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**Fifth report on relations between States and international organizations, by
Mr. El Erian, Special Rapporteur**

Topic:

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RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS

[Agenda item 2]

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**Fifth report on relations between States and international organizations,
by Mr. Abdullah El-Erian, Special Rapporteur**

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ABBREVIATIONS

CMEA	Council for Mutual Economic Assistance
ECA	Economic Commission for Africa
ECAFE	Economic Commission for Asia and the Far East
FAO	Food and Agriculture Organization of the United Nations
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
IDA	International Development Association
IFC	International Finance Corporation
ILO	International Labour Organisation
IMCO	Inter-Governmental Maritime Consultative Organization
IMF	International Monetary Fund
ITU	International Telecommunication Union
OAS	Organization of American States
OAU	Organization of African Unity
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNITAR	United Nations Institute for Training and Research
UNRRA	United Nations Relief and Rehabilitation Administration
UPU	Universal Postal Union
WHO	World Health Organization
WMO	World Meteorological Organization

I. Introduction

A. THE BASIS OF THE PRESENT REPORT

1. At its twentieth and twenty-first sessions, the Commission provisionally adopted parts I and II of its draft articles on representatives of States to international organizations, consisting of a first group of twenty-one articles on general provisions (part I) and permanent missions to international organizations in general (part II, section 1)¹ and of a second group of twenty-nine articles

on facilities, privileges and immunities of permanent missions to international organizations; conduct of the permanent mission and its members; and end of the functions of the permanent representative (part II, sections 2, 3 and 4).² The Commission decided, in accordance with articles 16 and 21 of its Statute, to submit the first and the second groups of articles, through the Secretary-General, to Governments for their observations. It also decided to transmit them to the secretariats of the United Nations, the specialized agencies, and IAEA, for their observations. Bearing in mind the position of

¹ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 194, document A/7209/Rev.1, para. 21.

Ibid., 1969, vol. II, p. 206, document A/7610/Rev.1, para. 13.

Switzerland as the host State in relation to the Office of the United Nations at Geneva and to a number of specialized agencies, as well as the wish expressed by the Government of that country, the Commission deemed it useful to transmit also both groups of draft articles to that Government for its observations. At its twenty-first session, the Commission decided to continue at its twenty-second session its work on relations between States and international organizations and to consider at that session draft articles on permanent observers of non-member States to international organizations and on delegations to sessions of organs of international organizations and to conferences convened by such organizations.³ The Special Rapporteur accordingly now submits to the Commission his fifth report dealing with those aspects of the question of representatives of States to international organizations.

B. SUMMARY OF THE COMMISSION'S DISCUSSION AT ITS TWENTY-FIRST SESSION⁴

2. The Commission did not have much difficulty in reaching the conclusion that its draft on representatives of States to international organizations should also include articles dealing with permanent observers of non-member States to international organizations and with delegations to sessions of organs of international organizations.

3. Opinions were divided on whether the draft should, in addition, include articles on delegations to conferences convened by international organizations or whether that question ought to be considered in connexion with another topic. Some members stated that there were, no doubt, certain theoretical differences between representatives to an organ of an international organization and representatives to a conference convened by an international organization, but that for practical purposes it was hardly possible to draw a distinction between those two categories of representatives from the point of view of diplomatic law, especially in respect of the privileges and immunities which should be accorded to them. Reference was made by one member to examples from the past and modern instances which, in his opinion, showed that there was no fundamental difference between an organ of an international organization and a conference convened by that organization. For instance, at the twenty-third session of the General Assembly, the Sixth Committee had turned itself into a conference of plenipotentiaries to consider the draft Convention on special missions. The reverse also occurred: it was not unknown for an international conference to wish to become something more than the sum of its participants and to act like an organ or even an organization. At the first Hague Conference, for example, when, in the absence of agreement on the text of a convention, some States had wished to adopt a declaration on compulsory arbitration, the question had arisen whether it would be a declaration by the States which had agreed to make it, or a declaration by the Conference.

4. On the other hand, some members did not think that international conferences convened by international organizations formed part of the topic which the Commission was now studying. According to that view, international conferences were sovereign bodies that were not dependent on the United Nations, and some of the States attending them were not members of the convening organization. Such conferences were therefore a separate topic and the Commission should be asked to treat them accordingly. One member stated that the Commission should confine itself to delegations to organs of international organizations; to go further, it would need a wider mandate from the General Assembly. Some members took a rather practical approach in their support for including the problem of representatives to international conferences convened by international organizations. They warned that if that problem was not dealt with at the present stage, when the Commission was working on the codification of diplomatic law, there was a danger that it would be completely neglected. It would not be advisable, in their opinion, to postpone consideration of the problem until the whole subject of conferences was examined, because that might well involve a long delay. One member stated that when a conference was convened by the United Nations, arrangements were normally made by the Secretariat with the host country and the Convention on the Privileges and Immunities of the United Nations would apply. He inferred that it was thus clear that there was a link between representatives to such conferences and permanent representatives.

5. The Legal Counsel stated that during the Sixth Committee's discussion on the draft Convention on special missions, a new article on the subject of conferences had been proposed. He understood that that proposal was not likely to be adopted and, in view of the danger that the question of conferences might not be dealt with at all, it would perhaps be useful for the Commission to include in its report on the twenty-first session a passage indicating its interest in the subject. The Sixth Committee would then probably decide that the Commission should be invited to deal with the subject. He pointed out that a conference convened by the United Nations was not a subsidiary organ of the Organization and did not report to the General Assembly. It had been said that a conference was sovereign but it might perhaps be more correct to describe it as semi-sovereign, because such matters as the date and place of meeting and the composition of the conference were decided by the General Assembly. He also pointed out that the question of conferences convened by States should also receive attention. It was not usual for important international conferences to be convened otherwise than under the auspices of an international organization, but such conferences were sometimes convened by States and raised problems in international law. For those reasons, the Legal Counsel deemed it desirable that the Commission should be empowered to examine the question of conferences.

6. At the 993rd meeting of the Commission, the Chairman, Mr. Ushakov, proposed that the Commission should, provisionally, authorize the Special Rapporteur to draft a chapter on the legal status of delegations of

³ *Ibid.*, para. 17.

⁴ *Ibid.*, vol. I, p. 4, 991st to 993rd meetings.

States to international conferences convened by international organizations, on the understanding that the Commission would take no decision of substance on the matter until it had examined that chapter. It was so agreed. The decision of the Commission on the question was recorded as follows in its report on the work of its twenty-first session:

"... the Commission again considered the question referred to in paragraph 28 of its report on the work of its twentieth session.⁵ At its 992nd meeting, it reached the conclusion that its draft should also include articles dealing with permanent observers of non-member States to international organizations and with delegations to sessions of organs of international organizations. Opinions were divided on whether the draft should, in addition, include articles on delegations to conferences convened by international organizations or whether that question ought to be considered in connexion with another topic. At its 993rd meeting, the Commission took a provisional decision on the subject, leaving the final decision to be taken at a later stage. The Commission intends to consider at its twenty-second session draft articles on permanent observers of non-member States and on delegations to sessions of organs of international organizations and to conferences convened by such organizations".⁶

C. SUMMARY OF THE SIXTH COMMITTEE'S DISCUSSION, AT THE TWENTY-FOURTH SESSION OF THE GENERAL ASSEMBLY, OF THE QUESTION OF RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS

7. The Sixth Committee considered the item entitled "Report of the International Law Commission on the work of its twenty-first session" at its 1103rd to 1111th meetings held from 25 September to 1 October 1969. Most of the observations on chapter II of the Commission's report related to the twenty-nine articles which are contained in that chapter.

8. Several representatives agreed with the Commission's conclusion that its draft should also include articles dealing with delegations to sessions of organs of international organizations. As regards, however, delegations to conferences convened by such organizations, some representatives reserved their position. It was said, in this connexion, that an international conference was a sovereign body, irrespective of who convened it.⁷

D. SUMMARY OF THE SIXTH COMMITTEE'S DISCUSSION AT THE TWENTY-FOURTH SESSION OF THE GENERAL ASSEMBLY ON THE DRAFT CONVENTION ON SPECIAL MISSIONS

9. The delegation of the United Kingdom suggested the inclusion in the draft Convention on special missions of a provision pertaining to conferences. It introduced an

amendment,⁸ the purpose of which was to add the following article to the draft Convention:

Article 0

Conferences

1. A State may apply the provisions of part II of the present articles, as appropriate, in respect of a conference attended by representatives of States or Governments which is held in its territory and which is not governed by similar provisions in any other international agreement.

2. Where a State applies the provisions of paragraph 1 of this article in respect of a conference held in its territory, officials of the secretariat of that conference shall:

(a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(b) Unless they are nationals or permanent residents of the receiving State, enjoy exemption from taxation on the emoluments paid to them in respect of their services to the conference;

(c) Be immune from immigration restrictions and from aliens' registration;

(d) Be given the same repatriation facilities as members of diplomatic missions of comparable rank;

(e) Have the right to import free of duty the personal baggage accompanying them at the same time of first arriving in the receiving State to take up their duties in connexion with the conference.

3. Where a State applies the provisions of paragraph 1 of this article in respect of a conference held in its territory, the premises occupied for the purposes of the conference and all archives, papers and documents relating to the conference shall enjoy inviolability.

10. Introducing the new article,⁹ the representative of the United Kingdom stated that the question of the status of delegations of States to international conferences and of officials of the secretariat of such conferences was of considerable practical importance and that, although the problem arose very frequently, it was not governed by a coherent set of legal rules. He posed the question whether it was suitable for inclusion in a draft convention on special missions or whether it would be preferable to include it in the convention on the representatives of States to international organizations. While recognizing the complexity of the problem, he considered that, since international conferences were, legally speaking, closely akin to special missions, it would seem logical to accord them the same facilities, privileges and immunities. He conceded, however, that the argument that the matter of international conferences should be dealt with in the future convention on representatives of States to international organizations, since these conferences were generally called by the latter, should be duly taken into consideration. He pointed out that paragraph 1 of article 0 imposed no obligation on States; it simply allowed them to have recourse, at their discretion, to the provisions of a precise legal instrument to settle a question which was not covered by any text. He also pointed out that the adoption of the new article would not prejudice the outcome of the studies to be made by the International

⁵ *Ibid.*, 1968, vol. II, p. 195, document A/7209/Rev.1.

⁶ *Ibid.*, 1969, vol. II, p. 206, document A/7610/Rev.1, para. 17.

⁷ *Official Records of the General Assembly, Twenty-fourth Session, Annexes*, agenda items 86 and 94 (b), document A/7746, para. 21.

⁸ *Ibid.*, agenda item 87, document A/7799, para. 175.

⁹ *Ibid.*, *Twenty-fourth Session, Sixth Committee*, 1142nd meeting.

Law Commission on the subject of international conferences but might on the contrary facilitate its work, since the Commission would have at its disposal the opinions expressed by States on the present occasion.

11. The Expert Consultant, Mr. Bartoš, stated at the same meeting¹⁰ that in his view the United Kingdom proposal was in line with the relevant general principles of modern international law and came within the ambit of the rules contained in the draft Convention on special missions. It also took account of the practical difficulties arising from the lack of applicable rules in that field. He pointed out that it should not be forgotten that, if it was decided to include rules relating to international conferences in the draft convention on representatives of States to international organizations, it should be made clear that the article proposed by the United Kingdom, if it was adopted, was to be considered as provisional and applicable only until such time as that draft convention was adopted.

12. The position of the delegations who commented on the United Kingdom proposal¹¹ was divided. Some of those who supported it made their support conditional on the addition of the words "outside the framework of an international organization" after the word "territory" in paragraph 1 of the article, in order better to define the scope of the article. Others suggested that since the proposed provision was not imperative in nature and could be construed as giving States a free choice, it might be included in a protocol annexed to the Convention so that States would be free to decide whether or not to apply it. There was general agreement on the usefulness of the United Kingdom proposal which dealt with a question that was becoming increasingly important, and had the merit of drawing attention to the problem. The decision of the Sixth Committee not to include in the draft Convention on special missions a provision on conferences as suggested by the United Kingdom was influenced by considerations of rather practical character. Some delegations thought that a more thorough study of the question was necessary if certain difficulties were to be avoided. Several delegations considered that the best solution would be to leave the topic of international conferences to be dealt with by the International Law Commission. The Committee would thus ensure that the question of conferences came back to it in a form which would enable it to reach a more informed decision.

13. In the 1148th meeting, the representative of the United Kingdom withdrew his amendment and the Committee decided, on the proposal of the United Kingdom representative, to include in its report the following summary of the views expressed during the discussion of the question of conferences.¹²

The Committee was of the view that the question of the legal status, privileges and immunities of members of delegations to international conferences and of the secretariat of conferences constituted a gap in the law relating to international represen-

tation which remained to be filled. Once again, it was necessary to start from the proposition that the status, privileges and immunities should be those necessary to ensure the efficient and independent exercise of their respective functions. There were a number of precedents which could serve as a starting point for the study of the problem—the conventions on the privileges and immunities of international organizations (including those relating to the United Nations and to the specialized agencies) together with the Vienna Conventions on Diplomatic and Consular Relations and the forthcoming Convention on Special Missions.

The Committee noted that the International Law Commission's Special Rapporteur on relations between States and international organizations, Mr. El-Erian, had indicated his intention to include articles on the status of delegations to conferences in the draft articles on representatives of States to international organizations. The Committee also noted that the International Law Commission had discussed, and would discuss again at its next session, the general question of further work on the status, privileges and immunities of delegations to international conferences.

The Committee requested the International Law Commission to take into account in its further work on the subject the interest and the views expressed in the debates in the Sixth Committee at the twenty-fourth session of the General Assembly.¹³

E. THE SCOPE AND ARRANGEMENT OF THE PRESENT GROUP OF DRAFT ARTICLES

14. The present group of draft articles covers the following subjects:

(a) Permanent observer missions to international organizations (part III);

(b) Delegations to organs of international organizations and to conferences convened by international organizations (part IV).

The subject of permanent observers of non-member States to international organizations is dealt with in this report immediately after that of permanent missions to international organizations. Theoretical and practical considerations require, in the opinion of the Special Rapporteur, that order of presentation. Having the character of permanent missions and not that of *ad hoc* diplomacy, permanent observers of non-member States to international organizations should logically be dealt with after permanent missions of Member States. While the subject of immunities and privileges of delegations to organs of international organizations and to conferences convened by international organizations has been regulated in the Conventions on the Privileges and Immunities of the United Nations¹⁴ and the Specialized Agencies¹⁵ as well as in a great number of special agreements, the immunities of permanent observers have in practice hitherto remained almost entirely unregulated by international law.

15. In accordance with the practice of the Commission in other topics, the Special Rapporteur has not given the articles in the present group a separate set of numbers but has numbered them starting from the last articles of section 4 of part II, the first article being numbered 51.

¹⁰ *Ibid.*, paras. 2-3.

¹¹ *Ibid.*, 1142nd and 1143rd meetings.

¹² *Ibid.*, 1148th meeting.

¹³ *Ibid.*, Annexes, agenda item 87, document A/7799, para. 178.

¹⁴ United Nations, *Treaty Series*, vol. 1, p. 15.

¹⁵ *Ibid.*, vol. 33, p. 261.

II. Draft articles on representatives of States to international organizations, with commentaries

PART III. PERMANENT OBSERVER MISSIONS TO INTERNATIONAL ORGANIZATIONS

General comments

(1) Permanent observers have been sent by non-member States to the Headquarters of the United Nations at New York and to its Office at Geneva. Since 1946 a permanent observer is being maintained by the Swiss Government. Observers have also been 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, at the present time, members of the Organization, maintain permanent observers. In addition, the Holy See has recently appointed permanent observers, both at New York and at Geneva.

(2) 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 (III) of 3 December 1948 relating to permanent missions (of Member States) to the United Nations. The Secretary-General referred to permanent observers of non-member States in his report on permanent Missions to the fourth session of the General Assembly,¹⁶ but no action was taken by the Assembly to provide a legal basis for permanent observers. Their status, therefore, has been determined by practice.¹⁷

(3) In the Introduction to his Annual Report on the Work of the Organization for the period 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 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.¹⁸

¹⁶ *Official Records of the General Assembly, Fourth Session, Sixth Committee, Annex, document A/939/Rev.1 and Rev.1/Add.1, p. 17.*

¹⁷ See the memorandum dated 22 August 1962 of the Legal Counsel to the then Acting Secretary-General, reproduced in *Yearbook of the International Law Commission, 1967, vol. II, p. 190, document A/CN.4/L. 118 and Add.1 and 2, para. 169.*

¹⁸ *Official Records of the General Assembly, Twenty-first Session, Supplement No. 1 A (A/6301/Add.1), p. 14.*

(4) A similar statement was again included in the Introduction to the Annual Report of the Secretary-General on the Work of the Organization for the period 16 June 1966-15 June 1967.¹⁹

(5) 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,²⁰ 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 have 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 levels.

(6) The position of permanent observers as regards privileges and immunities was stated as follows in the memorandum, dated 22 August 1962, sent by the Legal Counsel:²¹

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.

Article 0. Use of terms

For the purposes of the present articles:

(a) A "permanent observer mission" is a mission of representative and permanent character sent by a State non-member of an international organization to the Organization;

(b) The "permanent observer" is the person charged by the sending State with the duty of acting as the head of a permanent observer mission.

Commentary

(1) In the twenty-one draft articles which it provisionally adopted at its twentieth session, the Commission includes an article (article 1) on use of terms. The terms defined in that article relate only to permanent missions. The inclusion in the draft of articles on permanent observer missions would therefore require the extension of the scope of article 1 by the addition thereto of the provisions set out in sub-paragraphs (a) and (b) of article 0.

¹⁹ *Ibid., Twenty-second Session, Supplement No. 1 A (A/6701/Add.1), para. 168.*

²⁰ See *Official Records of the Economic and Social Council, Forty-fifth Session, Supplement No. 3 (E/4491), annex II, pp. 114-115.*

²¹ See foot-note 17 above.

(2) The Special Rapporteur does not deem it necessary to add sub-paragraphs relating to such terms as "the members of the permanent observer mission", "the members of the staff of the permanent observer mission", etc., since their meaning is obvious by reference to the corresponding terms relating to permanent missions.

Article 51. Establishment of permanent observer missions

Non-member States may establish permanent observer missions to the Organization for the performance of the functions set forth in article 52.

Article 52. Functions of permanent observer missions

1. The principal function of a permanent observer mission is to ensure the necessary liaison between the sending State and the Organization.

2. Permanent observer missions may also perform *mutatis mutandis* other functions of permanent missions as set forth in article 7.

Commentary

(1) Article 51 lays down a general rule in accordance with which non-member States may establish permanent observer missions to effect the necessary association with an international organization, short of full membership.

(2) Underlying such a general rule is the assumption that the organization is one of universal character. As defined in article 1 (b), an "international organization of universal character" means an organization whose membership and responsibilities are on a world-wide scale.²² Paragraph (4) of the commentary on that article states:

"The definition of the term 'international organization of universal character' in sub-paragraph (b) flows from Article 57 of the Charter which refers to the 'various specialized agencies, established by intergovernmental agreement and having wide international responsibilities'".²³

Given the central position which such international organizations occupy in the present day international order and the world-wide character of their activities and responsibilities, it becomes of vital interest to non-member States to be able to follow the work of those organizations more closely. It could also be of benefit to the organizations as a whole and conducive to the fulfilment of their principles and purposes. The community of interest in the association of non-member States with international organizations of universal character cannot be assumed in the case of regional organizations, the structure and membership of which are established on the assumption that their activities are of particular interest to a specific group of States. This is not to say that one or more States which are not members of a regional organization may not be interested in being

brought into association with that organization. What it means is that it is not possible to generalize such an assumption or lay down a general rule. In the case of regional organizations, unlike that of international organizations of universal character, it is difficult to state a residual rule based on an established pattern. The question should therefore be left to be regulated in accordance with the particular conditions of the regional organizations in question.

(3) A number of States have not become members of the United Nations and, to a lesser degree, of the specialized agencies, notwithstanding the fact that the Charter of the United Nations and the constitutions of the specialized agencies are based on the principle of universality of membership. The reasons are varied. Some, like Switzerland and Western Samoa, have chosen themselves not to become members of the United Nations. The "package deal" arrangement of simultaneous admission of eighteen States in 1955 which resolved the membership crisis in the United Nations excluded from its application the "divided countries" of Germany, Korea and Vietnam. Some of these divided countries succeeded in gaining admission to the specialized agencies while the admission of the rest of the divided countries was blocked.

(4) The establishment of permanent observer missions has been mentioned in recent years as one of the solutions for the problem of "micro-States". In the Introduction to his Annual Report on the work of the Organization covering the period 16 June 1966-15 June 1967, the Secretary-General of the United Nations stated:

... 'micro-States' should also be permitted to establish permanent observer missions at United Nations Headquarters and at the United Nations Office at Geneva, if they so wish, as is already the case in one or two instances. Measures of this nature would permit the 'micro-States' to benefit fully from the United Nations system without straining their resources and potential through assuming the full burden of United Nations membership which they are not, through lack of human and economic resources, in a position to assume.²⁴

The Secretary-General reiterated this position in the Introduction to his Annual Report covering the period 16 June 1967-15 June 1968 when he stated:

I drew attention last year to the problem of the 'micro-States'. I can well understand the reluctance of the principal organs of the United Nations to grapple with this problem, but I believe it is a problem that does require urgent attention. The question has been considered by many scholars and also by the United Nations Institute for Training and Research. It seems to me that several of the objectives which micro-States hope to achieve by membership in the United Nations could be gained by some other form of association with the Organization, such as the status of observers. In this connexion, I should like to reiterate the suggestion that I made last year that the question of observer status in general, and the criteria for such status, require consideration by the General Assembly so that the present institutional arrangements, which are based solely on practice, could be put on a firm legal footing.²⁵

²² See *Yearbook of the International Law Commission, 1968*, vol. II, p. 196.

²³ *Ibid.*

²⁴ *Official Records of the General Assembly, Twenty-second Session, Supplement No. 1A (A/6701/Add.1)*, para. 166.

²⁵ *Ibid.*, *Twenty-third Session, Supplement No. 1A (A/7201/Add.1)*, para. 172.

In a letter dated 18 August 1969 to the President of the Security Council, the Permanent Representative of the United States of America requested "an early meeting of the Security Council to consider a proposal that the Secretary-General be requested by the Security Council to inscribe an item entitled 'Creation of a Category of Associate Membership' on the provisional agenda of the twenty-fourth session of the General Assembly". He further stated that his delegation "would appreciate an opportunity to present its views on the problem posed by the association of emerging very small States with the United Nations".²⁶ The Council considered the matter at its 1505th and 1506th meetings held on 27 and 29 August 1969 and decided to establish "a committee of experts, consisting of all members of the Security Council, to study the question which was examined at the 1505th and 1506th meetings of the Security Council".²⁷ The Committee has not so far submitted a report.²⁸

(5) Article 52, paragraph 1, provides that the principal function of a permanent observer mission is to ensure the necessary liaison between the sending State and the Organization. In the Introduction to his Annual Report on the work of the Organization covering the period 16 June 1966-15 June 1967, the Secretary-General of the United Nations stated:

In my introduction to last year's annual report as well as in previous years, I have already expressed my strong feeling that all countries should be encouraged and enabled, if they wish to do so, to follow the work of the Organization more closely by maintaining observers at the Headquarters of the United Nations, at Geneva and in the regional economic commissions. They will thus be exposed to the impact of the work of the Organization and the currents and cross-currents of opinion that prevail within it, besides gaining opportunities to contribute to that exchange.²⁹

(6) Permanent observers, being representatives of States non-members of the Organization, do not perform functions identical with those of permanent missions of Member States. They do not perform as a general rule and on a standing basis the functions of permanent missions as set forth in article 7.³⁰ They may however perform some of these functions on an *ad hoc* basis: paragraph 2 of article 52 provides that permanent observer missions, besides their principal function of ensuring the necessary liaison between their respective Governments and the organization to which they are assigned, may also perform *mutatis mutandis* other functions of permanent missions. The functions of represen-

tation and negotiation can be performed in particular by permanent observers, if an organ of an international organization plays the role of a conference of plenipotentiaries and non-member States are allowed to participate therein. The most recent case of such a conference is the consideration of the draft Convention on special missions by the Sixth Committee at the twenty-fourth session of the General Assembly. An example of a similar procedure may be found in resolution 2520 (XXIV) of 4 December 1969, by which the General Assembly decided that "a State which is a party to the Statute of the International Court of Justice, but is not a Member of the United Nations, may participate in the General Assembly in regard to amendments to the Statute in the same manner as the Members of the United Nations".

Note on assignment to two or more international organizations or to functions unrelated to permanent missions

(1) The information supplied by the legal advisers of the United Nations, the specialized agencies and IAEA indicates that, apart from the Permanent Observer of the Holy See to FAO at Rome, permanent observers have been sent by non-member States only to the United Nations Headquarters at New York and to the United Nations Office at Geneva.³¹ It may therefore appear unnecessary to include in the draft articles on permanent observer missions a provision corresponding to article 8 on accreditation to two or more international organizations or assignment to two or more permanent missions.³²

(2) Cases may, however, arise in the future in which States non-members of international organizations will send permanent observers to two or more international organizations. In order to make as complete as possible the legal regulation of the institution of permanent observer missions of non-member States to international organizations, which constitutes the primary purpose of the draft articles on permanent observer missions, the Commission may wish to deal with the question of assignment to two or more international organizations. The Special Rapporteur therefore submits for the consideration of the Commission the following provision which is modelled on article 8:

1. The sending State may accredit the same person as permanent observer to two or more international organizations or assign a permanent observer as a member of another of its permanent observer missions.

2. The sending State may accredit a member of the staff of a permanent observer mission to an international organization as permanent observer to other international organizations or assign him as a member of another of its permanent observer missions.

(3) The Commission may also wish to provide for the situation in which a State accredits the same mission as permanent mission to an international organization of which that State is a member and as permanent observer

²⁶ *Official Records of the Security Council, Twenty-fourth Year, Supplement for July, August and September 1969*, document S/5397.

²⁷ See S/PV.1506.

²⁸ See on this question the study by the United Nations Institute for Training and Research entitled *Status and Problems of Very Small States and Territories*, UNITAR, Series No. 3, New York, 1969; see also P. Wohlgenuth Blair, "The Ministate Dilemma" (New York, Carnegie Endowment for International Peace, October 1967), Occasional Paper No. 6.

²⁹ *Official Records of the General Assembly, Twenty-second Session, Supplement No. 1 A (A/6701/Add.1)*, para. 168.

³⁰ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 200.

³¹ See *Yearbook in the International Law Commission, 1967*, vol. II, p. 190, document A/CN.4/L.118 and Add.1 and 2, para. 169.

³² *Ibid.*, 1968, vol. II, p. 201.

mission to another international organization of which it is not a member. This may be effected through the inclusion in article 9, which deals with accreditation, assignment or appointment of a member of a permanent mission to other functions,³³ of a reference to permanent observer missions. Such a solution however would not cover the situation in which the sending State assigns to one of the members of its permanent observer missions functions unrelated to permanent missions. The Special Rapporteur therefore submits to the consideration of the Commission a provision modelled on article 9 which reads as follows:

1. The permanent observer of a State to an international organization may be accredited as a permanent representative to another international organization or as head of a diplomatic mission or assigned as a member of a permanent mission of that State or as a member of one of its diplomatic or special missions to the host State or to another State.

2. A member of the staff of a permanent observer mission of a State to an international organization may be accredited as a permanent representative to another international organization or as head of a diplomatic mission or assigned as a member of a permanent mission of that State or as a member of one of its diplomatic or special missions to the host State or to another State.

3. A member of a permanent observer mission of a State may be appointed as a member of a consular post of that State in the host State or in another State.

4. The accreditation, assignment or appointment referred to in paragraphs 1, 2 and 3 of this article shall be governed by the rules of international law concerning diplomatic and consular relations.

Article 53. Appointment of the members of the permanent observer mission

Subject to the provisions of articles 54 and 56, the sending State may freely appoint the members of the permanent observer mission.

Article 54. Nationality of the members of the permanent observer mission

The permanent observer and the members of the diplomatic staff of the permanent observer mission should in principle be of the nationality of the sending State. They 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.

Commentary

(1) Article 53 is based on the provisions of article 10 as adopted by the Commission. It seeks to underline the principle of the freedom of choice by the sending State of the members of the permanent observer mission. Article 53 expressly provides for two exceptions to that principle. The first is embodied in article 54 which requires the consent of the host State for the appointment of one of its nationals as a permanent observer or as a member of the diplomatic staff of the permanent observer mission

of another State. The second exception relates to the size of the mission; that question is regulated by article 56.

(2) In paragraphs (2) and (3) of its commentary on article 10, the Commission stated that:

Unlike the relevant articles of the Vienna Convention on Diplomatic Relations and the draft articles on special missions, article 10 does not make the freedom of choice by the sending State of the members of its permanent mission to an international organization subject to the *agrément* of either the organization or the host State as regards the appointment of the permanent representative, the head of the permanent mission.

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 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. That legal situation is the basis of the institution of *agrément*, for the appointment of the head of the diplomatic mission. As regards the United Nations, the Legal Counsel pointed out at the 1016th meeting of the Sixth Committee, on December 1967, 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 as those relating to *agrément*, nationality or reciprocity, have no relevancy in the situation of representatives to the United Nations."³⁴

(3) Article 54, reproduces, with the necessary drafting changes, the provisions of article 11. In his report, the Special Rapporteur stated that 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.³⁵ In view of that, the Special Rapporteur decided not to include in his third report 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 2 of part II of the draft articles.³⁶ When the Commission considered the third report of the Special Rapporteur at its twentieth session, some members supported the position stated above. This position, however, was not accepted by the majority of the members. The Commission therefore decided, as stated in paragraphs (3) and (4) of its commentary on article 11, to include in the present draft articles a provision based on paragraphs 1 and 2 of article 8 of the Vienna Convention on Diplomatic Relations.³⁷ This provision—contained in article 11—states that the permanent representative and the members of the diplomatic staff of the permanent mission should in principle be of the

³⁴ *Ibid.*, p. 203.

³⁵ *Ibid.*, p. 137, document A/CN.4/203 and Add.1-5, para. 36.

³⁶ *Ibid.*, p. 137, para. 38.

³⁷ United Nations, *Treaty Series*, vol. 500, p. 95.

³³ *Ibid.*, p. 202.

nationality of the sending State, and that they may not be appointed from among persons having the nationality of the host State, except with the consent of that State. The Commission decided to limit the scope of that provision to nationals of the host State and not to extend it to nationals of a third State. It therefore did not include in article 11 the rule laid down in paragraph 3 of article 8 of the Vienna Convention on Diplomatic Relations. The highly technical character of some international organizations makes it desirable not to restrict unduly the free selection of members of the mission since the sending State may find it necessary to appoint as members of its permanent mission nationals of a third State who possess the required training and experience.³⁸

(4) The Special Rapporteur presumes that the Commission would like to take a similar approach in dealing with the problem of nationality of the members of the permanent observer mission. Article 54 is drafted with such an assumption in mind.

*Note on the question of credentials
in relation to permanent observers*

(1) The study by the Secretariat³⁹ refers only indirectly to the question of credentials of permanent observers, in the context of facilities accorded to them. In that respect, the study quotes the above-mentioned memorandum by the Legal Counsel to the then Acting Secretary-General, paragraph 4 of which states *inter alia*:

Communications informing the Secretary-General of their [the permanent observers'] appointment are merely acknowledged by the Secretary-General or on his behalf and they are not received by the Secretary-General for the purpose of presentation of credentials as is the case for Permanent Representatives of States Members of the Organization.⁴⁰

(2) Unlike permanent representatives of Member States, permanent observers of non-member States do not present credentials to the Secretary-General. The non-member State which wishes to maintain a permanent observer to the United Nations simply addresses a letter to the Secretary-General informing him of the identity of its permanent observer. The standard letter for the appointment of permanent observers reads as follows:

Since the Government of..... has decided to establish more permanent contact with the offices of the United Nations Organization, I have the honour to inform your Excellency that the..... will have a Permanent Observer to the United Nations in the person of His Excellency..... with residence at.....

In asking your Excellency to take note of the above-mentioned data, I have the pleasure in expressing [etc.].

(3) As far as the accreditation of permanent missions is concerned, the annex to the report on permanent

missions to the United Nations⁴¹ submitted by the Secretary-General to the General Assembly at its fourth session gave a standard form of credentials, as a guide to the drafting of such instruments, which read as follows:

Whereas the Government of has set up at the seat of the United Nations a permanent mission to maintain necessary contact with the Secretariat of the Organization,

Now therefore, we..... (name and title)..... have appointed and by these presents do confirm as permanent representative to the United Nations His Excellency..... (name)..... (title).....

His Excellency..... is instructed to represent the Government of..... in the following organs:..... He is also authorized to designate a substitute to act temporarily on his behalf after due notice to the Secretary-General.

In faith whereof we have signed these presents at..... on.....,

Signature

(title)
(Head of the State,
Head of the Government or
Foreign Minister)

It was suggested that where a Government desires to accredit its permanent representative to all organs of the United Nations, the first sentence of the third paragraph of the form might be altered to read:

His Excellency..... is instructed to represent the Government of..... in all organs of the United Nations.

(4) The Secretary-General of the United Nations submits each year a report on permanent missions to the United Nations in pursuance of resolution 257 A (III) of 3 December 1948, which requests 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." The reports indicate which Member States have authorized their permanent representatives to represent them in all organs of the United Nations and which have authorized their permanent representative to represent them in certain organs of the United Nations. The latest report submitted by the Secretary-General on "Permanent missions to the United Nations" to the twenty-fourth session of the General Assembly⁴² indicates that all Member States, with the exception of one, have set up permanent missions at the seat of the United Nations. It lists Member States which have appointed permanent representatives and transmitted to the Secretary-General credentials for those representatives in accordance with paragraph 1 of resolution 257 A (III). The report lists also the Member States the permanent missions of which are headed, pending the appointment of permanent representatives, by acting permanent representatives, *chargés d'affaires ad interim* or deputy permanent representatives.

(5) The Special Rapporteur is not convinced that a case exists for departing from the practice in accordance with

³⁸ Yearbook of the International Law Commission, 1968, vol. II, p. 204, document A/7209/Rev. 1, para. (4) of the commentary to article II.

³⁹ *Ibid.*, 1967, vol. II, p. 154, document A/CN.4/L. 118 and Add.1 and 2.

⁴⁰ *Ibid.*, p. 190, document A/CN.4/L. 118 and Add.1 and 2, para. 169.

⁴¹ Official Records of the General Assembly, Fourth Session, Sixth Committee, Annex, document A/939/Rev.1 and Rev.1/Add.1, pp. 16-17.

⁴² Document A/7631 of 12 December 1969.

which permanent observers do not present credentials, and he therefore did not include a provision on credentials of permanent observers analogous to article 12, as adopted by the Commission, on credentials of permanent representatives. Inasmuch as the letter of appointment of permanent observers takes the form of a notification, it could be covered by article 57 on notifications.

Article 55. Composition of the permanent observer mission

In addition to the permanent observer, a permanent observer mission may include members of the diplomatic staff, the administrative and technical staff and the service staff.

Article 56. Size of the permanent observer mission

The size of the permanent observer mission shall not exceed what is reasonable and normal, having regard to the functions of the Organization, the needs of permanent observer missions and the circumstances and conditions in the host State.

Article 57. Notifications

1. The sending State shall notify the Organization of:

(a) The appointment of the members of the permanent observer mission, their position, title and order of precedence, their arrival and final departure or the termination of their functions with the permanent observer mission;

(b) The arrival and final departure of a person belonging to the family of a member of the permanent observer mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the permanent observer mission.

(c) The arrival and final departure of persons employed on the private staff of members of the permanent observer mission and the fact that they are leaving that employment;

(d) The engagement and discharge of persons resident in the host State as members of the permanent observer mission or persons employed on the private staff entitled to privileges and immunities.

2. Whenever possible, prior notification of arrival and final departure shall also be given.

3. The Organization shall transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

4. The sending State may also transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

Commentary

(1) Article 55 reproduces, with the necessary drafting changes, the provisions of article 15 relating to the composition of the permanent mission.

(2) Every permanent observer 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 observer mission.

(3) As stated in paragraph (2) of the commentary on article 0 (Use of terms), the Special Rapporteur did not deem it necessary to add sub-paragraphs relating to such terms as "the members of the permanent observer mission", "the members of the staff of the permanent observer mission", etc., since their meaning is obvious by reference to the corresponding terms relating to permanent missions. The same applies to the commentary.

(4) Article 56 is based on article 16. There is, however, one essential difference between the two texts. In article 16, the needs of the permanent mission are referred to as "the needs of the particular mission" in the singular. This drafting aims at reflecting the fact that the needs of permanent missions vary according to the number of organs of the Organization in which the Member States concerned take part and in which they therefore have to be represented. Article 56 takes a different approach to the problem. It simply refers to the needs of permanent observer missions in general and not to the particular needs of a particular permanent observer mission. The reason for such drafting is very simple: permanent observer missions are sent by non-member States for the principal purpose of maintaining the necessary contact with the Organization. The sending State in such cases is in general not a member of any organ of the Organization and the members of its permanent observer mission do not participate in the meetings of the various organs of the Organization.

(5) The provisions of article 57 reproduce, with the necessary drafting changes, those of article 17. The Special Rapporteur considers that they do not call for any comment.

Article 58. Offices of permanent observer missions

1. The sending State may not, without the prior consent of the host State, establish offices of the permanent observer mission in localities other than that in which the seat or an office of the Organization is established.

2. The sending State may not establish offices of the permanent observer mission in the territory of a State other than the host State, except with the prior consent of such a State.

Article 59. Use of flag and emblem

1. The permanent observer mission shall have the right to use the flag and emblem of the sending State on its premises. The permanent observer shall have the same right as regards his residence and means of transport.

2. In the exercise of the right accorded by this article, regard shall be had to the laws, regulations and usages of the host State.

Commentary

(1) Article 58 reproduces with the necessary drafting changes the provisions of article 20. In paragraph (1) of its commentary on article 20, the Commission stated that the provisions of that article

have been included in the draft to avoid the awkward situation which would result for the host State if an office of a permanent

mission was established in a locality other than that in which the seat or an office of the Organization is established. The article deals also with the rare cases in which sending States wish to establish offices of their permanent missions outside the territory of the host State.⁴³

(2) Article 59 is modelled on article 21. The Special Rapporteur considers that it calls for no comment.

Article 60. Facilities, privileges and immunities

The permanent observer mission and its members shall enjoy the same facilities, privileges and immunities as are accorded to the permanent mission and its members in accordance with articles 22 to 44.

Article 61. Conduct of the permanent observer mission and its members and end of functions

The rules relating to the conduct of permanent missions and their members and to the end of functions as laid down in articles 45 to 49 shall apply *mutatis mutandis* to permanent observer missions and their members.

Commentary

(1) The position as regards facilities accorded to permanent observers at United Nations Headquarters is summarized as follows in paragraphs 3 and 4 of the above-mentioned memorandum of the Legal Counsel:⁴⁴

Since Permanent Observers of non-member States do not have an officially recognized status, facilities which are provided them by the Secretariat are strictly confined to those which relate to their attendance at public meetings and are generally of the same nature as those extended to distinguished visitors at United Nations Headquarters. The Protocol Section arranges for their seating at such meetings in the public gallery and for the distribution to them of the relevant unrestricted documentation. A list of their names is appended, for convenience of reference, to the List of Permanent Missions to the United Nations published monthly by the Secretariat, as Permanent Observers often represent their Governments at sessions of United Nations organs at which their Governments have been invited to participate.

No other formal recognition or protocol assistance is extended to Permanent Observers by the Secretariat. Thus no special steps are taken to facilitate the granting of United States visas to them and their personnel, nor for facilitating the establishment of their offices in New York. Communications informing the Secretary-General of their appointment are merely acknowledged by the Secretary-General or on his behalf, and they are not received by the Secretary-General for the purpose of presentation of credentials as is the case for Permanent Representatives of States Members of the Organization.

(2) The position as regards diplomatic privileges and immunities for permanent observers at United Nations Headquarters is summarized as follows in paragraph 5 of the memorandum:

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.

(3) At the European Office, in Geneva, the Federal Republic of Germany, the Holy See, the Republic of Korea, and the Republic of San Marino maintain permanent observers, who enjoy *de facto* the same privileges and immunities as permanent representatives (except in the case of the permanent observer of San Marino, who is a Swiss citizen). In addition, Switzerland appointed in 1966 an *Observateur permanent du Département Politique Fédéral auprès de l'Office des Nations Unies à Genève*.

(4) In *Pappas v. Francisci*,⁴⁵ a claim by a member of the staff of the then Italian observer to the United Nations to full diplomatic immunity was rejected since the State Department of the United States had not recognized the defendant as an official with diplomatic status. The Court also referred in its decision to a letter of the Acting Chief of Protocol of the United Nations concerning the status of representatives of non-member nations maintaining observers' offices in New York, in which it was stated that the

"Headquarters Agreement does not mention the observers' category and up until now the agreement has not been interpreted to confer diplomatic immunity on such persons and/or members of their staff."

The benefits of the International Organizations Immunities Act, however (i.e. functional privileges and immunities) are granted to persons designated by foreign Governments to serve as their representatives "in or to" international organizations; this phrase has been interpreted as applying to permanent observers.

(5) Article 60 provides that the permanent observer missions and their members enjoy the facilities, privileges and immunities accorded to permanent missions and their members, as laid down in articles 22 to 44. The fact that the functions of permanent observer missions are not identical with those performed by permanent missions may suggest that their privileges and immunities should not be identical either. It should be noted, however, that, notwithstanding the fact that permanent observer missions are assigned to international organizations by non-member States while permanent missions are accredited by Member States, they have analogous legal status, since they both have a representative and permanent character. This is reflected in article 0 (Use of terms), sub-paragraph (a), which defines a "permanent observer mission" as "a mission of representative and permanent character sent by a State non-member of an international organization to the Organization". This definition is identical in substance with the definition of the permanent mission in article 1, sub-paragraph (d), according to

⁴³ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 212.

⁴⁴ See foot-note 17 above.

⁴⁵ *Supreme Court of the State of New York, Special Term, King's County, Part V*, 6 February 1953, 119 N.Y.S. 2d. 69.

which a permanent mission is a "mission of representative and permanent character sent by a State member of an international organization to the Organization".⁴⁶

(6) Because of the difference, both in nature and in scope, between the functions of permanent missions on the one hand and those of permanent observer missions on the other, it is not necessary that the latter receive the same facilities as the former, especially from the organization. As mentioned above, the facilities which are extended to permanent observers of non-member States by the Secretariat of the United Nations are strictly confined to those which relate to their attendance at public meetings and are generally of the same nature as those extended to distinguished visitors at United Nations Headquarters. As regards the host State, the memorandum of the Legal Counsel states that if the permanent observers are not listed in the United States diplomatic list, i.e. if they do not form part of the diplomatic missions of their Governments to the Government of the United States, whatever facilities they may be given in the United States are merely gestures of courtesy by the United States authorities. This situation is explained in the memorandum by the fact that "Permanent Observers of non-member States do not have an officially recognized status". The purpose of article 60 is to redress such a situation by requiring both the host State and the organization to accord the permanent observer mission and its members facilities similar to those provided for in articles 22 to 44 regarding the permanent mission and its members. Article 22, as adopted by the Commission, on general facilities to be accorded to permanent missions refers to "facilities for the performance of its functions". It follows that in the application of such a rule *mutatis mutandis* to permanent observer missions, due account is to be taken of the more limited scope of the functions of the latter. This is reflected in paragraph (4) of the commentary on articles 55, 56 and 57.

(7) Article 61 provides for the application to permanent observer missions and their members, *mutatis mutandis*, of the rules applicable to the conduct of the permanent mission and its members and to the end of functions as laid down in articles 45-49. The rationale of such an assimilation is to be found in the fact that permanent missions and permanent observer missions have the same representative and permanent character, despite the constitutional difference which exists between them because the former are accredited by Member States of the Organization while the latter are sent by non-member States.

(8) Mention should be made of the fact that the articles referred to in article 61 do not include article 50 on "Consultations between the sending State, the host State and the Organization". The Special Rapporteur observes that, as stated in the report of the Commission on the work of its twenty-first session,⁴⁷ the place of article 50 in Part II concerning permanent missions is provisional;

he assumes that the content of that article will be transferred at a later stage either to part I entitled "General provisions" or to the end of the draft articles so that the article would be applicable to permanent missions, permanent observer missions and delegations to organs of international organizations and to conferences convened by international organizations.

PART IV. DELEGATIONS TO ORGANS OF INTERNATIONAL ORGANIZATIONS AND TO CONFERENCES CONVENED BY INTERNATIONAL ORGANIZATIONS

General comments

(1) The draft articles contained in this part consist of two categories: the first category seeks to regulate the general questions relating to delegations to organs of international organizations and to conferences convened by international organizations, e.g. composition, accreditation, powers in respect to the conclusion of treaties. The second category covers the question of facilities, privileges and immunities accorded to delegations to such organs and conferences.

(2) Out of the rules of procedure worked out by the different organs of the United Nations and the specialized agencies grew a substantial body of rules and regulations concerning the organization and procedure of diplomatic conferences which have become known as "multilateral" or "parliamentary" diplomacy.⁴⁸ Special mention should be made of the preparatory work on the "method of work and procedures" of the United Nations Conference on the Law of the Sea. This work was undertaken by the Secretariat of the United Nations with the advice and assistance of a group of experts in implementation of paragraph 7 of resolution 1105 (XI) of 21 February 1957 which reads as follows:

The General Assembly

[. . .]

7. Requests the Secretary-General to invite appropriate experts, to advise and assist the Secretariat in preparing the conference, with the following terms of reference:

[. . .]

(b) To present to the conference recommendations concerning its method of work and procedures, and other questions of an administrative nature; [. . .]

The report submitted by the Secretary-General⁴⁹ pursuant to this request contained provisional rules of procedure which, for the most part, followed the standard pattern of the rules of procedure of the General Assembly. The same rules were adopted, with a limited number of appropriate significant variations, by the United Nations First and Second Conferences on the Law of the Sea in

⁴⁸ See P. C. Jessup, "Parliamentary diplomacy: an examination of the Rules of Procedure of organs of the United Nations" in *Recueil des cours de l'Académie de droit international de La Haye, 1956-I* (Leyden, Sijthoff, 1957), t. 89, pp. 185-316.

⁴⁹ See *Official Records of the United Nations Conference on the Law of the Sea*, vol. I, *Preparatory Documents* (United Nations publication, Sales No.: 58.V.4, Vol. I), pp. 172-175.

⁴⁶ *Yearbook of the International Law Commission, 1968*, vol. II, p. 196.

⁴⁷ *Ibid.*, 1969, vol. II, p. 221, document A/7610/Rev.1, footnote 44

1958 and 1960, the Conference on Diplomatic Intercourse and Immunities in 1961, the Conference on Consular Relations in 1963 and the Conference on the Law of Treaties in 1968 and 1969.

(3) A corresponding substantial body of rules grew in relation to privileges and immunities of representatives to organs of international organizations and conferences convened by them. Article 105, paragraph 2, of the Charter provides that the representatives of Member States shall "[...] enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization." Article 105, paragraph 3, specifies that the General Assembly may make recommendations with a view to determining the details of application of paragraph 2 or may propose conventions to Member States for this purpose. Even before such steps have been taken, however, Member States are bound by the terms of Article 105. At the United Nations Conference on International Organization (San Francisco Conference), the Committee on Legal Problems stated that Article 105 "sets forth a rule obligatory for all members as soon as the Charter becomes operative";⁵⁰ similarly, the Executive Committee of the Preparatory Commission of the United Nations reported in 1945 that Article 105 is "applicable even before the General Assembly has made the recommendations referred to in paragraph (3) of the Article, or the conventions there mentioned have been concluded."⁵¹

As regards the nature of the privileges and immunities granted under Article 105, the Committee on Legal Problems at the San Francisco Conference declared that the terms *privileges* and *immunities* used in that Article "indicate in a general way all that could be considered necessary to the realization of the purposes of the Organization, to the free functioning of its organs [...]: exemption from tax, immunity from jurisdiction, facilities for communication, inviolability of buildings, properties, and archives, etc."⁵²

The Committee stated expressly that it had "seen fit to avoid the term 'diplomatic'", in describing the nature of the privileges and immunities conferred under Article 105, and had

preferred to substitute a more appropriate standard, based ... in the case of the representatives ..., on providing for the independent exercise of their functions.⁵³

⁵⁰ *Documents of the United Nations Conference on International Organization*, IV/2/42 (2), vol. XIII, p. 704.

⁵¹ Preparatory Commission of the United Nations, *Report by the Executive Committee* (PC/EX/113/Rev.1), Part III, chap. V, sect. 5, para. 2.

⁵² See foot-note 50 above.

⁵³ Article 7, paragraph 4, of the Covenant of the League of Nations provided 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."

Detailed arrangements concerning the privileges and immunities of the League of Nations were worked out between the Secretary-General of the League and the Swiss Government in the form of the "Modus Vivendi" of 1921 as supplemented by the "Modus Vivendi" of 1926. The "Modus Vivendi" of 1921 was embodied in a letter of 19 July 1921 from the Head of the Federal Political Department of the Swiss Government to the Secretary-General of the League of Nations on behalf of the Secretariat of the League and also of the International Labour Office. The "Modus Vivendi"

The Preparatory Commission of the United Nations instructed the Executive Secretary to invite the attention of the Members of the United Nations to the fact that, under Article 105 of the Charter, the obligation of all Members to accord to the United Nations, its officials and the representatives of its members all privileges and immunities necessary for the accomplishment of its purposes, operated from the coming into force of the Charter and was therefore applicable even before the General Assembly made the recommendations or proposed the conventions referred to in paragraph 3 of Article 105. It recommended that "the General Assembly, at its First Session, should make recommendations with a view to determining the details of the applications of paragraphs 1 and 2 of Article 105 of the Charter, or propose conventions to the Members of the United Nations for this purpose".⁵⁴ It transmitted for the consideration of the General Assembly a study on privileges and immunities, and, as working papers, a draft convention on privileges and immunities and a draft treaty to be concluded by the United Nations Organization with the United States of America, the country in which the headquarters of the Organization were to be located. It considered that the details of the prerogatives to be accorded to members of the International Court of Justice should be determined after the Court had been consulted, and that until further action had been taken "the rules applicable to the members of the Permanent Court of International Justice should be followed".⁵⁵ It recommended that the privileges and immunities of specialized agencies contained in their respective constitutions should be reconsidered and negotiations opened "for their co-ordination"⁵⁶ in the light of any convention ultimately adopted by the United Nations.

The documents of the Preparatory Commission were studied by the Sixth Committee of the General Assembly at the first part of its first session in January-February 1946. The following resolutions concerning the privileges and immunities of the United Nations were adopted by the General Assembly:

(a) A resolution relating to the adoption of the General Convention on Privileges and Immunities of the United Nations, to which the text of the convention is annexed [Resolution 22 A (I)];

(b) A resolution relating to negotiations with the competent 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, together with the text of a draft convention to be transmitted as a basis of discussion for these negotiations [Resolution 22 B (I)];

(c) A resolution on the privileges and immunities of the International Court of Justice [Resolution 22 C (I)];

of 1926 was submitted to the Council of the League for approval. For an account of the negotiations which led to the conclusion of these two Agreements, see M. Hill, *Immunities and Privileges of International Officials: The Experience of the League of Nations* (Washington, Carnegie Endowment for International Peace, 1947), pp. 14-23.

⁵⁴ *Report of the Preparatory Commission of the United Nations* (PC/20), chap. VII, sect. 1, para. 2.

⁵⁵ *Ibid.*, para. 4.

⁵⁶ *Ibid.*, para. 5.

(d) A resolution on the co-ordination of the privileges and immunities of the United Nations and the specialized agencies [Resolution 22 D (I)].

The general Convention on the Privileges and Immunities of the United Nations⁸⁷ (hereafter referred to as the General Convention) was approved by the General Assembly on 13 February 1946 and was in force on 1 April 1970 for 101 States.⁸⁸ Article IV, Section 11, of the General Convention provides that:

Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during the journey to and from the place of meeting, enjoy the following privileges and immunities:

(a) 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;

(b) Inviolability for all papers and documents;

(c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;

(d) Exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions;

(e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also;

(g) Such other privileges, immunities and facilities, not inconsistent with the foregoing, as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

(4) A Convention on the Privileges and Immunities of the Specialized Agencies⁸⁹ (hereafter referred to as the Specialized Agencies Convention) was approved by the General Assembly on 21 November 1947 and was in force on 1 April 1970 for 70 States.⁹⁰ Article V, section 13, on "Representatives of members" is modelled on article IV, section 11, of the General Convention. The Convention is applicable, subject to variations set forth in a special annex for each agency, the final form of which is determined by the agency concerned, to nine specialized agencies expressly designated in the Convention—namely the ILO, FAO, UNESCO, ICAO, IMF, IBRD, WHO, UPU and ITU, and to any other agency subsequently brought into relationship with the United Nations in accordance with Articles 57 and 63 of the Charter.⁹¹ In accordance with that last provision, the Convention has

been applied to WMO, IMCO and IFC. An agreement on the privileges and immunities of IAEA was approved by the Board of Governors of the Agency on 1 July 1959, which "in general follows the Convention on the Privileges and Immunities of the Specialized Agencies."⁹² The General Convention and the Specialized Agencies Convention are supplemented by headquarters agreements concluded between the United Nations and the specialized agencies on the one hand, and States on whose territory they maintain headquarters on the other hand. Headquarters agreements have been concluded by the United Nations with the United States of America and Switzerland, by ICAO with Canada, by UNESCO with France, by FAO with Italy, by IAEA with Austria, by ILO, WHO, WMO, ITU and UPU with Switzerland, and by IMCO with the United Kingdom.

(5) Constitutional instruments of regional organizations also usually contain provisions relating to privileges and immunities of the organization. Such provisions are found, for instance, in:

(a) Article 106 of the Charter of OAS signed at Bogota on 30 April 1948;

(b) Article 40 of the Statute of the Council of Europe of 5 May 1949;

(c) Article 14 of the Pact of the League of Arab States of 22 March 1945;

(d) Article XIII of the Statutes of CMEA signed at Sofia on 14 December 1959;

(e) Article XXXI of the Charter of OAU 25 May 1963.

These constitutional provisions have been implemented by general conventions on privileges and immunities⁹³ which were largely inspired by the General Convention and the Specialized Agencies Convention. A number of headquarters and host agreements were also concluded by regional organizations with States on whose territory they maintain headquarters or other offices.

Article 0. Use of terms

For the purposes of the present articles:

(a) 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.

(b) A conference is a meeting of representatives of States for negotiating or concluding a treaty on matters concerning the relations between the States.

⁸⁷ United Nations Legislative Series, *Legislative Texts and Treaty Provisions Concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (United Nations publication, Sales No.: 61.V.3), p. 358.

⁸⁸ Examples: Agreement on Privileges and Immunities of the Organization of American States, opened for signature on 15 May 1949; General Agreement on Privileges and Immunities of the Council of Europe, signed at Paris on 2 September 1949; Protocole sur les privilèges et immunités de la Communauté européenne du charbon et de l'acier, signed at Paris on 18 April 1951; Convention on the Privileges and Immunities of the League of Arab States approved by the Council of the League of Arab States on 10 May 1953; Convention concerning the juridical personality, privileges and immunities of the Council for Mutual Economic Assistance, signed at Sofia on 14 December 1959.

⁸⁷ See foot-note 14 above.

⁸⁸ Information on the status of this Convention and the number of States which had acceded to it on 1 April 1970 was communicated to the Special Rapporteur through the kindness of the Treaty Section of the Office of Legal Affairs of the United Nations.

⁸⁹ See foot-note 15 above.

⁹⁰ See foot-note 58 above.

⁹¹ See F. Wolf, *Le droit aux privilèges et immunités des institutions spécialisées reliées aux Nations Unies* (thesis, Université de Montréal, 1948) [cited in W. Jenks, *International Immunities* (London, Stevens & Sons, 1961), p. 5, foot-note 34].

Commentary

(1) As mentioned before,⁶⁴ the Commission included in the twenty-one draft articles which it provisionally adopted at its twentieth session an article (article 1) on use of terms. The terms defined in that article relate only to permanent missions. The inclusion in the draft of articles on delegations to organs of international organizations and conferences convened by international organizations would therefore require the extension of the scope of article 1 by the addition thereto of the provisions set out in sub-paragraphs (a) and (b) of article 0.

(2) "Conference": the definition of this term does not appear to require any comment except to indicate that

from the point of view of international law there is no essential difference between congresses and conferences. 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.⁶⁵

The first Special Rapporteur on special missions (A.E.F. Sandström) used the two terms jointly in the draft articles which he prepared for the Commission in 1960.⁶⁶ The second Special Rapporteur (M. Bartoš) also used the two terms jointly in the third preliminary question which he included in his report on special missions.⁶⁷ 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 1827-32 [. . .]. 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 [. . .]⁶⁸

A survey of the practice of the United Nations reveals a consistent tendency towards the usage 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 the 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 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 to conferences convened by States.⁶⁹

Article 62. 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 international organization may also include administrative and technical staff and service staff.

Commentary

(1) Every delegation to an organ of an international organization or to a conference convened by an international organization 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 delegation to an organ of an international organization or to a conference convened by an international organization. If the delegation to an organ of an international organization or to a conference convened by an international organization comprises two or more representatives, the sending State may appoint one of them to be head of the delegation.

(2) The term "representatives" is defined in article IV, section 16, of the General Convention as follows:

In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.⁷⁰

This definition is repeated in article IV, section 13, of the Interim Arrangement on Privileges and Immunities concluded between the Secretary-General of the United Nations and the Swiss Federal Council.⁷¹ The term "secretaries of delegations" is deemed to refer to diplomatic secretaries only and not to include clerical staff.

In the agreement between the United Nations and Government of Thailand relating to the Headquarters

⁶⁴ See part III, article 0, para. (1), of commentary.

⁶⁵ See E. Satow, *A Guide to Diplomatic Practice*, 4th ed. (London, Longmans, Green and Co., 1957), p. 303.

⁶⁶ *Yearbook of the International Law Commission, 1960*, vol. II, pp. 113-114.

⁶⁷ *Ibid.*, 1964, vol. II, pp. 73-74, document A/CN.4/166, paras. 20-26.

⁶⁸ E. Satow, *op. cit.*, pp. 303-304.

⁶⁹ One of the few instances in which the term "congress" is still used at present relates to article 11 of the Universal Postal Convention (United Nations, *Treaty Series*, vol. 364, p. 169), which continues to be revised periodically at "congresses" of the States forming the Universal Postal Union.

⁷⁰ United Nations, *Treaty Series*, vol. 1, p. 24.

⁷¹ *Ibid.*, p. 173.

of ECAFE in Thailand, a slight change is made that in the reference is to the "representatives of governments"; in article I, section 1 (k), of the agreement, this expression is declared "[. . .] to apply to delegates, deputy delegates, advisers, technical experts and secretaries of delegations, and to include the family of resident representatives".⁷²

In article I, section 1 (i), of the agreement between the United Nations and Ethiopia regarding the Headquarters of the United Nations ECA, the expression "representatives of governments" is deemed "to include representatives, deputy representatives, advisers, technical experts and secretaries of delegations".⁷³

In the case of the United Nations, further definition is, to some extent, provided by the rules of procedure of the four principal organs composed of representatives of Member States:

Rule 25 of the rules of procedure of the General Assembly provides:

The delegation of a Member shall consist of not more than five representatives and five alternate representatives, and as many advisers, technical advisers, experts and persons of similar status as may be required by the delegation.

Rule 13 of the provisional rules of procedure of the Security Council reads:

Each member of the Security Council shall be represented at the meetings of the Security Council by an accredited representative [. . .]

Rule 18 of the rules of procedure of the Economic and Social Council provides:

Each member of the Council shall be represented by an accredited representative, who may be accompanied by such alternate representatives and advisers as may be required.

Lastly, rule 11 of the rules of procedure of the Trusteeship Council reads:

Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

(3) In the Specialized Agencies Convention, article I, section 1(v), provides that for the purposes of articles V and VII, dealing respectively with the representatives of Member States and abuses of privileges, ". . . the expression 'representatives of members' shall be deemed to include all representatives, alternates, advisers, technical experts and secretaries of delegations".⁷⁴

In the ICAO Headquarters Agreement concluded between ICAO 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 mission but not the clerical staff".⁷⁵

The majority of the specialized agencies reported that no special problems had arisen regarding the interpretation of the term "representative". By reason of the tripartite character of the Organization, Government, employers' and workers' delegates enjoy an equal status in organs of the International Labour Organization. If, however, at the ILO General Conference, employers' and workers' delegates are in fact members of national delegations, 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 ILO annex to the Specialized Agencies Convention (Annex I), employers' and workers' members and deputy members of the Governing Body of the ILO are assimilated to representatives of member States, except that any waiver of the immunity of any such person may be made only by the Governing Body.⁷⁶

(4) Owing to the particular organizational structure of some of the specialized agencies (IBRD, IFC, IDA, IMF), inasmuch as they have besides a Secretariat a Board of Governors as well as Executive Directors, the determination of the status of the members of such bodies presents particular problems. These problems relate to the question of the extent to which Governors, Executive Directors, and their respective alternates, may be regarded as the representatives of member States. Such questions are to be determined in the light of the particularities and relevant factors in each individual case. However, it could be stated in a general way that Governors and alternate Governors are appointed by their Governments, that they usually hold annual meetings and that they serve without receiving salaries or other emoluments from the organization to which they are appointed. Under the circumstances it would seem that Governors may be characterized as "representatives" of their Governments. On the other hand, Executive Directors function in continuous session at the principal offices of the organizations and meet as often as the business of each organization may require. While having been appointed or elected, as the case may be, by member Governments, the Executive Directors and their Alternates serve in each organization and receive salaries and other emoluments from one or more of the organizations. It should be noted, however, that Executive Directors and their Alternates usually report to the Governments which have appointed or elected them. The replies of the above mentioned specialized agencies indicate that some Executive Directors have also performed outside duties, e.g. in other organizations, national embassies and elsewhere. In view of all this, it might be wise to heed the warning contained in the study by the Secretariat that:

. . . It is therefore considered that, at least for present purposes, the variety of posts held by Executive Directors from time to time and the different ways in which individual Directors perform their duties make it inappropriate to treat them as being exclusively "representatives" or the opposite.⁷⁷

⁷² *Ibid.*, vol. 260, p. 35.

⁷³ *Ibid.*, vol. 317, p. 101.

⁷⁴ *Ibid.*, vol. 33, p. 264.

⁷⁵ *Ibid.*, vol. 96, p. 155.

⁷⁶ *Ibid.*, vol. 33, p. 290.

⁷⁷ See *Yearbook of the International Law Commission, 1967*, vol. II, p. 205, document A/CN.4/L.118 and Add.1 and 2, para. 71.

Article 63. Appointment of a joint delegation by two or more States

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

Commentary

(1) The third report of the Special Rapporteur contained a "Note on appointment of a joint permanent mission by two or more States".⁷⁸ In that note, it was mentioned that 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 the institution of permanent missions.

(2) The problem of representation of more than one State by a single representative has arisen in a number of cases in different organs of the United Nations. In 1949 the same person was appointed to represent two States on the Interim Committee of the General Assembly. At the request of the delegate, he sat as the representative of only one of the two States.⁷⁹ At the third session of the UNRRA Council held in London in August 1945, one State requested to be represented by a representative of another State participating in that session. The report of the Credentials Committee of the Council states that the Committee gave careful attention to the credentials of the requesting State and that it "resolved that the request be accepted, but hoped that such procedure would not be accepted as a precedent for future meetings". The report stated also that "the Committee understood that this procedure would not give [one State] a dual vote".⁸⁰ Reference to this question is made in the report of the Credentials Committee of the Technical Assistance Conference held in 1950, in the following terms:

[...] There appears to be no precedent in United Nations bodies or in conferences convened by the United Nations in which one government has been represented by the delegation of another government. Considering the possible implications of the proposal, the President and Vice Presidents believe that the Conference should not depart from the accepted United Nations practice, and it is accordingly recommended that the Conference not accept multiple representation as proposed.⁸¹

At the United Nations Coffee Conference in 1962, one person was accredited as a member of three delega-

⁷⁸ *Ibid.*, 1968, vol. II, p. 135, document A/CN.4/203 and Add.1-5, paras. 31-34.

⁷⁹ Interim Committee of the General Assembly, "Representatives and Members-Nominations and Credentials" (document LEG 23/02).

⁸⁰ UNRRA, third session of the Council, document 29 *Ad Hoc/CI*, 7 August 1945.

⁸¹ Technical Assistance Conference, "Report on credentials" (document E/CONF.10/9), p. 2, para. 7.

tions. The Legal Adviser of the Conference informed the delegations concerned that it was contrary to established United Nations practice for one person to serve on more than one delegation to a conference. In addition, the representative of one State sent a letter accrediting as alternate on his country's delegation to the Economic Committee of the Conference the representative of another State to the Conference. The Legal Adviser informed the delegation concerned that it was contrary to United Nations practice and to the Conference's rules of procedure for a representative to be accredited to one committee only, rather than to the Conference as a whole. The matter was raised informally in the Credentials Committee, where views in favour of United Nations practice were expressed in respect of both cases. As a result, requests for dual or multiple representation were withdrawn by the delegations concerned.

(3) The interpretation of the practice of the United Nations is summed up in the study by 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 on 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.⁸²

(4) It may be interesting in this respect to note that several commodity agreements drafted under United Nations auspices provide for one State to represent another. Article 13 (2) of the 1962 International Coffee Agreement, for example, provides in part as follows:

(2) Any exporting Member may authorize any other exporting Member, and any importing Member may authorize any other importing Member, to represent its interests and to exercise its right to vote at any meeting or meetings of the Council.⁸³

Article 64. Appointment of the members of the delegation

Subject to the provisions of article 67, the sending State may freely appoint the members of its delegation to an organ of an international organization or to a conference convened by an international organization.

Commentary

(1) Article 64 is based on the provisions of article 10 concerning permanent missions as adopted by the Commission at its twentieth session and article 53 of the present draft articles. It, likewise, seeks to underline the principle of the freedom of choice by the sending State of the members of its delegation to an organ of an inter-

⁸² See *Yearbook of the International Law Commission, 1967*, vol. II, p. 169, document A/CN.4/L. 118 and Add.1 and 2, para. 40.

⁸³ See United Nations, *Treaty Series*, vol. 469, p. 186.

national organization or to a conference convened by an international organization. Article 64 expressly provides for an exception to that principle which relates to the size of the delegation and which is regulated in article 67.

(2) Unlike articles 10 and 53, article 64 does not provide for a second exception relating to nationality. The reasons for this are explained in the following note.

Note on nationality of members of a delegation

(1) In his third report, the Special Rapporteur stated that 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. In view of that, the Special Rapporteur decided not to include in his third report 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 2 of part II of the draft articles.⁸⁴ When the Commission considered the third report of the Special Rapporteur as its twentieth session, some members supported the position stated above. This position, however, was not accepted by the majority of the members. The Commission therefore decided, as stated in paragraphs (3) and (4) of its Commentary on article 11, to include in the present draft articles a provision based on paragraphs 1 and 2 of article 8 of the Vienna Convention on Diplomatic Relations.⁸⁵ This provision—contained in article 11—states that the permanent representative and the members of the diplomatic staff of the permanent mission should in principle be of the nationality of the sending State, and that they may not be appointed from among persons having the nationality of the host State, except with the consent of that State. The Commission decided to limit the scope of that provision to nationals of the host State and not to extend it to nationals of a third State. It therefore did not include in article 11 the rule laid down in paragraph 3 of article 8 of the Vienna Convention. The highly technical character of some international organizations makes it desirable not to restrict unduly the free selection of members of the mission since the sending State may find it necessary to appoint as members of its permanent mission nationals of a third State who possess the required training and experience.⁸⁶

(2) The Special Rapporteur is of the opinion that the sending State should have a wider freedom of choice with respect to the members of its delegations to organs

of international organizations and to conferences convened by such organizations. One of the salient features of present-day international relations is the increasing number of subsidiary organs set up by international organizations to deal with very specialized matters of highly technical character which require the enlisting of the services of experts possessing the necessary training and experience. This trend is by no means limited to international organizations of technical character (the specialized agencies). It is also increasingly witnessed in general international organizations of predominantly political character such as the United Nations and the regional organizations which have a general rather than specialized character. Similarly, conferences for the promotion of institutionalized international co-operation are convened at a rate which exceeds by far that of international conferences prior to the era of the United Nations. For these reasons it is highly desirable, if not indispensable, that the sending State should enjoy the widest possible freedom in the choice of the members of its delegations to such organs and conferences.

Furthermore, it should be noted that such organs and conferences meet temporarily and for short periods. Given this fact, the question of the requirement of the consent of the host State to the appointment of one of its nationals in the delegation of another State should be seen in a light different from that in which the Commission viewed the question in relation to members of permanent missions.

Article 65. Credentials and notifications

1. The credentials of representatives to an organ of an international organization or to a conference convened by an international organization shall be issued either by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or by another competent minister or by an appropriate authority designated by one of the above if that is allowed by the practice followed in the Organization.

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

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

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

Article 66. Full powers to represent the State in the conclusion of treaties

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

⁸⁴ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 137, document A/CN.4/203 and Add.1-5, para. 38.

⁸⁵ See foot-note 37 above.

⁸⁶ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 204, document A/7209/Rev.1, para. (4) of the commentary to article 11.

Commentary

(1) Article 65 is based on the provisions of article 27 of the Rules of Procedure of the General Assembly of the United Nations. This provision served as a prototype for the corresponding provisions in the rules of procedure of a great number of international organizations, universal and regional. It also served as a model for a number of conferences convened by the United Nations, the most recent of which is the United Nations Conference on the Law of Treaties held in 1968 and 1969.

(2) The addition at the end of paragraph 1 of article 65 of the words "or by another competent minister or by an appropriate authority designated by one of the above if that is allowed by the practice followed in the Organization" is in order to co-ordinate the text of article 65 with that of article 12 as adopted by the Commission. It is designed to cover the situation in some of the international organizations of technical character, in which practice allows that the credentials of representatives be issued by the member of Government responsible for the department which corresponds to the field of competence of the organization concerned.⁸⁷

In accordance with rule 22 (b) of the Rules of Procedure of the Assembly of the World Health Organization, credentials must be issued by the Head of State, by the Minister for Foreign Affairs, or by the Minister of Health or by any other appropriate authority. In practice the term "appropriate authority" has been considered to include government departments responsible for dealing with public health, ministries of health, heads of diplomatic missions and permanent missions.⁸⁸ Credentials for representatives on the Council of ICAO are usually signed by the Minister for Foreign Affairs or the Minister of Communications or Transport. In the case of a member of a temporary delegation, it is considered sufficient that his credentials be signed by the Ambassador of his State appointed to the country where the meeting is held, or by the representative of his State on the ICAO Council if the delegation represents a State which is a member of the Council.⁸⁹

(3) Article 13 of the Provisional Rules of Procedure of the Security Council of the United Nations provides that "... The Head of Government or Minister of Foreign Affairs of each member of the Security Council shall be entitled to sit on the Security Council without submitting credentials." The Special Rapporteur does not deem it necessary to include in article 65 an explicit provision relating to the credentials of heads of Governments or ministers of foreign affairs. The case of the Security Council is a particular one for which such high-rank representation is envisaged in paragraph 2 of Article 28 of the Charter of the United Nations, as follows:

The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.

(4) Paragraph 2 of article 65 requires that the competent organ of the Organization be notified of the names of

the delegation to one of its organs or to a conference convened by it. It provides that such notification should be made, if possible, not less than one week before the date fixed for the opening of the session of the organ or of the Conference. While the rules of procedure of the General Assembly of the United Nations adopt the time-limit of one week, those of the Economic and Social Council and of the Trusteeship Council provide that the communications be made not less than twenty-four hours before the first meeting. The same rule is to be found in rule 3 of the Rules of Procedure of the United Nations Conference on the Law of Treaties of 1968 and 1969.⁹⁰ As to the specialized agencies, their rules of procedure generally provide for a two week time-limit for notification of names of members of delegations to their general assemblies and conferences (e.g. rule 22 (b) of the Rules of Procedure of the World Health Assembly, Rule III-2 of the General Rules of FAO).

(5) Paragraphs 3 and 4 of article 65 regulate the question of notification to the host State. They correspond to paragraphs 3 and 4 of article 17 as adopted by the Commission. It appears from a survey of the practice of the United Nations and the specialized agencies relating to notification to the host State of the members of delegations to an organ of an international organization or to a conference convened by such an organization that such practice is varied and far from systematized. It should be noted, however, that some headquarters agreements include provisions on this matter. Article III, Section 15, of the Headquarters Agreement between Canada and the International Civil Aviation Organization specifies that

No person shall be entitled to the provisions of Section 12 unless and until the name and status of this person shall have been duly notified to the Secretary of State for External Affairs as a Representative of a Member State.⁹¹

(6) The language of article 66 is based on the relevant provisions of article 7 of the Vienna Convention on the Law of Treaties.⁹² The Special Rapporteur considers that it calls for no comment.

Article 67. Size of the delegation

The size of a delegation to an organ of an international organization or to a conference convened by an international organization shall not exceed what is reasonable and normal, having regard to the functions of the organ or conference, the needs of the particular delegation and the circumstances and conditions in the host State.

Article 68. Precedence

Precedence among heads of delegations to an organ of an international organization or to a conference convened

⁹⁰ See *Official Records of the United Nations Conference on the Law of Treaties, First Session, Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No.: E.68.V.7), p. xxvi.

⁹¹ United Nations, *Treaty Series*, vol. 96, p. 166.

⁹² *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No.: E.70.V.5), p. 290.

⁸⁷ *Ibid.*, p. 204, para. (4) of the commentary on article 12.

⁸⁸ *Ibid.*, 1967, vol. II, p. 194.

⁸⁹ *Ibid.*, p. 193.

by an international organization shall be determined by the alphabetical order, in accordance with the practice established in the Organization.

Commentary

(1) Article 67 is based on article 16 as adopted by the Commission. There is however one significant difference between the two texts. Article 16 lists as one of the determining factors in relation to the size of the permanent mission the functions of the Organization. Article 67 refers to the functions of the organ or conference. The size of a delegation to an organ of general competence (the General Assembly or Conference of the United Nations and the specialized agencies) is by necessity much larger than that of a delegation to an organ or subsidiary organ dealing with a limited subject matter. The same applies to the so-called "major-conferences" like the United Nations Conference on the Law of the Sea or the United Nations Conference on the Law of Treaties as compared to other conferences of much more limited scope and duration. Article 25 of the Rules of Procedure of the General Assembly of the United Nations provides that

The delegation of a Member shall consist of not more than five representatives and five alternate representatives, and as many advisers, technical advisers, experts and persons of similar status as may be required by the delegation.

Rule 13 of the Provisional Rules of Procedure of the Security Council provides that:

Each member of the Security Council shall be represented at the meetings of the Security Council by an accredited representative

Rule 18 of the Rules of Procedure of the Economic and Social Council reads:

Each member of the Council shall be represented by an accredited representative, who may be accompanied by such alternate representatives and advisers as may be required.

Lastly, rule 11 of the Rules of Procedure of the Trusteeship Council provides:

Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

(2) Article 68 corresponds to article 19 as adopted by the Commission. There is, however, an essential difference between the two texts. Article 19 provides for two variants, the first being the alphabetical order and the second the time and date of submission of credentials of permanent representatives. Owing to the comparatively *ad hoc* character and short duration of the sessions of organs of international organizations and conferences, it is not practicable to adopt for them the second variant, i.e., the order of the time and date of submission of credentials. Article 68, therefore, provides for the alphabetical order. It may be relevant to recall what the Commission stated in paragraph (6) of its commentary on article 16 of its draft articles on special missions:

As there is no universally recognized alphabetical order, the Commission chose the alphabetical order used by the protocol of the State on whose territory the missions meet.⁹³

In the case of sessions of organs of international organizations and conferences convened by them, it is to be noted that international organizations usually have a number of languages, whether official languages or working languages. A presumption can be made in favour of the alphabetical order used in the host State.

(3) Certain modalities for the alphabetical system as a basis of the rule regulating the precedence of heads of delegations to organs of international organizations have been worked out in the practice of those organizations. According to the information summarized by the Secretary-General of the United Nations in a note of 3 July 1968 to the Commission entitled "Precedence of representatives to the United Nations"⁹⁴ and the information provided to the Special Rapporteur by the Legal Advisers of the ILO, IAEA and UPU, it appears that, as a general rule, heads of delegations take precedence in accordance with their rank and, in case of equality of rank, in accordance with the alphabetical order. In both cases a certain precedence is accorded to heads of delegations who serve as chairmen of a committee of the organ concerned.

Article 69. Facilities, privileges and immunities

ALTERNATIVE A

The provisions of part II, section 2, of the present articles, shall apply, as appropriate, to delegations to organs of international organizations and to conferences convened by international organizations.

ALTERNATIVE B

Representatives to organs of international organizations and to conferences convened by international organizations shall enjoy the following facilities, privileges and immunities:

(a) Immunity from any form of arrest or detention and from seizure of their personal baggage;

(b) Immunity from the criminal jurisdiction of the host State;

(c) Immunity from legal process of any kind in respect of words spoken or written and all acts done by them in their capacity as representatives;

(d) Inviolability of all papers and documents;

(e) The right to use codes and to receive papers or correspondence by courier or in sealed bags;

(f) Exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions;

⁹³ *Yearbook of the International Law Commission, 1967, vol. II, p. 355.*

⁹⁴ *Ibid.*, 1968, vol. II, p. 163, document A/CN.4/L. 129.

(g) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(h) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also

(i) Such other privileges, immunities and facilities, not inconsistent with the foregoing, as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

Article 70. Conduct of delegations to organs of international organizations and to conferences convened by international organizations and end of functions

The rules relating to the conduct of permanent missions and their members and to the end of functions as laid down in articles 45 to 49 shall apply *mutatis mutandis* to delegations to organs of international organizations and to conferences convened by international organizations and their members.

Commentary

(1) The privileges and immunities of delegations to organs of the United Nations and the specialized agencies and to conferences convened by them are regulated by provisions in the General Convention and the specialized agencies Convention and by the 1946 Interim Arrangement on Privileges and Immunities concluded between the Secretary-General of the United Nations and the Swiss Federal Council. One of the recent significant developments relating to the diplomatic law of international organizations is the completion of the necessary steps for the ratification by the Government of the United States of America—the host country of the United Nations—of the General Convention. On March 19, 1970, the Senate adopted the resolution of ratification by which it

Resolved, [...] That the Senate advise and consent to the ratification of the Convention on Privileges and Immunities of the United Nations approved unanimately by the General Assembly on February 13, 1946 (Executive J, Ninety-first Congress, first session) [...].⁹⁵

It is noteworthy that among these privileges and immunities, immunity from jurisdiction is limited to words spoken or written and all acts done by members of such delegations in their capacity as representatives. This rather limited immunity from jurisdiction is in contrast with the full diplomatic immunities accorded by these same Conventions to the Secretary-General (e.g. article V, section 19, of the General Convention). It is also in contrast with the full diplomatic immunities which the members of the permanent missions to the United Nations and the specialized agencies enjoy in accordance

with the provisions of the Headquarters Agreement concluded between the United Nations and the United States on 26 June 1947 and with the decision of the Swiss Federal Council dated 31 March 1948.

(2) Authors generally agree that representatives to international conferences enjoy full diplomatic status. Their position is summed up by Satow as follows:

As regards delegates to the numerous conferences now held on a great variety of matters, some doubt might perhaps be felt, in the absence of cases arising for settlement, as to the extent of the immunities to which they and the members of their suites are entitled. Formerly international congresses and conferences were for the most part attended by personages of high ministerial rank, or by resident diplomatic agents who already possessed diplomatic privileges; now plenipotentiaries appointed are often officials or persons chosen for their special knowledge of the subject to be discussed, who with their retinues constitute the delegations to the conference. In the view of most writers, such representatives are entitled to full diplomatic privileges.⁹⁶

Sometimes the foundation of this position is given as being the diplomatic character of the representative's mission. Thus, according to Hall:

The case of negotiators at a congress or conference is exceptional. Though they are not accredited to the government of the State in which it is held, they are entitled to complete diplomatic privileges, they being as a matter of fact representative of their State and engaged in the exercise of diplomatic functions.⁹⁷

(3) The Pan-American Convention regarding Diplomatic Officers, signed at Havana on 20 February 1928, contains the following articles:

Article 1. States have the right of being represented before each other through diplomatic officers.

Article 2. Diplomatic officers are classed as ordinary and extraordinary.

Those who permanently represent the Government of one State before that of another are ordinary.

Those entrusted with a special mission or those who are accredited to represent the Government in international conferences and congresses or other international bodies are extraordinary.

Article 3. Except as concerns precedence and etiquette, diplomatic officers, whatever their category, have the same rights, prerogatives and immunities.

Etiquette depends upon diplomatic usages in general as well as upon the laws and regulations of the country to which the officers are accredited.

[...]

Article 9. Extraordinary diplomatic officers enjoy the same prerogatives and immunities as ordinary ones.⁹⁸

(4) Hesitation on the part of some writers to concede full diplomatic immunities to delegations to international conferences is prompted by the fact that some of these conferences are purely technical and of secondary importance, and such treatment would place the delega-

⁹⁵ E. Satow, *op. cit.*, p. 207.

⁹⁷ W. E. Hall, *A Treatise on International Law*, 8th ed. (Oxford, Clarendon Press, 1924), p. 365.

⁹⁸ League of Nations, *Treaty Series*, vol. CLV, pp. 265 and 267.

⁹⁶ United States of America, *Congressional Record: Proceedings and Debates of the 91st Congress, Second Session*, vol. 116, No. 42, pp. S 3963-S 3965, and *ibid.*, No. 43, pp. S 4011-S 4012.

tions on a level higher than that of representatives of States to the organs of the United Nations. Thus, Chaier observes in this respect that:

... it seems difficult to place delegates on the same footing as diplomats, for to do so would mean that delegates to a highly technical conference requiring them to fulfil relatively important functions would enjoy a higher privileged status than that enjoyed, for example, by representatives of States to the General Assembly of the United Nations. That does not seem very logical.

He concludes, however, that:

In this sphere too, it appears that international practice should try to achieve a degree of uniformity between the status granted in *ad hoc* diplomacy, the status of delegates to conferences and the status of representatives of States to meetings of organs of international organizations.⁹⁹

(5) Pending discussion in the Commission of the preliminary question of the extent of privileges and immunities of representatives to organs of international organizations and to conferences convened by them, the Special Rapporteur takes the position that these representatives should be accorded in principle, and with particular reference to immunity from criminal jurisdiction, diplomatic privileges and immunities such as those accorded to members of permanent missions to international organizations. The basis of this position is that a number of recent developments have taken place in the codification of diplomatic law in the direction of the extension of diplomatic immunities and privileges rather than that of the restrictive functional approach. One of these developments is the evolution of the institution of permanent missions to international organizations and the assimilation of their status and immunities to diplomatic status and immunities. The second development is the tendency of the International Law Commission, as can be discerned from its discussions and formulation of the provisional draft articles on special missions, in favour of: (a) making the basis and extent of the immunities and privileges of special missions more or less the same as that of permanent diplomatic missions, and (b) taking the position that it was impossible to make a distinction between special missions of a political nature and those of a technical nature; every special mission represented a sovereign State in its relations with another State. The Special Rapporteur is therefore of the view that, owing to the temporary character of their task, delegations to organs of international organizations and

to international conferences occupy, in the system of the diplomatic law of international organizations, a position similar to that of special missions within the framework of bilateral diplomacy. It follows that the determination of their privileges and immunities should be co-ordinated with those of special missions as finalized by the Commission. Apart from the adjustments necessitated by the fact that their task is temporary, their privileges and immunities should not differ in principle or in basis from those of permanent missions to international organizations.

(6) In their consideration of the topics of "Special Missions" and "Relations between states and international organizations", neither the Sixth Committee nor the International Law Commission discussed the extent of privileges and immunities of representatives to organs of international organizations and to conferences. In his second report, the Special Rapporteur included that problem among the preliminary questions to be considered in relation to delegations to organs of international organizations and to international conferences.¹⁰⁰ The Commission focused its discussion on whether the draft articles should include articles on delegations to organs of international organizations and conferences convened by international organizations. The same approach was taken by the Commission when the question was raised by the second Special Rapporteur on Special Missions (Mr. M. Bartoš) in his first report.¹⁰¹ As mentioned above in this report,¹⁰² when the Sixth Committee considered, at the twenty-fourth session of the General Assembly, the Commission's draft articles on special missions, the delegation of the United Kingdom suggested the inclusion in the draft Convention on special missions of a provision pertaining to conferences. It introduced an amendment, the purpose of which was to add an article on conferences. The comments of delegations in the Sixth Committee were addressed to the question whether it was advisable to include such a provision in the Convention. No discussion of the substance of the amendment took place.

(7) Article 69 is presented in the form of two alternatives. In case the Commission should adopt the approach reflected in alternative A, some adjustments would be needed, for example, with respect to the privileges and exemptions of fiscal character which presuppose long sojourn—a condition which is not fulfilled in the case of *ad hoc* representatives to organs of international organizations. Alternative B is based on the corresponding provisions of the Conventions on the privileges and immunities of the United Nations (article IV, section 11) and of the specialized agencies (article V, section 13).¹⁰³ A noteworthy difference is sub-paragraph (b) which provides for complete immunity from criminal jurisdic-

⁹⁹ P. Cahier, *Le droit diplomatique contemporain* (Genève, Librairie E. Droz, 1962), Publications de l'Institut universitaire de hautes études internationales, No. 40, p. 402.

"... il paraît difficile d'assimiler les délégués aux diplomates, car si tel était le cas, les délégués à une conférence très technique dont les fonctions sont donc relativement importantes jouiraient d'un statut privilégié supérieur à celui des représentants des Etats à l'Assemblée générale des Nations Unies par exemple, ce qui ne semble pas très logique.

"Dans ce domaine aussi, il apparaît que la pratique internationale devrait tendre vers une certaine uniformisation entre le statut de la diplomatie *ad hoc*, celui des délégués aux conférences ainsi que celui des représentants des Etats auprès des réunions d'organes des organisations internationales." (English translation by the United Nations Secretariat.)

¹⁰⁰ *Yearbook of the International Law Commission, 1967*, vol. II, pp. 149-150, document A/CN.4/195 and Add.1, paras. 96-103.

¹⁰¹ *Ibid.*, 1964, vol. II, pp. 73-74, document A/CN.4/166, paras. 20-26.

¹⁰² See paras. 9-12 above.

¹⁰³ United Nations, *Treaty Series*, vol. 1, pp. 20 and 22, and *ibid.*, vol. 33, pp. 270 and 272.

tion. Should the Commission prefer alternative B, additional privileges would be needed, for example, concerning waiver of immunity, duration of privileges and immunities and persons covered by them other than representatives.

(8) Article 70 provides for the application to delegations to organs of international organizations and to conferences convened by international organizations and their members *mutatis mutandis*, of the rules applicable to the conduct of the permanent mission and its members and to the end of functions as laid down in articles 45 to 49. Mention should be made of the fact that the articles referred to in article 70 do not include article 50 on "Consultations between the sending State, the host State

and the Organization". The Special Rapporteur observes that, as stated in the report of the Commission on the work of its twenty-first session,¹⁰⁴ the place of article 50 in part II concerning permanent missions is provisional; he assumes that the content of that article will be transferred at a later stage either to part I entitled "General provisions" or to the end of the draft articles so that the article would be applicable to permanent missions, permanent observer missions and delegations to organs of international organizations and to conferences convened by international organizations.¹⁰⁵

¹⁰⁴ *Yearbook of the International Law Commission, 1969*, vol. II, p. 221, document A/7610/Rev.1, foot-note 44.

¹⁰⁵ Cf. para. 8 of the commentary on articles 60 and 61.