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OBSERVATIONS OF MEMBER STATES ON THE PROVISIONAL DRAFT OF TWENTY-ONE ARTICLES ON REPRESENTATIVES OF STATES TO INTERNATIONAL ORGANIZATIONS, ADOPTED BY THE INTERNATIONAL LAW COMMISSION AT ITS TWENTIETH SESSION

Contents

A. NOTE BY THE SECRETARY-GENERAL

1. In pursuance of a decision taken by the Commission at its twentieth session[1] the Secretary-General, in a circular letter dated 14 October 1968, asked Member States for their observations on the provisional draft of twenty-one articles on representatives of States to international organizations, adopted by the Commission at its twentieth session.[2]

2. This document contains the observations which the Secretary-General had received by 27 January 1970 in reply to his letter of 14 October 1968. Any observations which may be received later will be published in an addendum to this document.

B. OBSERVATIONS COMMUNICATED BY MEMBER STATES

1. AUSTRIA

Observations communicated by note verbale dated 30 August 1969 from the Permanent Representative to the United Nations

[Original: English]

It can be said that the present twenty-one draft articles on representatives of States to international organizations achieve the aim - as expressed in the International Law Commission's commentary to article 3 - of detecting the common denominator and laying down the general pattern which regulates the diplomatic law of relations between States and international organizations. Apart from that, it is to be noted favourably that the articles, especially articles 11, 16 and 17, paragraph 3, correspond to the interests of the host State, and it may be hoped that the International Law Commission will continue to pay due attention to these interests when drafting the remaining articles.

1/ See Official Records of the General Assembly, Twenty-third Session, Supplement No. 9 (A/7209/Rev.1), para. 22.

2/ Ibid., pp. 5-23.

With respect to article 4 the following may be pointed out: if the status of permanent missions to an international organization is defined bilaterally by a headquarters agreement between the host State and the organization concerned, the entry into force of the envisaged convention on representatives of States to international organizations between the host State and the sending State of a permanent mission, would establish treaty relations between these two States on a subject already covered by the headquarters agreement in force between the host State and the organization. For the sake of clarity, it would seem advisable to mention that the status of the permanent missions concerned (as defined in the headquarters agreement) would in such a case not be altered by the convention.

Article 17 requires the organization to transmit to the host State certain notifications received from the sending States. In this context, the question arises whether the possibility should not be provided, for the organizations concerned, to become parties to the convention.

Apart from that, it would seem advisable to have a somewhat more precise definition of the expression "international organization of universal character" (article 1 (b) included in the draft).

2. CANADA

Observations communicated by letter dated 15 January 1970 from the Permanent Representative to the United Nations

[Original: English]

It is noted that the Commission has sought, in these articles, to lay down certain general principles, while ensuring that appropriate recognition is given to both existing and future agreements concluded between States and international organizations. In the Canadian view, the provisional draft articles appear to be generally satisfactory. However, there are certain articles, dealing mainly with the position of the host State, on which we wish to make a few specific comments.

We have studied with particular interest articles 10 and 11 which relate to the appointment of members of the permanent mission. Article 11 requires a sending State to obtain the consent of the host State before appointing as a permanent representative or member of the diplomatic staff of the permanent mission a person who is a national of the host State. It is suggested that further study might be

given to the adoption of a provision whereby the sending State's freedom to appoint nationals of the host State, as members of the permanent mission, would be recognized; however, the host country would have the right to decide which privileges and immunities it should grant to its own nationals. In this connexion, it might also be useful to give some consideration to the position of landed immigrants or permanent residents of the host State whose position might be assimilated to that of nationals.

The present draft articles do not provide a formula whereby the host State can require a member of the permanent mission to leave its territory. In our opinion, consideration should be given to the desirability of introducing a provision similar to the one contained in article IV, section 13 (b) (1)-(3), of the Agreement signed between the United Nations and the United States of America on 26 June 1947.[3/]

Article 16, which is concerned with the size of the permanent mission, seeks to take into account the interests of the mission, of the international organization and of the host State. Canada fully endorses the suggestion that consideration be given to the inclusion of a provision for consultation between the host State, the sending State and the international organization concerning the application of this and other articles. Canada notes and welcomes the indication by the Commission that it will consider a general article relating to the settlement of disputes.

In its present form, article 15 does not specifically recognize the practice which has been adopted by an increasing number of States of appointing Deputy Permanent Representatives or Associate Permanent Representatives. We would suggest that a provision, to the effect that the "Deputy or Associate Permanent Representative" shall enjoy the status of Permanent Representative when the latter is absent, be included.

Finally, we would recommend that article 19 be revised so as to specify the language of the alphabetical order to which the article refers. This would remove the possibility of confusion which might otherwise result from the present wording.

3/ United Nations Treaty Series, vol. 11, p. 11.

3. CYPRUS

Observations communicated by letter dated 22 October 1969 from the Ministry of Foreign Affairs

[Original: English]

The Cyprus Government heartily welcomes the set of twenty-one draft articles on representatives of States to international organizations, and wishes to record once again its appreciation for the work of the Special Rapporteur, Ambassador El Erian. The draft articles on permanent missions to international organizations are of particular interest to the Cyprus Government. While the Cyprus Government will carefully study the implications arising therefrom in detail, it simply wishes, at this stage, to say that the draft articles in question seem to achieve a proper balance between the legitimate interests of the three parties concerned, i.e., the sending State, the receiving State and the organization itself.

4. DENMARK

Observations communicated by letter dated 9 January 1970 from the Permanent Representative to the United Nations

[Original: English]

The Danish Government has studied with interest the International Law Commission's report on the work of its twentieth session containing a provisional draft of twenty-one articles on representatives of States to international organizations. The Danish Government has no comments on the proposed articles. It is suggested, however, that the Commission reconsider whether the interests of the host State are adequately safeguarded by the provisions of article 11 on the nationality of the members of the permanent mission, and article 16 on the size of the permanent mission.

5. ECUADOR

Observations communicated by letter dated 6 June 1969 from the Ministry of Foreign Affairs

[Original: Spanish]

Article 1. The Government of Ecuador fully subscribes to the view expressed by the Sixth Committee with regard to article 1 (Use of Terms), namely, that the definition of "an international organization" is inadequate in that the statement

that it means any intergovernmental organization does little to improve it. The definition suggested by the Special Rapporteur in his third report (A/CN.4/203 and Add.1-5) would obviously have been preferable. Nevertheless, given the fact that the draft Convention on the Law of Treaties contains a definition identical to that proposed in draft article 1 (a) and as the terms used in treaties sponsored by the United Nations should be consistent, this definition is acceptable.

It would be advisable to expand the definition of "an international organization of universal character" in sub-paragraph (b) of the same article by stating that such an organization should be open to all States which accept the rights and obligations established in its constitutive document, as was suggested in the Sixth Committee.

In the definition of a "permanent mission" in sub-paragraph (d), the word "permanent" is repeated and this does not clarify the term as it ought to be clarified in a definition. The same comment applies to the definition of "organs of an international organization" in sub-paragraph (m).

The remaining definitions are based on corresponding definitions in the Vienna Convention on Diplomatic Relations and are acceptable. They are consonant with the provisions of the Ley Orgánica del Servicio Exterior Ecuatoriano (Organic Law of the Ecuadorian Foreign Service).

Article 2. The draft articles should logically be applicable only to international organizations of universal character because their obvious connexion, in the context of the United Nations system, with the provisions of Articles 57 and 63 of the San Francisco Charter is thereby preserved and because a convention of this kind cannot seek to standardize existing or future rules applicable in a regional context. It must be borne in mind that, even in the case of international organizations, these rules are supplementary, as is clear from draft article 3 which states that: "The application of the present articles is without prejudice to any relevant rules of the Organization". The approach of the International Law Commission to the drafting of article 2, namely, that the present text, which excludes regional organizations, should be retained, is preferable to that suggested in the Sixth Committee's commentary on this article whereby these provisions would be applicable even to regional organizations, which could adopt other rules for themselves only by mutual agreement. This latter approach is diametrically opposed to that taken in the draft.

Articles 3 and 4. Article 3 regulates the application of the draft provisions and is, by any standard, a necessary rule. The same may be said of article 4, which safeguards provisions already in force as the result of other international agreements between States and an international organization.

Article 5. The provision in this article makes the draft articles considerably more flexible because it does not preclude the possible conclusion of other international agreements "having different provisions concerning the representatives of States to an international organization".

Article 6. This provision would allow Member States to establish permanent missions to the Organization for the performance of the functions set forth in article 7 of the draft articles.

This article would be of doubtful value if the International Law Commission had not made clear that it was to be interpreted subject to the general reservations laid down in draft articles 3, 4 and 5. Otherwise, this rule would oblige international organizations to agree to accept permanent missions established by States, even in violation of their own rules. The present wording taken by itself, therefore, does not make matters clear and to understand the rule properly it would always be necessary to have the interpretation based on the clarification given by the International Law Commission of the United Nations. The article should be so drafted as to make its meaning clear. In addition, the commentary on article 13 is relevant to this rule.

Article 7. The enumeration in this article of the functions of a permanent mission is perfectly clear.

The Sixth Committee's suggestion for the addition of a rule concerning the commencement of the functions of the permanent representative and staff of a mission in order to determine when their privileges and immunities begin could be adopted.

Articles 8 and 9. Despite the fact that, in a regional context, Ecuador has contended that representatives should be appointed to international bodies on an ad hoc basis - in other words, that they should not simultaneously be representatives of their country to the body in question and to the State in which it has its headquarters - articles 8 and 9, being designed to meet needs at the global as opposed to the regional level, are clear and could be accepted, on the

understanding that draft articles 3, 4 and 5 would allow certain bodies to lay down rules departing from this general pattern.

Articles 10, 11 and 12. The various relevant provisions are rather descriptive and refer, respectively, to the appointment of the members of a permanent mission, to the nationality of its members and the manner in which the credentials of Permanent Representatives should be issued. These articles occasion no difficulty whatsoever. They follow current practice and would make it a rule of international law that, as stated in article 11, the diplomatic staff of permanent missions may not be appointed from among persons having the nationality of the host State, except with the consent of that State, which may be withdrawn at any time. This provision is appropriate, in view primarily of the problems which a citizen would create for his own country in respect of privileges and immunities.

Article 13. This article establishes clearly the field of action of the Permanent Representative but it is not logical to presume that, if the Permanent Representative acts as such only in relation to certain organs (or, in the event that there are no special requirements as regards representation in other organs of the organization and the sending State does not decide otherwise, if he is also Permanent Representative to the latter organs), the permanent mission, as such, could assume representative functions in relation to the organization as a whole - as draft articles 6 and 7 apparently provide. It would not be proper for permanent missions to be accredited to an organization as a whole while Permanent Representatives were accredited solely to certain organs of that organization. There should be a parallelism between the scope of representative functions of permanent missions and that of Permanent Representatives so that the missions would not appear juridically to discharge representative functions wider in scope than those exercised by the heads of such missions.

It would not be difficult to embody this principle of parallelism juridically in an instrument sponsored by the United Nations, even though this dual principle has more or less been established in current practice. If the present texts of articles 6 and 13 are to be reconciled, they will need to be interpreted in the sense that a permanent mission accredited to an organization in accordance with article 6 is the one which represents the sending State in the organs of

the organization in accordance with article 13. The commentary on this rule could well be drafted to indicate that the apparent duality in articles 6 and 13 should be construed in the light of the foregoing interpretation.

Article 14. While the subject-matter of this article belongs rather in the Convention on the Law of Treaties, it is acceptable as part of these draft articles although, as the Sixth Committee of the General Assembly has pointed out, it would be wiser here again to take the rules of the said Vienna Convention as the model, once the Convention has been signed in that city.

Article 15. This article presents no problem; its text reflects current practice.

Article 16. The size of the permanent mission as laid down in this article is acceptable.

Article 17. This article presents no problem whatsoever; it is right and proper to state that the members of the permanent mission are not accredited to the organization in question but are simply appointed by the sending State to assume such functions.

Article 18. This article calls for no comment. It merely confirms customary diplomatic practice by stipulating that a Chargé d'Affaires ad interim shall be appointed in the absence of the head of the mission.

Article 19. This rule is acceptable in that it establishes the order of precedence among Permanent Representatives and thereby ratifies the principle of the sovereign equality of States.

Articles 20 and 21. The Government of Ecuador has no comment to make on these rules, which are fully acceptable.

6. ISRAEL

Observations communicated by note verbale dated 8 April 1969 from the Permanent Representative to the United Nations

/Original: English/

Article 1

The Government of Israel believes that the Commission should consider adding a definition of "representative", since the term is used both in the title and in the text of the draft articles.

It proposes that sub-paragraph (b) be omitted, having regard to its observations on article 2.

It suggests that in sub-paragraph (1), the words "are established" be replaced by "may be established".

Article 2

The Government of Israel does not consider that a valid or workable distinction can be drawn between international organizations of a universal character and others, for the purpose of these articles. It points out that in so far as the provisions of these articles conflict with the relevant rules or constituent instruments of any international organization at all, whatever the characteristic of that organization, the latter will in any case prevail by virtue of articles 3, 4 and 5. It therefore proposes that this article be omitted.

Articles 4 and 5

The Government of Israel makes the following comments:

(1) The formulation of article 4 should correspond more closely with the terms of paragraph 2 of article 26 of the draft articles on the law of treaties (in the final form which will be given to it at the Vienna Conference).[4/]

(2) It is noted that in the title of article 4, the word "existing" appears, but in the text reference is made to "other international agreements in force". It is therefore not clear whether the article does or does not apply to future agreements. The Government of Israel doubts if it is appropriate to restrict article 4 only to agreements in force when the draft articles themselves enter into force.

(3) In article 4, the words "between States or between States and international organizations" are superfluous.

(4) In the light of the foregoing, a more succinct formulation should be considered, such as an amalgamation of articles 4 and 5 along the following lines:

4/ In the Vienna Convention on the Law of Treaties as adopted by the Conference on the Law of Treaties in 1969 (A/CONF.39/27 and Corr.1 /English only/, Corr.2 /French only/, Corr.3 /Russian only/, Corr.4 /Spanish only/ and Corr.5 /Russian only/).

"Nothing in the present articles shall prejudice other international agreements in force concerning the representatives of States to an international organization".

Article 7

The Government of Israel suggests that sub-paragraph (e) be inserted immediately after sub-paragraph (a), in view of its generality and importance.

Article 8

The Government of Israel considers that this article is superfluous, and believes that it could well be omitted. In view of the fact that the appointment of members of a permanent mission is not subject to the agrement of the host State or the organization concerned, it points out that even in the absence of this article there would be nothing to prevent a sending State from appointing the same persons as members of two or more permanent missions. By contrast, it points out, it was only the need to preserve the right of receiving States to withhold their consent that necessitated the inclusion of paragraph 1 of article 5 of the Vienna Convention on Diplomatic Relations,[5/] and article 4 of the draft articles on special missions.[6/] The hypothesis of the present article, however, is not analogous to that with which those other provisions deal.

It is also considered that if this article is retained, then, as a matter of drafting, the phrase "as a member of another of its permanent missions" which occurs in both paragraphs 1 and 2, should in each case be replaced by "as a member of the staff of another of its permanent missions". This, it seems, would more accurately express the intended meaning, in view of the definitions of each of these phrases contained in paragraphs (f) and (g) of article 1.

Article 9

The Government of Israel suggests that the phrase "as head of a diplomatic mission", which occurs in paragraph 1 and paragraph 2, should in each case be replaced by "as head of a diplomatic or special mission".

5/ United Nations Treaty Series, vol. 500, p. 96.

6/ See Official Records of the General Assembly, Twenty-second Session, Supplement No. 9 (A/6709/Rev.1), p. 6

Article 10

The Government of Israel recognizes that this article gives expression to the well-established practice with regard to permanent missions, namely that their members may be appointed freely and without requiring the consent of the host State or of the organization. It nevertheless considers that in the following two cases, the host State should have the right to refuse its consent, namely

(1) in the case of a person who has previously been convicted in the host State of a serious criminal offence,

(2) in the case of a person whom the host State has previously declared persona non grata.

In order to give effect to this, it proposes the addition of a new provision either as a new paragraph to article 10 or as a new article 10 (bis), along the following lines:

> "The host State may withhold or at any time withdraw its consent to the appointment as a member of a permanent mission of any person whom it has previously declared persona non grata or who has previously been convicted in any of its courts of a criminal offence involving ignominy."

The phrase "a criminal offence involving ignominy" is based upon the authorized English translation of sub-section (1) of section 44 of the Chamber of Advocates Law, 5721-1961 (Laws of the State of Israel, authorized translation from Hebrew, vol. 15, 196 at p. 203). The use of this phrase is suggested here, in order to exclude from the scope of the proposed article trivial contraventions such as parking offences.

Article 11

The Government of Israel draws attention in this context to the necessity of making special provision, in those sections dealing with privileges and immunities, for the privileges and immunities of members of a permanent mission who are nationals or permanent residents of the host State. Such a provision could be based on paragraph 2 of article 38 of the Vienna Convention on Diplomatic Relations.

Article 12

The Government of Israel proposes the following two amendments:

(1) To replace the words "or by another competent minister" by "or by any other authority competent to do so under the laws of the sending State". It considers that "authority" is preferable to "minister", since credentials are in fact sometimes issued by authorities other than ministers, and because the word "minister", unlike "Minister for Foreign Affairs", has no clearly defined meaning in international law. As regards the word "competent", it feels that the proposed phrase should be substituted, in order to eliminate the possible ambiguity arising from the fact that the word occurs twice in this article, the first time with the meaning "competent by the law of the sending State", and the second time with the meaning "competent by the rules of the organization".

(2) To omit the phrase "if that is allowed by the practice of the Organization", since the idea is already covered by article 3.

Article 13

The Government of Israel considers that the text of this article should be replaced by that suggested in paragraph 7 of the commentary. The meaning of the latter is far clearer, and it is free from the ambiguities of the present text, which leaves it uncertain (1) whether in the event of organs being specified, the Permanent Representative has or has not the right to appear before the unspecified organs, (2) whether in the event of organs not being specified, the Permanent Representative has a right to appear before any organs at all, and (3) whether paragraph 2 relates to a situation in which organs have been specified, or in which they have not been specified. The Government of Israel suggests, however, that in paragraph 2 of the alternative text contained in paragraph 7 of the commentary, the words "unless there are special requirements as regards representation in any particular organ" be omitted, since this point is already expressed by article 3.

Article 14

The Government of Israel, while not disagreeing with the provisions of this article as they stand, feels that the topic of treaties between States and

international organizations would be more appropriately dealt with in the context of the codification of the law of treaties. While noting that the draft adopted in 1968 by the Committee of the Whole at the first session of the Vienna Conference[7] is limited by article 1 to treaties concluded between States, it draws attention to the resolution passed at the same session of that conference[8] recommending the General Assembly to refer the study of the question of treaties concluded between States and international organizations or between two or more international organizations to the International Law Commission. In view of this, the Government of Israel suggests that the question of the retention of article 14 should be examined only after the General Assembly has finally pronounced itself on the future study of the topic.

Article 15

The Government of Israel suggests that article 15 be merged with article 6, so as to form the second paragraph of that article.

Article 17

The Government of Israel proposes that in sub-paragraph (a) of paragraph 1, the words "of the members" be replaced by "of members" and the words "their arrival and final departure" by "their arrival and their final departure"; this would bring the text of the article into line with that of article 10 of the Vienna Convention on Diplomatic Relations. It also proposes that at the end of the sub-paragraph, the semicolon be replaced by a comma and the following words added: "and, in the case of temporary absences, their departure and return".

In sub-paragraph (b), it considers that the words "where appropriate" are redundant and should be deleted.

It suggests that paragraph 2 be drafted along the same lines as paragraph 2 of article 11 of the draft articles on special missions.

7/ See document A/CONF.39/C.1/L.370/Rev.1/Vol. I, p. 30.

8/ Ibid., vol. II, p. 406.

Article 18

The Government of Israel suggests that the following sentence be added to the end of article 18, along the lines of paragraph 4 of article 17: "The Organization shall transmit the notification of the host State".

It notes that no provision has not been made for the accreditation of chargés d'affaires ad interim. It considers that this may be needed, in view of the fact that the post of Permanent Representative is sometimes vacant for a considerable time. It suggests that the International Law Commission obtain information as to the practice of international organizations on this point, with a view to the inclusion of an appropriate provision.

Article 20

The Government of Israel makes the following suggestions:

(1) That in paragraph 1, the word "express" be inserted after "prior" in order to bring the text into conformity with that of article 12 of the Vienna Convention on Diplomatic Relations;

(2) That the words "within the host State" be inserted after "localities".

Article 21

The Government of Israel proposes that the second sentence of paragraph 1 be omitted, but that the first sentence be completed by the addition of the words "and on its means of transport when used on official business", in conformity with paragraph 1 of article 19 of the draft articles on special missions.

7. NETHERLANDS

Observations communicated by letter dated 25 September 1969 from the Deputy Permanent Representative to the United Nations

/Original: English/

General remarks

The draft articles are intended to be rules of a non-obligatory nature, open to exceptions in the cases provided for in articles 3-5. The Netherlands

Government agrees with this modest scope of the draft. Nevertheless, the draft articles must be regarded as reflecting the actual state of international law as regards relations between States and international organizations. In fact, the International Law Commission itself describes the draft articles as a "common denominator" and a "general pattern which regulates the diplomatic law of relations between States and international organizations", their purpose being "the unification of that law to the extent feasible in the present stage of development" (paragraph 1 of the commentary on article 3).

It is for this reason that the Netherlands Government objects to the present wording of article 6, which in principle grants States the right to establish permanent missions to the organizations of which they are members. When exercising this right, they are of course subject to the relevant rules of the organization concerned. But what if the organization's rules are silent in regard to the possibility of establishing special missions? Must it then be assumed that member States are automatically entitled to establish permanent missions, pursuant to article 6?

The Netherlands Government considers this interpretation undesirable, for the following reasons. Firstly, a provision of this kind would make no allowance for the great differences between the aims of the various organizations and between their membership. With respect to many organizations, there will be a need for permanent missions. However, to several organizations, e.g., the International Monetary Fund and the World Bank, the institution of permanent missions is unknown. Secondly, the institution of permanent missions is liable to put smaller States at a disadvantage. Through its permanent mission, a State is able to exert a certain influence, and it is easier for some States to keep large diplomatic missions than it is for others. Thirdly, if member States were automatically entitled to establish permanent missions, countries might be less inclined to make themselves available as host States in the future, and the ratification of the present rules by the existing host States might be held up.

For these three reasons, it would be better to word article 6 in such a way that member States are only entitled to establish permanent missions if and in so far as this is provided for in the rules of the organization in question. Accordingly, a different wording for article 6 will be suggested below in the comments on each separate article.

The Netherlands Government notes with satisfaction that the International Law Commission agrees to consider the inclusion of an article of general scope on the remedies available to host States for safeguarding their rights (paragraph 8 of the commentary on article 16). Pending the inclusion of such an article, the Government will abstain from expressing an opinion on the position of the host States as resulting from the present draft articles. However, the Netherlands Government wishes to point out that it is the host State that will have to accept the privileges and immunition provided for in this Convention. In that Government's opinion, this means that there does exist a legal relationship between the sending State and the host State (cf. paragraph 3 of the commentary on article 10).

The Netherlands Government is aware that guarantees for host States can also be included in headquarters agreements.

Comments on particular articles

Article 1, sub-paragraph (b) in conjunction with article 2, paragraph 1

In the opinion of the Netherlands Government the proposal that the present rules be restricted to "organizations of universal character" is inopportune, since this criterion is irrelevant in this connexion. The fact that an organization has world-wide responsibilities and membership does not necessarily qualify it for the institution of permanent missions; on the other hand, the institution might be useful for organizations of more limited scope, e.g., some of the regional organizations. The Council of Europe is a good example. If the addition to article 6 suggested below is accepted, there would appear to be no objection to allowing the existing rules to apply in principle to all international organizations. In that case, article 2 could be omitted altogether.

Article 2, paragraph 2

If article 2 is retained, the Netherlands Government recommends deleting the last sentence of paragraph 2, since it is superfluous and confusing. It goes without saying that States can agree to apply the present rules to their representatives to organizations whose membership and responsibilities are not global.

Article 6

For the reasons stated in the general remarks, the Netherlands Government suggests that article 6 be reworded as follows:

> "Member States may establish permanent missions to the organization for the performance of the functions set forth in article 7 of the present articles, in so far as this is provided for in the relevant rules of the organization."

Article 7

This article rightly emphasizes the diplomatic, representational function of permanent representatives. It should be kept in mind that the draft articles are intended to supplement the codifications of the law on the position of State representatives so far completed, viz., the Vienna Conventions on Diplomatic Relations and on Consular Relations, and the Convention on Special Missions.

Article 9

The Netherlands Government wonders why in paragraphs 1 and 2, the permanent representative and the members of the staff of a permanent mission are named separately, whereas in paragraph 3 they are mentioned together, which is in accordance with article 1 (f). It is recommended that paragraphs 1 and 2 be combined.

Article 10

As stated in the general remarks, further guarantees will have to be given with regard to the position of the host State. It therefore is right that in article 10, reference be made to articles 11 and 16, which grant to the host State some influence as regards the nationality of the members of a mission and its size.

Article 13

The Netherlands Government prefers the wording of this article suggested by some members of the International Law Commission (paragraph 1 of the commentary), as expressing more clearly the purpose of the article.

Article 14

The title of this article is too wide; actually the article refers to only one category of conventions, namely, those between sending States and international organizations. It is therefore suggested that the title be redrafted as follows:

"Representation of States in the conclusion of treaties with international organizations."

Article 15

The Netherlands Government fails to see why paragraph 4 of the commentary on this article refers, without further explanation, to a number of definitions of the word "representatives", which term is deemed to include delegations, i.e., temporary representatives at international organizations. According to paragraph 19 of the report of the International Law Commission on the work of its twentieth session,9/ the position of delegations to organs of international organizations and to conferences convened by international organizations will be determined in a later section of the draft articles. Quite rightly, therefore, the only term defined in article 1 (e) is "permanent representative". It is recommended that paragraph 4 of the commentary to article 15 be deleted.

8. SWEDEN

Observations communicated by letter dated 1 September 1969 from the Ministry of Foreign Affairs

[Original: English]

A. General remarks

1. In view of the diversity of the purposes and functions of international organizations, the Swedish Government considers that a code intended to serve as a standard and a model for future international agreements would be more appropriate than a convention for the purpose of laying down general rules concerning the establishment and status of permanent missions to such organizations. In all

9/ Official Records of the General Assembly, Twenty-third Session, Supplement No. 9 (A/7209/Rev.1).

likelihood, specific agreements will continue to be needed on the matters dealt with in the draft articles. Given the form of code, the articles would be useful by providing a basis for such agreements. On the other hand, general rules adopted in the form of a convention, even though they would be of a residuary character as provided in articles 3-5, would probably make special arrangements more difficult to achieve in practice, once these rules have been generally accepted and become binding on the States.

2. The establishment of permanent missions by members of an international organization is, in principle, a matter for arrangement between the organization concerned, or its members, and the host State. Only on the basis of a special agreement between these parties can a State member of an organization claim a right to establish a permanent mission to the organization. Article 6, which provides that "member States may establish permanent missions to the Organization...", is, of course, quite in order if the ultimate form of the draft articles is to be a code, but does not seem acceptable as a general provision to be included in a convention which would apply to any organization falling within the definitions in article 1, subject only to the reservations contained in articles 3-5.

3. With regard to the privileges and immunities of permanent representatives of States to international organizations, a large measure of uniformity has already been achieved in practice, since such representatives have generally been accorded the same treatment as diplomatic agents in the host State, in most cases by headquarters agreements or other special arrangements. Without wishing to propose any change in the present status of permanent representatives, the Swedish Government is of the opinion that it is not axiomatic that full diplomatic privileges and immunities should be granted in every future case. It should be regarded as the maximum that can be asked for, rather than as the standard required. In its view, the general rules to be adopted in this field could be limited to granting mainly functional immunities, leaving it to the member States and the host State of any international organization to extend full diplomatic immunities to permanent missions by special agreement, if they choose to do so.

4. The following observations are submitted on individual draft articles, viewed as being intended for a code and not a convention.

B. Observations on individual articles

Article 1. Use of terms

1. The purpose and meaning of the expression "representative character" as used in the definition of a "permanent mission" in article 1(d) are not clear. If it is intended that some categories of missions should be excluded from the application of the provisions of the draft articles on the ground that they are not "representative", it would be necessary to indicate in what manner or on the basis of what criteria the representative character of a permanent mission is to be determined. If, on the other hand, this expression simply means that a permanent mission should represent the sending State, this could of course be stated in more direct terms, and it is in fact clearly stated in article 7.

2. Although the status of a permanent mission representing the host State in an international organization may, in some respects, be different from that of other permanent missions, it is nevertheless believed that such a mission should be included in the term "permanent mission" as used in the draft articles. Since the expression "sent to the Organization" in article 1(d) would not be adequate as regards the permanent mission of the host State in cases where the organization in question has its seat in the capital of that State, it is suggested that those words should be replaced by "representing in the organization".

3. The definition in article 1 (h) of the term "members of the diplomatic staff" should be more precise. As appears from paragraph 6 of the commentary, this term is intended to include not only staff members having diplomatic titles but also experts and advisers assimilated to them. However, the definition lays down as a condition for such assimilation that the persons concerned should have "diplomatic status". It is believed that this condition, the meaning of which is not clear, can be dispensed with, and that article 1 (h) might be changed to read:

> "(h) The 'members of the diplomatic staff' are the members of the staff of the permanent mission having diplomatic rank or serving as experts or advisers."

Article 9. Accreditation, assignment or appointment of a member of a permanent mission to other functions

1. The functions specifically mentioned in article 9 - diplomatic and consular functions and special missions to a State - should presumably be regarded as examples rather than as an exhaustive enumeration of the functions which may be performed by a permanent representative and any other member of a permanent mission outside the field of his activities in that capacity. It can hardly be intended, for instance, that a permanent representative should be prevented from acting as head of a permanent mission to an international organization of which the sending State is not a member (this case does not seem to be covered by article 8, since such a mission does not fall within the definition of a permanent mission in article 1 (d) or as a delegate to an international conference (this case is presumably not covered by the expression "special mission of that State to the host State or to another State" in paragraph 1 of article 9).

2. It would seem, however, that article 9 should preferably deal only with the performance of diplomatic and consular functions, leaving out all questions regarding temporary assignments to other functions, such as special missions. If the scope of the article is thus limited, there would be less reason for uncertainty as to the purpose and indirect implications of the article. It is accordingly proposed that the words "or special" should be deleted after "member of a diplomatic" in paragraphs 1 and 2 of the article and that the title of the article should be changed to read: "Performance of diplomatic and consular functions by a member of a permanent mission".

Article 14. Full powers to represent the State in the conclusion of treaties

1. There is no objection to the principle underlying article 14 that permanent representatives should be regarded as being invested with powers similar to those of heads of diplomatic missions as regards the negotiation or conclusion of treaties.

2. The first paragraph of the article contains provisions similar to those of article 7 paragraph 2 (b) of the Vienna Convention on the Law of Treaties. However, the expression "adopting the text of a treaty" is not ordinarily used on connexion with bilateral treaties, and in the absence of any definition in the present draft articles, may lend itself to an interpretation different from that intended in the Vienna Convention. To avoid any misunderstandings it would seem that the word "negotiating" should be substituted for the words "adopting the text of" in paragraph 1 of article 14.

3. Because of the differing opinions on the nature of agreements between international organizations and member States and on the legal personality of international organizations, it is suggested that the word "treaty" in article 14 should be replaced by the more neutral expression "agreement".

4. The Swedish Government is not convinced of the wisdom of the formula adopted in article 7 paragraph 1 (b) of the Vienna Convention on the Law of Treaties, and it has similar views on the clause "unless it appears from the circumstances that the intention of the Parties was to dispense with full powers" in paragraph 2 of article 14. It would be in favour of deleting this clause.

Article 18. Chargé d'affaires ad interim

It is suggested that the temporary head of a permanent mission should ordinarily be designated as "acting permanent representative" rather than as "chargé d'affaires ad interim" and that the text and title of article 18 should be changed accordingly. It seems desirable that the latter designation should, as a rule, be reserved for the temporary head of a diplomatic mission, and not be unnecessarily extended to other missions.

9. UNION OF SOVIET SOCIALIST REPUBLICS

Observations communicated by note verbale dated 19 December 1969 from the Permanent Mission to the United Nations

[Original: Russian]

The permanent Mission of the Union of Soviet Socialist Republics to the United Nations has the honour to state that the draft articles on representatives

of States to international organizations (articles 1-21) do in general reflect existing practice and do not give rise to any objections of principle.

The Permanent Mission believes that in view of the representative nature of permanent missions to international organizations established by sovereign States, and also in order to ensure the normal and uninterrupted functioning of such missions, the principle of according them all the privileges and immunities which are accorded to diplomatic missions should be consistently followed throughout the draft articles, and the status of members of the staff of such missions should be analogous to the status of staff of the corresponding category in diplomatic missions.
