately, the Commission was unable to further its study of succession in respect of matters other than treaties.

36. The Secretariat circulated, at the present session of the Commission,⁶⁶ the following documents relating to

⁶⁵ *Ibid.*, 1969, vol. II, pp. 225-228, document A/7610/Rev.1, paras. 36-60.

⁶⁶ The Secretariat had previously prepared and distributed, in accordance with the Commission's requests, the following documents and publications relating to the topic: (a) a memorandum on "The succession of States in relation to membership in the United Nations" (*Yearbook of the International Law Commission*, 1962, vol. II, p. 101, document A/CN.4/149 and Add.1); (b) a memorandum on "Succession of States in relation to general multilateral treaties of which the Secretary-General is the depositary" (*ibid.*, p. 106, document A/CN.4/150); (c) a study entitled "Digest of the decisions of international tribunals relating to State Succession" (*ibid.*, p. 131, document A/CN.4/151); (d) a study entitled "Digest of decisions of national courts relating to succession of States and Governments" (*ibid.*, 1963, vol. II, p. 95, document A/CN.4/157); (e) six studies in the series "Succession of States to multilateral treaties", entitled respectively "International Union for the Protection of Literary and Artistic Works: Berne Convention of 1886 and subsequent Acts of revision" (study I), "Permanent Court of Arbitration and The Hague Conventions of 1889 and 1907" (study II), "The Geneva Humanitarian Conventions and the International Red Cross" (study III), "International Union for the Protection of Industrial Property;

⁶⁴ *Ibid.*, pp. 221-222, paras. 80-91.

succession of States: (a) the seventh study of the series "Succession of States to multilateral treaties" entitled "International Telecommunication Union: 1932 Madrid and 1947 Atlantic City International Telecommunication Conventions and subsequent revised Conventions and Telegraph, Telephone, Radio and Additional Radio Regulations" (A/CN.4/225); (b) a first study in the series "Succession of States in respect of bilateral treaties" entitled "Extradition treaties" (A/CN.4/229); (c) a supplement (A/CN.4/232) to the "Digest of the decisions of international tribunals relating to State succession" published in 1962,⁶⁷ in accordance with the decision taken by the Commission at its twenty-first session.⁶⁸

B. SUCCESSION IN RESPECT OF TREATIES

1. Summary of proposals of the Special Rapporteur

37. The Commission, as already stated, had before it the second and third reports on this topic (A/CN.4/214 and Add.1 and 2 and A/CN.4/224 and Add.1) by Sir Humphrey Waldock, the Special Rapporteur. The two reports combined contained twelve articles, with commentaries, which covered the use of certain terms, the case of territory passing from one State to another (the so-called principle of "moving treaty—frontiers"), devolution agreements, unilateral declarations by successor States, and the rules governing the position of "new States"⁶⁹ in regard to multilateral treaties. The Special Rapporteur stated that in his next report these articles would be followed by further articles dealing with the position of "new States" in regard to bilateral treaties, with certain particular categories of treaties (such as "dispositive" and "localized" treaties) and with certain particular cases of succession (such as federations, unions of States, protected States, etc.).

38. The Special Rapporteur explained that his draft was based on the thesis that in regard to treaties the question of "succession" should be considered as a particular problem within the general framework of the law of treaties. This thesis was founded on a close examination of State practice which, in his view, afforded no convincing evidence of any general doctrine of succession of States

by reference to which the various problems of succession to treaties could find their appropriate solution. He further stated that in State practice the matter appeared rather as one of determining the impact of the occurrence of a change in the sovereignty of a territory on existing treaties which affected the territory and which were necessarily subject to the general law of treaties. This meant that, in approaching questions of succession in respect of treaties, the implications of the general law of treaties had constantly to be borne in mind. Today the most authoritative statement of the general law of treaties was that contained in the Convention adopted at Vienna in 1969. Accordingly, he had felt bound to take the provisions of that Convention as an integral part of the legal foundations of the law relating to succession in respect of treaties.

39. The Special Rapporteur also drew attention to the meanings which were given to the expressions "succession" and "new State" in his draft and which were set out in article 1. The term "succession", as provided in paragraph 1 (a) of that article, was used simply to denote "the replacement of one State by another in the sovereignty of territory or in the competence to conclude treaties with respect to territory." It thus concerned exclusively the fact of the replacement of one State by another in the sovereignty of territory or in the treaty-making competence with respect to it. Admittedly, in internal law the term "succession" had a different meaning, denoting the transmission of rights and obligations by operation of law; and in the past, writers had not infrequently sought to transfer the internal law concept on succession by analogy into international law. But such a theoretical approach to the subject derived from internal law did not correspond to the legal principles apparently acted upon in State practice, and above all in the State practice of today. The use of the term "succession" in connexion with the changes of sovereignty was almost inevitable for drafting purposes, and, in consequence, the Special Rapporteur had considered it advisable to make clear at the outset that the word "succession", as used in the draft, denoted only the fact of the replacement of one State by another and did not necessarily connote any transmission of rights or obligations in respect of treaties. Otherwise, it would hardly be possible to avoid confusions resulting from internal analogies. When the Commission had examined the subject in detail and had determined to what extent, if at all, the automatic transmission of rights or obligations upon a change of sovereignty was recognized in international law, it could review the use of the term "succession" in the draft.

40. As to the expression "new State", the Special Rapporteur pointed out that the meaning given to it in paragraph 1 (e) of article 1 was a "succession where a territory which previously formed part of an existing State has become an independent State;" and that this expression had been used in the draft purely as a term of art for convenience of drafting and to facilitate the Commission's study of the subject as a whole. He explained that the object was to enable the Commission to examine the applicable principles of law first in the context of succession in its purest form—i.e. where part of the territory of an existing State attained independence—and then to consider the possible effect of special factors in particular

Paris Convention of 1883 and subsequent Acts of revision and special agreements" (study IV), "The General Agreement on Tariffs and Trade (GATT) and its subsidiary instruments (study V) [*Ibid.*, 1968, vol. II, doc. A/CN.4/200 and Add.1 and 2] and "Food and Agriculture Organization of the United Nations: Constitution and multilateral conventions and agreements concluded within the Organization and deposited with its Director-General" (study VI) [*ibid.*, 1969, vol. II, doc. A/CN.4/210]; (f) a volume of the *United Nations Legislative Series* entitled *Materials on succession of States* (United Nations publication, Sales No.: E/F.68.V.5), containing the information provided or indicated by Governments of Member States in response to the Secretary-General's request.

⁶⁷ *Yearbook of the International Law Commission*, 1962, vol. II, p. 131, document A/CN.4/151.

⁶⁸ *Ibid.*, 1969, vol. II, p. 229, document A/7610/Rev.1, para. 63.

⁶⁹ For the meaning given by the Special Rapporteur to the expression "new States", see paragraph 40 below.

cases of succession such as unions of States, federations, protected States, mandates and trusteeships. If the Commission then concluded that some of these particular cases did not differ in any material way from the case of a "new State" in its purest form, the use of that term in the draft could be reviewed.

41. Other preliminary matters to which the Special Rapporteur drew attention were the scope of the treaties to be covered by the draft and the need to reserve the application of any relevant rules of international organizations governing succession to constituent instruments or to treaties adopted within the organization. He explained that for the time being he had been assuming that the present draft, like the Vienna Convention on the Law of Treaties, would be limited to treaties between States. He had also assumed that it would contain an article similar to article 5 of the Vienna Convention reserving the application of any relevant rules of international organizations to the categories of treaties which he had mentioned. In due course, the necessary drafts on these matters would be submitted to the Commission.

42. In addition, the Special Rapporteur stressed certain points in the substantive articles where the Commission would find his proposals on a number of questions which were of cardinal importance in his treatment of the whole topic. One such point was article 3 which dealt with the legal implications of agreements concluded between a predecessor State (the former sovereign of the territory) and its successor regarding the devolution of the treaty obligations and rights of the former to the latter. The position taken by the Special Rapporteur in that article was that the predecessor State's treaties would not become applicable as between the successor State and any third State party to them in consequence only of the conclusion of such a devolution agreement; and that the treaty obligations and rights of the successor State in relation to the third States would be determined by reference to the rules set out in the other articles of the draft. The contrary view, that such an agreement would by itself establish treaty relations between the successor State and third States, appeared to the Special Rapporteur neither to be in harmony with articles 34 to 36 of the Vienna Convention of the Law of Treaties nor to be supported by the general evidence of State practice in matters of succession.

43. Another point singled out by the Special Rapporteur was article 4 which dealt with unilateral declarations by successor States expressing their wills with regard to the maintenance in force of their predecessors' treaties. In his article also, the position taken by the Special Rapporteur was that such a general declaration would not by itself have the effect of rendering the predecessor State's treaties applicable as between a successor State and third States parties to them. Except in the case of such treaties as might pass automatically to a successor State under customary law, a predecessor State's treaty would become applicable as between the successor State and any third State party to it only in conformity with the specific provisions of this article and of other articles of the draft.

44. Among the provisions regarding "new States", the Special Rapporteur asked the Commission particularly to note article 6. This laid down as a fundamental rule

that a new State was not be considered as bound by any treaty by reason only of the fact that the treaty had been concluded by its predecessor and had been in force in respect of the territory at the date of the succession; nor as under any obligation to become a party to such a treaty. By terms of article 6, that fundamental rule had been made subject to the provisions of the other articles of the draft, for the reason that in due course the Commission would have to consider whether any particular categories of treaties constituted exceptions to it; e.g. so-called "dispositive", "territorial", "localized" treaties, etc. But, subject to such possible exceptions, State practice appeared to the Special Rapporteur strongly to confirm that the rule set out in article 6 was the fundamental rule applicable to new States in respect both of bilateral and multilateral treaties.

45. The final point on which the Special Rapporteur laid stress was the rights accorded to new States by articles 7 and 8 of his draft in regard to multilateral treaties. The principal provision was that in article 7, which recognized as the general rule that a new State had the right to consider itself a party to multilateral treaties in force in respect of its territory at the date of succession. This article laid down the principle that, subject to certain exceptions mentioned in paragraph 46 below, a new State was entitled in relation to any such multilateral treaty to notify the parties that it considered itself a party to the treaty in its own right. The Special Rapporteur explained that, while modern treaty practice did not support the thesis that a new State was under any *obligation* to become a party to multilateral treaties, it did support the view that a new State had a *right* to notify its succession to such treaties. The practice showed that both new States and depositaries acted upon the assumption that new States possessed that right, and also that the correctness of this assumption was not questioned by the other parties to the treaties. In his view, therefore, it was justifiable to deduce from the practice the existence to-day of a general rule of customary law entitling a new State to notify its will to be a party to any multilateral treaty in force in respect of its territory at the date of succession, other than one of the excepted categories of treaties. Moreover, this right appeared in the practice to spring automatically from the legal nexus existing between the treaty and the territory at the date of the succession and not to be dependent on whether it was otherwise open to the new State to become a party to the treaty under a specific provision of its final clauses. The practice relating to multilateral treaties of which the Secretary-General was the depositary further indicated that this right was recognized also in cases where the treaty was not yet in force at the date of succession but the predecessor State had either established its consent to be bound or signed the treaty subject to ratification in relation to the territory of the new State. Accordingly, article 8 of the draft proposed that the right should be considered as extending to such cases.

46. The practice at the same time indicated that a new State's right to notify its "succession"⁷⁰ did not, and could not, apply to three categories of multilateral treaties which

⁷⁰ As to the meaning given by the Special Rapporteur to the term "succession", see para. 39 above.

were, therefore, expressly excepted from the rule laid down in article 7. Those exceptions were: (a) treaties of such a kind that the participation of the new State in question would be incompatible with the object and purpose of the particular treaty; (b) constituent instruments of international organizations to which a State could become a party only by the procedure prescribed for the acquisition of membership; and (c) treaties in regard to which, by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any additional State must be considered as requiring the consent of all the parties.

47. The Special Rapporteur summed up the concept of succession as it had so far emerged from the study of the topic in his reports as follows. This concept was characterized in the first place by the fact of the replacement of one State by another in the sovereignty of a territory or in the competence to conclude treaties in respect of it; and, secondly, by a distinction between the fact of a succession and the transmission of treaty rights and obligations on its occurrence. A further element in the concept was that a consent to be bound, or a signature, given by the predecessor State in relation to a territory prior to the succession, established a certain legal nexus between the territory and the treaty to which certain legal incidents attached. One such legal incident was the new State's right, in the case of a multilateral treaty, to notify its will to be considered a party. As to bilateral treaties, which he had not yet dealt with in his reports, the legal nexus appeared to give rise to a legally recognized process for bringing about the entry into force of the treaty between the successor State and the other party by novation. Thus, it gave rise to a faculty to renew the treaty in respect of the territory by mutual consent, but no more. In addition, the Commission would in due course have to consider whether in the case of "dispositive" or "localized" treaties the legal nexus gave rise to an obligation for the successor State to consider itself as bound by its predecessor's treaty. It would also have to consider the implications of the legal nexus in the case of particular forms of succession, such as federations, unions of States, etc. But each of the cases in which the legal nexus existing between the territory and the treaty at the date of succession might possibly give rise to legal incidents attaching to the successor State had to be examined on its own merits. In the modern law there did not appear to be any general doctrine of the succession of a new State to its predecessor's treaties; nor any legal presumption as to the continuity of treaties on the occurrence of a succession, however desirable continuity might be as a matter of policy. On the latter point—the absence of a presumption of continuity—the Special Rapporteur drew the Commission's attention to the fact that his treatment of the topic differed from that of the International Law Association which, at its Buenos Aires conference, had endorsed the existence of such a presumption.⁷¹ In his view, quite apart from the contrary indications in State practice, the principle of self-determination

militated against the recognition of a legal presumption of continuity.

48. In presenting his reports the Special Rapporteur emphasized that, at this stage, he would not expect members of the Commission to give their views on other provisions of his draft which he had not mentioned or to go into details on those which he had. On the other hand, the points which he had singled out constituted essential elements in his treatment of the whole topic, and it was important for him to know whether or not the Commission was broadly in agreement with the solutions adopted on those points in his reports. Accordingly, he hoped that members would confine their comments for the most part to those points, and would also state whether, in general, they considered his treatment of the matters so far dealt with in his reports afforded a sound basis for the Commission's work on the topic.

2. Summary of the Commission's debate

49. The members of the Commission who took part in the discussion of the reports on succession in respect of treaties were unanimous in endorsing the Special Rapporteur's general approach to the topic and in considering that the drafts provided a good working basis for its study by the Commission. As to the points singled out by the Special Rapporteur as basic elements in the drafts, some members voiced doubts or reservations on one or other point. But on these basic points also the discussion showed a large measure of general agreement in the Commission as to the broad substance of the solutions adopted in the reports.

50. The use of the word "succession" in the drafts as a term of art meaning the fact of the replacement of one State by another in the international relations of a territory, rather than the transmission of rights and obligations, was endorsed by most members. Several members, however, voiced doubts as to whether it would be satisfactory in article 1 to express this meaning in the form "replacement of one State by another in the sovereignty of territory or in the competence to conclude treaties with respect to territory." Some pointed out that the two alternatives overlapped. Others, while appreciating that the second alternative was designed to cover particular forms of succession where the question of sovereignty might be controversial, felt that these particular forms (e.g. protected States, mandates and trusteeships) belonged to the past. Certain members felt hesitation as to whether the element of transmission of rights and obligations could be wholly excluded from the definition of "succession".

51. A particular point was raised by one member as to possible cases where the competence to conclude treaties might subsist but the practical possibility to apply them had disappeared. He had in mind certain cases of occupation of territory, and these might occur even in peace time. If these might not be instances of "succession", they might raise analogous problems. Some other members, however, felt that the problem presented by such cases fell somewhat outside succession in respect of treaties, and that the appropriate solution would be to include in the

⁷¹ Resolution No. 1 (b) (iv) adopted at the fifty-third Conference of the International Law Association (Buenos Aires, September 1968). Text reproduced in the Special Rapporteur's second report (*Yearbook of the International Law Commission, 1969*, vol. II, p. 48, document A/CN.4/214 and Add.1 and 2, para. 15).

draft articles a general reservation of the question of military occupation, just as the special cases of "aggression" and the "outbreak of hostilities" had been reserved from the Vienna Convention on the Law of Treaties.

52. As to the expression "new State" in article 1, its use as a term of art, denoting a succession where a territory which previously formed part of an existing State had become an independent State, was also generally accepted for working purposes on the provisional basis indicated in the reports. One member, however, drew attention to the fact that some newly independent States regarded themselves as having recovered, rather than acquired, their independence and statehood. Certain other members stressed that, although in the present era decolonization had been the main cause of the birth of new States, it was necessary also to have regard to the future when new States might more commonly arise from associations and mergers as well as to the case in which several States arose from a single predecessor State.

53. Many members expressed their concurrence in the Special Rapporteur's treatment of devolution agreements and unilateral declarations in articles 3 and 4 respectively. A few members at the same time suggested that it would be desirable to formulate article 3 in such a way as not to discourage the use of devolution agreements. Another underlined the possibility of devolution agreements having the effect of assigning rights and obligations as a result of the creation of *vincula juris* with the other parties to treaties through the process of tacit consent or novation. A number of members, on the other hand, underlined the principle of self-determination and the need to ensure the reality of the emancipation of the new State.

54. Many members stressed the key character of article 6 which laid down the absence of any general obligation on a new State to take over the treaties of its predecessor, some suggesting that it should have a more prominent position in the draft. A number of members, in giving their approval to the principle embodied in this article, stated that they regarded it as being more consistent both with State practice and with the principle of self-determination than the legal presumption of continuity which had been favoured by the International Law Association.

55. While fully accepting the principle laid down in article 6 as the general rule, many members indicated that their acceptance of that rule was subject to the reservation of the question of so-called "dispositive" or "territorial" or "localized" treaties. A number, moreover, drew attention to the relevance of this question also in connexion with the "moving treaty-frontier" rule contained in article 2 of the draft. One member expressed opposition to the idea that boundary treaties should be considered as included in the categories of treaties constituting possible exceptions to the rule laid down in article 6. The Commission, however, recognized that the whole question of so-called "dispositive" or "territorial" or "localized" treaties would fall to be examined by the Special Rapporteur in his next report.

56. As to articles 7 and 8, members of the Commission were nearly unanimous in endorsing the principle that, subject to the exceptions mentioned in article 7, a new

State had the right to notify its will to be considered as a party to a multilateral treaty in force in respect of its territory at the date of the succession. One member doubted whether a proper construction of the modern practice necessarily led to the conclusion that a new State had the right to consider itself a party to the multilateral treaties in question without the consent, express or implied, of the other parties to the treaty. He understood that practice as establishing that the formalities and temporal effect of participation laid down in the treaty could be supplemented by the new procedure of succession whenever the new State would be entitled to become a party to the treaty under its participation clause, and that participation by succession would have retroactive effect to the date of independence. That interpretation of the practice, he considered, would respect the principle of the autonomy of the parties. It would not attribute to depositaries larger powers than they normally possessed and it was, moreover, in conformity with the Vienna Convention on the Law of Treaties (particularly article 11) and, like the Vienna Convention itself, rendered unnecessary a distinction of substance between bilateral and multilateral treaties. Two other members suggested that the right of a new State to consider itself a party as from the moment of succession was limited to cases where either it would also be open to that State to become a party to the treaty under the final clauses or the participation provisions were very wide. But the majority of the Commission concluded that the modern treaty practice of States and depositaries did justify the conclusion that a customary right had emerged for a new State, independently of the terms of the final clauses, to notify its will to be considered as a party to a multilateral treaty as from the date of succession. The Special Rapporteur further pointed out that, if this view was correct, there was no question of disregarding the autonomy of the parties or of depositaries exceeding their powers. The parties must be taken to have given their consent in assenting to the customary rule, while the rule itself had developed from the interaction of the practice of States and depositaries.

57. Certain members queried whether there was any need for the extension of this principle to the cases covered in article 8, where the treaty was not in force as the date of succession but the predecessor State had either established its consent to be bound by the treaty in relation to the territory or signed in subject to ratification. Others, while endorsing that extension, noted that the exceptions to the general rule in article 7 would necessarily have to apply also in connexion with article 8. In regard to these exceptions, one member also said that it might be necessary to consider whether the three categories of treaties specified in article 7 were wholly exhaustive of the exceptions to the rule.

58. Certain other questions were touched on during the discussion. Some members, for example, suggested that in laying down the rule in article 6 that a new State was under no obligation to take over its predecessor's treaties, it might be desirable to make clear that this rule applied only to the treaty as such; for the rule in article 6 would not preclude the new State from being bound by rules in the treaty which were generally accepted customary law. In regard to this question, the Special Rapporteur

explained that he had in mind a general provision on the lines of article 43 of the Vienna Convention of the Law of Treaties. This would cover any case of the cessation of the application of a treaty to a territory under article 6, and also under article 2, and would make a reservation similar to that in article 43 of the Vienna Convention which proclaimed "the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty". Another question raised in connexion with the cessation of the application of the predecessor State's treaties to a territory was the possible need for some form of transitional provision to obviate difficulties which might result from an abrupt termination of a treaty régime applicable to the territory.

59. As to the Special Rapporteur's treatment of succession in respect of treaties as a particular topic within the framework of the law of treaties, this met with the general approval of members of the Commission. Two points regarding the relation between the present topic and the topic of "Succession in respect of matters other than treaties", were, however, made during the discussion. First, if "succession" were treated as referring primarily to the fact of a change of sovereignty, as the Commission seems to think advisable, it would still be desirable to have uniformity in regard to the elements of fact constituting cases of "succession" in the two topics of succession of States entrusted to different rapporteurs. Secondly, in connexion with the question of "dispositive" or "territorial" or "localized" treaties, attention should be given to the distinction between the treaty itself and the situation of régime established by it. It was not a question simply of succession in respect of treaties but also of succession in respect of the situation or régime; and in consequence there might be a certain overlap between the present topic and "succession in respect of matters other than treaties".

60. Summing up the results of the discussion, the Special Rapporteur said that he was much encouraged by the Commission's endorsement of his general approach to this difficult topic; and he interpreted the discussion which had taken place as authorizing him to complete the drafts of the lines indicated by him in the reports and in his opening observations. No doubt, there were points in the draft articles already submitted which might call for modification or refinement in the light of the comments made by members in the discussion. However, he would probably not submit revised texts of the present articles in his next report, but would instead examine comments of members when the Commission took up the study of each article in detail. This was because he considered that his first task was to complete the draft in order that the Commission might be in a position to see the topic as a whole. Although the discussion of his first twelve articles at the present session had given him valuable guidance as to the views of the Commission, he did not regard members of the Commission or himself as in any way committed on particular points at this stage. It was essential to see the whole draft before taking up final positions. Accordingly, in his next report he would give priority to dealing with all the remaining aspects of the topic.

61. The Special Rapporteur observed that among the matters which remained to be covered in his next report was that of the particular forms of "succession", which included protected States, mandates and trusteeships. Some members had suggested that those cases could now be regarded as belonging to the past. Without taking any position yet on that question, he felt that it was his duty, as Special Rapporteur, to put a full study of these forms of succession before the Commission in his next report so that it might be in a position to take its decisions regarding them in full knowledge of all the relevant considerations.

62. Another difficult matter which remained to be dealt with, he said, was the important question of "dispositive" or "territorial" or "localized" treaties, which also involved the problem of boundaries. He reminded the Commission that in its work on the law of treaties (eighteenth session) it had considered the analagous question of treaties establishing "objective" régimes in the context of "treaties and third States"; and that although there had been substantial support in the Commission for the concept of "objective" treaty régimes, it had not been included in the draft. However, it seemed to him that the question presented itself from a somewhat different angle in the case of succession of States. At any rate, it was clear that the question had now to be examined *de novo* on its own merits in dealing with succession in respect of treaties.

63. In conclusion, the Special Rapporteur underlined that the discussion had been most valuable, and that the comments of members showed a large measure of solidarity in their approach to the topic. In his view, this gave the Commission the assurance that it had within itself a sufficient basis of general agreement to bring its work on the present topic to a fruitful conclusion.

CHAPTER IV

State responsibility

64. In 1969, at the Commission's twenty-first session, Mr. Roberto Ago, the Special Rapporteur, submitted his first report (A/CN.4/217 and Add.1) on the international responsibility of States.⁷² This report contained a review of previous work on the codification of the topic and reproduced, as annexes, the most important texts prepared in the course of the earlier codification work. It was intended to provide the Commission with a full account of that

⁷² For the historical background of this topic and the reports submitted by Mr. F. V. García Amador, the former Special Rapporteur, see *Yearbook of the International Law Commission, 1969*, vol. II, pp. 218-221, document A/7610/Rev.1, paras. 64-77. At its twenty-first session the Commission also had before it two papers prepared by the Secretariat supplementing two documents issued in 1964, namely, a supplement (A/CN.4/209) to a working paper containing a summary of the discussions in various United Nations organs and the resulting decisions (A/CN.4/165) and a supplement (A/CN.4/208) to the "Digest of the decisions of international tribunals relating to State responsibility" (A/CN.4/169) (*Yearbook of the International Law Commission, 1964*, vol. II, pp. 125-132 and 132-171).

work, from which it could derive useful guidance for its own future work on the substance of the topic, with a view to avoiding the obstacles which have hitherto impeded the codification of this branch of international law. The first report also summarized the methodological conclusions reached by the Sub-Committee on State Responsibility set up in 1962, and later by the Commission itself at its fifteenth (1963) and nineteenth (1967) sessions, on the basis of which the Commission decided to resume the study of the topic from a fresh viewpoint and to try to achieve positive results in accordance with the recommendations made by the General Assembly in its resolutions 1765 (XVII), 1902 (XVIII), 2045 (XX), 2167 (XXI), 2272 (XXII) and 2400 (XXIII).

65. The Commission examined the Special Rapporteur's first report in detail at its 1011th to 1013th meetings and at its 1036th meeting. Replying to comments and summing up the debate, the Special Rapporteur summarized the views expressed by members and noted that there was a remarkable identity of ideas in the Commission as to the best way of continuing the work on State responsibility and as to the criteria which should govern the preparation of the various parts of the draft articles which the Commission proposes to draw up on the topic. The Commission's conclusions were set out in paragraphs 80 to 84 of its report on the work of its twenty-first session.⁷³

66. The criteria laid down by the Commission as a guide for its future work on the topic may be summarized as follows:

(a) The Commission intends to confine its study of international responsibility, for the time being, to the responsibility of States. It does not underrate the importance of studying questions relating to the responsibility of subjects of international law other than States, but the overriding need to ensure clarity in the study undertaken, and the organic nature of the draft, clearly make it necessary to defer consideration of these other questions.

(b) The Commission will first proceed to examine the question of the responsibility of States for internationally wrongful acts. It intends to consider separately the question of responsibility arising from certain lawful acts, such as space and nuclear activities, as soon as its programme of work permits. Owing to the entirely different basis of the so-called responsibility for risk, the different nature of the rules governing it, its content and the forms it may assume, a simultaneous examination of the two subjects could only make them more difficult to grasp.

(c) The Commission agreed on the need to concentrate its study on the determination of the principles which govern the responsibility of States for internationally wrongful acts, maintaining a strict distinction between this task and the task of defining the rules that place obligations on States, the violation of which may generate responsibility. Consideration of the various kinds of obligations placed on States in international law and, in particular, a grading of such obligations according to their importance to the international community, may have to be treated as a necessary element in assessing the gravity

of an internationally wrongful act and as a criterion for determining the consequences it should have. But this must not obscure the essential fact that it is one thing to define a rule and the content of the obligation it imposes, and another to determine whether that obligation has been violated and what should be the consequences of the violation. Only the second aspect of the matter comes within the sphere of responsibility proper; to encourage any confusion on this point would be to raise an obstacle which might once again frustrate the hope of a successful codification of the topic.

(d) The study of the international responsibility of States will comprise two broad separate phases, the first covering the origin of international responsibility and the second the content of that responsibility. The first task is to determine what facts and circumstances must be established in order to be able to impute to a State the existence of an internationally wrongful act which, as such, is a source of international responsibility. The second task is to determine the consequences attached by international law to an internationally wrongful act in different cases, in order to arrive, on this basis, at a definition of the content, forms and degrees of responsibility. Once these two essential tasks have been accomplished, the Commission will be able to decide whether a third phase should be added in the same context, covering the examination of certain problems relating to what has been termed the "implementation" of the international responsibility of States and questions concerning the settlement of disputes with regard to the application of the rules on responsibility.

67. The conclusions reached by the Commission in 1969 were, on the whole, favourably received by the Sixth Committee of the General Assembly.⁷⁴ The plan for the study of the topic, the successive stages in the execution of this plan and the criteria to be applied to the different parts of the draft, as laid down by the Commission, received general approval. In resolution 2501 (XXIV) of 12 November 1969, the General Assembly recommended that the International Law Commission should "continue its work on State responsibility, taking into account paragraph 4 (c) of General Assembly resolution 2400 (XXIII) of 11 December 1968".⁷⁵

68. At the session of the Commission covered by the present report, Mr. Roberto Ago, the Special Rapporteur, submitted a second report on State responsibility entitled "The origin of international responsibility" (A/CN.4/233). This report, which was prepared in accordance with the decision taken by the Commission at its twenty-first session, contains a general introduction dealing with certain questions of method, and a first chapter devoted to the general fundamental rules governing the topic as a whole.

⁷⁴ See *Official Records of the General Assembly, Twenty-fourth Session, Annexes*, agenda items 86 and 94 b, document A/7746, paras. 86-89.

⁷⁵ In operative paragraph 4 (c) of resolution 2400 (XXIII) the General Assembly recommends that the Commission should make every effort to begin substantive work on State responsibility as from its next session, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII)".

⁷³ See *Yearbook of the International Law Commission, 1969*, vol. II, p. 221, document A/7610/Rev.1.

It begins by discussing the principle of the internationally wrongful act as a source of responsibility, then goes on to define the essential conditions for the existence of an internationally wrongful act, and lastly considers the general question of what is described as the "capacity" of States to commit internationally wrongful acts. The various problems which arise in connexion with each point are stated and discussed. The numerous requirements that must be met in defining the rule are indicated. Finally, draft articles are submitted as a basis for the Commission's discussion. The Special Rapporteur did not go further for the time being, because of the very large number of preliminary questions which have to be settled before the basic rules can be defined and because he needed to be sure that the method he had adopted had the Commission's approval and support, before proceeding to the analysis and definition of the more specific rules which are to follow.

69. The Special Rapporteur presented his second report at the 1074th and 1075th meetings of the Commission. At the same time, he submitted a questionnaire listing a number of points on which he particularly wished to know the views of members of the Commission. The Commission had a general discussion on the Special Rapporteur's report by way of a first broad review, postponing a more detailed discussion of specific points to its twenty-third session. The discussion took place at the 1075th, 1076th, 1079th and 1080th meetings. At the 1081st meeting, the Special Rapporteur dealt with a number of points on which questions had been raised during the discussion and summarized the main conclusions to be drawn from the Commission's broad review.

70. With regard to the question of method, the Commission considered it desirable, at least in the early stages of the work, that the presentation of each draft article should be preceded by a full explanation of the reasons which had led the Special Rapporteur to propose a particular wording, as well as of the practical and theoretical date on which his arguments were based. The Commission also agreed, in principle, that the more general questions should be treated first and that there should be a gradual transition from the general to the particular. That obviously does not preclude the inclusion of rules of a very general character in the body of the draft, as in other drafts adopted by the Commission. In that connexion, the Special Rapporteur emphasized the concrete character of the rules concerning responsibility, even where they were general and their formulation might at first appear abstract. In conformity with the opinion expressed by some members of the Commission, the Special Rapporteur indicated his preference for an essentially inductive method rather than for the deduction of theoretical premises, whenever consideration of State practice and jurisprudence made it possible to follow such a method. It was known, moreover, that the precedents offered by practice and jurisprudence were not equally numerous on the different subjects, being abundant on some and relatively scarce on others. The Special Rapporteur also pointed out that, despite the extra work it involved, it had often been necessary—and would be necessary in the future—to take account of a very large number of opinions of writers. That method met the double requirement

of ascertaining and harmonizing the approaches adopted in the different legal systems and also of deciding which of the views expressed were supported by the majority of writers and which were merely the expression of an individual point of view.

71. The Commission agreed that the topic of the international responsibility of States was one of those in which progressive development could be particularly important, especially as regards the determination of the content and degrees of responsibility. The relative importance of progressive development and codification of accepted principles respectively could not, however, be fixed in accordance with some pre-established plan; it would have to emerge in concrete terms from the pragmatic solutions adopted for the various points.

72. With regard to the desirability of prefacing the draft by a definitions article or by an article indicating what matters were excluded from its scope, the Commission agreed that it would be better to postpone any decision until later. When solutions to the different problems had reached a more advanced stage, it would be easier to see whether or not such preliminary clauses were needed in the general economy of the draft.

73. As regards the substance of the report, some members of the Commission emphasized that they were giving purely provisional views on some points in the questionnaire since they could not give a more definite opinion until they had seen more of the draft. But the Commission appreciated the fact that, already, in defining the general rule which constituted the starting point and basis of the whole draft, the Special Rapporteur had made a number of suggestions regarding possible solutions to certain problems concerning the content of international responsibility. The Special Rapporteur also indicated his preference for solutions based on progressive development. Members of the Commission particularly stressed the need, in defining the initial general rules, to avoid formulae which might prejudice solutions to be adopted later, when the Commission would be dealing with the determination of the content and degrees of responsibility. The work had therefore been based, and for the time being would continue to be based, on a general notion of international responsibility, meaning thereby the set of legal relationships to which an internationally wrongful act by a State may give rise in the various possible cases. Such relationships may arise between that State and the injured State or between the injured State and other subjects of international law, or possibly even with the international community as a whole.

74. The Commission also agreed that, in defining the general rule concerning the principle of responsibility for internationally wrongful acts, it was necessary to adopt a formula which did not prejudice the existence of responsibility for lawful acts. Some members of the Commission reverted to the idea that this second matter should also be studied and suggested that an initial article might perhaps be included in the present draft to indicate the two possible sources of international responsibility. However, the Special Rapporteur, with the support of several members

of the Commission, stressed the desirability of adhering to the already accepted criterion that one and the same draft should not cover two matters which, though possessing certain common aspects and characteristics, were nevertheless quite distinct. That does not, of course, prevent the Commission from undertaking, if it sees fit, a study of this other form of responsibility, which is in reality a safeguard against the risks of certain lawful activities. It could do so after the study on responsibility for wrongful acts has been completed or it could even do so simultaneously but separately.

75. With regard to "indirect" responsibility or responsibility for the acts of others, the great majority of the members recognized the existence of this special concept and the need to give it a place in the draft as a whole. That does not necessarily mean that it will now have to be taken specifically into account in defining the basic general rule on responsibility for wrongful acts. Certain members expressed doubts as regards the existence of that notion in international law.

76. On the question of terminology, the French-speaking members of the Commission agreed with the Special Rapporteur on the desirability of using the expression "*fait illicite international*" or its equivalent "*fait internationalement illicite*". The word "*fait*" avoided the possible ambiguities of the word "*acte*", which had a special connotation in law and in any case conveyed less satisfactorily the idea of an act of commission as well as of an act of omission. The majority of Spanish-speaking members also expressed themselves in favour of the expression "*hecho ilicito internacional*". For the purposes of the Russian version, the Commission decided to rely on the Russian-speaking members to select the terms which best conveyed the same idea. The English-speaking members said that they preferred the expression "internationally wrongful act", since the term "*fait*" did not have a real equivalent in English and the adjective "wrongful" was preferable to "illicit". When the work is continued, therefore, this is the terminology that the Commission intends to employ. If any definitions are adopted when the examination of the draft is completed, it will then be possible to see whether any further simplifications can be introduced.

77. The Commission confirmed the agreement, already reached when approving the over-all general plan for the study of the subject, that every internationally wrongful act contains both a subjective element and an objective element. It is recognized that these two elements remain logically distinct even though indissolubly linked in any concrete situation. To designate the essential aspect of the subjective element—that is to say, the existence of positive conduct or of an omission which, in the specific case under consideration, must be ascribable to the State and thus figure as an act or omission by the State itself—the Commission chose, on the suggestion of some of its members, to speak of "attribution" instead of "imputation", the term used by many writers. This will obviate the ambiguities inherent in the notions of "imputation" and "imputability", which are used in an entirely different sense in certain systems of internal criminal law. At the same time, the Commission emphasized that the attribution of an act or omission to the State as an international

legal person is an operation which of necessity falls within the scope of international law. As such it is distinct from the parallel operation which may, but need not necessarily, take place under internal law. The Commission considered it particularly important to make this point clear in relation to certain cases which will be studied in detail in the next chapter of the draft and which are concerned *inter alia* with acts performed by organs of the State outside their competence or in violation of internal law, acts of organs or public institutions distinct from the State, etc.

78. As to the objective element, the Commission was in general agreement that the most appropriate way to define it was in terms of a violation or breach of an international obligation or of failure to fulfil such an obligation. This idea, which is established usage both in jurisprudence and in practice, is the best calculated to convey that the essence of an internationally wrongful act giving rise to responsibility resides in the fact that the State has not done what it was internationally bound to do, or has done what it ought not to have done under international law.

79. In the same context, several members of the Commission expressed interest in the notion of abuse of right. The Commission will accordingly return to his question later and then decide whether or not abuse of right should be given a place in the draft. However, with regard to the definition of the conditions for the existence of an internationally wrongful act, it was recognized that failure to fulfil an international obligation would also cover the case where the obligation in question was specifically an obligation not to exercise certain of the State's own rights in an abusive or unreasonable manner.

80. The Commission also discussed the distinction between the cases where the conduct of an organ of the State is held to be sufficient in itself to constitute complete failure to fulfil an international obligation and the cases where such failure comes to light only when the conduct as such is followed by an act or event connected with it but not included in it. Some members of the Commission preferred to reserve their position with regard to this distinction for the time being, while recognizing that it deserves more thorough study when the report is examined in greater detail.

81. The Commission examined the question whether there is a further constituent element of an internationally wrongful act, in the form of what some writers call the element of "injury". However, after some misunderstandings due to difficulties of translation had been disposed of, most members of the Commission recognized that the economic element of injury referred to by certain writers was not inherent in the definition of an internationally wrongful act as a source or responsibility, but might be part of the rule which lays upon States the obligation not to cause certain injuries to aliens. As to the determination of a condition which is indispensable for the existence of an internationally wrongful act, it is recognized that under international law an injury, material or moral, is necessarily inherent in every impairment of an international right of a State. Hence the notion of failure to fulfil an international legal obligation to another State seems to the Commission sufficient to cover this aspect, without the addition of anything further. The economic injury, if any, sustained by the injured State

may be taken into consideration *inter alia* for the purpose of determining the amount of reparation but is not a prerequisite for the determination that an internationally wrongful act has been committed.

82. With regard to what several writers term the "capacity" of States to commit internationally wrongful acts and the possible limits of such "capacity" in certain circumstances, the Commission agreed with the Special Rapporteur that this notion has nothing to do with capacity to conclude treaties or, more generally, to act internationally. What is really meant is a physical ability rather than a legal capacity to perform certain acts. Indeed, some members of the Commission had misgivings about the use of the term "capacity", which they considered might lead to misunderstanding. The Special Rapporteur will explore the possibility of using a different formula, perhaps negative rather than positive. When it takes up this point, the Commission may also decide whether or not to mention the possible existence of limits to the notion here mentioned.

83. At the close of the discussion on his report, the Commission strongly encouraged the Special Rapporteur to continue his study of the topic and the preparation of the draft articles. It was accordingly agreed that the Special Rapporteur should include in a third, more extensive report the part which had been examined at the present session, revised in the light of the discussion. In accordance with the over-all plan approved by the Commission and reproduced in paragraph 91 of the first report submitted by the Special Rapporteur (A/CN.4/217 and Corr.1 and Add.1), this new report will include a detailed analysis of the various subjective and objective conditions which must be met if an internationally wrongful act is to be attributed to a State as an act giving rise to international responsibility. The Commission hopes to be able to examine this new report at its twenty-third session.

CHAPTER V

Other decisions and conclusions of the Commission

A. CELEBRATION OF THE TWENTY-FIFTH ANNIVERSARY OF THE UNITED NATIONS

84. By a letter dated 23 March 1970 (A/CN.4/231) addressed to the Chairman of the International Law Commission, the Secretary-General brought to its attention the text of General Assembly resolution 2499 A (XXIV) of 31 October 1969, on the celebration of the twenty-fifth anniversary of the United Nations, and in particular, operative paragraphs 17 and 18 of the said resolution. Wishing to associate itself with this celebration in as constructive a manner as possible, the Commission completed its first reading of the set of draft articles on relations between States and international organizations so as to fulfil its task of codification and progressive development of the whole body of diplomatic and consular law. It also adopted a very intensive programme of work for

its twenty-third session, as outlined below, having regard to the need to complete as early as possible the consideration of important drafts in accordance with paragraph 18 of the said resolution.

85. The Commission further decided to ask the Secretary-General to instruct the Office of Public Information to produce as soon as possible a new edition of the publication entitled *The Work of the International Law Commission*⁷⁶ and to incorporate therein a summary of the latest developments of the work of the Commission as well as the texts of new Commission drafts and codification conventions recently adopted, such as the Vienna Convention on the Law of Treaties and the Convention on Special Missions.

B. ORGANIZATION OF FUTURE WORK

86. In order substantially to advance its work in 1971 as recommended by the General Assembly [Resolution 2501 (XXIV) of 12 November 1969] the Commission requests a fourteen-week session for 1971. In that session it intends to complete the second reading of the draft articles on relations between States and international organizations as well as the first reading of the entire draft articles on succession of States in respect of treaties. It also intends to begin its discussion of the first series of draft articles on State responsibility. In addition, the Commission wishes to devote some time to the consideration of succession of States in respect of matters other than treaties and the most-favoured-nation clause, two subjects on its agenda to which the Commission has not, in view of its other commitments, found time to consider at the present session. It is quite clear to the Commission that it must have a minimum of fourteen weeks for its twenty-third session if it is to be in a position to accomplish the programme just outlined.

C. REVIEW OF THE COMMISSION'S PROGRAMME OF WORK

87. At the present session, the Secretariat submitted a preparatory working paper (A/CN.4/230) concerning the review of the Commission's programme of work in accordance with the request made by the Commission at its twenty-first session.⁷⁷ Confirming its intention of bringing up to date in 1971 its long-term programme of work, taking into account the General Assembly recommendations and the international community's current needs, and discarding those topics on the 1949 list which were no longer suitable for treatment, the Commission asked the Secretary-General to submit at its twenty-third session a new working paper as a basis for the Commission to select a list of topics which may be included in its long-term programme of work.

⁷⁶ United Nations publication, Sales No.: 67.V.4.

⁷⁷ See *Yearbook of the International Law Commission, 1969*, vol. II, p. 222, document A/7610/Rev.1, para. 91.

D. THE QUESTION OF TREATIES CONCLUDED BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN TWO OR MORE INTERNATIONAL ORGANIZATIONS

88. By operative paragraph 5 of resolution 2501 (XXIV) of 12 November 1969, the General Assembly, following the recommendation contained in the resolution relating to article 1 of the Vienna Convention on the Law of Treaties adopted by the United Nations Conference on the Law of Treaties, recommended:

that the International Law Commission should study, in consultation with the principal international organizations, as it may consider appropriate in accordance with its practice, the question of treaties concluded between States and international organizations or between two or more international organizations, as an important question.

89. The Commission decided to include the question recommended by the General Assembly in its general programme of work and, at its 1069th meeting, set up a Sub-Committee composed of the following thirteen members: Mr. Reuter (Chairman), Mr. Alcívar, Mr. Casttrén, Mr. El-Erian, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Rosenne, Mr. Sette Câmara, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ustor and Sir Humphrey Waldock. The Commission entrusted the Sub-Committee on treaties concluded between States and international organizations or between two or more international organizations with the task of considering preliminary problems involved in the study of this new topic. The Sub-Committee met during the Commission's session and submitted a report (A/CN.4/L.155) to the Commission. At its 1078th meeting, the Commission considered the Sub-Committee's report and adopted it with minor drafting changes. The Sub-Committee's report as adopted by the Commission reads as follows:

The Sub-Committee took note of the two decisions of the International Law Commission: the first to include in its general programme of work the question of treaties concluded between States and international organizations or between two or more international organizations, and the second to set up a Sub-Committee to prepare the work on that subject immediately.

After a discussion, the Sub-Committee decided to submit the following proposals to the Commission:

1. That the Secretary-General be requested to prepare a number of documents for the use of members of the Commission, viz.:

(i) As soon as possible (preferably by 1 January 1971) a working paper on the subject containing: a short bibliography, a historical survey of the question, and a preliminary list of the relevant treaties published in the United Nations *Treaty Series*.

(ii) Later, in one or more parts, a document containing; as full a bibliography as possible, an account of the practice of the United Nations and the principal international organizations (treaties between the United Nations and States, between the United Nations and other international organizations, problems encountered by the United Nations when contemplating becoming a party to a treaty, statistics, and particularly a complete list of the treaties in question published in the United Nations *Treaty Series*, etc.). For the time being, the Secretary-General might consider as the principal international organizations for the purposes of the present topic those which were invited to send observers to the Vienna Conference on the Law of Treaties.

2. That, by 1 November 1970, the Chairman submit to members of the Sub-Committee a questionnaire regarding the method of treating the topic and its scope, accompanied by an introduction. Members would be asked to send their replies to this questionnaire together with any other comments they might wish to make, to the Sub-Committee, if possible by 1 February 1971. All replies, prefaced by an introduction by the Chairman, would be circulated as a working paper at the Commission's next session.

E. MOST-FAVOURED-NATION CLAUSE

90. At the present session of the Commission, Mr. Endre Ustor, Special Rapporteur, submitted his second report (A/CN.4/228 and Add.1) on the most-favoured-nation clause. Owing to the lack of time, the Commission postponed the consideration of the topic until its next session.

F. PREPARATION OF A NEW EDITION OF THE "SUMMARY OF THE PRACTICE OF THE SECRETARY-GENERAL AS DEPOSITARY OF MULTILATERAL AGREEMENTS"

91. In view of its extreme usefulness for Special Rapporteurs and for its own future work on several topics of its programme, the Commission decided to ask the Secretary-General to prepare a new edition, brought up to date, of the document entitled "Summary of the practice of the Secretary-General as depositary of multilateral agreements" (ST/LEG/7), published in 1959.

G. RELATIONS WITH THE INTERNATIONAL COURT OF JUSTICE

92. At its 1068th meeting, the Commission heard a statement by Mr. André Gros, Judge of the International Court of Justice. He addressed himself to the question of the present state of international justice, after expressing his understanding that the principle of contacts between the Court and the Commission, which had been unanimously accepted by the Court three years previously, concerned mainly those legal problems which were of common interest to the judges of the Court and the members of the Commission.

H. CO-OPERATION WITH OTHER BODIES

1. *Asian-African Legal Consultative Committee*

93. Mr. Nikolai Ushakov submitted a report (A/CN.4/234) on the eleventh session of the Asian-African Legal Consultative Committee, held at Accra from 19 to 29 January 1970, which he had attended as an observer for the Commission.

94. The Asian-African Legal Consultative Committee was represented before the Commission by Mr. N. Y. B. Adade, President of the eleventh session of that Committee, who addressed the Commission at the 1074th meeting. He commented that, in anticipation of the Commission's discussion of the topic of State succession, the Committee had placed that same topic on its agenda for preliminary

discussion at its eleventh session, with a view to giving member States the opportunity to define their positions on the matter. Although, unfortunately, time had not permitted the Committee to deal with that item, it would continue to follow the Commission's discussion of the topic with the keenest interest. He indicated that, at its eleventh session, the Committee had discussed three main items, namely, the rights of refugees, the law of international rivers and the international sale of goods. However, owing to lack of time, it had been unable to discuss the topic of international shipping law. He stated that every effort was being made to increase the number of the Committee's member States. Thus, at the eleventh session, Nigeria had been admitted as a full member and the Republic of Korea as an associate member. The Committee was particularly anxious to attract as many of the French-speaking African States as possible, in view of the fact that it did not yet have a single one of them among its members. Since that situation might be due, in part, to the fact that English was so far the only official language used at its meetings, the Committee intended to adopt French as an alternative language as soon as it had a sufficient number of French-speaking States. Efforts were also being made to persuade some of the East African States to join the Committee.

95. The Commission requested its Chairman, Mr. T. O. Elias, to attend the next session of the Committee, to which it has a standing invitation to send an observer, or, if he was unable to do so, to appoint another member of the Commission for the purpose.

2. *European Committee on Legal Co-operation*

96. The European Committee on Legal Co-operation was represented by Mr. H. Golsong, Director of Legal Affairs of the Council of Europe, who addressed the Commission at the 1069th meeting. He also submitted for the information of the Commission a report circulated to members as document ILC (XXII) Misc. 1.

97. In his address he underlined the ever-increasing interest which the Committee was taking in the work of the Commission, as evidence by the special meetings organized to consider parts of the Commission's work. In particular, he stressed the interest with which the Committee followed the Commission's discussion on the topic of relations between States and international organizations, on some of whose aspects the approach taken by the member Governments of the Committee differed from that of the Commission. He pointed out that the Committee had prepared a report of its own on the privileges and immunities of international organizations which had been transmitted to both the United Nations and the Commission. With regard to the Committee's recent work, he indicated that the Consultative Assembly of the Council of Europe had recently recommended that it prepare a draft for a treaty on the subject of pollution of international rivers. Also, a European draft convention on State immunity was almost completed. With respect to the development of the European Convention on Human Rights, he drew attention to the Committee's agreed view that the most important objective was to reach complete

identity of definition between that instrument and the United Nations Covenants on human rights, in the sense that the standards of the European Convention should be aligned with those of the world-wide covenants. As to other fields, proposals had been made for the uniform interpretation of European treaties, for the publication of a digest of State practice in the field of public international law, and for support of an initiative for a unified collection of international treaties. Also, the Committee had established a close working relationship with the United Nations Commission on International Trade Law (UNCITRAL), and a number of instruments in the field of commercial law had either been completed or were in their final stage; for example, there had been drawn up a draft European convention on international patent classification, which would be the subject of a diplomatic conference at Strasbourg in 1971. Recently, a European convention on the international validity of criminal judgements had been opened for signature at The Hague; that convention dealt with the recognition and enforcement of foreign penal judgements and would be supplemented by another instrument on the settlement of conflicts of jurisdiction in criminal matters and the transfer of criminal proceedings. Among the items under consideration for its future work, he referred to the problem of hi-jacking, which the Committee proposed to consider under the general heading of jurisdiction with regard to crimes committed outside national territory and to which one of its draft conventions dealing with radio broadcasts might prove relevant. He also referred to the problem of the protection of members of diplomatic and consular missions against acts of violence and to the judicial settlement of international disputes.

98. The Commission was informed that the next session of the Committee, to which it has a standing invitation to send an observer, would be held at Strasbourg in November 1970. The Commission requested its Chairman, Mr. T. O. Elias, to attend the session or, if he was unable to do so, to appoint another member of the Commission for the purpose.

3. *Inter-American Juridical Committee*

99. The Inter-American Juridical Committee was represented by Mr. José Joaquín Caicedo Castilla, who addressed the Commission at its 1064th meeting.

100. He drew attention to the entry into force of the Protocol of Amendment to the Charter of the Organization of American States (OAS), the Bogotá Charter,⁷⁸ which had been adopted by the Third Special Inter-American Conference held at Buenos Aires.⁷⁹ As a result, the juridical machinery of the Organization had been rendered more flexible since of the two previous legal organs the revised Charter had retained only the Inter-American Juridical Committee. In this connexion, and referring to the opinion of some commentators to the effect that the OAS would henceforth deal only with economic and financial matters, he stressed that legal rules such as non-intervention continued to be basic to

⁷⁸ United Nations, *Treaty Series*, vol. 119, p. 48.

⁷⁹ *OAS Official Records*, OEA/Ser.A/2/Add. (Washington D.C., Pan American Union, 1967), pp. 49-96.

the inter-American system. Also, many draft juridical conventions were under consideration by the OAS, such as the draft convention on human rights prepared at the end of 1969 by a specialized inter-American Conference held at San José in Costa Rica.

101. With regard to the work of the Committee in 1969, he mentioned the extensive report it had submitted to the first General Assembly of the OAS on the Committee's past achievements and future work,⁸⁰ and the decisions adopted on government-owned international companies and on violations of international "standstill" (*status quo*) commitments. On the first question, the conclusions adopted included the requirement that such companies should be formed by means of treaties which would contain the articles of association and specify the law that would govern the company's activities. Also, the companies should enjoy extra-territorial legal personality and be entitled to certain immunities and privileges. Provision should likewise be made for the submission of all disputes to some means of judicial settlement. On the second question, which arose in connexion with article XXXVII (Commitments) of the General Agreement on Tariffs and Trade (GATT), the Committee had concluded that it was both necessary and desirable to prepare a new legal formulation of the standstill system; that the definition of international standstill commitments contained in that article was acceptable; that the escape clause should be deleted because in practice the expressions "to the fullest extent possible", "compelling reasons" and "legal reasons" made it possible for developed countries to evade compliance with the basic commitment and to act as they pleased; that recommendation A.II.1 of the first session of the United Nations Conference on Trade and Development should be embodied in a protocol in order to give it the character of a binding obligation; and that where a developed State proposed to change its taxes on products covered by a standstill commitment, notification of its intention should be given to the other contracting parties, especially those interested in the products concerned.

102. Among the topics to be dealt with by the Committee at its next session, he mentioned the draft conventions on cheques and bills of exchange negotiated internationally; the inter-American peace system in order to secure unanimity as regards the American Treaty on Pacific Settlement or Bogotá Pact of 1948, which had been ratified by only fourteen States; the legal status of foreign guerilla fighters in the territory of member States; the treatment of foreign investments; and the revision and modernization of various inter-American conventions. In this respect, the Committee intended to review the position in respect of no less than sixty-four instruments. Some had become obsolete owing to changing conditions, such as those on patents and civil aviation. In particular, the Convention on Treaties, signed at Havana on 20 February 1928, had become obsolete because of regional support for the Vienna Convention on the Law of Treaties (1969) which had been signed by no less than sixteen Latin American States. Also, other conventions had only been ratified by a few American States and therefore stood in need of revision.

⁸⁰ *Ibid.*, OEA/Ser.I/VI.1 (Washington D.C.), document CIJ-99.

103. The Commission was informed that the 1970 session of the Committee, to which it has a standing invitation to send an observer, would be held at Rio de Janeiro from 16 June to 15 September. The Commission requested its Chairman, Mr. T. O. Elias, to attend the Committee's session or, if he was unable to do so, to appoint another member of the Commission for the purpose.

I. DATE AND PLACE OF THE TWENTY-THIRD SESSION

104. The Commission decided to hold its next session at the United Nations Office at Geneva from 26 April to 30 July 1971.

J. REPRESENTATION AT THE TWENTY-FIFTH SESSION OF THE GENERAL ASSEMBLY

105. The Commission decided that it would be represented at the twenty-fifth session of the General Assembly by its Chairman, Mr. T. O. Elias.

K. SEMINAR ON INTERNATIONAL LAW

106. In pursuance of General Assembly resolution 2501 (XXIV) of 12 November 1969, the United Nations Office at Geneva organized during the twenty-second session of the Commission a sixth session of the Seminar on International Law intended for advanced students of that discipline and young government officials whose functions habitually include a consideration of questions of international law. In order to associate the Seminar with the tribute paid by the Commission to the memory of Gilberto Amado, the present session was called the "Gilberto Amado session".

107. Between 25 May and 12 June 1970, the Seminar held twelve meetings devoted to lectures followed by discussion. It was attended by twenty-four students from different countries; they also attended meetings of the Commission during that period and had access to the facilities provided by the Library in the Palais des Nations. They heard lectures by nine members of the Commission (Mr. Bartoš, Mr. Castañeda, Mr. El-Erian, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Sir Humphrey Waldock and Mr. Ustor), a professor from the University of Geneva (Mr. Virally) and one member of the Secretariat (Mr. Raton, Senior Officer, Office of the Director General of the United Nations Office at Geneva). The lectures were given on various subjects connected with the past and present work of the International Law Commission, including the Convention on Special Missions, the question of permanent missions to the international organizations, the most-favoured-nation clause, succession in respect of treaties, the outer limit of the continental shelf and recent legal aspects of the sea-bed. Other lectures dealt with the role of custom in international law, the International Law Commission and the twenty-fifth anniversary of the United Nations, the "Barcelona Traction, Light and Power Co., Ltd." case and the Inter-

national Court of Justice judgment of 5 February 1970, and principles of international law concerning friendly relations and co-operation between States.

108. The Seminar was held without cost to the United Nations, which assumed no responsibility for the travel or living expenses of the participants. The Governments of Denmark, Finland, the Federal Republic of Germany, Israel, the Netherlands, Norway and Sweden offered scholarships for participants from developing countries. Thirteen candidates were chosen to be beneficiaries of the scholarships. Four students holding scholarships granted by the United Nations Institute for Training and Research (UNITAR) were also admitted to the Seminar, but two were unable to attend the session. The grant of scholarships is making it possible to achieve a much better geographical distribution of students and to bring deserving candidates from distant countries, who would otherwise be unable to attend the session solely for pecuniary reasons. The higher number of scholarship-holders at the sixth session was partly due to the fact that a Netherlands Government scholarship not used at the fifth session was transferred to the scholarships budget of the present session, and partly to the use of what was left over from various scholarships for earlier sessions. If it is desired to maintain a high level of participation by nationals of developing countries, it is not only essential to be able to rely on the continuing generosity of the above-men-

tioned Governments, but also desirable that one or two more scholarships should be offered for the next session.

109. The experience gained during the six sessions proves that it would be useful to make Spanish a working language of the Seminar on the same footing as English and French. Moreover, it is necessary that participants should have free access to adequate documentation relating to the work of the Commission, especially reports, yearbooks and other printed Commission documents, so as to ensure that the greatest benefit can be derived from their participation in the Seminar.

110. The Commission expressed appreciation, in particular to Mr. Raton, for the manner in which the Seminar was organized, the high level of discussion and the results achieved. The Commission recommended that seminars should continue to be held in conjunction with its sessions.

L. INDEX OF THE COMMISSION'S DOCUMENTS

111. The United Nations Library at Geneva published and circulated the guide (ST/GENEVA/LIB/SER.B/Ref.2) to the main documents of the Commission issued from 1949 to 1969 referred to in paragraph 110 of the Commission's report on its twenty-first session.⁸¹

⁸¹ See *Yearbook of the International Law Commission, 1969*, vol. II, p. 225, document A/7610/Rev.1.