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**Third Report on Relations between States and Inter-governmental Organizations by  
Abdullah El-Erian, Special Rapporteur**

Topic:  
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# RELATIONS BETWEEN STATES AND INTER-GOVERNMENTAL ORGANIZATIONS

[Agenda item 2]

## DOCUMENT A/CN.4/203 AND ADD.1-5

**Third report on relations between States and inter-governmental organizations,  
by Mr. Abdullah El-Erian, Special Rapporteur**

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### Introduction

1. In 1967, the Special Rapporteur presented to the Commission, at its nineteenth session, a second report on relations between States and inter-governmental organizations.<sup>1</sup> As stated in paragraph 43 of its report on the work of its nineteenth session, "the Commission was unable to discuss it owing to the pressure of other work and to the unavoidable absence of [the Special Rapporteur]."<sup>2</sup> The Commission also stated that the second report, together with the report which the Special Rapporteur intends to submit at the twentieth session, "will contain a full set of draft articles on the privileges and immunities of representatives of States to inter-governmental organizations, and both reports will be submitted for discussion in 1968."<sup>3</sup>

2. The second report contained: (a) a summary of the Commission's discussions at its fifteenth and sixteenth sessions; (b) a discussion of the general problems relating to the diplomatic law of international organizations; (c) a survey of the evolution of the institution of permanent missions to international organizations; (d) a brief account of the preliminary questions, whose discussion by the Commission should precede the consideration of the draft articles; and (e) the text of draft articles relating to general provisions, of an introductory nature.

3. The present report is intended to present a full set of draft articles, with commentaries, on the legal position of representatives of States to international organizations, consisting of four parts:

- part I. General provisions;
- part II. Permanent mission to international organizations;
- part III. Delegations to organs of international organizations or to conferences convened by international organizations;
- part IV. Permanent observers of non-member States to international organizations.

4. Since the Special Rapporteur's second report was written, a discussion on the question of diplomatic privileges and immunities took place in the Sixth Committee during the twenty-second session of the General Assembly. The discussion touched on a number of the general problems and preliminary questions raised by the Special Rapporteur in his second report in relation to the diplomatic law of international organizations in general, and the legal position of representatives of States to international organizations in particular. The Special Rapporteur has therefore deemed it appropriate to include a summary of that discussion in the present report.

### CHAPTER I

#### Summary of the Sixth Committee's discussion at the twenty-second session of the General Assembly

5. At its 1592nd plenary meeting, held on 25 October 1967, the General Assembly decided to include the following item in the agenda of its twenty-second session;

Question of diplomatic privileges and immunities:

- (a) Measures tending to implement the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations and the privileges and immunities of the staff and of the Organization itself, as well as the obligations of States concerning the protection of diplomatic personnel and property;
- (b) Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations.

At the same meeting the General Assembly allocated the item to the Sixth Committee for consideration and report. The Sixth Committee examined the item at its 1010th to 1017th meetings, held between 29 November and 7 December 1967.<sup>4</sup>

6. The discussion in the Sixth Committee revealed widespread agreement on the need for the representatives

<sup>1</sup> See *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/195 and Add.1, pp. 133-153.

<sup>2</sup> *Ibid.*, document A/6709/Rev.1 and Rev.1/Corr.1, p. 369.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 98, document A/6965.

of Member States to the United Nations, the Organization and its staff to enjoy appropriate privileges and immunities, and on the importance of respect for these privileges and immunities for the effective functioning of international organizations. The development of international organizations since 1945 and their central position in present-day international relations were stated to have served to underline the significance of the diplomatic law of international organizations. It was emphasized that if Member States wished the work of the Organization to be properly carried out, they must be prepared to observe strictly the immunities designed to secure the free and successful performance of its functions.

#### A. BILATERAL AND MULTILATERAL DIPLOMACY

7. Many delegations noted that the considerations on the need for the enjoyment by representatives sent on behalf of one State to another of a special status so as to enable them to perform their functions under conditions of adequate security and without being subject to pressures or constraint on the part of receiving States, applied in the case of representatives of Member States to the United Nations and with respect to the Organization itself and its staff. It was pointed out, however, that the application to representatives to international organizations of the rules concerning diplomatic missions between States would be *mutatis mutandis*. The application by the host State of the principle of reciprocity in determining the treatment to be given to the representatives of individual Member States was criticized by some delegations on the ground that this principle was inappropriate outside the framework of bilateral relations.

#### B. LEGAL NATURE OF THE DIPLOMATIC LAW OF INTERNATIONAL ORGANIZATIONS AS A PART OF GENERAL INTERNATIONAL LAW

8. The legal nature of the 1946 Convention on the Privileges and Immunities of the United Nations<sup>5</sup> and its relationship to the Charter of the United Nations and the customary norms of international law were raised in the discussion. The majority of the delegations that spoke on this point noticed that the purpose of the Convention on the Privileges and Immunities of the United Nations was to determine the details of the application of Article 105 of the Charter. Article 105 (1) and Article 105 (2) provide that the Organization, representatives of Member States and the officials of the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of the purposes of the Organization and the independent exercise of their functions. Article 105 (3) envisages that further content could be given to the term "necessary" by the General Assembly: it provides that the Assembly may make recommendations with a view to determining the details of the application of the

first two paragraphs or may propose conventions to the Members of the United Nations for this purpose. Those delegations expressed the view that "the standards and principles of the Convention had been so widely accepted as to have become a part of general international law governing the relations between States and the United Nations". They concluded that the contents of the Convention "now formed part of general international law between the Organization and its Members and were accordingly binding on States even in the absence of an express act of accession". Many speakers indicated that the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations "were based not only on a system of conventional norms but also on the progressive development of customary law".

9. One delegation, however, invoked the rule *pacta tertiis nec nocent nec prosunt* to assert that the 1946 Convention was not regarded as being in force for States which had not adhered to it in accordance with the procedure indicated therein, and that it was thus difficult to accept that such States should be able to invoke the Convention when they were not parties to it. Consequently, that delegation concluded, the Convention on the Privileges and Immunities of the United Nations should remain *res inter alios acta* with regard to States which have not become parties to it.<sup>6</sup>

10. Another delegation stated that a detailed legal study of the instruments concerned would be necessary to determine the precise extent to which the 1946 Convention was binding upon States not parties to it.<sup>7</sup>

#### C. INTEREST AND ROLE OF THE UNITED NATIONS IN THE PROTECTION AND OBSERVANCE OF THE PRIVILEGES AND IMMUNITIES OF THE REPRESENTATIVES OF MEMBER STATES

11. It was generally agreed that the Organization itself had an interest in the enjoyment by the representatives of Member States of the privileges and immunities necessary to enable them to carry out their tasks, and that the Secretary-General should maintain his efforts to ensure that the privileges and immunities concerned were respected.<sup>8</sup> References were made to the fact that the obligations of Member States under the 1946 Convention, including those affecting representatives of other Members, were obligations to the Organization.

12. Another view was, however, expressed in favour of making a distinction between two categories of privileges and immunities. The first category related to privileges and immunities of the Organization itself and its agents, a matter in which the Organization "was competent to demand respect for or permit the waiving of the immunities concerned". The second category related to privileges and immunities of representatives of Member States, a matter in which it was for the State

<sup>5</sup> *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 184.

<sup>6</sup> See *Official Records of the General Assembly, Twenty-second Session, Sixth Committee, 1011th meeting*, para. 72.

<sup>7</sup> *Ibid.*, 1014th meeting, para. 18.

<sup>8</sup> *Ibid.*, *Twenty-second Session, Annexes*, agenda item 98, document A/6965, para. 14.

to exercise diplomatic protection in respect of its representatives, and in which "the Organization should not usurp the role of the State concerned by taking up the question". According to this view "the legal bond existing between the representative of a Member State and the Organization could not be equated with the relationship which, under Article 100 of the Charter, existed between the United Nations on the one hand and the Secretary-General . . . on the other".<sup>9</sup>

#### D. STATEMENT BY THE UNITED NATIONS LEGAL COUNSEL

13. At the close of the Committee's discussion of the item, the Legal Counsel, speaking as the representative of the Secretary-General, made a statement at the 1016th meeting of the Sixth Committee.<sup>10</sup> In his statement the Legal Counsel expressed a number of views which can be summed up as follows:

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

(b) The Convention on the Privileges and Immunities of the United Nations, which was adopted by the General Assembly on 13 February 1946 and proposed for accession by each Member of the United Nations, is of a very special character—in fact, it is a convention *sui generis*. Nearly all multilateral conventions refer to the ratifying and acceding States as parties and the rights and obligations created are between the parties. The Convention on the Privileges and Immunities of the United Nations is different. Throughout, in referring to rights and obligations, it refers to Members of the United Nations. Section 35 of the Convention makes clear the character of each Member's obligations vis-à-vis the Organization itself.

(c) The fact that these obligations are to the United Nations is not a mere formality. The Organization itself has a real interest in assuring the privileges and immunities necessary to enable the representatives of Members to attend and participate freely in all meetings and conferences. If the representatives of Members are prevented from performing their functions, the Organization could not function properly. It therefore seems elementary that the rights of representatives should properly be protected by the Organization and not left entirely to bilateral action of the States immediately involved.

<sup>9</sup> *Ibid.*, Twenty-second Session, Sixth Committee, 1011th meeting, paras. 79 and 80.

<sup>10</sup> *Ibid.*, Twenty-second Session, Annexes, agenda item 98, document A/C.6/385.

(d) The privileges and immunities as defined in the Convention are the minimum privileges and immunities deemed necessary by the Assembly to be accorded by all Member States in implementation of Article 105 of the Charter.

(e) It should be noted that there are now ninety-six States which have acceded to the Convention. Moreover, in most of the remaining Member States as well as in many non-members, the provisions of the Convention have been applied by special agreement. While it may be true that in 1946 many of the provisions of the Convention had the character of *lege ferenda*, in the nearly twenty-two years since the adoption of the Convention by the Assembly its provisions have become the standard and norm for governing relations between States and the United Nations throughout the world. The standards and principles of the Convention have been so widely accepted that they have now become a part of the general international law governing the relations of States and the United Nations.

14. It must be noted that at the conclusion of the Legal Counsel's statement the Chairman of the Sixth Committee proposed that the Committee should not discuss the statement, but that this action should not be taken to imply that the Sixth Committee had adopted any position with regard to it. On this understanding it was decided that the entire statement should be circulated as a Committee document.

#### E. GENERAL ASSEMBLY RESOLUTION 2328 (XXII)

15. On 18 December 1967 the General Assembly adopted resolution 2328 (XXII) on the "Question of diplomatic privileges and immunities". Special mention should be made of the sixth preambular paragraph and operative paragraph 3 in view of their bearing on some of the above-mentioned problems of the diplomatic law of international organizations.

The sixth preambular paragraph reads:

*Recalling further* that the 1946 Convention on the Privileges and Immunities of the United Nations confirms and specifies the provisions of Article 105 of the Charter and lays down rules, *inter alia*, regarding the immunity of the property and the inviolability of the premises of the Organization, regarding facilities for its official communications and regarding the privileges and immunities of representatives of Members to organs of the United Nations and conferences convened by it, while exercising their functions and during their journey to and from the place of meeting,

Operative paragraph 3 reads:

*Urges* States Members of the United Nations, whether or not they have acceded to the Convention on the Privileges and Immunities of the United Nations, to take every measure necessary to secure the implementation of the privileges and immunities accorded under Article 105 of the Charter to the Organization, to the representatives of Members and to the officials of the Organization.

## CHAPTER II

## Draft articles on the legal position of representatives of States to international organizations with commentaries

## PART I. GENERAL PROVISIONS

*Article 1. Use of terms*

For the purposes of the present articles:

(a) An "international organization" is an association of States established by treaty, possessing a constitution and common organs, and having a legal personality distinct from that of the member States;

(b) A "permanent mission" is a mission of representative and permanent character sent by one State member of an international organization to that organization;

(c) The "permanent representative" is the person charged by the sending State with the duty of acting as the head of a permanent mission;

(d) The "members of the permanent mission" are the permanent representative and the members of the staff of the permanent mission;

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

(f) The "members of the diplomatic staff" are the members of the staff of the permanent mission who have diplomatic status;

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

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

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

(j) The "host State" is the State in whose territory the seat of an international organization is established, or the meeting of an organ of an international organization or a conference is held;

(k) The "Secretary-General" is the principal executive official of the international organization in question whether designated "Secretary-General", "Director General" or otherwise;

(l) A "member State" means a State which is a member of the international organization in question;

(m) A "non-member State" means a State which is not a member of the international organization in question;

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

(o) A "conference" is a meeting of representatives of States for negotiating and/or concluding a treaty on matters concerning the relations between the States;

(p) A "delegation" is the person or body of persons

charged with the duty of representing a State at a meeting of an organ of an international organization or at a conference.

(q) The "Organization" means the international organization in question.

*Commentary*

(1) Following the example of many draft articles prepared by special rapporteurs of the Commission, the Special Rapporteur has specified in article 1 of the draft the meaning of the expressions most frequently used in it.

(2) This article, as its title and introductory words indicate, is intended only to state the meanings with which terms are used in the draft articles.

(3) "International organization" is defined by reference to its basic constitutional and structural elements. The definition is placed at the outset in sub-paragraph (a) to circumscribe the area which is the principal object and field of application of these draft articles.

(4) Firstly, we are concerned with associations of States,<sup>11</sup> as distinct from associations of private individuals or professional organizations. Private international organizations, in spite of the great importance of some of them and the role envisaged for them in Article 71 of the Charter of the United Nations, are not international organizations in the proper sense. Their members are not States, and they are not created by a treaty, though some of them may be mentioned in or assigned certain functions by treaties. The Charter does not qualify them as international, but simply as non-governmental organizations, in Article 71. But it uses the term international organization without qualification in the same Article as well as in the Preamble to indicate public international organizations. So do Articles 66 and 67 of the Statute of the International Court of Justice. But Article 34 of the same Statute uses the term "public international organization".

(5) The term "State" is used in sub-paragraph (a) with the same meaning as in the Charter of the United Nations, the Statute of the Court, the General Conventions on the Law of the Sea, the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, the International Law Commission's draft articles on the law of treaties, and the International Law Commission's draft articles on special missions.

(6) Although, generally speaking, membership in international organizations is limited to States, there are exceptions. The membership of the Universal Postal Union, for example, consists of countries and their dependent territories where the latter possess an independent postal administration.<sup>12</sup> A number of specialized agencies provide for "associate membership", thus enabling participation of entities enjoying internal self-

<sup>11</sup> This first element in the definition is explicit in the very term "organizations of States" which Lauterpacht uses as synonymous with the expression "international organization" in his draft articles on the law of treaties. See first report by Sir Hersch Lauterpacht, *Yearbook of the International Law Commission, 1953*, vol. II, document A/CN.4/63, p. 90.

<sup>12</sup> United Nations, *Treaty Series*, vol. 364, p. 163.

government but which have not yet achieved full sovereignty. In the World Health Organization "territories or groups of territories which are not responsible for the conduct of their international relations" may be admitted upon application by the State or authority having responsibility for those relations.<sup>13</sup> Associate membership does not confer the full rights of membership. These may be restricted as to the right to vote in the organs of the organization or as to the right of election to certain organs. The Pact of the League of Arab States provides in its article 4 for participation in the Committees established by the Council of the League of "the other Arab countries", i.e., countries other than the "Independent Arab States" which have the right to adhere to the League in accordance with article 1.<sup>14</sup> Membership in an international organization of another international organization is envisaged in article 238 of the Treaty establishing the European Economic Community signed at Rome on 25 March 1957 which reads: "The Community may conclude with a third country, a union of States or an international organisation agreements creating an association embodying reciprocal rights and obligations, joint actions and special procedures . . ." <sup>15</sup> In order to include such entities of public international law other than fully independent States, the words "whose membership is composed primarily of States" were included in some definitions of international organizations. Examples: Lauterpacht<sup>16</sup> and Restatement on the Foreign Relations Law of the United States by the American Law Institute.<sup>17</sup> Reuter includes in his definition that "*en tant qu'organisation internationale, ce groupe est d'une manière normale, mais non exclusive, formé d'Etats . . .*"<sup>18</sup> Chaumont defines an international organization as "*une réunion de personnes représentant généralement des Etats . . .*"<sup>19</sup> The exceptional character of dependent territories in the present-day community of nations and the infrequent occurrence of membership of one international organization in another do not warrant, in the opinion of the Special Rapporteur, the provision for such contingencies in a general definition. Secondly, every international organization has a conventional basis, a multilateral treaty, which forms the constitution of the organization. Thirdly, this constituent instrument creates organs of the organization and these organs assume a separate identity distinct from that of the member States who make up the organ. Anzilotti distinguishes between international conferences where the wills expressed by representatives of States remain separate and do not merge, though they may meet in an agreement, and collective organs where a

common will emerges and is attributed to all States which have the organ in common.<sup>20</sup> This distinction may appear to be admitting the separate entity of the collective organ by emphasizing the existence of one will, namely that of the collective organ. In fact, it does not. True, there is only one will, that of the collective organ, but it is not a separate will of the organ, it is the common will of the States whose organ it collectively is.<sup>21</sup> The phenomenon of international organizations is explained in terms of organs (or representatives, agents) of States and treated as such side by side with diplomatic agents in the same chapter of the *Cours*. Although the institutional forms are dealt with by Anzilotti, they are treated as new modalities of the system of complex (collegiate) organs and not as a new phenomenon in itself. The emphasis is on the treaty aspects and the organ character of international organizations rather than on the institutional element.<sup>22</sup> Fourthly, the organization so created possesses a separate legal personality distinct from that of the individual member States and is thus a subject, though in a limited degree, of international law.<sup>23</sup> In its Advisory Opinion of 11 April 1949 on the "Reparations for Injuries Suffered in the Service of the United Nations," the International Court of Justice found unanimously that the United Nations possessed a large measure of "international personality", and stated:

It must be acknowledged that its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged.

Accordingly, the Court has come to the conclusion that the Organization is an international person. That is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State . . . What it does mean is that it is a subject of

<sup>20</sup> D. Anzilotti, *Cours de Droit International*, (French translation by G. Gidel), Paris, 1929.

<sup>21</sup> The difference between the two points of view is of little value as long as unanimity is required. But once votes are taken by majority the collective organ theory becomes less convincing. See Paul Reuter, *Principes de Droit International Public, Recueil de Cours de l'Académie de droit international*, 1961, vol. II, p. 516.

<sup>22</sup> Anzilotti even objected to the term "international organization". M. O. Hudson wrote in this respect: "the term 'international organization' was never precisely defined in this connection [advisory proceedings before the P.C.I.J.]; in 1924 Judge Anzilotti referred to it as an 'unhappy expression' which had been adopted to avoid mention of the ILO and he sought to have the term defined, but he refrained from pressing this proposal in 1926 because he thought difficulties could be avoided so long as the initiative rested with the Court." Hudson, *The Permanent Court of International Justice, 1920-1942. A Treatise*, New York, 1943, p. 400.

<sup>23</sup> The permanent character of the international organization, which distinguishes it from other forms of inter-State institutional co-operation, is explicitly mentioned in some constituent instruments of international organizations. Article 1 of the Constitution of the International Labour Organisation as amended by the Constitution of the International Labour Organisation instrument of amendment, 1946, provides that "... a permanent organization is hereby established for the promotion of the objects set forth in the Preamble to this Constitution..." United Nations, *Treaty Series*, vol. 15, p. 42.

<sup>13</sup> *Ibid.*, vol. 14, p. 189.

<sup>14</sup> *Ibid.*, vol. 70, p. 254.

<sup>15</sup> *Ibid.*, vol. 298, p. 92.

<sup>16</sup> *Yearbook of the International Law Commission, 1953*, vol. II, document A/CN.4/63, p. 90.

<sup>17</sup> American Law Institute, *Restatement of the Law, Second, Foreign Relations Law of the United States*, St. Paul, Minn., 1965, p. 17.

<sup>18</sup> Paul Reuter, *Institutions Internationales*, 3<sup>e</sup> éd., Paris, 1962, p. 289.

<sup>19</sup> Charles M. Chaumont, *L'organisation des Nations Unies*, 3<sup>e</sup> éd., Paris, 1962, p. 5.

international law and capable of possessing international rights and duties . . .<sup>24</sup>

(7) With a few exceptions, the remaining sub-paragraphs do not appear to require any explanation, since the definitions explain themselves, or at least do so when read in conjunction with the articles to whose subject matter they particularly relate.

(8) Sub-paragraphs (d), (e), (f), (g), (h), (i) are based, with a few changes in terminology, on the definitions in sub-paragraphs (b), (c), (d), (e), (f), (g) and (h) of article 1 of the Vienna Convention on Diplomatic Relations<sup>25</sup> and sub-paragraphs (f), (g), (h), (i), (j) and (k) of article 1 of the International Law Commission's draft articles on special missions.<sup>26</sup>

(9) "Permanent representative" is the term generally used at present as title for heads of permanent missions to international organizations. Article V, section 15 of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations used the term "resident representative".<sup>27</sup> However, since the adoption of General Assembly resolution 257 A (III) on permanent missions, the usage of the term "permanent representative" became the prevailing pattern in the statutory law and practice of international organizations, both universal and regional. There are some exceptions to the general pattern. The Agreement between the Republic of Austria and the International Atomic Energy Agency regarding the headquarters of IAEA uses the term "resident representative".<sup>28</sup> So does the Agreement between the United Nations and Ethiopia regarding the headquarters of the United Nations Economic Commission for Africa<sup>29</sup> which is the only headquarters agreement for a regional economic commission which expressly envisages resident representatives. The term "resident representative" is also used in the Agreement between the Government of the Italian Republic and the Food and Agriculture Organization of the United Nations (FAO) regarding the headquarters of FAO.

(10) "Secretary-General".<sup>30</sup> According to Article 97 of the Charter of the United Nations the Secretary-General "shall be the chief administrative officer of the Organization". The term "Secretary-General" is used in the constituent instruments of almost all the other (regional) organizations of general competence e.g., the League of Arab States,<sup>31</sup> the Organization of American States,<sup>32</sup> the

Council of Europe.<sup>33</sup> The Charter of the Organization of African Unity<sup>34</sup> adds the adjective "administrative" to the term "Secretary-General". Conversely, the Constitutions of the specialized agencies use the expression "Director-General" as title for their "principal executive official".<sup>35</sup> Some international organizations of specialized competence, other than those related to the United Nations, i.e., the specialized agencies, use, however, the expression "Secretary-General" e.g., the International Institute for the Unification of Private Law,<sup>36</sup> while the International Wheat Council uses the expression "Executive Secretary".<sup>37</sup>

(11) "Organ of an international organization". The constituent instruments of international organizations, apart from establishing the organizations themselves, also create or prescribe the process of creating a number of organs for the purpose of carrying out the aims of the organization. Chapter III of the Charter of the United Nations establishes a distinction between the principal and subsidiary organs of the Organization. Article 7 (1) lists as principal organs the General Assembly, Security Council, Economic and Social Council, Trusteeship Council, International Court of Justice and the Secretariat. Article 7 (2) merely provides for the establishment of such subsidiary organs as may be found necessary, but without defining the term "subsidiary organ" or listing any such organs. Only two other provisions of the Charter actually specifically refer to the competence of an organ to establish subsidiary organs (Art. 22 and Art. 29, the General Assembly and the Security Council, respectively). Although Article 68 authorizes the Economic and Social Council to set up commissions, the rules of procedure of the Trusteeship Council permit the establishment of committees and the Statute of the Court provides for the creation of chambers. It is doubtful whether the framers of the Charter intended to imply any distinction between the subsidiary organs of the Assembly or the Council and those of other organs, despite the differing terminology. The principal organs of the United Nations have made considerable use of the possibility afforded them by the Charter of establishing subsidiary organs, notably in regard to political, economic, social and legal matters. There would seem to be no limit to the number of such subsidiary organs which a principal organ may establish, provided the principal organ has the competence, under the Charter, to do so, and provided also the subsidiary organ's functions do not exceed those of the principal organ.

(12) "Conference". The definition of this term does not appear to require any comment except to indicate

<sup>24</sup> *Reparations for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports, 1949, p. 179.*

<sup>25</sup> United Nations, *Treaty Series*, vol. 500, pp. 96 and 98.

<sup>26</sup> *Yearbook of the International Law Commission, 1967, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 348.*

<sup>27</sup> United Nations, *Treaty Series*, vol. 11, p. 26.

<sup>28</sup> *Ibid.*, vol. 339, p. 153.

<sup>29</sup> *Ibid.*, vol. 317, p. 108.

<sup>30</sup> *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (ST/LEG/SER.B/11), p. 195.

<sup>31</sup> United Nations, *Treaty Series*, vol. 70, p. 256.

<sup>32</sup> *Ibid.*, vol. 119, p. 80.

<sup>33</sup> *Ibid.*, vol. 87, p. 120.

<sup>34</sup> *Ibid.*, vol. 479, p. 78.

<sup>35</sup> See article I, section 1 (vii) of the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947. *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (ST/LEG/SER.B/11), p. 102.

<sup>36</sup> See Amos J. Peaslee, *International Governmental Organizations, Constitutional Documents*, The Hague, 1956.

<sup>37</sup> United Nations, *Treaty Series*, vol. 349, p. 220.

that from the point of view of international law there is no essential difference between "conferences" and "congresses". "Both are meetings of plenipotentiaries for the discussion and settlement of international affairs; both include meetings for the determination of political questions, and for the treatment of matters of a social or economic order."<sup>38</sup> The first Special Rapporteur on Special Missions (Mr. Sandström) used the two terms jointly in the draft articles which he prepared for the Commission in 1960.<sup>39</sup> The second Special Rapporteur (Mr. Bartoš) also used the two terms jointly in the preliminary questions which he included in his reports on Special Missions preceding his draft articles.<sup>40</sup> As stated by an authority on "diplomatic practice", the term congress "has in the past been more frequently applied to assemblies of plenipotentiaries for the conclusion of peace . . . The first international gathering to which the name of conference was given was that on the affairs of Greece, held at London in 1827-1832.... At the present day the term 'conference' is habitually used to describe all international assemblages in which matters come under discussion with a view to settlement . . ."<sup>41</sup>

A survey of the practice of the United Nations reveals a consistent tendency towards the use of the term "conference". Examples: the United Nations Maritime Conference, 1948; the United Nations Conference on Freedom of Information, 1948; the United Nations Conference on Road and Motor Transport, 1949; the United Nations Conference on Declaration of Death of Missing Persons, 1950; the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 1951; the United Nations Conference on Maintenance Obligations, 1956; the United Nations Conference of Plenipotentiaries on a Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956; the General Conference on the Statute of the International Atomic Energy Agency, 1956; the United Nations Conferences on the Law of the Sea, 1958 and 1960; the United Nations Conference on Diplomatic Intercourse and Immunities, 1961; the United Nations Conference on Consular Relations, 1963, and the United Nations Conference on the Law of Treaties, 1968 and 1969. The same applies to Conferences convened by other international organizations, universal or regional, as well as conferences convened by States.<sup>42</sup>

<sup>38</sup> Sir Ernest Satow, *A Guide to Diplomatic Practice*, 4th ed., edited by Sir Neville Bland, London, 1957, p. 303.

<sup>39</sup> *Yearbook of the International Law Commission*, 1960, vol. II, document A/CN.4/129, pp. 113 and 114.

<sup>40</sup> *Yearbook of the International Law Commission*, 1964, vol. II, document A/CN.4/166, p. 73.

<sup>41</sup> Satow, *op. cit.*, p. 304.

<sup>42</sup> One of the few instances in which the term "congress" is still used at present relates to the Universal Postal Convention which continues to be revised periodically at "congresses" of the States forming the Universal Postal Union. United Nations, *Treaty Series*, vol. 364, p. 169.

## Article 2. Scope of the present articles

**The present articles relate to representatives of States to international organizations whose membership is of a universal character.**

## Article 3. International organizations not within the scope of the present articles

**The fact that the present articles do not relate to international organizations of a regional character shall not affect the application to them of any of the rules set forth in the present articles to which they would be subject independently of these articles.**

### Commentary

(1) Articles 2 and 3 have to be read together, because the insertion of article 3 is based on the assumption that the scope of the draft articles as delimited in article 2 will be favoured by the Commission.

(2) One method of determining the international organizations which come within the scope of the present articles could be the one adopted by the Convention on the Privileges and Immunities of the Specialized Agencies of 1947.<sup>43</sup> It identifies the organizations in question as the United Nations and the specialized agencies brought into relationship with the United Nations in accordance with Articles 57 and 63 of the Charter of the United Nations. This method of determination leaves out organizations such as the International Atomic Energy Agency which is not considered, strictly speaking, a specialized agency as defined above in view of the circumstances of its creation and the peculiar arrangements of its relationship with both the Economic and Social Council and the Security Council. It also does not include other organizations of universal character which are outside what has become known as the United Nations "system" or "family" or the United Nations and its "related" or "kindred" agencies. Examples: the Bank for International Settlements, the International Institute for the Unification of Private Law, the International Wheat Council, and the Central Office for International Transport by Rail.<sup>44</sup> The wording of article 2 is designed to fill such a gap inasmuch as it uses a general definition which includes all international organizations of a universal character.

(3) Article 2 contains a clause which restricts the scope of the present articles to international organizations of a universal character. The place of regional organizations in the work to be undertaken by the Commission on this topic was the subject of a division of opinion among its members. The Special Rapporteur has stated the

<sup>43</sup> See *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (ST/LEG/SER.B/11), pp. 101 and 102.

<sup>44</sup> For a list of such organizations see *Repertory of Practice of United Nations Organs*, vol. III, p. 125; see also Amos J. Peaslee, *op. cit.*

reasons why he suggests to the Commission that it should concentrate its work on this subject first on international organizations of a universal character and prepare its draft articles with reference to these organizations only.<sup>45</sup>

(4) Article 3 is included on the assumption that the Commission will adopt article 2 which excludes regional organizations from the scope of application of the present articles. This will require a reservation to the effect that such a limitation of the scope of the articles is not to affect the application to them of any of the rules set forth in the present articles to which they would be subject independently of these articles. The purpose of this reservation is to give adequate expression to the view stated by some members of the Commission, when the first report of the Special Rapporteur was discussed, to the effect that relations with States were apt to follow a very similar pattern whether the organization in question was of a universal or a regional character.<sup>46</sup>

*Article 4. Nature of the present articles; relationship with the particular rules of international organizations*

**The application of the present articles to permanent missions of States to international organizations and other related subjects regulated in the present articles shall be subject to any particular rules which may be in force in the organization concerned.**

*Commentary*

(1) The purpose of this article is twofold. Firstly, it seeks to state the general nature of these draft articles. Given the diversity of international organizations and their heterogeneous character in contradistinction with States, the present articles only seek to detect the common denominator and lay down the general pattern which regulates the diplomatic law of relations between States and international organizations. Their purpose is the unification as far as possible of that law.

(2) Secondly, article 4 seeks to safeguard the position of the particular rules which may be applicable to one or more international organizations. As mentioned before, although generally speaking membership in international organizations is limited to States, there are exceptions. The membership of the Universal Postal Union, for example, consists of countries and their dependent territories where the latter possess an independent postal administration. A number of specialized agencies provide for "associate membership", thus enabling participation of entities enjoying internal self-government but which have not yet achieved full sovereignty. In the World Health Organization "territories or groups of territories which are not responsible for the conduct of their international relations" may be admitted upon application by the State or authority having responsi-

bility for those relations (see para. (6) of the commentary to art. 1, above).

(3) Another illustration of the particular rules which may prevail within an international organization relates to the character of representatives to international organizations as representatives of States. An exception to this general pattern is to be found in the peculiarity of the tripartite system of representation in the International Labour Organisation. The employers' and workers' members of the Governing Body do not represent the countries of which these persons are nationals, but are elected by employers' and workers' delegates to the Conference. By virtue of paragraph 1 of the International Labour Organisation Annex to the Specialized Agencies Convention, employers' and workers' members of the Governing Body are assimilated to representatives of Member States, except that the waiver of the immunity of any such person may be made only by the Governing Body.<sup>47</sup>

(4) The Special Rapporteur did not consider it appropriate to include a number of specific reservations in the respective articles wherever the necessity arose for safeguarding the particular rules prevailing in one or more international organizations. He, therefore, decided to formulate a general reservation and place it in the general provisions to cover the draft articles as a whole. This would, as he hopes, enable the Commission to simplify the drafting of the articles which would otherwise require specific reservations.

PART. II. PERMANENT MISSIONS  
TO INTERNATIONAL ORGANIZATIONS

*Section I. Permanent missions in general*

*General comments*

16. Since the creation of the United Nations, the practice of establishing permanent missions of Member States at its Headquarters has greatly developed. In the introduction to his Annual Report on the Work of the Organization, 16 June 1958-15 June 1959, the Secretary-General of the United Nations observed that: "The permanent representation at Headquarters of all Member nations, and the growing diplomatic contribution of the permanent delegations outside the public meetings . . . may well come to be regarded as the most important "common law" development which has taken place . . . within the constitutional framework of the Charter".<sup>48</sup> Most institutional developments within the United Nations have had their impact upon the organizations related to it as well as those outside the United Nations family. Thus, the 1946 Convention on the Privileges and Immunities of the United Nations served

<sup>45</sup> *Yearbook of the International Law Commission, 1963*, vol. I, 717th meeting, p. 298.

<sup>46</sup> See *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/195 and Add.1, p. 139, para. 36.

<sup>47</sup> See "The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities: study prepared by the Secretariat" (hereinafter referred to as the Study of the Secretariat), *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 191, para. 4.

<sup>48</sup> *Official Records of the General Assembly, Fourteenth Session, Supplement No. 1 (A/4132, Add.1).*

as a prototype for and greatly helped in the drafting of a number of conventions relating to the specialized agencies and a number of regional organizations. The same is true with regard to the institution of permanent missions whose development within the United Nations has had its impact upon the development of that institution within other international organizations, universal and regional.

### *League of Nations*

17. The practice of permanent representation to international organizations was not unknown before the United Nations. Many members of the League of Nations had permanent delegates in Geneva.<sup>49</sup> They were usually members of the diplomatic missions accredited to Switzerland. Nevertheless, the practice had not been generally accepted of accrediting permanent delegations to the League of Nations.<sup>50</sup>

18. The position of permanent delegations to the League of Nations was described in a recent work on diplomatic law as follows:

*Le développement des délégations permanentes est parallèle à celui des organisations internationales. Leur apparition se situe lors des premières années de la Société des Nations; leur existence pourtant n'était aucunement prévue par le pacte de la SDN. D'une part, en effet, on n'avait pas prévu la nécessité d'un lien permanent entre les Etats membres et l'Organisation; on pouvait penser alors que, ce lien étant assuré temporairement par les représentants des Etats aux réunions d'organes de la SDN, cela suffirait. D'autre part, la doctrine ne voyait pas clairement la nature de la SDN; elle hésitait sur la question de savoir si elle possédait ou non la personnalité juridique internationale; enfin elle était très réticente à lui accorder un droit de légation qu'elle considérait comme n'appartenant qu'aux Etats.*

*Pourtant le besoin s'en faisait sentir; la Pologne établit la première délégation permanente dès 1920, et son exemple fut suivi par un grand nombre d'Etats: dès 1922, on n'en comptait pas moins de 25 et, en 1930, 43. Toutefois, pendant toute la durée de la SDN et bien qu'une décision du Conseil fédéral Suisse de 1922 les assimilât, au point de vue de leur statut, aux missions diplomatiques accréditées à Berne, leur nature ne fut jamais très nette, ni leurs fonctions uniformes. Certaines délégations étaient accréditées auprès du Secrétariat de la SDN, d'autres ne l'étaient pas du tout; certaines estimaient qu'elles représentaient véritablement leur Etat alors que, pour d'autres, il s'agissait plutôt d'une mission d'information.*<sup>51</sup>

<sup>49</sup> Pitman B. Potter, "Permanent Delegations to the League of Nations", *Geneva Special Studies*, vol. I, No. 8, 1930.

<sup>50</sup> The distinction between permanent representatives and non-resident delegates had little practical effect within the League system at least in relation to privileges and immunities, since Article 7, paragraph 4 of the Covenant of the League provided that: "Representatives of the Members of the League... shall enjoy diplomatic privileges and immunities." The situation within the United Nations is different. While permanent representatives enjoy diplomatic immunities, delegates to the organs of the United Nations enjoy functional immunities only. (See para. 19 below).

<sup>51</sup> Philippe Cahier, *Le Droit Diplomatique Contemporain*, Genève, No. 40, 1962, pp. 411 and 412. See also P. H. Frei, *De la situation juridique des représentants des membres de la Société des Nations*, Paris, 1929, p. 27; R. Genet, "La Société des Nations et le droit d'ambassade actif et passif" in *Revue de Droit International et de Législation Comparée*, 1935, pp. 527-573.

### *United Nations*

19. The Charter of the United Nations does not contain a general provision with regard to the question of permanent delegations to the United Nations. However, Article 28 (1) provides that: "The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization." In this article provision was made for the Security Council to be able to function continuously, and accordingly every member of the Council had to be permanently represented thereon. In other words, the only permanent representation envisaged by the Charter is the permanent representation of the States members of the Security Council.

20. The provisional rules of procedure of the Security Council contain no provision bearing on the stipulation in Article 28 (1) of the Charter that each member of the Security Council shall be represented at all times at the seat of the Organization. Rule 13, in its first sentence, is limited to the provision that "each member of the Security Council shall be represented at the meetings of the Security Council by an accredited representative", while the remainder of rule 13 contains provisions concerning credentials. All members of the Security Council have maintained delegations to the Security Council at Headquarters, usually consisting of the Head of delegation, an alternate representative and one or more advisers.<sup>52</sup>

21. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, does not contain special rules for permanent representatives. Article IV, section 11 speaks in general terms of "representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations".<sup>53</sup> It provides for the enjoyment by these representatives of certain privileges and immunities, mainly functional, e.g., immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind.

22. The omission of reference to permanent representatives was rectified in the agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed on 26 June 1947, which contains special provisions on the privileges and immunities of permanent representatives and which makes them entitled to the same privileges and immunities which the Government of the United States "accords to diplomatic envoys accredited to it" (article V, section 15).<sup>54</sup>

<sup>52</sup> *Repertory of Practice of United Nations Organs*, vol. II, p. 110.

<sup>53</sup> *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 186.

<sup>54</sup> *Ibid.*, p. 208.

23. The competence of permanent missions was considered by the Interim Committee of the General Assembly at its meetings held from 5 January to 5 August 1948. The Committee considered a proposal submitted by the Dominican Republic whereby the heads of permanent delegations at the seat of the United Nations should, in that capacity, be automatically entitled to represent their countries on the Interim Committee. This would provide for greater elasticity by making it unnecessary for each delegation to submit new credentials for each convocation of the Interim Committee.

24. The Committee considered also a proposal submitted by the Bolivian delegation on permanent missions to the United Nations. While the Committee generally recognized the value and interest of such a proposal, doubts were expressed as to whether the matter was properly within the terms of reference of the Interim Committee. The opinion was expressed that it was a matter which should be studied by the General Assembly itself, all the more so because in the limited time at its disposal the Interim Committee would not be in a position to devote to it the careful and thorough study it deserved. Consequently, it was decided that the Bolivian proposal should be submitted to the General Assembly as an annex to the Committee's report.<sup>55</sup>

25. The Bolivian proposal<sup>56</sup> on permanent missions to the United Nations was discussed by the General Assembly during the first part of its third session.<sup>57</sup> The discussion of the Bolivian proposal in the Sixth Committee gave rise to a substantial debate on a number of legal points which included: (a) the legal status of permanent missions; (b) the character of the institution of permanent missions; (c) the use of the term "credentials"; and, (d) the competence of the Credentials Committee.<sup>58</sup>

26. On 3 December 1948, the General Assembly unanimously adopted resolution 257 A (III), which reads as follows:

*The General Assembly*

Considering that, since the creation of the United Nations, the practice has developed of establishing, at the seat of the Organization, permanent missions of Member States,

Considering that the presence of such permanent missions serves to assist in the realization of the purposes and principles of the United Nations and, in particular, to keep the necessary liaison between the Member States and the Secretariat in periods between sessions of the different organs of the United Nations,

<sup>55</sup> Reports of the Interim Committee of the General Assembly (5 January-5 August 1948), *Official Records of the General Assembly, Third Session, Supplement No. 10*, documents A/578, A/583, A/605, A/606.

<sup>56</sup> *Official Records of the General Assembly, Third Session, Part I, Plenary Meetings, Annexes*, agenda item 47, document A/609.

<sup>57</sup> *Ibid.*, Third Session, Part I, Sixth Committee, 124th-127th meetings, pp. 619-651.

<sup>58</sup> An account of these points was included in the second report by the Special Rapporteur. See *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/195 and Add.1, pp. 145 and 146, paras. 75-78.

Considering that in these circumstances the generalization of the institution of permanent missions can be foreseen, and that the submission of credentials of permanent representatives should be regulated,

*Recommends*

1. That credentials of the permanent representatives shall be issued either by the Head of the State or by the Head of the Government or by the Minister of Foreign Affairs, and shall be transmitted to the Secretary-General;

2. That the appointments and changes of members of the permanent missions other than the permanent representative shall be communicated in writing to the Secretary-General by the head of the mission;

3. That the permanent representative, in case of temporary absence, shall notify the Secretary-General of the name of the member of the mission who will perform the duties of head of the mission;

4. That Member States desiring their permanent representatives to represent them on one or more of the organs of the United Nations should specify the organs in the credentials transmitted to the Secretary-General;

*Instructs* the Secretary-General to submit, at each regular session of the General Assembly, a report on the credentials of the permanent representatives accredited to the United Nations.

*United Nations Office at Geneva*

27. The Interim Arrangement on Privileges and Immunities of the United Nations concluded between the Secretary-General of the United Nations and the Swiss Federal Council, signed at Berne on 11 June 1946 and at New York on 1 July 1946, does not contain special provisions relating to permanent representation.<sup>59</sup> However, on 31 March 1948 the Swiss Federal Council adopted a resolution entitled "*Décision du Conseil fédéral suisse concernant le statut juridique des délégations permanentes auprès de l'Office européen des Nations Unies ainsi que d'autres organisations internationales ayant leur siège en Suisse*". It reads as follows:

1. *Les délégations permanentes d'Etats Membres bénéficient, comme telles, de facilités analogues à celles qui sont accordées aux missions diplomatiques à Berne. "Elles ont le droit d'user de chiffres dans leurs communications officielles et de recevoir ou d'envoyer des documents par leurs propres courriers diplomatiques.*

2. *Les chefs de délégations permanentes bénéficient de privilèges et immunités analogues à ceux qui sont accordés aux chefs de missions diplomatiques à Berne, à condition toutefois qu'ils aient un titre équivalent.*

3. *Tous les autres membres des délégations permanentes bénéficient, à rang égal, de privilèges et immunités analogues à ceux qui sont accordés au personnel des missions diplomatiques à Berne.*

4. *La création d'une délégation permanente, les arrivées et les départs des membres des délégations permanentes sont annoncés au Département politique par la mission diplomatique à Berne de l'Etat intéressé. Le Département politique délivre aux membres des délégations une carte de légitimation attestant les privilèges et immunités dont ils bénéficient en Suisse.*<sup>60</sup>

<sup>59</sup> *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 196.

<sup>60</sup> *Ibid.*, p. 92.

*Specialized agencies*

28. The position of permanent representatives to the specialized agencies developed on lines similar to those described above regarding the United Nations Headquarters in New York and the United Nations Office at Geneva.

29. The Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947, regulates the status of "representatives of members" in general (art. V).<sup>61</sup> It does not contain special provisions concerning "permanent representatives" or "resident representatives". This gap was filled in a number of Headquarters Agreements concluded between the respective specialized agencies and the host Governments concerned. Examples: article XI, section 24 (a) of the Agreement between the Government of the Italian Republic and the Food and Agriculture Organization of the United Nations regarding the headquarters of the Food and Agriculture Organization of the United Nations, signed at Washington, on 31 October 1950, which provides that: "Every person designated by a Member Nation as its principal resident representative to FAO or as a resident representative to FAO with the rank of Ambassador or Minister Plenipotentiary, and the members of its mission, shall, whether residing inside or outside the headquarters seat, be entitled within the Italian Republic to the same privileges and immunities, subject to corresponding conditions and obligations, as the Government accords to diplomatic envoys and members of their missions of comparable rank accredited to the Government";<sup>62</sup> article 18, paragraph 1 of the "Accord entre le Gouvernement de la République française et l'Organisation des Nations Unies pour l'éducation, la science et la culture, relatif au siège de l'UNESCO et à ses privilèges et immunités sur le territoire français", signed at Paris, on 2 July 1954, which provides that "Les représentants des Etats membres de l'Organisation aux sessions de ses organes ou aux conférences et réunions convoquées par elle, les membres du Conseil exécutif, ainsi que leur suppléants, les délégués permanents auprès de l'Organisation et leurs adjoints jouiront, pendant leur séjour en France pour l'exercice de leurs fonctions aux facilités, privilèges et immunités qui sont reconnus aux diplomates de rang comparable des missions diplomatiques étrangères accréditées auprès du Gouvernement de la République française".<sup>63</sup>

*Regional organizations*

30. The impact of the development of the institution of permanent missions within the United Nations upon other international organizations can be further discerned

when one take a look at the position of permanent missions in a number of regional organizations.

(a) *Organization of American States*. Neither the Charter of the Organization of American States,<sup>64</sup> signed at Bogotá, on 30 April 1948, nor the Agreement on Privileges and Immunities of the Organization of American States<sup>65</sup> opened for signature on 15 May 1949, contain any provisions on permanent missions. Article 104 of the Charter speaks in general of the "Representatives of the Governments on the Council of the Organization", and accords to them the privileges and immunities "necessary for the independent performance of their duties". Article 7 of the Agreement speaks of "the Representatives of the States Members of the Organs of the Organization" and defines the modalities of their immunities along the lines of functional immunities. However, article 1 of the *Bilateral Agreement between the Organization of American States and the Government of the United States of America relating to Privileges and Immunities of representatives and other members of delegations*,<sup>66</sup> signed at Washington, on 22 July 1952, provides that "The privileges and immunities which the Government of the United States of America accords to diplomatic envoys accredited to it shall be extended, subject to corresponding conditions and obligations: (a) to any person designated by a Member State as its Representative or Interim Representative on the Council of the Organization of American States; (b) to all other permanent members of the delegation regarding whom there is agreement for that purpose between the Government of the Member State concerned, the Secretary-General of the Organization, and the Government of the United States of America".

(b) *Council of Europe*. Neither the Statute of the Council of Europe of 5 May 1949,<sup>67</sup> nor the General Agreement on Privileges and Immunities of the Council of Europe of 2 September 1949<sup>68</sup> contemplates that Member States will install a permanent mission, and consequently no reference is made to the status, privileges, immunities or facilities of permanent representatives, other members of the mission, or the mission itself. Permanent representation was established pursuant to a resolution adopted by the Committee of Ministers at its eighth session in May 1951, on permanent representation of members at the seat of the Council, which reads as follows:

*The Committee of Ministers,*

*Considering that it is in the interest of the Council of Europe to facilitate liaison between the Governments and the Secretary-General;*

*Resolves:*

*In order to facilitate liaison between the Governments and the Secretariat-General of the Council, each member should*

<sup>61</sup> *Ibid.*, vol. II, (ST/LEG/SER.B/11), p. 104.

<sup>62</sup> *Ibid.*, p. 195.

<sup>63</sup> *Ibid.*, p. 245. It is noteworthy that this Headquarters Agreement does not confine the enjoyment of diplomatic immunities to permanent delegations, but extends it to representatives to meetings of the organs of the organization and conferences convened by the organization, who in other Headquarters Agreements enjoy functional immunities only.

<sup>64</sup> *Ibid.*, p. 377.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*, p. 281.

<sup>67</sup> United Nations, *Treaty Series*, vol. 87, p. 104.

<sup>68</sup> *Ibid.*, vol. 250, p. 14. Council of Europe, Consultative Assembly, third ordinary session, May-November 1951, *Message and report of the Committee of Ministers*, pp. 61 and 62.

consider the possibility of appointing an official to act as its permanent representative at the seat of the Council of Europe.<sup>69</sup>

The status of the permanent representatives to the Council of Europe was regulated in the Additional Protocol to the General Agreement on Privileges and Immunities of the Council of Europe, signed at Strasbourg on 6 November 1952.<sup>70</sup> Article 4 of this Protocol provides that: "The permanent representatives of Members of the Council of Europe shall, while exercising their functions and during their journey to and from the place of meetings, enjoy the privileges, immunities and facilities normally enjoyed by diplomatic envoys of comparable rank."

(c) *League of Arab States.* The Pact of the League of Arab States of 22 March 1945 does not contain provisions on permanent representatives. Article 14 regulates the status of the members of the Council of the League, the members of its committees . . .<sup>71</sup>

At the third meeting of the twelfth regular session of the Council of the League, held on 29 March 1950, the Political Committee approved the third resolution relating to the proposal to appoint permanent representatives to the League in order to ensure continuity in the work of the League and facilitate liaison between Member States and the League. The resolution reads as follows:

*The Political Committee* has considered the proposal of the Secretary-General and the Memorandum attached to it concerning the appointment of permanent representatives of member States to the Secretariat-General of the League of Arab States for the considerations stated in that Memorandum and has resolved to accept the principle and to recommend to member States that they take the necessary measures to fulfil the above-mentioned purpose.

(d) *Organization of African Unity.* Neither the Charter of the Organization of African Unity of 25 May 1963, nor the General Convention on the Privileges and Immunities of the Organization of African Unity adopted by the Assembly of Heads of State and Government of that Organization<sup>72</sup> contain any provisions relating to permanent representatives. The Institutional Committee considered at its meetings from 6 to 9 December 1965, held at the seat of the Organization at Addis Ababa, the "question of the relations between the General-Secretariat and the African Diplomatic Missions accredited to Addis Ababa" and adopted the following recommendation:

The Institutional Committee recommends that the diplomatic missions of African States in Addis Ababa maintain the excellent relations they have established with the General-Secretariat of the Organization of African Unity and continue to serve as

liaison between the Secretariat and their respective Governments.<sup>73</sup>

The report of the Institutional Committee was approved by the Council of Ministers of the Organization on 28 February 1966 at its Sixth Ordinary Session held at Addis Ababa. From the foregoing it would appear that the Organization of African Unity is the only regional organization of general competence which has not yet developed the institution of permanent missions. The comparatively short period which has elapsed since the creation of that organization may not allow the drawing of definitive conclusions in this regard. When the question was considered by the Institutional Committee a number of difficulties were raised, in particular relating to budgetary or administrative expenses.

#### *Article 5. Establishment of permanent missions*

**Member States may establish permanent missions at the seat of the Organization for the performance of the functions defined in article 6 of the present articles.**

#### *Commentary*

(1) Article 5 makes it clear that the institution of permanent representation before an international organization is of a non-obligatory character. Member States are under no obligation to establish permanent missions at the seat of the Organization.

(2) When the question of permanent missions was discussed by the General Assembly during the first part of its third session, a number of representatives expressed doubts concerning the advisability of including in the draft resolution under consideration (see foot-note 56, above) the last preambular paragraph which recommended Member States of the United Nations . . . to establish permanent missions to the United Nations at the seat of the Organization. They stated that while they considered that it would be desirable for all Member States to have a permanent mission attached to the United Nations, they did not see the necessity of making a special recommendation to that effect in view of the fact that "for internal reasons certain Member States might not be able to establish a permanent mission". One delegation considered that the recommendation was "unprofitable, as it constituted interference in the internal administration of Member States". Another pointed out that a number of Member States were deterred from maintaining permanent missions at the seat of the Organization by "special budgetary and administrative expenses."<sup>74</sup>

<sup>73</sup> Organization of African Unity, document INST/Rpt.1/Rev.1.

<sup>74</sup> *Official Records of the General Assembly, Third Session, Part I, Sixth Committee*, 124th-127th meetings, pp. 619-651. One delegation stated that: "Only the members of the Security Council were obliged to maintain permanent representatives, as laid down in Article 28 of the Charter", and considered that "if the appointment of permanent missions was made obligatory, it might impose a heavy burden on certain States" and therefore requested that "the appointment of permanent missions should be optional". *Ibid.*, 126th meeting, p. 637.

<sup>69</sup> The French text is less specific: "*Chaque Membre est invité à étudier la possibilité de se faire représenter en permanence au Siège du Conseil de l'Europe.*"

<sup>70</sup> United Nations, *Treaty Series*, vol. 250, p. 32.

<sup>71</sup> United Nations, *Treaty Series*, vol. 70, p. 256.

<sup>72</sup> Text published by the secretariat of the Organization of African Unity, Addis Ababa.

(3) The legal basis of permanent missions is to be found in the constituent instruments of international organizations as supplemented by the general conventions on the privileges and immunities of the organizations and related headquarters agreements. To this must be added the practice that has accumulated since the development of that institution in the United Nations. According to Cahier "*Le statut des délégations permanentes découle d'un certain nombre de textes: textes législatifs internes, traités internationaux tels qu'accords de siège, ainsi que de règles coutumières.*"<sup>75</sup>

This question gave rise to a division of opinion in the Sixth Committee when the question of permanent missions was discussed in the General Assembly of the United Nations at its third session. A memorandum prepared by the Secretariat on permanent delegations to the United Nations<sup>76</sup> mentioned that permanent missions as such had no recognized legal status under the Charter or under the rules of procedure of the various organs of the United Nations.

The third preambular paragraph of the draft resolution under consideration referred to the fact that it would be of interest for all Member States and for the United Nations as a whole that a legal status be given to the institution of permanent missions to the United Nations. Some representatives pointed out that while it was true that no regulations governing the status of permanent missions existed their legal status was already in existence. They cited Article 105 (3) of the Charter which states: "The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose", and article IV of the Convention on the Privileges and Immunities of the United Nations<sup>77</sup> which regulates the privileges and immunities of "the representatives of Members". They, therefore, thought that the problem did not lie in establishing the legal status of permanent missions but in laying down the general principles which should govern their establishment.

This question proved also to be controversial in doctrine. The controversy arose over the interpretation of Article 7, paragraph 4 of the Covenant of the League of Nations which provides that "Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities". Some writers (P. H. Frei) thought that the provision also covered permanent delegations.<sup>78</sup> Others (Philippe Cahier) saw in such an interpretation "*un élargissement du texte de l'art. 7, al. 4 du Pacte absolument injustifié.*"<sup>79</sup> The

latter writer also took issue with the delegations which advocated in the Sixth Committee during the third session of the General Assembly of the United Nations an analogous interpretation and made the following observation:

*Certains délégués à la sixième Commission de la troisième Assemblée Générale des Nations Unies, notamment Fitzmaurice, Chaumont . . ., ont prétendu que les articles des conventions générales consacrées aux représentants devraient être considérés comme comprenant aussi les délégués permanents. Il y a là un abus certain, car les termes employés ne laissent pas d'équivoque; on parle en effet dans ces conventions: . . . des représentants des membres auprès des organes principaux et subsidiaires des Nations Unies.*<sup>80</sup>

Without wishing to involve the Commission in this doctrinal controversy, the Special Rapporteur wishes to state that he is of the opinion that what is needed is not the establishing of the legal basis of the institution of permanent missions to international organizations but rather the enunciation of the different rules for its regulation. He wishes to observe further that the provisions in the constitutive instruments of international organizations and the general conventions on their privileges and immunities relating to representatives of member States to the organs of the organization do cover permanent representatives. If the latter are considered representatives to the Secretary-General, then they are covered by the phrase "representatives to the organs of the organization", since the Secretary-General is one of those organs. If on the other hand permanent representatives are considered representatives to the organization itself and not to one of its organs, they could be covered *a fortiori*.

(4) Article 5 states that the establishment of the permanent mission takes place at the seat of the Organization. This emanates from the character of the permanent mission as representative to the Organization itself or its secretariat which keeps the necessary liaison between the sending State and the Organization.

International organizations usually have one principal seat. However, the United Nations has an office at Geneva, where a great number of Member States maintain permanent missions as liaison with that office as well as with a number of specialized agencies which have established their principal seats at Geneva: the International Labour Organisation (ILO), the World Health Organization (WHO) and the World Meteorological Organization (WMO). Reference has been made before in this report to the Agreement between the United Nations and Ethiopia regarding the headquarters of the United Nations Economic Commission for Africa which is the only headquarters agreement for a regional economic commission which expressly envisages resident representatives (see para. (9) of the commentary to art. 1, above).

<sup>75</sup> Cahier, *op. cit.*, p. 411.

<sup>76</sup> A/AC.18/SC.4/4.

<sup>77</sup> *United Nations Legislative Series, Legislative Texts and Treaties concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 186.

<sup>78</sup> Frei, *op. cit.*, p. 27.

<sup>79</sup> Cahier, *op. cit.*, p. 412, foot-note 5.

<sup>80</sup> *Ibid.*, foot-note 8.

*Article 6. Functions of a permanent mission*

The functions of a permanent mission consist *inter alia* in:

- (a) keeping the necessary liaison between the sending State and the Organization;
- (b) representing the sending State in the Organization;
- (c) negotiating with the Organization;
- (d) ascertaining activities and developments in the Organization, and reporting thereon to the Government of the sending State;
- (e) promoting co-operation within the Organization and assisting in the realization of the purposes and principles of the Organization.

*Commentary*

(1) A detailed enumeration of all the functions of a permanent mission would be very lengthy. Article 6 has merely mentioned the main categories under broad headings.

(2) First of all, under sub-paragraph (a), comes the task which characterizes the principal activity of the permanent mission. This function was described by two writers who have served on the permanent missions of two Member States of the United Nations as follows: "They [the permanent missions] maintain contact with the United Nations Secretariat on a continuous basis, report on previous meetings, anticipate coming meetings and act as a channel of communication and centre of information for the relationships of their country with the United Nations."<sup>81</sup>

(3) Sub-paragraph (b) states the representational function of the permanent mission. The mission represents the sending State in the organization. The mission, and in particular the permanent representative, the head of the mission, is the spokesman for its Government in communications with the Organization, or in any discussions with that Organization to which relations between the member States and the Organization may give rise.

(4) Sub-paragraphs (c) and (d) state two classic diplomatic functions, *viz.*, negotiating with the Organization and ascertaining activities and developments in the Organization and reporting thereon to the Government of the sending State. In a memorandum submitted to the Secretary-General of the United Nations in 1958, the Legal Counsel stated: "The development of the institution of the permanent missions since the adoption of that resolution [General Assembly resolution 257 A (III)] shows that the permanent missions also have functions of a diplomatic character . . . The permanent missions perform these various functions through methods and in a manner similar to those employed by diplomatic missions, and their establishment and organ-

ization are also similar to those of diplomatic missions which States accredit to each other."<sup>82</sup>

(5) It should be noted, however, that certain functions of diplomatic missions are not performed by permanent missions to international organizations, e.g., consular functions and in particular diplomatic protection, which are the responsibility of the diplomatic mission accredited to the host State. Article 6 does not, therefore, include the classical function of diplomatic protection.

(6) Sub-paragraph (e) is intended to reflect the hope that the presence of permanent missions will contribute to the realization of the purpose envisaged in Article 1 (4) of the Charter that the United Nations be "a centre for harmonizing the actions of nations".

*Article 7. Appointment of the same permanent mission to two or more organizations*

**The sending State may appoint the same permanent mission to two or more organizations.**

*Article 8. Appointment of a permanent mission to the host State and/or one or more other States*

**The sending State may appoint a permanent mission to the host State and/or one or more other States.**

*Commentary*

(1) There have been a number of cases where a permanent mission has been appointed to represent its State at more than one organization. At the United Nations Office at Geneva the practice has developed whereby the same mission has been appointed both to the various specialized agencies having their headquarters at Geneva and to the United Nations Office itself.

(2) Article 7 states the principle in general terms. Although it refers to the mission as a body, it must be assumed that it covers the instances where the permanent representative or other members of the permanent mission were appointed to represent their country at two or more organizations during the same period. At United Nations Headquarters, members of permanent missions have also exercised functions on behalf of their respective States at the specialized agencies in Washington, for example.<sup>83</sup>

(3) The practice of appointing the same mission or representative to two or more organizations is not limited to organizations of universal character. Representatives have on occasions represented their country both at the United Nations and at regional organizations (e.g. at the Organization of American States).<sup>84</sup> Permanent representatives of Sweden and Norway to the Council of

<sup>81</sup> John G. Hadwen and Johan Kaufmann, *How United Nations decisions are made*, Leyden, 1962, p. 26.

<sup>82</sup> See Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 165, para. 17.

<sup>83</sup> *Ibid.*, p. 169, para. 38.

<sup>84</sup> *Ibid.*, para. 39.

Europe have been simultaneously accredited to the European Economic Community.

(4) Article 5 of the Vienna Convention on Diplomatic Relations<sup>85</sup> which regulates the case of the accreditation of a head of mission or the assignment of a member of the diplomatic staff to more than one State and article 4 of the draft articles of the International Law Commission on special missions<sup>86</sup> which deals with the question of the sending of the same special mission to two or more States require that none of the receiving States objects. This restriction is intended to avoid the undesirable conflict and difficulties which may exist in certain instances of accreditation of the same diplomatic agent to more than one State. Given the different character of permanent missions to international organizations, which serve primarily as liaison between the sending State and the organization concerned, the considerations underlying the restriction embodied in article 5 of the Vienna Convention on Diplomatic Relations and article 4 of the draft articles of the International Law Commission on special missions do not apply in the case of permanent missions to international organizations. Article 7, therefore, does not require the non-objection of the organizations concerned for the appointment of the same permanent mission to two or more international organizations. Such a requirement is not supported by the practice of international organizations.

(5) Article 8 corresponds to article 5, paragraph 3, of the Vienna Convention on Diplomatic Relations which provides that: "A head of mission or any member of the diplomatic staff of the mission may act as representative of the sending State to any international organization".

(6) A number of permanent representatives or members of permanent missions have also served as the ambassador of their country to the host State or a nearby State, or as a member of a diplomatic mission.

(7) Article 8, like article 5, paragraph 3, of the Vienna Convention on Diplomatic Relations, does not require the non-objection by the international organization and the receiving State. The considerations underlying such a restriction in the case of joint accreditation to two or more States do not apply in the combined situation of accreditation to international organizations and States.

*Note on appointment of a joint permanent mission by two or more States*

31. Article 6 of the Vienna Convention on Diplomatic Relations<sup>87</sup> and article 5 of the draft articles of the International Law Commission on special missions<sup>88</sup> contain provisions on the appointment of a diplomatic mission by two or more States.

32. In the infrequent cases where such a situation arose within the framework of representation to international organizations, the question related in fact to

representation to one of the organs of the organization or a conference convened by it and not to the institution of permanent missions.

33. The situation is summed up in the Study of the Secretariat in the following manner:

The question of representation of more than one Government or State by a single representative has been raised on several occasions in United Nations bodies. It has been the consistent position of the Secretariat and of the organs concerned that such representation is not permissible unless clearly envisaged in the rules of procedure of the particular body. The practice, which has sometimes been followed, of accrediting the official of one Government as the representative of another, has not been considered legally objectionable, provided the official concerned was not simultaneously acting as the representative of two countries . . .<sup>89</sup>

34. For the considerations stated above, the Special Rapporteur has decided not to include an article on this situation in part II of these draft articles on permanent missions and to deal with it in part III on delegates to organs of international organizations and conferences convened by international organizations.

*Article 9. Appointment of the members of the permanent mission*

**The sending State may freely appoint the members of the permanent mission.**

*Commentary*

(1) Unlike the relevant articles of the Vienna Convention on Diplomatic Relations and the draft articles of the International Law Commission on special missions, article 9 does not make the freedom of the sending State in the choice of the members of its permanent mission to an international organization subject to the *agrément* of either the organization or the host State for the appointment of the permanent representative, the head of the permanent mission. Nor does article 9 require the sending State to obtain the consent of the host State for the appointment of a national of the latter as a member of the permanent mission.

(2) The members of the permanent mission are not accredited to the host State in whose territory the seat of the organization is situated. They do not enter into direct relationship and transactions with the host State, unlike the case of bilateral diplomacy. In the latter case, the diplomatic agent is accredited to the receiving State in order to perform certain functions of representation and negotiation between the receiving State and his own State. This legal situation is the basis of the institution of acceptance by the receiving State of the diplomatic agent (*agrément*) and of the right of the receiving State to request his recall when it declares him *persona non grata*. In his statement at the 1016th meeting of the Sixth Committee of the General Assembly on

<sup>85</sup> See United Nations, *Treaty Series*, vol. 500, p. 100.

<sup>86</sup> See *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 349.

<sup>87</sup> See United Nations, *Treaty Series*, vol. 500, p. 100.

<sup>88</sup> See *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 350.

<sup>89</sup> *Ibid.*, document A/CN.4/L.118 and Add.1 and 2, p. 169, para. 40. See also *United Nations Juridical Yearbook, 1962* (provisional edition) (ST/LEG/8), fascicle 2, p. 258.

6 December 1967, the United Nations Legal Counsel pointed out that: "The Secretary-General in interpreting diplomatic privileges and immunities would look to provisions of the Vienna Convention so far as they would appear relevant *mutatis mutandis* to representatives to United Nations organs and conferences. It should of course be noted that some provisions such, for example, as those relating to *agrément*, nationality and reciprocity have no relevancy in the situation of representatives to the United Nations."<sup>90</sup>

(3) The position of permanent representatives and delegates to the United Nations in relation to the host State and the Secretary-General in reference to the question of acceptance was stated by one writer as follows:

The representatives of Members, however, are not accredited to the Government of the United States in any way or in any sense. *Agrément* implies prior approval and national control. It has its traditional place and significance in connection with diplomatic representatives of foreign States who are to transact business with the United States Government. Representatives of Members to the United Nations have no business to transact with the United States. Representatives to meetings of the General Assembly or to other organs of the United Nations have no business to transact with the United States. Representatives to meetings of the General Assembly or to other organs of the United Nations bear credentials which are scrutinized by those organs. Permanent delegates, although they present their credentials to him, are not accredited to the Secretary-General for this would imply control and the right to reject persons appointed by Members. No such right has been conceded by the sovereign Members to the Secretary-General.<sup>91</sup>

*Note on nationality of members of a permanent mission*

35. The Convention on the Privileges and Immunities of the United Nations does not contain any restrictions on the choice by the sending State of non-nationals as representatives. Article IV, section 15, provides, however, that: "The provisions of Sections 11, 12 and 13 [which define the privileges and immunities of the representatives of Members] are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative".<sup>92</sup> The same applies to the Convention on the Privileges and Immunities of the Specialized Agencies. Article V, section 17, provides that: "The provisions of sections 13, 14 and 15 are not applicable in relation to the authorities of a State of which the person is a national or of which he is or has been a representative".<sup>93</sup> Other examples: Article 11 of Supplementary Protocol No. 1 to the Convention for European Economic Cooperation on Legal Capacity, Privileges and Immunities of the Organization, 16 April 1948: "The provisions of

Article 9 are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative";<sup>94</sup> Article 12 (a) of the General Agreement on Privileges and Immunities of the Council of Europe, 2 September 1949: "The provisions of articles 9, 10 and 11 are not applicable in relation to the authorities of a State of which the person is a national or of which he is or has been a representative";<sup>95</sup> Article 15 of the Convention on the Privileges and Immunities of the League of Arab States, 10 May 1953: "The provisions of Articles 11, 12 and 13 are not applicable as between a representative and the authorities of the State of which he is a national or which he is or has been the representative";<sup>96</sup> Article V, paragraph 5, of the General Convention on the Privileges and Immunities of the Organization of African Unity: "The provisions of paragraphs 1, 2 and 3 of Article V are not applicable as between a representative and the authorities of a State of which he is a national or of which he is or has been the representative".

Examples of legislative provisions: Article 9 of the Diplomatic Privileges (United Nations and International Court of Justice) Order in Council 1947 of the United Kingdom: "For the purposes of the application of this Order, the expression 'representatives of member governments' shall be deemed to include..., but shall not include any person who is the representative of His Majesty's Government in the United Kingdom or any member of the staff of such representative, or any person who is a British subject and who is not the representative of a Government of His Majesty other than His Majesty's Government in the United Kingdom or the member of the staff of and accompanying any such representative";<sup>97</sup> Article 24 of the Law on Civil Proceedings, 1957 of Yugoslavia: "The rules of international law apply with regard to the competence of Yugoslav Courts to hear cases of foreign nationals enjoying the right of immunity in Yugoslavia and of hearing the cases of foreign States and intergovernmental organizations";<sup>98</sup> Article 6 of the Order-in-Council P.C. 1791 of 18 November 1954 of Canada—Privileges and Immunities of the International Civil Aviation Organization: "Nothing in this Order shall be construed as exempting a Canadian citizen residing or ordinarily resident in Canada, from liability for any taxes or duties imposed by any law in Canada";<sup>99</sup> Article 8, paragraph 1 (c), of the Diplomatic Privileges (International Labour Organisation) Order in Council, 1949 (as amended), of the United Kingdom: "The provisions of this paragraph shall not apply to British subjects whose usual place of abode is in the United Kingdom".<sup>100</sup>

<sup>90</sup> *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 98, document A/C.6/385, p. 4.

<sup>91</sup> Leo Gross "Immunities and Privileges of Delegations to the United Nations", in *International Organization*, vol. XVI, No. 3, summer 1962, p. 491.

<sup>92</sup> *United Nations Legislative Series, Legislative Texts and Treaties concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 187.

<sup>93</sup> *Ibid.*, vol. II, (ST/LEG/SER.B/11), p. 105.

<sup>94</sup> *Ibid.*, p. 371.

<sup>95</sup> *Ibid.*, p. 393.

<sup>96</sup> *Ibid.*, p. 417.

<sup>97</sup> *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 116.

<sup>98</sup> *Ibid.*, p. 175.

<sup>99</sup> *Ibid.*, vol. II (ST/LEG/SER.B/11), p. 22.

<sup>100</sup> *Ibid.*, p. 55.

36. State practice and treaty and statutory provisions reveal that the consent of the host State is not required for the appointment of one of its nationals as a member of a permanent mission of another State. The problem is usually dealt with in terms of the immunities conceded to the member of the mission, and a number of States make a distinction between nationals and non-nationals in this regard.

37. A different approach is suggested by one writer who observes:

*Une question qui se pose est de savoir si un Etat pourrait nommer, comme membre de sa délégation permanente, un ressortissant de l'Etat du siège. Une telle mesure peut être fort utile pour les Etats ne possédant pas un service diplomatique développé; de plus, un des inconvénients d'une telle nomination qui se fait sentir pour les missions diplomatiques disparaît ici, car étant accréditées auprès d'une organisation internationale, les conflits de loyauté entre celle qu'une telle personne doit à l'Etat dont elle est ressortissant et celle qu'elle doit à l'Etat qui l'emploie sont peu probables. Toutefois un inconvénient majeur demeure, à savoir l'obligation dans laquelle se trouverait l'Etat du siège d'accorder un statut privilégié à un de ses ressortissants sur son propre territoire. Pour cette raison, nous pensons que les règles de droit diplomatique en la matière doivent s'appliquer aussi ici, c'est-à-dire que l'Etat du siège peut s'opposer à cette nomination lorsqu'il s'agit de personnel ayant un caractère diplomatique, alors que la délégation permanente peut choisir librement son personnel administratif et technique parmi des nationaux de cet Etat. La liberté doit par contre être laissée à la délégation permanente d'employer des personnes ressortissants d'un Etat tiers.<sup>101</sup>*

It is to be noted that the writer quoted above does concede that the appointment of a national of the host State as a member of a permanent mission of another State does not present in principle the difficulties which are encountered in similar cases within the framework of bilateral diplomacy. Realizing, however, that the situation may place the host State in the position of granting privileges to one of its nationals, he seeks remedy in advocating the right of the host State to oppose the appointment of one of its nationals as a member of a permanent mission of another State instead of suggesting its right to restrict his privileges and immunities.

38. In view of the above, the Special Rapporteur has decided not to include a general provision of principle on the question of nationality of members of the permanent mission and to deal with this question as a problem of privileges and immunities in section II of part II of these draft articles.

39. The only objection which might be raised to those considerations is that, in some States, nationals have to seek the consent of their own Government before entering the service of a foreign Government. Such a requirement, however, is merely an obligation governing the relationship between a national and his own Government and does not affect relations between States, and is not therefore a rule of international law.

## *Accreditation of the permanent representative*

### *Article 10*

**1. The credentials of the permanent representative shall be issued either by the Head of the State or by the Head of Government or by the Minister of Foreign Affairs, and shall be transmitted to the Secretary-General.**

**2. The Secretary-General shall submit, at each regular session of the General Assembly or any other organ designated for this purpose in accordance with the rule applicable in the organization concerned, a report on the credentials of the permanent representatives accredited to the organization.**

### *Article 11*

**1. Member States desiring their permanent representatives to represent them on one or more of the organs of the organization should specify the organs in the credentials submitted to the Secretary-General.**

**2. Subject to the rules of procedure of the organization concerned and unless the credentials of the permanent representative provide otherwise, the permanent representative shall represent the sending State in the different organs of the organization.**

### *Commentary*

(1) Article 10 reproduces, with the necessary drafting changes, sub-paragraph 1 of the first operative paragraph and the second operative paragraph of General Assembly resolution 257 A (III) on permanent missions to the United Nations.

(2) The question of accreditation of permanent representatives was discussed at the third session of the United Nations General Assembly.<sup>102</sup> The use of the word "credentials" in the Bolivian proposal was criticized by some delegations. It was stated by one delegate that "the word 'credentials' was out of place, because it tended to give the impression that the United Nations was a State, headed by the Secretary-General, and that the permanent representatives were accredited to him, and because the permanent representatives had to have full powers to enable them to accomplish certain actions, such as the signing of conventions." Mention was made that as matters stood, the permanent representatives of some countries to the United Nations have "full powers" and not "credentials" (*lettres de créance*). A number of delegates did not, however, share this point of view; they preferred the use of the word "credentials", pointing out that it had been intentionally used in the draft resolution and that it was unnecessary for permanent representatives to receive full powers to carry out their functions.

<sup>101</sup> *Cahier, op. cit.*, p. 419.

<sup>102</sup> See paragraphs 19-26 of section 1 of part II above. See also the second report by the Special Rapporteur, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/195 and Add.1, pp. 143 and 145, paras. 61-65 and 77.

(3) The rules of procedure of the different organs of the United Nations use the term "credentials" (chapter IV of the rules of procedure of the General Assembly; chapter III of the provisional rules of procedure of the Security Council; rule 19 of the rules of procedure of the Economic and Social Council; and rules 14-17 of the rules of procedure of the Trusteeship Council). The term "credentials" is also the term commonly used in the rules of procedure of other international organizations (for example: Rule III-2 of the General Rules of the Food and Agriculture Organization of the United Nations; chapter 5 of the General Regulations annexed to the International Telecommunication Convention (Montreux 1965) which regulates the question of credentials for delegations to conferences of the International Telecommunications Union; rule 22 (b) of the rules of procedure of the World Health Assembly of the World Health Organization).

(4) The general practice regarding issuance of credentials in respect of permanent representatives to international organizations is that these credentials are issued by the Head of the State or by the Head of Government or by the Minister for Foreign Affairs. In the case of one or two specialized agencies, the credentials of permanent representatives may also be issued by the member of government responsible for the department which corresponds to the field of competence of the organization concerned. Thus, credentials for representatives to the International Civil Aviation Organization are usually signed by the Minister for Foreign Affairs or the Minister of Communications or Transport. In the World Health Organization credentials must be issued by the Head of State, the Minister for Foreign Affairs, or the Minister of Health or by any other appropriate authority.

(5) While the credentials of permanent representatives are usually transmitted to the principal executive official of the organization whether designated "secretary-general", "director-general" or otherwise, there is no consistent practice concerning the organ to which the secretary-general should report on this matter. The second operative paragraph of General Assembly resolution 257 A (III) instructs the Secretary-General to submit, at each regular session of the General Assembly, a report on the credentials of the permanent representatives accredited to the United Nations. In the case of some organizations, the credentials are submitted to the Director-General who reports thereon to the Conference (FAO), or the Board of Governors (IAEA). In others, there is no similar procedure. Paragraph 2 of article 10 is designed to consolidate the practice in this matter and establish a general pattern for the submission of the credentials of permanent representatives to the secretary-general and the latter's reporting thereon to the General Assembly or any other organ of similar competence in accordance with the situation in the organization concerned.

(6) Article 11 regulates the position of permanent representatives with regard to the representation of the sending State in the organs of the organization. Paragraph 1 is based on sub-paragraph 4 of the first opera-

tive paragraph of General Assembly resolution 257 A (III).

The competence of permanent representatives was considered by the Interim Committee of the General Assembly at its meetings held from 5 January to 5 August 1948. The Committee considered a proposal submitted by the Dominican Republic. According to this proposal, the heads of permanent delegations at the seat of the United Nations should, in that capacity, be automatically entitled to represent their countries on the Interim Committee. This, it was said, would provide for greater elasticity by making it unnecessary for each delegation to submit new credentials for each convocation of the Interim Committee. With regard to alternates and advisers, rule 10 of the rules of procedure of the Interim Committee stated that they could normally be designated by the appointed representative. Consequently, special credentials would only be required when a Member of the United Nations desired to send a special envoy. It was said that such a procedure, in addition to its practical usefulness, would induce all Governments to set up permanent delegations, which would be an important contribution to the work of the United Nations.

It was pointed out, on the other hand, that the matter of credentials was properly one for the Governments concerned to decide for themselves. For example, in accrediting the head of a permanent delegation, it might be specified that, in the absence of notification to the contrary, he might act as representative on all organs or committees of the United Nations. The representative of the Dominican Republic made it clear, however, that the proposal submitted by his Government was intended to apply exclusively to the Interim Committee.<sup>103</sup>

(7) According to the information supplied to the Special Rapporteur by the legal advisers of the specialized agencies, the question whether permanent representatives accredited to a particular agency are entitled to represent their State before all organs of the agency has received answers which vary to some extent from agency to agency. It would seem a general rule, however, that accreditation as a permanent representative does not entitle the representative to participate in the proceedings of any organ to which he is not specifically accredited.

(8) While paragraph 1 of article 11 codifies this practice, paragraph 2 seeks to develop the practice in favour of conceding to the permanent representative general competence to represent his country in the different organs of the organization to which he is accredited. As a residual rule, it establishes a presumption to that effect. This rule is, however, without prejudice to the function of the credentials committee which may be set up or other procedures followed by the different organs to examine the credentials of delegates to their meetings.

<sup>103</sup> Reports of the Interim Committee of the General Assembly (5 January-5 August 1948), *Official Records of the General Assembly, Third Session, Supplement No. 10 (A/578, A/583, A/605, A/606)*.

**Article 12. Full powers and action in respect of treaties**

**1. Permanent representatives are not required to furnish evidence of their authority to negotiate, draw up and authenticate treaties drawn up within an international organization to which they are accredited or concluded between their State and the organization.**

**2. Permanent representatives shall be required to furnish evidence of their authority to sign (whether in full or *ad referendum*) on behalf of their State a treaty drawn up within an international organization to which they are accredited or between their State and the organization by producing an instrument of full powers.**

*Commentary*

(1) Paragraph 1 of article 12 is modelled on article 4, paragraph 2 (b) of the draft articles on the law of treaties adopted provisionally by the International Law Commission in 1962. In the relevant part of the commentary on that article, the Commission stated that: "The practice of establishing permanent missions at the headquarters of certain international organizations to represent the State and to invest the permanent representatives with powers similar to those of the Head of a diplomatic mission is now extremely common."<sup>104</sup> However, in the process of finalizing its draft articles on the law of treaties, the Commission decided in 1966 to revise article 4, paragraph 2 (b) of the 1962 text, which treated heads of permanent missions to international organizations on a similar basis to heads of diplomatic missions, so that they would automatically have been considered as representing their States in regard to treaties drawn up within the organization and also in regard to treaties between their State and the organization. In paragraph (6) of its commentary to article 6 of the 1966 text, the Commission stated that: "In the light of the comments of Governments and on a further examination of the practice, the Commission concluded that it was not justified in attributing to heads of permanent missions such a general qualification to represent the State in the conclusion of treaties."<sup>105</sup>

(2) The Special Rapporteur believes that the Commission has taken a rather strict approach to the question of the powers of permanent representatives to international organizations to represent their States in the conclusion of treaties. In interpreting the practice in this regard, it should be borne in mind that such practice has been developed at a time when the evolution of the institution of permanent mission was in its formative stage. With the evolution of the institution reaching at present a consolidated stage and the progressive attribution to permanent representatives to international organizations of functions and powers similar to those of heads of diplomatic missions, the Commission might consider whether it wished to reflect existing practice or to lay

down a rule entailing progressive development of international law in the matter.

(3) Paragraph 2 of article 12 is based on the practice of international organizations. The requirement of United Nations practice that permanent representatives need full powers to enable them to sign international agreements was described as follows by the Legal Counsel in response to an enquiry made by a permanent representative in 1953:

As far as permanent representatives are concerned, their designation as such has not been considered sufficient to enable them to sign international agreements without special full powers. Resolution 257 (III) of the General Assembly of 3 December 1948 on permanent missions does not contain any provision to this effect and no reference was made to such powers during the discussions which preceded the adoption of this resolution in the Sixth Committee of the General Assembly. However, the credentials of some permanent representatives contain general authorization for them to sign the conventions and agreements concluded under the auspices of the United Nations. But, even in such cases, in order to avoid any possible misunderstanding, if an agreement provides that States can be definitely bound by signature alone, it is the general practice to request a cable from the Head of the State or Government or from the Minister for Foreign Affairs confirming that the permanent representative so authorized in his credentials can sign the agreements concerned.<sup>106</sup>

Full powers, issued by the Head of State or Government, or by the Minister for Foreign Affairs or other responsible authority referred to in paragraph (4) of the commentary on articles 10 and 11 above, are generally required to enable permanent representatives to sign agreements drawn up within the specialized agencies. Except, to a limited extent, in IAEA and the United Nations Educational Scientific and Cultural Organization (UNESCO), accreditation as a permanent representative is not regarded as sufficient to enable a representative to sign agreements on behalf of his government; the limited exemption granted by IAEA in this respect is presently under review.<sup>107</sup>

**Article 13. Composition of the permanent mission**

**A permanent mission consists of one or more representatives of the sending State from among whom the sending State may appoint a head. It may also include diplomatic staff, administrative and technical staff and service staff.**

*Commentary*

(1) Article 13 is modelled on article 1 of the Vienna Convention on Diplomatic Relations<sup>108</sup> and article 9 of

<sup>106</sup> See the Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 169, para. 35. Further information may be found in United Nations Legislative Series, "Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements (ST/LEG/7), paras. 28-36.

<sup>107</sup> For details of the practice of the various specialized agencies, see the study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 195, para. 12.

<sup>108</sup> See United Nations, *Treaty Series*, vol. 500, pp. 96 and 98.

<sup>104</sup> *Yearbook of the International Law Commission, 1962*, vol. II, document A/5209, p. 165.

<sup>105</sup> *Yearbook of the International Law Commission, 1966*, vol. II, document A/6309/Rev.1, p. 193.

the International Law Commission's draft articles on special missions.<sup>109</sup>

(2) Every permanent mission must include at least one representative of the sending State, that is to say, a person to whom that State has assigned the task of being its representative in the permanent mission. If the permanent mission comprises two or more representatives, the sending State may appoint one of them to be head of the mission.

(3) "Permanent representative" is the term generally used at present as title for heads of permanent missions to international organizations. Article V, section 15 of the Headquarters Agreement between the United Nations and the United States of America uses the term "resident representative".<sup>110</sup> However, since the adoption of General Assembly resolution 257 A (III) on permanent missions to the United Nations the usage of the term "permanent representative" became the prevailing pattern in the statutory law and practice of international organizations, both universal and regional. There are some exceptions from the general pattern. The Headquarters Agreement of the International Atomic Energy Agency with Austria uses the term "resident representative",<sup>111</sup> which is also used in the Headquarters Agreement of the Food and Agriculture Organization with Italy.<sup>112</sup>

(4) The term "representatives" is defined in Article IV of the Convention on the Privileges and Immunities of the United Nations. Section 16 of this article, which defines the privileges and immunities to be accorded to the representatives of Member States, provides that:

In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.<sup>113</sup>

This definition is repeated in article I, section 1 (v) of the Convention on the Privileges and Immunities of the Specialized Agencies<sup>114</sup> and article IV, section 13 of the Interim Arrangement on Privileges and Immunities concluded between the United Nations and Switzerland.<sup>115</sup> This definition is generally adopted in the corresponding instruments of regional organizations. The term "secretaries of delegations" is deemed to refer to diplomatic secretaries only and not to include clerical staff. In the Headquarters Agreement between the International Civil

Aviation Organization and Canada, article I, section 1 (f), which reproduces the substance of the above definition, specifies that the expression "secretaries of delegations" includes "the equivalent of third secretaries of diplomatic missions but not the clerical staff".<sup>116</sup>

(5) The composition and organization of permanent missions are very similar to those of diplomatic missions which States accredit to each other. In paragraphs (7) and (8) of its commentary on articles 13-16 of its draft articles on diplomatic intercourse and immunities the International Law Commission stated:

The Commission did not feel called upon to deal in the draft with the rank of the members of the mission's diplomatic staff. This staff comprises the following classes:

- Ministers or Minister-Counsellors;
- Counsellors;
- First Secretaries;
- Second Secretaries;
- Third Secretaries;
- Attachés.

There are also specialized officials such as military, naval, air, commercial, cultural or other attachés who may be placed in one of the above mentioned.<sup>117</sup>

#### *Note on military, naval and air attachés*

40. The Vienna Convention on Diplomatic Relations includes an article which expressly provides that in the case of military, naval and air attachés, the receiving State may, in accordance with what is already a fairly common practice, require their names to be submitted beforehand, for its approval (article 7).<sup>118</sup>

41. Within the framework of international organizations, and except as regards regional organizations for military purposes, the staff of permanent missions does not include military, naval or air attachés. States do not in practice include such a category in their missions to the United Nations, the specialized agencies, regional organizations of general competence and regional organizations of limited competence for non-military purposes. One exception is that of the Permanent Members of the Security Council of the United Nations, who in this capacity are members of the Military Staff Committee. For the purpose of their representation in this military committee, the Permanent Members of the Security Council find it necessary to and do in fact include in their permanent missions specialized officials in military, naval and air matters.

42. The question of prior approval of these officials does not arise in the case of permanent missions. As stated before, the members of permanent missions are not accredited to the host State. Moreover, no prior approval (*agrément*) is required for the permanent representative, the head of the permanent mission. *A fortiori*, the same should apply to military, naval and air attachés. For these considerations, the Special Rapporteur did not

<sup>109</sup> See *Yearbook of the International Law Commission*, 1967, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 351.

<sup>110</sup> *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 208.

<sup>111</sup> *Ibid.*, vol. II, (ST/LEG/SER.B/11), p. 336.

<sup>112</sup> *Ibid.*, p. 195.

<sup>113</sup> *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 187.

<sup>114</sup> *Ibid.*, vol. II, (ST/LEG/SER.B/11), p. 102.

<sup>115</sup> *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 199.

<sup>116</sup> *Ibid.*, vol. II, (ST/LEG/SER.B/11), pp. 161 and 162.

<sup>117</sup> *Yearbook of the International Law Commission*, 1958, vol. II, document A/3859, p. 94.

<sup>118</sup> See *United Nations, Treaty Series*, vol. 500, p. 100.

deem it appropriate to include an article similar to article 7 of the Vienna Convention on Diplomatic Relations.

*Article 14. Size of the permanent mission*

**The sending State should observe that the size of its permanent mission does not exceed what is reasonable and normal, having regard to the circumstances and conditions in the host State, and to the needs of the particular mission and the organization concerned.**

*Commentary*

(1) Article 14 is modelled on article 11, paragraph 1 of the Vienna Convention on Diplomatic Relations.<sup>119</sup> There is, however, one basic difference. According to the provision of the Vienna Convention, the receiving State "may require that the size of a mission be kept within limits considered by it to be reasonable and normal. . .". Its original text as adopted by the Commission (article 10) used the words ". . . the receiving State may refuse to accept a size exceeding what is reasonable and normal. . .".<sup>120</sup> Article 14 states the problem differently. It merely lays down as a guide-line to be observed by the sending State the recommendation that the latter should endeavour, in composing its permanent mission, not to make it unduly excessive.

(2) The problem of limiting the size of the mission was dealt with differently in the International Law Commission's draft articles on special missions. In paragraph (6) of the commentary on article 9 of these draft articles,<sup>121</sup> the Commission noted that in view of the obligation of the sending State, under the terms of article 8, to inform the receiving State in advance of the number of persons it intends to appoint to the special mission, the Commission decided that there was no need to include in the draft the rules stated in article 11 of the Vienna Convention.

(3) In their replies to the questionnaire addressed to them by the Legal Counsel of the United Nations, the specialized agencies and the International Atomic Energy Agency stated that they encountered no difficulties in relation to the size of permanent missions accredited to them, and that the host States had imposed no restrictions on the size of these missions. The practice of the United Nations itself, as summed up in the study of the Secretariat indicates that although no provision appears to exist specifically delimiting the size of a mission it has been generally assumed that some upper limit did exist.<sup>122</sup> When negotiations were held with the United States authorities concerning the

Headquarters Agreement, the United States representative, while accepting the principle of the proposed article V dealing with permanent representatives, "felt that there should be some safeguard against too extensive an application." The text thereupon suggested (which, with slight modification, was finally adopted as article V) was considered by the Secretary-General and the Negotiating Committee to be a possible compromise.<sup>123</sup> The relevant portion of article V (section 15 (2)) reads: "such resident members of their staffs as may be agreed upon between the Secretary-General, the Government of the United States and the Government of the Member concerned."

(4) The question of the size of the permanent missions was indirectly discussed at the seventh session of the Conference of the Food and Agriculture Organization in 1953. The debate related to the interpretation of article XI (a) of the Headquarters Agreement between that organization and Italy.<sup>124</sup> The Italian Government pointed out that its understanding when signing the Headquarters Agreement was that resident representatives would normally be chosen from amongst the heads or members of diplomatic missions accredited to the Italian Government, or possibly the Holy See, except in the case of countries with which Italy did not maintain diplomatic relations or where an Italian national was appointed by the sending State. In its memorandum of 6 August 1953 addressed to the Director-General of the Food and Agriculture Organization, the Italian Government stated that: "It is true that the Headquarters Agreement which in Article XI recognizes the right of Member Nations to designate 'principal' resident representatives or representatives 'with the rank of Ambassador or Minister Plenipotentiary' does not explicitly provide for prior approval of the nomination by the Italian Government." The memorandum pointed out, however, that this article is reproduced from the provisions of article V, section 15, of the Agreement between the United States of America and the United Nations, which provides that the designation of the permanent members of the staff of the representatives be agreed between the Secretary-General of the United Nations, the Government of the United States of America and the Government of the Member concerned.<sup>125</sup> As a ground for advocating a restrictive approach to the composition and indirectly the size of permanent missions to the Food and Agriculture Organization, the

<sup>123</sup> *Ibid.* See joint report by the Secretary-General and the Negotiating Committee on the negotiations with the authorities of the United States of America concerning the arrangements required as a result of the establishment of the seat of the United Nations in the United States of America, A/67 and A/67/Add.1, 4 September 1946. Reproduced in United Nations Legislative Series, "Handbook on the Legal Status, Privileges and Immunities of the United Nations" (ST/LEG/2), p. 441.

<sup>124</sup> See *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (ST/LEG/SER.B/11), p. 195.

<sup>125</sup> See *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 208.

<sup>119</sup> *Ibid.*, p. 102.

<sup>120</sup> See United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. II, document A/CONF.20/4, p. 3.

<sup>121</sup> See *Yearbook of the International Law Commission*, 1967, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 352.

<sup>122</sup> *Ibid.*, document A/CN.4/L.118 and Add.1 and 2, p. 166, para. 18.

Italian Government relied on considerations of a practical nature. The memorandum emphasized that "FAO has not the political character of the United Nations Organization and its Council is not in permanent session . . . The normal activity of the Organization is, furthermore, of a purely administrative and technical nature. It is, therefore, justifiable to assume that the Member Nations of FAO do not find it necessary to nominate in Rome a permanent representative having the rank of Head of Mission as well as a permanent *ad hoc* mission, in order to ensure liaison with FAO."<sup>126</sup> The Conference adopted resolution No. 54 which recommended to Member States that they should "consult the Director-General in order that he may seek the views of the Italian Government" if they wished to appoint resident representatives, "who are not and may not become members of diplomatic missions accredited to the Italian Government."<sup>127</sup> Problems arising out of the application of this resolution have been satisfactorily resolved by negotiations.<sup>128</sup> The reference to article V, section 15 of the Headquarters Agreement of the United Nations as the basis for the Italian Government's interpretation of article XI (a) of the Food and Agriculture Organization Headquarters Agreement evoked some comments from the United Nations. It was pointed out in these comments that: "The purpose of the agreement required by section 15 (b) [sic] (of the United Nations Headquarters Agreement) was merely to designate administratively which ranks in the permanent missions would be entitled to the privileges and immunities of diplomatic envoys. A fixed agreement as to the dividing line between members of missions having diplomatic status and the purely administrative or service personnel was, therefore, reached shortly after the entry into force of the United Nations Headquarters Agreement. Neither then nor since has any consideration ever been given to the designations of individual members of any permanent representative's staff." It was further stated that consultation with the host Government before Members nominate members of the permanent missions "does not purpose to correspond to practice at the Headquarters of the United Nations."<sup>129</sup>

(5) Article 14, as mentioned before in paragraph (1) of this commentary, does not provide that the host State or the organization may require that the size of the mission be kept within certain limits or that they may refuse to accept a size exceeding those limits, a prerogative which was recognized to the receiving State under article 11, paragraph 1 of the Vienna Convention on Diplomatic Relations.<sup>130</sup> Unlike the case of bilateral diplomacy,

<sup>126</sup> Conference of FAO, Seventh Session, "Interpretation of Article XI (a) of the Agreement between the Government of the Italian Republic and the FAO": note by the Director-General, document C 53/52, of 25 August 1953, p. 3.

<sup>127</sup> See the Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 192, para. 8.

<sup>128</sup> *Ibid.*

<sup>129</sup> Conference of FAO, Seventh Session, "Comments of the United Nations on the Interpretation of Article XI (a) of the Agreement between the Italian Government and the FAO", Commission III, document C 53/III/11 of 23 November 1953.

<sup>130</sup> See foot-note 119 above.

the members of permanent missions to international organizations are not accredited to the host State. Nor are they accredited to the international organization in the proper sense of the word. As will be seen in different parts of these draft articles, remedy for the grievances which the host State or the organization may have against the permanent mission or one of its members cannot be sought in the prerogatives recognized to the receiving State in bilateral diplomacy, prerogatives which flow from the fact that diplomatic envoys are accredited to the receiving State and from the latter's inherent right in the last analysis to refuse to maintain relations with the sending State. In the case of permanent missions to international organizations, remedies must be sought in consultations between the host State, the organization concerned and the sending State, but the principle of the freedom of the sending State in the composition of its permanent mission and the choice of its members must be recognized.

(6) Like article 11, paragraph 1 of the Vienna Convention on Diplomatic Relations, article 14 lays down as guiding factors in the limiting of the size of the mission the conditions in the host State and the needs of the mission. To these it adds the needs of the organization concerned. A number of specialized agencies drew attention to the fact that, owing to the technical and operational nature of their work, they corresponded directly with the ministry or other authority of Member States immediately concerned; the functions of permanent representatives in these cases, therefore, tended to be of a formal and occasional nature rather than of day-to-day importance.<sup>131</sup>

#### Article 15. Notifications

##### 1. The Organization shall be notified of:

- (a) The appointment of members of the mission, their arrival and their final departure or the termination of their functions with the mission;
- (b) The arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the mission;
- (c) The arrival and final departure of private servants in the employ of persons referred to in sub-paragraph (a) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons;
- (d) The engagement and discharge of persons resident in the receiving State as members of the mission or private servants entitled to privileges and immunities.

##### 2. The Organization shall transmit to the host State the notifications referred to in paragraph 1 of this article.

<sup>131</sup> See the Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 192, para. 9.

3. The sending State may also transmit to the host State the notifications referred to in paragraph 1 of this article.

4. Where possible, prior notification of arrival and final departure shall also be given.

#### Commentary

(1) Article 15 is modelled on article 10 of the Vienna Convention on Diplomatic Relations,<sup>132</sup> with the changes required by the particular nature of permanent missions to international organizations.

(2) It is desirable for the Organization and the host State to know the names of the persons who may claim privileges and immunities. The question to what extent the sending State is obliged to give the necessary notifications of the composition of the mission and the arrival and departure of its head, its members and its staff, arises with regard to permanent missions to international organizations just as it does with regard to permanent diplomatic missions and special missions. Of particular application, however, to permanent missions to international organizations is the problem whether the sending State is obliged to give the notifications referred to in paragraph 1 of article 15 to the Organization or to the host State or to both.

(3) *Position at United Nations Headquarters.* The Secretariat wrote to Member States in December 1947 informing them that the Headquarters Agreement had come into effect and recalling the terms of General Assembly resolution 169 B (II);<sup>133</sup> Member States were requested to communicate the name and rank of all persons who, in the opinion of the State concerned, came within the categories of persons covered by sub-sections (1) or (2) of section 15 of the Headquarters Agreement.<sup>134</sup>

The question of appointments of the members of permanent missions was regulated by General Assembly

<sup>132</sup> United Nations, *Treaty Series*, vol. 500, p. 102.

<sup>133</sup> *General Assembly resolution 169B (II)*, adopted on 31 October 1947, reads: "The General Assembly Decides to recommend to the Secretary-General and to the appropriate authorities of the United States of America to use Section 16 of the General Convention on the Privileges and Immunities of the United Nations as a guide in considering—under sub-section 2 and the last sentence of section 15 of the above-mentioned Agreement regarding the Headquarters—what classes of persons on the staff of delegations might be included in the lists to be drawn up by agreement between the Secretary-General, the Government of the United States and the Government of the Member State concerned."

*Section 16 of the Convention on the Privileges and Immunities of the United Nations reads:* "In this article the expression 'representatives' shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations."

<sup>134</sup> *Sub-sections (1) and (2) of section 15 of the Headquarters Agreement read:*

"(1) Every person designated by a Member as the principal resident representative to the United Nations of such Member or as a resident representative with the rank of ambassador or minister plenipotentiary,  
 "(2) such resident members of their staffs as may be agreed upon between the Secretary-General, the Government of the United States and the Government of the Member concerned . . ."

resolution 257 A (III). Sub-paragraph 2 of the first operative paragraph of this resolution provides "that the appointments and changes of members of the permanent missions other than the permanent representative shall be communicated in writing to the Secretary-General by the head of the mission".

On the basis of the practice established in 1947 and 1948 the normal procedure at the present time is for missions to notify the Protocol and Liaison Section of the Secretariat of the names and ranks of persons on their staff who are entitled to privileges and immunities under section 15, sub-sections (1) and (2) of the Headquarters Agreement. These particulars are then forwarded by the Secretariat to the United States Department of State via the United States mission. Upon notification from the Department of State, the United States mission then dispatches to the person concerned a standard letter, giving details of the privileges and immunities afforded.<sup>135</sup>

A note was sent by the Secretary-General to permanent missions on 31 July 1964, setting out arrangements designed to reduce or eliminate delay between the arrival of members of the staff of permanent mission and the recognition by the host Government of the privileges and immunities accorded to them under the Headquarters Agreement. The note stated that: "The United States authorities informed the Secretary-General that it is proposed to put into effect a new procedure to reduce or eliminate the delay which presently arises between the arrival in the United States of members of the staff of Permanent Missions and the recognition by the host Government of the privileges and immunities accorded to such members under the Headquarters Agreement. This new procedure would permit Permanent Missions, if they so wished, to submit in advance, and prior to their arrival in the United States, the names of persons appointed to serve on their Missions".<sup>136</sup> The note pointed out that "the Secretary-General has indicated to the United States Mission his belief that Permanent Missions may find the foregoing procedure a useful one, if they wish to avail themselves of it. This would be without prejudice to any questions of the interpretation to be given to section 15 (2) of the Headquarters Agreement between the United Nations and the United States of America."<sup>137</sup>

<sup>135</sup> See the Study of the Secretary, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 171, para. 53.

<sup>136</sup> For the text of this note, *ibid.*, p. 173, para. 60.

<sup>137</sup> The interpretation of section 15 sub-section (2) of the Headquarters Agreement became an issue in the Santiesteban case in 1962. In discussions with the United States authorities, the United Nations contended that the wording of section 15 sub-section (2) and the arrangements which had been previously established did not support the contention, made by the United States authorities, that the agreement of all three parties involved (viz., of the Secretary-General, the United States and of the Member States) extended to requiring the consent of all three to each individual resident member of a State's mission to the United Nations. *Ibid.*, p. 172, paras. 56-59. The problem of the approval by the host State of the individual nominations of members of the missions will be discussed in section II of part II of these draft articles entitled "Facilities, privileges and immunities".

(4) *Position at the United Nations Office at Geneva.* Paragraph 4 of the decision adopted by the Swiss Federal Council on 31 March 1948 entitled "*Décision du Conseil fédéral suisse concernant le statut juridique des délégations permanentes auprès de l'Office européen des Nations Unies ainsi que d'autres Organisations internationales ayant leur Siège en Suisse*" regulates the question of notifications. It provides that "*la création d'une délégation permanente, les arrivées et les départs des membres des délégations permanentes sont annoncés au Département politique par la mission diplomatique à Berne de l'Etat intéressé. Le Département politique délivre aux membres des délégations une carte de légitimation attestant les privilèges et immunités dont ils bénéficient en Suisse*".<sup>138</sup> This rule was criticized by one writer who observed:

*D'après la décision de 1948 du Conseil fédéral suisse, c'est à la mission diplomatique à Berne de l'Etat intéressé qu'il incombe de signaler les arrivées et départs au sein de la délégation permanente. C'est ignorer que le lien diplomatique a lieu entre l'organisation internationale et l'Etat d'envoi, et non entre ce dernier et l'Etat du Siège. En outre, que se passera-t-il au cas où la délégation permanente représente un Etat non reconnu par la Suisse? Il vaut mieux que ce soit l'organisation internationale qui transmette à l'Etat du Siège les allées et venues des membres des délégations permanentes.*<sup>139</sup>

(5) *Practice of the specialized agencies.* The practice of the specialized agencies regarding the procedure prescribed for notification of the composition of permanent missions and the arrival and departure of their members is varied and far from systematized. Some of these agencies (e.g., the International Labour Organisation) indicated in their replies that in certain cases member States merely inform the Director-General, before or immediately after his arrival, that a person has been designated as permanent representative to that organization. In other cases the person designated deposits a letter of credence. It is the practice for the Director-General, in reply to a communication on the subject, to inform the member State concerned that he has taken note of the communication. The Organization has no procedure similar to that established in the United Nations under General Assembly resolution 257 A (III) of 3 December 1948. Member States notify the host State independently of the arrival and departure of representatives, members of their family and private servants. Other specialized agencies (e.g., the United Nations Educational, Scientific and Cultural Organization) indicated that when a permanent representative submits his letter of credence to the Director-General it is the Organization which requests the host State to provide the representative with a diplomatic card; this request constitutes an implicit notification to the host State. In a very small number of cases this request is made by the Embassy of the State concerned, without the intervention of the Organization. However, other

agencies (e.g., the World Health Organization) replied that there are no formal arrangements and the Director-General is informed of the appointment of the permanent representatives either directly by the Ministry of Foreign Affairs of the member concerned or through the United Nations Office at Geneva. The Organization does not, as a general rule, notify the host State of the arrival and departure of representatives. Mention should also be made of the distinction drawn in the replies of some organizations between the notification of appointments on the one hand and the notification of arrivals and departures on the other hand. While the nomination to the post of permanent representative is communicated to the Organization, Member States usually notify the host State of the arrival and departure of representatives directly through ordinary diplomatic channels.

(6) It would appear from the foregoing survey of practice that while the United Nations has developed a system of notifications of the appointments of members of permanent missions and their departures and arrivals, the arrangements applied within the different specialized agencies are fragmentary and far from systematized. In laying down the rule for notifications one may consider two possibilities, either to take note of the practice of international organizations and provide a rule which sets out different alternatives, or to establish a uniform regulation. The first possibility would be to give as the principal alternative that notifications be addressed to the Organization while at the same time giving as a "variant" that notifications be addressed to the host State. The Special Rapporteur believes that it would be desirable to establish a uniform regulation and article 15 seeks to accomplish this end.

(7) The rule formulated in article 15 is based on considerations of principle as well as of a practical nature. Its rationale is that the direct relationship being between the sending State and the Organization, notifications are to be communicated to the Organization (para. 1). The transmission of notifications to the host State is effected through the intermediary of the Organization (para. 2). Paragraph 3 of the article makes it optional for the sending State to communicate the notifications independently to the host State. It should be noted that paragraph 3 provides a supplement to and not an alternative or a substitute for the basic pattern prescribed in paragraphs 1 and 2 of the article.

#### *Article 16. Permanent representative ad interim*

**If the post of permanent representative is vacant, or if the permanent representative is unable to perform his functions, a chargé d'affaires ad interim shall act provisionally as acting permanent representative. The name of the acting permanent representative shall be notified to the Organization either by the permanent representative or, in case he is unable to do so, by the sending State.**

#### *Commentary*

(1) Article 16 corresponds to article 19 of the Vienna Convention on Diplomatic Relations. It provides for

<sup>138</sup> *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations (ST./LEG/SER.B/10)*, p. 92.

<sup>139</sup> *Cahier, op. cit.*, p. 417, foot-note 14.

situations where the post of head of the mission falls vacant, or the head of the mission is unable to perform his functions.

(2) General Assembly resolution 257 A (III) envisages that the duties of head of mission may be performed temporarily by someone other than the permanent representative. Sub-paragraph 3 of the first operative paragraph of this resolution reads: "That the permanent representative, in case of temporary absence, shall notify the Secretary-General of the name of the member of the mission who will perform the duties of head of the mission".

(3) In the United Nations "blue book" listing members of permanent missions, the designation "chargé d'affaires, a.i." is used after the Secretariat has been informed of such an appointment. In their replies to the question whether there is a practice in these organizations for permanent missions to make notification that an acting permanent representative or chargé d'affaires has become temporary head of mission, the specialized agencies furnished varied information. A number of them indicated that notifications concerning the designation of acting permanent representatives are usually received. Some of the agencies replied that in practice certain permanent missions notify the Organization that the deputy permanent representative assumes the functions of temporary head of mission, or that the Organization is sometimes informed that a permanent representative *ad interim* or a chargé d'affaires is temporarily in charge of a mission. Others indicated that no such practice existed within them. One or two agencies pointed out that since missions frequently consist of the resident representative only and seldom exceed three members, no practice as mentioned in the above-mentioned question has so far been developed.

(4) The appointment of a chargé d'affaires should be distinguished from that of an "alternate representative" or of a "deputy permanent representative". Both of these terms are used by Member States, the latter expression being frequently used to describe the person ranking immediately after the permanent representative himself.<sup>140</sup>

#### Article 17. Precedence

**Heads of permanent mission shall take precedence in the order established in accordance with the rule applicable in the Organization concerned.**

#### Commentary

(1) The question of precedence of heads of permanent mission did not figure in the list of questions included in the questionnaire prepared by the Legal Counsel of the United Nations.<sup>141</sup> Nor did the replies of the legal

<sup>140</sup> See the Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 164, para. 12.

<sup>141</sup> See second report of the Special Rapporteur, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/195 and Add.1, pp. 134 and 135, paras. 5 and 6.

advisers of the specialized agencies to whom the questionnaire was addressed include any information on the question of precedence. The Special Rapporteur has requested the Office of Legal Affairs of the United Nations to provide him the necessary data on the practice of the United Nations in this regard. Pending the receipt of such information, the Special Rapporteur has decided to include on a provisional basis the present text of article 17 of these draft articles.

(2) Unlike article 16 of the Vienna Convention on Diplomatic Relations,<sup>142</sup> article 17 does not make reference to the classes to which the heads of mission are assigned. The classification of diplomatic missions into ambassadors, ministers and chargés d'affaires *en pied* is not applicable within the system of permanent missions to international organizations.<sup>143</sup>

#### Article 18. Seat of the permanent mission

**1. A permanent mission shall have its seat in the locality in which the seat of the organization is established.**

**2. A permanent mission may, with the consent of the host State or the State concerned, have its seat in localities other than those in which the seat of the organization is established.**

#### Article 19. Offices away from the seat of the permanent mission

**A permanent mission may not, without the consent of the host State, establish offices in localities other than those in which the mission itself is established.**

#### Commentary

(1) The provisions of these two articles have been included to forestall the awkward situation which would result for the host State if the premises of a mission were established in localities other than that which is the seat of the organization.

(2) There is no specific reference to mission premises in the United Nations Headquarters Agreement. General Assembly resolution 257 A (III) deals with the personnel of the permanent missions (credentials of a permanent representative, communication of appoint-

<sup>142</sup> United Nations, *Treaty Series*, vol. 500, p. 104.

<sup>143</sup> "Article 14 of the Vienna Convention on Diplomatic Relations reads:

"1. Heads of mission are divided into three classes, namely:

(a) that of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;  
(b) that of envoys, ministers and internuncios accredited to Heads of State;  
(c) that of chargés d'affaires accredited to Ministers for Foreign Affairs.

"2. Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class."

ment of the staff of a permanent mission, etc.) but does not deal with the premises of such missions. The practice relating to the premises of permanent missions at United Nations Headquarters was summarized in a letter sent by the Legal Counsel of the United Nations to the Legal Adviser of one of the specialized agencies as follows: "In practice permanent missions do not inform us in advance of their intention to set up an office at a given location, and I understand do not inform the United States Mission, unless they desire assistance of some kind in obtaining the property of otherwise. They do of course advise us of the address of their office once it is established and of any changes of address. We publish the address in the monthly list of Permanent Missions. We also inform the United States Mission of new addresses, and the United States Mission is sometimes informed directly by the permanent mission, but there is no special procedure, consultation or acceptance, tacit or express, involved."<sup>144</sup>

(3) In the case of the United Nations Office at Geneva, the Swiss Federal Authorities in a circular note informed permanent missions at that Office that they had no objection in principle to one mission serving for the purposes of representing the State concerned both at Berne and at the Geneva Office, but that they would only recognize such missions as an embassy where the premises were situated in Berne. At the present time all permanent missions at the Geneva Office are located in Geneva, with the exception of two in Berne and one in Paris.<sup>145</sup>

(4) The replies of the specialized agencies indicate in general that no restrictions on the location of the premises of a permanent mission have ever been imposed by the Organization or the host State. One organization (the International Atomic Energy Agency) pointed out in its reply that "the premises of some permanent missions accredited to IAEA are not in Austria, but in other European countries."

### *Article 20. Use of flag and emblem*

**The permanent mission and the permanent representative shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the permanent representative, and on his means of transport.**

#### *Commentary*

(1) This article is modelled on article 20 of the Vienna Convention on Diplomatic Relations.<sup>146</sup>

(2) There appear to be no express provisions which regulate the question of the use by permanent missions of national flags. In the practice of the United Nations Member States have placed their national flag and

emblem outside the premises of permanent offices and, to a lesser extent, on the residence and means of transport of the permanent representative.<sup>147</sup> At the United Nations Office at Geneva the national flag is flown only on the national day and on special occasions.<sup>148</sup>

(3) The replies of the specialized agencies and the International Atomic Energy Agency can be summarized as follows: In a number of cases the national flag of the Member State is flown from the office of its mission and, to a lesser extent, on the car used by the permanent representative. National flags are not flown from the offices in the United Nations Educational, Scientific and Cultural Organization building used by permanent missions. The International Atomic Energy Agency states that resident representatives are not known to have flown a national flag from their offices unless they were at the same time accredited to the host State. On the other hand, permanent representatives to the United Nations Educational, Scientific and Cultural Organization who are assimilated to heads of diplomatic missions normally fly the national flag on their cars when travelling on official business. In general, however, it would appear that the fact that many representatives are members of diplomatic missions and that many premises are also used for other purposes (e.g., as an embassy or consulate) has prevented any clear or uniform practice from emerging.

### *Section II. Facilities, privileges and immunities*

#### *General comments*

43. As a common feature, the headquarters agreements of international organizations, whether universal or regional, include provisions for the enjoyment by permanent representatives of privileges and immunities which the host State "accords to diplomatic envoys accredited to it". In general, these headquarters agreements do not contain restrictions on the privileges and immunities of permanent representatives which are based on the application of the principle of reciprocity in the relations between the host State and the sending State. However, the relevant articles of some of the headquarters include a proviso which makes it an obligation of the host State to concede to permanent representatives the privileges and immunities which it accords to diplomatic envoys accredited to it, "subject to corresponding conditions and obligations". Examples: article V, section 15 of the Headquarters Agreement of the United Nations;<sup>149</sup> article XI, section 24, paragraph (a) of the Headquarters Agreement of the Food and Agriculture Organization of the United Nations;<sup>150</sup> article 1 of the

<sup>147</sup> See Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 187, para. 159.

<sup>148</sup> *Ibid.*

<sup>149</sup> *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 208.

<sup>150</sup> *Ibid.*, vol. II (ST/LEG/SER.B/11), p. 195.

<sup>144</sup> See Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 187, para. 154.

<sup>145</sup> *Ibid.*, p. 187, para. 155.

<sup>146</sup> United Nations, *Treaty Series*, vol. 500, p. 106.

Bilateral Agreement between the Organization of American States and the Government of the United States of America relating to privileges and immunities of representatives and other members of delegations.<sup>151</sup>

44. In determining the rationale of diplomatic privileges and immunities the International Law Commission discussed, at its tenth session in 1958, the theories which have exercised influence on the development of diplomatic privileges and immunities. The Commission mentioned the "extritoriality" theory, according to which the premises of the mission represent a sort of extension of the territory of the sending State; and the "representative character" theory, which bases such privileges and immunities on the idea that the diplomatic mission personifies the sending State. The Commission pointed out that "there is now a third theory which appears to be gaining ground in modern times, namely, the "functional necessity" theory, which justifies privileges and immunities as being necessary to enable the mission to perform its functions."<sup>152</sup>

45. Functional necessity as one of the bases of the privileges and immunities of representatives of States to international organizations is generally reflected in constituent instruments of international organizations. In accordance with Article 105 (2) of the Charter of the United Nations, "Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization."

46. The representation of States in international organizations is the basic function of permanent missions as defined in article 6 of these draft articles. Article 1, subparagraph (b) of these draft articles defines a "permanent mission" as a mission of representative and permanent character sent by one State member of an international organization to that organization. Paragraph (3) of the commentary on article 6 states that "sub-paragraph (b) states the representation function of the permanent mission". The mission represents the sending State in the Organization. The mission, and in particular the permanent representative, the head of the mission, is the spokesman for its Government in communication with the organization, or in any discussions with that Organization to which relations between the member States and the Organization may give rise.

47. The representation of States within the framework of the diplomacy of international organizations and conferences has its particular characteristics. The representative of a State to an international organization does not represent his State before the host State. He does not enter into direct relationship and transactions with the host State, unlike the case of bilateral diplomacy. In the latter case, the diplomatic agent is accredited to the receiving State in order to perform certain functions of representation and negotiation between it and his own State. The representative of a State to an

international organization represents his State before the Organization as a collective organ which possesses a separate identity and legal personality distinct from those of the individual member States. In a sense it may be said that he also performs some kind of representation to the States members of the Organization in their collegiate capacity as an organization of States and not in their individual capacity. The host State is included in such a community when it is a member of the Organization. Such a situation cannot be said to exist when the host State is a non-member of the Organization.

48. Another characteristic of representation to international organizations springs from the fact that the observance of the juridical rules governing privileges and immunities is not solely the concern of the sending State as in the case of bilateral diplomacy. In the discussion on the "question of diplomatic privileges and immunities" which took place in the Sixth Committee during the twenty-second session of the General Assembly, it was generally agreed that the Organization itself had an interest in the enjoyment by the representatives of Member States of the privileges and immunities necessary to enable them to carry out their tasks. It was also recognized that the Secretary-General should maintain his efforts to ensure that the privileges and immunities concerned were respected.<sup>153</sup> In his statement at the 1016th meeting of the Sixth Committee the Legal Counsel, speaking as the representative of the Secretary-General, stated that: ". . . the rights of representatives should properly be protected by the Organization and not left entirely to bilateral action of the States immediately involved. The Secretary-General would therefore continue to feel obligated in the future, as he has in the past, to assert the rights and interests of the Organization on behalf of representatives of Members as the occasion may arise. I would not understand from the discussion in this Committee that the Members of the Organization would wish him to act in any way different from that which I have just indicated. Likewise, since the Organization itself has an interest in protecting the rights of representatives, a difference with respect to such rights may arise between the United Nations and a Member and consequently be the subject of a request for an advisory opinion under section 30 of the Convention [the Convention on the Privileges and Immunities of the United Nations of 1946]. It is thus clear that the United Nations may be one of the 'parties' as that term is used in section 30."<sup>154</sup>

49. The privileges and immunities of permanent missions to international organizations, being analogous if not identical with those of diplomatic bilateral missions, the articles thereon are modelled on the corresponding provisions of the Vienna Convention on Diplomatic Relations. In view of this, there does not appear to be a need for an independent and elaborate commentary for this section, except inasmuch as it may

<sup>151</sup> *Ibid.*, p. 382.

<sup>152</sup> *Yearbook of the International Law Commission, 1958*, vol. II, document A/3859, p. 95.

<sup>153</sup> *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 98, document A/6965, para. 14.

<sup>154</sup> *Ibid.*, document A/C.6/385, pp. 4 and 5.

be necessary to draw attention to certain departures from the Vienna text or to point out any particular content of application which a given rule might have assumed within one or more international organizations.

### *Article 21. General facilities*

**The organization and the host State shall accord to the permanent mission the facilities required for the performance of its functions, having regard to the nature and task of the permanent mission.**

### *Article 22. Accommodation of the permanent mission and its members*

1. The host State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its permanent mission or assist the latter in obtaining accommodation in some other way.

2. The host State and the Organization shall also, where necessary, assist permanent missions in obtaining suitable accommodation for their members.

### *Commentary*

(1) Article 21 is based on article 25 of the Vienna Convention on Diplomatic Relations<sup>155</sup> and article 22 of the draft articles on special missions.<sup>156</sup> It states in general terms the obligations of both the Organization and the host State to accord to the permanent mission the facilities required for the performance of its functions.

(2) The reference in the text of article 21 to the nature and task of the permanent mission—a reference which does not appear in article 25 of the Vienna Convention—makes the extent of the obligations both of the Organization and of the host State depend on the individual characteristics of the permanent mission according to the specific functional needs of the Organization to which the mission is assigned.

(3) A permanent mission may often need the assistance of the host State, in the first place during the installation of the mission, and also in the performance of its functions. To an even greater extent, the permanent mission needs the assistance of the Organization which has a more direct interest in the permanent mission being able to perform its functions satisfactorily. The Organization can be particularly helpful to the permanent mission in obtaining documentation and information, an activity referred to in article 6, sub-paragraph (d) of these draft articles.

(4) Article 22 is based on article 21 of the Vienna Convention on Diplomatic Relations.<sup>157</sup> As observed by the International Law Commission in the commentary

on the relevant provision (article 19) of its draft articles which served as the basis for the Vienna Convention, the laws and regulations of a given country may make it impossible for a mission to acquire the premises necessary to it.<sup>158</sup> For that reason the Commission inserted in that provision a rule which makes it obligatory for the receiving State to ensure the provision of accommodation for the mission if the latter is not permitted to acquire it. These considerations equally underlie article 22, paragraph 1 of the draft articles.

### *Article 23. Inviolability of the premises of the permanent mission*

1. The premises of the permanent mission shall be inviolable. The agents of the host State may not enter them, except with the consent of the head of the mission.

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

3. The premises of the permanent mission, their furnishings and other property thereon and the means of transport of the permanent mission shall be immune from search, requisition, attachment or execution.

### *Article 24. Exemption of the premises of the permanent mission from taxation*

1. The sending State and the head of the permanent mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the permanent mission, whether owned or leased, other than such as represent payment for specific services rendered.

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

### *Article 25. Inviolability of archives and documents*

**The archives and documents of the permanent mission shall be inviolable at any time and wherever they may be.**

### *Commentary*

(1) Articles 23 to 25 relate to certain immunities and exemptions concerning the premises of the permanent mission and its archives and documents. These articles reproduce, with the necessary drafting changes, the provisions of articles 22 to 24 of the Vienna Convention on Diplomatic Relations.<sup>159</sup>

<sup>155</sup> United Nations, *Treaty Series*, vol. 500, p. 108.

<sup>156</sup> See *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 359.

<sup>157</sup> United Nations, *Treaty Series*, vol. 500, p. 106.

<sup>158</sup> *Yearbook of the International Law Commission, 1958*, vol. II, document A/3859, p. 95.

<sup>159</sup> United Nations, *Treaty Series*, vol. 500, pp. 106 and 108.

(2) The requirement that the host State should ensure the inviolability of permanent missions' premises, archives and documents has been generally recognized. In a letter sent to the Legal Adviser of one of the specialized agencies in 1964, the Legal Counsel of the United Nations stated that: "There is no specific reference to mission premises in the Headquarters Agreement and the diplomatic status of these premises therefore arises from the diplomatic status of a resident representative and his staff".<sup>160</sup>

(3) The headquarters agreements of some of the specialized agencies contain provisions relating to the inviolability of the premises of permanent missions and their archives and documents (for example, article XI of the Headquarters Agreement of the Food and Agriculture Organization of the United Nations;<sup>161</sup> article XIII and article XIV, section 33 (c) of the Headquarters Agreement of the International Atomic Energy Agency,<sup>162</sup> which recognize the inviolability of correspondence, archives and documents of missions of member States).

(4) The inviolability of the premises of the United Nations and the specialized agencies was sanctioned in article II, section 3 of the Convention on the Privileges and Immunities of the United Nations<sup>163</sup> and article III, section 5 of the Convention on the Privileges and Immunities of the Specialized Agencies<sup>164</sup> respectively. They provide that the property and assets of the United Nations and the specialized agencies, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action. The conventions also contain provisions on the inviolability of the archives and documents of the United Nations and the specialized agencies. Provision is also made for inviolability for all papers and documents of "Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations" and of "Representatives of members at meetings convened by a specialized agency".

(5) An explicit reference to the premises of permanent missions has been made in the Headquarters Agreement of the International Civil Aviation Organization. Article II, section 4 (1) of this Agreement provides that the "headquarters premises of the Organization shall be inviolable".<sup>165</sup> Article I, section 1 (b) defines the expression "headquarters premises" as follows: "The expression 'headquarters premises' means any building or part of a

building occupied permanently or temporarily by any unit of the Organization or by meetings convened in Canada by the Organization, including the offices occupied by resident Representatives of Member States."<sup>166</sup>

(6) Article 24 provides for the exemption of the premises of the permanent mission from taxation. The replies of the United Nations and the specialized agencies indicate that this exemption is generally recognized. Examples of provisions in headquarters agreements for such exemption are to be found in article XI of the Headquarters Agreement of the Food and Agriculture Organization of the United Nations<sup>167</sup> and in articles XII and XIII of the Headquarters Agreement of the International Atomic Energy Agency.<sup>168</sup>

### Article 26. Freedom of movement

**Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the host State shall ensure to all members of the permanent mission freedom of movement and travel in its territory.**

#### Commentary

(1) This article is based on article 26 of the Vienna Convention on Diplomatic Relations.<sup>169</sup>

(2) Replies of the specialized agencies indicate that no restrictions have been imposed by the host State on the movement of members of permanent missions of member States.

(3) At the United Nations Headquarters the host State has imposed limits on the movement of the representatives of certain Member States on the ground that similar restrictions have been placed on the representatives of the host State in the countries concerned.

(4) The problem of reciprocity will be dealt with in article 41 on non-discrimination. Suffice it to mention here that it has been the understanding of the Secretariat of the United Nations that the privileges and immunities granted should generally be those afforded to the diplomatic corps as a whole, and should not be subject to particular conditions imposed, on a basis of reciprocity, upon the diplomatic missions of particular States.<sup>170</sup>

### Article 27. Freedom of communication

**1. The host State shall permit and protect free communication on the part of the permanent mission for all**

<sup>160</sup> See the Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 187, para. 154.

<sup>161</sup> *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II, (ST/LEG/SER.B/11), pp. 195 and 196.

<sup>162</sup> *Ibid.*, pp. 336 and 337.

<sup>163</sup> *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 185.

<sup>164</sup> *Ibid.*, vol. II, (ST/LEG/SER.B/11), p. 103.

<sup>165</sup> *Ibid.*, p. 162.

<sup>166</sup> *Ibid.*, p. 161.

<sup>167</sup> *Ibid.*, pp. 195 and 196.

<sup>168</sup> *Ibid.*, pp. 336 and 337.

<sup>169</sup> United Nations, *Treaty Series*, vol. 500, p. 108.

<sup>170</sup> See Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 178, para. 96.

official purposes. In communicating with the Government and the diplomatic missions, consulates and special missions of the sending State, wherever situated, the permanent mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the host State.

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

3. The bag of the permanent mission shall not be opened or detained.

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

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

6. The sending State or the permanent mission may designate couriers *ad hoc* of the permanent missions. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the permanent mission's bag in his charge.

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

#### Commentary

(1) This article is based on article 27 of the Vienna Convention on Diplomatic Relations.<sup>171</sup>

(2) Permanent missions to the United Nations, the specialized agencies and other international organizations enjoy in general freedom of communication on the same terms as the diplomatic missions accredited to the host State.

(3) Replies of the United Nations and the specialized agencies indicate also that the inviolability of correspondence, which is provided in article IV, section 11 (b) of the Convention on the Privileges and Immunities of the United Nations<sup>172</sup> and article V, section 13 (b) of

<sup>171</sup> United Nations, *Treaty Series*, vol. 500, p. 108.

<sup>172</sup> See *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 186.

the Convention of Privileges and Immunities of the specialized Agencies<sup>173</sup> has been fully recognized.

(4) One difference between this article and article 27 of the Vienna Convention on Diplomatic Relations is the addition in paragraph 1 of the words "[with] special missions" in order to coordinate the article with article 28, paragraph 1 of the draft articles on special missions.<sup>174</sup>

(5) Another difference is that paragraph 7 of article 27 provides that the bag of the permanent mission may be entrusted not only to the captain of a commercial aircraft, as provided for the diplomatic bag in article 27 of the Convention on Diplomatic Relations, but also to the captain of a ship. This additional provision is taken from article 35 of the Vienna Convention on Consular Relations<sup>175</sup> and article 28 of the draft articles on special missions.

(6) On the model of article 28 of the draft articles on special missions, the article uses the expression "the bag of the permanent mission" and "the courier of the permanent mission". The expressions "diplomatic bag" and "diplomatic courier" were not used in order to prevent any possibility of confusion with the bag and courier of the permanent diplomatic mission.

(7) The expression "diplomatic missions" in paragraph 1 of the article is used in the broad sense in which it is used in paragraph 1 of article 28 of the draft articles on special missions, so as to include other missions to international organizations. Paragraph (4) of the commentary of the International Law Commission to article 28 of the draft articles on special missions states that "the Commission wishes to stress that by the expression 'diplomatic missions', used in the second sentence of paragraph 1, it means either a permanent diplomatic mission, or a mission to an international organization, or a specialized diplomatic mission of a permanent character".<sup>176</sup>

#### Article 28. Personal inviolability

**The persons of the permanent representative and of members of the diplomatic staff of the permanent mission shall be inviolable. They shall not be liable to any form of arrest or detention. The host State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity.**

#### Article 29. Inviolability of residence and property

**1. The private residence of the permanent representative and the members of the diplomatic staff of the**

<sup>173</sup> *Ibid.*, vol. II, (ST/LEG/SER.B/10), p. 104.

<sup>174</sup> See *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, pp. 360 and 361.

<sup>175</sup> United Nations Conference on Consular Relations, *Official Records*, vol. II, Annexes, document A/CONF.25/12, p. 175.

<sup>176</sup> See *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 361.

permanent mission shall enjoy the same inviolability and protection as the premises of the permanent mission.

2. Their papers, correspondence and, except as provided in paragraph 3 of article 30, their property, shall likewise enjoy inviolability.

#### *Commentary*

(1) Articles 28 and 29 reproduce, without change of substance, the provisions of articles 29 and 30 of the Vienna Convention on Diplomatic Relations<sup>177</sup> and of the draft articles on special missions.<sup>178</sup>

(2) Articles 28 and 29 deal with two generally recognized immunities which are essential for the performance of the functions of the permanent representative and of the members of the diplomatic staff of the permanent mission.

(3) The principle of the personal inviolability of the permanent representative and of the members of the diplomatic staff, which article 28 confirms, implies, as in the case of the inviolability of the premises of the permanent mission, the obligation for the host State to respect, and to ensure respect for, the person of the individuals concerned. The host State must take all necessary measures to that end, including possibly the provision of a special guard where circumstances so require.

(4) Inviolability of all papers and documents of representatives of members to the organs of the organizations concerned is generally provided for in the Conventions on the Privileges and Immunities of the United Nations, the Specialized Agencies and other international organizations.

(5) In paragraph (1) of its commentary to article 28 (Inviolability of residence and property) of its draft articles on diplomatic intercourse and immunities adopted in 1958, the International Law Commission stated that: "This article concerns the inviolability accorded to the diplomatic agent's residence and property. Because this inviolability arises from that attaching to the person of the diplomatic agent, the expression 'the private residence of a diplomatic agent' necessarily includes even a temporary residence of the diplomatic agent."<sup>179</sup>

#### *Article 30. Immunity from jurisdiction*

1. The permanent representative and the members of the diplomatic staff of the permanent mission shall enjoy immunity from the criminal jurisdiction of the host State. They shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

- (a) a real action relating to private immovable property situated in the territory of the host State, unless they hold it on behalf of the sending State for the purposes of the permanent mission;

- (b) an action relating to succession in which the permanent representative or a member of the diplomatic staff of the permanent mission is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (c) an action relating to any professional or commercial activity exercised by the permanent representative or a member of the diplomatic staff of the permanent mission in the host State outside his official functions.

2. The permanent representative and the members of the diplomatic staff of the permanent mission are not obliged to give evidence as witnesses.

3. No measures of execution may be taken in respect of a permanent representative or a member of the diplomatic staff of the permanent mission except in the cases coming under sub-paragraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a permanent representative or a member of the diplomatic staff of the permanent mission from the jurisdiction of the host State does not exempt him from the jurisdiction of the sending State.

#### *Article 31. Waiver of immunity*

1. The immunity from jurisdiction of permanent representatives or members of the diplomatic staff of permanent missions and persons enjoying immunity under article 37 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by a permanent representative, by a member of the diplomatic staff of a permanent mission or by a person enjoying immunity from jurisdiction under article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

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

#### *Commentary*

(1) Article 30 is based on article 31 of the Vienna Convention on Diplomatic Relations.<sup>180</sup>

(2) The immunity from criminal jurisdiction granted under paragraph 1 of article 30 is complete and the immunity from civil and administrative jurisdiction is subject only to the exceptions stated in paragraph 1 of the article. This constitutes the principal difference between the "diplomatic" immunity enjoyed by permanent missions and the "functional" immunity accorded to delegations to organs of international organizations

<sup>177</sup> United Nations, *Treaty Series*, vol. 500, p. 110.

<sup>178</sup> See *Yearbook of the International Law Commission*, 1967, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 361.

<sup>179</sup> See *Yearbook of the International Law Commission*, 1958, vol. II, document A/3859, p. 98.

<sup>180</sup> United Nations, *Treaty Series*, vol. 500, p. 112.

and conferences by the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies. Article IV, section 11 (a) of the Convention on the Privileges and Immunities of the United Nations<sup>181</sup> and article V, section 13 (a) of the Convention on the Privileges and Immunities of the Specialized Agencies<sup>182</sup> accord to representatives of members to the meetings of the organs of the organization concerned or to the conferences convened by it "immunity from legal process of every kind" in respect of "words spoken or written and all acts done by them" in their official capacity.

(3) Article 31 is modelled on the provisions of article 32 of the Vienna Convention on Diplomatic Relations.<sup>183</sup> The basic principle of the waiver of immunity is contained in article IV, section 14 of the Convention on the Privileges and Immunities of the United Nations<sup>184</sup> which states: "Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the United Nations. Consequently a Member not only has the right, but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded." This provision was reproduced *mutatis mutandis* in article V, section 16 of the Convention on the Privileges and Immunities of the Specialized Agencies<sup>185</sup> and in a number of the corresponding instruments of regional organizations.

#### Article 32. Consideration of civil claims

The sending State shall waive the immunity of any of the persons mentioned in paragraph 1 of article 31 in respect of civil claims in the host State when this can be done without impeding the performance of the functions of the permanent mission, and when immunity is not waived, the sending State shall use its best endeavours to bring about a just settlement of the claims.

#### Commentary

(1) This article is based on the important principle stated in resolution II adopted on 14 April 1961 by the United Nations Conference on Diplomatic Intercourse and Immunities.<sup>186</sup>

<sup>181</sup> See *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 186.

<sup>182</sup> *Ibid.*, vol. II, (ST/LEG/SER.B/11), p. 104.

<sup>183</sup> United Nations, *Treaty Series*, vol. 500, p. 112.

<sup>184</sup> See *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), pp. 186 and 187.

<sup>185</sup> *Ibid.*, vol. II, (ST/LEG/SER.B/11), p. 105.

<sup>186</sup> United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. II, document A/CONF.20/10/Add.1, p. 90.

(2) The International Law Commission embodied this principle in article 42 of its draft articles on special missions "because"—as stated in the commentary on that article—"the purpose of immunities is to protect the interests of one sending State, not those of the persons concerned, and in order to facilitate, as far as possible, the satisfactory settlement of civil claims made in the receiving State against members of special missions. This principle is also referred to in the draft preamble drawn up by the Commission."<sup>187</sup>

#### Article 33. Exemption from social security legislation

1. Subject to the provisions of paragraph 3 of this article, the permanent representative and the members of the diplomatic staff of the permanent mission shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the host State.

2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of a permanent representative or of a member of the diplomatic staff of the permanent mission, on condition:

- (a) that such employed persons are not nationals of or permanently resident in the host State, and
- (b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. The permanent representative and the members of the diplomatic staff of the permanent mission who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the host State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article does not exclude voluntary participation in the social security system of the host State where such participation is permitted by that State.

5. The provisions of the present article do not affect bilateral and multilateral agreements on social security which have been previously concluded and do not preclude the subsequent conclusion of such agreements.

#### Commentary

(1) This article is based on article 33 of the Vienna Convention on Diplomatic Relations.<sup>188</sup>

(2) Paragraph 2 is modelled on paragraph 2 of article 32 of the draft articles on special missions<sup>189</sup> in that it substitutes the expression "persons who are in the sole private employ" for the expression "private servants", which is used in article 33 of the Vienna Convention. Referring to this change in terminology, the Interna-

<sup>187</sup> See *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 365.

<sup>188</sup> United Nations, *Treaty Series*, vol. 500, p. 112 and 114.

<sup>189</sup> See *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 362.

tional Law Commission stated in paragraph (2) of its commentary to article 32 of the draft articles on special missions: "Article 32 . . . applies not only to servants in the strict sense of the term, but also to other persons in the private employ of members of the special mission such as children's tutors and nurses."<sup>190</sup>

(3) Permanent representatives are generally exempt from payment of social security contributions. Permanent missions to the International Atomic Energy Agency are exempt from paying employers' social security contributions by virtue of articles XII and XIII of the Headquarters Agreement; it is understood that in practice the employers' contribution has been paid by permanent missions on a voluntary basis.<sup>191</sup>

#### Article 34. Exemption from dues and taxes

**The permanent representative and the members of the diplomatic staff of the permanent mission shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:**

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues and taxes on private immovable property situated in the territory of the host State, unless the person concerned holds it on behalf of the sending State for the purposes of the permanent mission;
- (c) estate, succession or inheritance duties levied by the host State, subject to the provisions of paragraph 4 of article 39;
- (d) dues and taxes on private income having its source in the host State and capital taxes on investments made in commercial undertakings in the host State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 24.

#### Commentary

(1) This article is based on article 34 of the Vienna Convention on Diplomatic Relations.<sup>192</sup>

(2) The immunity of representatives from taxation is dealt with indirectly in article IV, section 13 of the Convention on the Privileges and Immunities of the United Nations which provides that: "Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a State for the discharge of their duties shall not be considered as periods of

residence."<sup>193</sup> This provision was reproduced *mutatis mutandis* in article V, section 15 of the Convention on the Privileges, Immunities of the Specialized Agencies<sup>194</sup> and in a number of the corresponding instruments of regional organizations.

(3) Except in the case of nationals of the host State, representatives enjoy extensive exemption from taxation. In the International Civil Aviation Organization and the United Nations Educational, Scientific and Cultural Organization all representatives, and in the Food and Agriculture Organization and the International Atomic Energy Agency resident representatives, are granted the same exemptions in respect of taxation as diplomats of the same rank accredited to the host State concerned. In the case of the International Atomic Energy Agency, no taxes are imposed by the host State on the premises used by missions or delegates, including rented premises and parts of buildings. Permanent missions to the United Nations Educational, Scientific and Cultural Organization pay taxes only for services rendered and real property tax ("*contribution foncière*") when the permanent representative is the owner of the building. Permanent representatives are exempt from tax on movable property ("*contribution mobilière*"), a tax imposed in France on inhabitants of rented or occupied properties, in respect of their principal residence but not for any secondary residence.<sup>195</sup>

#### Article 34bis. Exemption from personal services

**The host State shall exempt the permanent representative and the members of the diplomatic staff of the permanent mission from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.**

#### Commentary

(1) This article is based on the provisions of article 35 of the Vienna Convention on Diplomatic Relations.<sup>196</sup>

(2) The immunity in respect of national service obligations provided in article IV, section 11 (d) of the Convention on the Privileges and Immunities of the United Nations<sup>197</sup> and article V, section 13 (d) of the Convention on the Privileges and Immunities of the Specialized Agencies<sup>198</sup> has been widely acknowledged. That immu-

<sup>193</sup> See *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 186.

<sup>194</sup> *Ibid.*, vol. II, (ST/LEG/SER.B/11), p. 105.

<sup>195</sup> See the Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 201, para. 45.

<sup>196</sup> United Nations, *Treaty Series*, vol. 500, p. 114.

<sup>197</sup> See *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 186.

<sup>198</sup> *Ibid.*, vol. II, (ST/LEG/SER.B/11), p. 104.

<sup>190</sup> *Ibid.*

<sup>191</sup> See the Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 201, para. 46.

<sup>192</sup> United Nations, *Treaty Series*, vol. 500, p. 114.

nity does not normally apply when the representative is a national of the host State.<sup>199</sup>

**Article 35. Exemption from customs duties and inspection**

**1. The host State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services, on:**

- (a) articles for the official use of the permanent mission;
- (b) articles for the personal use of a permanent representative or a member of the diplomatic staff of the permanent mission or members of his family forming part of his household, including articles intended for his establishment.

**2. The personal baggage of a permanent representative or a member of the diplomatic staff of the permanent mission shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host State. Such inspection shall be conducted only in the presence of the person enjoying the exemption or of his authorized representative.**

*Commentary*

(1) This article is based on article 36 of the Vienna Convention on Diplomatic Relations.<sup>200</sup>

(2) While in general permanent representatives and members of the diplomatic staff of permanent missions enjoy exemption from customs and excise duties, the detailed application of this exemption in practice varies from one host State to another according to the system of taxation followed by the country in question.

(3) At United Nations Headquarters the United States Code of Federal Regulation, Title 19—Customs Duties (Revised 1964) provides in section 10.30 b, paragraph (b), that resident representatives and members of their staffs may import “. . . without entry and free of duty and internal-revenue tax articles for their personal or family use”.<sup>201</sup>

(4) At the United Nations Office at Geneva the matter is dealt with largely in the Swiss Customs Regulation of 23 April 1952. Briefly, permanent missions may import all articles for official use and belonging to the Government they represent (art. 15). Permanent repre-

sentatives with a title equivalent to that of the head of a diplomatic mission and who have a “*carte de légitimation*” may import free of duty all articles destined for their own use or that of their family (art. 16, para. 1). Representatives with a title equivalent to members of a diplomatic mission and who have a “*carte de légitimation*”, have a similar privilege except that the importation of furniture may only be made once (art. 16, para. 2).<sup>202</sup>

(5) The position in respect of permanent missions to specialized agencies having their headquarters in Switzerland in identical with that of permanent missions to the United Nations Office at Geneva. In the case of the Food and Agriculture Organization, the extent of the exemption of resident representatives depends on their diplomatic status and is granted in accordance with the general rules relating to diplomatic envoys. Permanent representatives to the United Nations Educational, Scientific and Cultural Organization assimilated to heads of diplomatic missions can import goods at any time for their own use and for that of their mission free of duty. Other members of permanent missions may import their household goods and effects free of duty at the time of taking up their appointment.

**Article 36. Acquisition of nationality**

**Members of the permanent mission not being nationals of the host State, and members of their families forming part of their household, shall not, solely by the operation of the law of the host State, acquire the nationality of that State.**

*Commentary*

This article is based on the rule stated in the Optional Protocol concerning Acquisition of Nationality adopted on 18 April 1961 by the United Nations Conference on Diplomatic Intercourse and Immunities.<sup>203</sup>

**Article 37. Persons entitled to privileges and immunities**

**1. The members of the family of a permanent representative or a member of the diplomatic staff of the permanent mission forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 28 to 35.**

**2. Members of the administrative and technical staff of the permanent mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 28 to 34 bis, except that the immunity from civil and administrative jurisdiction of the host State specified in paragraph 1 of article 30 shall not extend to**

<sup>199</sup> See the Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 200, para. 37.

<sup>200</sup> United Nations, *Treaty Series*, vol. 500, p. 116.

<sup>201</sup> See the Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 183, para. 134. For details of the position in respect of the various federal and State taxes in New York, *ibid.*, pp. 185 and 186, para. 147.

<sup>202</sup> *Ibid.*, p. 183, para. 136.

<sup>203</sup> United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. II, document A/CONF.20/11, p. 88.

acts performed outside the course of their duties. They shall also enjoy the privileges specified in article 35, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the host State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in article 33.

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

#### *Commentary*

(1) This article is modelled on article 37 of the Vienna Convention on Diplomatic Relations.<sup>204</sup>

(2) The study of the Secretariat does not include data on the privileges and immunities which host States accord to the members of the families of permanent representatives, to the members of the administrative and technical staff and of the service staff of permanent missions and to the private staff of the members of permanent missions. It is assumed that the practice relating to the status of these persons conforms to the corresponding rules established within the framework of inter-State diplomatic relations as codified and developed in the Vienna Convention on Diplomatic Relations. The assumption is corroborated by the identical legal basis of the status of these persons inasmuch as their status attaches to and derives from diplomatic agents or permanent representatives, who are accorded analogous diplomatic privileges and immunities.

(3) In paragraph 4 of the article the expression "private servants" which appears in paragraph 4 of article 37 of the Vienna Convention on Diplomatic Relations, has been replaced by the expression "private staff" on the model of articles 32 and 38 of the draft articles on special missions.<sup>205</sup> Paragraph (2) of the commentary to article 32 of the draft articles on special missions explains this change as follows: "Article 32 . . . applies not only to servants in the strict sense of the term, but also to other persons in the private employ of members of special mission such as children's tutors and nurses."<sup>206</sup> This explanation is also valid for permanent missions to international organizations.

#### *Article 38. Nationals of the host State and persons permanently resident in the host State*

1. Except in so far as additional privileges and immunities may be granted by the host State, a permanent representative or a member of the diplomatic staff of the permanent mission who is a national or a permanent resident of that State or is, or has been, its representative, shall enjoy immunity from jurisdiction, and inviolability only in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the permanent mission and private staff who are nationals or permanent residents of the host State shall enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

#### *Commentary*

(1) This article reproduces, with the necessary drafting changes, article 38 of the Vienna Convention on Diplomatic Relations.<sup>207</sup> Here, too, the expression "private servants" has been replaced by "private staff".

(2) As mentioned before in this report a number of the conventions on the privileges and immunities of international organizations, whether universal or regional, stipulate that the provisions which define the privileges and immunities of the representatives of members are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative.<sup>208</sup>

#### *Article 39. Duration of privileges and immunities*

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the host State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the host State.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the permanent mission, immunity shall continue to subsist.

3. In case of the death of a member of the permanent mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

<sup>204</sup> United Nations, *Treaty Series*, vol. 500, p. 116.

<sup>205</sup> See *Yearbook of the International Law Commission*, 1967, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, pp. 362 and 364 respectively.

<sup>206</sup> *Ibid.*, p. 362.

<sup>207</sup> United Nations, *Treaty Series*, vol. 500, p. 118.

<sup>208</sup> See part II, section 1, p. 136 above, "Note on nationality of members of a permanent mission".

4. In the event of the death of a member of the permanent mission not a national or permanent resident of the host State or a member of his family forming part of his household, the host State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the host State was due solely to the presence there of the deceased as a member of the permanent mission or as a member of the family of a member of the permanent mission.

#### Commentary

(1) This article is based on the provisions of article 39 of the Vienna Convention on Diplomatic Relations.<sup>209</sup>

(2) The first two paragraphs of the article deal with the times of commencement and termination of entitlements for persons who enjoy privileges and immunities in their own right. For those who do not enjoy privileges and immunities in their own right other dates may apply, viz., the dates of commencement and termination of the relationship which constitutes the grounds for the entitlement.

(3) Article IV, section 11 of the Convention on the Privileges and Immunities of the United Nations<sup>210</sup> and article V, section 13 of the Convention on the Privileges and Immunities of the Specialized Agencies<sup>211</sup> provide that representatives shall enjoy the privileges and immunities listed therein "while exercising their functions and during their journey to and from the place of meeting". In 1961 the Legal Counsel of the United Nations replied to an inquiry made by one of the specialized agencies as to the interpretation to be given to the first part of this phrase. The reply contained the following: "You enquire whether the words 'while exercising their functions' should be given a narrow or broad interpretation... I have no hesitation in believing that it was the 'broad' interpretation that was intended by the authors of the Convention."<sup>212</sup>

(4) The duration of privileges and immunities of members of permanent missions gave rise to differences between the Secretariat of the United Nations and the host States both at Headquarters in New York and at the Geneva Office. One of the two host Governments contended that the commencement of privileges and immunities was dependent on the notification to it of the appointment of the members of the mission and the other required the prior consent of its authorities before

giving diplomatic privileges and immunities to the individual concerned.<sup>213</sup>

(5) Article IV, section 12 of the Convention on the Privileges and Immunities of the United Nations,<sup>214</sup> which is reproduced *mutatis mutandis* in article V, section 14 of the Convention on the Privileges and Immunities of the Specialized Agencies,<sup>215</sup> provides that: "In order to secure for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded notwithstanding that the persons concerned are no longer the representatives of Members."

#### Article 40. Duties of third States

1. If a permanent representative or a member of the diplomatic staff of the permanent mission passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the permanent representative or member of the diplomatic staff of the permanent mission, or travelling separately to join him or to return to their country.

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

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the host State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the host State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons

<sup>209</sup> United Nations, *Treaty Series*, vol. 500, p. 118.

<sup>210</sup> See *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 186.

<sup>211</sup> *Ibid.*, vol. II, (ST/LEG/SER.B/11), pp. 104 and 105.

<sup>212</sup> See the Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 176, para. 87.

<sup>213</sup> See the case of *B.v.M., Arrêts du Tribunal fédéral suisse*, 85, 1959, II, p. 153. Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 176, para. 89 and the Santiesteban case, *ibid.*, p. 172, paras. 56-59. For the differences of interpretation of section 15 (2) of the Headquarters Agreement of the United Nations, see *supra*, paragraph (3) of the commentary on article 15.

<sup>214</sup> See *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 186.

<sup>215</sup> *Ibid.*, vol. II, (ST/LEG/SER.B/11), p. 105.

**mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to *force majeure*.**

#### *Commentary*

(1) The provisions of this article are taken from article 40 of the Vienna Convention on Diplomatic Relations.<sup>216</sup>

(2) Reference has been made in paragraph (3) of the commentary to article 39 to the broad interpretation given by the Legal Counsel of the United Nations to the provisions of article IV, section 11 of the Convention on the Privileges and Immunities of the United Nations and article V, section 13 of the Convention on the Privileges and Immunities of the Specialized Agencies which stipulate that representatives shall enjoy the privileges and immunities listed in those provisions "while exercising their functions and during their journeys to and from the place of meeting".

(3) The study of the Secretariat mentions the special problem which may arise when access to the country in which a United Nations meeting is to be held is only possible through another State. It states that: "While there is little practice, the Secretariat takes the position that such States are obliged to grant access and transit to the representatives of Member States for the purpose in question".<sup>217</sup>

#### *Article 41. Non-discrimination*

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

#### *Commentary*

(1) Article 41 reproduces, with the necessary drafting changes, paragraph 1 of article 47 of the Vienna Convention on Diplomatic Relations.<sup>218</sup>

(2) A difference of substance between the two articles is the non-inclusion in article 41 of the second paragraph of article 47 of the Vienna Convention. That paragraph refers to two cases in which, although an inequality of treatment is implied, no discrimination occurs, since the inequality of treatment in question is justified by the rule of reciprocity.

(3) In general, headquarters agreements of international organizations contain no restrictions on privileges and immunities of members of permanent missions based on the application of the principle of reciprocity in the relations between the host State and the sending State. Some headquarters agreements, however, include a clause providing that the host State shall grant permanent representatives the privileges and immunities which it accords to diplomatic envoys accredited to it, "subject

to corresponding conditions and obligations". Examples of such clauses may be found in article V, section 15 of the Headquarters Agreement of the United Nations,<sup>219</sup> article XI, section 24, paragraph (a) of the Headquarters Agreement of the Food and Agriculture Organization<sup>220</sup> and article 1 of the Bilateral Agreement between the Organization of American States and the Government of the United States of America relating to privileges and immunities of representatives and other members of delegations.<sup>221</sup>

(4) The Study of the Secretariat states that it has been the understanding of the Secretariat of the United Nations that the privileges and immunities granted should generally be those afforded to the diplomatic corps as a whole, and should not be subject to particular conditions imposed, on a basis of reciprocity, upon the diplomatic missions of particular States.<sup>222</sup> In his statement at the 1016th meeting of the Sixth Committee of the General Assembly, the Legal Counsel of the United Nations stated that: "The Secretary-General in interpreting diplomatic privileges and immunities would look to provisions of the Vienna Convention so far as they would appear relevant *mutatis mutandis* to representatives to the United Nations organs and conferences. It should of course be noted that some provisions such, for example, as those relating to *agrément*, nationality or reciprocity have no relevancy in the situation of representatives to the United Nations".<sup>223</sup>

#### *Section III. Conduct of the permanent mission and its members*

#### *Article 42. Obligation to respect the Laws and regulations of the host State*

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

**2. The premises of the permanent mission must not be used in any manner incompatible with the functions of the permanent mission as laid down in the present articles or by other rules of general international law or by any special agreements in force between the sending and the host State.**

#### *Commentary*

(1) This article is based on the provisions of article 41, paragraphs 1 and 3, of the Vienna Convention on Diplo-

<sup>219</sup> United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and International Organizations* (ST/LEG/SER.B/10), p. 208.

<sup>220</sup> *Ibid.*, vol. II, (ST/LEG/SER.B/11), p. 195.

<sup>221</sup> *Ibid.*, p. 382.

<sup>222</sup> See the Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 178, para. 96.

<sup>223</sup> *Official Records of the General Assembly, Twenty-second Session, Annexes, agenda item 98, document A/C.6/385, para. 4.*

<sup>216</sup> United Nations, *Treaty Series*, vol. 500, pp. 118 and 120.

<sup>217</sup> See the Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 190, para. 168.

<sup>218</sup> United Nations, *Treaty Series*, vol. 500, p. 122.

matic Relations,<sup>224</sup> and article 48 of the draft articles on special missions.<sup>225</sup>

(2) Paragraph 1 states that, in general, it is the duty of all persons enjoying privileges and immunities to respect the laws and regulations of the host State. This duty naturally does not apply when the member's privileges and immunities exempt him from it. With respect to immunity from jurisdiction, this immunity implies merely that a member of the permanent mission may not be brought before the courts if he fails to fulfil his obligations. Such a failure by a member of the permanent mission who enjoys immunity from jurisdiction does not absolve the host State from its duty to respect the member's immunity.

(3) Paragraph 2 stipulates that the premises of the permanent mission shall be used only for the legitimate purposes for which they are intended. Failure to fulfil the duty laid down in this articles does not render article 23 (inviolability of the premises of the permanent mission) inoperative. That inviolability, however, does not authorize a use of the premises which is incompatible with the functions of the permanent mission.

#### *Article 43. Professional activity*

**The permanent representative and the members of the diplomatic staff of the permanent mission shall not practice for personal profit any professional or commercial activity in the host State.**

#### *Commentary*

(1) This article reproduces, with the necessary drafting changes, the provisions of article 42 of the Vienna Convention on Diplomatic Relations<sup>226</sup> and article 49 of the draft articles on special missions.<sup>227</sup>

(2) In paragraph (2) of the commentary on article 49 of its draft articles on special missions, the Commission stated that: "Some Governments proposed the addition of a clause providing that the receiving State may permit the persons referred to in article 49 of the draft to practise a professional or commercial activity on its territory. The Commission took the view that the right of the receiving State to grant such permission is self-evident. It therefore preferred to make no substantive departure from the text of the Vienna Convention on this point."<sup>228</sup>

<sup>224</sup> United Nations, *Treaty Series*, vol. 500, p. 120.

<sup>225</sup> See *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 367.

<sup>226</sup> United Nations, *Treaty Series*, vol. 500, p. 120.

<sup>227</sup> See *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 367.

<sup>228</sup> *Ibid.*

#### *Section IV. End of the function of the permanent representative*

#### *Article 44. Modes of termination*

**The function of a permanent representative or a member of the diplomatic staff of the permanent mission comes to an end, *inter alia*:**

- (a) on notification by the sending State that the function of the permanent representative or the member of the diplomatic staff of the permanent mission has come to an end;
- (b) if the membership of the sending State in the international organization concerned is terminated or suspended or if the activities of the sending State in that organization are suspended.

#### *Commentary*

(1) Sub-paragraph (a) of this article reproduces, with the necessary drafting changes, the provisions of sub-paragraph (a) of article 43 of the Vienna Convention on Diplomatic Relations.<sup>229</sup>

(2) Sub-paragraph (b) refers to those cases where the sending State recalls the permanent mission for reasons relating to the membership of the sending State in the organization to which that mission has been sent. In general, constituent instruments of international organizations contain provisions on expulsion of a member, withdrawal from membership and suspension of membership. Sub-paragraph (b) expressly provides also for the case of suspension of the activities of the sending State in the organization. The absence of Indonesia from the United Nations during the period from 1 January 1965 to 28 September 1966 has been interpreted by the United Nations as suspension of activities in the Organization and not as withdrawal from membership. On 19 September 1966, the Ambassador of Indonesia in Washington transmitted a message to the Secretary-General from his Government, stating that it had decided "to resume full co-operation with the United Nations and to resume participation in its activities starting with the twenty-first session of the General Assembly".<sup>230</sup> At the 1420th plenary meeting of the General Assembly on 28 September 1966, the President, having read this communication, declared: "It would . . . appear that the Government of Indonesia considers that its recent absence from the Organization was based not upon a withdrawal from the United Nations but upon a cessation of co-operation. The action so far taken by the United Nations on this matter would not appear to preclude this view."<sup>231</sup>

(3) This article does not contain a provision corresponding to sub-paragraph (b) of article 43 of the Vienna

<sup>229</sup> United Nations, *Treaty Series*, vol. 500, p. 122.

<sup>230</sup> See *Official Records of the Security Council, Twenty-first year, Supplement for July, August and September 1966*, document S/7498.

<sup>231</sup> See the Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 177, foot-note 39.

Convention on Diplomatic Relations, which provides as one of the modes of termination of the function of a diplomatic agent the "notification by the receiving State to the sending State that, in accordance with paragraph 2 of article 9, it refuses to recognize the diplomatic agent as a member of the mission".<sup>232</sup> Under paragraph 2 of article 9 of the Vienna Convention on Diplomatic Relations the receiving State may refuse such recognition if the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1—relating to the declaration of a diplomatic agent as *persona non grata* by the receiving State.<sup>233</sup> As mentioned before in paragraph (2) of the commentary to article 9 of these draft articles, the members of the permanent mission are not accredited to the host State. They do not enter into direct relationship and transactions with the host State, unlike the case of bilateral diplomacy. In the latter case, the diplomatic agent is accredited to the receiving State in order to perform certain functions of representation and negotiation between the receiving State and his own State. This legal situation is the basis of the institution of acceptance by the receiving State of the diplomatic agent (*agrément*) and of the right of the receiving State to request his recall when it declares him *persona non grata*.<sup>234</sup>

(4) Article VII, section 25, paragraph 1 of the Convention on the Privileges and Immunities of the Specialized Agencies provides that:

Representatives of members at meetings convened by specialized agencies, while exercising their functions and during their journeys to and from the place of meeting, and officials within the meaning of section 18, shall not be required by the territorial authorities to leave the country in which they are performing their functions on account of any activities by them in their official capacity. In the case, however, of abuse of privileges of residence committed by any such person in activities in that country outside his official functions, he may be required to leave by the Government of that country . . .<sup>235</sup>

The following comment was made on this provision in the Study of the Secretariat:

No corresponding provision is contained in the General Convention (the Convention on the Privileges and Immunities of the United Nations). In the absence of any cases in which article VII of the Specialized Agencies Convention, or any similar provision in a headquarters agreement, has been applied, no practice has been developed regarding its interpretation.<sup>236</sup>

#### *Article 45. Facilities of departure*

**The host State must, even in the case of armed conflict, grant facilities in order to enable persons enjoying privi-**

<sup>232</sup> United Nations, *Treaty Series*, vol. 500, p. 122.

<sup>233</sup> *Ibid.*, p. 102.

<sup>234</sup> *Supra*, p. 135.

<sup>235</sup> *United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (ST/LEG/SER.B/11), p. 107.

<sup>236</sup> See the Study of the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add.1 and 2, p. 200, para. 36.

**leges and immunities, other than nationals of the host State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.**

#### *Article 46. Protection of premises and archives*

**1. When the functions of a permanent mission come to an end, the host State must, even in the case of armed conflict, respect and protect the premises as well as the property and archives of the permanent mission. The sending State must withdraw that property and those archives within a reasonable time.**

**2. The host State is required to grant the sending State, even in the case of armed conflict, facilities for removing the archives of the permanent mission from the territory of the host State.**

#### *Commentary*

The provisions of article 45 are substantially the same as those of article 44 of the Vienna Convention on Diplomatic Relations.<sup>237</sup> The provisions of article 46 are based on the provisions of article 45 of the same Convention.<sup>238</sup> The Special Rapporteur considers that these two articles call for no special comment.

### PART III. DELEGATIONS TO ORGANS OF INTERNATIONAL ORGANIZATIONS OR TO CONFERENCES CONVENED BY INTERNATIONAL ORGANIZATIONS

#### *General comments*

50. The draft articles contained in part III (articles 47 to 52) are presented in a tentative form with a view to enabling the Commission to decide the preliminary question whether to confine its draft articles on representatives of States to international organizations to permanent missions to international organizations, or to broaden their scope by including delegations to organs of international organizations and to conferences convened by international organizations.

51. In his second report, the Special Rapporteur raised a number of preliminary questions as to the treatment of the subject of delegations to organs of international organizations and to international conferences and its place in the present draft articles.<sup>239</sup> These questions can be summed up as follows:

#### *A. Delegations to conferences convened by international organizations*

52. There is little disagreement on the treatment, with-

<sup>237</sup> United Nations, *Treaty Series*, vol. 500, p. 122.

<sup>238</sup> *Ibid.*

<sup>239</sup> See *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/195 and Add.1, pp. 149-152, paras. 95-117.

in the framework of the present topic, of the question of privileges and immunities of delegations to conferences convened by international organizations. Article IV, section 11 of the Convention on the Privileges and Immunities of the United Nations stipulates that delegates to "conferences convened by the United Nations" shall enjoy the same privileges and immunities that the Convention accords to representatives of Members to the principal and subsidiary organs of the United Nations.<sup>240</sup>

*B. Conferences not convened by international organizations*

53. The Special Rapporteur favours a joint treatment of the legal position of delegations to conferences convened by international organizations and that of delegations to conferences convened by States. It should be noted that in substance international conferences, whether convened by international organizations or by one or more States, are conferences of States. The distinction between the two types of conferences is purely formal, the criterion being who convenes the conference.

*C. The extent of the privileges and immunities of delegations to organs of international organizations and to international conferences*

54. These privileges and immunities are usually regulated in the convention on the privileges and immunities of the organization concerned. Generally speaking, the privileges and immunities are functional and immunity from jurisdiction is limited to words spoken or written and all acts done by the representatives in their capacity as representatives. The Special Rapporteur takes the position that representatives of States to organs of international organizations and to conferences should be accorded in principle, and with particular reference to immunity from jurisdiction, diplomatic privileges and immunities such as those accorded to members of permanent missions to international organizations.

*Article 47. Composition of the delegation*

1. A delegation to an organ of an international organization or to a conference convened by an international organization consists of one or more representatives of the sending State from among whom the sending State may appoint a head.

2. The expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

3. A delegation to an organ of an international organization or to a conference convened by an inter-

**national organization may also include administrative and technical staff and service staff.**

*Article 48. Appointment of a joint delegation to two or more organs or conferences*

1. A delegation to an organ of an international organization or to a conference convened by an international organization should in principle represent one State only.

2. A member of a delegation to an organ of an international organization or to a conference convened by an international organization may represent another State at that organ or conference, provided that the representative concerned is not simultaneously acting as the representative of more than one State.

*Article 49. Accreditation*

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 the State or by the Head of Government or by the Minister of Foreign Affairs, and shall be transmitted to the Secretary-General.

*Article 50. Full powers and action in respect of treaties*

1. Representatives accredited by States to an organ of an international organization or to a conference convened by an international organization are not required to furnish evidence of their authority to negotiate, draw up and authenticate treaties concluded at that organ or conference.

2. Representatives accredited by States to an organ of an international organization or to a conference convened by an international organization shall be required to furnish evidence of their authority to sign (whether in full or *ad referendum*) on behalf of their State a treaty drawn up at that organ or conference by producing an instrument of full powers.

*Article 51. Size of the delegation*

The sending State should observe that the size of its delegation to an organ of an international organization or to a conference convened by an international organization does not exceed what is reasonable and normal, having regard to the circumstances and conditions in the host State, and to the needs of the particular delegation and representation at the organ or conference concerned.

*Article 52. Precedence*

Heads of delegations to an organ of an international organization or to a conference convened by an international organization shall take precedence in the order

<sup>240</sup> United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10), p. 186.

**established in accordance with the rule applicable in the organization concerned.**

PART IV. PERMANENT OBSERVERS OF NON-MEMBER STATES  
TO INTERNATIONAL ORGANIZATIONS

*General comments*

55. The draft articles contained in part IV (articles 53-56) are presented in a tentative form for the same purpose as that stated in paragraph 50 (general comments preceding the draft articles contained in part III).

56. Permanent observers have been sent by non-member States to the Headquarters of the United Nations in New York and to its office at Geneva. Since 1946 a permanent observer has been designated by the Swiss Government. Observers have been also appointed by States such as Austria, Finland, Italy and Japan before they became members of the United Nations. The Federal Republic of Germany, Monaco, the Republic of Korea, San Marino and the Republic of Viet-Nam, which are not members of the Organization at the present time, maintain permanent observers. In addition, the Holy See has recently appointed permanent observers both in New York and at Geneva.

57. There are no provisions relating to permanent observers of non-member States in the United Nations Charter, the Headquarters Agreement or General Assembly resolution 257 A (III) of 3 December 1948 relating to permanent missions of Member States. The Secretary-General referred to permanent observers of non-members in his report on permanent missions to the fourth session of the General Assembly,<sup>241</sup> but no action was taken by the Assembly to provide a legal basis for permanent observers. Their status, therefore, has been determined by practice (see memorandum to the Acting Secretary-General) issued by the Office of Legal Affairs, 22 August 1962.<sup>242</sup>

58. In the introduction to his Annual Report on the Work of the Organization 16 June 1965-15 June 1966, the Secretary-General of the United Nations stated:

I feel that all countries should be encouraged and enabled, if they wish to do so, to follow the work of the Organization more closely. It could only be of benefit to them and to the United Nations as a whole to enable them to maintain observers at Headquarters, at the United Nations Office at Geneva and in the regional economic commissions, and to expose them to the impact of the work of the Organization and to the currents and cross-currents of opinion that prevail within it, as well as to give them some opportunity to contribute to that exchange. Such contacts and intercommunication would surely lead to a better understanding of the problems of the world and a more realistic approach to their solution. In this matter I have felt myself obliged to follow the established tradition by which only

<sup>241</sup> *Official Records of the General Assembly, Fourth Session, Sixth Committee, Annex, document A/939.*

<sup>242</sup> *United Nations Juridical Yearbook, 1962* (provisional edition) (ST/LEG/8), fascicle 2, p. 236.

certain Governments have been enabled to maintain observers. I commend this question for further examination by the General Assembly so that the Secretary-General may be given a clear directive as to the policy to be followed in the future in the light, I would hope, of these observations.<sup>243</sup>

A similar statement was again included in the introduction to the Annual Report of the Secretary-General on the Work of the Organization 16 June 1966-15 June 1967.<sup>244</sup>

59. Reference should also be made to the message of the Secretary-General of the United Nations to the twenty-third session of the Economic Commission for Europe dated 17 April 1968 in which he stated:

It seems to me that the advances so far achieved in the field of economic development in Europe, laudable as they had been, would be even greater if the United Nations and its agencies could achieve the goal of universality of membership. As the attainment of this objective may, however, take some time, I should like to reiterate what I have underscored in the introduction to my last two Annual Reports to the General Assembly that all countries should be encouraged and enabled, if they so wish, to follow the work of the Organization more closely at the Headquarters and regional level.<sup>245</sup>

*Privileges and immunities of permanent observers of non-members*

60. The position of permanent observers as regards privileges and immunities was stated in the memorandum dated 22 August 1962 sent by the Legal Counsel to the then Acting Secretary-General of the United Nations:

Permanent Observers are not entitled to diplomatic privileges or immunities under the Headquarters Agreement or under other statutory provisions of the host State. Those among them who form part of the diplomatic missions of their Governments to the Government of the United States may enjoy immunities in the United States for that reason. If they are not listed in the United States diplomatic list, whatever facilities they may be given in the United States are merely gestures of courtesy by the United States authorities.<sup>246</sup>

61. The Special Rapporteur is of the opinion that the Commission should consider the regulation of the legal position of permanent observers of non-members on the basis of recognizing their right in principle to privileges and immunities analogous to those enjoyed by permanent missions of members.

*Article 53. Establishment of permanent observers*

**Non-member States may establish permanent observers at the seat of the organization.**

<sup>243</sup> *Official Records of the General Assembly, Twenty-first Session, Supplement No. 1A (A/6301/Add.1), p. 14.*

<sup>244</sup> *Ibid., Twenty-second Session, Supplement No. 1A (A/6701/Add.1), pp. 20 and 21.*

<sup>245</sup> *Official Records of the Economic and Social Council, Forty-fifth Session, Supplement No. 3, (E/4491), Annex II, A.*

<sup>246</sup> *United Nations Juridical Yearbook, 1962*, (provisional edition) (ST/LEG/8), fascicle 2, p. 237.

*Article 54. Functions of permanent observers*

1. The principal function of permanent observers is to ensure the necessary liaison between the sending State and the organization.

2. Permanent observers may also perform *mutatis mutandis* other functions of permanent missions as defined in article 6.

*Article 55. Composition of the office of the permanent observer*

The office of permanent observers consists of the per-

manent observer and may include one or more representatives of the sending State. It may also include diplomatic staff, administrative and technical staff and service staff.

*Article 56. Accreditation*

The credentials of permanent observers shall be issued either by the Head of the State or by the Head of Government or by the Minister of Foreign Affairs, and shall be transmitted to the Secretary-General.