

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

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38th meeting of the Committee of the Whole

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host State was informed of the nationality of the person in question.

49. Mr. SOGBETUN (Nigeria) said that his delegation, too, had voted in favour of the amendment to

article 72 in document A/CONF.67/C.1/L.137, which it considered reasonable.

The meeting rose at 5.55 p.m.

38th meeting

Tuesday, 4 March 1975, at 10.50 a.m.

Chairman: Mr. NETTEL (Austria).

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

Article O of the annex (Immunity from jurisdiction) (concluded) (A/CONF.67/4, (A/CONF.67/C.1/L.97)

1. The CHAIRMAN drew the Committee's attention to the oral amendments proposed at the previous meeting to article O by the representatives of the United Kingdom and of Austria respectively (see 37th meeting, paras. 15 and 17).

2. Mr. RICHARDS (Liberia) proposed, as an oral subamendment to the United Kingdom oral amendment, that at the end of the paragraph the phrase "outside the performance of his tasks" should be inserted before the words "where those damages". That would bring the text into line with the International Law Commission's articles 30 and 61 (see A/CONF.67/4).

3. Mr. HAQ (Pakistan) deplored the fact that some delegations were treating the examination of the annex in a perfunctory manner. His delegation and others had wished to have time to consider the oral amendments to the article which had been proposed at the previous meeting, although he agreed that a provision identical to that proposed orally by the United Kingdom representative had been accepted by the Committee in articles 30 and 61. However, the Liberian subamendment had brought it closer to the original International Law Commission (ILC) text. He was therefore inclined to support the United Kingdom amendment as subamended.

4. Mr. AUST (United Kingdom) said that the purpose of the United Kingdom oral amendment had been to bring article O into line with articles 30 and 61 as already adopted. The principle that members of permanent missions and delegations did not enjoy immunity from civil and administrative jurisdiction in respect of claims for damages arising out of motor accidents had already been accepted and there was no reason to depart from it in the case of observer missions. Consequently, his delegation could not accept the oral subamendment proposed by the Liberian representative.

5. Mr. RICHARDS (Liberia) requested that his oral subamendment should be put to the vote.

6. The CHAIRMAN put to the vote article O and the amendments thereto.

The seven-Power amendment (A/CONF.67/C.1/L.97) was adopted by 39 votes to 3, with 18 abstentions.

The Austrian oral amendment was adopted by 29 votes to 13, with 14 abstentions.

The Liberian oral subamendment was adopted by 26 votes to 18, with 15 abstentions.

7. Sir Vincent EVANS (United Kingdom) said that in view of the adoption of the Liberian subamendment which nullified the intention of the United Kingdom amendment, he wished to withdraw it.

8. The CHAIRMAN said that it was not possible to withdraw an amendment which had been subamended.

The United Kingdom oral amendment, as subamended, was adopted by 25 votes to 15, with 21 abstentions.

Article O as a whole, as amended, was adopted by 30 votes to 4, with 29 abstentions.

9. Sir Vincent EVANS (United Kingdom), speaking in explanation of vote, said that he had been obliged to vote against his own amendment since the inclusion of the Liberian subamendment had nullified its intent.

10. Mr. JALICHANDRA (Thailand) said that in line with his delegation's preference for the International Law Commission's draft of paragraph 1 (d) in articles 30 and 61, he had voted for the Liberian oral subamendment to the United Kingdom amendment.

Article 73 (Laws concerning acquisition of nationality) (A/CONF.67/4, A/CONF.67/C.1/L.128)

11. Mr. FENNESSY (Australia), introducing his amendment (A/CONF.67/C.1/L.128) to article 73, said that his delegation proposed that the provisions of the article should be incorporated in an optional protocol rather than form an integral part of the convention under consideration, owing to the difficulty in reconciling the article with the requirements of the laws of citizenship of many countries, including his own. The problem was best illustrated by way of an example: if a permanent mission to an international organization established in Australia engaged locally, as a member of its service staff, a national of the sending State who had immigrated to Australia, any child born to that person during his employment with the mission could not, under the provisions of article 73,

acquire Australian citizenship by birth. The Australian Government would have difficulty in accepting such an anomalous situation.

12. His delegation had considered redrafting the article but it had finally decided that it was better to follow the precedent set by the Vienna Conventions on Diplomatic Relations¹ and on Consular Relations,² in which the question of acquisition of nationality was dealt with in optional protocols. The advantage of that course was that, by excluding the article from the convention as such, it allowed States which had difficulties regarding their citizenship laws to consider ratifying the rest of the convention.

13. The language of the optional protocol suggested in A/CONF.67/C.1/L.128 was based on the Optional Protocol concerning Acquisition of Nationality, done in Vienna in 1961,³ with some necessary changes in the preamble and articles I and II. He was, however, open to the views of the Drafting Committee regarding the final text.

14. Mr. GOBBI (Argentina) said that article 73 was based on customary diplomatic practice. Any departure from that practice was undesirable because it might lead to loss of nationality by members of delegations or of their households against their will and the will of the sending State. Furthermore, conflicts might arise if such persons found themselves subject to the domestic legislation of the host State. His objection was not to the substance of the optional protocol proposed by the Australian delegation, but to the device itself; if the protocol was not generally accepted, the principle it enshrined would not be applied in practice.

15. It was to be noted that the similar Optional Protocol concerning Acquisition of Nationality annexed to the Vienna Convention on Diplomatic Relations had been ratified by only a limited number of States which did not include the four countries where the majority of international organizations were concentrated. He would therefore vote against the Australian amendment.

16. Mr. PINEDA (Venezuela) said that he agreed with the comments made by the Argentine representative. As explained in paragraphs 1 and 2 of the International Law Commission's commentary to the article (see A/CONF.67/4), article 73 was based on the rule stated in article II of the Optional Protocol concerning Acquisition of Nationality adopted in 1961. It was intended particularly to cover the case of a woman member of a diplomatic mission who married a national of the host State and that of a child born to parents who were members of a foreign diplomatic mission and who were not nationals of the host State.

17. The choice lay between having an optional protocol on the subject, as proposed by the Australian delegation or an express provision as contained in the International Law Commission's draft article. While recognizing the merits of the Australian proposal, his delegation preferred the excellent text of the ILC as

being more in accordance with modern realities and the principles of diplomatic law, particularly in multi-lateral diplomacy, in which the link between the sending State and an international organization on the one hand and between the international organization and the host State, by means of a Headquarters Agreement, on the other. In some cases, bilateral diplomatic relations might not exist between the host State and the sending State concerned.

18. The article particularly protected the status of women who might otherwise find themselves deprived of their rights on marriage. It was in line with the principle established by the Convention on the Nationality of Married Women⁴ whereby the act of marriage could not *ipso facto* affect a woman's nationality. In International Women's Year, it was important that women should be accorded equality of treatment in international texts.

19. Mr. ABDALLAH (Tunisia) said that article 73 as drafted by the International Law Commission was precise, concise and clear: it thus had all the characteristics of a good legal rule. As his delegation saw it, the Australian proposal lacked those essential features.

20. He wished to ask the Expert Consultant whether he was aware of any practical cases of disputes relating to the nationality of children of members of a mission or of a delegation.

21. Mr. EL-ERIAN (Expert Consultant) said that no instances of actual disputes of that kind had come to his knowledge, nor had any been alluded to in the information supplied by the specialized agencies in response to the Secretariat's questionnaires. He himself had a son who had been born in New York while he was legal adviser to his country's permanent mission to United Nations Headquarters, but no problem of dual nationality would really arise in a case of that kind because United States legislation specified that United States citizenship was acquired by all persons born in the territory "and under the jurisdiction" of the United States; that latter requirement would not be present in such cases.

22. With regard to article 73 of the draft, however, he wished to stress that it related exclusively to the problem of nationality acquired "solely by the operation of the law of the host State". It did not affect in any way the question of acquisition of nationality by consent. That essential point should be kept in mind when discussing the article.

23. Mr. DANCE (United Kingdom) expressed his delegation's full support for the Australian proposal. The United Kingdom delegation did not in any way repudiate the principle underlying article 73; the fact was, however, that the effect of article 73 combined with the operation of United Kingdom nationality legislation would create undesirable anomalies.

24. To give but one example: a child born in the United Kingdom to a woman member of a delegation, and to her husband who was not a national of the sending State, could in certain cases be stateless. The only

¹ United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

² *Ibid.*, vol. 596, No. 8638, p. 261.

³ *Ibid.*, vol. 500, No. 7311, p. 223.

⁴ General Assembly resolution 1040 (XI), annex.

way of ensuring that such a child would never be stateless would be adopt a different approach from that taken in article 73.

25. It was, of course, desirable to include a clear provision on the nationality problem but it had to be remembered that the attempt to include such a provision in the draft convention on diplomatic relations had led the 1961 Vienna Conference into great difficulties. Finding itself totally unable to formulate a satisfactory provision on the subject, that Conference had finally recognized that the only acceptable solution was to deal with the question in an optional protocol. Exactly the same course had been adopted with respect to the Vienna Convention on Consular Relations.

26. It was a fact that neither the 1961 Optional Protocol nor the 1963 Optional Protocol had been ratified by anything like as many States as the corresponding Conventions. It was, however, significant that the combined operation of the Conventions and Protocols had not led to significant problems.

27. Mr. AVAKOV (Union of Soviet Socialist Republics) stressed that the purpose of article 73 was to ensure that members of a mission or delegation, and members of their families, would not “solely by the operation of the law of the host State” acquire the nationality of that State. The purpose of the article was definite and clear and the reasons for it were well explained in the commentary of the ILC to the article.

28. His delegation strongly supported article 73 and would vote against the Australian proposal to convert its contents into an optional protocol. Reference to the precedents of the 1961 and 1963 Optional Protocols was not convincing. There could be no question of simply imitating what had been done at the 1961 and 1963 Conferences. Those Conferences, for one thing, had dealt with problems of bilateral relations between States; the draft articles now under discussion dealt with the problems of multilateral diplomacy and with the triangular relationship between sending State, host State and international organization.

29. Conflicts of nationality laws could lead to cases of dual nationality and cases of statelessness. Those conflicts occurred mainly between countries which conferred nationality *jure sanguinis*, i.e. by virtue of descent, and countries which attributed nationality *jure soli*, i.e. by virtue of birth on the territory of the country.

30. Statelessness was an evil to be avoided in the interests of both the persons concerned and of the States members of the international community. Statelessness was, for the individual affected, a condition totally at variance with the letter and spirit of the Universal Declaration of Human Rights. At the same time, the existence of stateless persons created difficulties for States.

31. Efforts to eliminate or reduce cases of statelessness were being constantly made on a bilateral basis. As his delegation saw it, the provisions of article 73 would, by having binding force for all parties to the future convention, make a useful contribution to the efforts to reduce statelessness.

32. Mr. WERSHOF (Canada) said that his country, like Australia and the United Kingdom, would be faced with a real legal and practical problem if article 73 were incorporated as it stood in the future convention.

33. No difficulty arose under Canadian law in the case of a child born in Canada to a diplomat at Ottawa or to a member of a permanent mission of the International Civil Aviation Organization at Montreal; Canadian nationality laws made it quite clear that the child would in that case not acquire Canadian citizenship solely by the operation of Canadian law.

34. A serious problem did arise, however, where an embassy at Ottawa or a mission at Montreal employed as a member of its administration or service staff a non-Canadian who was a permanent resident of Canada, i.e. a person who had entered the country as an immigrant but who had not yet become a naturalized Canadian.

35. With the provisions of article 73 as they stood, the Canadian-born child of such a member of the staff—who was anything but a diplomat of the sending State—would not acquire Canadian citizenship and might then perhaps be stateless. For that reason, the Canadian Government could not possibly give effect to the provisions of article 73. If the Committee failed to adopt the Australian proposal for an optional protocol some other solution would have to be found to obviate the grave difficulties to which the present text of article 73 would give rise.

36. Mr. TAKEUCHI (Japan) said that the ILC had acted consistently when it had included article 73 in its draft. As indicated in its commentary, the Commission had, as far back as 1958, included a similar provision in its draft articles on diplomatic intercourse and immunities that had been submitted to the 1961 Vienna Conference. After a lengthy discussion, that Conference had converted the provision in question into the 1961 Optional Protocol. For his part, he would urge the Committee to be consistent with the course taken by the 1961 Vienna Conference. Therefore, he supported the Australian proposal.

37. Mrs. DE MERIDA (Guatemala) said that the idea embodied in article 73 had the full support of her delegation. The article contained a clear and precise legal rule which had the advantage of establishing a universally applicable régime in the matter for all officials of sending States that would be governed by the future convention.

38. The provisions of the article had the additional advantage of avoiding discriminatory treatment against the child of a woman member of a delegation by ruling out the automatic acquisition of the nationality of the host State solely by the operation of the law of that State.

39. In 1975, which was an International Women's Year, her Government was actively participating both at the national level and at the international level in furthering the rights of women. As she saw it, the effect of the provisions of article 73 now under discussion would be to promote recognition and observance of the rights of women.

40. For those reasons and those already stated by a number of other speakers, her delegation would vote against the Australian proposal (A/CONF.67/C.1/L.128).

41. Mr. BARAKAT (Yemen) said that his delegation could not support the Australian proposal, which in substance did not differ from the provisions of article 73 but which would have the effect of turning those provisions into a separate convention, with attendant procedural delays and complications.

42. Mr. SMITH (United States of America) said that the laws on the acquisition of nationality were as varied as the countries participating in the present Conference. It was also fair to say that there probably was no sovereign right so generally agreed upon as the right of a State to determine how its nationality was acquired or lost. Some countries based attribution of nationality primarily on descent, whereas others based it primarily on place of birth; United States law followed both principles to some extent.

43. In that situation, the efforts made by the ILC to deal with the resulting problems deserved commendation. The provisions of article 73, however, would create insuperable difficulties for the United States, as for a number of other countries.

44. There was no precedent for the inclusion in an international convention of an article on the lines of article 73. The fact that the 1961 and 1963 Optional Protocols had attracted few ratifications actually illustrated that point. Had the substance of the two Protocols been included in the 1961 and 1963 Vienna Conventions, those Conventions themselves would not have been ratified by a large number of States.

45. It should be stressed that the Conference could not engage in the task of dealing with the problem of conflict of nationalities. Any attempt to do so would require a protracted conference solely for that purpose. What was more, that problem was the same for bilateral relations and was not altered by the fact that an international organization was involved.

46. For those reasons, his delegation fully supported the Australian proposal and warned that the inclusion of article 73 in the future convention would raise yet another obstacle to its ratification on the part of many countries.

47. The CHAIRMAN invited the Committee to vote on the Australian proposal (A/CONF.67/C.1/L.128), on the understanding that the vote related to the principle of dealing with the problem of acquisition of nationality in an optional protocol rather than in an article in the body of the future convention. After that the Committee would vote on the article.

The Australian proposal was rejected by 35 votes to 19, with 13 abstentions.

Article 73 was adopted by 54 votes to 5, with 11 abstentions.

Article 74 (Privileges and immunities in case of multiple functions) (A/CONF.67/4)

48. The CHAIRMAN observed that no amendments had been submitted to article 74. If there were no comments, he would take it that the Committee agreed to

adopt article 74 in the form in which it had been proposed by the ILC.

It was so decided.

New article proposed by the Australian delegation (A/CONF.67/C.1/L.139)

49. Mr. STUART (Australia), introducing the Australian proposal for a new article 74 *bis* (A/CONF.67/C.1/L.139), said that its purpose was to enable host States to carry out effectively the obligations imposed upon them by articles 28 and 29 for permanent missions and articles 59 and 60 for delegations.

50. The new article would have the advantage of giving balance to the proposed convention. It also emphasized that action to deal with an offence had to begin with evidence that an offence had taken place and indicated that sending States should in their own interests volunteer to assist in investigations. Although some attacks, such as an attempted destruction by demonstrators of the premises of a mission, were likely to be made in public view and be easily and promptly dealt with by the host State under its normal police powers, such attacks as letter-bombs opened by the members of a mission in the privacy of their offices might be known only to the victims themselves. Cases had been known of a diplomat failing to inform the authorities of the host State of an attack on him of which the authorities themselves were unaware; in such a case, no remedial action could possibly follow.

51. It was obvious in such cases that persons whose inviolability was infringed, or other staff on their behalf, would benefit if they lodged a complaint and offered their co-operation to the host State in bringing offenders to justice. Likewise, a sending State, although not obliged to do so, should find it in its interests to offer evidence in the course of an investigation. A practical provision on the subject was at present lacking in the draft and the purpose of the Australian amendment was to remedy that omission.

52. Mr. DO NASCIMENTO E SILVA (Brazil) said that while he understood the underlying reasons for the Australian proposal he could not support it. The Conference could not attempt to provide for the peculiarities of all legal systems. It could only frame general rules that created obligations incumbent upon host States in the matter.

53. Mr. SMITH (United States of America) favoured the Australian proposal because it introduced an element of balance. In its discussion of articles 28 and 29 and articles 59 and M, the Committee had introduced provisions which would have the effect of imposing upon the host State an obligation to prosecute and punish those responsible for attacks against the premises of a mission or delegation or against any one of its members.

54. Certainly, no reasonable person could ask the host State to take such action without that State being assured of the sincere co-operation of the sending State, which was the party directly concerned. All that the Australian proposal demanded from the sending State was co-operation, without which the provisions of articles 28, 29, 59 and M would be meaningless.

55. He could mention two recent cases which had occurred in New York of attacks against permanent missions. In the first case, the mission concerned had fully co-operated with the investigating authorities and the guilty person had been found, convicted and punished. In the other case, no such co-operation had been forthcoming and the member of the mission concerned, who had been the only witness of the offence, had refused to testify. Under United States law, no case could in such circumstances possibly be made against the person charged.

56. The Australian proposal (A/CONF.67/C.1/L.139) made no unreasonable demands upon the sending State of its mission. It was also fully consistent with the provisions of the relevant articles of parts II and III concerning immunity from jurisdiction and the procedures for waiver of immunity. His delegation strongly urged its adoption by the Committee.

57. Mr. KUZNETSOV (Union of Soviet Socialist Republics) said that the Australian proposal would virtually have the effect of placing the burden of investigating attacks on a mission or delegation, or any of its members, upon the sending State. An attempt to achieve that objective had already been made during the discussion on article 28 and had been rejected by the Committee.

58. His delegation strongly felt that the sending State could not possibly participate in an investigation of an attack committed upon its mission on the territory of the host State. It was for the latter State, as the territorial State, to carry out such investigation itself.

59. For those reasons, his delegation opposed the Australian proposal.

60. Sir Vincent EVANS (United Kingdom) said that his delegation fully supported the Australian proposal. Apart from the reasons adduced by its sponsor, he drew the Committee's attention to the fact that the question of the co-operation of the sending State in the kind of proceedings referred to in the proposal had been fully considered by the General Assembly when it had negotiated the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.⁵ Article 10 of that Convention imposed upon the States parties thereto the duty to "afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the crimes set forth in article 2, including the supply of all evidence at their disposal necessary for the proceedings".

61. His delegation failed to understand how delegations which, in the General Assembly, had voted in favour of the inclusion of that article 10 in the 1973 Convention could now oppose the inclusion of precisely the same principle in the context of the draft convention now being negotiated.

62. The statement that the proposed new article 74 *bis* would place the burden of investigation upon the sending State was incorrect. He could not vouch for the meaning of the translations into other languages, but

the English original text of the Australian proposal merely stated that the sending State "shall fully co-operate with the host State" in the conduct of a necessary investigation or prosecution. Those words could not be interpreted as placing the burden of investigation upon the sending State.

63. During the discussion on article 28, a number of delegations had submitted an amendment which included a provision to the effect that a member of a permanent mission could not be requested to make statements or to give evidence. Following a discussion, that proposal had been deleted from the amendment. To be consistent with that decision on article 28, the Committee should now adopt the Australian proposal for a new article 74 *bis*.

64. Mr. RICHARDS (Liberia) asked the sponsor to explain the meaning of the words "in the conduct of any investigation or prosecution".

65. Mr. STUART (Australia) said that the meaning of that phrase would be decided by the sending State and the host State in the light of the circumstances at the time and in a spirit of co-operation.

66. Mr. YAÑEZ-BARNUEVO (Spain) said that, during the discussion of other articles of the draft, his delegation had referred to a number of recent cases in which Spanish missions or delegations to international organizations had been the victims of attacks or threats. In a number of those cases, the Spanish mission or delegation had been asked whether it wished to lodge a complaint or file a criminal charge. In all those cases, it had been the consistent attitude of the Spanish mission or delegation concerned to state that investigation and prosecution was a matter for the host State. All the attacks in question were, at least under Spanish law, offences which, as a matter of course, had to be investigated and the offenders had to be prosecuted regardless of any complaint or charge being made by the injured party.

67. For those reasons, although his delegation was not opposed to the principle embodied in the proposed new article, it could not support it in the form in which it had been proposed. The language therein used could be interpreted in such a way as to give a host State a convenient pretext to avoid carrying out the necessary investigations.

68. He accordingly suggested two drafting changes to the sponsor of the proposed new article 74 *bis*. The first was to delete the word "fully" and to replace it by the following phrase, preceded and followed by commas: "in so far as compatible with the independent exercise of its functions". His second suggestion was to insert at an appropriate place, and possibly after the words "the sending State shall", a formula such as "where necessary".

69. He hoped that the sponsor of the proposal would accept those suggestions, the first of which would make it clear that the permanent mission or delegation would not become an investigating body. As to the second, it would serve to ensure that any co-operation required of the mission or delegation would not in any way hinder the exercise of its official duties.

⁵ General Assembly resolution 3166 (XXVIII), annex.

70. Mr. EUSTATHIADES (Greece) said that his delegation could support the Australian proposal for a new article 74 *bis* because it agreed with the idea that the sending State should co-operate with the host State in the conduct of an investigation or prosecution. In order to ensure that the proposed article would not imply that the host State could abuse such co-operation, it might be amended as suggested by the representative of Spain, but he thought the same results could be achieved by simply deleting the word "fully" between the word "shall" and the word "co-operate".

71. Mr. RAOELINA (Madagascar) said his delegation was of the opinion that the new article 74 *bis* proposed by Australia constituted an obligation on the part of members of missions and delegations to co-operate with the host State in the conduct of investigations or prosecutions. In view of the problems of reciprocity which arose in that connexion, however, his delegation had some difficulty in adopting a position on that amendment and would have to vote against it unless the Australian delegation could accept less strict wording.

72. Mr. PINEDA (Venezuela) said that his delegation would vote against the Australian amendment because it considered that the principle of reciprocity did not apply in the same way in the case of multilateral relations as it did in the case of bilateral relations. Moreover, account had not been taken in the Australian amendment of cases involving a sending State which had no relations with the host State. His delegation did, of course, understand the need for co-operation envisaged in the Australian amendment, but was of the opinion that the standard it was intended to establish was not necessarily appropriate.

73. Mr. TAKEUCHI (Japan) said that his delegation would like to propose an oral amendment to the Australian proposal intended to delete the word "fully" and to add the words "as fully as possible" after the word "co-operate". The purpose of that oral amendment was to take account of the fact that, in some countries, such as his own, the sending State had to lodge the complaint in order that the prosecution process should be carried out in certain cases such as offences against a national flag.

74. Mr. CALLE Y CALLE (Peru) said it was evident that, in practice, the sending State would be ready to co-operate as fully as possible with the authorities of the host State in the conduct of an investigation or prosecution. His delegation could not, however, support the Australian amendment because, as the representative of Brazil had stated, it seemed to make the conduct of an investigation or prosecution entirely dependent upon the request of the sending State. The text might be improved by the introduction of the oral amendments suggested by the representatives of Spain and Japan, which brought the proposed new article into line with article 10 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

75. He requested the representative of Australia to explain whether the provisions of articles M and N of

the annex would be related to the proposed new article 74 *bis*.

76. Mr. MARESCA (Italy) said that his delegation could support the Australian amendment and the drafting suggestions made by the representatives of Spain and Japan because it was of the opinion that all systems of immunity were based on tacit acceptance of the principle of co-operation between the sending State and the host State and that if the agents of the sending State could always take refuge behind their immunity, it would be difficult for the host State to fulfill its obligations under international law.

77. Mr. STUART (Australia) said that his delegation could accept any of the proposed oral amendments which might improve the text of its amendment, but, to simplify matters, it felt that the best choice would be the oral amendment suggested by the representative of Japan and he revised his proposal accordingly. Referring to the question asked by the representative of Peru, he said that, in view of the progress made in the consideration of the draft articles, he was prepared to revise the last part of the proposed new article 74 *bis* to read: "articles 28, 29, 59, 60, M and N".

78. The CHAIRMAN put to the vote the Australian amendment (A/CONF.67/C.1/L.139), as revised by the sponsor.

The amendment as revised was adopted by 24 votes to 23, with 18 abstentions.

79. Mr. YAÑEZ-BARNUEVO (Spain), speaking in explanation of vote, said that he appreciated the spirit of compromise in which the Australian delegation had accepted the oral amendment proposed by Japan, but considered that that drafting change did not take sufficient account of the doubts his delegation had expressed with regard to the proposed new article. It had therefore voted against the revised Australian amendment and would interpret the new article 74 *bis* to mean that members of missions and delegations could not be required to take part in investigations or to give testimony in cases where the host State did not initiate the conduct of the investigation or prosecution.

80. Mr. WERSHOF (Canada), speaking in explanation of vote, said that his delegation had voted in favour of the revised Australian amendment, because it considered that the proposed convention should take account of the legal and practical problems which the host State encountered in the prosecution of cases involving members of the missions and delegations of sending States.

81. Mr. SANGARET (Ivory Coast), speaking in explanation of vote, said that his delegation had voted against the revised Australian amendment because it considered that it was obvious that the sending State should co-operate with the host State in the investigation or prosecution of crimes against members of missions and delegations and that, in any case, the host State had the main responsibility for conducting such investigations or prosecutions.

82. Mr. GOBBI (Argentina), speaking in explanation of vote, said that, although his delegation agreed with the principle embodied in the new article 74 *bis*,

it had voted against the revised Australian amendment because it did not think that missions or delegations should be required to initiate proceedings in respect of an investigation or prosecution. Moreover, it was concerned by the trend in the Committee towards the adoption of standards of international law which related only to domestic law and considered that it was time to reverse that trend.

83. Mr. MITIĆ (Yugoslavia), speaking in explanation of vote, said that his delegation had voted against the revised Australian amendment not because it was against the principle of co-operation, which would benefit sending States and host States alike, but because it could not agree that such co-operation should mean that members of missions and delegations would have the obligation to testify in the host State or to take part in the conduct of investigations carried out in accordance with other articles of the proposed convention.

84. Mr. SURENA (United States of America), speaking in explanation of vote, said that his delegation had voted in favour of the revised Australian amendment even though it considered that the new article stated the obvious, namely, that co-operation was necessary between the sending State and the host State in

the conduct of investigations or prosecutions. However, his delegation was of the opinion that the article was absolutely necessary in the present convention in order to balance equally obvious points included in other provisions of the convention. Thus, the host State was obliged to prosecute offenders and the sending State was obliged to co-operate with the host State in any necessary investigation or in the prosecution itself.

Article 75 (Respect for the laws and regulations of the host State) (A/CONF.67/4)

85. The CHAIRMAN said that six amendments and one subamendment had been submitted to article 75 and that the discussion of that article would be very difficult because most of the amendments were contradictory. He therefore suggested that the sponsors of the amendments or the regional groups should hold consultations in order to find a compromise solution either for the amendments or for the text of article 75 proposed by the ILC. In order to leave time for those consultations, he also suggested that the Committee should discuss article 75 after it had completed its consideration of article 1 and article A of the annex.

The meeting rose at 12.50 p.m.

39th meeting

Tuesday, 4 March 1975, at 3.35 p.m.

Chairman: Mr. NETTEL (Austria).

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

Article 75 (Respect for the laws and regulations of the host State) (continued) (A/CONF.67/4, A/CONF.67/C.1/L.78, L.119, L.132, L.134 and Corr.1, L.141, L.144, L.149)

1. The CHAIRMAN recalled that at the previous meeting he had suggested that the discussion of article 75 should be deferred on account of the number of amendments, oral amendments and subamendments, of which it was the subject. He hoped that the members of the Committee would agree on a joint proposal and would wait until the substantive articles of the draft had been discussed before taking up article 75.

2. Mr. KUZNETSOV (Union of Soviet Socialist Republics) said that his delegation was not categorically opposed to that proposal, all the more so since the subamendment by Japan (A/CONF.67/C.1/L.149) to the Nigerian amendment (A/CONF.67/C.1/L.78) had only been distributed at the current meeting. However, the consultations that had taken place between delegations had revealed very great divergencies of view on that article and, if discussion of the question were postponed until later, there was a risk of being faced

with a still greater number of amendments and subamendments, and that at a time when the Committee would have even less time to devote to its discussion.

3. Mr. SOGBETUN (Nigeria) said that there were several gaps in the text of the article prepared by the International Law Commission (ILC) (see A/CONF.67/4). When the Committee had discussed article 9, on the appointment of the members of the mission, it had tried to make the same type of amendment to it, but in the end it had been decided to wait until article 75 had been discussed.

4. Under the terms of paragraph 2 of the present text of the article, in case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from jurisdiction, four possible courses of action were open to the sending State: first, to waive the immunity of that person; second, to recall him; third, to terminate his functions, and fourth to secure his departure. In the Nigerian delegation's view, the main point in that article was to provide for the recall by the sending State of the person concerned, as was the practice followed in traditional diplomacy: when the ambassador of a State to another country was guilty of an offence and was declared *persona non grata*, he was simply recalled to his country of origin. The Nigerian delegation's amendment (A/CONF.67/C.1/L.78) was aimed at such a simplification. Under the terms of the draft convention, the members of missions and of delegations were going to enjoy certain privileges and