

Document:-  
**A/CN.4/SR.1057**

**Summary record of the 1057th meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
**1970, vol. I**

*Downloaded from the web site of the International Law Commission  
(<http://www.un.org/law/ilc/index.htm>)*

stage in the codification of international law he did not think it would be wise to introduce a definition of the expression "the sending State" into the draft articles, since there were already three international conventions based on drafts prepared by the Commission in which that expression was used. He thought that any possible doubt could be cleared up by the Drafting Committee, which might refer to the "sending State" in article 0, sub-paragraph (a).

40. On the question of nationality, he was prepared to accept the view taken by the Special Rapporteur in his note, but only in so far as article 64 was concerned. The privileges and immunities granted to members of a delegation who were nationals of the host State might well be narrower than those of nationals of the sending State, but he agreed with Mr. Castrén that there was no need to provide for that second exception in article 64.

41. The general principle of the sending State's freedom of appointment was an overriding principle, unless the constituent instrument of the organ or conference in question or some other formal text provided otherwise. There had been instances in which a mere resolution referred to the composition of a delegation. For example, operative paragraph 5 of General Assembly resolution 2166 (XXI), on an international conference of plenipotentiaries on the law of treaties, read: "*Invites the States . . . to include as far as possible among their representatives experts competent in the field to be considered*". He agreed with a view taken in the Sixth Committee that that phrase was exhortatory and not obligatory, but it might be useful to refer to it in the commentary.

42. Mr. AGO said that, in general, he agreed with the Special Rapporteur on the principle of the sending State's freedom to choose the members of its delegation to a session of an organ or to a conference, but the drafting of the article should take account of certain differences in situation. In the first place, it was once again necessary to take account of the fact, to which he had already drawn attention, that a reference to delegations to sessions of an organ such as a general assembly of members did not cover the situation of a representative to an organ—generally a small one—who was appointed permanently. In the second place, reference should be made to the special rules of certain organizations such as the International Monetary Fund, which required the members of some of their organs to be persons performing specific functions in their own countries, which limited the sending State's freedom of choice.

43. The third point he wished to stress was that the term "delegation" itself was ambiguous, since a delegation comprised both delegates, the number of whom was generally fixed by the rules of procedure of the organ concerned, and a number of other persons who accompanied the delegates, but did not have their status. It was conceivable that a sending State might appoint a national of another State as a technical adviser, for example, but the appointment of foreign nationals seemed less acceptable in the case of delegates in general and heads of delegation in particular. The situation might be different in the case of conferences owing to the

technical nature of some of them, which called for special qualifications. The sending State could be given the faculty to appoint delegates of another nationality more easily in the case of conferences than in the case of sessions of an organ of an organization. In any case the appointment of a national of another country as representative to a small organ of an organization should be ruled out.

44. Mr. USHAKOV repeated that it was impossible to cover two different situations by one and the same formula; the Commission was bound to fail if it continued to use an unacceptable legal technique. The same sources of difficulty as had been found in the previous articles reappeared in article 64: namely, the expression "sending State", used to denote both a State which was a member of an organ and a State participating in a conference, and the term "delegation", whose scope had not yet been defined and whose meaning varied, as other members of the Commission had pointed out, depending on whether it referred to a delegation to a conference or a delegation to an organ. There should either be a single article with two paragraphs, or two separate articles. Apart from the drafting, he supported the principle of the sending State's freedom of choice in the appointment of the members of its delegation.

45. As to the nationality of the members of a delegation, he must protest against any departure from the well-established principle of contemporary international law that the members of a delegation must be nationals of the sending State. Whether a State was represented by its own nationals or by nationals of another State was a matter of great political importance. It was unacceptable that a State should be represented by nationals of another State, even in the case of a delegation to a conference. The Commission should not lose sight of the fact that it was working in the interests of States, and it should not lay down a principle contrary to another principle of contemporary international law which it had itself established.

The meeting rose at 1 p.m.

## 1057th MEETING

Wednesday, 27 May 1970, at 10.10 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

### Welcome to Mr. Sette Câmara

1. The CHAIRMAN welcomed Mr. Sette Câmara, who had been elected a member of the Commission to fill the vacancy caused by the death of Mr. Gilberto Amado.
2. Mr. SETTE CÂMARA expressed his gratitude to all those who had given him their support and shown their confidence in him by electing him a member of the International Law Commission. He had been present in the Commission twenty years before, as an adviser to the late Mr. Amado, and had followed the Commission's work with the closest attention ever since. He would try to prove a worthy successor to Mr. Amado, though he knew that he could not replace him; the legacy such men left behind them did not follow the normal law of succession, but became part of the patrimony of mankind.

### Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/227 and Add.1 and 2)

[Item 2 of the agenda]

(resumed from the previous meeting)

#### ARTICLE 64 (Appointment of the members of the delegation) (continued)

3. The CHAIRMAN invited the Commission to continue consideration of article 64 and the Special Rapporteur's note on the nationality of members of a delegation (A/CN.4/227/Add.1).
4. Mr. BARTOŠ said that, generally speaking, the sending State could freely appoint the members of its delegation, whether the delegation was to an organ or to a conference convened by an international organization. That freedom was not absolute, however; it was limited by customary international law, by the rules of procedure of the organ in question, or, in the case of a conference, by the letter of invitation. The sending State was obliged to comply with the prior conditions laid down by the State or organization convening the conference or by the rules of procedure or practice of the organ, in the case of both delegations and missions. It would be better to use the term "delegation" when the form of representation was temporary, and "mission" when it was permanent.
5. Mr. RAMANGASOAVINA said he approved of article 64 as drafted; although concise, it was extremely flexible. The underlying idea was the same as in article 63: the sending State must be free to choose the members of its delegation. In principle, those members should be nationals of the sending State, and as far as possible each State should appoint representatives who possessed its nationality; but it could happen that a State, particularly a young State during the early years of its international life, did not have sufficient qualified persons to represent it and therefore appointed nationals of the host State or a third State. That practice existed and experts were often exchanged between countries in the same region, even when their languages were different.
6. Article 64 thus reflected the practice and the Special

Rapporteur had been quite right in trying to ensure that the sending State's freedom of choice was not limited. That was also in conformity with the principle of the freedom and sovereignty of States, by virtue of which a State could not be obliged to be represented by its own nationals if it was in its interests to employ nationals of another State for that purpose. The Special Rapporteur had rightly refrained from drawing a distinction between nationals of the host State and nationals of a third State; that not only gave the sending State greater freedom of choice, but at the same time guaranteed the representatives in question, whatever their nationality, the same advantages as the other members of the delegation.

7. Sir Humphrey WALDOCK said he agreed with Mr. Yasseen that, in view of the existence of analogous provisions in other conventions, it might give rise to misunderstanding if the Commission said nothing about the nationality of members of a delegation. He could understand the practical considerations which had led the Special Rapporteur to omit any reference to the need for the consent of the host State in the case of its nationals, but he was still not convinced that there was sufficient reason for distinguishing between delegations to organs or conferences of international organizations and permanent missions. It was true that the latter were generally of longer duration, but there were also sometimes long conferences, like the United Nations Conference on the Law of Treaties. It was desirable that the sending State should have full freedom to appoint the members of its delegation, but the host State's interests had to be considered. It was not only a question of privileges and immunities; it might prove embarrassing, for example, if the sending State were to appoint as a technical expert a national of the host State who was employed in some capacity by the host State's government.

8. He did not share Mr. Ushakov's preoccupation with the basic difference between organs of international organizations and conferences convened by those organizations. Such differences did exist and ought to be borne in mind, but they were more differences of degree than of kind. The problem could probably be solved by careful drafting; it might be possible to adapt the formula used in article 51 (A/CN.4/227).

9. In principle, he supported article 64, the essential purpose of which was to underline the sending State's right to freedom of appointment, subject to the restrictions laid down in article 67. He could not agree with the suggestion that it should be divided into two separate articles, since that would result in a clumsy draft.

10. Mr. RUDA said he had no objection to either the substance or the form of article 64. Where the problem of nationality was concerned, however, he thought the wisest course would be to draft an article on the lines of article 11, on the nationality of the members of the permanent mission.<sup>1</sup> The consent of the host State was obviously necessary for the appointment of its nationals

<sup>1</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 203.

as members of foreign delegations to organs or conferences of international organizations, though that requirement might perhaps not be necessary for very short conferences. In paragraph (2) of his note on nationality, the Special Rapporteur had said that it was "highly desirable, if not indispensable, that the sending State should enjoy the widest possible freedom in the choice of the members of its delegations to such organs and conferences"; he hoped that, in addition to such general statements of policy, the Special Rapporteur would include in his commentary some actual examples of the existing practice in the matter.

11. Mr. NAGENDRA SINGH said he agreed with Mr. Rosenne that article 64 should be made subject to the provisions of both article 67 and article 63; it was true that article 63 had not yet been put into final form, but the general opinion in the Commission appeared to be in favour of such an article.

12. He found the present formulation of article 64 satisfactory; at first glance it might seem logical to deal with organs and conferences in two separate articles, but the subject-matter was in several respects identical and he thought that a common approach was perhaps justified.

13. He agreed with the Special Rapporteur's decision to depart from the provisions of articles 11 and 54 in formulating article 64, and to leave the sending State completely free to appoint nationals of the host State as members of its delegation; the adoption of that course would serve the interests of the progressive development of international law and help the newly independent States. Moreover, delegations to organs and conferences were generally of an *ad hoc* or temporary character and would normally not cause any embarrassment to the host State. There was no objection to the host State's being notified of the proposed appointment of one of its nationals.

14. It was worth noting that the developing countries were extremely keen to exercise their right as "sending States" to send their own nationals. It was only when they had no suitable technical expert of their own available that they reluctantly appointed a national of the host State, and then only after careful investigation of his trustworthiness and ability. The diplomatic mission of the sending State in the host State made local enquiries and the chances of making a wrong choice were very slight. The host State was proud to have one of its nationals selected on grounds of technical competence, and such assistance should not be denied to developing countries which needed it. It was true, of course, that the freedom of the sending State might be limited by the constituent instrument of the organ or conference, but that contingency was already provided for in article 3.

15. He thought that the term "sending State" covered the three kinds of mission or delegation dealt with in the draft articles; its precise meaning should be easily understandable from the context of the article concerned.

16. Mr. KEARNEY said that, in dealing with article 64, the Commission should conform to the position it had taken previously in dealing with article 11, as

well as to the relevant provisions of existing international conventions. He had been impressed by the fact that the closest analogy to the type of diplomacy now under discussion was to be found in the Convention on Special Missions, which had been adopted by the General Assembly at its last session. Article 10 of that Convention<sup>2</sup> differed from, and went further than, article 11 of the present draft, in that it contained a third paragraph which read: "The receiving State may reserve the right provided for in paragraph 2 of this article with regard to nationals of a third State who are not also nationals of the sending State". In the light of Mr. Ramangasoavina's remarks about the needs of developing States, there was no need to include such a provision in article 64. There should, however, be a reference to article 11; the Commission would be going too far if it dispensed with limitations on the right of appointment altogether. That might give rise to all kinds of difficulties; for example, the person appointed by the sending State might be under investigation in the host State on a criminal charge.

17. The CHAIRMAN, speaking as a member of the Commission, said that he welcomed article 64 as it stood. He did not consider it proper to include a reference to article 63 at the present stage. The Special Rapporteur had been right to stress the freedom of choice of the sending State and to limit the qualification of that right to the provisions of article 67. He appreciated the problems raised by Mr. Ushakov, but doubted if it would be possible to divide article 64 into two paragraphs or into two different articles.

18. He agreed with the majority that the precise meaning of the term "sending State" would in each case be clear from the context and that it was unnecessary to include a definition or to distinguish between delegations to organs and delegations to conferences.

19. A number of members had expressed misgivings about the problem of nationality; Sir Humphrey Waldock had stressed the point made by Mr. Yasseen, but had refrained from taking any strong line. He himself agreed with Mr. Kearney that difficulties might arise if a sending State appointed a national of the host State who was suspected of fraud or embezzlement and was consequently *persona non grata* to that State. Obviously, the consent of the host State should be made a necessary condition, in order to avoid any embarrassment either to it or to the sending State.

20. Mr. AGO said that the Commission must be clear about what it would be referring to the Drafting Committee. He would therefore repeat that, to be complete, the draft articles must take account not only of temporary delegations, but also of permanent forms of representation to organs of international organizations.

21. As to the nationality of members of delegations, he did not see why the Commission should not follow its custom and lay down as a principle that the permanent representative, the principal delegate, and so on, must be nationals of the sending State. That would avoid the

<sup>2</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 100.

misunderstanding to which the word "delegation" might give rise, since it was not clear whether it meant delegates as such, or all the members of the delegation, including those who did not have the same status as the delegates.

22. It would be preferable to leave it to the Drafting Committee, which would be in a better position to judge the question, to decide whether article 64 should be split up into several paragraphs or even several articles. The Commission should not take a final decision of that kind on the basis of one particular article.

23. Mr. EL-ERIAN (Special Rapporteur) summing up the discussion, said he would include in his commentary some examples of actual practice regarding the nationality of members of delegations, as Mr. Ruda had requested.

24. It had been suggested that article 64 should include a reference to article 63, but the Chairman and other members had considered that unnecessary, inasmuch as article 63 did not deal with the choice of individuals, but with the objective right of States to make appointments. His view was that the Commission should accept freedom of appointment as a basic principle, subject only to article 67 on the size of the delegation and to an article on nationality if it was decided to include one.

25. Mr. Ago had referred to the case in which a representative might acquire a status of an intermediate character, between that of a permanent member and that of a temporary member of a delegation. That was a matter to which some reference should be made, perhaps in the commentary. Mr. Ago had also pointed out that the term "delegation" was ambiguous. There were cases, however, in which a delegation consisted of a single delegate, who might nevertheless require administrative or service personnel for his delegation.

26. He was glad to see that several members shared his view about the desirability of adopting a permissive attitude towards nationality. For example, a conference might be convened for only one or two days; to go through the formal process of obtaining the consent of the host State would take time and might even be embarrassing to that State if for some reason it did not wish to take a decision. He was not sure that it was always the wisest course to include a reference to consent.

27. Mr. Kearney had mentioned the possibility that nationals of the host State might be appointed who were suspected of criminal offences. But it should be borne in mind that even under the articles on permanent missions and the Convention on Special Missions, such persons did not enjoy the same privileges and immunities as members who were not nationals of the host State and they would only be protected in respect of their official acts. The Commission should also remember that the legislation of many States provided that their nationals must obtain permission from the government before acting as agent of another State.

28. He did not think that the absence of a reference to nationality would lead to misunderstanding; but if the Commission decided to include an article on nationality, and if it also decided to restrict the sending State's freedom of appointment in that respect, the restriction

might be expressed by some such phrase as "unless there is an objection by the host State".

29. Mr. Kearney had said that the draft Convention on Special Missions provided the closest analogy to the present draft articles. That might be true in the sense that both dealt with *ad hoc* bodies, but there was nevertheless an important difference between them: in the case of special missions, the national of the host State would be a member of a mission to his own government, whereas delegates to organs and conferences were not accredited to the host State. In bilateral diplomacy, what had to be avoided was a situation in which a national of one State represented the views of another State to his own government.

30. Although there were obviously differences of opinion in the Commission on the subject of nationality, he was confident that the Drafting Committee would be able to produce a text acceptable to all members.

31. The CHAIRMAN suggested that article 64 be referred to the Drafting Committee.

*It was so agreed.<sup>3</sup>*

#### ARTICLES 65 and 66

32. The CHAIRMAN invited the Commission to consider articles 65 and 66 in the Special Rapporteur's fifth report (A/CN.4/227/Add.2).

33.

##### *Article 65*

##### *Credentials and notifications*

1. The credentials of representatives to an organ of an international organization or to a conference convened by an international organization 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 or by an appropriate authority designated by one of the above if that is allowed by the practice followed in the Organization.

2. The credentials of representatives and the names of the members of a delegation to an organ of an international organization or to a conference convened by an international organization shall be submitted to the competent organ of the organization if possible not less than one week before the date fixed for the opening of the session of the organ or of the conference.

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

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

##### *Article 66*

##### *Full powers to represent the State in the conclusion of treaties*

Representatives accredited by States to an organ of an international organization or to a conference convened by an international organization, in virtue of their functions and without having to produce full powers, are considered as representing their State for the purpose of adopting the text of a treaty in that organ or conference.

<sup>3</sup> For resumption of the discussion, see 1073rd meeting, para. 70.

34. Mr. EL-ERIAN (Special Rapporteur) said that, as would be seen from the commentary, article 65 was based on rule 27 of the Rules of Procedure of the General Assembly, which had served as a model for the rules of procedure of a number of different organizations. The addition at the end of paragraph 1 was based on article 12 of the draft articles on permanent missions.<sup>4</sup>

35. He had not thought it necessary to include in article 65 an explicit provision on the credentials of heads of government or ministers for foreign affairs. With regard to the time-limit set in paragraph 2, he had considered that one week would be sufficient in the case of delegations to organs or conferences.

36. Paragraphs 3 and 4 referred to notifications to the host State; those notifications were clearly necessary if only because of the facilities which the host State would wish to extend to delegations. It would be noted that paragraph 4 did not lay down an obligatory procedure.

37. Article 66 was based on the relevant provisions of article 7 of the Vienna Convention on the Law of Treaties<sup>5</sup> and called for no comment.

38. Mr. YASSEEN said that articles 65 and 66 represented a very careful piece of codification in which the Special Rapporteur had succeeded in formulating the provisions that were needed. With regard to article 65, the only objection he had was to paragraph 4, which seemed to him to be superfluous, since it accorded a faculty which the sending State possessed in any event by virtue of its powers under international law.

39. He had no criticism of the substance of article 66. It might be asked whether it was really necessary to include in the present draft articles a provision based on article 7 of the Convention on the Law of Treaties, laying down that the representative of a State to a conference or to an organ was not required to produce his full powers for the purpose of adopting the text of a treaty; but a provision of that kind might perhaps be useful, since the international legal order was not completely uniform and the parties to one convention might not be parties to another. But if such a provision were retained, it would be well to refer to other clauses in the Convention on the Law of Treaties dealing with the full powers of certain persons.

40. Mr. CASTRÉN said that on the whole he approved of the substance and the drafting of article 65, which should be included in the draft articles. The Special Rapporteur had been right to take as his model the first two paragraphs of rule 27 of the Rules of Procedure of the General Assembly, which had already served as model for the corresponding provisions in the rules of procedure of several other international organizations and of various conferences convened by the United Nations. He noted that the Special Rapporteur had also included in paragraph 1 a phrase taken from article 12 stating that

credentials might be issued "by another competent minister" and had added the words "or by an appropriate authority designated by one of the above", which was acceptable.

41. Paragraphs 3 and 4 reproduced practically word for word paragraphs 3 and 4 of article 17,<sup>6</sup> and those provisions seemed equally applicable to delegations to organs of international organizations and to conferences convened by them. His only suggestion would be that the title of the article should be amended by the deletion of the words "and notifications", since the article dealt with credentials and did not mention any notifications other than the notification of credentials.

42. With regard to paragraph 2, he doubted whether it was really necessary to submit to the competent organ of an organization the credentials of representatives sent to a conference convened by that organization before the opening of the conference, since in practice credentials were often submitted direct to the conference. It would be sufficient if the names of representatives were submitted to the organization together with the State's notification that it would be taking part in the conference.

43. The Special Rapporteur had said that the text of article 66, which was based on the corresponding provisions of article 7 of the Convention on the Law of Treaties, called for no comment. He wondered whether the article was really necessary, however, for it seemed unnecessary to restate a rule that had been stated more fully in another convention which constituted the general source of the law of treaties. It was true, of course, that the draft contained an article—article 14—on the full powers of permanent representatives to represent a State in the conclusion of treaties, but that case had not been covered by article 7 of the Convention on the Law of Treaties, which had been adopted after the Commission had adopted draft article 14 on first reading in 1968.

44. Mr. ROSENNE said he was in general agreement with the substance of paragraphs 1 and 2 of article 65. Those paragraphs, which dealt with credentials, should be entirely separated from paragraphs 3 and 4, which dealt with notification of the composition of delegations. The rules on credentials were fairly well established, whereas those on notification broke new ground, as the Special Rapporteur had pointed out in his commentary. Moreover, in the present context, credentials related solely to the question of relations between the sending State and the organ or conference, whereas notification also touched on that of relations between the sending State and the host State.

45. With regard to the drafting of paragraphs 1 and 2, the Drafting Committee should scrutinize closely the expression "credentials of representatives", which provided one more illustration of the fact that the provisions of paragraph 2 of article 62 were much too wide. On the basis of the existing United Nations practice, formal credentials should be required only from persons entitled to vote at plenary meetings of a conference or at formal

<sup>4</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 204.

<sup>5</sup> *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference, document A/CONF.39/27* (United Nations publication, Sales No.: E.70.V.5).

<sup>6</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 209.

meetings of an organ, or to sign any binding instrument which might be drawn up by such a conference or organ.

46. In paragraph 1, the words "or by another competent minister or by an appropriate authority designated by one of the above" should be shortened to "or by another competent minister or authority". The matter would in any case usually be covered by the provisions of article 3,<sup>7</sup> though it was true that in some cases what was involved was the practice of States rather than the practice of an organization.

47. He would urge the Special Rapporteur to include more explanatory material in the commentary, since paragraphs 1 and 2 had little legal content; besides, they did not exhaust the subject of credentials. The commentary should make it clear that the provisions of those paragraphs left current practice intact. One feature of that practice was that credentials were examined and reported on by a credentials committee at a convenient moment during the conference or the session of the organ concerned. Technically, a representative was provisionally recognized until his credentials were accepted by the conference or organ. There had been one case in which the credentials of a delegation had been rejected on the very last day of the conference.

48. He would suggest that paragraphs 3 and 4 should form a new article 65 *bis* and that their provisions should be expanded on the lines of articles 17 and 57. It would be desirable to know the views of the principal host States, but in his opinion article 65 *bis* should deal with the duty of the sending State to notify the organization, the duties of the secretariat or other authority convening the conference, and the duty of the organization to notify the host State. Reference might also be made to the faculty of the sending State to notify the host State, but such a provision was probably not necessary.

49. The practice of organizations in regard to notifying the host State varied, and paragraph 3 of article 65 would be a useful clarification. He understood that the Registry of the International Court of Justice, which administered the agreement on privileges and immunities between the United Nations and the Netherlands, as host to the Court, regularly followed the procedure laid down in that paragraph.

50. He found paragraph 4 somewhat puzzling; he was uncertain of its legal effect. Article 42 (duration of privileges and immunities)<sup>8</sup> was based on an entirely different approach; neither the credentials nor their notification had any effect on the commencement of privileges and immunities.

51. It was doubtful whether article 66 was necessary, since its provisions duplicated those of article 7, paragraph 2 (c) of the Vienna Convention on the Law of Treaties. There were difficulties in the drafting, partly because of the ambiguity of the term "representative". In the organs of international organizations and in conferences, the adoption of the text of a treaty was normally

a voting function and, as such, it was covered by the credentials of the representative entitled to vote. For example, the vote on the adoption of the Convention on the Law of Treaties at the 36th plenary meeting of the Vienna Conference had been a vote of exactly the same kind, legally, as that on the adoption, on the same occasion, of a resolution paying a tribute to the Federal Government and the people of the Republic of Austria, nor did those decisions differ in character from those by which the Conference had adopted individual articles of the same Convention.<sup>9</sup>

52. The Commission's report might include a statement to the effect that, in United Nations practice, credentials to a conference were taken to include the power to sign the final act, even if the representative did not have power to sign other documents. The question was not regulated anywhere by international law, and a reference to that practice would be of value.

53. Mr. USHAKOV said he wished first to emphasize that he found the ideas expressed in articles 65 and 66 acceptable; but he could not accept the articles themselves, because they laid down rules applicable to completely different situations.

54. As to article 65, he agreed with Mr. Rosenne that it was not possible to put together in a single article rules concerning credentials and rules concerning notifications. The Special Rapporteur was proposing that only the names of members of delegations should be notified. That was quite inadequate; the notifications should be the same as in the case of permanent missions of member States. Moreover, the recipients of the notifications differed according to whether the delegations concerned were delegations to organs of international organizations or to conferences. The difficulties created by the method of dealing with two quite different questions in the same provision appeared again in paragraph 3, which had some meaning when applied to delegations to organs, but none when applied to delegations to conferences. In addition, the expression "host State" had a very different meaning in the two cases. Notifications concerning delegations to organs and notifications concerning delegations to conferences should therefore be dealt with in two separate articles.

55. As to the substance of article 65, he still did not know who were the "representatives" referred to. In paragraph 1, the phrase "if that is allowed by the practice followed in the organization" had some meaning in connexion with delegations to organs, but was meaningless in connexion with delegations to conferences. Similarly, the list of persons who might issue credentials was not appropriate for delegations to conferences. Questions of the same kind arose in regard to paragraph 2; for instance, the expression "the competent organ of the organization" seemed to have little meaning when applied to delegations to conferences. Again, he could not see why the Special Rapporteur had specified

<sup>7</sup> *Ibid.*, p. 197.

<sup>8</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10*, p. 14.

<sup>9</sup> *United Nations Conference on the Law of Treaties, Second Session, Official Records, Summary Records of Plenary Meetings*. (United Nations publication, Sales No.: E.70.V.6.)

that credentials should be submitted "one week before the date fixed". Lastly, the expression "opening of the session" was meaningless when applied to a body which was continuously in session.

56. In article 66, the use of the expression "in virtue of their functions" was dubious, since the functions of representatives of States to organs of international organizations could differ very widely, so that it was not correct to say that such representatives were authorized to adopt the text of a treaty in virtue of their functions. Moreover, article 66 was contrary to the practice by which only one representative was authorized to adopt the text of a treaty, and not all organs could do so. In the case of permanent missions, only the permanent representative had powers under article 14 to represent his State in the adoption of the text of a treaty, and not all treaties at that, but only a treaty between that State and the international organization to which he was accredited. In the case of conferences, the rule raised no difficulty if the conference was convened to adopt a treaty; but the situation was quite different if the conference was not convened to adopt a treaty, for in that case the representative of a State needed a special authorization. Furthermore, the adoption of a treaty and its signature were governed by different rules.

57. Consequently, in article 66, as in the previous articles, separate rules should be laid down for delegations to organs of international organizations and delegations to conferences. In the case in point, a single article should be drafted for delegations to conferences, stating the precise conditions under which the representative of a State participating in a conference might participate in the adoption, and sign the text, of a treaty.

58. Mr. AGO said that in his opinion articles 65 and 66 bristled with difficulties. He wished first to draw the Special Rapporteur's attention to the need to draft a text which was both consistent with practice and comprehensive; unless that were done, the Commission would have to be less ambitious and content itself with laying down a few rules on the status of permanent missions of member States.

59. With regard to article 65, he agreed with Mr. Rosenne and Mr. Ushakov that the matters contemplated in paragraphs 3 and 4 were completely different from those contemplated in paragraphs 1 and 2. In paragraph 1, the term "representatives" could denote not only representatives appointed to represent a State at a particular session of an organ of an international organization, but also permanent representatives appointed once and for all, who could also represent their State at a session of an organ of an international organization. It might happen, of course, that the same person acted in both capacities, but that would be pure chance. That situation should be taken into account in the drafting of the articles and the Special Rapporteur should therefore supplement paragraph 1 by referring to the two categories of person he had just mentioned.

60. With regard to the persons who could issue representatives' credentials, he considered, unlike Mr. Ushakov, that the list was justified, but he would ask the

Special Rapporteur to examine very carefully the practice followed in international organizations.

61. Paragraph 2 of article 65 raised substantive difficulties; for although the rule laid down was justifiable in the case of representatives appointed to represent a State at a particular session of an organ of an international organization, the same did not apply to permanent representatives appointed once and for all, since they did not need credentials and consequently the rule in paragraph 2 could not apply to them.

62. He also had doubts about the application of article 65 to delegations to conferences. Although the position of those delegations was rather similar to that of delegations to a particular session of an organ of an international organization, he was inclined to think, like Mr. Ushakov, that a single provision would not suffice. Furthermore, the title of the draft articles was "Relations between States and international organizations" and he thought that was an additional reason why the rule laid down was not appropriate for delegations to conferences, even when they were convened by international organizations. It also seemed clear that in the case of conferences, notifications to the host State could be of an entirely different character according to whether the conference met only once or met regularly at the same place.

63. In article 66 two different situations were again involved: for in the case of treaties concluded by organs of international organizations the requirements for credentials were known beforehand, whereas in the case of treaties concluded at conferences the credentials required for negotiation were not the same as those required for the adoption of the Final Act and signature. Moreover, as Mr. Rosenne had pointed out, the case of conferences adopting resolutions also had to be considered.

The meeting rose at 1 p.m.

## 1058th MEETING

Thursday, 28 May 1970, at 10.15 a.m.

Chairman: Mr. Taslim O. ELIAS

*Present:* Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Kearney, Mr. Nagendra Singh, Mr. Raman-gasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.