

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

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**A/CONF.67/C.1/SR.30**

**30th meeting of the Committee of the Whole**

*Extract from Volume I of the Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

22. Mr. ZEMANEK (Austria) requested the sponsors of the proposal contained in document A/CONF.67/C.1/L.96 to provide some clarifications concerning the future status of the articles now contained in the annex. If those articles were adopted, it would be necessary to decide whether they should be a separate legal instrument or whether they should be included in the convention after the present article 82.

23. Mr. KUZNETSOV (Union of Soviet Socialist Republics) said the sponsors of the proposal in document A/CONF.67/C.1/L.96 considered that the articles contained in the annex must be part of the proposed convention. It would be for the Conference, however, to decide how those articles should be incorporated in the final document.

24. Mr. CALLE Y CALLE (Peru) said that, in view of the decision taken by the Conference concerning the joint consideration of the articles contained in part III and the annex, his delegation considered that the Neth-

erlands suggestion was not practical and could therefore support the Chairman's suggestion that the Committee should take a decision on the joint consideration of article 59 and article M of the annex.

25. Mr. EUSTATHIADES (Greece) said that his delegation supported the suggestion made by the Chairman to suspend the meeting so as to enable the regional groups to consult on the Netherlands suggestion.

26. Sir Vincent EVANS (United Kingdom), referring to rule 27 of the rules of procedure, formally moved the adjournment of the meeting in order to allow the regional groups to hold such consultations.

27. The CHAIRMAN called for a vote on the United Kingdom motion.

*The motion was adopted by 39 votes to 14, with 5 abstentions.*

*The meeting rose at 12.10 p.m.*

## 30th meeting

Wednesday, 26 February 1975, at 3.35 p.m.

Chairman: Mr. NETTEL (Austria).

*In the absence of the Chairman, Mr. Wershof (Canada), Vice-Chairman, took the Chair.*

**Consideration of the question of the representation of States in their relations with international organizations in accordance with resolutions 2966 (XXVII), 3072 (XXVIII) and 3247 (XXIX) adopted by the General Assembly on 14 December 1972, 30 November 1973 and 29 November 1974 (continued)**

*Article 59 (Personal inviolability) (continued) and article M of the annex (Personal inviolability) (A/CONF.67/4, A/CONF.67/C.1/L.92, L.94, L.96, L.124, L.138)*

1. Mr. MAAS GEESTERANUS (Netherlands) recalled that, at the previous meeting, his delegation had made a proposal to help the Committee to find a way out of the difficulties confronting it in connexion with article 59. After considering the comments made by other delegations, his delegation had submitted an amendment<sup>1</sup> to subparagraphs 9 and 10 of paragraph 1 of the draft of the International Law Commission (ILC) (see A/CONF.67/4). According to that amendment, part III of the draft articles would be combined with the annex, since the proposed definitions merged the definitions of delegations and observer delegations contained respectively in article 1 of the draft convention and article A of the annex. The observer delegations currently forming the subject of the annex would then be dealt with in exactly the same way as the delegations referred to in part III of the draft articles. That would obviate considering each article of the annex separately, and the time thus saved might be usefully

devoted to real negotiations on questions of substance, including that of ascertaining how far the facilities, immunities and privileges provided for were necessary for the performance of the functions of delegations and observer delegations.

2. Mr. KUZNETSOV (Union of Soviet Socialist Republics) said that he did not quite see from what difficulties the Netherlands delegation was endeavouring to extricate the Committee. The group of socialist countries had proposed (A/CONF.67/C.1/L.69) that article 59 should be considered in conjunction with article M of the annex, and it was now for the Committee of the Whole to decide whether or not it wished to consider that proposal.

3. The Netherlands amendment had serious implications. It called in question the actual text prepared by the ILC and it conducted to the annulment of the joint proposal by the group of socialist countries and to the reduction of the privileges and immunities accorded to delegations in part III of the draft articles. His delegation could therefore not support that amendment. From the procedural point of view, the Netherlands was undoubtedly entitled to submit an amendment to article 1 if it wished to do so, but his delegation would ask the Committee first to take a decision on the proposal submitted by the group of socialist countries.

4. The CHAIRMAN explained that in the absence of any other procedural motions which would have priority over the joint proposal by the group of socialist countries, it was, in fact, that proposal (A/CONF.67/C.1/L.96) which should be considered briefly and put to the vote.

5. Mr. KUZNETSOV (Union of Soviet Socialist Republics), in reply to a question by Mr. HELLINERS

<sup>1</sup> Distributed later under the symbol A/CONF.67/C.1/L.138.

(Sweden), said that if the proposal in document A/CONF.67/C.1/L.96 was adopted, article 59 of the draft convention and article M of the annex could be considered either simultaneously or consecutively.

6. Mr. EUSTATHIADES (Greece) recalled that, in submitting orally his delegation's amendment to article 1, the Netherlands representative had referred to the time which the adoption of that amendment would save. But that amendment contained a proposal which raised problems of prejudgement for, if it were adopted, the whole procedure for considering the draft and the annex would thereby be modified. Since the Netherlands proposal had not yet been distributed, he therefore moved that the meeting be suspended, in conformity with rule 27 of the rules of procedure.

*The motion was rejected by 36 votes to 7, with 20 abstentions.*

7. Mr. OSMAN (Egypt) submitted a motion for the closure of the debate, in accordance with rule 26 of the rules of procedure, and proposed that the seven-Power proposal (A/CONF.67/C.1/L.96) should then be put immediately to the vote.

8. Mr. MAAS GEESTERANUS (Netherlands) and Sir Vincent EVANS (United Kingdom) declared themselves against the motion.

*The motion was adopted by 35 votes to 19, with 16 abstentions.*

9. The CHAIRMAN invited the Committee to vote on the seven-Power proposal (A/CONF.67/C.1/L.96).

10. Sir Vincent EVANS (United Kingdom) asked to explain his vote before the voting took place.

11. The CHAIRMAN said that delegations wishing to explain their vote prior to the voting could do so, in conformity with rule 39 of the rules of procedure, but they should limit the duration of their explanations to three minutes.

12. Sir Vincent EVANS (United Kingdom) said that he would vote against the proposal in document A/CONF.67/C.1/L.96, as the debate had revealed that there was a good deal of obscurity concerning the definitions of the expressions "delegation to an organ", "delegation to a conference", "observer delegation to an organ" and "observer delegation to a conference", which definitions determined the scope of the articles contained in part III of the draft and in the annex. The Netherlands amendment would assist the Committee in considering the substance of the articles in part III and in the annex, by clarifying the definitions given in article 1. He did not see how the articles in the annex could be considered without first knowing to which categories of observers those articles applied.

13. Mr. YAÑEZ-BARNUEVO (Spain) said he thought that the articles relating to observer delegations to organs or to conferences had been submitted in the form of an annex because Governments had not had an opportunity to examine them and formulate comments on them, but that the ILC had intended to combine those articles with the articles in part III of the draft. In that way, apart from the introduction and the general provisions, the draft might have comprised

two main parts: one dealing with permanent missions, and the other with temporary delegations, whether delegations proper or observer delegations. He had therefore been in favour of considering the articles of part III of the draft in conjunction with the corresponding articles of the annex. But the Netherlands representative was now proposing a much simpler procedure which would make it possible to achieve the same result while saving a great deal of time—namely, that of enlarging the scope of the application of part III. He was therefore at a loss to understand why the sponsors of the proposal in document A/CONF.67/C.1/L.96 did not warmly welcome the Netherlands amendment, and he would abstain from participating in the voting on the seven-Power proposal.

*The seven-Power proposal (A/CONF.67/C.1/L.96) was adopted by 42 votes to 14, with 10 abstentions.*

14. Mr. ZEMANEK (Austria) said that he had not taken part in the vote on the seven-Power proposal because its authors had not given a satisfactory reply to his question concerning the legal status of the articles in the annex.

15. Mr. SURENA (United States of America) said he had voted against the seven-Power proposal for the reasons already indicated by his delegation in the previous meeting. He added that, so as not to hold up the Committee's work, his delegation would not raise formal objection prior to each consideration of an article in part III of the draft in conjunction with an article in the annex. But he wished to make it clear that his delegation's objection to the joint consideration of article 59 and article M applied likewise to the joint consideration of the other articles in part III and in the annex.

16. Mr. MOLINA LANDAETA (Venezuela) said that he had abstained in the vote on the seven-Power proposal, because he had doubts on the utility of studying, at the present stage, the articles contained in the annex. Also, he regretted that he had been unable to study the Netherlands amendment, which seemed to him very interesting.

17. Mr. MARESCA (Italy) said that he had been unable to support the seven-Power proposal because, in his opinion, the Committee should not depart from the method so far followed by conferences dealing with the codification of diplomatic law. Moreover, he considered that the Netherlands amendment solved the problem and that it should have been examined first.

18. Mr. JALICHANDRA (Thailand) said that he had not taken part in the vote for the same reasons as those given by the Venezuelan representative.

19. Mr. MUSEUX (France) said that he had abstained in the vote in a spirit of compromise, as he had not wished to oppose the procedure chosen by the majority of the Committee's members. He saw no objection to consideration of the provisions of the annex, but he thought that the course chosen did not constitute the best method of work. He regretted that the Netherlands amendment had not been considered first, in conformity with the usual procedure.

20. The CHAIRMAN pointed out that, in considering articles 59 and M, delegations could always refer,

if they wished, to the definitions given in article 1, and he recalled in that connexion that, with regard to article 54, the French delegation had submitted an amendment to subparagraph 27 of paragraph 1 of article 1 (A/CONF.67/C.1/L.10), which had been put to the vote and adopted. He asked the Netherlands representative whether he maintained his amendment (A/CONF.67/L.138).

21. Mr. MAAS GEESTERANUS (Netherlands) said that the sole purpose of his amendment had been to assist the Committee in finding an acceptable solution. For his part, he would be unable to take a decision on the articles in the annex so long as he did not know what would be the scope of the definitions given in that annex.

22. The CHAIRMAN invited the United States representative to introduce his amendment to article M of the annex.

23. Mr. SURENA (United States of America) agreed, so as not to hold up the Committee's work, to introduce forthwith his amendment to article M of the annex (A/CONF.67/C.1/L.124), although he did not think that that amendment should be considered in conjunction with article 59. The amendment dealt with the personal inviolability of observer delegates to organs and to conferences. But the scope of the annex had not been defined and it was not as yet fully clear what should be understood exactly by "observer delegates". As he understood the annex, at that time, he himself considered that the personal inviolability of observer delegates should be related to their official functions. Those functions were fairly limited and were not equivalent to the functions of the members of permanent missions or of the delegations referred to in part III of the draft. That point of view was in keeping with the principle stated by the ILC concerning the scope of the draft articles.

24. Mr. GÜNEY (Turkey) said that he proposed to confine his comments to article 59 and the amendments thereto; he reserved the right to comment later on article M of the annex. Article 59, which was the counterpart of article 28 and was modelled on article 29 of the Convention on Special Missions,<sup>2</sup> proclaimed the principle of the personal inviolability of the head of delegation and of other delegates and members of the diplomatic staff of the delegation. It also required the host State to respect and to ensure respect for those persons by taking all appropriate steps. The Ukrainian amendment in document A/CONF.67/C.1/L.92 amplified that requirement by stipulating that such steps should be designed not only to prevent, but also to prosecute and punish any attack on their persons, freedom or dignity. When article 28 had been considered, the Egyptian delegation had orally proposed a similar amendment, which had been adopted (19th meeting). His delegation considered that the Ukrainian amendment was acceptable as far as the substance was concerned. With regard to the form, the expression "prosecute and punish any attack" was unsatisfactory, for

what was meant was that the perpetrators of any attack should be prosecuted and punished.

25. The United Kingdom amendment in document A/CONF.67/C.1/L.94 was motivated by the absence of any provisions on personal inviolability in the Convention on the Privileges and Immunities of the United Nations and in the Convention on the Privileges and Immunities of the Specialized Agencies.<sup>3</sup> The ILC had of course gone beyond those two precedents, but it should not be forgotten that it had been entrusted with the task of codifying and progressively developing international law. The United Kingdom amendment sought to replace the principle of personal inviolability by the principle of immunity from arrest or detention. Since his delegation was in favour of proclaiming the principle of inviolability, its preference went to the International Law Commission's text.

26. Mr. PASZKOWSKI (Poland) pointed out to those delegations that considered that article 59 should be based on the two Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies, that when the United Nations General Assembly had instructed the ILC in 1958 to prepare the draft convention under consideration it had certainly not been unaware of the existence of those two instruments. The French delegation, which had asked for the question to be put on the General Assembly's agenda, had, in particular, observed that the existence of special conventions on the subject only emphasized the need to codify the rules set forth in them. It had added that the work should not only be based on those special conventions, but that general principles should also be elaborated which would enable the international law in that field to be progressively developed.<sup>4</sup>

27. It should be noted that, though the United Kingdom had been the first State to ratify the Convention on the Privileges and Immunities of the United Nations, one of the principal host States, the United States of America, had ratified it only recently. It could not be claimed therefore that that instrument had always governed the status of the representatives of States to the United Nations. Although it acknowledged the value of precedents, his delegation did not consider that old texts should always be slavishly adhered to. In addition to the two conventions he had mentioned earlier, pertinent rules existed in the constitutions of some international organizations, in multilateral conventions, in bilateral agreements, in the internal law of States, and, in particular, of host States, as well as in recent practice.

28. He understood and agreed with those delegations that wished to strengthen the universally acknowledged principle of personal inviolability, which was stated in article 59. On the other hand, he did not understand why the United Kingdom delegation and the United States delegation were proposing in their respective amendments (A/CONF.67/C.1/L.94 and L.124) that the scope of that principle should be restricted in the

<sup>3</sup> General Assembly resolutions 22 A (1) and 179 (II).

<sup>4</sup> See *Official Records of the General Assembly, Thirteenth Session, Sixth Committee, 569th meeting, para. 22.*

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

cases contemplated by article 59 of the draft and article M of the annex. The Polish delegation therefore could not support either of those two amendments.

29. Mr. TAKEUCHI (Japan) said that account should be taken first and foremost of the principle of functional need, of precedents and of practice. Many delegations wished to take the Vienna Convention on Diplomatic Relations as a model. While it was true that part II of the draft under consideration could be modelled to a certain extent on that Convention, part III had necessarily to depart from it, as it dealt specifically with delegations of temporary duration. Part III could not be faithfully modelled upon the Convention on Special Missions because that Convention contained ceremonial elements which were alien to delegations. Like the United Kingdom delegation, his delegation did not quite understand the purpose of the first sentence of article 59. The general idea expressed in it might be deleted without changing the substance of the provision in any way. The United Kingdom amendment (A/CONF.67/C.1/L.94) would unquestionably contribute to clarifying the position.

30. With regard to the Ukrainian amendment (A/CONF.67/C.1/L.92) his delegation was opposed to it, as it had been opposed to the oral amendment by Egypt to article 28.

31. Mr. SANGARET (Ivory Coast) stressed the fact that his delegation was very attached to the principle of inviolability, whether the latter applied to premises, to property or to persons. In all cases, the principle had to be absolute, and the ILC had been right to proclaim it in the first sentence of its article 59. The sentence could have sufficed, but the ILC had considered it wise to add some details: the persons contemplated in article 59 could not be liable to "any form of arrest or detention". Those two cases were doubtless the best known. But it might happen, for example, that persons benefiting from diplomatic status were manhandled or subjected to brutality without, however, being either arrested or detained. For that reason the Ivory Coast delegation proposed that the words "in particular" should be inserted between the words "be liable" and the words "to any form" in the second sentence of article 59; it also proposed that the same amendment should be introduced into article M of the annex.

32. He was unable to accept the United Kingdom amendment (A/CONF.67/C.1/L.94), which, although less restrictive than the second sentence of the International Law Commission's text, was nevertheless entirely satisfactory.

33. Referring to the Ukrainian amendment (A/CONF.67/C.1/L.92), he said that he was in favour of any amendment which, like that of the Ukraine, was aimed at strengthening the principle of personal inviolability.

34. Mr. CALLE Y CALLE (Peru) observed that the purpose of the draft convention under consideration was to determine the status of the representatives of States who formed part of permanent missions, permanent observer missions, delegations and observer delegations. Having regard to the Convention on the Privileges and Immunities of the United Nations and other international instruments, those persons were assimilated to ordinary diplomatic agents. That assimilation had come into being in 1928, when the Havana Convention regarding Diplomatic Officers had been drawn up. It was logical that at the present stage of diplomatic evolution, an attempt should be made to determine a uniform status.

35. Article 59 was based on article 29 of the Convention on Special Missions. When it had drafted the article under consideration, the ILC had benefited from the experience gained since the first codification convention on diplomatic law—the Vienna Convention on Diplomatic Relations—had been drawn up, and it had been right to proclaim, in article 59 and article M of the annex, the principle of personal inviolability. If a State was represented simultaneously by a permanent mission at United Nations headquarters, by a permanent observer mission to the European Communities, by a delegation to the current Conference and by an observer delegation to a conference taking place in another country, it was logical that in all those cases, it should expect that each of its representatives would be treated with the respect due to him and that his person would be inviolable. It was for that reason that he fully approved the wording of article 59 of the draft and of article M of the annex.

36. The Ukrainian amendment (A/CONF.67/C.1/L.92) aimed at strengthening the principle of inviolability without distorting it. It would have the effect of modifying article 59 and article M of the annex in the same way that article 28 had been modified, and it was acceptable to him.

37. The United Kingdom amendment (A/CONF.67/C.1/L.94) was based on the Convention on the Privileges and Immunities of the United Nations. That instrument did not provide for general personal inviolability because it was a special convention; it was confined to listing certain privileges and immunities. The future convention, on the other hand, would have a more general character and, by proclaiming the general principle of personal inviolability, article 59 was only sanctioning an existing practice.

38. As regards the amendment of the United States of America concerning article M of the annex (A/CONF.67/C.1/L.124), it seemed to bear rather on article O which related to the immunity from jurisdiction of the observer delegate. He would not be able to support an amendment of that kind, which would be contrary to the content and the heading of article M.

39. Mr. MOLINA LANDAETA (Venezuela) recalled that, during consideration of article 28, his delegation had supported the International Law Commission's text and had voted against the oral amendment to article 28 submitted by Egypt. In the present instance, his delegation would also support the Commission's text. It could not support the amendment in document A/CONF.67/C.1/L.94, since that amendment substituted the principle of immunity from arrest or detention for the general principle of personal inviolability. The Venezuelan delegation was unable to agree to any restriction of the principle of inviolability.

40. On the other hand, referring to his own personal case, he drew attention to the fact that the head of a

delegation could also be head of a permanent mission, and he wondered what the status of persons possessing that dual capacity would be under the amendment in document A/CONF.67/C.1/L.94. It could also happen, as had already happened in the case of Venezuela, that the head of a permanent mission, while forming part of a delegation to an organ or a conference, was not appointed head of that delegation.

41. With regard to the amendment in document A/CONF.67/C.1/L.92, some delegations considered that the phrase "shall take all appropriate steps to prevent, prosecute and punish any attack" should be considered as representing not an obligation on, but a simple recommendation to, the host State. The Venezuelan delegation did not share that view; as far as it was concerned, what was expressed by that phrase was not a recommendation but a duty incumbent on the host State. For Venezuela, a sacred principle existed—the principle of asylum. The institution of asylum had originated in Latin America and it formed part of American law. It had led several countries to sign conventions which they respected and, at the tenth Pan American Conference in Caracas, two model conventions—on diplomatic asylum and on territorial asylum, respectively—had been drawn up. While it was true that a number of criminals under ordinary law had taken advantage of that humanitarian institution, it was none the less a fact that it had enabled thousands of human lives to be saved. If Venezuela agreed to the phrase in question (A/CONF.67/C.1/L.92), and if the perpetrator of an attack, asserting that it was a political crime, requested asylum in Venezuela, and was accorded it, Venezuela would be unable to say that it had taken all appropriate steps to prosecute and punish the guilty person.

42. He did not, of course, mean that Venezuela neither punished nor prosecuted the perpetrators of criminal acts; he simply wanted to demonstrate that there could be exceptions to that rule. The principle of asylum was sacred for Venezuela, as was stated in its Constitution. It was one thing to undertake to take steps to prevent any attack on a person, it was another to undertake to prosecute and punish.

43. If article 59 were modified by either of the amendments in documents A/CONF.67/C.1/L.92 and L.94, the Venezuelan delegation would abstain in the vote on that article and would vote against the Ivory Coast oral amendment. On the other hand, if both of those amendments were rejected, the Venezuelan delegation would vote for the Ivory Coast amendment and for the article as amended.

44. Mr. OSMAN (Egypt) said he considered personal inviolability to be a sacred principle. At the present time, international organizations, sessions of organs of those organizations and conferences held under their auspices were multiplying on the international scene.

More and more frequently, the affairs of nations were debated and often settled in international forums, seeing that the majority of the small nations did not have the necessary means to defend their interests. To make their hopes and legitimate aspirations known, they should have maximum recourse to existing forums and they should be able to do so in complete independence. If those delegations could not be guaranteed freedom to express themselves without fear, secure from all threats or other form of intimidation, the working of the international organization was distorted. It was in that spirit that the Egyptian delegation would vote for article 59 and for the amendment in document A/CONF.67/C.1/L.92. It was unable to support the amendments in documents A/CONF.67/C.1/L.94 and A/CONF.67/C.1/L.124, which were restrictive in character.

45. Mr. SURENA (United States of America) said that his delegation did not quite understand the distinction drawn by several representatives between the United Nations Conventions on the Privileges and Immunities of the United Nations and the Privileges and Immunities of the Specialized Agencies on the one hand, and the present convention, on the other. Having regard to the scope which it had been agreed to give to the present convention, it would seem that the latter related essentially to the United Nations and the specialized agencies.

46. With regard to the 1928 Pan American Conference, which had decided to assimilate members of delegations to diplomats, he wished to stress the fact that the participants in that conference had not been under the obligation to respect article 105 of the Charter of the United Nations, according to which the functional aspect of privileges and immunities had to be taken into account.

47. Moreover, he hoped that members of the Committee would show that the *status quo* was not satisfactory and that the texts in force did not meet the functional criterion which, by virtue of article 105 of the Charter, was the criterion that the Committee had to apply.

48. The United States delegation would vote for the amendment in document A/CONF.67/C.1/L.94, since it shared the views expressed by the United Kingdom delegation on the question under consideration.

49. As it had done in the case of the oral amendment by Egypt to article 28, the United States delegation declared itself strongly opposed to the provisions contained in the amendment in document A/CONF.67/C.1/L.92; they were not only badly drafted but also constituted instructions to the host State, which were entirely out of place, in the circumstances, since they misprized the good faith of the host State.

*The meeting rose at 5.55 p.m.*