Document:-
A/CN.4/240 and Add.1-7

Observations of Member States, Switzerland and the Secretariat of the United Nations, specialized agencies and the IAEA on the draft articles on representatives of States to international organizations, adopted by the Commission at its twenty-second session

Topic:
Representation of States in their relations with international organizations

Extract from the Yearbook of the International Law Commission:-
1971, vol. II(1)

ANNEXES

ANNEX I

Observations of Member States, Switzerland and the secretariats of the United Nations, the specialized agencies and the International Atomic Energy Agency on the draft articles on representatives of States to international organizations, adopted by the International Law Commission at its twentieth, twenty-first and twenty-second sessions *

CONTENTS

A. OBSERVATIONS OF MEMBER STATES

Australia

OBSERVATIONS COMMUNICATED BY LETTER DATED 19 JANUARY 1971 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[Original text: English]

1. The Australian Government expresses its appreciation of the work of the International Law Commission in drawing up the draft articles on relations between States and international organizations.[1] It has studied the draft articles with interest and wishes at this stage to make the following comments.

General comments

2. The Australian Government considers that the draft is too long and in places unnecessarily repetitive: perhaps greater use could be

* The observations contained in this annex were originally distributed in documents A/CN.4/221 and Corr.1 and Add.1, A/CN.4/238 and Add.1 and 2, A/CN.4/239 and Add.1–3 and A/CN.4/240 and Add.1–7.

[1] The texts of the draft articles on representatives of States to international organizations, together with the commentaries, have been published as follows:

Articles 1–21: Yearbook of the International Law Commission, 1968, vol. II, pp. 196 *et seq.*, document A/7209/Rev.1.

Articles 22–50: Ibid., 1969, vol. II, pp. 207 *et seq.*, document A/7610/Rev.1.

Articles 51–116: Ibid., 1970, vol. II, pp. 276 *et seq.*, document A/8010/Rev.1.

made of drafting by reference. Further study might also be given by the Commission to the definition in articles 1, 51 and 78 with the object of consolidating them where possible.

3. A considerable body of practice already exists, including a large number of international agreements, dealing with relations between States and international organizations: the two Conventions on Privileges and Immunities of the United Nations and of the Specialized Agencies [2] are of considerable significance as precedents in the matter because of their wide and long-standing acceptance as appropriate standards for international organizations. Due regard should be had to this body of practice. The Australian Government is pleased to note that articles 3 and 5 preserve this and acknowledge the possible need to conclude future agreements on the subject in relation to particular organizations. The varied character of international organizations had led to a diversity of rules regarding their functions and status: nevertheless these rules have been generally founded on the principle of functional necessity, a principle which is embodied in Article 105 of the Charter of the United Nations. The Australian Government has always regarded this important principle as fundamental to a consideration of the levels of privileges and immunities in the international field and emphasizes that, in its view, the present draft articles should not attempt to depart from it. If they do, the possibility of wide acceptance of the articles will be greatly prejudiced. There is already in many countries both a public and a parliamentary resistance to the proliferation of organizations and individuals who are entitled to special privileges, even on the more modest scale accepted hitherto.

4. The Australian Government notes with approval that the articles are confined to international organizations of universal character, although, as mentioned subsequently in relation to delegations of States to international organizations and conferences, even this restriction does not prevent the articles having application to a very large number of international conferences.

5. Paragraph 2 of the Commission's commentary on *article 22* states that the question of international organizations becoming parties to the draft articles is a separate one to be considered at a later stage. It seems to the Australian Government that this is an important question of principle which should be decided now, since the final shape of the draft articles will be dependent to a considerable degree on whether or not international organizations are to become parties to them and whether or not they are to assume obligations under them—and indeed to obtain rights under them.

Permanent missions to international organizations: Articles 6-50

6. Bearing in mind the principle of functional necessity referred to earlier in these comments, the Australian Government considers that, in general, these articles are satisfactory. They broadly equate permanent missions to international organizations with permanent diplomatic missions: this seems a reasonable approach.

7. One important difference, however, between permanent missions to international organizations and permanent diplomatic missions is that, in the case of the former, three entities are involved (the organization, the host State and the sending State), whereas in the latter only two are involved (the receiving State and the sending State). The present draft tends to underestimate the difficult position of the host State and the Australian Government suggests that this aspect might be considered further by the Commission. An example arises in *article 45*. Under that article, persons enjoying privileges and immunities under the articles have a duty to respect the laws and regulations of the host State and a duty not to interfere in the internal affairs of that State. The draft articles contain no provision for the declaration by the host State of an unwelcome representative to the international organizations as *persona non grata*. This omission is apparently intended to safeguard the independent exercise of their functions by representatives to the international organizations and to isolate them from the exercise of pressures by the host State. This, of course, must be a primary object: but the ambit of the functions of a representative to an international organization is defined to a large extent by the terms of the draft articles themselves and a question arises whether the sending State ought not be obliged to recall a representative (or whether indeed a host State, after consultation with the organization, should not have the right to expel a representative) in the case of a gross breach by the representative of the obligations imposed on him by the articles—for example, in the case of breach by a representative to an international organizational organization of his duty not to interfere in the internal affairs of the host State. The draft articles do not adopt this approach but oblige the sending State to recall a representative or otherwise deal with him only in the case of a grave and manifest violation of the criminal law of the host State. Furthermore, what is a grave violation of the criminal law may be the subject of general agreement; but whether in any particular case, a violation of that law is manifest may be the subject of real dispute. Accordingly, if this provision is to be retained, perhaps some other formula should be chosen.

8. In relation to the position of the host State, the Australian Government refers to the difficulty felt by members of the Commission in relation to accidents arising out of the use of motor cars. This difficulty appears, *inter alia*, in the Commission's commentary on *article 32* where it is indicated that some members of the Commission took the view that members of the permanent mission should not enjoy immunity from the civil jurisdiction of the host State in the case of an action for damages arising out of an accident caused by a vehicle used outside the official functions of the person in question. The advent of the motor car and the frequency of accidents caused by its use have required modifications in traditional legal notions all over the world. In some places, States have gone so far as to exclude all notions of fault in relation to the recovery of compensation for injury caused in such accidents. In other States, modification of traditional notions has not gone so far but various forms of insurance are compulsory, it being a criminal or quasi-criminal offence not to insure against liability for injury caused in such an accident. It may be that a solution to the differences of opinion within the Commission on this matter could be found by resort to provisions requiring representatives to international organizations to be insured against liability for accidents caused by vehicles used by them. If such a solution were adopted, it would of course be necessary also to make provision to ensure that insurance companies would not be free in the exercise of their rights of subrogation to rely on the diplomatic immunity of the insured.

Permanent observer missions: Articles 51-77

9. The comments of the Commission and of other States indicate that *article 52* has already been construed as conferring on a non-member State the right to send an observer mission to an international organization. In the view of the Australian Government, international practice has established no such right: on the contrary the members of an organization maintain control over the establishment of observer missions. How this should be codified is a matter which should be given further consideration by the Commission; but it is essential that the Commission should examine from this standpoint both the efficacy of, and indeed the need for, article 52.

10. The provisions regarding permanent observer missions have evidently been based on the premise that these missions perform functions virtually identical to the functions performed by permanent missions. They have therefore been accorded similar status, privileges and immunities. The Australian Government is of the view that this premise is not valid and that the description of a

[2] For the Convention on the Privileges and Immunities of the United Nations, see United Nations, *Treaty Series*, vol. 1, p. 15. For the Convention on the privileges and Immunities of the Specialized Agencies, *ibid.*, vol. 33, p. 261.

permanent observer mission in *articles 51 and 53* does not accurately reflect the role of a permanent observer mission. The phrase "representative [. . .] character" in article 51 is accurate to the extent that a permanent observer mission is "representative" of the sending State, but in the Australian Government's view it is not accurate to the extent that the mission "represents" the sending State in the organization itself. The function of an observer mission is to observe and maintain liaison with the organization: it does not, in the active sense, "represent" the sending State.

11. The draft articles virtually equate permanent observer missions with permanent missions for the purposes of determining the facilities, privileges and immunities to be accorded to them. In the Australian Government's view, the Commission should review the parallel it has drawn, taking into account the functions of permanent observer missions and the fact that, since they do not belong to the organization, they are not subject to its rules. On the basis of a proper relationship between permanent missions and permanent observer missions the status, privileges and immunities of the latter would be considerably reduced from those shown in the present draft articles. They might appropriately be similar to those proposed in the following paragraphs of these comments for delegations to organs and conferences.

Delegations of States to organs and to conferences: Articles 78-116

12. The Australian Government agrees with those States which consider that the draft articles on the delegations of States to organs and conferences go well beyond the level required for effective performance of their functions. The magnitude of the problem might well be emphasized by considering also the number of conferences to which these articles are intended to apply. Although they concern only international organizations of a universal character, they apply to all meetings convened under the aegis of such organizations. Very many of these meetings are regional in their composition or are narrowly technical in their range of interests. As an example, FAO during 1970 scheduled some 120 conferences involving more than twenty host States. The calendar of conferences of other agencies is probably no less extensive or less diverse in its range of technical interest. There are therefore literally hundreds of conferences each year to which the broad range of privileges and immunities envisaged in the draft articles will apply.

13. The Australian Government finds particularly disturbing the degree to which the present articles go beyond the level of the privileges and immunities accepted in the past in relation to most international organizations. Of some thirty such organizations which the Australian Government has had reason to consider in relation to its own legislation on the matter, the highest level of privileges and immunities for a representative accredited to, or attending a conference convened by an international organization is as follows:

(1) Immunity from personal arrest or detention;

(2) Immunity from suit and from other legal process in respect of acts and things done in his capacity as a representative;

(3) Inviolability of papers and documents;

(4) The right to use codes and to send and receive correspondence and other papers and documents by couriers or in sealed bags;

(5) Exemption (including exemption of the spouse of the representative) from the application of laws relating to immigration, the registration of aliens and the obligation to perform national service;

(6) Exemption from currency or exchange restrictions to such an extent as is accorded to a representative of a foreign Government on a temporary mission on behalf of that Government;

(7) The like privileges and immunities, not being privileges and immunities of a kind referred to in any of the preceding paragraphs, as are accorded to an envoy, other than exemption from:

(*a*) excise duties;

(*b*) sales taxes; and

(*c*) duties on importation or exportation of goods not forming part of personal baggage.

The Australian Government is of the view that such a scale is adequate on the basis of functional necessity: furthermore it is consistent with that applied to other international organizations in the past.

Austria

PART I AND SECTION 1 OF PART II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY " NOTE VERBALE " DATED 30 AUGUST 1969 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

It can be said that the present twenty-one draft articles on representatives of States to international organizations achieve the aim —as expressed in paragraph 1 of the International Law Commission's commentary to article 3—of detecting the common denominator and laying down the general pattern which regulates the diplomatic law of relations between States and international organizations. Apart from that, it is to be noted favourably that the articles, especially *articles 11, 16 and 17, paragraph 3*, correspond to the interests of the host State, and it may be hoped that the Commission will continue to pay due attention to these interests when drafting the remaining articles.

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

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

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

Belgium

PARTS I AND II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 13 NOVEMBER 1970 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: French*]

General observations

The part of the draft articles dealing with permanent missions to international organizations proceed from two somewhat debatable starting-points, in that, firstly, such missions are divorced from the at once more general and more diversified context of international organizations, and, secondly, it is assumed that because they are

accredited to international organizations, their establishment and status are not subject to the *agrément* of the host country.

In a way, this abstract approach runs counter to actual international practice with respect to the establishment of permanent missions. An international organization is a functional whole, its purpose being to institutionalize collaboration among a larger or smaller group of States in a broader or narrower field. The main instruments of this instutitionalization are one or more decision-making organs, in which representatives of the States deliberate together, and an executive organ composed of international officials; in some cases there is, in addition to these basic institutions, a parliamentary-type assembly and a judicial body.

As a rule, only the corps of officials is of a permanent nature, and it is for this reason that most of the legal instruments concerning privileges and immunities of international organizations refer to representatives of States only from the standpoint of such facilities as are required to enable them and their staffs to attend sessions of deliberative bodies at the most varied levels.

There is a considerable lack of uniformity with regard to these facilities. For instance, article IV of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 and article V of the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947 grant representatives of States immunity from legal process only in respect of words spoken or written by them in their official capacity. Other instruments go further and refer to the privileges and immunities enjoyed by diplomatic envoys of comparable rank (part IV, article 9, of Supplementary Protocol No. 1 to the Convention for European Economic Co-operation of 16 April 1948); [1] others again simply speak of the customary privileges and immunities (cf. the Protocol on the Privileges and Immunities of the European Communities, of 8 April 1965). [2]

Furthermore, in the case of organizations having a particularly important role in various spheres (political, economic, technical, etc.), representatives of States may have such extensive duties to perform that travelling to attend meetings from time to time no longer suffices.

Although this does not mean that travelling delegations are eliminated, it does as a matter of practical necessity call for the establishment of a permanent unit to provide representation. However, since this situation is *sui generis* and is not covered by most statutory protocols, it is essential to make provision for it, and this is done through supplementary protocols, through headquarters agreements between the organization concerned and the host State—especially if the latter is not a member of the organization—or through the application of customary rules or even of regulations laid down unilaterally by the host State. Another factor which emerges at this stage is that a State establishing a permanent mission regards the mission as performing on a multilateral basis representational functions equivalent to those performed by a diplomatic mission on a bilateral basis. This, in fact, is reflected in the internal legislation of States relating to foreign service careers and the classification of posts. It has accordingly become common practice, by an express or tacit consensus arrived at between the host State and the member States through the organization, to accord diplomatic status to the permanent missions of States to international organizations.

Inasmuch as a permanent mission is part and parcel of the over-all functioning of an international organization, it would have been conceivable that its status and the status of its staff should be determined in accordance with objective criteria peculiar to the organization concerned. However, once it is decided to grant diplomatic status, there exists at present only one possible guide to such status, namely, the Vienna Convention on Diplomatic Relations of 18 April 1961. [3]

It therefore seems inconsistent with international law to decide that the host State would have no authority with regard to *agrément*, declarations of *persona non grata* and reciprocity, as a result of which permanent missions would enjoy all the advantages of the diplomatic régime without being subject to the safeguarding measures associated therewith. This would run counter to the headquarters agreements and conventions dealing with the subject (e.g., article V of the Agreement between the United Nations and the United States of America of 26 June 1947 [4] and article 11 of the Agreement on the status of Western European Union, National Representatives and International Staff, 11 May 1955). [5] In the final analysis, it is the host State that grants privileges, and ways must therefore be found to reconcile the two aspects which an objective analysis of the *sui generis* situation described above discloses, the first being the representative nature of a permanent mission to an international organization and the second the granting of diplomatic status by the host State, although, perhaps, in accordance with a multilateral decision.

It should be noted that such status is often accorded to the executive head of an international organization but that, in this case, the host State has an opportunity to express its views through institutional procedures as regards both his appointment and the waiver of his immunity.

In view of the diversity of the statutes of international organizations, the ideal course would be to try to synthesize them in a model statute which, besides dealing with questions relating to observers for the missions of third States, representatives to sessions and conferences, and so forth, would lay down procedures for the establishment of permanent missions that would preclude any automaticity.

The draft articles will be reviewed below in the light of the foregoing.

Observations on the draft articles

Title and scope

"Representatives of States" is a general term—a fact which, incidentally, shows clearly that permanent missions are functionally part of a broader framework and that an approach extrinsic to their status is unjustified.

PART I.—General Provisions

Article 1

Subparagraphs (*g*) and (*h*). The use of the term "diplomatic staff" is a clear indication of how it has become customary in international and domestic law to assimilate the status of a permanent mission to that of a diplomatic mission. In effect, this is an explicit cross reference to the Convention on Diplomatic Relations of 18 April 1961.

Assuming that it does not simply follow from this that the régime laid down in the Vienna Convention is accorded to the persons concerned, confusion in the use of terms should be avoided, and the fact that the experts and advisers are included makes no difference.

Article 2

1. The draft articles would apply only to "international organizations of universal character", which, according to article 1 (*b*),

[1] *British and Foreign State Papers*, vol. 151, p. 289.

[2] *Traités instituant les Communautés européennes: Traités portant révision de ces traités, Documents annexes* (Office des publications officielles des Communautés européennes, 1971), p. 769.

[3] United Nations, *Treaty Series*, vol. 500, p. 95.

[4] *Ibid.*, vol. 11, p. 11.

[5] United Nations, *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 .421.

would mean organizations whose membership and responsibilities are on a world-wide scale. This is both too restrictive and too vague.

It may very well be that a world organization does not necessitate permanent representation, whereas a regional organization may render it indispensable. Thus, universality of character is totally irrelevant, and the only decisive factors should be the functional criterion and a consensus among the States concerned.

Furthermore, if the scope of the articles is in practice limited to the United Nations and the organizations referred to in Article 57 of its Charter, the question of permanent missions could be settled simply by drawing up supplementary protocols to the instruments relating to the privileges and immunities of those organizations.

2. Once the scope of the draft articles is restricted to world organizations, it is quite obvious that they do not cover regional organizations at all. Paragraph 1 of article 2 is therefore unnecessary and merely points up the difficulty, as demonstrated by articles 3, 4 and 5, of reconciling the draft with the actual state of international relations in this field.

Article 3

Every international organization is governed by its constituent instrument or by protocols annexed thereto. The diversity of their statutes makes it difficult to formulate rules in the abstract, without any functional criteria. Another significant point is that, as mentioned in paragraph 5 of the commentary on this article, the "relevant rules of the Organization" include not only constituent instruments but also resolutions of the organization or the practice prevailing in it.

The question of "association membership" or of delegates who are not representatives of States (e.g., employers and workers) appears somewhat irrelevant to the establishment of a permanent mission.

Articles 4 and 5

The fact that existing agreements will remain in force and the possibility of different provisions, will deprive the draft articles of any binding effect at all. A convention on permanent missions would, at best, be only of an indicative or supplementary nature—a fact which argues in favour of a model statute or a model code for international organizations.

PART II.—Section 1: Permanent missions in general

Article 6

As drafted, this article on the establishment of permanent missions subjects the host State to automaticity. Also implicit in it is a rule that such missions will proliferate far beyond the actual need. The establishment of permanent missions should derive from the statutes of the organization or a decision taken in accordance with a functional procedure that enables the host State to express its views, or from an agreement with the host State. This is borne out by a statement quoted in paragraph 4 of the commentary, to the effect that the status of permanent delegations derives from internal legislative texts, international treaties such as headquarters agreements, and from customary rules.

It should also be noted that the article makes no reference to permanent missions of third States.

Article 7

Although the functions listed certainly belong to permanent missions, they belong equally to the broader category of representatives of States; for, while permanent missions are involved in what has come by general agreement to be termed "multilateral diplomacy", they have no monopoly of it.

Articles 8 and 9

The possibility of a permanent representative's being assigned as a member of another mission, or of a member of a permanent mission's being assigned as head of a diplomatic mission to the host State, hardly seems compatible with the rules governing precedence and rank.

Article 10

In diplomacy, the receiving State is entitled to refuse its *agrément* to the appointment of a head of mission and to declare certain persons unacceptable. Control by the host State should be exercisable with regard to permanent missions, in accordance with certain procedures appropriate to the structure of international organizations. Thus, it should be clear that this is a case, not of accreditation *stricto sensu* to the international organization, but of a designation which the organization would notify to the host State, and to which the latter could then object.

Article 11

Once it is accepted that diplomatic status should be granted to permanent missions, there is no compelling reason to diverge from the provisions of the Convention on Diplomatic Relations of 18 April 1961.

Articles 12, 13 and 14

The question of credentials is by no means confined to permanent missions. Moreover, the reference to the practice followed in the organization makes it clear that this is a matter which depends essentially on the statute of the organization concerned. It also seems too restrictive to cover only treaties between member States and the organization; treaties concluded under the auspices of the organization may constitute a much more far-reaching and important category.

Article 15

Since the composition of a permanent mission is the same as that of a diplomatic mission, it might surely have been more expedient to annex a few specific articles on permanent missions to the Convention on Diplomatic Relations.

Article 16

The right of the host State to intervene in matters relating to the size of the permanent mission should be recognized and should be exercisable in accordance with specific procedures.

Articles 17 and 18

These articles correspond *mutatis mutandis* to the equivalent articles of the Convention on Diplomatic Relations.

Article 19

With regard to the reference to the practice established in the organization, see the observations on articles 12, 13 and 14 above.

Article 20

This article is unnecessary and might give rise to difficulties. Obviously, a permanent mission should normally be established only in the vicinity of the seat of the organization. Cases in which the functions of representation to the organization concerned devolve upon a diplomatic mission, or upon a permanent mission to another organization in the host country or in a third country, are covered by draft articles 8 and 9.

Article 21

This article is, in substance, a repetition of the corresponding article of the Convention on Diplomatic Relations regarding the use of the national emblem. One may suspect that the addition of material that had been omitted from the articles of the Vienna Convention was not necessitated by the nature of permanent missions but should, rather, be interpreted as an attempt—valid enough in itself—to make good certain deficiencies or fill certain gaps in the Convention.

Article 22

It seems inconsistent with international practice to involve the organization in the granting of facilities and privileges that are not determined by the relevant rules of the organization but derive from the diplomatic status which the host State has undertaken to grant.

Articles 23 and 24

As stated above, the role of the organization should be limited to the strict application of its own statutory, budgetary and administrative rules. The consequences of the granting of diplomatic status should continue to be of a bilateral nature.

Articles 25 to 33

These articles merely repeat the substance of the corresponding articles of the Convention on Diplomatic Relations. As noted above, new material of the kind contained in article 25, paragraph 1, regarding the presumed consent of the permanent representative in case of disaster, could quite well have been included in the Convention, as it in fact was in the Vienna Convention on Consular Relations of 24 April 1963.[6]

Furthermore, the wording of article 31, paragraph 2, of the latter Convention is preferable by far to that proposed in the present draft, inasmuch as the term "public safety" can be very broadly interpreted.

A similar comment applies to draft article 32, paragraph 1 (*d*), which provides that there shall be no immunity from jurisdiction in the case of damages arising out of a traffic accident. Such a clause is certainly very much to the point, but here again the question is whether it should not have been included in the Convention on Diplomatic Relations; for, while it would be wrong to give permanent missions more privileges than are prescribed for diplomatic missions, it is surely unfair to adapt the status which the latter enjoy by means of accretions that would only operate to the detriment of the former. Moreover, the term "official functions" can be broadly interpreted and ought to be clarified.

Article 34

This article, which reproduces the operative part of resolution II (Consideration of civil claims) annexed to the Convention on Diplomatic Relations,[7] adds nothing more than the recommendation itself, since in the final analysis it rests on the discretion and goodwill of the sending State.

Articles 35 to 43

These articles are simply copied from the corresponding provisions of the Convention on Diplomatic Relations, or, in the case of article 39, the Optional Protocol concerning Acquisition of Nationality.

Article 41, paragraph 1, perpetuates a drafting error which occurred in the French text of that Convention but which was corrected in article 71 of the Convention on Consular Relations; the paragraph in question should accordingly read: ". . . shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts . . . ".

Article 44

This article on non-discrimination is unacceptable, unless provision is made for the principle of reciprocity. It is hardly admissible that the permanent mission of a sending State should be able to enjoy a more favourable status than the same State's diplomatic mission although, of course, the advantages deriving from the status of representative of a State under the statutory rules of the organization must in any event be safeguarded.

However, while the status of representative of a State as such must be determined in accordance with those rules, diplomatic status is a matter involving relations between the host State and the sending State.

Article 45

Paragraph 2 of this article, relating to recall by the sending State of a person enjoying privileges in case of a grave violation, does not go far enough. The host State should be able to declare him *persona non grata*.

The last sentence of paragraph 2 reintroduces the principle of exterritoriality, although this had been dropped in the Convention on Diplomatic Relations.

Articles 46 to 49

These articles add nothing to the analogous provisions of the Convention on Diplomatic Relations.

Article 50

This article, which provides only for consultations with a view to the solution of questions in dispute, is imperfect and should be incorporated in a more detailed provision or in a protocol on the settlement of disputes, as may be appropriate.

Canada

(*a*) PART I AND SECTION I OF PART II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 15 JANUARY 1970 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

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

We have studied with particular interest *articles 10 and 11* which relate to the appointment of members of the permanent mission. Article 11 requires a sending State to obtain the consent of the host State before appointing as a permanent representative or member of the diplomatic staff of the permanent mission a person who is a national of the host State. It is suggested that further study might be given to the adoption of a provision whereby the sending State's freedom to appoint nationals of the host State, as members of the permanent mission, would be recognized; however, the host country would have the right to decide which privileges and immunities it should grant to its own nationals. In this connexion, it might also be useful to give some consideration to the position of landed

[6] United Nations, *Treaty Series*, vol. 596, p. 261.

[7] *Official Records of the United Nations Conference on Diplomatic Intercourse and Immunities*, vol. II (United Nations publication, Sales No.: 62.XI.1), p. 90.

immigrants or permanent residents of the host State whose position might be assimilated to that of nationals.

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

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

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

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

(*b*) SECTION 2 OF PART II AND PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY A LETTER DATED 20 JANUARY 1971 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

PART II.—Facilities, privileges and immunities of permanent missions

General remarks

Draft articles 22 to 50 generally provide for permanent missions a status approximating that of diplomatic missions. This appears generally satisfactory to Canada. However, there are certain articles dealing mainly with the position of the host State on which Canada would like to comment on the basis of its experience as host State to one of the United Nations specialized agencies.

Observations on particular articles in the draft

Article 25

Article 25, paragraph 1, sanctions the inviolability of the premises of the mission, and provides that agents of the host State are permitted to enter the mission only after obtaining the consent of the permanent representative.

Such consent may be assumed in case of fire or other disaster that seriously endangers public safety "only in the event that it has not been possible to obtain the express consent of the permanent representative". In situations involving serious danger to public safety, the provision that agents of the host State are prohibited from entering the premises of the mission to eliminate or contain that danger without the express consent of the permanent representative unless it has not been possible to obtain that consent is perhaps too restrictive and might instead be based on the reasonableness of efforts to obtain the consent of the permanent representative.

Article 26

This article appears to be acceptable to Canada in its present form now that a definition of the term "premises of the permanent mission" has been added to article 1 as indicated in the report of the Commission on the work of its twenty-first session.[1]

The inclusion of paragraph 2 of the article continues to be important. It is believed that residents of the host State should be subject to real property taxes, such as those levied by municipalities, on real property they own, even when they lease it to members of permanent missions.

Article 30

Consideration should be given to the insertion of a second paragraph in draft article 30 which would read as follows: "This principle does not exclude, in respect of the permanent representative, either measures of self-defence or, in exceptional circumstances, measures to prevent him from committing serious crimes or offences".

Article 35

This article would seem to be satisfactory. However, it might be necessary to make it clear that the exemption from the social security legislation of the receiving State conferred by the article does not include an exemption from social security taxes of an indirect nature and is thus not in conflict with the intent of subparagraph (*a*) of article 36 which permits the receiving State to impose indirect taxes.

Article 36

It is suggested that the drafting committee might wish to rephrase the opening sentence so as to make it clear that the phrase "personal or real, national, regional or municipal" applies to "dues" as well as to "taxes".

Subparagraph (*a*) is acceptable, although it is suggested that the phrase "Indirect taxes incorporated in the price of goods or services, whether invoiced separately or not" could be used as an alternative.

In subparagraph (*b*), it is considered that the phrase "unless the person concerned holds it on behalf of the sending State for the purposes of the permanent mission" could, to avoid any undesirable extension of the exemption, be deleted and replaced by the words "subject to the provisions of article 26".

In subparagraph (*d*), it is suggested that the phrase

"and capital taxes on investments made in commercial undertakings in the host State", which is almost identical to the corresponding provision in subparagraph (*d*) of article 34 of the Convention on Diplomatic Relations, is less satisfactory than the wording of subparagraph (*d*) of article 49 of the Convention on Consular Relations which reads, "dues and taxes on private income, including capital gains, having its source in the receiving [host] State and capital taxes relating to investments made in commercial or financial undertakings in the receiving [host] State;".

Subparagraph (*f*) contains the phrase "with respect to immovable property" which Canada would prefer to have deleted.

Article 38

In paragraph 1, subparagraph (*b*), it is presumed that the word "his" refers both to the permanent representative and to any member of the diplomatic staff.

[1] *Yearbook of the International Law Commission, 1969*, vol. II, p. 206, document A/7610/Rev.1, para. 14.

Article 40

It is noted that in paragraph 1 of article 40 the phrase "or permanently resident in the host State" does not appear. It is recommended that the words "or permanently resident in" be inserted after the words "if they are not nationals of".

Article 42

Article 42, paragraph 1 should be amended; according to the present text, a person could be entitled to privileges and immunities from the moment his appointment is notified to the host State by either the organization or the sending State. This paragraph creates an artificial relationship between the host State and the sending State. Consequently, we consider that only notification by the organization should be relevant.

It is understood that the movable property of a member of the permanent mission or a member of his family referred to in paragraph 4 does not include "property of an investment nature".

Article 48

The last sentence of article 48 by requiring the host State to place at the disposal of persons enjoying privileges and immunities the necessary means of transport for their property would appear to be imposing an unrealistic duty on the host State. The last sentence of article 48 should, therefore, be replaced by the following provision: "It shall, in case of emergency, facilitate in every possible way the obtaining of means of transport for them, and for such of their personal effects as is reasonable under the circumstances."

Article 50

The first part of this article should be amended to read: "If any question arises among a sending State, the host State and the Organization. . .". In this way, all possible questions that may arise will be covered by article 50. As it is presently drafted, only questions arising between the host State and a sending State can be the subject of consultations under article 50.

PART III.—Permanent observer missions

General remarks

Canada appreciates that these articles must of necessity contain new elements of international law as opposed to the codification of existing rules. However, since observer missions do not, as such, represent, but observe, it is the opinion of Canada that a permanent observer mission should not be placed on the same footing as that of a permanent mission. Reference made in draft articles 65 to 77 to the draft articles on permanent missions should be more restrictive. Privileges and immunities granted to permanent observer missions should only be those which are essential to the execution of their functions.

Observations on particular articles in the draft

Article 51

Canada considers that the contents of article 51 are generally acceptable. It is, however, suggested that the elimination of the overlapping of article 51 with article 1 should receive careful attention.

As to subparagraph (*a*) of article 51, Canada is of the opinion that the definition of the "permanent observer mission" should make it clear that the function of this type of mission is to "observe" not "represent", and therefore the role of the "permanent observer" referred to in subparagraph (*b*) of the same article would clearly be to "observe" not "represent".

Article 52

Article 52 is generally acceptable to Canada. However, it is understood that this article does not give an automatic right to establish a permanent observer mission. In cases where there is no generally recognized practice regarding establishment of observer missions, it would be a matter for arrangement between the sending State, the organization and the host State.

Article 53

In conformity with the comments made on subparagraphs (*a*) and (*b*) of article 51, Canada is of the view that the phrase "negotiating with the Organization when required and representing the sending State at the Organization" be rephrased or deleted in order to make it clear that an observer mission does not represent.

Article 56

It is suggested that the last sentence of the article be redrafted to read, "They may be appointed from among persons having the nationality or persons being permanent residents of the host State, with the consent of that State which may be withdrawn at any time."

Article 57

Taking into account the position of an observer mission in comparison with that of a permanent mission, paragraph 1 of article 57 could be less rigid in its formulation and redrafted as follows: "The credentials of the permanent observer may be issued either by the Head of Government or the Minister for Foreign Affairs or by another competent minister . . .".

In paragraph 2 of the same article, the phrase after the words "permanent observer" should read: "shall act as its observer in one or more organs of the Organization when such role is permitted".

Article 58

In the context of the role of an observer mission, it is suggested that in paragraph 1 of this article the word "representing" be deleted and replaced by the words "being authorized by".

The title of this article should read: "Full powers with respect to the conclusion of treaties".

Article 59

Article 59 should include in paragraph 1 a provision to the effect that the "deputy or associate permanent observer" shall enjoy the status of permanent observer when the latter is absent.

As to paragraph 2, Canada is satisfied as to the recognition of the differences in privileges and immunities enjoyed by different types of delegates.

Article 60

Canada would welcome the relocation of the present article 50 so that it would apply to article 60 as well as to article 16, i.e. to a permanent observer mission as well as to a permanent mission.

Article 62

In view of the fact that "*Chargé d'affaires ad interim*" is a well established title, its use here might be somewhat confusing. Accordingly, Canada would prefer the use of the words "Acting permanent observer" rather than "*Chargé d'affaires ad interim*" for the replacement of permanent observers.

Article 64

Canada is of the general opinion that the words "Use of emblem" would be sufficient.

Article 65

Canada welcomes and supports the statement made by the Chairman of the International Law Commission in the Sixth Committee that "The Commission would [. . .] also bear in mind [. . .] the suggestion of various delegations that articles 65 to 75 should be reconsidered in the light of the functional theory of privileges and immunities". [2] The comments of Canada on articles 66 to 75 are therefore of a tentative nature, taking into account the possibility of a redraft of these articles which would give further emphasis to the difference between a permanent mission and a permanent observer mission.

Article 67

Canada believes that since the task of an observer mission differs in certain aspects from that of a permanent mission, article 67 should be more explicit regarding this distinction.

It is therefore suggested that this article, instead of referring to articles 25, 26, 27, 29 and 38, paragraph 1 (*a*), of the present draft articles, should, *mutatis mutandis*, follow articles 31, 32, 33, 35 and 50, paragraph 1 (*a*) of the Vienna Convention on Consular Relations.

Article 68

It is suggested that article 68 should follow article 34 of the Vienna Convention on Consular Relations instead of article 28 of this draft convention.

Article 69

Along the line of the comments made on article 68, it is suggested that article 69, paragraph 1, instead of referring to article 30 of the present draft articles, follow article 40 of the Convention on Consular Relations and that the following be added in article 69 to the text of article 40 of the Convention on Consular Relations: "This principle does not exclude, in respect of the permanent observer, either measures of self-defence or, in exceptional circumstances, measures to prevent him from committing serious crimes or offences."

Also in paragraph 1, no reference should be made to article 31. Instead of referring to articles 32, 35, 36, 37 and 38, paragraphs 1 (*b*) and 2 of the present draft articles, paragraph 1 of article 69 should, in our view, refer to articles 41, 48, 49, 52 and 50, paragraphs 1 (*b*) and 2 of the Convention on Consular Relations.

In paragraphs 2, 3, 4 and 5, the provisions contemplated for the different categories of persons should be determined along the lines of the status of such categories of persons at a consular post.

Article 71

Instead of referring to articles 33 and 34 of the present draft articles, article 71 should follow *mutatis mutandis* articles 44 and 45 of the Convention on Consular Relations.

Article 73

This article should follow article 53 of the Convention on Consular Relations; only notification by the organization to the host State should be relevant.

Article 75

In article 75, reference could be made to article 72 of the Convention on Consular Relations.

[2] See *Official Records of the General Assembly, Twenty-fifth Session, Sixth Committee*, 1193rd meeting.

Article 76

It is suggested that article 76 should follow in substance articles 55, 56 and 57 of the Convention on Consular Relations.

Article 77

Article 77 should follow articles 25, 26 and 27 of the Convention on Consular Relations.

PART IV. Delegations of States to organs and to conferences

General remarks

It is the opinion of Canada that in the drafting of articles 78 to 116 a functional approach should be taken. The extent of privileges and immunities to be granted should be based on the actual needs of the delegations in respect of the performance of their duties. It is therefore suggested that, *mutatis mutandis*, taking into account comments made on particular articles, the Convention on the Privileges and Immunities of the Specialized Agencies be used as the main point of reference in the redrafting of part IV.

Comments on specific articles

Set out below are some comments on specific articles. However, in view of the likelihood (which Canada deems desirable) that part IV will be completely redrafted, Canada reserves the right to present further comments in the future.

Article 83

Article 83 could be redrafted so as not to exclude double representation when permitted by the organ or the organization concerned.

Article 85

It is suggested that consideration be given to including in the category of persons that cannot be appointed without the consent of the host State the persons having permanent residence in the host State; to that effect, the words "or persons having permanent residence in the host State" should be included after the words "persons having the nationality of the host State".

Article 94

Article 94 should be redrafted keeping in mind that delegations are often located in commercial buildings.

Articles 95, 98, 99 and 102

Articles 95, 98, 99 and 102 offer other examples, in Canada's opinion, of practical administrative problems that would arise for a country subscribing to the text of these articles as they now stand. The redrafting should be guided by the functional approach.

Article 100

Canada would prefer alternative B.

Article 103

Article 103 could be summarized by stating that: "The host State shall do all that is necessary to facilitate the entry of and to grant exemption from all customs duties [. . .] on articles for the official use of a delegation including the personal baggage of a representative in a delegation."

Article 104

Instead of referring to articles 35, 37 and 33, article 104 could simply state that members of delegations shall be exempted from social security legislation, personal services and laws concerning acquisition of nationality.

Cyprus

(*a*) PART I AND SECTION 1 OF PART II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 22 OCTOBER 1969 FROM THE MINISTRY OF FOREIGN AFFAIRS

[*Original text: English*]

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

(*b*) SECTION 2 OF PART II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 14 NOVEMBER 1969 FROM THE MINISTRY OF FOREIGN AFFAIRS

[*Original text: English*]

The following general observations of the [Cyprus] Government are a reiteration of the views expressed by its representative [at the 1109th meeting of the Sixth Committee, on 30 September 1969].[1]

The Cyprus Government welcomes the twenty-nine new draft articles on the subject, which, together with the twenty-one draft articles adopted in 1968, were the work of Mr. El-Erian. While the Cyprus Government leaves detailed comments to be submitted at a later stage, it wishes to express its general approval of these articles, which are aimed ... at achieving a proper balance between the legitimate interests of the three parties concerned, viz., the sending State, the receiving State and the Organization itself. The topics dealt with in these draft articles (facilities, privileges and immunities, conduct of the permanent missions and their members, and end of the functions), are topics of particular interest and with the ever increasing importance of representation to international organizations, especially as far as newly independent and small States not having extensive embassy networks are concerned, are also of particular importance.

On the substance of the draft articles, the Cyprus Government would like to offer a few comments at this stage.

While agreeing with the substance of *article 25*, it should be stressed that only in the most extreme cases of fire or other disaster can the exemption from the principle of inviolability of the permanent mission premises be invoked, and that the host State would have the burden of proving that the circumstances justified the action taken.

Again, with regard to *article 26* on exemption of the premises of the permanent mission from taxation, the Cyprus Government would like to see a formulation exempting such premises from taxation, not only in cases where the premises are owned by the mission, but also when such property is leased or rented. While appreciating the practical difficulties that may exist in certain cases, it is nevertheless of the opinion that a system should be devised to enable missions, the Governments of which are unable to purchase premises, to enjoy the same benefit of exemption as missions whose Governments can afford to own their premises. In the nature of things, it is the less well-off States, that would be obliged to content themselves with rented premises, and it is both paradoxical and unfair that the wealthy States, which can afford to own their premises should take advantage of the exemption, while the former would not.

The Cyprus Government would likewise wish to stress the significance it attaches to such other topics, as the assistance to be furnished by the Organization in respect of privileges and immunities (*article 24*), the inviolability of the archives and documents of the mission (*article 27*), freedom of communication (*article 29*), personal inviolability (*article 30*), inviolability of residence and property (*article 31*) and immunity from jurisdiction (*article 32*).

The Cyprus Government looks forward to receiving the 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. Once this piece of work is ripe for codification, and in relation to the Convention on Special Missions, this will have completed the codification and progressive development of the whole field of diplomatic law, and it will finally be a source of particular satisfaction to all concerned with the codification and development of this important branch of law.

Denmark

PART I AND SECTION 1 OF PART II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 9 JANUARY 1970 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

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

Ecuador

PART I AND SECTION 1 OF PART II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 6 JUNE 1969 FROM THE MINISTRY OF FOREIGN AFFAIRS

[*Original text: Spanish*]

Article 1

The Government of Ecuador fully subscribes to the view expressed by the Sixth Committee of the General Assembly with regard to article 1 (Use of Terms), namely, that the definition of "an international organization" is inadequate in that the statement that it means any intergovernmental organization does little to improve it. The definition suggested by the Special Rapporteur in his third report[1] would obviously have been preferable. Nevertheless, given the fact that the Vienna Convention on the Law of Treaties[2] contains a definition identical to that proposed in draft article 1 (*a*)

[1] *Official Records of the General Assembly, Twenty-fourth Session, Sixth Committee*, 1109th meeting, paras. 23-27.

[1] *Yearbook of the International Law Commission, 1968*, vol. II, p. 124, document A/CN.4/203 and Add.1-5, chap. II, part I, article 1.

[2] For the text of this Convention, see *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. 289.

and as the terms used in treaties sponsored by the United Nations should be consistent, this definition is acceptable.

It would be advisable to expand the definition of "an international organization of universal character" in subparagraph (*b*) of the same article by stating that such an organization should be open to all States which accept the rights and obligations established in its constitutive document, as was suggested in the Sixth Committee.[3]

In the definition of a "permanent mission" in subparagraph (*d*), the word "permanent" is repeated and this does not clarify the term as it ought to be clarified in a definition. The same comment applies to the definition of "organ" in subparagraph (*m*).

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

Article 2

The draft articles should logically be applicable only to international organizations of universal character because their obvious connexion, in the context of the United Nations system, with the provisions of Articles 57 and 63 of the United Nations Charter is thereby preserved and because a convention of this kind cannot seek to standardize existing or future rules applicable in a regional context. It must be borne in mind that, even in the case of international organizations, these rules are supplementary, as is clear from draft article 3 which states that: "The application of the present articles is without prejudice to any relevant rules of the Organization". The approach of the International Law Commission to the drafting of article 2, namely, that the present text, which excludes regional organizations, should be retained, is preferable to that suggested in the Sixth Committee's commentary on this article[4] whereby these provisions would be applicable even to regional organizations, which could adopt other rules for themselves only by mutual agreement. This latter approach is diametrically opposed to that taken in the draft.

Articles 3 and 4

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

Article 5

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

Article 6

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

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

Article 7

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

The Sixth Committee's suggestion for the addition of a rule concerning the commencement of the functions of the permanent representative and staff of a mission in order to determine when their privileges and immunities begin, could be adopted.[5]

Articles 8 and 9

Despite the fact that, in a regional context, Ecuador has contended that representatives should be appointed to international bodies on an *ad hoc* basis—in other words, that they should not simultaneously be representatives of their country to the body in question and to the State in which it has its headquarters—articles 8 and 9, being designed to meet needs at the global as opposed to the regional level, are clear and could be accepted, on the under standing that draft articles 3, 4 and 5 would allow certain bodies to lay down rules departing from this general pattern.

Articles 10 to 12

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

Article 13

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

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

[3] *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 84, document A/7370, para. 23.

[4] *Ibid.*, para. 25.

[5] *Ibid.*, para. 29.

Article 14

While the subject-matter of this article belongs rather in the Vienna Convention on the Law of Treaties, it is acceptable as part of these draft articles although, as the Sixth Committee has pointed out,[6] it would be wiser here again to take the rules of the said Vienna Convention as the model.

Article 15

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

Article 16

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

Article 17

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

Article 18

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

Article 19

This rule is acceptable in that it establishes the order of precedence among permanent representatives and thereby ratifies the principle of the sovereign equality of States.

Articles 20 and 21

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

Finland

(*a*) SECTION 2 OF PART II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY "NOTE VERBALE" DATED 16 FEBRUARY 1971 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

It is noted that the provisions contained in the draft articles 22 to 50 are closely related to the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations and to the Convention on Special Missions [1] and are often variants of these, adapted to the special circumstances related to international organizations.

The Government of Finland has no special observations to make about the main principles as embodied in the draft articles, provided there are no inconsistencies between the draft articles and the aforementioned Conventions. *Draft articles 26 and 36* deal with exemption from taxation of the premises of the permanent mission of (*a*) the sending State, (*b*) the permanent representative and (*c*) another member of the permanent mission acting on behalf of the mission. Article 26 seems to refer to direct taxes but leaves room for the interpretation that also indirect taxes (sales tax and other similar taxes) are covered. According to the view of the Finnish Government indirect taxes, levied for the building elements and for services in connexion with construction, although buildings or parts thereof are in themselves tax exempt, should be excluded from the exemption. Difficulties may also arise in obtaining tax exemption especially in a federal State, with regard to the implementation of tax laws imposed by a State or some other non-federal authority.

Similarly there have been difficulties in interpretation with regard to taxation of apartments of diplomatic missions in Finland, held by virtue of the shares of the title-holder in housing corporations. Article 26 should be altered to take the ownership of these shares into consideration. The words "in respect of the premises" cannot be intrepreted so broadly as to include the exemption of such shares. Article 36 (*b*) should also provide that its provision shall apply to the aforementioned shares which cannot be considered as real property.

Article 32 deals with the immunity of the diplomatic staff of the permanent mission from the jurisdiction of the host State. This immunity is complete as to criminal jurisdiction, but there are exceptions as to civil and administrative jurisdiction. Different opinions were expressed in the Commission, whether traffic accidents having occurred outside official functions were to be expressly mentioned among the exceptions as has been done in the Convention on Special Missions, or whether they should be left without special mentioning, as in the Convention on Diplomatic Relations. Although valid reasons have been given in favour of both alternatives the former one seems to be more pertinent for the sake of clarity.

With regard to *article 42* it would perhaps be well-founded to include also provisions regarding the commencement and termination of privileges and immunities received on other grounds than the official post, for example through family membership, in the same way as has been done in the Convention on Consular Relations.

The Government of Finland considers that part II of the draft articles on representatives of States to international organizations submitted by the International Law Commission are suited as a basis for the final draft.

(*b*) PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY "NOTE VERBALE" DATED 23 FEBRUARY 1971 FROM THE ACTING PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

The Government of Finland has noted with satisfaction articles 51-116 concerning permanent observer missions and delegations to organs and to conferences and consider them to be a valuable basis for the preparation of a convention on the subject.

With respect to individual articles the Government of Finland makes the following observations:

Article 52

The wording of article 52 seems to be quite appropriate. Given the character of international organizations, granting States an unreserved and unconditional right to establish a permanent observer mission to any international organization whatsoever would be inappropriate. On the other hand, requiring the consent of every Member State would perhaps be too strict.

Article 53

It is not necessary to mention the promotion of co-operation between the sending State and the Organization in the enumeration of the functions of a permanent observer mission.

Articles 54 and 56

Among other reasons, regulating the status and rights of permanent observer missions is of importance because the possibility to establish such missions as described in these articles could constitute a suitable solution to the problems of the representation of small

[6] *Ibid.*, para. 33.

[1] See resolution 2530 (XXIV) of the General Assembly, annex.

States including so-called micro-States. Consequently, States should have the right to appoint a joint permanent observer and to be represented at two or more organizations or organs by the same representative. The provisions should therefore be flexible enough in this respect.

Article 57

In this article and in the commentary thereto, the presentation of credentials is described in varying terms. Terminology should be harmonized. (Reference is made to article 87).

Article 58

The wording of paragraph 1 is appropriate as it limits the powers of a permanent observer to adopt treaties in virtue of his functions to the treaties concluded between the sending State and the organization.

Article 64

The right to use the flag of the sending State is not necessary for a permanent observer mission but there is no reason to exclude it.

Articles 65-75

In principle the permanent observer missions should have the same status as the permanent missions.

Article 82

Delegations often have functional difficulties due to the insufficient number of delegates appointed to them. However, some kind of limitation could at times be appropriate as regards the size of a delegation.

Articles 83 and 85

A delegation should be entitled to represent two or more States if necessary and it should be possible to compose a delegation of persons of different nationality. The functions of a delegation often require special knowledge and expertise which all States do not have at their disposal. Even a conference of short duration can cause great costs which could be shared by appointing a joint delegation and thus a greater participation could also be obtained. In this way the representation at, and dissemination of information from the meetings of organs having limited membership on grounds of equitable geographical distribution, such as UNCITRAL, could be more easily arranged.

Article 90

It remains to some extent unclear by what alphabetical order the precedence among delegations shall be determined in countries which have several official languages.

Article 91

The status of the persons of high rank mentioned in this article should be defined in the draft articles but it is doubtful whether the references to official visits and international law are enough in this respect.

Article 98

The provisions of this article have gained additional significance as a result of the recent kidnappings of diplomats.

Article 100

Because delegations are usually composed of various categories of persons and because ensuring the proper performance of their functions is the purpose of provisions in several other articles (reference is made to articles 82, 95 and 96), the Government of Finland is in favour of alternative B. The acceptance of this alternative will entail consequential changes at least in article 105.

Article 103

The status of a representative should be stated in his passport or in an additional document given to him, as the implementation of the provision could otherwise be difficult.

Article 113

If this article purports to prohibit all professional or economic activities of both diplomatic and non-diplomatic members of a delegation, it seems to go too far.

Article 114

In the view of the Government of Finland, the wording of this article should be reconsidered to the effect that the functions of a member of a delegation shall come to an end *inter alia* upon the conclusion of the meeting of the organ or the conference and of all measures arising directly therefrom. The provisions could perhaps be enlarged by reviewing the language used.

France

OBSERVATIONS COMMUNICATED BY "NOTE VERBALE" DATED 8 APRIL 1971 FROM THE PERMANENT MISSION TO THE UNITED NATIONS

[*Original text: French*]

The Government of the French Republic has studied the draft articles on relations between States and international organizations adopted on first reading by the International Law Commission at its twentieth, twenty-first and twenty-second sessions.

The French Government would like first to pay tribute to the work already accomplished by the Commission. Undertaken as it has been with great meticulousness and care, this work will certainly represent a positive contribution to the development of international law and States will usefully be able to refer to it in defining their relations with the international organizations they have created or may decide to create.

The French Government wishes, however, to make some general observations and some specific comments on the articles provisionally adopted, in the hope that the International Law Commission may take them into consideration during its second reading of the draft.

General observations

1. As the French delegation has stated at recent sessions of the General Assembly, the draft prepared by the International Law Commission should be applicable only to major universal organizations.

It must be remembered that international organizations, even those which are similar in their geographical scope, differ widely in character. However, since the International Law Commission has wisely adopted the criterion of "functional necessity" for determining the privileges and immunities provided for in its draft, it is essential that the organizations to which the draft relates should, by the very nature of their activities, present a certain similarity.

The definition given in article 1, paragraph (*b*) ("an 'international organization of universal character' means an organization whose membership and responsibilities are on a world-wide scale") does not seem to be sufficiently specific on this point.

The French Government believes that the Commission should try to find a formulation which would make it clear that the draft will apply only in the case of organisations of universal character

whose activities are of major importance to the world community and are such that the functions of representatives of States to the organizations justify the status proposed.

In this connexion, the French Government still believes that it would have been easier to consider, first, what status should be accorded to organizations of the type under consideration, and then to determine what privileges and immunities should be accorded to persons taking part in their activities.

2. The French Government considers that, in its further work, the Commission should take due account of existing agreements on the subject and should use them as a basis for its work of codification. It should examine very carefully the practice of States, as it appears from these agreements, and should not adopt too doctrinal an approach. It should, accordingly, refrain from applying the solutions of the 1961 Vienna Convention on Diplomatic Relations systematically to different situations for which States have already found solutions of their own.

3. In the French Government's view, it is equally essential that the convention should not be applied in the face of an established practice. Article 4, which states that "the provisions of the present articles are without prejudice to other international agreements in force between States or between States and international organizations" is particularly important in this connexion. Organizations which are the subject of an agreement already concluded should continue to be governed by this agreement, and by it alone.

The French Government also strongly supports the principle expressed in article 5, which preserves the freedom of negotiation of States which become parties to the proposed convention.

Observations on the various parts of the draft articles

PART I.—General provisions

and

PART II.—Permanent missions to international organisations

Article 1 and article 15

(this observation applies to all the draft articles)

The French Government has already had occasion to state that it regrets the use of the words "diplomatic staff" in a context other than that of diplomatic relations, which are the subject of the Conventions on Diplomatic Relations.

Article 6

It would be better for the Commission to include, in the actual text of this provision, the principles to which it refers in paragraphs (4) and (5) of its commentary—namely, that:

— the legal basis of permanent missions is to be found in the constituent instruments of international organizations, in the conventions on the privileges and immunities of the organizations, in headquarters agreements or, possibly, in recognized practice;

— the establishment of permanent missions is subject to certain reservations.

Articles 10, 34 and 45

The French Government notes that the International Law Commission's draft does not contain any provision similar to that expressed in article 9 of the 1961 Vienna Convention, to the effect that a member of the staff of a mission may be declared *persona non grata.*

It believes that the International Law Commission should try to find formulations which would enable the host State to take measures necessary for its security and maintenance of public order, without prejudice to the independence of the organization.

It is true that in two articles—articles 34 and 45 which are referred to in articles 71, 76 and 112—the Commission has provided that the sending State should, in certain cases, waive the immunity from jurisdiction of its representative.

However, these provisions seem to be more limited in their scope than article IV, section 14 of the Convention on the Privileges and Immunities of the United Nations which is quoted in the commentary to article 33 and states that:

> "Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded."

Moreover, article 45 provides that, in case of grave and manifest violation of the criminal law of the host State, the sending State must waive the immunity of its representative or recall him, unless the act in question was performed by the person in carrying out the functions of the permanent mission within either the organization or the premises of a permanent mission.

These exceptions seem to be difficult to explain in law, since they are apparently based on a principle of exterritoriality which is no longer recognized; an offence committed on the premises of an organization or of a permanent mission is committed on the territory of the host State and, subject to the privileges and immunities applicable, falls within the jurisdiction of the host State. Article 45, as it is at present drafted, could have the effect that, if a crime were committed in a permanent mission, for instance, by a person enjoying immunity from jurisdiction, the host State would not be able even to request his recall; and this would obviously be unacceptable. The same remarks apply to similar provisions in the Commission's draft.

For the foregoing reasons, the French Government wishes to express the hope that the International Law Commission will reconsider the matter, and to point out once again that there is one serious omission in the draft as it now stands: it does not contain any provision concerning the possible expulsion of the persons whose immunities it defines. Yet a provision to this effect is essential in order to strike a fair balance between the interest of the host State and those of the sending State.

Article 14

The French Government is not convinced that provisions concerning powers to represent a State in the conclusion of treaties between that State and an international organization should be included in the draft now being prepared.

Article 17

The French Government considers that prior notification of the arrival and final departure of members of a permanent mission should be given in every case.

Articles 24 and 50

The attention of the French Government has been drawn to articles 24 and 50.

Article 24 provides that: "The Organization shall, where necessary, assist the sending State, its permanent mission and the members of the permanent mission in securing the enjoyment of the privileges and immunities provided for by the present articles."

Articles 50 provides that: "If any question arises between a sending State and the host State concerning the application of the present articles, consultations between the host State, the sending

State and the Organization shall be held upon the request of either State or the Organization itself."

The French Government does not dispute the fact that an international organization has an interest in the fulfilment by the host State of the obligations assumed by the host State in regard to sending States. However, it does not consider that the precise forms which this interest may take are reflected altogether satisfactorily in the above-mentioned provisions.

Article 24 might induce the organization to intervene in relations between sending States and the host State in cases where no genuine problems concerning the enjoyment of privileges and immunities had arisen.

Article 50—notwithstanding the observations to the contrary which appear in the commentary—might well prejudge a solution of the problem of the settlement of disputes. Like article 24, it might also prejudge the answer to the question which organ of the organization would be entitled to concern itself with respect for the privileges and immunities accorded to missions of member States. It would in all probability be difficult in practice to get the political organs of the organization to intervene on problems which arise in the day-to-day life of a permanent mission. The secretariat of the organization concerned might, as a result of the approach adopted in this provision, find itself invested with powers which it should be accorded only by the constituent instruments of the organization.

The French Government takes this opportunity to state that it does not subscribe to the principle expressed by the Legal Counsel of the United Nations in a statement made to the Sixth Committee at the twenty-second session of the General Assembly, and reproduced in the commentary to article 24, to the effect that the Organization itself is a party to the Convention on the Privileges and Immunities of the United Nations. In this connexion, a distinction should be made between multilateral conventions, to which only States are parties, and headquarters agreements to which organizations as such may become parties.

Article 25

Though the French Government is not formally opposed to the wording of paragraph 1 of this provision, it would prefer the wording of article 31, paragraph 2 of the Vienna Convention on Consular Relations to be used in the last sentence.

It also expresses the hope that the reference to means of transport in paragraph 3 of this provision will for practical reasons be deleted.

Article 26

The French Government considers that exemption from taxation, in respect of the mission premises, of a member of the permanent mission other than the permanent representative might be a source of confusion. A provision of this kind which might be required in the case of special missions, is unnecessary in the case of missions of a permanent character.

The French Government could not, moreover, agree to any extension of the privileges provided for by this article.

Article 28

The French Government takes the view that the principle on which this provision is based does not satisfy the criterion of functional necessity which the Commission has adopted. Representatives to an international organization do not require, for the performance of their functions, as great a freedom of movement as diplomats. *A fortiori*, there is no reason to go beyond the Convention on Diplomatic Relations with regard to the families of the persons concerned.

The French Government suggests, therefore, that the Commission might adopt the rule expressed in article 27 of the Convention on Special Missions, to the effect that freedom of movement and travel should be ensured to the extent necessary for the performance of the functions of the mission.

Article 29

The French Government feels that it would be desirable to insert in this article a provision similar to that of article 28, paragraph 3 of the Convention on Special Missions, to the effect that communications between the permanent mission and its Government or other missions should, as far as possible, be conducted through the permanent diplomatic mission of the sending State.

Article 32

If the principle that diplomatic status should be accorded to certain members of permanent missions is accepted, the idea that such persons should enjoy immunity from civil jurisdiction for road accidents caused by a vehicle used outside their official functions is also acceptable. If it is so decided and if subparagraph (*d*) of paragraph 1 is accordingly omitted, the French Government would like to see it expressly stated that persons benefiting from the provisions of the article should at all times be covered by a motor vehicle accident insurance policy taken out under the laws of the host State.

Article 35

The French Government has no objection to this provision. It notes, however, that it relates to social security legislation only. The French Government believes that the Commission should include in its draft a provision relating to labour law in connexion with contracts concluded by permanent missions with locally recruited staff.

Article 36

The French Government expresses the hope that paragraph (*f*) of this article will be brought into line with the corresponding provisions of the Convention on Consular Relations and the Convention on Special Missions, by deleting the words "with respect to immovable property".

Article 38

It would seem to be unnecessary to refer to members of the family in this provision, since article 38 is mentioned in article 40, paragraph 1. It would also seem to be preferable to have the entire status of these persons defined in one single provision.

Article 39

The French Government believes that this provision might be incompatible with legislations which enable persons, by an act of personal choice (option or repudiation), to avoid the application of the law concerning acquisition of nationality. It would therefore be better to make this provision optional, as in the case of the Vienna Conventions of 1961 and 1963.

Article 41

Paragraph 1 of this provision contains a drafting error which appeared in the French text of the 1961 Vienna Convention and which was corrected in the Vienna Convention of 1963 and in the Convention on Special Missions. In the French text, the last part of the paragraph should read: "... *ne bénéficient que de l'immunité de juridiction et de l'inviolabilité pour les actes officiels accomplis dans l'exercice de leurs fonctions.*"

Articles 42 and 43

The French Government hopes that the International Law Commission will be able to find some way of making these articles more specific.

The French Government made this point in connexion with the corresponding provisions in the Convention on Special Missions.

It would seem that some attempt to make these articles more explicit is essential, in order to avoid possible disputes on the interpretation of the provisions.

In this connexion, the French Government wishes to state that —differing, perhaps, from the opinion of Legal Counsel of the United Nations which is reproduced in paragraph 3 of the commentary on article 42—it does not consider that the provisions of a convention relating to the granting of privileges and immunities should be given a broad interpretation, save in exceptional cases.

In any case, with regard to paragraph 1 of article 42, it would be better to find a formulation which would rule out any possibility that the appointment as a member of a permanent mission of a person already in the territory of the host State may be invoked as grounds for granting privileges and immunities even in cases when the appointment is made some time before the person actually takes up his post.

Similarly, with respect to article 43, the State of transit should not be obliged to grant the privileges and immunities provided for unless it has been notified of the transit and status of the person concerned, and has given its consent. This principle should be applied to all categories of representative covered by the convention.

Article 44

It is stated in this draft article that: "In the application of the provisions of the present articles, no discrimination shall be made as between States". In its commentary, the Commission states that this article is placed provisionally. If at its next session the Commission should decide to consider certain exceptional circumstances, such as participation in the organization by non-recognized States, it will find, on examining existing agreements, that some variations have from time to time been introduced into the rule which it states in this article. At present, too, by omitting the reference to the concept of reciprocity, the Commission has made the rule more absolute than the principle established by the Vienna Convention of 1961.

PART III.—Permanent observer missions to international organizations

On this part of the draft, the French Government will confine itself to making some fairly general remarks, since it believes that the Commission should reconsider the very principles underlying the articles which it has provisionally adopted.

The French Government wishes to state, first, that it shares the views of those members of the Commission who believe—as stated in paragraph 3 of the commentary on article 52—that no State is entitled to send an observer mission to an organization when the rules or practice of the organization do not provide for such a possibility.

The International Law Commission has, in its draft, created an entirely new international status of "permanent observer" and even of a permanent observer mission patterned exactly on the status of diplomatic missions.

The French Government cannot fail to note that the Commission itself states in its commentary (part III, section 1, paragraph 2 of the "General comments") that:

> "There are no provisions relating to permanent observer missions of non-member States in the United Nations Charter or the Headquarters Agreements or in General Assembly resolution 257 (III) of 3 December 1948 which deals with permanent missions of Member States".

The Commission goes on to say that, as regards the United Nations, the problem has been determined—satisfactorily, it would seem—by practice. The French Government is therefore by no means convinced that it is necessary or advisable to establish a rigid and comprehensive body of legal rules such as that contained in the Commission's draft. It considers that, if the presence of observers and the régime applicable to them are not based on the constituent instruments of an organization, or on its practice or on decisions taken by the competent organs, then observers should not be admitted and should not in any case enjoy a particular legal status unless such a status is expressly provided for either by the multilateral conventions applicable to the organization itself or by a special agreement between the organization and the host State. In the French Government's view, such an agreement should define a uniform status for all observer missions to the same organization. However, the Commission should reconsider the question whether there is any justification for giving "observer missions" the same status as the permanent missions of States to international organizations, having regard both to the role played by observer missions and to the fact that the States which appoint them are not members of the organization and are therefore not subject to its rules. The French Government has some very serious doubts on this point.

PART IV.—Delegations of States to organs and to conferences

With regard to this part of the draft, the French Government must again urge the Commission to take account of established practice.

As the Commission itself has noted (part IV, section 2, paragraph 1 of the "General comments"):

> "A substantial body of rules has developed in relation to privileges and immunities of representatives to organs of international organizations and to conferences convened by international organizations".

After analysing these rules, however, the Commission then departs from them and grants diplomatic status to all the persons referred to in its draft, although it admits that this is not in keeping with the usual practice of States, as it appears from the conventions at present in force, including the Convention on the Privileges and and Immunities of the United Nations. The Commission has preferred to assimilate delegations of this kind to special missions rather than follow the line laid down by the Committee on Legal Questions of the San Francisco Conference which, as the Commission itself has noted (*ibid.*, para. 12), stated that it had

> "seen fit to avoid the term 'diplomatic' in describing the nature of the privileges and immunities conferred under Article 105" of the Charter and that it had "preferred to substitute a more appropriate standard, based ... in the case of ... representatives ..., on providing for the independent exercise of their functions".

The French Government is of the opinion that the Commission should reconsider the question in the light of that comment.

It is not self-evident that delegations to organs of international organizations or to conferences convened under the auspices of international organizations should have exactly the same status in the host State as missions sent directly to the host State by a foreign State.

The French Government believes, as has already been stated, that privileges and immunities should be granted only to the extent that they satisfy the criterion of functional necessity. The agreements at present in force, based on this principle, seem in fact to have proved satisfactory.

Due account also must be taken of the temporary character of delegations. In the discussion on special missions which have the same temporary character, the French Government has already had occasion to draw attention to the serious difficulties which might arise for administrations if they were obliged to accord certain diplomatic privileges to persons whose presence in their territory was essentially transitional. The Convention on Special Missions, in accordance with the definition adopted, applies only to well-

defined missions. However, the articles now being proposed would apply to delegations to conferences and [article 78 (*a*) and (*c*)] to delegations to the principal or subsidiary organs of an international organization and to any commission, committee or sub-group of any such organ, in which States are members. It would seem very difficult in practice, and hardly justifiable in principle, to apply the described status indiscriminately to all persons who—according to the terms of the draft—would be able to avail themselves of it.

From this point of view also, it is impossible to extend diplomatic law, as it stands, to temporary delegations to international organizations.

The Commission must in fact have realized this since, for article 100 on immunity from jurisdiction, it has proposed two alternatives. The French Government believes that in the light of current practice in the matter, and having regard to the proper sphere of application of the draft, alternative B would be preferable. However, it does not regard this alternative as entirely satisfactory since it would enable persons benefiting from it to enjoy total immunity from jurisdiction, which is not provided for by article IV of the Convention on the Privileges and Immunities of the United Nations.

The French Government must emphasize once again that it is highly desirable for the Commission to give due consideration to the provisions of that text and of similar texts which strike the necessary balance between the various interests involved in the life of an international organization. Such consideration will undoubtedly lead it to the conclusion that provisions such as those relating to the premises of delegations, private accommodation and customs or tax exemptions are not in keeping with the solutions which have generally been adopted both for reasons of principle and for practical considerations.

The French Government would also express the hope that the Commission will consider the practical aspects of applying the provisions it adopts. It would observe, for example, that if a person is to be accorded full diplomatic status, it is essential that he should be immediately identifiable by the authorities concerned, and that the authorities should receive prior notification of his presence on the territory of the host State.

In short, the French Government believes that the Commission might usefully reconsider the articles of this part of its draft in the light of the agreements at present in force and, as regards problems which are not dealt with in these agreements, in the light of the actual practice of States and organizations.

In general, the French Government believes that, in its study of the question of relations between States and international organizations, the Commission should be guided essentially by considerations of functional necessity and should not lose sight of the need to strike a balance between the interests of the host State and the independence of the organization.

The French Government intends to offer some further observations when the Commission has completed its second reading of the draft.

Hungary

PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY "NOTE VERBALE" DATED 22 FEBRUARY 1971 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

Article 52

This article ought to lay down that all non-member States may establish permanent observer missions to the international organizations of universal character. The present wording of the provision, more specifically, the expression "in accordance with the rules or practice of the Organization", is contrary to the principle of the sovereign equality of States and to the principle of universality. It is also inconsistent with draft article 75, which forbids discrimination between States.

Furthermore there is a contradiction between article 52 and the attached commentary. Namely, it is rightly stated in paragraph 2 of the commentary that it is of vital interest to non-member States to be able to follow the work of international organizations, and that the association of non-member States with international organizations is of benefit to the organizations and conducive to the fulfilment of their principles and purposes.

In view of the foregoing, the right solution would be for the present wording of article 52 to be replaced by the text of article 51 proposed by the Special Rapporteur in his fifth report.[1]

Article 94

The last sentence of paragraph 1 of this article ought to be deleted. In this way, the paragraph would reflect exactly the right principle accepted by a large majority of States in article 22 of the Vienna Convention on Diplomatic Relations.

Article 100

Alternative A would seem to be the more acceptable because alternative B narrows down, with no reason, the immunity from civil and administrative jurisdiction of the representatives of States members of an international organization.

Israel

(*a*) PART I AND SECTION 1 OF PART II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY *note verbale* DATED 8 APRIL 1969 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

Article 1

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

It proposes that subparagraph (*b*) be omitted, having regard to its observations on article 2.

It suggests that in subparagraph (*l*), the words "are established" be replaced by "may be established".

Article 2

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

[1] *Yearbook of the International Law Commission, 1970*, vol. II, p. 7, document A/CN.4/227 and Add.1 and 2.

Articles 4 and 5

The Government of Israel makes the following comments:

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

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

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

(4) In the light of the foregoing, a more succinct formulation should be considered, such as an amalgamation of articles 4 and 5 along the following lines: "Nothing in the present articles shall prejudice other international agreements in force concerning the representatives of States to an international organization".

Article 7

The Government of Israel suggests that subparagraph (*c*) be inserted immediately after subparagraph (*a*), in view of its generality and importance.

Article 8

The Government of Israel considers that this article is superfluous, and believes that it could well be omitted. In view of the fact that the appointment of members of a permanent mission is not subject to the *agrément* of the host State or the organization concerned, it points out that even in the absence of this article there would be nothing to prevent a sending State from appointing the same persons as members of two or more permanent missions. By contrast, it points out, it was only the need to preserve the right of receiving States to withhold their consent that necessitated the inclusion of paragraph 1 of article 5 of the Vienna Convention on Diplomatic Relations, and article 4 of the draft articles on special missions.[2] The hypothesis of the present article, however, is not analogous to that with which those other provisions deal.

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

Article 9

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

Article 10

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

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

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

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

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

The phrase "a criminal offence involving ignominy" is based upon the authorized English translation of subsection (1) of section 44 of the Chamber of Advocates Law, 5721-1961.[3] The use of this phrase is suggested here, in order to exclude from the scope of the proposed article trivial contraventions such as parking offences.

Article 11

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

Article 12

The Government of Israel proposes the following two amendments:

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

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

Article 13

The Government of Israel considers that the text of this article should be replaced by that suggested in paragraph 7 of the commentary. The meaning of the latter is far clearer, and it is free from the ambiguities of the present text, which leaves it uncertain *(a)* whether in the event of organs being specified, the permanent representative has or has not the right to appear before the unspecified organs, *(b)* whether in the event of organs not being specified, the permanent representative has a right to appear before any organs at all, and *(c)* whether paragraph 2 related to a situation in which organs have been specified, or in which they have not been specified. The Government of Israel suggests, however, that in paragraph 2

[1] In the Vienna Convention on the Law of Treaties as adopted by the United Nations Conference on the Law of Treaties on 23 May 1969, article 26 of the International Law Commission's draft articles on the law of treaties has become article 30.

[2] See *Yearbook of the International Law Commission, 1967*, vol. II, p. 349, document A/6709/Rev.1, chap. II, D.

[3] Israel, Ministry of Justice, *Laws of the State of Israel*, vol. 15, 5721—1960/61, Authorized translation from the Hebrew (Published by the Government Printer [n.d.]), p. 203.

of the alternative text contained in paragraph 7 of the commentary, the words "unless there are special requirements as regards representation in any particular organ" be omitted, since this point is already expressed by article 3.

Article 14

The Government of Israel, while not disagreeing with the provisions of this article as they stand, feels that the topic of treaties between States and international organizations would be more appropriately dealt with in the context of the codification of the law of treaties. While noting that the draft adopted in 1968 by the Committee of the Whole at the first session of the Vienna Conference is limited by article 1 to treaties concluded between States, [4] it draws attention to the resolution passed at the same session of that conference recommending the General Assembly to refer the study of the question of treaties concluded between States and international organizations or between two or more international organizations to the International Law Commission. [5] In view of this, the Government of Israel suggests that the question of the retention of article 14 should be examined only after the General Assembly has finally pronounced itself on the future study of the topic.

Article 15

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

Article 17

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

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

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

Article 18

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

It notes that no provision has been made for the accreditation of *chargés d'affaires ad interim*. It considers that this may be needed, in view of the fact that the post of permanent representative is sometimes vacant for a considerable time. It suggests that the International Law Commission obtain information as to the practice of international organizations on this point, with a view to the inclusion of an appropriate provision.

Article 20

The Government of Israel makes the following suggestions:

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

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

Article 21

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

(b) SECTION 2 OF PART II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY "NOTE VERBALE" DATED 1 JUNE 1970 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[Original text: English]

General observations

See the statement of the representative of Israel at the 1106th meeting of the Sixth Committee on 29 September 1969. [6]

Observations on particular articles

Article 26

The expression "another member of the permanent mission acting on behalf of the mission" introduces a new element which may be of much broader significance than this article. In so far as it embraces the "acting permanent representative", it would seem preferable that the issue of principle be dealt with elsewhere and the text of article 26 co-ordinated with it. On the other hand if, as seems to be the case, article 26 does not mean to refer to an acting permanent representative, then some other language should be used than the phrase in question. See in this context, the observations of the Government of Israel on article 18 (see section *(a)* above).

Article 32

Paragraph 4 of the commentary has been noted. The Government of Israel recognizes the interconnexion between paragraph 1 (*d*) of article 32 and article 34 of the draft articles. Expressing the hope that article 34 will be retained in the final text, the Government of Israel would wish to reserve its position on article 32, paragraph 1 (*d*) for the time being.

Article 33

The Government of Israel suggests that in paragraph 1, in place of the phrase: "The immunity from jurisdiction of the permanent representative or members of the diplomatic staff of the permanent mission and persons enjoying immunity under article 40", there should be substituted the following: "The immunity from jurisdiction of the permanent representative or members of the diplomatic staff of the permanent mission, and of persons enjoying immunity under article 40".

Article 35

The Government of Israel takes the view that paragraph 5 adds nothing to the provisions of articles 4 and 5, and that it could with advantage be omitted.

Article 38

The Government of Israel suggests that in paragraph 1 (*b*) "their families" be substituted for "his family", "their households" for "his household" and "their establishments" for "his establishment".

[4] *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. 110.

[5] *Ibid.*, p. 285.

[6] *Official Records of the General Assembly, Twenty-fourth Session, Sixth Committee*, 1106th meeting.

Article 39

See the remarks of the representative of Israel at the 1106th meeting of the Sixth Committee.[7]

Article 42

The Government of Israel notes that article 39, paragraph 1 of the Vienna Convention on Diplomatic Relations reads: "from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed". On the other hand the present text reads: "from the moment when his appointment is notified to the host State". No reason for this change is given in the commentary, and the Government of Israel feels that the earlier text is preferable as being more precise. In this connexion it seems that article 17 could be made more precise as well as article 18, if the suggestion of the Government of Israel regarding that article (see above) is incorporated into the final text of the draft article.

Article 43

The Government of Israel suggests that the last sentence of paragraph 1 be reworded as follows:

"The same shall apply only in the case of any members of the family of the permanent representative or members of the diplomatic staff of the permanent mission enjoying privileges and immunities who are accompanying them or travelling separately to join them or to return to their own country."

The substitution of "any members" for "the members" would bring the text into line with that of article 40 of the Vienna Convention on Diplomatic Relations.

Article 44

The Government of Israel notes that this article is worded in the passive: "no discrimination shall be made". The corresponding passage in article 47, paragraph 1, of the Vienna Convention on Diplomatic Relations is worded in the active: "the receiving State shall not discriminate". Paragraph 6 of the commentary explains this difference by the fact that in the case of the present articles the obligation applies not merely to the host State, but also to the Organization. The Government of Israel considers that it would be better if this were made explicit, and suggests redrafting the article along the following lines:

"In the application of the provisions of the present articles, no discrimination shall be made as between States by the host State or the Organization."

Article 45

Paragraph 2

The Government of Israel wishes to make the following observations:

(1) The phrase "grave and manifest violation of the criminal law" appears to have no recognized legal meaning.

(2) The provisions of the paragraph apparently leave it to the sending State itself to determine whether, in the hypothesis with which the article deals, a case has arisen to recall the person concerned.

The problems with which the International Law Commission is endeavouring to grapple are appreciated, and it is considered that there is no objection in principle to recognizing that under the circumstances envisaged the host State should have the right to request the sending State to take appropriate steps. Any dispute arising out of such a request would be dealt with under the provisions of article 50. On that basis a more satisfactory formation of article 45 could read:

"If the host State has strong grounds for believing that a criminal offence involving ignominy has been committed against its laws by any person enjoying immunity from criminal jurisdiction, then it may notify the sending State of this, and the latter shall in that case either waive the aforesaid person's immunity, recall him, terminate his functions with the mission or secure his departure, as appropriate."

The phrase "a criminal offence involving ignominy" has been explained in the observations of the Government of Israel on article 10 (reproduced above); and should the suggestions made for that article find expression in the Commission's final text, it is believed that article 45 should be co-ordinated with it.

Paragraph 3

The words "the exercise of", which do not appear in the corresponding provision of the Vienna Convention on Diplomatic Relations (article 41), seem superfluous.

Article 48

1. The Government of Israel notes that the words "to leave its territory" at the end of the first sentence have been substituted for the words "to leave at the earliest possible moment" which appear in the corresponding article of the Vienna Convention on Diplomatic Relations (article 44). It sees no reason for this change, and therefore suggests reverting to the earlier text.

2. With reference to paragraph 2 of the commentary, the Government of Israel considers that a clause obliging the host State to allow members of permanent missions to enter its territory to take up their posts should be included in the draft articles.

Article 49

1. The Government of Israel proposes that the word "must", wherever it appears in paragraph 1, be replaced by "shall".

2. The Government of Israel notes that, according to paragraph 2 of the commentary, the intention is that in the event of the sending State failing to comply within a resonable time with the obligations imposed upon it under the second sentence of paragraph 1, the host State shall no longer be bound by the provisions of the first sentence of paragraph 1, but only by "any obligations which may be imposed upon it by its municipal law, by general international law, or by special agreements" as regards the property, archives and premises. It is believed that this should be made more explicit in the text in order to avoid ambiguity. The addition of a phrase such as "after which time the obligations of the host State under this paragraph shall cease" could achieve this.

The difference between the "special" protection and protection of property, archives and premises under international law is not altogether clear.

(c) PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY "NOTE VERBALE" DATED 5 JANUARY 1971 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

General observations

See the statement of the representative of Israel at the 1193rd meeting of the Sixth Committee on 8 October 1970.[8]

Subject to the comments set out below, Israel expresses its general agreement with the proposed draft articles.

The observations of the Government of Israel on the first and second groups of draft articles apply generally and in principle to Parts III and IV.

[7] *Ibid.*

[8] *Ibid., Twenty-fifth Session, Sixth Committee,* 1193rd meeting.

As the four parts of the draft articles will form an integral part of the diplomatic law, it is considered that in the final text of the draft articles, all those provisions relating to matters susceptible of uniform treatment should be redrafted and amalgamated in the fewest possible articles. The Government of Israel is inclined towards a broad formulation of facilities, privileges and immunities for the official representatives of States; it considers that uniformity of treatment is preferable to the many ambiguities and obscurities now encountered. If, however, this view is not adopted, it is suggested that the Commission may wish to consider presenting the material in a series of separate instruments. At all events it is considered that the present opportunity should be taken to introduce the greatest possible degree of unification and systematization into the law governing the official representatives of States, and to co-ordinate the provisions governing representatives to universal international organizations with those governing direct and inter-State representatives, now consolidated in the 1961 Convention on Diplomatic Relations, in the 1963 Convention on Consular Relations and in the 1969 Convention on Special Missions.

It is also considered desirable for the question of observer delegations to organs and conferences to be regulated in the present group of draft articles.

Observations on particular articles

Article 51

The introductory words to this article dealing with the use of terms indicate that those terms would specifically apply to part III of the draft articles.

Subparagraph (*a*) of this draft article defines the term "permanent observer mission" as a mission sent to an "international organization". Paragraph 1 of the commentary of this draft article explains that the latter term is used in the same sense as in draft article 1.

In view of the opening words to draft article 51, it might be desirable to include the words "as defined in article 1" after the words "international organization", unless the Commission should decide to amalgamate articles 1 and 51.

Article 52

The Government of Israel considers that the sending of observer missions to an international organization by non-member States can only be done in conformity with the rules and practice of the organization. In that connexion it is doubtful if relatively generalized concepts such as "principles of sovereign equality of States and of universality" (paragraph 3 of the commentary) could prevail over the rules and practice of the organization in question.

Article 58

Since the Vienna Convention on the Law of Treaties does not deal adequately with this aspect, the Government of Israel agrees that articles 14 and 58 could be retained in the present set of draft articles, but it believes that, together with article 88, a single provision would be sufficient.

Article 76

The Government of Israel suggests that permanent observer missions and their members, as well as all the other representatives to which the different parts of the draft articles apply, should be required to carry third party insurance policies to cover damage or injury that may arise from the use of vehicles by them in the receiving State. This observation applies to articles 45 and 112, and it is offered as a contribution to the solution of the problem dealt with in articles 32, paragraph 1 (*d*) and 100, paragraph 2 (*d*) (alternative A).

Article 88

See observations on article 58.

Article 112

See observations on article 76.

Japan

OBSERVATIONS COMMUNICATED BY LETTER DATED 16 MARCH 1971 FROM THE CHARGÉ D'AFFAIRES "AD INTERIM" OF THE PERMANENT MISSION TO THE UNITED NATIONS

[*Original text: English*]

PART I.—General provisions

Articles 4 and 5

In view of the great variety of functions and characteristics of agreements relating to international organizations, articles 4 and 5 have rightly been included.

PART II.—Permanent missions to international organizations

General comments

1. In the view of the Japanese Government, draft articles on the diplomatic law on the relationship between States and international organizations should be based of the functional necessity, due regard being paid to the existing rules and practice. Owing to the approach taken by the Commission that the provisions on privileges and immunities of permanent missions and their members should closely follow the corresponding provisions of the Vienna Convention on Diplomatic Relations, the element of diversity of functions and needs of international organizations is not sufficiently taken into consideration. Thus the draft articles substantially depart from the prevailing practices and principles of international organizations regarding privileges and immunities.

2. In drawing up the diplomatic law of representatives of States to international organizations, the interest of the sending States should be guaranteed, but at the same time, ample consideration should be given to the adequate protection of the interests of the host States. It is to be expected that the presence of numerous permanent missions in one locality will impose a particularly heavy burden on the host State of an international organization of universal character. Particular attention should be given to safeguard the interests of the host State against possible abuses of privileges and immunities by permanent missions and their members.

3. While the draft articles grant permanent missions privileges and immunities virtually identical with those accorded to permanent diplomatic missions, they do not adequately ensure the protection of the interests of the host State by providing measures comparable to the provisions on *persona non grata* and *agrément* designed to protect the interests of the receiving State in bilateral relations. The procedure envisaged in article 50, namely, consultations among the States concerned and the organization, will not provide the host State with sufficient protection. It is, therefore, hoped that the Commission will give consideration to devising more effective procedures for the protection of the interests of the host State (conciliation procedure, for example).

Observations on particular articles

Article 13

The formulation of paragraph 2 does not appear to be sufficiently clear in its meaning. The Japanese Government would favour the formulation which appears in paragraph 7 of the Commission's commentary.

Article 19

The end of the sentence from the words "in accordance with . . ." should be deleted in the light of the provision of article 3. If these words are retained, the article will not provide an effective residual rule where established practice or rules do not exist in the organization on the matter.

Article 22

The Japanese Government is not convinced of the necessity of the second sentence of article 22 on the obligation of an international organization to assist permanent missions in obtaining facilities for the performance of their functions. The provision is not supported by the practice of existing international organizations. Moreover, if the organization has the competence to accord certain facilities in accordance with internal rules or regulations, it will accord such facilities in virtue of those internal rules or regulations irrespective of the obligation envisaged in article 22.

Article 24

The Commission's intention, as it appears in the commentary, to enable the organization to assist the sending State may well be taken care of by the provision of article 50 on consultations between the sending State the host State and the organization. As it stands, the formulation of the present article might raise the question whether the organization will intervene in the disputes between the sending State and the host State solely in favour of the former.

Article 25

The provision of article 25 is considered reasonable. The third sentence of paragraph 1 should be retained.

Article 28

This article goes beyond the Vienna Convention on Diplomatic Relations in extending freedom of movement to members of the families of members of the permanent mission. It does not seem essential for the performance of the functions of the permanent mission to assure such an extensive freedom of movement to "all members of the permanent mission and members of their families". It is doubtful if the liberal practice as mentioned by the Commission with regard to the members of the families of diplomatic agents can be regarded as an expression of a customary rule. It is suggested that the Commission should reconsider the matter so that the formulation be aligned with the provision of article 26 of the Vienna Convention on Diplomatic Relations.

Article 32

The provision in paragraph 1 (*d*) of article 32 on action for damages arising out of a motor accident is reasonable and necessary and should be retained. The Japanese Government is also of the view that provisions be included requiring members of permanent missions to be insured against liability for accident caused by vehicles used by them.

Article 34

The Japanese Government believes that this article should be retained.

Article 48

The insertion of the words "whenever requested" is likely to be interpreted as placing a greater responsibility on the host State than the provision of article 44 of the Vienna Convention on Diplomatic Relations does on the receiving State. The expression "whenever requested" might be replaced by the expression "in case of need".

The wording "in case of emergency" is ambiguous with respect to multilateral relations. Since the bilateral relationship between a sending State and the host State is not directly connected with the withdrawal of a permanent mission to an international organization, it is not clear what other cases of "emergency" exist.

It is considered superfluous to include a provision on the obligation of the host State to allow members of permanent missions to enter its territory such as appears in paragraph 2 of the commentary.

Article 49

The second sentence of paragraph 1 is reasonable and should be retained.

Article 50

For the reason mentioned in the general comments, the Japanese Government is not entirely convinced that the provision of this article is enough to cope with the difficulties which may arise as a result of the non-applicability between States members of the organization and the host State of the rules regarding *agrément* and *persona non grata*. For example, a situation might arise where a member of a permanent diplomatic mission declared *persona non grata* or a private person accused of violating the law of the host State, would be appointed as member of the permanent mission to an international organization seated in the host State. A more effective procedure might be provided for in order to protect the interests both of the sending State and the host State in cases where consultations of the type envisaged do not bring about satisfactory solutions.

PART III.—Permanent observer missions to international organizations

General comments

It is considered that the draft articles adopted by the Commission are based too closely on those of permanent diplomatic missions and permanent missions to international organizations.

Placing permanent observer missions on the same footing as permanent diplomatic missions or permanent missions is not necessary for the performance of these limited functions.

Privileges and immunities to be accorded to permanent observer missions should be such as to ensure efficient performance of their main and normal functions. The functions of permanent observer missions consist, in principle, in observing the activities of international organizations and, to a lesser degree, in maintaining the necessary liaison between sending States and organizations. Thus, their functions differ, both in extent and in nature, from those of permanent diplomatic missions or permanent missions, which functions lie essentially in representing the sending States respectively in the receiving State or in the organization. Occasions may sometimes arise in which permanent observer missions are entrusted by their sending States with functions of representation at or negotiation with organizations. These functions, however, as the commentary on article 53 indicates, are not regularly recurrent and not inherent in the nature of permanent observer missions.

Moreover, the Commission's approach to the matter is not supported by the practice of international organizations of the United Nations family. In granting privileges and immunities to permanent observer missions, one should not depart from the practice of international organizations.

The Japanese Government would suggest that the draft articles on privileges and immunities of permanent observer missions be based on the Vienna Convention on Consular Relations.

Observations on particular articles

Article 52

The Commission has rightly made the right of non-member States to establish permanent observer missions conditional on the

relevant rules or practice of the organization. When such rules or practice do not provide for the establishment of permanent observer missions, a non-member State should be allowed to send an observer mission to an organization only if the host State and the organization agree to receive such a mission.

Article 53

It is noted that the Commission has included among the functions of permanent observer missions "negotiating with the Organization when required and representing the sending State at the Organization". Occasions may arise where a non-member State negotiates with the organization, or such a State must be represented at the organization. For example, parties to the Statute of the International Court of Justice that are not Members of the United Nations participate in the procedure for effecting amendments to the Statute in the United Nations. Since a non-member State has the discretion to decide by whom it shall be represented, a permanent observer may be designated to negotiate with the organization or to represent it at the organization. From this it does not necessarily follow that representing at or negotiating with the organization constitute proper functions of a permanent observer mission as such.

It is therefore suggested that the end of the sentence from the words "negotiating with" be deleted. The deletion will in no way preclude a permanent observer mission from performing such functions.

Article 57

It is doubted that the inclusion in the draft articles of a provision on the submission of credentials of a permanent observer is necessary. Since a permanent observer does not represent the sending State in the organization, there is no need for submission of credentials. The requirement of notification under article 61 will suffice for the purpose of a permanent observer. Additional formality adds nothing to the status of a permanent observer. The practice of the United Nations in this regard should be followed.

Article 58

This article should be deleted since the matter will be dealt with in connexion with "the question of treaties concluded between States and international organizations", a subject which is on the agenda of the Commission.

Article 64

The Japanese Government would favour the deletion of the reference to the use of flag.

Articles 65 and 66

The comments made on articles 22 and 24 also apply to articles 65 and 66.

Article 68

It is not considered necessary for the performance of the functions of the permanent observer mission that members of the permanent observer mission and, in particular, members of their family enjoy the same freedom of movement as members of the permanent diplomatic mission.

Article 69

The provision of article 69 goes too far. The Commission might amend the article to the effect that members of the permanent observer mission and members of their family enjoy such personal privileges and immunities as are accorded by the Vienna Convention on Consular Relations to members of consular posts.

PART IV.—Delegations of States to organs and to conferences

General comments

1. The Japanese Government is not fully convinced that, because of the temporary character of their task, the privileges and immunities of delegations to organs of international organizations and to conferences convened by international organizations should be determined in the light of those granted to special missions. In the view of the Japanese Government, privileges and immunities of delegations should be determined bearing in mind the fact that the principle of reciprocity, which functions as a balancing factor between the interests of the sending States and those of the receiving States with regard to privileges and immunities of special missions, does not exist in the case of multilateral relations.

It should also be borne in mind that, because of the temporariness of the task of delegations to organs of international organizations and conferences convened by international organizations, the question of their privileges and immunities will give rise, for the host State, to particular difficulties which might not be known to States where the seat of international organizations is permanently placed. For example, the host State of an international conference convened by an international organization might be required to take special and temporary administrative and legislative measures in order to assure privileges and immunities provided for in the draft articles.

2. It would seem that the Commission takes the position that the delegations to organs of international organizations and conferences convened by such organizations should, irrespective of their nature and functions, be accorded the same extent of privileges and immunities on the ground that they represent sovereign States.

The Japanese Government hesitates to concur fully with this view, since, in its opinion, representatives to conferences which are of purely technical character and of relatively secondary importance need not enjoy some of the privileges and immunities (personal inviolability and protection, in particular), which may be indispensable to the representatives to conferences of highly political character.

It may be sometimes difficult to distinguish between conferences of technical nature and those of political nature. However, this does not mean that the difference of character may be lightly dismissed.

3. The Japanese Government would favour the inclusion of a provision for the effective settlement of difficulties which might arise between the sending States and the host State regarding privileges and immunities.

Observations on particular articles

Article 80

According to the commentary, the Commission is of the view that rules of procedure should not derogate from provisions relating to privileges and immunities. In the view of the Japanese Government, it is unlikely that conference rules of procedure would deal with provisions on privileges and immunities. It is therefore suggested that the question of derogation from the provisions on privileges and immunities be left entirely to article 79 and that the application of article 80 be limited to section 1 of part IV.

Article 83

This article does not appear to be necessary. Progressive development of law on conferences convened by international organizations should not preclude a delegation to an organ or to a conference from representing more than one State.

Article 85

The Japanese Government would favour the view of some of the members of the Commission that the consent of the host State can be withdrawn only if that would not seriously inconvenience the delegation in carrying out its functions. Unlike in the case of permanent missions, sudden withdrawal of the consent of the host State in the course of the session of an organ or conference might place the sending State in an awkward situation.

Article 99

This article seems to impose too great a burden on the host State by requiring that State to give special protection to members of delegations. The Commission might reconsider the formulation in the light of the temporariness of the task and accommodation of members of delegations.

Article 100

The Japanese Government supports alternative B.

Article 103

Paragraph 1 (*b*) should be deleted. Because of the temporariness of the task of delegations, exemption from customs duties and inspection of articles for the personal use of the members of the delegation does not seem justified.

Article 105

It is deemed sufficient that members of the families of representatives and the diplomatic staff be accorded the privileges and immunities provided for in article 104 (Exemption from social security legislation, personal services and laws concerning acquisition of nationality).

Madagascar

PARTS II, III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY "NOTE VERBALE" DATED 2 FEBRUARY 1971 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: French*]

PART II.—Permanent missions to international organizations

Article 32

The attention of Governments is drawn to a novel provision of article 32, paragraph 1 (*d*), under which immunity from civil and administrative jurisdiction is not extended to any "action for damages arising out of an accident caused by a vehicle used outside the official functions of the person in question".

In support of this provision, some delegations argued that it met a real need because of the greater frequency of such accidents and the difficulties which had arisen in some countries from the application of insurance laws.

Other delegations, however, opposed this provision, citing as a precedent the 1961 Vienna Convention, which does not deal with the question, pointing out that draft article 34 calls upon the sending States to waive civil immunity whenever possible or to use their "best endeavours to bring about a just settlement", and emphasizing the difficulties of applying the functional line that was being drawn. One other argument, based on article 45, in accordance with which it is the duty of persons enjoying immunity to respect the laws and regulations of the host State, does not appear to be valid in connexion with a liability resulting from clumsiness or carelessness.

Since experience has shown that it is somewhat unrealistic to rely on the goodwill of States to bring about a just settlement of this type of case within a reasonable period, the Malagasy Government believes that it would be advisable to concentrate on eliminating the difficulties encountered by victims of traffic accidents in obtaining compensation.

However, the provision in question does not, in its opinion, provide an effective means of achieving that goal. How will it be established that the vehicle was being used outside official functions? Will the court hearing the case decide that point? Is the court to accept the version of he facts given by the permanent mission, or can it go beyond that interpretation? Will it have to suspend judgement? What if the vehicle was being used "on duty"? These questions will not be easy to answer, and the delays or disputes which they may engender will bar the way to the desired aim.

It might be better to provide that permanent missions must take out insurance to cover any damage their vehicles might cause to third parties. This would avoid the introduction of one more exception in the context of immunities, while at the same time settling a problem which causes annoyance to host States.

Article 42

The expression "a reasonable period" in paragraphs 2 and 3 of this article seems very vague and needs to be further clarified.

In addition, it is rightly noted in paragraph 2 of the commentary that there is no provision regulating the duration of privileges and immunities for persons who do not enjoy them in their official capacity. A provision on this point, based on article 53 of the Vienna Convention on Consular Relations, might therefore profitably be added to article 42.

PART III.—Permanent observer missions to international organizations

Article 63

As a drafting change, needed in order to eliminate any ambiguity, the word "localities" should be replaced by the words "a locality". It would hardly be reasonable to allow the premises of an observer mission to be dispersed over the territory of a host State, since such premises enjoy important immunities and tax exemptions (article 67).

Article 64

The right to use the flag is expressly recognized. If diplomatic relations do not exist or are severed, however, use of the flag should be the subject of arrangements to be concluded between the sending State and the receiving State.

PART IV.—Delegations of States to organs and to conferences

Article 83

Article 6 of the Vienna Convention on Diplomatic Relations specifies that two or more States may accredit the same person as head of mission to another State. The article under consideration raises a similar issue and it would be desirable, for several reasons, not to specify so categorically the principle that a delegation may represent only one State.

The Malagasy Government notes, moreover, that the practice described by the Special Rapporteur is not always followed at international conferences. For example, one representative acting for the Upper Volta and the Congo (Brazzaville) signed the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft.

Article 100

Two alternative versions are given:

Alternative A lists the four categories of civil actions for which there is no entitlement to immunity from civil and administrative jurisdiction;

Alternative B, which seems broader in scope, excludes from the sphere of immunity acts which are not "performed in the exercise of [. . .] official functions".

In both cases, measures of execution are dealt with in the same way as the categories of actions to which they relate.

In the opinion of the Malagasy Government, alternative B would raise the same difficulties of interpretation regarding the definition of "acts performed outside official functions" as have already been noted in the analysis of article 32 of the draft.

For this reason, the Malagasy Government prefers alternative A, which is clearer and more specific.

In addition, the comments already made on the subject of the provision concerning actions arising out of a traffic accident are also applicable to article 100 (alternative A), paragraph 2 (*d*).

Mauritius

PARTS I AND II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY "NOTE VERBALE" DATED 25 AUGUST 1970 FROM THE PERMANENT MISSION TO THE UNITED NATIONS

[*Original text: English*]

. . . Mauritius is fully appreciative of the efforts of the International Law Commission to codify international law on the topic of representatives of States to international organizations and is in general in agreement with the draft articles proposed.

Netherlands

(*a*) PART I AND SECTION 1 OF PART II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 25 SEPTEMBER 1969 FROM THE DEPUTY PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

General remarks

1. The draft articles are intended to be rules of a non-obligatory nature, open to exceptions in the cases provided for in articles 3-5. The Netherlands Government agrees with this modest scope of the draft. Nevertheless, the draft articles must be regarded as reflecting the actual state of international law as regards relations between States and international organizations. In fact, in paragraph 1 of the commentary on article 3 the International Law Commission itself describes the draft articles as a "common denominator" and a "general pattern which regulates the diplomatic law of relations between States and international organizations", their purpose being "the unification of that law to the extent feasible in the present stage of development".

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

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

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

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

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

Comments on particular articles

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

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

Article 2, paragraph 2

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

Article 6

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

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

Article 7

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

Article 9

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

Article 10

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

Article 13

13. The Netherlands Government prefers the wording of this article suggested by some members of the International Law Commission (paragraph 7 of the commentary), as expressing more clearly the purpose of the article.

Article 14

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

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

Article 15

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

(*b*) SECTION 2 OF PART II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 13 OCTOBER 1970 FROM THE DEPUTY PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

General observations

1. In its comments on the draft articles on special missions,[1] the Netherlands Government recommended to restrict the privileges and immunities to be accorded to diplomats *ad hoc*, in view of the differences in their position and responsibilities vis-à-vis *permanent* diplomatic representatives. Such a minimum regulation could, if needed, be supplemented by additional agreements between the sending and the host State.

2. The present draft deals with permanent diplomatic representatives of States accredited not to other States but to international organizations. From the *sending State*'s point of view there is not much difference between the positions of permanent missions to States and to international organizations. In both cases, residence in the host State is permanent and the mission's task is not confined to one specific assignment.

3. This similarity justifies the privileges and immunities in the present draft being wider in scope than those laid down in the Convention on Special Missions; they conform in a large measure to those laid down in the 1961 Vienna Convention on Diplomatic Relations.

4. The Netherlands Government agrees to this in principle and will not, therefore, make proposals designed to restrict privileges and immunities, as it deemed appropriate to make with regard to diplomats *ad hoc*. It does not, for instance, intend to propose that personal inviolability be restricted to acts performed in the discharge of official duties, nor that the rule of no immunity in the event of damage due to road accidents be extended to official journeys.

5. From the point of view of *host States* however, there is an essential difference between receiving permanent missions in bilateral diplomatic relations and receiving permanent missions accredited to an international organization having its seat in the territory of the host State. In bilateral diplomatic relations, the host State accords diplomatic facilities to ensure the efficient conduct of its diplomatic relations with the sending State. This clearly serves the direct interests of both the sending State and the host State itself. In the case of missions accredited to international organizations, however, such facilities accorded by the host State are intended to ensure the efficient functioning of the *Organization*. The host State has only an indirect interest here, namely the promotion of the work of the Organization and its acting as a good host.

6. The requirement of *agrément* does not apply to members of missions to international organizations. Such missions can be sent by States not recognized by the host State or even by States whose relations with the host State could hardly be called friendly.

7. In view of these considerations, the Netherlands Government is of the opinion that in some respects the present draft could approach the matter of privileges and immunities to be accorded by the host State in a more restrictive sense.

The role of the Organization

8. In articles 22–24 and in article 50, the Organization is assigned a certain role in the relations between the sending State and the host State. The Netherlands Government fully supports this principle. The present draft differs from the three previous codifications of diplomatic law in that the Organization occupies a key position in the relations between the sending State and the host State.

9. The Netherlands Government is, however, of the opinion that this principle has not been elaborated quite satisfactorily. The Organization's intermediary role in questions between the sending and host States should be defined more accurately; the solving of such difficulties is in the Organization's own interest, since they ultimately affect its proper functioning.

10. The Netherlands Government fears that the present wording of articles 22 and 24 could create the impression that the Organization should be concerned solely with the interests of the sending State. It is important that the Organization's role be formulated in such a manner that its independent position be made quite clear: it must be in a position to act in the interests of both the sending State and the host State.

[1] *Yearbook of the International Law Commission, 1967*, vol. II, pp. 388 *et seq.*, document A/6709/Rev.I, annex I, sect. 18.

Paragraph 3 of the commentary on article 50 shows that the International Law Commission intends *article 24* to impose upon the Organization the *duty* to ensure the application of the provisions of the present draft. The Netherlands Government agrees with this view, but thinks it desirable that this should be clearly stated in the article. It has formulated an amended text to that effect in paragraph 16 of these comments.

Position of the host State

11. The Netherlands Government is of the opinion that this position is *insufficiently guaranteed* in the present draft. In its comments on articles 1–21 (see section (*a*) above), it stated that it would postpone expressing a final opinion on the matter until the guarantees the Commission intended to provide for host States had been formulated. This has now been done in articles 45 and 50. In the Netherlands Government's view, these guarantees are insufficient; the host States' position should be made clearer.

12. For instance, the provision of paragraph 2 of article 45, in virtue of which a member of a permanent mission is required to leave the host State in case of certain conduct, would in the Netherland Government's view have to apply not only in case of grave and manifest violation of the *criminal law* of the host State but also in case of grave and manifest violation of the obligations laid down in paragraph 1 of that article.

13. Should a dispute arise between the sending and host States on this matter, the consultations provided for in *article 50*, in which the Organization may also participate, may well offer a solution. The Netherlands Government, however, considers a provision for the settlement of disputes concerning the interpretation and application of the Convention essential, in addition to the conciliation procedure of article 50. Paragraph 5 of the commentary on article 50 shows that the Commission reserves the possibility of including a provision to that effect.

Comments on particular articles

Articles 22 and 24

14. As pointed out in paragraph 10 above, the wording of these articles could create the impression that the Organization should be concerned solely with the interests of the sending State. It must be admitted, however, that in article 24 the words "where necessary" guarantee to some extent that the Organization will try to strike a balance between the interests of sending and host States.

15. The term "full facilities" in article 22 seems to suggest facilities of too wide a scope, also in the light of what has been stated in the preceding paragraph. Since the host State accords facilities with a view to the proper functioning of the *Organization*, the phrase "such facilities as are required for the performance of its functions" seems to be more appropriate.

16. With reference to the points raised in paragraphs 10 and 14, it is proposed that the phrase "take steps to ensure the application of the present articles, and assist . . ." etc. be inserted in article 24 after the words "where necessary". The Netherlands Government is aware that this proposal underlines the need to consider the fundamental question whether, in case the draft should take the form of a convention, the organizations themselves ought to become parties to the convention. It will postpone giving its views on this question until it has studied the draft articles, referred to by the Commission in paragraph 17 of its report on its twenty-first session,[2] on permanent observers from non-member States, delegations to sessions of organs of international organizations and conferences convened by such organizations.

Article 25

17. Regarding paragraph 3, there seems to be no reason for making the means of transport of the permanent mission immune from search, requisition, attachment or execution without any restriction. Such immunity should at any rate be restricted to *official journeys*. Furthermore, it is recommended that for official journeys, a restriction of immunity be introduced similar to that adopted in *paragraph 2 of article 38* with regard to personal baggage, namely to permit inspection and attachment if the competent authorities in the host State have serious grounds for presuming that the law has been infringed in some way.

Article 26

18. In paragraph 3 of the commentary, the Commission requests Governments to supply information on the practice in their respective countries. The practice in the Netherlands is that premises *owned* by the sending State are exempt from land tax if and as long as they are intended for use by the diplomatic service. The exemption does not apply to *leased* premises, which are subject to land tax, to a tax levied on the value of the furnishings of the premises (and on their rental value) (called "personele belasting") and to some municipal and polder-board dues and taxes. Since only small sums are involved, the Netherlands Government is of the opinion that for the situation in the Netherlands, special regulations are not called for in respect of leased premises.

Article 30

19. For the reasons stated in paragraphs 2 and 4 above, the Netherlands Government will not propose—as it did in its comments on the draft articles on special missions—that the personal inviolability of diplomatic staff be restricted to acts performed in the discharge of official duties. It seems appropriate to regulate the position of permanent representatives to international organizations in this point in conformity with the Convention on Diplomatic Relations.

Article 31

20. In paragraph 4 of the commentary on article 25, the Commission proposes a new paragraph (*k* bis) to be added to article 1, reading "The 'premises of the mission' are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the permanent mission, *including the residence of the permanent representative*." It is recommended that the last phrase, from "including the residence . . . ", be deleted, since this idea is covered by article 31, paragraph 1.

Article 32

21. In the exceptions to immunity from jurisdiction listed in paragraph 1, the Commission has, tentatively, included in subparagraph (*d*) actions for damages arising out of accidents caused by vehicles used outside the official functions of the persons involved.

The Netherlands Government welcomes the inclusion of this provision and might refer to the fact that the Netherlands delegation to the United Nations Conference on Diplomatic Intercourse and Immunities (1961) already advocated the inclusion of such a provision.[3] It was not adopted until 1969, however, namely in the Convention on Special Missions [article 31, paragraph 2, subparagraph (*d*)].

If the proposed provision is adopted, the question of including in the present draft a provision requiring from diplomats entitled to immunity a third party liability-insurance loses much of its relevance. Moreover, many States already impose an obligation of this kind.

[2] *Ibid.*, *1969*, p. 206, document A/7610/Rev.1.

[3] *Official Records of the United Nations Conference on Diplomatic Intercourse and Immunities*, vol. II (United Nations publication, Sales No.: 62.XI.1), p. 27, document A/CONF.20/C.1/L.186/Rev.1.

22. It is recommended that *aircraft and ships* be included in *subparagraph* (d), since these too may cause considerable damage.

23. In paragraph 30 of its comments on the draft articles on special missions,[4] the Netherlands Government proposed that, as regards missions *ad hoc*, the rule of no immunity in civil actions for damages arising out of road accidents be extended to official journeys. The Netherlands Government has considered whether it would be appropriate to make such a proposal in the case of the present draft. It is of the opinion, however, that the similarity between *permanent* missions to States and *permanent* missions to international organizations, to which attention has been drawn in paragraphs 2 to 4 above justifies the immunity accorded in this respect under the present draft being wider in scope than that accorded to missions *ad hoc* in the Convention on Special Missions.

Article 35

24. In paragraph 3 of the commentary on this article, the Commission raises the question whether the reference to bilateral and multilateral agreements concerning social security in paragraph 5 of this article is necessary, in view of the provisions of articles 4 and 5. The Netherlands Government answers this question in the negative.

Article 36

25. As regards the provision in subparagraph (*f*) concerning certain fees, dues and taxes with respect to immovable property, the Commission states in paragraph 5 of its commentary that it would be interested to learn whether Governments have found any practical difficulties in applying the corresponding provision appearing in article 34 of the Vienna Convention on Diplomatic Relations. In the Netherlands, registration fees, paid on the transfer to the sending State of immovable property intended for official use, are refunded. Documents signed solely by members of foreign diplomatic missions are exempt from stamp duty. This practice does not give rise to difficulties.

Article 42

26. As regards this article, the Commission invites the views of Governments on the desirability of including a provision similar to article 53 of the Vienna Convention on Consular Relations, concerning the dates of commencement and termination of entitlements for persons who do not enjoy privileges and immunities in their official capacity.

The Netherlands Government is of the opinion that such a provision should indeed be included.

Article 44

27. It was proposed in the Sixth Committee at the twenty-fourth session of the United Nations General Assembly, during the debate on the report of the International Law Commission on the work of its twenty-first session, that the article on non-discrimination be worded as follows: "In the application of the provisions of the present articles, there shall be no discrimination against any State".[5]

The Netherlands Government prefers this wording of article 44 to that proposed by the Commission.

Article 45

Paragraph 2

28. The Netherlands Government refers to its comments in paragraph 12 above and proposes that paragraph 2 be extended to include all "grave and manifest violations" of the obligations laid down in paragraph 1.

Paragraph 3

29. As regards this provision, the Netherlands Government recommends that the *means of transport* of the mission be explicitly included. It is proposed to insert the words "and means of transport" after the word "premises".

(*c*) PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 9 MARCH 1971 FROM THE ACTING PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

General observations

1. Now that the third series of articles, completing the Commission's draft, is at hand, the Netherlands Government would first of all like to express its admiration for this extensive piece of work designed to add a new, completive chapter to the codification and progressive development of international law concerning diplomatic and other missions through which States maintain mutual relations.

Reading through the complete draft, one is obliged to consider to what extent the draft body of rules satisfies the needs of the international community. The draft is remarkably detailed and treats some points very fully—an understandable and perhaps inevitable consequence of any attempt at codification. The various parts of the draft are based in part on the existing regulations for permanent and *ad hoc* diplomatic missions—with the inherent risk that dissimilar matters may be treated as similar. It may be thought that in some cases the present rules follow too closely the rules of classical bilateral diplomacy, instead of being adapted to the changed needs of modern international relations.

In international practice, a number of organizations already have rules for the functioning of and facilities for permanent missions or permanent observer missions of States and almost all organizations have such rules for delegations of States to their organs or conferences. These rules display considerable variety, as is clearly shown by the extensive research undertaken by the Commission and notably by its very capable Special Rapporteur. The Commission quite rightly takes this variety into account in articles 3, 4, 5, 79 and 80.

At the same time it is to be expected that the regulations for the individual organizations will, under the influence of the present codification, tend towards standardization. Assuming that uniformity ought never to be an aim in itself, the question should be considered whether the international community is in fact in need of highly detailed standardization for the legal relationships under review, always bearing in mind the evident multiformity of international organizations. This line of thought might well prompt the conclusion that the final text should confine itself more to basic principles.

At the present stage of international exchange of views on the Commission's draft, the Netherlands Government would restrict itself to putting forward the above views for further comment. It reserves the right to return to these questions after considering the comments of other Governments and the final draft.

PART III.—Permanent observer missions

The observer mission as an institution

2. The question may legitimately be asked whether the institution of the observer mission—at least in the case of missions to world-wide organizations—is not in principle open to criticism, being in contradiction with the universal character of the organization.

[4] See foot-note 1 above, this section.

[5] *Official Records of the General Assembly, Twenty-fourth Session, Annexes*, agenda items 86 and 94 (*b*), document A/7746, para. 53.

Apart from certain exceptional cases—accounted for by political reasons—as regards the membership of the United Nations, States which are interested in the work of an organization ought to become members of that organization. It does not appear desirable to normalize the basically not normal institution of the observer mission—particularly not on the same footing as the permanent missions, which are a normal element in the structure of international relationships.

One argument put forward by the Commission in favour of this normalization is that it would help to solve the problem of the "micro-States" within the United Nations (see para. 8 of the "general comments" on section 1 of part III). It is striking that this aspect is not further mentioned in the commentary on the individual articles.

Inasmuch as the draft articles will also apply to other than world-wide organizations, the institution of the observer mission becomes more acceptable. This is the consideration underlying the following comments on the individual articles.

Multiple representation

3. Neither part II, which deals with permanent missions, nor the present part III make any provision for the possibility of one representative or observer being accredited to an organization on behalf of two States. This is in contrast to article 6 of the Vienna Convention on Diplomatic Relations, article 8 of the Vienna Convention on Consular Relations, article 5 of the 1969 Convention on Special Missions and article 83 of the present draft.

The Special Rapporteur considers this point in his third report in a "Note on appointment of a joint permanent mission by two or more States"[6] and, basing his observations exclusively on the practice followed within the United Nations, he concludes that joint representation is a rare phenomenon, to be found only in connexion with the assembly of an organ or with a conference; this was the reason for the drafting of article 83.

The Netherlands Government readily accepts the fact that, until now, joint permanent missions or joint permanent observer missions have seldom occurred—if at all. On the other hand it would like to point out that the absence of any reference to such a possibility in parts II and III leaves that possibility open. The Netherlands Government considers it right that the possibility should be kept open, especially in part III, in view of the fact that in the case of observer missions there is not the added complication of the exercise of voting rights. Moreover, this possibility could be in the interests of the micro-States. There is no need for such an arrangement to be regulated in the draft under review, provided that articles 6 and 52 state that no permanent missions or observer missions may be admitted, save where rules governing such admission have been laid down by the organization concerned (see the Netherlands comments on draft article 6 reproduced above, and also para. 4 below).

Observations on particular articles

Article 52

4. As regards the various points of view existing within the Commission, as reflected in paragraph 3 of its commentary, the Government of the Netherlands subscribes to the view that no State may derive from this article the right to establish an observer mission with an organization unless the rules or customary practice of the organization itself provide for such a possibility. From this point of view article 52 is too broadly formulated; a more precise formulation is recommended on the lines suggested earlier for article 6 (see the Netherlands comments on the first series of articles, reproduced above).

Article 54

5. While this article repeats the provisions of article 8 in respect of permanent missions, a provision analogous to that laid down in article 9 has not been included either here or in a subsequent article. In the fifth report, the Special Rapporteur did make a proposal for the latter.[7]

Although the commentary makes it clear why this proposal was not adopted, its exclusion suggests that the Commission deems any provision concerning the compatibility of representative functions to be superfluous for two reasons, namely, that this compatibility is not disputed in practice by any State, (a practice sufficiently well established in the Vienna Conventions of 1961 and 1963), and, secondly, that this compatibility also follows from article 59, paragraph 2.

The Netherlands Government too considers any provision analogous to article 9 superfluous, but it is of the opinion that, for reasons of balance, article 9 could and should be deleted.

Article 55

6. As previously observed in its comments on the first series of draft articles (see section (*a*) above general remarks and comments on article 10) and in paragraphs 11 *et seq.* of its comments on the second series (see section (*b*) above), the Netherlands Government would like to see the position of the host State invested with further guarantees. It should be borne in mind that the principle of reciprocity entertained in bilateral diplomatic relations can hardly ever be applied in the regulation of the quasi-diplomatic status of representatives to organizations. A partial remedy may be found in the inclusion of a provision to the effect that a host State shall have the right to require that a member of a diplomatic or consular mission, declared *persona non grata* by the host State, may not return as a member of a permanent mission, an observer mission or a delegation.

Article 57

7. The Netherlands Government sees no reason why credentials should be introduced for permanent observers. This formality is not met with in practice and a written communication to the organization as provided for in article 61, paragraph 1, seems sufficient for all conceivable purposes. Article 57 can be entirely omitted.

8. As regards the wording of paragraph 2, in conformity with the terms used in other articles and in view of the definition in article 51 (*a*), the words "A non-member State" should be replaced by "The sending State".

Article 58

9. The observation made in the Netherlands' comments on the title of article 14 (see section (*a*) above) also applies to the title of this article.

Article 59

10. The provision in paragraph 2 could better be placed in section 2, in the same way as article 107 has been inserted in section 2 of part IV.

11. In the last part of the provision the words used differ from those in the last part of paragraph 2 of article 9 of the 1969 Convention on Special Missions. There seems to be no difference in intent, so it is recommended that the same wording be adopted.

Article 61

12. A new provision should be inserted between subparagraphs (*a*) and (*b*) in the first paragraph (see para. 13 below).

[6] *Yearbook of the International Law Commission, 1968*, vol. II, p. 135, document A/CN.4/203 and Add.1-5, paras. 31-34.

[7] *Ibid., 1970*, vol. II, p. 8, document A/CN.4/227 and Add.1 and 2, "Note on assignment to two or more international organizations or to functions unrelated to permanent missions".

Article 62

13. The Netherlands Government agrees with the Commission that the sending State should not be obliged to appoint a *chargé d'affaires ad interim* for an observer mission. Accordingly, any detailed regulation governing this institution seems ponderous. If article 62 were deleted, it would suffice to add to article 61, paragraph 1, a subparagraph (*b*) reading as follows:

"the name of the person who will act as *chargé d'affaires ad interim*, if the post of permanent observer is vacant or the permanent observer is unable to perform his functions, and if the sending States wishes to fill this vacancy".

Article 63

14. Replacement of the word "localities" by "a locality" (see paragraph 2 of the Commission's commentary) would indeed seem to clarify the text.

Article 64

15. If this article is considered necessary, it seems preferable to refer to the "flag and emblem" (see para. 2 of the Commission's commentary).

Article 65

16. In accordance with the Netherlands' suggestion on article 22 (section (*b*), para. 15, above), article 65 should also mention:

". . . such facilities as are required for the performance . . .".

Article 66

17. Please refer to the comments in paragraph 27 below relating to article 93.

Article 74

18. Please refer to the comments in paragraphs 35 and 36 below relating to article 110.

Article 75

19. The observation of the Netherlands Government concerning a different wording of article 44 (see section (*b*), para. 27) is equally applicable to article 75.

20. It may be asked whether the facility to grant exemption, in individual cases, from a general prohibition by the host State—such as the forbidding of visits to certain areas or the carrying of photographic equipment—might be incompatible with the non-discrimination principle. The Netherlands Government considers the answer to be in the negative.

PART IV.— Delegations of States to organs and to conferences

Section 1.— Delegations in general

Other conferences

21. With references to the definition in subparagraph (*b*) of article 78, the Netherlands Government points out that, besides conferences convened by or under the auspices of organizations (and even including in that category conferences convened by States on behalf of organizations [see paragraph 3 of the Commission's commentary]), there are other international conferences, some of which certainly have a universal character—e.g. the International Red Cross Conferences, the Hague Diplomatic Conferences of 1951 and 1964 on the Unification of Law governing the International Sale of Goods, the Brussels Diplomatic Conferences on Maritime Law (since 1910), the European Fisheries Conference of 1963/1964 in London. The status of delegations to these and similar conferences is not covered in the draft articles under review; nor would it seem to be covered by the 1969 Convention on Special Missions, unless article 6 of that Convention is to be interpreted as covering delegations to international conferences as well.

Article 81

22. The Netherlands Government shares the view of the majority of the Commission that a delegation must include at least one person empowered to represent the sending State.

Article 83

23. From paragraph 1 of its commentary, it would seem that the Commission is under the impression that the principle of single representation, as laid down in this article, reflects the practice of international organizations, as described by the Special Rapporteur. But his fifth report [8] shows that the Special Rapporteur based his findings on the practice of the United Nations alone. The Netherlands Government points out that there are other organizations which provide for the possibility of multiple representation. Bearing in mind the Commission's intention to review the matter of single or multiple representation in the light of comments from Governments, the following instances may be recalled:

The Universal Postal Union of 1874 (Berne Convention of 1874, revised in the Acts of the Union, Vienna, 1964). Article 101, paragraph 2 of the General Regulations of the Universal Postal Union [9] provides for the possibility of double representation in the Congress of the Union.

The International Union for the protection of Industrial Property (Convention of Paris 1883, revised at Stockholm 1967). [10] Article 13, paragraph 3 (*b*) contains a special regulation for group representation in the Assembly of the Union.

The International Telecommunication Union (Madrid Convention of 1932, revised at Montreux 1965). Chapter 5, margin Nos. 640-642, of the General Regulations pertaining to the Treaty [11] provides for double representation in the Conference of the Union and also for the transference of votes up to a maximum of one extra vote.

The International Organization of Legal Metrology (Paris Convention, 1955). [12] Article XVII provides for the possibility of transferring votes in the International Committee of Legal Metrology up to a maximum of two extra votes.

The European Economic Community (Treaty of Rome, 1957). [13] Article 150 provides for the possibility of a member of the Council of the Community acting as proxy for not more than one other member in case of a vote.

It seems clear that international practice—from which no doubt further examples could be drawn—requires greater flexibility than allowed for by the Commission. On the other hand the draft articles do not aim to be more than directory; see articles 3 and 80.

The Netherlands Government is in agreement with the regulation laid down in article 83. If the statutes of an organization or the regulations for a conference do not mention this matter, it seems right to accept the principle of single representation as a general rule, one of the reasons being that—as is clear from our examples taken from international practice—divergent rules are conceivable for multiple representation and the latter is sometimes not practicable without additional provisions.

---

[8] *Ibid.*, p. 1, document A/CN.4/227 and Add.1 and 2.

[9] United Nations, *Treaty Series*, vol. 611, p. 86.

[10] WIPO, *Paris Convention for the Protection of Industrial Property* (Geneva, 1970) [201(E)].

[11] United States of America, Department of State, *United States Treaties and other International Agreements* (Washington D.C., U.S. Government Printing Office, 1968), vol. 18, part 1, 1967, p. 685.

[12] United Nations, *Treaty Series*, vol. 560, p. 3.

[13] *Ibid.*, vol. 294, p. 17.

It seems however preferable that the commentary on this article more fully reflect current practice, and state more clearly the conclusion that it may be advisable for individual organizations and conferences to adopt a different rule than that contained in article 83.

Article 84

24. Please refer to the comments in paragraph 6 above in relation to article 55.

Article 88

25. Together with "some members" of the Commission whose opinion is reflected in paragraph 2 of the commentary, the Netherlands Government is of the opinion that paragraph 3 of the proposed article is redundant. It fears that the inclusion of this article may tend to confuse rather than clarify.

Moreover, with reference to the article as a whole, it is questionable whether in this case the repetition of what is already laid down in the Vienna Convention on the Law of Treaties is to be recommended.

Section 2.—Facilities, privileges and immunities of delegations

26. The third and last category of representatives of States to international organizations differs from the two previous categories in more than one respect: the length of their stay is by nature limited; their task is specific and limited; and the host State is not necessarily the State in which the organization has its headquarters. By the first two of these characteristics the delegations are comparable to special missions. On the other hand, their business is not connected with the relations between the sending State and the host State, as in the case of special missions, but with the aims and procedures of an organization. For this reason it seems more appropriate to approach the question of the facilities, privileges and immunities to be accorded to them from a purely functional point of view.

In this connexion, the Netherlands Government would recall the rules in existence for delegations to organs and conferences, which are laid down, for instance, in the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies, also mentioned by the Commission in its general comments on section 2. It is questionable whether it is desirable to deviate from these existing rules to any considerable extent.

Article 93

27. The Netherlands Government does not see the analogy drawn in the Commission's commentary with article 23 of the 1969 Convention on Special Missions. A special diplomatic mission entertains relations with the host State, whilst the relations referred to in this article are multilateral, or else are relations with an organization. In practice, too, as far as is known, in finding accommodation for delegates to conferences or assemblies of an organ, assistance is often given by the secretariat of the organization. To make this the responsibility of the host State seems to impose an unnecessary extra burden on the latter's hospitality. It is therefore proposed that the provision be reversed to the effect that the organization provides assistance and that, where necessary, it is assisted therein by the host State.

What has been stated above in respect of article 93 is also applicable to the accommodation of permanent missions and permanent observer missions (articles 23 and 66), albeit to a lesser extent, as providing for the accommodation of permanent representatives seems to require less strenuous efforts. It might, however, still be considered whether the distribution of duties in articles 23 and 66 too might not be reversed.

Article 94

28. Please refer to the comments on article 25 (see section (*b*), para. 17).

The analogy drawn by the Commission with the special missions has already been disputed in paragraph 27 above.

Articles 98, 99 and 100

29. In accordance with the views expressed in paragraph 26 above, the Netherlands Government prefers provisions limiting the immunity to acts carried out during the performance of the duties of the delegation. With reference to draft article 100, this implies the rejection of alternative A.

30. With reference to article 100, the Netherlands Government offers for consideration a supplementary provision permitting the host State to require that the representatives and members of delegations be covered by third-party insurance according to the laws of the host State, such insurance to include accidents occurring whilst on their official business. This is especially important in the case of those States where legal responsibility for damages depends on the establishment of guilt under criminal law.

31. A provision on the settlement of civil claims, such as the Commission envisages in paragraph 4 of its commentary on article 100, should be included.

Article 107

32. Please refer to the comments contained in paragraph 11 above in relation to article 59.

Article 108

33. Please refer to the Netherlands' comments on article 42 (see section (*b*), para. 26).

34. The Netherlands Government supports the notion, expressed by the Commission in paragraph 3 of its commentary, that a "reasonable time-limit" should be set in paragraph 1 on the enjoyment of the privileges and immunities. It is proposed that this should be one week before the date set for the commencement of the meeting.

Article 110

35. There is room for uncertainty about the meaning of the term "third State" in the relationship between a sending State on the one hand and an international organization on the other hand. Assuming that "third State" means any State which is neither the sending State, nor the State in which the organization has its headquarters, nor the State in which the organ is assembling or the conference is convened, the question still arises whether the provision under review also considers as "third States" States which are not members of the organization concerned. A State which becomes a party to the convention under review will not necessarily be a member of all the international organizations covered by the convention and may even be strongly opposed to some of the organizations. Would such a State nevertheless have to grant all the facilities mentioned in article 110?

36. The concluding words of paragraph 4—"and has raised no objection to it"—completely undermine the provisions contained in paragraphs 1, 2 and 3. The Netherlands Government is of the opinion that the third State ought not, in principle, to object to transit on subjective grounds. The reasons for refusing transit should be such as can be tested against an objective criterion, and this should be laid down in the article under review. If no objective criterion can be formulated for refusing transit, there seems to be little point in retaining the article.

Article 111

37. Please refer to the Netherlands comments on article 44 (see section (*b*), para. 27) and article 75 (paras. 19 and 20) above.

Article 112

38. With reference to paragraph 2, the same remark is applicable as that made above by the Netherlands Government with reference to article 45, paragraph 2 (see section (*b*), para. 28).

For paragraph 3, please refer to the observations made on article 45, paragraph 3 (see section (*b*), para. 29).

Article 115

39. It is mentioned in the commentary that the Commission wishes to make further investigations to determine whether there is need for a provision governing the obligation of the host State to allow members of a delegation to enter the country. It would seem that this obligation already follows from articles 22 and 92, so that there is no need for a separate provision.

New Zealand

PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY "NOTE VERBALE" DATED 20 JANUARY 1971 FROM THE PERMANENT MISSION TO THE UNITED NATIONS

[*Original text: English*]

The Government of New Zealand wishes to reiterate the views expressed by its representative in the Sixth Committee on 8 October 1970 [1] on *article 83* of the International Law Commission's draft articles on representatives of States to international organizations.

Article 83 lays down a general rule that a delegation to an organ or conference may represent only one State. This article has to be read subject to articles 3, 4, 5, 79 and 80, which collectively ensure that the general rule it lays down does not in any way affect the relevant existing rules of international organizations or conferences nor preclude international organizations or conferences from adopting a different rule in the future. The rule in article 83 is therefore of a residual character only. The Government of New Zealand is nevertheless of the view that the rule is unnecessary and undesirable. It would prefer that the question of whether a delegation to an organ or conference should be permitted to represent more than one State should be left to be decided specifically by that organ or conference.

The Government of New Zealand has a particular interest in this question because under article V (*b*) of the Treaty of Friendship between New Zealand and Western Samoa concluded in 1962 [2] it is provided that, when requested, and where permissible and appropriate the Government of New Zealand will represent the Government of Western Samoa at any international conference at which Western Samoa is entitled to be represented. In pursuance of this provision New Zealand has over the past eight years represented the Government of Western Samoa at its request on a number of occasions. In addition to this formalized arrangement which gives New Zealand a special interest in this question of dual representation, the Government of New Zealand is concerned that a number of other small States and territories in the South-West Pacific might well wish, for financial reasons, to have single delegations representing more than one State at a particular conference or conferences of interest to them. It would be unfortunate, therefore, in New Zealand's view if, as a result of the inclusion of article 83, the principle of single representation were to govern all situations where rules of procedure of the organ or conference do not provide otherwise. The Government of New Zealand would prefer that the Commission included no rule on this matter in its final text.

The Government of New Zealand has consulted on this question with the Government of Western Samoa which has requested that the International Law Commission be informed that it wishes to be associated with the observations of the Government of New Zealand on this article.

Pakistan

PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY "NOTE VERBALE" DATED 15 JANUARY 1971 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

The Government of Pakistan is pleased to note the progress achieved by the International Law Commission in the formulation of draft articles on representatives of States to international organizations. In general, the practical approach which has been adopted seems to be adequate to present needs. Particular satisfaction is felt at the consideration given by the International Law Commission on the legal status, privileges and immunities of permanent observers of non-member States to international organizations. It is noted that the progress on the subject is the consequence of the conscientious preparatory work which has been undertaken by the present Special Rapporteur on the topic and the Government of Pakistan is happy to express its appreciation of his work.

The following specific observations are put forward:

1. The Government of Pakistan feels that it is necessary to provide a legal basis for permanent observer missions hitherto regulated by practice. The questions dealt with in this set of draft articles are of particular interest to newly independent States which still lack an extensive network of embassies.

2. The Government of Pakistan is of the opinion that permanent observers, being representatives of non-member States, 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. In view of this, the Government of Pakistan endorses the approach taken by the Special Rapporteur that permanent observers may simply address a letter to the Secretary-General in conformity with the current United Nations practice instead of presenting credentials.

3. The Government of Pakistan is of the opinion that draft *article 56* correctly recognizes the right of the sending State to choose the members of its permanent observer mission from among nationals of third States possessing the required training and experience. The highly technical character of some international organizations makes it desirable not to restrict unduly the freedom of choice of States, especially in the case of developing countries.

4. The Government of Pakistan fears that the provision in draft *article 63*, paragraph 2, under which the sending State may not establish offices of the permanent observer mission in the territory of a State other than the host State, may cause hardship to newly independent States.

5. The Government of Pakistan is of the opinion that the International Law Commission rightly recognized the correct position in draft *article 83*. This article is based on the general practice at conferences convened under the auspices of the United Nations.

6. The Government of Pakistan would like to point out that it attaches great importance to the inviolability of the premises where a delegation to an organ or to a conference is established. It expresses its concern in respect of the last sentence of paragraph 1 of draft *article 94* where it is provided that in case of fire or other disaster, the agent of the host State may enter the said premises. The Government believes that the inviolability should be strictly maintained and no relaxation should be allowed without express consent.

[1] *Official Records of the General Assembly, Twenty-fifth Session, Sixth Committee*, 1193rd meeting.

[2] United Nations, *Treaty Series*, vol. 453, p. 3.

7. The Government of Pakistan is in favour of alternative B of draft *article 100* which deals with immunity from jurisdiction.

Poland

PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS TRANSMITTED BY "NOTE VERBALE" DATED 9 JANUARY 1971 FROM THE PERMANENT MISSION TOTHE UNITED NATIONS

[*Original text: English*]

The Government of the Polish People's Republic welcomes with satisfaction the progress made by the International Law Commission in the elaboration of the draft articles on relations between States and international organizations. The codification of this branch of international law will certainly contribute to the creation of better conditions for the fulfilment by the representatives of States of their functions related to the activities of international organizations and thus it will contribute to the attainment of goals of the organizations concerned.

Part III of the draft pertaining to permanent observer missions to international organizations is of considerable importance. The unification of practice existing in this field and the foundation of such practice on a solid legal basis can and should solve the difficulties existing in this respect and make possible the extension of the scope of co-operation through international organizations.

All States should be enabled, if they wish to do so, to co-operate with the universal international organizations, and in particular with the United Nations. This will be of benefit both to the States concerned and to the organizations themselves. It is worth mentioning that numerous provisions of the Charter of the United Nations, as well as many resolutions of the United Nations organs are addressed to States in general, and not only to Member States. The attainment of the purposes of the United Nations requires, therefore, that all States willing to co-operate with the Organization should be permitted to contribute to the efforts undertaken by the United Nations. Unjustified and inadmissible is the practice under which only certain States have been allowed to establish permanent observer missions to the United Nations, while some other States, which are able and willing to co-operate with the United Nations (e.g. the German Democratic Republic) are prevented from establishing such missions.

The principle expressed in *article 52* of the draft, according to which any non-member State may establish a permanent observer mission to an international organization of universal character, should be applied equally to all non-member States. It should be made absolutely clear that the rules or practice applied in an organization cannot lead to any discrimination whatsoever in the treatment of individual States. Such a discrimination would be incompatible with the principle of sovereign equality of States and the principle contained in article 75 of the draft.

It is to be hoped that the articles on permanent observer missions will serve in the future as a solid ground for the establishment of permanent observer missions to the United Nations and, as appropriate, to other international organizations of universal character by those States which are not willing, because of the scarcity of their human or material resources, to assume the burden of responsibilities arising out of a full membership. Permanent observer missions would enable those States to benefit from co-operation with the universal international organizations and to contribute to the attainment of the aims of those organizations.

As to part IV of the draft articles concerning delegations of States to organs and to conferences, the Government of the Polish People's Republic is of the opinion that the codification of these matters should primarily aim at systematizing the existing rules and filling the existing gaps. The Government of the Polish People's Republic will support such solutions as will afford delegates of States to organs and to conferences the best possible conditions necessary for the performance of their functions.

Spain

OBSERVATIONS COMMUNICATED BY LETTER DATED 23 JUNE 1971 FROM THE PERMANENT MISSION TO THE UNITED NATIONS

[*Original text: Spanish*]

General observations

(*a*) The draft articles set out to regulate the relations between States and international organizations in their entirety: that is to say, not only the relations arising between the States members of the organization and the organization itself, but also the relations arising, though not always in a direct form, between those States and the organization's host State.

From this point of view it is doubtful whether the draft articles, in their present form, afford an adequate guarantee of the interests at stake in the diplomacy carried on in international organizations. That is the position if we bear in mind the characteristics which distinguish this form of diplomacy from traditional bilateral diplomacy.

The law which regulates bilateral diplomatic relations seeks to protect the two mutually complementary interests at stake: the sending State's interest in the unfettered performance of a series of functions in relation to the receiving State, and the receiving State's interest that there should be no abuse or over-stepping of authority in the performance of those functions in relation to itself.

With these two complementary aims in view, international law has prescribed a set of advantages which the receiving State grant to the sending State and a set of safeguards against any abuse is the performance of functions. These safeguards are aplied by then receiving State directly and immediately in relation to and against the sending State; they are the declaration of *persona non grata*, refusal to permit the performance of functions not sanctioned by general international law, and reciprocity.

In contrast, the diplomacy carried on in international organizations involves a number of interests which are neither complementary nor related to one another. On one side is the sending State's interest in freely performing a series of functions within the organization together with its member States. The free performance of those functions has to be guaranteed by the host State, although the functions are not performed in relation to it and it may not maintain bilateral relations with the sending State, or even recognize the latter as a State or acknowledge its Government. The safeguards which are available to the sending State and to the host State are not of direct or immediate application.

In the draft articles under discussion, the guarantees which exist in bilateral diplomacy by virtue of its very nature have not been included because they are inoperative. The guarantees laid down in articles 44, 45 and 50 seem on the whole to have less force than can be ascribed to those embodied in the international law of traditional diplomacy.

(*b*) The approach made in the draft articles—that of following the 1961 Vienna Convention on Diplomatic Relations as closely as possible in defining the advantages of permanent missions and their members—is an acceptable one. In principle, agents who perform a diplomatic function permanently should not differ substantially in status according to whether they perform that function in bilateral diplomacy or in an international organization.

It is therefore considered that the draft articles should indeed keep as closely as possible to the 1961 Vienna Convention in enumerating the diplomatic advantages of missions and their members.

There is no doubt that the 1961 Convention has already begun to show its flaws and omissions. However, no attempt should be made in the draft articles to remedy those defects unless they are fundamental and obvious; in this way it will be possible to avoid creating any basic difference between the status conferred on permanent missions and that of traditional diplomatic missions.

Any differences that may appear in the draft articles in the matter of advantages should be dictated solely by the *sui generis* position of the host State in granting those advantages—a position which is radically different from that of the receiving State in bilateral diplomacy.

Specific observations

Article 1

It is assumed that the words "For the purposes of the present articles" will be amended to read "For the purposes of the present Convention" if the Commission's draft articles take shape as a convention. That was the case with the 1961 Vienna Convention on Diplomatic Relations and the 1969 Convention on Special Missions.

Subparagraph (a)

Since the draft is intended for a convention on representatives of States to international organizations, a more precise definition of the term "international organization" would be desirable. Merely to define it as an "intergovernmental organization" may have been adequate in the context of the 1969 Vienna Convention on the Law of Treaties, whose scope excludes treaties concluded with international organizations, but it is insufficient in the present draft. For this purpose the definition proposed by the Special Rapporteur in his third report—"an association of States established by treaty, possessing a constitution and common organs, and having a legal personality distinct from that of the member States" [1]—seems more satisfactory, possibly with the words "a legal personality" expanded to read "an international legal personality".

Subparagraph (b)

The definition of an "international organization of universal character" which is given raises a series of difficult political problems. If the draft articles did not deal with the legal status of international organizations, those problems could be avoided or minimized; if, on the other hand, the articles were made into a comprehensive instrument which dealt with that subject along with the rest, the political problems involved might become acute, making this subparagraph one of those most likely to complicate the progress of discussion on the draft. In addition the question arises whether it is really sound to confine the scope of the convention to international organizations of universal character.

Subparagraph (d)

It is a generally accepted principle that the word defined should not appear in the definition. A more satisfactory definition should therefore be sought.

Subparagraph (h)

The wording of this subparagraph exhibits a defect which was present in the 1961 Vienna Convention, but which is more serious in the present draft articles: namely, the lack of a definition of "diplomatic status".

In bilateral diplomacy, the international legal status of diplomat is acquired as a result of two wills: the will of the sending State that a person shall have that status, and the will of the receiving State to accept the person in that status. It is the meeting of these two wills which determines the attribution of the international status of diplomat to a particular person.

In the diplomacy carried on in international organizations, on the other hand, the international legal status of diplomat is acquired solely through the will of the sending State to attribute that status to the person concerned. In diplomatic practice, the organization does not make any expression of will to accept that status; consequently the status is not the result of a meeting of wills but the consequence of a single will.

The use in the 1961 Convention and in the draft articles of the same wording [2] to indicate those persons who acquire diplomatic status may give the impression that the diplomatic status is the same in both cases. It would therefore be useful to insert some indication of the particular nature of the acquisition of diplomatic status by the persons to whom the draft articles are to apply.

Such an explanation of what is meant by the word "diplomatic" is more of a necessity in the draft articles than in the 1961 Convention; that Convention did no more than codify the practice of centuries, whereas the draft articles in preparation will of necessity break new ground in many of their provisions.

Furthermore it would be desirable to include the head of the permanent mission among the members of the diplomatic staff, as was done in the 1961 Convention. This would make it possible to simplify considerably the wording of the articles concerning privileges and immunities, which apply equally to the permanent representative and to the other members of the diplomatic staff of the mission. The subparagraph would then read as follows:

"The 'members of the diplomatic staff' are the permanent representative and the members of the staff of the permanent mission, including experts and advisers, who have diplomatic status."

Subparagraph (j)

No reason is given for the change in the wording of this subparagraph from that of the corresponding provision of the 1961 Convention. Although the present text is consistent with that of the Convention on Special Missions, the definition given in the Convention on Diplomatic Relations seems more appropriate.

Article 2

The wording of paragraph 2 is somewhat inapt; either a simpler and more intelligible text should be found, or the paragraph should be deleted as redundant. Non-universal organizations can make use of the provisions of the Convention without it being necessary to say as much in the text. In a sense this paragraph tacitly acknowledges that it may have been a mistake to exclude non-universal international organizations from the scope of the draft articles.

Article 5

After perusal of this article it is not clear what purpose the draft is intended to serve. Under this article it would be possible to conclude a treaty laying down less favourable provisions that those of the draft articles. This implies the admission that the provisions of the draft may not be strictly necessary for the satisfactory conduct of relations between States and international organizations: in other words, that those provisions are not dictated by functional requirements as in the case of the existing conventions on diplomatic matters. It would therefore seem more appropriate to word the article along the lines of article 73, paragraph 2, of the 1963 Vienna Convention on Consular Relations.

[1] *Yearbook of the International Law Commission, 1968*, vol. II, p. 124, document A/CN.4/203 and Add.1–5, chap. II, article 1 (*a*).

[2] n.b. the expression "diplomatic rank" in article 1, subparagraph (*d*), of the 1961 Vienna Convention on Diplomatic Relations and the expression "diplomatic status" in article 1, subparagraph (*h*), of the draft articles on representatives of States to international organizations are alike rendered by "la calidad de diplomático" in the Spanish text.

Article 6

The inference from the present wording of this article is that the establishment of permanent missions is a discretionary right of the States members of the organization which could be exercized even against the organization's express wishes. Moreover the reference to article 7, which contains a non-exhaustive list of the functions of a permanent mission ("consist *inter alia* in . . ."), might imply that the permanent mission could perform no functions other than those enumerated in that list.

It would therefore seem more appropriate to use a form of words on the following lines:

"To the extent prescribed by the relevant rules or the practice of the Organization, member States may establish permanent missions to the Organization for the performance of their functions."

Article 7

This article represents perhaps the fundamental point of the draft articles, for it must be remembered that all diplomatic law centres on the performance of a function. Its wording probably presents greater difficulties than did that of the corresponding article of the 1961 Vienna Convention. Whereas for the latter the International Law Commission was able to draw on an ample supply of learned commentaries and the diplomatic practice of centuries, both of these are lacking in the case of diplomatic functions performed in international organizations.

Subparagraph (a)

There is a contradiction between the wording of this subparagraph ("Representing the sending State *in* the Organization") and the definition of a permanent mission given in article 1, subparagraph (*d*) ("a mission of representative and permanent character sent by a State member of an international organization *to* the Organization"). It would seem more correct to use the preposition "to", as more in keeping with the notion of the international legal personality of international organizations (with its concomitant right to send and receive legations) and with the terminology of the draft articles.

Subparagraph (b)

The function of liaison referred to in this subparagraph is not a separate function in itself. Liaison activities are merely a consequence of the function of representation. The subparagraph should therefore be deleted.

Subparagraph (c)

In order to maintain consistency with the corresponding provision of the 1961 Vienna Convention, the word "Negotiating" should be used instead of the words "Carrying on negotiations".

Subparagraph (d)

"Ascertaining activities" is not, strictly speaking, a function but a means of duly performing the function of reporting, since it would clearly be difficult to make a report without ascertaining the facts. This inaccuracy, which originates from the Convention on Diplomatic Relations and reappeared in the Convention on Consular Relations, may be difficult to correct.

Furthermore the permanent mission also has certain reporting duties to the organization in connexion with the latter's aims and programmes.

Subparagraph (e)

The inclusion in the 1961 Vienna Convention of a function of promoting international co-operation does not seem sound, for no such diplomatic function exists. What does exist in the present state of organization of the international community is the principle that it is necessary to co-operate in promoting international peace, a principle which should inspire the performance of diplomatic functions in both bilateral and multilateral relations. Thus the existence of a function of promoting co-operation, as specified in this subparagraph, is open to question. It is more a matter of a principle which should guide the performance of the diplomatic functions of a State in an international organization.

On the other hand there does appear to be one separate function which is not mentioned in the draft article. This consists in the performance of particular activities in pursuit of the aims of the organization: in other words, the functions which are performed by the members of a permanent mission as members of committees or other organs of the organization, and which are not a direct expression of the interests of the State that those persons represent. Thus there seems to be a function of realizing the aims and purposes of the Organization. The International Law Commission should consider how best to describe the activities mentioned.

Lastly, there seems to be no justification for departing from the list given in article 3 of the 1961 Vienna Convention by excluding all reference to the function of protection. Admittedly the function of diplomatic protection, in the strict technical sense of procedural action governed by international law to protect the interest of the State or of its nationals, is not fully operative in international organizations. However, although—as the International Court of Justice has acknowledged—an international organization may, as a subject of international law, perform a protective function and claim that a State is internationally liable for damage caused to the organization's officials, the organization itself may also cause damage to States or private individuals and be the defendant in an international claim. Accordingly a permanent mission can and should also perform a function of protection against the organization in respect of any damage which the organization may cause to the sending State or to its nationals. The International Law Commission should give its attention to this point as well.

Article 9

Paragraphs 1 and 2 might be combined into a single paragraph reading: "A member of the permanent mission of a State may. . .", since, under the definition given in article 1, subparagraph (*f*), the "members of the permanent mission" include the permanent representative.

Moreover this article does not correspond fully to article 5, paragraph 3, of the 1961 Vienna Convention; the latter requires that the person with double accreditation should be a member of the diplomatic staff, whereas under the draft articles a member of the administrative and technical staff or even of the service staff [see the definition given in article 1, subparagraph (*g*)] may be doubly accredited. In order to preserve the parallelism between the provisions of the two Conventions, it might perhaps be appropriate to amend the words "A member of the staff of a permanent mission" to read "A member of the diplomatic staff of a permanent mission". In this case too, the paragraphs 1 and 2 of the present article could be combined into a single paragraph provided that the definition proposed for article 1, subparagraph (*h*), was accepted. The paragraph would then begin as follows: "A member of the diplomatic staff of a permanent mission of a State may . . .".

Article 12

The decision who is to issue the credentials of the permanent representative of a State lies within the competence of that State; the present text could be taken as interference in its domestic affairs, particularly since there are no similar provisions in the 1961 Vienna Convention.

It would therefore seem more appropriate to word the article as follows:

"The credentials of the permanent representative shall be issued in accordance with the internal rules of each State and the practice of the Organization and shall be transmitted to the competent organ of the Organization."

Furthermore the question may be asked whether the credentials should not be "submitted" instead of being "transmitted".

Article 13

As indicated in paragraph 7 of the International Law Commission's commentary, there is room for doubt as to the interpretation which might be placed upon the present wording of the article with regard to its scope. The wording given in that paragraph seems clearer and sounder. In any case the terminology should be made consistent, since the title speaks of "accreditation to" and the text speaks of *representation in.*

Article 14

It is open to question whether this article is really necessary and whether it would not be better to leave it for inclusion in the draft convention on treaties with international organizations.

Article 16

It would be desirable to establish some kind of safeguard, however limited, for the host State in the event of non-compliance by the sending State with the provisions of this article. In this connexion, attention is drawn to the opinion expressed in paragraph 8 of the commentary. In any event it is doubtful whether the system of consultations provided for in article 50 is in itself a sufficient guarantee.

Article 19

In establishing an order of precedence, the article speaks only of permanent representatives and does not mention chargés d'affaires. For the latter, either of the following two rules might be adopted: that they should take the position which falls to the permanent representative whom they are replacing, or that they should be placed after permanent representatives. The second alternative seems the more appropriate. It might be desirable to deal with this point in the article, although there is no parallel rule in the 1961 Vienna Convention.

Article 23

In the first line of paragraph 1, the word "either" should be deleted.

Article 25

Paragraph 5 of the commentary undoubtedly makes some valid points.

The third sentence in paragraph 1 of the article does not appear in the corresponding article of the 1961 Vienna Convention, although it does in the 1969 Convention on Special Missions.

The omission of that sentence from the 1961 Vienna Convention—which has been criticized by a considerable body of juristic opinion—means that there would be an important difference between bilateral diplomacy and diplomacy in international organizations. This difference would give rise to difficult problems where the premises of the permanent mission were located within the premises of a diplomatic mission.

In any case, the words "or, in his absence, of another member of the diplomatic staff of the permanent mission" should be added at the end of paragraph 1.

Article 26

Paragraph 3 of the commentary states an undoubted fact. However, any attempt to correct the inequality in question would create a fundamental difference between the 1961 Vienna Convention and the draft articles. At all events, if the Commission does manage to incorporate in the article the element of progressive development referred to in the commentary and in due course the text is approved, it would be desirable to add a parallel rule to the 1961 Convention.

Article 28

The phrase which has been added to the wording taken from the 1961 Vienna Convention should be retained for the reasons given in paragraph 2 of the commentary.

Article 29

Those phrases of this article which, as pointed out in paragraph 4 of the commentary, have been added to the wording taken from the corresponding article of the 1961 Convention should be deleted. In point of fact the additions are unnecessary, since the expression "diplomatic mission" can have a general meaning in addition to the specific meaning it has in the context of traditional bilateral diplomacy. The added words introduce an unwarranted difference between the draft articles and the 1961 Vienna Convention. Furthermore, if the text of article 27, paragraph 1, of the 1961 Convention is to be followed verbatim, there is no clear reason for replacing the word *radiquen* by the words *se encuentren* in the Spanish text.

Again it is not clear why the expression "diplomatic bag" should not be used when in fact the bag has diplomatic status. The confusion referred to in paragraph 6 of the commentary could be avoided by speaking of the "diplomatic bag of the permanent mission". Moreover it should be remembered that article 1 does not hesitate to describe persons who have diplomatic status as "members of the diplomatic staff", in the same terms as are used in the 1961 Convention, even though they differ from the diplomatic agents of traditional missions.

The same may be said of the deletion of the adjective "diplomatic" to describe couriers.

Article 30 et seq.

If the proposed definition of "members of the diplomatic staff" as including the permanent representative is accepted, the formulation of these articles can be simplified.

Article 32

Paragraph 1, subparagraph (*d*), of this article does not appear in the corresponding article of the 1961 Vienna Convention. In the general terms in which it is expressed, it embodies an extremely dangerous principle. An exception to immunity for traffic accidents should be allowed solely where a diplomat who is under a duty to be covered by adequate insurance is not so covered through his own fault or negligence. Where this is not the case the immunity should be maintained, particularly if approval is given to article 34 of the draft, which prescribes a waiver of immunity in certain circumstances.

To make an exception to immunity in the case mentioned means laying down a principle which could be dangerous. An accident can easily be engineered or even simulated, particularly where, as in the subparagraph in question, the damage referred to is not confined to personal injury but also includes material damage. This could be an easy means of attacking the independence and inviolability of the diplomat through civil claims for damages for which there might be no basis in reality. This is a matter to which the International Law Commission should give more attention, considering that various countries are gradually increasing the penalties for causing traffic accidents.

Article 34

Neither the 1961 Vienna Convention nor the 1969 Convention on Special Missions contains a rule similar to the one laid down in this article. Such a rule was expressly excluded from both Conventions, having met with strong opposition from various States. Although the opposition probably still exists, there seem to be stronger reasons

why the rule laid down in this article should be included in the present draft; a particular reason is the special situation of the host State. Article 34 could be an important guarantee and safeguard for the host State in its peculiar situation in relation to States members of the organization.

Article 35

Paragraph 3 of the commentary appears to refer only to paragraph 5 of the article. If so, consideration might be given to the deletion of paragraph 5. A case could nevertheless be made for keeping that paragraph in the interests of closer consistency with the 1961 Convention.

Article 38

If this article is intended to reproduce article 36 of the 1961 Convention verbatim, there seems to be no reason to alter the Spanish text of paragraph 1 by replacing the word *de* by the words *por lo que respecta a.*

Article 43

In view of paragraph 4 of the commentary, it seems advisable to leave the wording of the article as it now stands in the draft.

Article 44

The use of the phrase "of the present articles" might suggest that the article refers solely to section 2 of the draft. Consequently, if the draft articles become a convention, this phrase will have to be amended to read "of the present Convention". The statements made in paragraphs 6 and 7 of the commentary do not suffice to dispel the ambiguity.

Article 45

Paragraph 2 of this article is not carried to its logical conclusion, since no provision is made for action by the host State in the event that the sending State refuses to waive the immunity of or to recall the official who has gravely violated the criminal law of the host State. The consultation procedure laid down in article 50 may not be sufficient.

Article 47

This article does not seem very aptly worded in that it lumps together the end of the functions of the diplomatic staff of a permanent mission with the final or temporary end of the mission's own existence. No such confusion arises in article 43 of the 1961 Convention.

Article 48

The introduction of the phrase "in case of emergency", which does not appear in article 44 of the 1961 Convention, would seem to be justified but there seems to be less justification for the requirement of a prior request, which could give rise to prevarication or excuses. The host State should always be prepared to grant facilities to members of permanent missions, whether requested to do so or not.

Article 50

The International Law Commission should carefully consider whether the consultations provided for in this article afford a proper safeguard for the interests of the sending States and of the host State respectively: that is to say, the interest of the sending States that the permanent missions should be able to perform their functions with sufficient independence and freedom, and the interest of the host State that there should be no abuses either in the performance of those functions or in the enjoyment of diplomatic privileges.

Sweden

(*a*) PART I AND SECTION 1 OF PART II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 1 SEPTEMBER 1969 FROM THE ROYAL MINISTRY OF FOREIGN AFFAIRS

[*Original text: English*]

General remarks

1. In view of the diversity of the purposes and functions of international organizations, the Swedish Government considers that a code intended to serve as a standard and a model for future international agreements would be more appropriate than a convention for the purpose of laying down general rules concerning the establishment and status of permanent missions to such organizations. In all likelihood, specific agreements will continue to be needed on the matters dealt with in the draft articles. Given the form of code, the articles would be useful by providing a basis for such agreements. On the other hand, general rules adopted in the form of a convention, even though they would be of a residuary character as provided in articles 3-5, would probably make special arrangements more difficult to achieve in practice, once these rules have been generally accepted and become binding on the States.

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

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

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

Observations on particular articles

Article 1

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

that a permanent mission should represent the sending State, this could of course be stated in more direct terms, and it is in fact clearly stated in article 7.

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

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

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

Article 9

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

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

Article 14

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

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

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

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

Article 18

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

(*b*) SECTION 2 OF PART II OF THE PROVISIONAL DRAFT

PRELIMINARY OBSERVATIONS COMMUNICATED BY LETTER DATED 17 DECEMBER 1970 FROM THE ACTING HEAD OF THE LEGAL DEPARTMENT OF THE ROYAL MINISTRY FOR FOREIGN AFFAIRS

[*Original text: English*]

Article 22

Some of the draft articles purport to impose obligations on the organization concerned, In paragraph 2 of the commentary to article 22, the question is raised whether it is desirable that the obligations of international organizations should be stated in the draft articles. The question apparently needs further consideration. According to article 3,

> "the application of the present articles is without prejudice to any relevant rules of the Organization".

Paragraph 5 of the commentary to article 3 states that

> "the expression 'relevant rules [. . .]' is broad enough to include all relevant rules whatever their source: constituent instruments, resolutions of the organization concerned or the practice prevailing in that organization".

In such circumstances it becomes somewhat questionable to speak of "obligations". It seems that they could be invalidated simply by unilateral action—resolutions, practice—taken by the organization.

Article 26

In paragraph 3 of the commentary to this article attention is drawn to

> "the inequality resulting from the provisions of paragraph 2 as between a State that was able to buy property to house its mission, or the mission staff, and a State which found itself obliged to lease premises for the same purpose".

The Commission would like to receive the views of Governments on the matter.

Paragraph 2 of this article provides that exemption from taxation in respect of mission premises does not apply to dues and taxes payable by persons contracting with the sending State. The inequality mentioned would, therefore, seem to be that premises owned by the sending State are not subject to taxation, while rented premises may be subject to taxes which are in law payable by the private owner but which in fact are charged to the sending State by being included in the rent.

In the case of a special tax on rents it would probably be rather simple technically to exempt from such a tax rents paid for mission

premises. Exemption from property tax based on a periodical evaluation of the property would be a more complicated matter, in particular if the mission premises are only part of the property. With respect to income taxes, it would hardly seem desirable to allow the owner to deduct from his income rent paid for mission premises. It may be doubted that the inequality referred to is grave enough to justify imposing on the receiving States tax exemptions which may cause both technical and political difficulties. Moreover, it is far from certain that the sending State and not the owner would in fact be the beneficiary of such exemptions.

Article 32

In paragraph 4 of the commentary, the views of Government are requested on paragraph 1 (*d*) which is placed within brackets because agreement on this provision could not be reached by the Commission.

Paragraph 1 (*d*) provides, in its context, that the immunity from civil and administrative jurisdiction does not cover "An action for damages arising out of an accident caused by a vehicle used outside the official functions of the person in question".

The Swedish Government is in favour of a provision along these lines. There is undoubtedly a growing tendency, based on public opinion, to limit the immunity in the case of traffic accidents, a tendency which has found expression *inter alia* in the report of the Council of Europe on the privileges and immunities of international organizations.[1] It is true that a corresponding provision was not included in the 1961 Vienna Convention on Diplomatic Relations, but this can hardly be a decisive argument. The Convention and the draft articles are not quite comparable in this respect. The Convention deals with immunities accorded by a receiving State, the draft articles with immunities accorded by a host State, and the problems caused by immunities may well be much greater in the latter than in the former State. Furthermore, as pointed out, opinions have developed since 1961 in the direction of restricting immunity from jurisdiction, particularly in traffic cases. In the words of paragraph 3 of the Commission's commentary on article 26 "an element of progressive development" should also, according to the Swedish view, be incorporated in article 32.

Article 35

The Commission states in paragraph 3 of its commentary that it "intends to consider, in the light of the comments to be received from Governments, whether paragraph 5 is necessary in view of the provisions of articles 4 and 5 of the present draft".

Since the general provisions in articles 4 and 5 apparently cover the special provision in paragraph 5 of article 35, that paragraph could accordingly be omitted.

Article 36

The Commission wishes to learn whether Governments have met practical difficulties in applying paragraph (*f*) because "it states an exception to a rule which is itself an exception" (paragraph 5 of the commentary).

The Swedish Government is not aware of any such difficulty.

Article 42

The Commission invites the views of Governments as to whether it is desirable to include a provision regarding the commencement and termination of entitlement for persons who do not enjoy privileges and immunities in their official capacity. It is noted by the Commission that the 1961 Vienna Convention on Diplomatic Relations does not contain any specific provision on the question, whereas the 1963 Vienna Convention on Consular Relations does so in its article 53.

Prima facie it would seem preferable to have a special provision on the matter. The fact that the more recent of the two Conventions contains such a provision might perhaps also be taken as an indication that experience has shown it to be desirable.

Article 43

The immunities to be accorded by a third State under this article are made dependent on the condition that the person enjoying them was granted by that State "a passport visa if such visa was necessary". During the discussion in the Commission the question was raised of deleting that condition, and arguments were presented for and against the requirement of a visa.

A case could be made for the omission of the said requirement, in the cases where the transit country is a member of the organization. It is questionable, however, whether this would be realistic. States may not wish to dispense with their option of requiring transit visa as a condition for an obligation to guarantee unimpeded and inviolable transit.

Article 45

According to paragraph 3 of the commentary, paragraph 2 of the article is intended

> "to ensure the protection of the host State in the event of a grave and manifest breach of its criminal law by a person enjoying immunity from criminal jurisdiction in the absence of the *persona non grata* procedure in the context of relations between States and international organizations".

It is open to doubt whether paragraph 2 would fulfil that expectation. Several questions may be raised such as: What happens if the host State asserts and the sending State denies that the person has committed a "grave and manifest violation of the criminal law of the host State"? Does the person have to leave or could he stay? Is it reasonable to provide that only in case of grave and manifest violation of the criminal law the host State is entitled to demand his recall? What will happen if the person concerned, in violation of paragraph 1 of article 45, makes political propaganda involving the host State or, in violation of article 46, exercises a professional or commercial activity? Are those provisions without a sanction? Furthermore, is it really desirable that the recall provisions should not apply "in the case of any act that the person concerned performed in carrying out the functions of the permanent mission within either the Organization or the premises of a permanent mission"? It is one thing that he should not be prosecuted, but it is another matter whether there should not be the sanction of recall. It can hardly be in the interest of the organization concerned that a person who has committed a serious crime in exercising his functions—if such a situation is at all conceivable—should continue to serve as a member of a permanent mission. It is difficult, moreover, to imagine that the activities of the mission would be seriously disturbed by such a person being recalled.

(*c*) PARTS III AND IV OF THE PROVISIONAL DRAFT

PRELIMINARY OBSERVATIONS COMMUNICATED BY LETTER DATED 23 MARCH 1971 FROM THE ROYAL MINISTRY FOR FOREIGN AFFAIRS

[*Original text: English*]

PART III.— Permanent observer missions to international organizations

Article 51

Three of the articles drafted so far deal with the "use of terms", namely articles 1, 51 and 78. As stated in its commentaries to articles

[1] Council of Europe, *Privileges and immunities of international organizations: Resolution (69)29 adopted by the Committee of Ministers of the Council of Europe on 26 September 1969, and Explanatory Report* (Strasbourg, 1970).

51 and 78, the Commission will at the second reading review all these articles together with article 2 on the "scope of the articles" in order to co-ordinate them and make such adjustments as may be necessary.

It may be useful in that connexion to point out that, while according to article 1 subparagraph (*a*), an "international organization" means "an intergovernmental organization", it seems obvious, in view of article 2 which limits the scope of the articles to "international organizations of universal character", that when the term "international organization" is used in the substantive articles of the draft, it is in fact intended to mean not only that the organization should be intergovernmental as indicated in the definition in article 1, but also universal in character, as indicated in article 2. It is suggested that this point should be made clearer.

Besides this problem of drafting, the question might perhaps be further examined whether the universal—in contradistinction to regional—character of an organization should be the criterion for the applicability of the draft articles to that organization. The elaborate provisions drafted by the Commission and the substantial privileges and immunities accorded in the draft seem to presuppose that the draft articles are intended to apply only in the case of organizations of considerable importance. It is doubtful whether the importance of an organization can be measured simply by the geographical extension of its membership or responsibilities. Indeed, regional organizations may be found which are far more important than some organizations of "universal character". From that point of view it might be prudent not to take a final decision regarding the scope of the articles until the Commission has taken up and studied in depth the status of the organizations themselves.

In any case, the present definition of an international organization of universal character as an "organization whose membership and responsibilities are on a world-wide scale" is hardly precise enough and should be given further consideration.

Finally, attention is drawn to the observations previously made by Sweden regarding article 1 on the use of terms (see section (*a*) above).

Article 52

In the Swedish general remarks on the first twenty-one articles of the draft it is stated:

> "The establishment of permanent mission by members of an international organization is, in principle, a matter for arrangement between the organization concerned, or its members, and the host State. Only on the basis of a special agreement between these parties can a State member of an organization claim a right to establish a permanent mission to the organization."

This principle applies, *a fortiori*, to the establishment of a permanent observer mission by a non-member State. Article 52 therefore seems unacceptable. There is no valid reason why the articles alone should create a right, even if residuary, for non-member States to be represented at the organization. The article ought to be omitted or replaced by an article to the effect that the establishment of a permanent observer mission is left to agreement between the interested parties. Such an agreement would not necessarily have to be explicit but could also result from practice between the parties.

Article 53

If the establishment of permanent observer missions were left to agreement between the interested parties, this article, too, could be omitted or could be revised so as to make reference to the agreements between the parties. The functions of a mission would be specified in each case by the agreement, whether explicit or developed by practice.

Articles 54-77 (in general)

Sweden would prefer that these articles also be omitted and the substance of them left to be settled by explicit agreement or by practice. If it is felt that the articles should contain some reference to permanent observer missions, it seems sufficient to draft an article stating generally that in case there exist permanent observer missions at an organization, these missions should enjoy such facilities, privileges and immunities as are necessary for the fulfilment of their functions.

Regarding some of the articles in particular, the following observations are submitted.

Articles 55, 56 and 60

These articles confer upon the sending State wide discretionary powers regarding the appointment of members of a permanent observer mission. The International Law Commission has in fact applied to observer missions the substance of the corresponding rules concerning permanent missions of members States. This is hardly justified. There is a considerable difference between a State having the rights and duties of membership and taking part in the activity of the organization and an outside State, however great its interest may be in following the work of the organization. If a non-member State wishes to have a permanent mission at an organization, it would seem reasonable that the size and composition of such a mission should be matters to be agreed upon by the sending State, the organization and the host State. This view is strengthened by the fact that in this field there exists no *persona non grata* procedure.

Article 62

The Swedish observations on article 18 (reproduced above) apply.

Article 65-75

In the Commission's commentary to article 65 it is stated:

> "Article 65 reproduces the provisions of article 22 except as regards the words 'full facilities', which have been replaced by the words 'facilities required' in the first sentence. In introducing this change, the Commission has sought to reflect the difference, both in nature and scope, between the functions, obligations and needs of permanent missions, on the one hand, and those of permanent observer missions, on the other, which makes it unnecessary for the latter to be given the same facilities as the former."

In view of this emphatic pronouncement on the difference between the functions and needs of permanent missions and those of permanent observer missions, it is surprising that in the following articles of this section, the Commission has chosen without stating the reasons for such a decision to apply to permanent observer missions the corresponding articles on permanent missions.

It is hoped that the Commission, if it considers that the section on facilities, privileges and immunities of permanent observer missions should be retained, will at the second reading re-examine the section in the light of the passage quoted above.

Article 76

The Swedish observations on article 45 (reproduced above) apply *a fortiori* with respect to observer missions.

PART IV.—Delegations of States to organs and to conferences

General remarks

The subject-matter of part IV would be better indicated if, in the title, the word "organs" were replaced by the words "meetings of organs" or "sessions of organs". Part IV is in fact concerned with delegations to meetings, sessions or conferences of limited duration in contradistinction to the permanent missions dealt with in parts II and III.

However, it is far from evident that meetings of organs of an international organization and conferences convened by or under the auspices of an international organization should be dealt with on the same level and be subject to the same rules. Although generalization may be dangerous, it may perhaps be said that meetings of organs are part of the regular activities of the organization, while conferences are convened now and then, when it is considered useful. Furthemore, if general rules are to be drafted for international conferences, it does not seem particulary relevant whether or not the conference is convened by an organization of universal character. The functional needs of a conference convened by a regional organization or by one or more States would hardly differ from those of a conference called by an organization of universal character. It would therefore seem more practical to deal with international conferences as a separate matter. This question which in itself is comprehensive would then be treated in its proper context. At the same time part IV, if it were limited to meetings of organs of international oragnizations, could be greatly simplified.

In the present draft, part IV is to a large extent based upon the Convention on Special Missions. It is doubtful whether that approach to the matter is justified. A special mission is a mission sent by one State to another to deal with specific questions. It is not apparent why the functional needs of such a mission should be substantially the same as those of delegations to international conferences or to meetings of organs of international organizations. One would have thought that a safer method would have been to study the practice of these organs and of international conferences and build on the experience to be found in such practice. Without such a study of practice the doubt will persist whether all the privileges and immunities accorded in the draft are necessary for the proper functioning of the organs or the conferences.

Observations on particular articles

Article 78

See the observations on article 51 above.

Article 79

The content of the article seems to belong in part I (General provisions) and should be included in article 5.

Article 83

When advanced as a general residuary rule, the contents of this article, namely that unless the rules of procedure provide otherwise (cf. article 80), a delegation to an organ or to a conference may represent only one State, is not acceptable. It is hard to see why, in principle, several States should not be considered free to send one (joint) delegation to represent them all. In the case of a particular organ or conference, the rules of procedure could prohibit such representation, or else regulate the status of a delegation representing more than one State.

As a residuary rule referred to above need not be expressly stated, the article could be omitted and the matter left to rules of procedure.

Article 86

The article should be omitted. It is unnecessary and in any case too rigid.

Article 89

These provisions seem unduly detailed.

Article 91

The article is superfluous. In substance it provides only that the rules of international law regarding the status of heads of State and persons of high rank should be respected.

Article 94

It is doubtful if the provisions regarding the inviolability of the premises of a delegation are realistic, especially when extended, in accordance with articles 99 and 105, to the private accommodation of delegation members. It is common that delegations are housed in hotels in different parts of a conference site. In the case of a fairly big conference, the task imposed upon the authorities of the host State by these articles might well be impossible to fulfil. Much depends of course on what precise meaning is given to the term "all appropriate steps".

It would be advisable to reconsider the articles in order to formulate the obligations imposed by them with more precision and, at the same time, limit them to what it is possible to fulfil.

Article 99

See the observations on article 94 above.

Article 100

Sweden would prefer alternative B of this article.

Article 105

See the observations on article 94 above.

Article 112

See the observations on article 45 (see section (*b*) above).

Turkey

PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY "NOTE VERBALE" DATED 13 APRIL 1971 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: French*]

The Turkish Government congratulates the International Law Commission on the results of its work on the draft articles on relations between States and international organizations. It has examined the draft with great interest and submits herewith its observations on the articles adopted in 1970.

PART III.—Permanent observer missions to international organizations

Section 1.—Permanent observer missions in general

Article 51

The term "international organization" in subparagraph (*a*) is broad and not very clear. For greater precision, the words "of universal and political character" should be added after "international organization".

Article 52

The words "in accordance with the rules or practice of the Organization" may give rise to differing interpretations. To improve the wording it is suggested that they be replaced by the words "in accordance with the rules applicable to the Organization".

Article 53

The functions of a permanent observer mission, as listed in the article, have not yet been clearly defined in practice. A list of functions of this kind may have adverse effects on current developments in this field. Hence it is Turkey's view that there is no point in retaining the article. Moreover some of these functions do not concern an observer mission. Either the article or its title needs to be reworded in order to bring them into harmony. As for "reporting... to the Government of the sending State", it is for the permanent observer mission itself to choose the most suitable method of informing its Government. The words "and reporting..." are therefore superfluous, assuming that article 53 is to be retained.

Article 54

The term "accreditation", which is used for diplomatic missions, is not appropriate for permanent observer missions. Turkey would prefer the term "sending" to "accreditation" so as to cover the situation of permanent observer missions.

Article 58

The deletion of the article is suggested on the same grounds as those adduced in the case of article 53.

Article 62

Turkey suggests that the expression "*Chargé d'affaires ad interim*" used for diplomatic missions be replaced by the expression "acting head of the permanent observer mission" in order to bring out clearly the difference between the two kinds of mission.

Article 64

Turkey would like to see the words in square brackets retained both in the title and in the text of article 64.

Section 2.—Facilities, privileges and immunities of permanent observer missions

Article 68

In general, Turkey supports the view that the privileges and immunities accorded to permanent observer missions should be confined to the facilities necessary for the performance of their functions and is accordingly inclined to favour the deletion of article 68. It is, of course, always open to the host State to grant this freedom to permanent observer missions. If the article is retained, it would be desirable to add the words "to the extent necessary for the performance of their functions".

Article 76

Turkey cannot accept the reference to the provisions of article 45 unless the word "manifest", in paragraph 2 of that article, is deleted and a provision concerning the *persona non grata* procedure is included.

PART IV.—Delegations of States to organs and to conferences

Article 78

Turkey does not support the view that the same privileges and immunities should be accorded without distinction to delegations of States to organs and to delegations of States to conferences. Acceptance of the text as it stands would represent a considerable departure from the principle that privileges and immunities should be accorded to the extent necessary for the performance of the respective functions.

Apart from this general observation, it considers that the term "international organization" in article 78 (*a*) should be amplified in the light of its comments on article 51 (*a*), and that in view of the temporary character of the functions of the delegations concerned, subparagraphs (*g*), (*h*), (*i*), (*j*), and (*k*) should be deleted.

Article 88

In view of the subject-matter of article 88, there is no justification for retaining it in the draft convention and Turkey accordingly suggests that it be deleted.

Article 89

Paragraph 4 of article 89, on notifications, seems inadequate from the practical standpoint. Since it is the host State which grants privileges and immunities it is to the host State that the notifications should be sent first.

Article 91

Turkey considers that article 91 is out of place in the convention. This matter should be left to international law to be dealt with in accordance with custom.

Article 94

Paragraphs 1 and 2 would be very difficult to apply, although in appearance they may be worth retaining. They would seem to relate mainly to hotels. The provisions relating to the premises occupied by the mission cannot be applied to commercial buildings. To avoid any possible dispute, Turkey would suggest that the two paragraphs be either deleted or at least redrafted so as to diminish the obligation therein laid down.

Article 100

Turkey prefers alternative B of draft article 100 on immunity from jurisdiction.

Article 101

Seeing that immunity is granted in the interest of the functions performed a further paragraph should be added providing for waiver of immunity where immunity is not warranted by the function performed.

Union of Soviet Socialist Republics

PART I AND SECTION 1 OF PART II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY "NOTE VERBALE" DATED 19 DECEMBER 1969 FROM THE PERMANENT MISSION TO THE UNITED NATIONS

[*Original text: Russian*]

The Permanent Mission of the Union of Soviet Socialist Republics to the United Nations has the honour to state that the draft articles on representatives of States to international organizations (articles 1-21) do in general reflect existing practice and do not give rise to any objections of principle.

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

United Kingdom of Great Britain and Northern Ireland

(a) PARTS I AND II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 27 NOVEMBER 1970 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

General

1. The project as envisaged by the International Law Commission is to study "the question of diplomatic law in its application to relations between States and intergovernmental organizations".[1] The Government of the United Kingdom have some reservations about the method which the Commission has chosen to adopt in carrying out this purpose. The Commission's approach seems to consist in treating the representatives of States to international organizations as if they were diplomatic personnel on a permanent or temporary mission, then determining what modifications of the Vienna Convention on Diplomatic Relations and of the Convention on Special Missions are called for and, finally, drafting articles apparently for inclusion in a general convention on the subject.

2. This approach gives rise to two basic difficulties. The first is as to its relationship to the considerable body of treaty provisions already covering the same ground in various ways. The second, which is connected with the first, is that the approach adopted assumes that all organizations can be treated in the same way notwithstanding the differences between them which have been reflected in the differences admittedly sometimes slight but also sometimes important, in the privileges and immunities provisions at present applying to them. These difficulties are to some extent met by draft articles 2, 3, 4 and 5 prepared by the Commission. It is true that, in accordance with these articles, the draft articles as a whole at present only relate to "organizations of universal character"; that they would not prejudice the "relevant rules" of organizations; that they would not affect existing international agreements in the matter; and that they would not preclude the conclusion of international agreements containing different provisions. But the commentary to article 3 says in its paragraph 1 that the draft articles

> "seek to detect the common denominator and lay down the general pattern which regulates the diplomatic law of relations between States and international organizations. Their purpose is the unification of that law to the extent feasible in the present stage of development".

Thus, if and when a convention on the basis of the draft articles were concluded, its impact in the field would be likely to be greater than its strict legal effect. That is to say, although it did not legally affect the existing situation or prevent the conclusion of agreements with different provisions, it might tend to become the norm—if it did not simply become a dead letter.

3. The Government of the United Kingdom continue to share the view expressed by the General Assembly of the United Nations in its resolution 22 D (I) of 13 February 1946 on the co-ordination of the privileges and immunities of the United Nations and the specialized agencies:

> "[. . .] the General Assembly considers that the privileges and immunities of the United Nations should be regarded, as a general rule, as a maximum within which the various specialized agencies should enjoy such privileges and immunities as the appropriate fulfilment of their respective functions may require, and that no privileges and immunities which are not really necessary should be asked for".

The Council of Europe has carried out a study of the question of the privileges and immunities of international organizations and, on 26 September 1969, the Committee of Ministers of the Council of Europe adopted the report prepared by the European Committee on Legal Co-operation. This report has been printed[2] and it is understood that copies have been made available to the Commission. The report considered the practice and the principles relating to the privileges and immunities of organizations and among its conclusions was the following:

> "It is not necessary or desirable to lay down a scale of privileges and immunities applicable to international organizations generally. Rather the privileges and immunities to be accorded to each organization should be determined with due regard to the needs of the organisation for the accomplishment of its aims and the exercise of its functions."[3]

The United Kingdom Government fully supports that conclusion.

4. With regard to draft articles 22 to 50 on which the comments of Governments have been invited, it is true that, broadly speaking, permanent representatives to international organizations have, under existing international agreements, a status generally similar to that of members of permanent diplomatic missions. In commenting on the draft articles 22 to 50 therefore, the Government of the United Kingdom are merely recognizing this fact and do not wish to imply that they regard any general modification of the law on this subject as necessary or desirable or that any general assimilation of the status of representatives of States to international organizations with that of diplomatic personnel on a permanent or temporary mission as laid down in the Vienna Convention or the Convention on Special Missions will be acceptable to them or that they would not welcome reconsideration by the Commission of its general approach to the topic and of the assumptions on which it is based.

Observations on particular articles

Article 22

This and other articles involve the placing of obligations on organizations. The Government of the United Kingdom note that the Commission will consider at a later stage the question whether international organizations would be parties to any convention which would embody the draft articles. The Government of the United Kingdom are not in principle opposed to the participation of organizations in such a convention.

Articles 25, 30, 31 and 32

These articles once again raise the question of the compatibility of the service of legal process with the inviolability of premises and persons. Given that there are exceptions to the immunity from jurisdiction of persons, problems can arise in relation to the service of process, in cases covered by these exceptions, on persons who have inviolability or who are in premises which have inviolability. This problem was left unresolved by the Vienna Conference on Diplomatic Relations of 1961 and the Commission may like to consider whether it can be resolved on this occasion.

Article 28

The Government of the United Kingdom are not entirely convinced of the arguments in favour of a more extensive privilege in the matter of freedom of movement than that conferred by the Vienna Convention on Diplomatic Relations and the Convention on Special Missions.

---

[1] *Yearbook of the International Law Commission, 1968*, vol. II, p. 194, document A/7209/Rev.1, para. 16.

[2] Council of Europe, *Privileges and immunities of international organizations: Resolution (69)29 adopted by the Committee of Ministers of the Council of Europe on 26 September 1969, and Explanatory Report* (Strasbourg, 1970).

[3] *Ibid.*, p. 71, para. 188(3).

Article 29

The Government of the United Kingdom would favour the inclusion of a provision on the lines of article 28 paragraph 3 of the Convention on Special Missions.

Article 32

The Government of the United Kingdom support the inclusion of a provision on the lines of paragraph 1 (*d*) relating to actions for damages arising out of accidents caused by vehicles used outside the official functions of the person in question. It is to be noted that this exception is now contained in article 31, paragraph 2 (*d*) of the Convention on Special Missions adopted by the General Assembly of the United Nations on 8 December 1969.

Article 34

The Government of the United Kingdom support the inclusion of this provision in the body of the convention itself as a progressive step which would help to reassure parliamentary and public opinion.

Article 39

The United Kingdom and certain other States have not ratified the Optional Protocol concerning Acquisition of Nationality adopted with the Vienna Convention on Diplomatic Relations in 1961. It would be preferable once again to include this provision in an optional protocol.

Article 40

The Government of the United Kingdom are not convinced of the justification for the privileges and immunities conferred by paragraph 2. They also remain of the view that the private staff referred to in paragraph 4 should not be accorded tax exemption.

Article 41

In paragraph 1, the word "only" should be placed after "shall enjoy" instead of before "in respect" (cf. the English text of article 38 of the Vienna Convention on Diplomatic Relations and article 40 of the Convention on Special Missions).

Articles 45 and 50

These two articles do not appear to give adequate protection to the interests of the host State. It is true that the concept of *persona non grata* is not appropriate in relation to representatives to international organizations. However, some means must be found to deal with the case where the host State cannot tolerate, for reasons of public order or national security, the presence on its territory of a particular representative. The Government of the United Kingdom consider that, when possible, Governments should be encouraged to waive immunity rather than simply recall the person concerned. They do not at the present stage have any alternative drafts to suggest. They will be interested to see the results of further consideration of this matter by the Commission in the light of comments by Governments.

(*b*) PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 19 MARCH 1971 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

PART III.—Permanent observer missions

The Commission has rightly drawn attention in paragraph 2 of its general comments [4] to the fact that there is at present no clear treaty basis for the status, privileges and immunities of permanent observer missions sent by non-member States to certain international organizations. But the Commission has not referred to any evidence to suggest that this situation causes any appreciable difficulty in practice. Nor is it at all clear that the best way to remedy the situation would be by creating a new general international legal entity to be known as a "permanent observer mission" whose status, privileges and immunities would be largely the same as those of permanent missions of Member States.

The concept of a permanent observer mission in the draft articles appears to involve granting to representatives of States which have no obligations under the constitutional instruments of the organization concerned, and possibly to representatives of entities which are not recognized as States or Governments by the host country, a status and functions which they are not entitled to have under the constitutional instruments of the organization. Due regard must be had to the position and interests of the host country and in the case of those organizations where there is no constitutional provision for observer missions and no settled practice, their establishment should be a matter for arrangement between the sending State, the organization and the host country, taking into account the special circumstances of each case. It is not at all clear that there would be any advantage in removing the flexibility which the present situation allows.

The Government of the United Kingdom are therefore not convinced of the necessity or desirability of including in the proposed convention articles such as those in Part III of the draft articles. The articles are in any case drafted largely by reference back to Part II. It would be better to leave organizations in the future to decide for themselves whether and, if so, to what extent they should seek to accord the Part II status to observer missions.

Section 1.—Permanent observer missions in general

Article 52

The drafting of this article might suggest that a non-member State has in some way a right to establish a permanent observer mission if it considers that it can do so in accordance with the rules or practice of the organization. This objection would indeed be strengthened if there were any question of the word "practice" being intended to cover the mere fact that other non-members already had observer missions to the organization. A non-member State is, by definition, not a party to the constitution of the organization in question and it is only by agreement or decision of the members that a non-member State can become entitled to send an observer mission. Moreover, in the absence of any provision in the constitution or otherwise binding on the host State, the establishment of observer missions in its territory must require its consent.

If it is felt that any provision is required on the question of the establishment of permanent observer missions, it would be preferable to provide simply that the establishment of permanent observer missions to an organization is regulated by the member States of the organization in accordance with the relevant constitutional documents and decisions of the organization and subject to the consent of the host State. But the problems presented by the drafting of this article illustrate the general difficulty of trying to lay down uniform rules relating to observer missions given that the cases which arise in practice are naturally so heterogenous.

Article 53

The functions listed are broader than those which might be performed by some observer missions. In other cases, the functions of such a mission could be wider than those listed. Here again, it would be preferable to leave this matter to be dealt with case by case in the future.

[4] *Yearbook of the International Law Commission, 1970*, vol. II, p. 276, document A/8010/Rev.1.

Articles 54, 57 and 58

These articles also deal with matters on which it is not necessary or desirable to seek to lay down uniformity in the proposed convention. The matters in question should be dealt with as a matter of practice in each organization or in the rules of procedure of the organization.

Article 61

Paragraphs 3 and 4 do not take sufficient account of the position of the host State. It is the host State which must accord the privileges and immunities to which the persons in question are to be entitled. There should at least be some requirement that the organization should transmit the notifications to the host State without delay.

Article 62

Although the title *Chargé d'affaires* may be appropriate in some cases, it would not be suitable in all. "Acting head of the permanent observer mission" or "acting permanent observer" would be more suitable in most cases. Here again, however, the flexibility of the present situation is preferable to any attempt to lay down a uniform rule. If anything, a slight amendment to article 51 (*b*) would be preferable to the inclusion of article 62.

Section 2.—Facilities, privileges and immunities of permanent observer missions

The Government of the United Kingdom note that privileges and immunities are at present accorded to certain observer missions on a scale similar to that accorded to missions of Member States. The Government of the United Kingdom do not consider it advisable to adopt articles which imply that this assimilation will be justifiable in all cases. The matter should be left to be dealt with in a flexible manner, case by case.

PART IV.—Delegations of States to organs and to conferences

General remarks

The privileges and immunities of delegations to meetings of organs of the United Nations and the specialized agencies and to conferences convened by them are provided for in the General Convention on the Privileges and Immunities of the United Nations and in the Convention on the Privileges and Immunities of the Specialized Agencies. The relevant provisions are Article IV (Sections 11 to 16) of the General Convention and Article V (Sections 13 to 17) read with the definition in Section 1 (vi) of the Specialized Agencies Convention. There is also a considerable body of international practice based on these agreements. Underlying these agreements and this practice is the principle, embodied in paragraph 2 of Article 105 of the United Nations Charter, of functional need.

It is the view of the Government of the United Kingdom that any attempt to codify and develop the law must have regard to existing agreements and practice. The correctness of this approach appears to have been recognized by the Commission in paragraph 1 of its commentary on draft article 3 where the Commission explains its general aim as follows:

> "Given the diversity of international organizations and their heterogeneous character, in contradistinction to that of States, the draft articles merely seek to detect the common denominator and lay down the general pattern which regulates the diplomatic law of relations between States and international organizations. Their purpose is the unification of that law to the extent feasible in the present stage of development."

Consistently with this approach, the Government of the United Kingdom would have expected that articles 78 to 116 would reflect existing agreements and practice. The Conventions referred to above purported to lay down the scale of privileges and immunities considered necessary for the exercise of the functions of the United Nations and of the specialized agencies. They have been in force and have been applied in practice for some twenty years. The Government of the United Kingdom are aware of no evidence to suggest that this aspect of the Conventions is in any substantial way inadequate or unsatisfactory.

However, in formulating this group of draft articles, the Commission appears to have departed substantially from the Conventions. Instead it has adopted a different approach which bears little relationship to existing practice and consists of applying *mutatis mutandis* the provisions of the Convention on Special Missions. The United Kingdom Government can see no justification for this. They continue to share the view expressed by the General Assembly of the United Nations in resolution 22 D (I) of 13 February 1946 that:

> "[. . .] the General Assembly considers that the privileges and immunities of the United Nations should be regarded, as a general rule, as a *maximum* within which the various specialized agencies should enjoy such privileges and immunities as the appropriate fulfilment of their respective functions may require, and that no privileges and immunities which are not really necessary should be asked for."

Draft articles 78 to 116 could produce the anomalous situation that members of delegations to other organizations of a lesser importance would be accorded a higher scale of privileges and immunities than delegations to organs of the United Nations. In many countries, there is already much parliamentary and public criticism of the extent to which privileges and immunities are accorded to international organizations and persons connected with them, and it is very difficult to see how the additional privileges and immunities provided by the Commission's draft articles could be justified as necessary in the light of the experience of the last twenty years. It must be borne in mind that the conferring of privileges and immunities on one person deprives others of their normal legal rights and remedies. This is justifiable within certain limits. Nevertheless, care must be taken not to recommend extensions of these privileges beyond what is strictly justifiable. Rather the effort should be made to seek acceptable limitations of those privileges which already exist and appropriate means of protecting the interests of third parties.

It is no doubt true that in some ways a delegation to an organ of an organization or to a conference convened by an organization is comparable to a special mission (within the meaning of the Convention on Special Missions) sent by one State to another. They both temporarily represent a State in the territory of another State. But the special status of a special diplomatic mission also reflects the fact that it is merely another form and, as a matter of historical fact, an older form of diplomatic mission. As between adopting the law relating to diplomatic missions between States and adopting the law relating to delegations to international organizations, the Government of the United Kingdom consider it correct to place special diplomatic missions in the framework of the law relating to diplomatic missions (as does the Convention on Special Missions and as customary international law perhaps already does) and to place delegates to organs and conferences of international organizations in the framework of the law and practice which has already developed in relation to such persons. A special mission is sent by one State to another State and under the Convention on Special Missions, a State may only send a special mission to another State with the consent of the latter. It is one matter to accord extensive immunities and privileges to a special mission; but it is quite another matter to do so in respect of large numbers of persons attending meetings of international organizations. The Government of the United Kingdom do not see how it would be possible to justify abandoning at this stage the principles underlying the General Convention on the Privileges and Immunities of the United Nations and the Specialized Agencies Convention merely to gain the convenience of having further texts based on the Vienna Convention on Diplomatic Relations.

It follows from the above that the Government of the United Kingdom are not able to accept the principles underlying Part IV of the Commission's draft articles and they very much hope that the Commission will revise Part IV with the above considerations in mind. The following comments on particular articles are without prejudice to that position.

Observations on particular articles

Article 91

As in the case of the comparable provision in the Convention on Special Missions (in connexion with the adoption of which the United Kingdom delegation made a statement of its position),[5] the Government of the United Kingdom find it difficult to accept the implication in paragraph 2 that persons other than the Head of State and his suite have privileges and immunities under international law, as opposed to those which may be accorded as a matter of courtesy, going beyond those contemplated in the succeeding articles.

Articles 94 and 99

The obligations which would be imposed by these articles go beyond the provisions in the existing Conventions. It is very difficult to conceive how such general obligations could be carried out in practice in the case of all delegations and delegates to organs and conferences of international organizations, except of course where a special situation called for special protection.

Article 98

The corresponding provision in the United Nations and Specialized Agencies Conventions does not confer such a general personal inviolability. The Government of the United Kingdom do not see any justification for the change.

Article 100

The two alternatives offered by the Commission are substantially different from the existing position under the United Nations and Specialized Agencies Conventions. Alternative A is based on the Convention on Special Missions which, as already explained, is not considered to be the appropriate precedent. But even Alternative B would confer immunity from criminal jurisdiction in respect of the non-official acts of a representative. Under the United Nations and Specialized Agencies Conventions, the immunity is only from arrest and detention in connexion with such matters, and not immunity from jurisdiction as such. The Government of the United Kingdom do not consider that the proposed departure from existing practice is justifiable.

Article 101

This draft article omits the provision requiring the sending State to waive the immunity in certain circumstances which is contained in the United Nations and Specialized Agencies Conventions. This provision is useful in practice.

Articles 102 and 103

These draft articles are substantially different from the provisions in the United Nations and Specialized Agencies Conventions. The Government of the United Kingdom do not accept that the proposed departure from the provisions of those Conventions is justified.

[5] *Official Records of the General Assembly, Twenty-fourth Session, Annexes*, agenda item 87, document A/7799, paras. 177 and 178.

United States of America

(*a*) PART I AND SECTION 1 OF PART II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY "NOTE VERBALE" DATED 23 MARCH 1970 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

The United States has reviewed the draft articles on representatives of States to international organizations contained in the report of the International Law Commission on the work of its twentieth session. The United States considers that these twenty-one draft articles have been carefully and thoughtfully worked out by the International Law Commission and is, in general, in accord with the Commission's proposals.

There are a number of articles as to which explicit comment is considered desirable.

Article 1

Sub-paragraph (*b*), which defines an "international organization of universal character" as "an organization whose membership and responsibilities are on a world-wide scale", does not adequately dispose of all the problems raised by an attempt to distinguish between universal international organizations and all others. The phrase "on a world-wide scale" leaves open such questions as whether membership has to be substantially universal or merely representative of all the regions of the world. The same problem arises in connexion with the concept of responsibilities. While the existing international organizations to which permanent missions are accredited may not give rise to substantial difficulties regarding the application of article 1 (*b*), and the strictly regional organizations, such as OAS, would clearly be excluded, it is not difficult to find organizations which occupy a penumbral area. The parties to the Commodity Agreements, for example, may not meet a requirement of practically universal membership but, none the less, most of them have a sufficiently varied membership to meet the requirement of being "world-wide" if that phrase is construed liberally. The same conclusion could be reached regarding the responsibilities of the organizations established under those Agreements.

Another example is the Asian Development Bank. Although ostensibly a regional organization, the membership is very widely distributed and the responsibilities, if considered on a reciprocal basis, are the same.

It may be queried whether, in view of the ability of any international organization to limit the application of the articles through adoption of a "rule", the attempt to distinguish between organizations of universal and non-universal character is either necessary or desirable.

Article 2

In the light of the comments regarding article 1 (*b*), it is suggested the Commission reconsider whether paragraph 1 of article 2 should not be revised.

Articles 3, 4 and 5

These articles are reasonable and necessary provisions. They recognize that the diversity of international organizations, the varying character of existing agreements with host States and the unforeseeable variances in headquarters agreements that may be necessary to accommodate future relationships of international organizations with host States require the maintenance of flexibility and the preservation of wide degrees of tolerance.

Article 7

It is doubted that clause (*b*) relating to liaison is necessary. It would appear to be subsumed under clauses (*a*) and (*c*).

Article 9

It is clearly the intention of the International Law Commission not to modify in any way the requirements of the Vienna Conventions on Diplomatic and Consular Relations as a result of the coming into force of the present articles. Accordingly, the proposal contained in paragraph 7 of the commentary to add a provision along the lines of paragraph 2 of article 17 of the Convention on Consular Relations appears essential.

Article 14

Article 14 will have to be reviewed in light of the text of article 7 of the Vienna Convention on the Law of Treaties.

Article 16

Article 16 is a well-balanced solution of a difficult problem that takes into account all the competing requirements relating to the size of a permanent mission.

Article 19

It is doubtful that an alternative proposal for determining precedence is desirable. The purpose of the article is to lay down a residual rule if an organization does not have a rule relating to precedence. Consequently, affording a choice between two solutions in accordance with established practice does not offer a definite solution. The United States considers that it would be desirable to adopt the rule of alphabetical order since that procedure is generally followed in international organizations.

Article 20

Paragraph 1 is a helpful clarification of the established rule but contains a slight ambiguity as a result of the word "localities". May the sending State establish an office of the permanent mission in another State without the consent of the State where the seat of the organization is established if there is an office of the organization in that other State? There would not appear to be any particular reason for such a restriction but under paragraph 1 as worded it could be argued that such permission was necessary.

(*b*) SECTION 2 OF PART II AND PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY "NOTE VERBALE" DATED 30 MARCH 1971 FROM THE PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: English*]

PART II.—Permanent missions to international organizations

Section 2.—Facilities, privileges and immunities

Article 25

With regard to the second sentence of paragraph 1, the United States suggests that it would be preferable to follow more closely the language used in paragraph 2 of article 31 of the Vienna Convention on Consular Relations. We believe that in cases causing serious danger to public safety it is not practical to insist on exhaustive efforts to contact those in authority at the mission involved before taking protective action.

Regarding paragraph 3, the United States is of the view that the immunity accorded means of transport should only apply for official journeys.

Regarding paragraph 4 of the commentary on article 25, the United States has no problems with the suggested definition to be inserted in article 1 as paragraph (*k* bis).

Article 26

The United States suggests revising paragraph 1 of this article to read:

> "The premises of the permanent mission, or the sending State or any person acting on its behalf who is the owner or lessee of such premises, shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the permanent mission, whether owned or leased, other than such as represent payment for specific services rendered."

This language is intended to have the same effect as that of the corresponding articles in the Vienna Conventions on Diplomatic and Consular Relations, but is slightly expanded to be more complete. By specifically exempting the premises themselves from taxes, the provision on the face of it bars *in rem* actions against such premises. Article 23 of the Vienna Convention on Diplomatic Relations refers only to the persons exempted in regard to taxes on the premises, while article 32 of the Vienna Convention on Consular Relations exempts the premises themselves in addition to these persons.

Article 28

The United States would prefer the language of article 96 to that contained in article 28. Under section 11 of the Headquarters Agreement between the United States and the United Nations, the United States already guarantees free transit to the Headquarters District of the United Nations. We thus accept the principle that free transit should be assured to those travelling to the Headquarters District of an international organization. In addition, the United States considers it appropriate that freedom of movement be assured within the territory of a country to representatives of members of an international organization when their official functions require such additional travel, provided that this entails no serious threat to the host State's national security. While the United States is, in principle, in favour of the broadest possible freedom of movement within its territory, we see no compelling reason why essentially private freedom of movement outside a headquarters district should be guaranteed by a convention if such movement bears no relationship to the functioning of the organization or mission involved.

Article 30

Section 15 of the Headquarters Agreement between the United States and the United Nations and section 11 of the Convention on the Privileges and Immunities of the United Nations grant privileges and immunities similar to those provided in draft article 30. The United States finds draft article 30 acceptable, provided that adequate provision is made to protect the host State against abuse of privileges and immunities which are accorded. Section 13 (*b*) of the Headquarters Agreement provides such protection, and it would be essential to include this provision in draft article 45 (section 13 (*b*) of the Headquarters Agreement is applicable as well to persons granted privileges and immunities under the Convention on the Privileges and Immunities of the United Nations by virtue of section 26 of the Headquarters Agreement, and this was restated for the sake of clarity in the United States reservation to the Convention). If draft article 45 is not improved, the United States would have to reconsider its view on draft article 30. In this regard, see the United States comments on draft article 45 below.

Article 32

In regard to subparagraph (*d*) of draft article 32, the United States suggests that the same treatment be accorded this subject as is by article 43 of the Vienna Convention on Consular Relations.

Article 35

In regard to paragraph 3 of the commentary, the United States believes paragraph 5 is not necessary.

Article 40

The United States believes the privileges and immunities accorded members of the mission should only be accorded to the class of people defined in section 16 of the Convention on Privileges and Immunities of the United Nations. We think it excessive to accord "the administrative and technical staff [. . .] together with members of their families forming part of their respective households" all the same privileges and immunities. Nor is this necessary for the effective functioning of the mission. If immunities are to be granted, they should only relate to members of the administrative and technical staff, not to members of their families, and immunities granted should only be in respect of acts performed in the course of their official duties. Indeed, we believe the assumption in paragraph 2 of the commentary is unwarranted.

Article 44

While the United States agrees completely with the provision of draft article 44 that no discrimination be made as between States, we understand that this of course does not in any way prohibit distinctions based on rational grounds, which are in certain instances warranted. The draft articles themselves implicitly recognize this fact. For example, article 25, paragraph 2, provides that the host State is under a special duty to take all appropriate steps to protect the premises of the permanent mission; the application of this provision may require that reasonable distinctions be made in the treatment accorded different States—for example, three policemen may be required for one mission but only one for another because of the size and location of the mission and its particular political problems.

Article 45

In regard to paragraph 2 of draft article 45, the United States believes it essential to substitute for this paragraph language along the lines of section 13 (*b*) of the Headquarters Agreement between the United States and the United Nations. Similar language is contained in section 25 of the Convention on the Privileges and Immunities of the Specialized Agencies. If privileges and immunities as broad as those provided for in the draft articles are to be accorded, a means must be provided by which the host State can protect itself against any serious abuse of the privilege of residence, whether or not it constitutes a grave and manifest violation of the criminal law. The Secretariat of the United Nations recognized this fact in its observations on this draft article.[1] Examples of activities from which a host State is entitled to protection are given in paragraph 11 of the United Nations Secretariat observations. In such cases, provided that there are such clear procedural safeguards as in section 13 (*b*) of the Headquarters Agreement, the host State must retain the ability to require that a person that has seriously abused his privilege of residence leave the country (this is of course the case with regard to diplomats who are accredited to States and who may be declared *persona non grata*).

Article 49

Regarding paragraph 1, the United States agrees with the Government of Israel that the word "must", which appears twice, should be replaced by the word "shall".[2] This would make the first paragraph consistent with the second paragraph of the draft article and, indeed, with the entire draft convention.

Article 50

It might be desirable to formalize the conduct of the consultations to a greater extent than is provided in article 50. Provision for some type of conciliation may be appropriate.

[1] See below, section C, 1, paras. 9–11.

[2] See the observations of Israel above.

In addition, the United States strongly believes a new article should be added along the lines of section 30 of the Convention on the Privileges and Immunities of the United Nations.

PART III.—Permanent observer missions to international organizations

The draft articles in part III create new and extensive privileges and immunities for permanent observer missions to international organizations. The United States believes that it is worthwhile to codify the existing privileges and immunities of observers, and in some limited cases to agree on their expansion. But we believe that the status given such missions in this part of the draft articles is not warranted. When a country undertakes to be host to an international organization, it is appropriate that the country provide the necessary privileges and immunities to the organization and to its members. It is implicit that the legitimate functioning of the organization must in no way be hindered. But observers are not formally participants in the work of the organization. In most cases they are not provided for in the charter or constitution of the organization, and it is difficult to imply an undertaking on the part of the host State with regard to them. To the extent that a practice has been established whereby observer missions exist, the United States believes it appropriate only to accord to such missions the limited privileges and immunities necessary for the functioning of the mission in its capacity as an observer. We believe that any further privileges and immunities must await action by the concerned international organizations to give observers formal, official status.

Article 52

The United States believes that, unless the international organization concerned has given formal consent to the establishment of the particular observer mission concerned, the consent of the host State should be required for the establishment of a permanent observer mission.

Article 53

The draft article seeks to elevate the status of observer missions from that of "observers" for the sending States to that of "representatives" of the sending States in the international organization. The United States believes that giving observers representative status is not warranted. Of course, "observers" do represent their States abroad in the sense that anyone who goes abroad represents his State. But this does not make them diplomatic representatives in the full sense, and they are not "representatives" in the international organization. Thus, in the view of the United States the words "and representing the sending State at the Organization" should be deleted from the end of draft article 53.

To take into account this change, consequential changes will be required in draft articles 51 (*a*) (deletion of the words "representative and"), 51 (*d*) and (*e*) (deletion of the reference to "diplomatic staff"), and 59 (deletion of the reference to "diplomatic staff").

Article 56

If the function of the permanent observer mission is to observe on behalf of the sending State rather than to represent that State, the United States has no objection to the observer being a national of the host State.

Article 59

In regard to paragraph 1, the United States is concerned that the listing of members of permanent observer missions may presage or even instigate the institutionalization of large observer missions. It is doubtful that an observer mission requires, in addition to the permanent observer, substantial diplomatic, administrative, technical and service staffs.

Article 62

The United States believes it is inappropriate to use the term "*chargé d'affaires ad interim*". This term has become standard usage with regard to diplomatic missions and therefore carries with it too many implications relating to such missions. We suggest that the term "Acting permanent observer" be used.

Article 64

The United States supports the deletion of the words in brackets. Indeed, the United States is of the view that the permanent observer mission should not have the right to use either the flag or the emblem of the sending State. Even use of the emblem is symbolic of a representative function at the international organization since members use such emblems. It would therefore not be proper for observers to have their use.

Articles 65 to 77 (in general)

As noted in the introductory remarks to part III, the United States is of the view that the privileges and immunities of permanent observer missions should strictly be limited to those required for the effective fulfilment of the function of the mission, i.e., observing. In regard to the specific draft articles, the United States refers to its previous comments regarding draft articles 25, 26, 28, 40, 44, 45 and 49. We should however like to make the following additional comments:

Article 69

The United States does not believe it is appropriate to guarantee to observer missions such broad privileges and immunities as are covered by draft articles 30 and 32. In the view of the United States, the privileges and immunities regarding arrest and immunity from jurisdiction should be no broader than those provided officials of the United Nations under section 18 (*a*) of the Convention on the Privileges and Immunities of the United Nations. Moreover, it should be made clear that the "official capacity" referred to is merely that of an observer. We also question whether the exemption of personal baggage from inspection, as provided in paragraph 2 of article 38, is necessary to ensure the effective fulfilment of the functions of an observer mission.

Article 76

The restriction on professional activities contained in article 46 may not be warranted with regard to members of an observer mission who have no formal duty to represent their sending State in the organization.

PART IV.—Delegations of States to organs and to conferences

Article 91

The United States believes this draft article is unnecessary since the privileges and immunities covered in the article are already accorded by international law. However, we have no difficulty with the article.

Article 94

The United States questions the wisdom of paragraph 1 of article 94. Most members of delegations will be quartered in hotel rooms often for short periods of time. Is this what is meant by "premises where a delegation [. . .] is established"? As suggested in the commentary, the United States believes a definition would be necessary. It would seem unreasonable to make such hotel rooms inviolable. The normal functioning of a hotel necessitates that service personnel enter the room. One cannot expect that a hotel will permit its routine to be disrupted because a delegation member is there. On the other hand, if the "premises" turn out to be those of the permanent mission, draft article 25 already provides the necessary protection. The United States comments on draft article 25 should also be referred to.

Article 95

The United States believes that this article needs clarification.

Article 99

The United States believes that paragraph 1 raises difficulties similar to those expressed in our comment on draft article 94.

Article 100

The United States believes alternative B is the better article. Regarding the immunity from criminal jurisdiction provided for in paragraph 1, the United States wishes to refer to its comments on draft articles 30, 32 and 45.

Article 102

The United States is of the view that to exempt members of a delegation from sales taxes and other taxes of this nature is impractical. The relatively brief period of time most delegations spend in the host country and the small amounts involved do not warrant the significant administrative burden that would be required to arrange for the refund of such taxes.

Article 103

The United States believes it is important that the language of articles 38 and 103 be uniform.

Article 105

As pointed out in the foot-note to article 105, if the preferable alternative B of article 100 is adopted, paragraph 2 of article 105 will require revision. In any case, the United States wishes to refer to its comments on draft article 40 in connexion with draft article 105.

Article 111

The United States wishes to refer to its comment on draft article 44.

Article 112

In regard to draft article 112, the United States wishes to refer to its comments on draft article 45.

Article 116

The United States questions whether it is reasonable to require protection of the premises of a delegation after the end of a conference. As noted in previous comments on other draft articles in part IV, the premises of a delegation will normally be a hotel room and the archives, one would assume, would consist of a brief case full of documents.

Yugoslavia

(*a*) PARTS I AND II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY "NOTE VERBALE" DATED 18 AUGUST 1970 FROM THE PERMANENT MISSION TO THE UNITED NATIONS

[*Original text: French*]

General

The Yugoslav Government has studied the draft articles on representatives of States to international organizations adopted by the International Law Commission at its twentieth and twenty-first

sessions, and regards them as an important contribution to the codification and progressive development of rules on representatives of States to international organizations which are destined to play a special role in the promotion of peaceful international co-operation.

Furthermore, the stress placed on the optional nature of the draft (articles 2, 3 and 4) should make it easy for this international instrument to be adopted by a large number of interested parties (host States, international organizations and sending States).

The draft articles rightly cover the main functions of permanent missions. Bearing in mind that permanent missions also exercise other functions important for the development of international relations (e.g. *ad hoc* representation in an international organization, quasi-diplomatic relations between States through their good offices, etc.), the question arises whether it would not be desirable to give these functions a specific place in the text of the draft.

One very important point is that the Commission, having regard to the specific nature of the institution of permanent missions of States to international organizations, has introduced a number of provisions in the draft (e.g. articles 24, 28, 34 and 39) which constitute in a sense a further elaboration of the Vienna Conventions system. Noteworthy too is the important decision taken by the Commission to round off the draft articles with legal rules concerning permanent observers for non-member States and representatives attending sessions of organs of international organizations; without these provisions the draft would be incomplete.

Observations on particular articles

Article 1

The inference to be drawn from the definition of the term "permanent representative" is that the main function of a permanent representative is to be the head of a permanent mission. The definition should emphasize his function as representative of a State to an international organization; this would be in keeping with sub-paragraph (*d*) of the article.

Article 12

The Yugoslav Government considers that to add "another competent minister" to the list of authorities empowered to issue credentials to the permanent representative would be at variance with the norm adopted in General Assembly resolution 257 A (III) of 3 December 1948, inasmuch as it would derogate from his representative character.

Article 26

In principle, the provisions of paragraph 2 of article 26 should not go further than those of the Convention on Diplomatic Relations.

Article 28

The Yugoslav Government regards the broadening of the provisions concerning freedom of movement and travel of members of permanent missions and their families beyond the scope of the Vienna Conventions as sound, particularly as the principle of reciprocity does not apply in multilateral diplomacy.

Article 29

Having regard to the development of international relations and the need to ensure that representatives of States and their missions are provided with appropriate means of communication with their Governments, and in the interests of the normal performance of the tasks of the international organization itself, the Yugoslav Government considers it justifiable to allow permanent missions to send messages in code or to use a wireless transmitter, as provided in the Vienna Conventions system.

Article 32

Since the provisions of draft article 34 satisfactorily safeguard the interests of the host State and the exercise of the functions of the permanent representative, the Yugoslav Government does not regard it as essential to include in this article the exception provided for in paragraph 1 (*d*), especially since the application of the functional test is a very complex matter.

Article 42

As regards the duration of privileges and immunities, the incorporation in their entirety of the basic provisions of article 39 of the 1961 Vienna Convention on Diplomatic Relations would be justified. The reason is that, as experience has shown, representatives of States, especially those accredited to international organizations, occasionally find themselves in a situation where they cannot perform their normal functions, not only in the case of armed conflict, but also in the case of a grave deterioration in international relations.

Article 44

The Yugoslav Government regards the introduction of the principle of non-discrimination as being of vital importance for the draft articles as a whole. To ensure the scrupulous application of the principle in practice, the draft should provide for the protection of the State sending the permanent mission against discrimination by the host State such as could result, for example, from the absence of diplomatic relations. The Yugoslav Government would point out in this connexion that the host State has already been given special protection in draft article 45, and there is no reason for making the observance of the principle of non-discrimination subject to special conditions.

Article 48

The Commission's idea, expressed in paragraph 2 of the commentary to this article, concerning the obligation of the host State to allow members of permanent missions to enter its territory to take up their posts, warrants separate examination.

Article 50

The principle of trilateral consultations between interested States and international organizations is of special importance for the whole system embodied in the draft articles. Such consultations could not only help to settle any difficulties that might arise between the States and the organization, but would in general make for efficient co-operation between them.

The Commission's views on the possibility of inserting at the end of the draft articles provisions concerning settlement of disputes arising out of the application of the future convention deserve particular attention.

(*b*) PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY A "NOTE VERBALE" DATED 1 JUNE 1971 FROM THE DEPUTY PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

[*Original text: French*]

The Government of the Socialist Federal Republic of Yugoslavia has studied parts III and IV of the draft articles on representatives of States to international organizations—dealing respectively with permanent observer missions to international organizations and with delegations of States to organs and to conferences—and wishes to make the following preliminary observations concerning the present stage of the work on this question.

PART III.—Permanent observer missions

General observations

For practical reasons it would be highly desirable to reduce part III of the draft, on permanent observer missions, to the essential provisions and to provide in transitional articles that the corresponding articles of the preceding parts shall also apply *mutatis mutandis* to the institutions whose status, privileges and immunities are governed by part III of the draft.

Observations on specific articles

Article 51

In this article, which defines the terms to be used in part III of the draft, it would also be useful to specify the meaning given to the expression "family of a member of the permanent observer mission" (article 61). In the other texts this concept is defined separately. Since the present article 51 defines in detail the terms used in part III, it might also cover this category of terms for the purposes of this part of the draft.

Article 53

An addition might be made to the text of this article, to the effect that the functions of the permanent observer mission also include maintaining relations with the permanent missions of member States.

PART IV.—Delegations of States to organs and to conferences

Article 83

For practical reasons, this article should provide for an exception to the effect that one State may represent another State to an organ or to a conference if the statutory provisions of the Organization so allow.

Article 100

Alternative A is drafted in greater detail and, from this point of view, offers better safeguards. However, in the Yugoslav Government's opinion, there is no need to include in this article the exception stated in paragraph 2, subparagraph (*d*), of the draft, particularly since the application of the "official functions" criterion is a very complex matter.

Conclusion

The Yugoslav Government considers that the text in question should be adopted as an international convention, i.e., as a fourth part of the code of diplomatic and consular law.

B. OBSERVATIONS OF SWITZERLAND

(*a*) PARTS I AND II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY " NOTE VERBALE " DATED 22 JUNE 1970 FROM THE PERMANENT OBSERVER TO THE UNITED NATIONS

[Original text: French]

The Swiss Government has followed with interest the work of the International Law Commission in the field of relations between States and international organizations. Not only has Switzerland long been a member of many international organizations, in the establishment and administration of which it has sometimes played a prominent part, but it now has many such organizations within its territory. It welcomes the efforts undertaken by the Commission, at the request of the General Assembly of the United Nations, with a view to codifying as far as possible this new aspect of international relations, which has become particularly important as a result of the development of multilateral international co-operation following the Second World War. In that connexion, the Swiss Government submits the following observations.

General remarks

The status and legal relations of international organizations are a field pre-eminently suited to contractual regulation. The existence, capacity and activity of each organization is based on its constitution, the application and, generally speaking, the interpretation of which are the responsibility of its organs. At first sight it might seem that the subject, regulated as it is by conventional instruments, does not lend itself to codification. However, the relevant constitutions and multilateral conventions often fail to cover all eventualities; although the procedure and functioning of organs can be treated on the basis of general principles, the situation is much more difficult when, for example, the status of certain persons connected with international organizations has to be defined in detail. Similarly, the constitution can only regulate relations between the organization and third parties within certain limits. It can impose rules on the organization itself, but not on its partners.

The Swiss Government therefore considers that there is justification for seeking to codify the rules on relations between States and international organizations, in so far as those rules cannot be codified by the constitutions of the organizations themselves, or where it seems desirable to establish common rules for a particular category of organizations.

For example, the rules concerning the conclusion of treaties between States and international organizations or between international organizations, a field in which the prevailing practice is complex and sometimes unclear, seem to require codification. In view of the rapid development of international organizations it may also be considered desirable to define the normal status of certain categories of organizations, both as regards the immunities and privileges of the organizations themselves and of their personnel and as regards the representatives (especially representatives of States) to the organizations.

The Swiss Government understands that the question of treaties concluded by international organizations will be taken up later. With regard to immunities and privileges, it would seem preferable to deal first—as indeed the International Law Commission has done—with the status of permanent representatives of member States to the organizations. It will be noted that this is a subject on which many conventions (including the headquarters agreement to which Switzerland is a party) are silent. Furthermore, the status of such permanent representatives, unlike that of persons employed by the organizations or connected with them (such as non-permanent representatives) is very similar to that of diplomatic agents or members of special missions. That being so, there are good grounds for considering them first and, as it were, in parallel with the texts already prepared by the Commission.

However, the Swiss Government wishes to observe that no conclusions can be drawn from the status of such permanent representatives—hitherto assimilated in international practice to diplomatic agents—as to the status of other representatives or of the organizations and their personnel. Those are fields in which there exist in addition a number of important multilateral and bilateral treaties, all based on more or less the same principles, which are completely distinct from those applicable to bilateral diplomacy.

The Swiss Government can also support the International Law Commission with regard to the general principle on which its draft is based, that is, the assimilation of permanent missions to diplo-

matic missions. This principle does not rest on a superficial analogy, but is solidly founded on State practice. In a field where customary rules are rare, if not non-existent, it is particularly important that codification should proceed in line with the facts of experience, as derived from the conventional rules in force and the practice of host countries. The rules in question, formed in the relations between the organization and the host State and confirmed by long usage, are extremely consistent in their effects. They are designed to avoid unnecessary friction and prevent abuses, preserving both the sovereignty of the host State and the independence of the organization. The Swiss Government hopes that, in pursuing its codification work, the International Law Commission will take due account—particularly in connexion with non-permanent representatives— of the current situation, which has proved to be fully satisfactory.

Text of the articles

Article 1

Subparagraph b

It seems desirable to restrict the scope of the draft articles to a limited category of organizations whose size and responsibilities justify the presence of permanent missions. The definition may nevertheless still seem somewhat too wide. Not all organizations with responsibilities on a world-wide scale have activities of a type which require the presence of permanent missions or, if missions do seem necessary, which justify granting them privileges as extensive as those envisaged in the draft. It would be advisable to replace the word "responsibilities" by an expression suggesting that there are special additional conditions which must be fulfilled. The application of the draft could also be limited to institutions of the United Nations family, which would have the advantage of avoiding any dispute about the universal character of an organization.

Subparagraph l

The commentary seems to imply that the International Law Commission intends the term "office" to mean an establishment constituting a sort of second seat, as distinct from a bureau or a separate organ established in a country other than that in which the organization has its seat. The term "seat" and for that matter the term "office", should probably be defined in subparagraph *l*. The definition could read as follows: "... its seat, that is, the principal establishment of its permanent organs and its secretariat, or an office, that is, another establishment having responsibilities analogous to those of the seat ...".

Articles 4 and 5

Article 4 provides that the rules established in the articles "are without prejudice to other international agreements in force between States or between States and international organizations", while article 5 states that nothing in the articles shall preclude the conclusion of other international agreements. It does not seem that the Commission, by this difference in wording, intended article 5 to refer to a category of agreements more limited (or more extensive) than that mentioned in article 4. It would therefore be preferable to use the same wording in both articles.

Article 6

This article creates a right in favour of the members of an organization covered by the article, by virtue of which they may establish a permanent mission to the seat or at an office of the organization. In view of the extent of the privileges granted to such missions in later draft articles, it may be wondered whether this provision does not exceed its goal, which is to ensure that any member State, on terms of perfect equality, may exercise its rights as a member and assert its interests within the organization.

It is true that article 6 is to be applied without prejudice to any "relevant rules of the Organization" (article 3). However, such rules do not always exist and are not always rules of the organization. For example, by virtue of consistent practice—mentioned, it may be noted, by the Commission (article 1, paragraph 7 of the commentary)—the permanent missions of member States to the specialized agencies with seats in Geneva are accredited to the Office of the United Nations. Thus, a single mission represents a member State both to the Office and to the specialized agencies. The results of this practice have been completely satisfactory, and it would be desirable for that fact to be taken into account in the text of article 6. To that end, two amendments could be made in the draft: the first the insertion after "Organization" of the words "in accordance with the latter's practice", and the second the addition of a paragraph 2, reading as follows:

"They may establish a single permanent mission to several organizations".

The Swiss Government feels that such a provision would facilitate the representation of sending States in countries where several organizations have their seats, and would enable them to organize their missions more rationally.

Article 8

As noted in the commentary, the provisions of paragraph 1 conform to the practice followed in Geneva with regard to the specialized agencies. The provisions of paragraph 2 seem acceptable, provided that the representative so designated does not have the status of head of mission.

Practice has shown that difficulties may arise in the case of multiple accreditations if the accreditation is not officially notified to the host State. Special provision should be made for this in article 17, for it may happen that such notifications are not given in the case of persons who already enjoy the immunities involved.

Article 9

There may be some justification for this article in so far as it signifies that the assignment of a diplomatic agent to a permanent mission is not in itself an obstacle to his being simultaneously assigned to a diplomatic mission or a consular post. It may, however, remain a dead letter as regards heads of mission and heads of consular posts, who may be refused the *agrément* or the *exequatur* without any reason being given.

The notification of such dual assignments should also be mentioned in article 17.

Article 10

Subject to the provisions of article 11, this article empowers any State which is a member of an organization covered by article 2 to send any person as a representative or agent to the territory of the host State, with extensive privileges, the host State having absolutely no say in the matter. Such a regulation may in practice lead to situations which the host State is not obliged to accept.

The *agrément* procedure is not in keeping with the nature of the relations between the host State and the sending State. On the other hand, in view of the position which the agent is called upon to occupy in the territory of the host State, the latter should be authorized to formulate objections to the presence of a given individual in its territory as a member of a permanent mission. These objections could be examined by the conciliation commission whose establishment is suggested below.[1]

In the absence of such an objection procedure, the host State should be empowered to refuse to grant all or some of the immunities to the person concerned.

[1] See observations on article 50.

Article 11

In its commentary, the Commission mentions the question of stateless representatives. In that connexion, it should be specified that the host State should not be obliged to accept the presence of stateless representatives unless the sending State takes them under its protection and is prepared to admit them to its territory at the end of their mission.

Article 14

In the Swiss Government's view, this article relates to the conclusion of treaties between States and international organizations, a field which will perhaps eventually be codified. The corresponding provision concerning heads of mission in relations between States is contained in article 7 of the Convention on the Law of Treaties of 23 May 1969. It is therefore suggested that this article should be deleted.

Article 16

Unlike article 11 of the Convention on Diplomatic Relations, and for easily understandable reasons, this article does not give the host State the right to limit the size of the permanent mission. Unless what is intended is merely a moral exhortation addressed to the sending State, however, it would be desirable to allow the host State the possibility of objecting to the size of the permanent mission, the objection being handled in accordance with a conciliation procedure described below.

Article 17

It was noted above (articles 8 and 9) that it would be highly desirable for multiple accreditations and the assignment of a member of a permanent mission to a diplomatic mission or a consular post to be expressly notified.

The provisions of article 17 deal simultaneously with two completely separate questions: notification of the organization, and notification of the host State. It may be wondered whether, in order to make the text clearer, it would not be preferable to have two separate articles, especially since the two types of notification have very different consequences.

Notification of the host State is particularly important, for it constitutes a condition *sine qua non* of the granting of privileges and immunities. It is therefore essential that the host State should be informed as soon as possible of any changes which take place. In that connexion, the Swiss Government would point out that paragraph 4 of its decision of 31 March 1948, quoted in paragraph 4 of the Commission's commentary, was amended by a decision of 3 November 1967 reading as follows:

> " The establishment of a permanent delegation is notified to the Political Department by the diplomatic mission of the State concerned at Berne, or, in the absence of such mission, through the competent Swiss diplomatic representation. Arrivals and departures of members of delegations are notified to the Political Department by the diplomatic mission at Berne or by the delegation. The Department issues to members of delegations an identity card (*carte de légitimation*) stating the privileges and immunities to which they are entitled in Switzerland.

The Swiss Government considers that it is the permanent mission, not the organization, which should give notification to the host State. This procedure is simpler and safer and makes for prompter issue of the cards.

Article 22

This article, like article 24, creates obligations for the organization; other articles deal with the relations between the organization and the sending State. Article 50 provides for consultations between the organizations, the sending State and the host State. This structure, which would be peculiar to this particular convention, would seem to justify its being opened, in an appropriate form, for signature and accession by the organizations which it covers.

Article 25

The Swiss Government ventures to draw the Commission's attention to the last sentence of article 31, paragraph 4, of the Convention on Consular Relations, which provides for the case of expropriation. The Swiss Government considers that this provision could usefully be added to article 25.

Subparagraph *k bis*, which it is proposed should be inserted in article 1 (paragraph 4 of the commentary on article 25), includes the residence of the permanent representative in the premises of the mission. The Swiss Government considers this definition acceptable, provided that, even if there were several permanent representatives, only one residence would be considered to form part of the premises of the mission. The other residences would be sufficiently protected by article 31.

Article 28

While stressing that it has never taken and does not intend to take any restrictive measures with regard to members of permanent missions, the Swiss Government would observe that these facilities, unlike those provided for diplomatic and consular agents, are not really justified by the functions of the persons concerned. In that connexion, reference may be made to article 27 of the Convention on Special Missions.

Article 32

The Swiss Government favours the retention of paragraph 1 *d* of this article.

Articles 33 and 34

The Swiss Government regards it as an important advance that the principle stated in resolution II accompanying the Convention on Diplomatic Relations has been embodied in the text of article 34 and that a clear obligation is now laid on the sending State. It nevertheless regrets that article 34 of the text should lag behind the Conventions relating to international organizations now in force, which specify that the sending State "has the right" and "is under a duty" to waive immunity from jurisdiction, without limiting the "duty" to the case of civil immunity. It is generally agreed that the provision authorizing the sending State to waive the diplomatic immunity of a diplomatic agent contained in article 32 of the Convention on Diplomatic Relations is virtually never applied. The sanction in criminal matters is usually a request for recall or a declaration of *persona non grata*. The latter institution is not provided for in the draft articles, for the same reasons which rule out a genuine *agrément* procedure. Recall is possible in the case of article 45, paragraph 2, which will be commented on below and which is not fully satisfactory.

In that connexion, it may be noted that one of the reasons which led to the granting of what is in practice total immunity to diplomatic agents is the fact that, as an intermediary between the sending State and the receiving State, the diplomatic agent may be liable simply through the normal exercise of his functions, to arouse the resentment of the receiving State. In the case of a permanent representative, such a possibility is much more remote, for the representative's activity in the organization has generally nothing to do with the host State. It would therefore be justifiable to specify not only a right but, as in the existing agreements with and concerning international organizations, a "duty" to waive immunity in cases other than those mentioned in article 34.

Article 35

It seems that the purpose of using the expression "private staff" of members of the mission in the Convention on Special Missions,

instead of the expression "private servants" which had been used in the Convention on Diplomatic Relations, was to take account of the differences between permanent missions and special missions, the latter being of a temporary nature, with the result that their members often do not employ servants. In the present draft, it would seem preferable to keep to the wording employed in the Convention on Diplomatic Relations.

Article 36

Although the Convention on Diplomatic Relations rule corresponding to subparagraph *f* is formulated as an exception to an exception, its application has caused no difficulty in Switzerland.

Article 39

The Swiss Government cannot agree with the views of the International Law Commission on article 39. Switzerland approves *per se* of the rule that the child of a member of the permanent mission may not acquire the nationality of the host State by the operation of *jus soli*. However, the rule laid down in article 39 is wider in scope: it covers all provisions for the automatic acquisition of the nationality of the host State, whether or not they make such acquisition dependent on residence in that State.

For the reasons which guided the Vienna Conferences of 1961 and 1963, the Swiss Government recommends that this provision should be dealt with in a separate protocol.

Article 40

With regard to the "private staff" of members of the mission, see the comment on article 35.

Article 41

Same comment as for the preceding article.

Article 45

The Swiss Government appreciates the intention of the Commission in inserting in article 45 a paragraph on the recall of members of the permanent mission. However, this provision has several drawbacks and on the whole must be considered inadequate. In the first place, it excludes offences committed within the premises of the mission, which implies that such offences do not fall within the jurisdiction of the host State. Furthermore, the obligation laid upon the sending State depends upon its good will and upon its interpretation of the violations. When, as has in fact occurred, the violation consists of an infringement of the security of the host State, the sending State can hardly be expected to recall the offender spontaneously. Yet recall is absolutely necessary in such cases.

The Swiss Government suggests two possible ways of replacing paragraph 2 of article 45 by a more satisfactory provision:

(*a*) A general provision on the protection of the security of the host State, such as those included in several headquarters agreements. This could read as follows:

"Nothing in these articles shall affect the right of the host State to take the necessary precautions in the interest of its security. In taking the necessary measures, which should be proportionate to the needs, the host State shall take due account of the interests of the organization and of the sending State. It shall enter into contact with them, as soon as circumstances permit, with a view to reaching agreement on appropriate measures to ensure the protection of those interests."

(*b*) A provision on the procedure to be followed in the event of expulsion, such as that contained in section 13 of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations.

Article 49

According to the commentary, the second sentence of paragraph 1 also covers the designation of a third State as protector of the property of the mission. It would seem preferable, while retaining the general formula, to mention this possibility expressly, as is done in article 45, subparagraph *b*, of the Convention on Diplomatic Relations.

Article 50

The Swiss Government has already indicated that it considers article 50 inadequate. In its view, the inadequacy is twofold.

First, the consultations provided for are insufficient for the application of a codification convention. The Swiss Government maintains its view that the corollary to the codification of international law must be the jurisdiction of international tribunals, preferably existing tribunals and in particular the International Court of Justice. It will make a proposal in that sense in due course.

Secondly, the special nature of the relations between the sending State and the host State require for certain specific questions the establishment of a tripartite body capable of coming to a decision in a very short time. This body could be made responsible for handling, through a conciliation procedure, the objections of the host State to a member of a permanent mission (article 10) or to the size of the permanent mission (article 16).

The conciliation machinery could operate in accordance with the text suggested below:

"Within six months after the Convention enters into force with regard to the Organization, the latter shall establish a Conciliation Commission based on the following principles:

"1. The Commission shall be composed of three members: one representative of the Organization, one representative of the sending State and one representative of the host State.

"2. The representatives shall be designated in advance and their names shall be included in a list maintained by the Organization.

"3. Matters may be brought to the cognizance of the Commission by the Organization, the sending State or the host State.

"4. The absence of a representative shall not prevent the Commission from taking a decision.

"5. The Commission shall take its decisions by majority vote; it may make recommendations to the parties."

(*b*) PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY "NOTE VERBALE" DATED 22 JANUARY 1971 FROM THE PERMANENT OBSERVER TO THE UNITED NATIONS

[*Original text: French*]

Introduction

The Swiss Government has been greatly interested in the results of the work of the International Law Commission on permanent observer missions to international organizations and on delegations of States to organs and to conferences. Switzerland attaches the greatest importance to these matters, both as the host State for the European headquarters of the United Nations and for many other international organizations and also as a non-member State of the United Nations which is represented in New York by an observer. The Swiss Government is happy to be able to collaborate in the codification work undertaken by the Commission at the request of the General Assembly, and its observations on the Commission's draft articles are given below.

As a preliminary comment, it is suggested that the references to earlier articles in the draft—those in articles 66 to 77 for example—

should be grouped together in one or more articles. Moreover, this suggestion seems to meet the concern expressed by some members of the Commission itself.

Article 52

The words "in accordance with the rules or practice of the Organization" should be replaced by "with the agreement of the Organization and in accordance with its rules or practice", which would come at the beginning of the sentence, for it is felt that the organizations should be empowered to grant or refuse permission to establish a permanent observer mission. The present reference to the rules or practice of the organization seems to signify that permanent observer missions may be established if the general practice of the organization admits of their existence. On the other hand, it does not seem to permit a separate decision to be taken in each case.

Article 53

The Swiss Government has some misgivings about the views in paragraph 2 of the commentary contrasting permanent missions and observers. In its view, the permanent observer does specifically represent his Government in (*auprès*) the Organization. Moreover, it may be noted that, in French, this is the term used in describing such missions. For example, the Swiss observer mission in New York is officially called the "Office of the Permanent Observer of Switzerland to (*auprès*) the United Nations" and the Swiss representative at Geneva is called the "Observer of the Federal Political Department to (*auprès*) the United Nations in Geneva and Permanent Representative to (*auprès*) the other International Organizations".

Precisely because the sending State is not a member of the organization, the position of the mission is very similar to that of an embassy to a foreign Government. In the same way as an embassy represents the sending State in (*auprès*) the receiving State, the observer mission represents it in (*auprès*) the organization, and participation in the internal work of the organization, which is one of the fundamental tasks of a Member State's permanent mission, is, in principle, clearly impossible in the case of observers, just as of course there is no equivalent in international relations. Like the ambassador, the observer therefore ensures representation between two entities which are exterior to each other. Accordingly, it is not a Member State's permanent mission which should be equated with a diplomatic mission (while the observer is accorded a lower degree of competence) but rather the observer who should be equated with the embassy, since the permanent mission, which participates in the internal work of the organization, has an important extra degree of competence for which there is no analogy in inter-State relations.

This similarity between observer missions and diplomatic missions has certain practical consequences relating to their status which should be taken up again at a later stage.

As to the text of the draft article, the words "representing its Government at sessions of organs of the Organization at which it has been invited to participate" should be added to the text. This formulation is based on the wording used in the United Nations Legal Counsel's memorandum dated 22 August 1962, [2] part of which is cited in the Commission's report on its twenty-second session.[3] An organization sometimes invites non-member States to participate in some of its work and, occasionally, it is obliged to do so. In that connexion, it is possible to cite Switzerland's participation in the elections in the International Court of Justice and in the revisions of the Statute of the Court. Such participation is one of the normal responsibilities of observer missions.

In addition, it is suggested that in the penultimate line of the article the words "with the Organization" should be changed to "with or in the Organization", the phrase used in article 7, *c*.

Article 54

In addition to plurality of functions as observer to two or more international organizations, it is indeed useful to provide for the possibility of accrediting the head or a member of a permanent mission to one organization as an observer to another organization. This is advantageous to States which are members of only one or some of the organizations established at a given place and which want observer status in other organizations. It may be noted, here again, that at Geneva the same person acts as permanent representative to the specialized agencies of which Switzerland is a member and as observer to the United Nations. His title, which was quoted in connexion with article 53, mentions both these functions.

However, the present wording of the article is not perhaps absolutely clear and it might be amended as follows:

"The sending State may accredit the same person as permanent observer to two or more international organizations or *simultaneously as a member of its permanent mission to one or more international organizations and as permanent observer to one or more other organizations*".

Article 55

Please see the Swiss Government's comment on article 10. The host State should be empowered to formulate objections to the presence of a given individual in its territory as a member of an observer mission. Without prejudice to the conciliation commission which it has been suggested should be set up, it should be empowered to refuse to grant all or some of the immunities to the person concerned.

Article 57

The Swiss Government supports the idea of issuing permanent observers with credentials. This results in a welcome clarification of their status.

Article 58

In its earlier comments, the Swiss Government suggested deleting article 14, whose place in the part concerning permanent missions is the same as that of article 58 in the part concerning observers. It expressed the view that this matter relates to the conclusion of treaties between States and international organizations, a field which should be codified separately.

Secondly, it is suggested that the word "adopting" in paragraph 1 should be replaced by "negotiating", so as to avoid confusion with signing—dealt with in paragraph 2—and also to make allowance for the modern tendency to replace signing by a vote of adoption.

Article 60

The Swiss Government reiterates its earlier comment on article 16, concerning the limiting of the size of the mission.

Article 61

The Swiss Government reiterates its earlier comment on article 17, concerning notification of the host State by the observer and not by the organization, as an indispensable requirement for the granting of privileges.

With regard to notification of double assignments (article 59, para. 2), please see the earlier comments on articles 9 and 17.

Article 63

The Swiss Government endorses the principle set out in this article. In addition, it shares the view expressed by some members

[2] Reproduced in *Yearbook of the International Law Commission, 1967*, vol. II, p. 190, document A/CN.4/L.118 and Add.1 and 2, part one, A, para. 169.

[3] *Ibid., 1970*, vol. II, p. 277, document A/8010/Rev.1, chap. II, B.

of the Commission that the words "in localities" should be replaced by "in a locality".

Article 64

In view of the observations on the similarity between observer missions and diplomatic missions (see comment on article 53), it seems natural to grant the mission the right to display the flag of the sending State on its premises and to extend that right to the observer's residence and the vehicle he uses.

Article 67 et seq.

The Swiss Government supports the idea that the privileges and immunities of observer missions should be the same as those of permanent missions. In its view, a great deal could also be borrowed from the status of diplomatic missions, because of the similarity between the two types of missions.

Article 68

Please see the earlier comment on article 28.

Article 79

It might be desirable to amend this article so as to cover agreements already concluded, as well as those to be concluded in the future.

Moreover, the purpose of this provision, including the proposed addition, would be met by articles 4 and 5, provided it was clearly understood that they apply to the draft as a whole—as indeed the Commission observes in its commentary on article 4—and that the wording of article 5, which is too restrictive in its present form, is revised accordingly.

Article 82

The subject of this article is a rather delicate one. It is not easy to define the rights of the host State in cases where a delegation to an organ or to a conference is of an exaggerated size. The fundamental rule, deriving from general international law, is that each State is, in principle, free to refuse entry into its territory, subject to the special obligations it has entered into in that connexion, i.e., in our case, those resulting from the headquarters agreement concluded with the organization. For the host State, such special norms will commonly involve the obligation to allow delegations to enter, with some opportunity to formulate objections in cases where they are of an exaggerated size. Where it is not possible to invoke any special norm, the general principle applies and it may be wondered whether this article limits the discretionary power of the host State in that regard. This does not seem to be the case with the present wording of the draft and such an approach appears to be acceptable.

The Swiss Government wishes to reaffirm in this connexion its intention to pursue a most liberal policy in his matter.

Article 83

It would seem advisable to take account here of the trend towards multiple representation which has been noted on a number of occasions. Among its other advantages, this practice has the merit of facilitating the participation of small States in the work of international organizations and conferences. It is therefore suggested that the text of the draft should be amended to authorize multiple representation.

Apart from the representation of two or more States by the same delegation, it would be advisable—for the benefit of small States in particular—to raise no obstacle to the different but well-established practice whereby a member of a permanent mission or an observer mission acts as the delegate of another State at certain meetings. For example, in the election of judges at the International Court of Justice, a member of the Office of the Observer of Switzerland to the United Nations is usually designated as the delegate for Liechtenstein.

Since it shares some of the concern expressed by the Commission in the commentary, the Swiss Government proposes the addition of a new article 83*bis*, establishing that, under certain conditions, a member of a delegation may represent another State.

Article 84

Please see the comment on article 55.

Article 86

It would be preferable for the acting head to be designated in advance, before any case of unavoidable absence, which may be sudden, can occur.

Article 95

The reference to the nature of the functions performed by delegations introduces an element which might lead to difficulties of interpretation and one which is not perhaps indispensable. This reference could be deleted and the article could start with the words "For the duration of the functions . . .".

Article 100

In view of the fairly loose ties delegates have in the host State—where their stay is only temporary—alternative B seems better. In the circumstances, this wording of the text ensures adequate protection.

Article 101

See the observations on articles 33 and 34.

Article 102

The detailed provisions of this article do not seem destined for broad practical application, since delegates do not in principle have a domicile in the host State or, if they do, they generally have diplomatic status. Consequently, it might be desirable to attempt to simplify the wording of this article and reduce it to a simple statement of principle. The wording might be something similar to the following:

> "The sojourn in the host State of representatives in a delegation to an organ or to a conference and of the members of its diplomatic staff shall never make the persons concerned liable to dues and taxes, personal or real, national, regional or municipal to which such persons would not have been liable if they did not have such status".

The idea underlying this text is that delegates shall be liable to the taxes which affect all persons who are in the territory for any purpose, even if they are merely passing through (for example, the indirect purchase taxes referred to in subparagraph *a* or those referred to in subparagraph *e*), and the taxes to which they are liable regardless of their presence in the territory of the country (subparagraphs *b* to *d*)—i.e. precisely the exceptions listed in the present draft—whilst they are exempted from all other taxes which are generally based on the existence of a domicile or sojourn in the territory of the host country.

Article 108

In paragraph 2, the words "in which to do so" might be interpreted as meaning that the privileges and immunities would subsist so long as the host State had not fixed a time-limit for the delegate to leave the territory. Since such a practice is not followed at the

present time and there would be no advantage in encouraging its introduction, it would seem preferable to adopt the following version for the beginning of the paragraph:

"When the functions of a person entitled to privileges and immunities under this part have come to an end, the privileges and immunities of such person shall normally cease at the moment when he leaves the territory of the host State or on the expiry of a reasonable period after the functions have come to an end".

Article 114

It would be desirable for the notification referred to in subparagraph *a* to be sent to the host State as well.

C. OBSERVATIONS OF THE SECRETARIATS OF THE UNITED NATIONS, THE SPECIALIZED AGENCIES AND THE INTERNATIONAL ATOMIC ENERGY AGENCY

1. United Nations

(*a*) PARTS I AND II OF THE PROVISIONAL DRAFT

[*Original text: English*]

1. In pursuance of the request of the International Law Commission made at its twenty-first session, 1969, the Secretariat of the United Nations submits the following observations on parts I and II of the draft articles on representatives of States to international organizations, adopted by the Commission at its twentieth and twenty-first sessions.

Right of entry and sojourn

2. The Secretariat of the United Nations believes it desirable that express provision should be made in the draft articles to ensure to members of permanent missions and their families the right of entry into and sojourn in the territory of the host State and the freedom of transit to and from the premises of the international organization concerned. The Commission has indicated, in paragraph 2 of its commentary to article 48 of the draft articles, that it would consider this point at its second reading of the draft articles.

3. Entry into the territory of the host States is an indispensable privilege and immunity for the independent exercise on the part of members of permanent missions of their functions in connexion with the organization to which they are accredited. It is a prerequisite to all other privileges and immunities in the host State. Provisions for it have been made in the Convention on the Privileges and Immunities of the United Nations (section II, para. *d*), the Convention on the Privileges and Immunities of the Specialized Agencies (section 13, para. *d*) and the Agreement on the Privileges and Immunities of IAEA (section 12, para. *d*). Similar provisions are contained in the headquarters agreements of the United Nations and in those of various specialized agencies, of IAEA, and of the subsidiary organs of the United Nations such as the regional economic commissions and UNIDO.

4. In the draft articles in their present form, the right of entry is probably implied in article 28 dealing with "freedom of movement" in the host State, in article 48 on "facilities for departure" and in article 45, paragraph 2, on "recall" (of the person concerned by the sending State). These provisions, on the other hand, appear to make its omission all the more conspicuous. Indeed, its absence renders the enumeration of privileges and immunities of representatives logically incomplete and the enjoyment of those already provided for possibly nugatory. Under article 42, every person entitled to privileges and immunities shall enjoy them only "from the moment he enters the territory of the host State". This provision would preclude a representative from claiming vis-à-vis the host State, any privilege and immunity, including that of entry, until he has entered the host State. It is therefore imperative to expressly provide for the right of entry into the host State. Without such a provision, a host State might in effect be given the unintended power of veto over the appointment by States of their representatives.

5. In the experience of the Secretariat of the United Nations, there have been occasions when—convention, headquarters agreement and/or "host agreement" notwithstanding—a representative of State has been refused entry by a host State. While most of such cases concerned representatives to a specific session of a United Nations organ or to an *ad hoc* meeting convened under the auspices of the United Nations, members of permanent missions have on occasion been involved too. Indeed, sessions of a regional economic commission have had their venue changed from one Member State to another because entry was not assured for the representative of a State entitled to attend.

6. The Secretariat of the United Nations would therefore suggest that an article be added to provide for members of permanent missions the right of entry into the host State in order to exercise their functions in connexion with the organization to which they are accredited. In the context of the existing text of the draft articles, in the light of the relevant provisions of existing conventions and headquarters agreements, and on the basis of the experience of the Secretariat, the additional article on entry might comprise several elements:

(1) The host State should facilitate

(*a*) entry into its territory, and

(*b*) sojourn in its territory

of all members of all permanent missions and members of their families forming part of their respective households;

(2) It should ensure the freedom of transit to and from the organization to any person referred to in 1 above;

(3) Visas, where required, should be granted free of charge and as promptly as possible; and

(4) Laws or regulations of the host State tending to restrict entry or sojourn of aliens should not apply to any person referred to in 1 above.

7. With reference to the privilege of sojourn in the host State, it is noted that article 45 of the draft envisages the recall or termination by the sending State of any member of its permanent mission "in case of grave and manifest violation of the criminal law of the host State" by the person concerned.

8. Should the Commission decide to add a new article in the sense suggested above, the text might be inserted so as to precede existing articles 28 ("Freedom of movement"). For the convenience of the Commission in its consideration of this matter, the Secretariat appends the following draft text which indicates the substance which such article might cover:

"*Article 27* bis. *Entry into and sojourn in the host State*

"1. The host State shall take all necessary measures to facilitate the entry into and sojourn in its territory of any person appointed, in accordance with article 10, by a State member of the Organization as a member of that State's permanent mission and of any member of the family forming part of the household of such member of permanent mission.

"2. The host State shall ensure to all persons referred to in paragraph 1 of this article the freedom of transit to and from the Organization and shall afford them any necessary protection in transit.

"3. Visas, where required for any person referred to in paragraph 1 of this article, shall be granted free of charge and as promptly as possible.

"4. Laws or regulations of the host State tending to restrict the entry or sojourn of aliens shall not apply to any person referred to in paragraph 1 of this article."

Abuse of privilege of residence

9. Article 45, paragraph 2, provides an obligation of the sending State, if it does not waive the immunity of a member of a permanent mission, to recall or otherwise remove him only "in case of grave and manifest violation of the criminal law of the host State". It is suggested that this obligation should be broadened to bring it into line with the corresponding provision of the Headquarters Agreement of the United Nations. It would then cover any serious abuse of the privilege of residence, whether or not it constitutes a grave and manifest violation of criminal law, subject only to the proviso already included in the last sentence of paragraph 2.

10. The language of the Headquarters Agreement of the United Nations (section 13, para. *b*) is "in case of abuse of such privileges of residence by any such person in activities in the United States outside his official capacity", and this has been followed in other headquarters agreements and conference agreements. Thus the practice in the wording of agreements supports a broader formulation than that in the present draft; and there have also been cases of abuse of the privilege of residence (for example by engaging in commercial activity in the host State without that State's permission) which have led a sending State to recall the persons involved after protest by the host State.

11. Under the present formulations of the draft articles, if there is a serious abuse of the privilege of residence which does not constitute a grave and manifest violation of criminal law—for example, conspicuous interference in the internal political affairs of the host State, or running an extensive private business without permission, or even a long series of minor offences showing contempt for the local law—the only thing the host State could do to stop the abuse would be to consult with the sending State and the organization under article 50. If, however, duties are imposed only on the individuals concerned (as under the present article 45, paragraph 1, and article 46) and not on the sending State, the latter would have no legal obligation to take action, and the consultation might not be fruitful.

(*b*) PARTS III AND IV OF THE PROVISIONAL DRAFT

[*Original text: English*]

1. The Secretariat of the United Nations submits to the International Law Commission two points concerning the Commission's draft articles on permanent observer missions to international organizations (part III) and those on delegations of State to organs and to conferences (part IV). These comments are parallel to its observations on part II of the draft articles dealing with permanent missions to international organizations and are motivated by the same considerations.

2. The Secretariat believes, in the first place, that express provision should be made, in parts III and IV of the draft articles, to ensure to members of permanent observer missions and of delegations of States to organs or conferences of international organizations, and to members of their families, the right of entry into and sojourn in the territory of the host State and the freedom of transit to and from the premises of the international organization, or to and from the site of the organ or the conference concerned.

3. The Secretariat is of the opinion, secondly, that the obligation of the sending State, envisaged by reference in articles 76 and 112, to recall or otherwise to remove a member of its permanent observer mission or of its delegation to an organ or conference, if it does not waive his immunity, should be extended to cover any serious abuse of the privilege of residence.

4. The reasons for the foregoing suggestions may be found in the Secretariat's observations on part II of the provisional draft, which are applicable, *mutatis mutandis*, to those on permanent observer missions and delegations to organs and conferences.

2. International Labour Organisation

(*a*) PARTS I AND II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 21 AUGUST 1970 FROM THE LEGAL ADVISER

[*Original text. French*]

Before offering the comments which certain of the draft articles seem to us to call for, I should like to make a general comment which we feel is of very considerable importance.

The draft convention will be adopted by States. It naturally imposes certain obligations on these subjects of international law, but it also imposes a number of obligations on international organizations. It seems to us that this raises the question whether, legally, an inter-State agreement can impose obligations on a third subject of international law, in this instance international organizations of universal character. In the case of relations between States the validity of such obligations is doubtful at best according to authoritative legal opinion, unless the third State on which the obligations are imposed, signifies its acceptance of them.

It is true that certain international conventions, such as the constitutions of international organizations, impose certain obligations on those organizations. However, in such cases the situation is different from the one we are dealing with here, for what those constitutions define is in fact the functions and purposes of the organizations, whereas in the present case the obligations imposed on the organization are not part of the latter's constitutional functions.

A comparison with the general conventions on privileges and immunities, whether of the United Nations or of the specialized agencies, does not seem to us entirely satisfactory, for under those conventions the obligations imposed on the international organizations are in reality simply prior conditions which the organizations must fulfil in order to obtain certain privileges or immunities. In the present instance, however, the obligations have no connexion with any rights which the organizations may enjoy.

As to this point, therefore, we feel that in order to clarify the situation the organizations should if possible be parties to the future convention or should at least have the opportunity formally to accept the obligations which it would impose on them.

Turning to our specific comments, we should like to stress the following points.

Article 3

The full significance of this article does not seem to us very clear, even in the light of the explanation given by the International Law Commission itself. Judging strictly from the explanation and the text, it would appear that the organization, in its relations with the host State and with a sending State, could completely ignore the provisions of the convention, even if the latter had been ratified by the two States: it could contend that its relevant rules and practices were different from those set forth in the convention and that consequently only the former were applicable. As that is surely not the intent of this provision, it would presumably be desirable to clarify somewhat the relationship between existing rules and practices and the draft convention.

Articles 4 and 5

These texts, the purpose of which is to safeguard existing agreements and permit the conclusion of special agreements in the future, also seem to us to justify some doubts. An existing agreement might not necessarily be in the usual form but might derive from an exchange of letters or even from unilateral decisions accepted as valid *per se* and applied over long periods (such is the case, for example, in Switzerland). Would these arrangements, which may even have acquired the character of customary law, be maintained under the new system, or would the convention have to be regarded as displacing them?

Moreover, a particularly delicate situation might arise if one or more of the sending States ratified the new convention and the host State did not. In such a case, the earlier arrangements would presumably be maintained. However, the sending State could request the organization—which would be bound vis-à-vis the sending State by the convention—to take the measures in its favour specified under the convention as being incumbent on the international organizations, while the host State did not recognize the organization's action. Such a situation would naturally be unsatisfactory, and perhaps some clarification of the problems which would arise could be included in the convention itself.

Article 7

This article, which describes the functions of a permanent mission, should of course be expanded, as far as the ILO is concerned, to take into account the fact that the ILO's relations with member States are primarily of a technical nature. For that reason, relations with member States are for the most part, under article 11 of the Constitution,[1] handled through the "government departments of any of the Members which deal with questions of industry and employment", which communicate with the Director-General, when necessary, through the representative of their Government on the Governing Body. Of course, draft article 7 is subject to the reservations set forth in article 3 and could thus, in the case of the ILO, at least to some extent be disregarded; but the impression given by article 7 is that henceforth only the permanent mission, as normally constituted or with the addition of technical experts, would be competent to have dealings with the ILO. It might be useful to specify what the situation would be, at least in an appropriate commentary of the draft convention.

Article 7 also provides that one of the functions of the permanent mission is that of "carrying on negotiations with or in the Organization". This provision does not seem to be applicable to the ILO, since no negotiations are carried on in the organization, at least as regards the adoption of the most important ILO instruments, namely conventions and recommendations, which takes place in the Conference.

Article 16

This provision, which deals with the size of the mission, and in particular the limits which the size of the mission should not exceed, gives no indication of who would decide what is reasonable and normal. It could place the organization in a very difficult situation, considering that article 50 of the draft provides that any question arising between a sending State and the host State concerning the application of the convention shall be the subject of tripartite negotiations between the sending State, the host State and the organization. The organization would thus be obliged to take a position on a problem which had very little to do with it.

Article 17

This article would completely disrupt the ILO's present practice. Until now the ILO has limited itself to receiving and taking note of notification regarding accreditation to the organization. The information received concerns only members of permanent missions representing their countries in the ILO. The considerable amplification of the obligation to notify provided for in article 17 would make it necessary to set up a very cumbersome system in which the Organisation would simply act as a transmitting body. At Geneva, moreover, the members of permanent missions are in the great majority of cases assigned to several organizations at the same time. To oblige the permanent missions to notify each of the organizations of the names of all the persons referred to in article 17 and to oblige all the organizations to transmit that information to the host State would entail a duplication of effort which would hardly seem justifiable. Perhaps in cases of accreditation to several organizations the notification could be made to only one of them, which would be responsible for informing the host State and the other organizations.

Article 19

The order of precedence provided for in this article would be determined by the alphabetical order. Perhaps the article should specify which alphabetical order is meant, as it would vary according to the language used.

Articles 22, 23 and 24

These articles provide that the organization shall assist the permanent mission in various matters. They raise the same problems as article 50. The organization's role with reference, in particular, to obtaining accommodation is not clearly defined, and could include the obligation to provide private accommodation for members of the permanent missions. It is difficult to see how the organizations could carry out such an obligation.

Article 50

This general provision envisages tripartite consultations between the sending State, the host State and the organization concerning the application of the convention. It thus imposes on the organizations the obligation to provide for the diplomatic protection, as it were of the sending State. It seems to us that it would be very difficult for an organization to play the role of conciliator, perhaps even arbitrator, in connexion with problems not directly related to its own interests, such as respect for exemption from customs duties or the extent and content of immunity from jurisdiction. While there is no question that an organization can and should intervene if the host State hinders the functioning of the organization by, for example, prohibiting the entry into its territory of representatives of member States, it does not seem to us that questions relating rather to diplomatic usage and the comity of nations can usefully be made the subject of intervention by the organization. They are matters touching solely on the relations between two States and having nothing to do with the organization.

(*b*) PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 2 DECEMBER 1970 FROM THE LEGAL ADVISER

[*Original text: French*]

. . . I should like to point out that my general comments concerning parts I and II [of the provisional draft] also apply to [parts III and IV].

Turning to particular points, I feel that the following observations could be made.

Article 51

Paragraph *a* of this article does not indicate whether, to benefit from the convention, a non-member State has to be a party to the convention or whether it is enough if the host State has ratified it.

[1] International Labour Office, *Constitution of the International Labour Organisation and Standing Orders of the International Labour Conference* (Geneva, 1968).

Probably both States have to be parties to the convention, but it might be preferable to say so specifically.

The term "office" in paragraph *i* of the same article does not seem very clear. It may refer to offices with a general field of activity, such as the United Nations Office at Geneva, as well as the regional offices of the Organization, which are designed only to meet the needs of their particular region. If the latter meaning is intended, it would appear that the host State would have to allow the establishment of missions in its territory by non-member States of the organization which are not situated in the region covered by the office to which the mission would be accredited. I am not sure that this was the intention of the authors of the draft. The fact that article 52 refers to the rules or practice of the organization does not seem to be a completely satisfactory solution in this case, since some organizations, such as the ILO, have no practice or rules relating to this matter.

Article 78

Quite obviously, article 78 refers solely to delegations consisting of government representatives and not to non-government delegations such as those representing employers and workers as we know them in the International Labour Office. For example, the status of the employers' and workers' members of the Governing Body of the International Labour Office or of the persons invited by the Governing Body to take part in advisory committees or regional conferences or meetings of experts does not fall within the scope of the draft. Similarly, there is no provision covering non-permanent observer delegations to an organ of the organization or to a conference. This seems to us to be an omission in the draft which might be of some importance, particularly as regards rights of entry, sojourn and departure in the country where the conference or the meeting is held, and also as regards the principal immunities.

Lastly, concerning the relation between the fourth part of the draft and article 13, which deals with the accreditation of permanent representatives to organs, it would seem desirable to state specifically that delegations to organs or to conferences should always be accredited according to the rules of the organization and that general accreditation to the organization would not be a sufficient basis for assuming that permanent delegates are automatically members of the delegation of the country they represent in each particular meeting.

Article 79

This article, which basically reproduces the text of article 5, might create some ambiguity, particularly with regard to the scope of articles 3 and 4, which are not reproduced. Accordingly, it is felt that it would be preferable either not to reproduce the substance of article 5, or to reproduce the whole of articles 3 to 5.

Article 81

It should be noted in this connexion that although States may appoint a head of delegation, the rules applicable in the ILO do not compel them to do so, since each of the government delegates (as well as the employers' and workers' delegates) are treated by the conference as being on an equal footing. The delegates representing employers and workers are not subject to the authority of any head of delegation.

Articles 84 and 86

The comments concerning article 81 apply equally to these two articles.

Article 89

It would indeed be desirable if organizations could be told of the dates of arrival and departure of the persons referred to in article 81 and so inform the Government of the country in which the conference meets of the period in which those persons will fall under the system established in the draft convention.

However, this provision might face almost insurmountable difficulties when it came to be implemented. In the first place, it is easy to imagine that some delegates, not to say members of their family, will fail to inform the organization of their arrival or departure; equally, some delegates, including the employers' and workers' delegates in the ILO, will prolong their stay at the place in which the conference meets beyond the closing date. In that case, should the Government be informed of the actual date of departure of the persons concerned? Alternatively (and, it would seem, more logically) should the period of application of the draft cease on the closing date of the conference?

Article 90

In the ILO, the problem of precedence among Member States does not really arise since, in practice, the order in which Governments are called in roll-call votes and seated in the conference room is alternately forward and reverse French alphabetical order. These are the only cases in which some precedence is observed.

Lastly, I note that the question of the status of observer missions which are not composed of national officials, such as the representatives at Geneva of the large employers' and workers' organizations, is not taken up in the draft convention.

3. Food and Agriculture Organization of the United Nations

PARTS I AND II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY A LETTER DATED 5 JANUARY 1971 FROM THE LEGAL COUNSEL

[*Original text: English*]

Article 12

In the third sentence of paragraph 5 of the commentary, the words "the Conference (FAO), or" should be deleted. In FAO the Director-General does *not* report to the Conference on credentials or appointment of permanent representatives; the Conference and its Credentials Committee may have to examine such credentials in cases in which the permanent representative is to represent his country at a session of the Conference by virtue of his general credentials.

Article 13

The first sentence of paragraph 4 of the commentary should be accompanied by a foot-note reading as follows:

> "In 1969, FAO amended Rule III.2 of its General Rules in this sense; the relevant provision now reads: 'A Permanent Representative to the Organization does not require special credentials if his letter of accreditation to the Organization specifies that he is authorized to represent his Government at sessions of the Conference, it being understood that this would not preclude that Government from accrediting another delegate by means of special credentials'." [2]

The previous practice has been modified by this amendment which has been drawn up in the light of the draft articles.

4. United Nations Educational, Scientific and Cultural Organization

(*a*) PARTS I AND II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 2 SEPTEMBER 1970 FROM THE ASSISTANT DIRECTOR-GENERAL FOR INTERNATIONAL STANDARDS AND LEGAL AFFAIRS

[*Original text: French*]

The observations of the UNESCO Secretariat refer to the draft articles and the commentaries on them, and also to the interpreta-

[2] FAO, *Basic Texts of the Food and Agriculture Organization of the United Nations, 1970 Edition*, pp. 24–25.

tion given to the information provided by UNESCO in its letters dated 2 March and 3 September 1965, 15 September 1966 and 2 August 1968.

1. In *article 11*, the provision that the permanent representative and the members of the diplomatic staff "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" seems to me too restrictive. Nationality should not be of any concern in the choice of a permanent representative and of the diplomatic staff of the mission, and the host State should not be given a right of veto in the matter. I note that

> "some members of the Commission considered that in principle there should be no restrictions on the appointment by the sending State of non-nationals to its permanent mission" (commentary, para. 2).

The only restriction with regard to nationals of the host State which seems to me to be justified is that concerning privileges and immunities, and I appreciate that the host State should not be obliged to grant such persons all the privileges and immunities; those restrictions are explicitly laid down in articles 40 and 41, and it would be advisable to leave it at that.

2. In *article 14*, it does not seem to me very apt to speak of "adopting the text of a treaty" in the case of a bilateral instrument. It would seem to me more accurate and more in accordance with the facts to say that a permanent representative is considered as representing his State "for the purpose of negotiating and drawing up the text of a treaty..." or "for the purpose of negotiating a treaty and drawing up the text thereof...".

3. The commentary on *article 15* seems to me to call for two comments:

(*a*) Paragraph 3 of the commentary draws attention to the practice of certain States of appointing to their permanent missions "deputy permanent representatives" or "alternate permanent representatives" and to the increasing importance of the functions performed by these officials, and observes that this practice is often followed at United Nations Headquarters in New York but is not a common occurrence "at headquarters of other international organizations". This is not correct in the case of UNESCO, where the practice in this matter is the same as in New York. There are many deputy permanent delegates at UNESCO Headquarters in Paris, and the functions performed by them are increasingly important. Moreover, the Headquarters Agreement [3] makes mention of such deputy permanent delegates (article 9, para. 2, *c*, and article 18, para. 1).

(*b*) In paragraph 4 of the commentary, the reference should no longer be to the "Interim Arrangements on Privileges and Immunities of the United Nations concluded between the Secretary-General and the Swiss Federal Council" but to the "Agreement on Privileges and Immunities of the United Nations concluded between the Swiss Federal Council and the Secretary-General of the United Nations on 19 April 1946". The original title was amended by an "exchange of letters constituting an additional agreement" of 5 and 11 April 1963, which entered into force on 11 April 1963.[4]

4. Article 17, paragraph 1, *a*, should speak of the "*cessation de leurs fonctions*" and not the "*cession de leurs fonctions*". This mistake occurs in the French text only.

5. In the French text of paragraph 4 of the commentary on article 20, it would be better to say *Conseiller juridique*, rather than *Conseil juridique*.

6. The last part of the commentary on *article 21* described the practice with regard to permanent delegates to UNESCO in terms which do not accurately reflect what was set forth in the reply that I addressed to you under cover of my letter of 2 March 1965.[5] I can only refer to that letter.

7. With regard to *article 22*, it is open to question whether a clause providing that the organization shall assist the permanent mission in obtaining the facilities necessary for the performance of its functions and shall accord it such facilities as lie within its own competence would not be out of place in such a convention. I understand that this question arose in the Commission (commentary, para. 2).

8. *Article 23*, paragraph 2, sets forth the obligation of the organization to assist permanent missions, where necessary, to obtain suitable accommodation for their members. Such an obligation seems to me to be questionable and often difficult to fulfil. In any event, it seems to me quite unwarranted, if not wrong, to base such an obligation on the idea that this assistance by the organization "would be very useful, among other reasons, because the organization itself would have a vast experience of the real estate market and the conditions governing it" (commentary, para. 3). A specialized agency is not a real estate brokerage, and it is certainly going too far to assume that it has such experience. Moreover, the same question arises here as in the case of article 22, namely, whether a provision of this kind is not out of place in a convention of this kind.

9. In *article 32*, I consider that paragraph 1 *d*, which appears in brackets, should be deleted completely. Such a provision would constitute an exception to immunity from civil jurisdiction and might give rise to other exceptions that would not be desirable. The problem of judicial action arising out of a third-party insurance policy does not seem relevant, since in most States the victim of an automobile accident would have a direct claim against the insurer and that claim could be enforced even if the policy-holder, having immunity from jurisdiction, could not be sued. I think that, as stated in the commentary (para. 4), "the Vienna precedent should be followed" and that the principles set forth in draft articles 34 and 45 (not article 44, as wrongly stated in the French version of the penultimate sentence of paragraph 4, of the commentary), the importance of which should not be underestimated, should be adhered to.

10. With regard to *article 33*, there seems to me to be every justification for providing that, in the situation covered by paragraph 3, the person concerned "shall [be precluded] from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim". However, I think that this should apply to appeals as well as counter-claims, as is generally provided by the makers of diplomatic law; for it is impossible to see how a person enjoying a privileged status who had obtained a judgement could be allowed to block his opponent's appeal by relying on his immunity from jurisdiction.

[For a further observation on article 33, see section *b*, para. 7, below.]

---

[3] United Nations, *Treaty Series*, vol. 357, p. 3.

[4] *Ibid.*, vol. 509, p. 309.

[5] The relevant paragraph of the letter reads as follows:

"21. The permanent delegations with offices in the UNESCO Headquarters do not display their national emblems. The flags of member States (and that of the United Nations) are flown at the entrance to the Headquarters on the occasion of national holidays and visits of the respective Heads of State.

"With regard to the right of permanent representatives to fly their national flag from their private residence, the Protocol Department of the Ministry of Foreign Affairs was consulted on the matter and stated that there were no official rules on the point.

"Permanent representatives who are holders of a 'Head of diplomatic mission' card and who have a CMD plate on their car are entitled to fly a pennon in their national colours on their car (in the exercise of their official functions)."

11. In paragraph 4 of the commentary on *article 36*, the statement about UNESCO does not reflect quite accurately what was stated in the reply contained in my letter of 2 March 1965.[6]

12. In paragraph 5 of the commentary on *article 38*, the last sentence should state that "other delegates or members of delegations may import . . ." and should add that they may also temporarily import motor-cars free of duty, under customs certificates without deposits (see my letter of 2 March 1965).[7]

13. I note that in *article 40*, paragraphs 2 and 3, and in *article 41*, persons who are permanently resident in the host State are placed on the same footing as nationals of that State, which means that they are deprived of the essentials of diplomatic status. Article 41 is most significant in this respect.

These provisions are regrettable. Such assimilation will enable States to refuse, or even to withdraw, privileges and immunities which have hitherto been granted. Moreover, permanent residence is not a concept which has a uniform interpretation (length of stay before taking up the post, conditions of stay, activity carried on, etc.); States might consider that a previous stay of one year, for example, could confer the status of permanent resident, within the meaning and for the purposes of the application of these provisions.

The Headquarters Agreement between France and UNESCO, dated 2 July 1954, has no clause of this nature; only the possession of French nationality places a restriction on certain privileges and immunities. Nevertheless, the French authorities, basing themselves on the provisions of the Vienna Convention on Diplomatic Relations (articles 37 and 38, which correspond to draft articles 40 and 41), did show a desire to place UNESCO officials who were considered to be permanent residents (one year's previous residence was sufficient for this) on the same footing as their French colleagues.

14. With regard to *article 45*, it is normal that the obligations it lays down should not apply in the case of any act that the person concerned performed in carrying out the functions of the permanent mission within the organization but it is not normal that this non-application should also cover an act performed "*within [. . .] the premises of a permanent mission*". The important point is that the act should have been performed in carrying out the functions in question, but it does not matter where the act—official or private—has been performed. If an act had only to be performed on the premises of a permanent mission in order to escape the applicability of the obligations set forth in article 45, the result would be a partial revival of the notion of exterritoriality, which, however, is nowadays rejected both by the courts and by writers on legal topics.

15. *Article 49* does not seem to me to have settled the question in an entirely satisfactory and comprehensive manner. It should have been based more on article 45 of the Vienna Convention, in particular subparagraph *b*. Provision should have been made for the mission which had been recalled to entrust the custody of its property and archives to the permanent mission of another State or to the diplomatic mission of another State. The idea expressed in paragraph 2 of the commentary ("The sending State is free to discharge that obligation in various ways, for instance, by removing its property and archives from the territory of the host State or by entrusting them to its diplomatic mission or to the diplomatic mission of another State") should have been made a provision of the convention.

(*b*) PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 25 FEBRUARY 1971 FROM THE ACTING DIRECTOR, OFFICE OF INTERNATIONAL STANDARDS AND LEGAL AFFAIRS

[*Original text: French*]

1. In section 1 of part III of the draft, under the heading "General comments", it is stated in paragraph 1 that "Permanent observer missions have [. . .] been sent [. . .] on some occasions to the United Nations Educational, Scientific and Cultural Organization". Actually the Holy See maintains a permanent mission to the organization, and has done so for a long time. The Executive Board of UNESCO took a decision regarding permanent observers—with particular reference to the permanent observer of the Holy See—as far back as 1951, at its twenty-sixth session. The text should therefore be amended along the following lines:

> ". . . for instance, by the Holy See to the Food and Agriculture Organization of the United Nations and the United Nations Educational, Scientific and Cultural Organization, and by San Marino . . .".

2. In *article 56*, the provision that the permanent observer and the members of the diplomatic staff of the observer mission "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" seems too restrictive. This draft article calls for the same observations as we have formulated concerning article II. Nationality should not be of any concern in the choice of a permanent observer and the diplomatic staff of the mission, and the host State should not be given a right of veto in the matter. I think that even the provision whereby the permanent observer and the members of the diplomatic staff of the mission "should in principle be of the nationality of the sending State" is too restrictive, because, for reasons of another kind, the permanent representative and the permanent observer cannot be put on the same footing in that respect. The only restriction with regard to nationals of the host State which seems to me to be justified is that concerning privileges and immunities, and I appreciate that the host State should not be obliged to grant such persons all the privileges and immunities; those restrictions are explicitly laid down in articles 69 (by reference to the provisions of article 40) and 70 (by reference to the provisions of article 41), and it would be advisable to leave it at that.

3. In *article 58* it does not seem to me very apt to speak of "adopting the text of a treaty" in the case of a bilateral instrument. It would seem to me more accurate and more in accordance with the facts to say that a permanent observer is considered as representing his State "for the purpose of negotiating and drawing up the text of a treaty . . .", or "for the purpose of negotiating a treaty and drawing up the text thereof . . .". We had made a similar remark concerning article 14.

4. With regard to *article 65*, it is open to question whether a clause providing that the organization shall assist the permanent observer mission in obtaining the facilities necessary for the performance of its functions and shall accord it such facilities as lie within its own

[6] The relevant paragraph of the letter reads as follows:

"22. The taxation system applied to permanent delegations is in principle the same as that enjoyed by embassies.

"Delegations pay only the taxes for services (scavenging, sewerage, garbage collection) and real property tax (*contribution foncière*) when the permanent delegate is the owner of a building.

"Permanent delegates are exempt from tax on movable property (*contribution mobilière*) (a tax imposed on residents of France, according to the residential premises they rent or occupy) in respect of their principal residence but not of any secondary residence."

[7] The relevant paragraph of this letter reads as follows:

"23. Only permanent delegates accredited to the Organization with the rank of ambassador or minister plenipotentiary are assimilated to heads of diplomatic missions (article 18, para. 3, of the Headquarters Agreement). In this capacity they may import goods for their official use and for that of the delegation free of duty.

"Other delegates or members of delegations are assimilated to members of a diplomatic mission accredited to the French Government; they may import free of duty their furniture and personal effects at the time of their installation in France and may temporarily import motor-cars free of duty, under customs certificates without deposits (article 22, subparagraphs *g* and *h*, of the Headquarters Agreement)."

competence would not be out of place in such a convention. I refer here to the observation made by the UNESCO secretariat regarding article 22.

5. *Article 66*, which states that article 23 shall apply in the case of permanent observer missions, calls for the same observations as we made concerning article 23, paragraph 2.

6. Similarly, *article 69*, which states that article 32 shall apply in the case of permanent observer missions, calls for the same observations as we made concerning article 32.

7. I note that article 69 does not state that article 33 shall apply in the case of permanent observers and members of the diplomatic staff of the permanent observer mission. I think that this is the result of an oversight, because if such persons enjoy the immunity from jurisdiction provided for in article 32, provision must also be made for waiving that immunity. There is no reason why the question of waiving immunity should be provided for and regulated in the case of some (permanent representatives) and not in the case of others (permanent observers). In my view it would be better to speak of "withdrawing" the immunity rather than "waiving" it, because to speak of "withdrawing the immunity" shows immediately that it is not for the beneficiaries themselves to deprive themselves of the immunity but that such a decision must be taken by the authority to which they are responsible.

8. Article 69 again states that article 40, paragraphs 1, 2, 3 and 4, shall apply in the case of permanent observer missions, and the same is true of article 70 with regard to the application of article 41. In this connexion I can only refer to the observations which the UNESCO secretariat made concerning articles 40 and 41 and reiterate that we regret the assimilation of persons having their permanent residence in the host State to nationals of that State.

9. *Article 76* states that article 45 shall apply in the case of permanent observer missions. Here again I refer to the remarks we made concerning article 45.

10. Finally, *article 77* states that article 49 shall apply in the case of permanent observer missions, and I can only refer to the observations we made concerning article 49.

5. World Health Organization

(*a*) PARTS I AND II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 18 AUGUST 1970 FROM THE DIRECTOR OF THE LEGAL OFFICE

[*Original text: English*]

As regards part I and section 1 of part II of the draft articles, I have noted that in the commentary to *article 6* it is stated that "The legal basis of permanent missions is to be found in the constitutent instruments of international organizations—particularly in the provisions relating to functions [. . .]" (para. 4), with a further provision that "the Commission wishes to make it clear that the establishment by member States of permanent missions is subject to the general reservations laid down in articles 3, 4 and 5 concerning the relevant rules of the organizations [. . .]" (para. 5).

It may be relevant to note that in so far as the World Health Organization is concerned, the functions of permanent missions as outlined in *article 7* of the draft articles need to be considered in the light of the provisions of articles 10, 1, 24 and 25 of the WHO Constitution,[8] relating to participation at constitutional meetings, and of article 33 relating to the direct access of the Director-General to the departments of members, including health administrations and national health organizations.

For delegates to the World Health Assembly and persons designated to serve on the Executive Board, the Constitution contains a recommendation that they should be technically qualified or competent in the field of health and permanent representatives have not been seated as such in constitutional meetings. The rules of procedure of the World Health Assembly [9] (rule 22) require formal credentials for representatives of members and associate members, irrespective of whether permanent representation exists, while in the case of the Executive Board, the persons serving thereon are not representatives of the members who have designated them.

It may be noted that one permanent mission in Geneva has for some years included a medical officer on its staff for the purposes of liaison with WHO.

With regard to communications, article 33 of the Constitution leaves it to members to decide to what government departments the Director-General may have access, and in the comment by the Technical Preparatory Committee on the draft constitution for WHO,[10] it was stated that the original provision in the draft was intended only to invest the Director-General and the Secretariat with the right to communicate with national health administrations in such manner as might be agreed upon with the competent authority of each country. Direct communication with other branches of government should be through such channels as might be approved by the above-mentioned health authority.

The notion of direct access to national health administrations is not new; it flows from similar arrangements under the Pan American Sanitary Code (article 57) and the Statutes of the International Public Health Office in Paris. The reason for these provisions was that experience had shown that it was not satisfactory to have communications on urgent international public health matters passing through traditional diplomatic channels, owing to the delays and misunderstandings that resulted and that these delays and misunderstandings could represent either a danger to public health or entirely unwarranted interference in international commerce and the free movement of persons and means of transport.

I should like to take this occasion to draw attention to paragraph 4 of the commentary on *article 12*. The wording suggests that in the case of WHO the authorities mentioned (Head of State, the Minister for Foreign Affairs, or the Minister of Health or any other appropriate authority) are empowered to issue credentials to permanent representatives. It should be pointed out that the reference to WHO practice is to a rule of procedure of the World Health Assembly relating to credentials of delegates to the Assembly (rule 22). This rule has no application to permanent representatives and the report of the Commission is erroneous in this regard.

As regards *article 14*, permanent representatives have occasionally signed agreements between WHO and the member concerned. However, the bulk of agreements between WHO and its members are related to the execution of operational programmes which are dealt with at the regional level and as there are no permanent representatives at any of WHO's regional offices, these agreements are signed on behalf of the members in the ministries concerned.

In Geneva, since permanent representatives are usually accredited to the United Nations and to the international organizations in Geneva, it is presumed that the notifications referred to in *article 17* would be made to the United Nations. Lists of permanent missions are prepared by the United Nations and circulated to the other organizations. However, I query the value of the inclusion of subparagraphs *c* and *d* in this article as these would seem to be of marginal interest only.

[8] United Nations, *Treaty Series*, vol. 14, p. 185 and ibid., vol. 377, p. 380.

[9] See WHO, *Basic Documents*, 22nd ed. (Geneva, April 1971), p. 97.

[10] See WHO, *Official Records of the World Health Organization*, No. 1, p. 72.

On precedence (article 19), WHO practice has already been indicated in my letter of 5 August 1968, and there has been no change in this practice to date.[11]

With respect to section 2 of part I, my only comments relate to the provisions placing various responsibilities on the organization with respect to the securing of the enjoyment of privileges and immunities, etc. (articles 22, 23 and 24). Apart from the specific question of housing under article 23, where WHO does not have in Geneva any arrangements for assisting its own staff (outside the United Nations housing service) and therefore could not assist permanent missions, I have some reservations on the more general obligations contained in articles 22 and 24. If by "facilities", office space or related facilities are intended to be included, then the administrative and budgetary aspects become predominant, particularly in view of the fact that WHO headquarters has itself been perennially short of space. As regard the securing of the enjoyment of privileges and immunities, I would observe that in practice most of the time devoted to this matter concerns the situation of individuals particularly as regards fiscal matters, personal disputes, traffic accidents and road traffic regulations and customs regulations. This is time-consuming and we only have limited facilities and time available for dealing with such matters.

In WHO, our practice is invariably to waive the immunity of our officials in cases where the interests of the organization are not involved so that difficulties could arise if, for example, we were requested to secure the privileges or immunities of a member of the staff of a permanent mission under circumstances where we would have waived the immunity.

Moreover, a difficult situation would arise if a mission were to consider that the organization had not been sufficiently diligent in securing its interests or if there were to be an actual difference between the organization and the mission as to the interpretation or extent of the privileges and immunities claimed. For these reasons it would seem that the application of article 24 would have to be limited to substantial matters and that day-to-day personal questions should be excluded.

[11] The relevant paragraphs of the letter read as follows:

"In so far as the precedence accorded to Permanent Representatives is concerned, I should point out that in Geneva, Permanent Representatives are accredited to the United Nations Office in Geneva and to the Specialized Agencies and that questions of precedence and liaison have been principally dealt with by the United Nations itself. WHO has never established any official list of precedence but for internal purposes official invitations, etc.) we usually establish precedence amongst permanent delegates on the basis of the date of deposit of the credentials.

"In so far as delegates of members attending the World Health Assembly are concerned our practice is to list these in alphabetical order in the language in which the list is drawn up. Within the lists themselves, Chief Delegates and Deputy Chief Delegates are given precedence over other delegates and alternates; Ministers of Public Health when serving on delegations normally are designated as chief delegates and enjoy precedence for that reason. However, persons of ambassadorial rank will not necessarily enjoy, in the list, any precedence over other delegates within the same delegation.

"In practice in the Health Assembly, Ministers of Health are often called upon to speak early in the general discussion but this practice is based not so much on precedence but on the fact that often Ministers attend only the first days of the session and are very anxious to be given an early opportunity to speak before returning to their country. The practice on matters of precedence is otherwise similar to that followed in the General Assembly and the members of the General Committee of the Health Assembly enjoy precedence over other delegates.

"There is however one point of difference which may be of interest. Under rule 72 of the rules of procedure of the Health Assembly, votes by roll-call are taken in the English or French alphabetical order of the names of the members in alternate years. Our practice is consequently to make the seating arrangements in the Assembly hall in alternate years in English or French as the case may be, the cards bearing the names of the countries being in whatever language is being used in a particular year. Roll-call sheets and lists for making the call of the delegates for secret ballots are similarly prepared in one or the other language in alternate years."

(*b*) PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 8 JANUARY 1971 FROM THE DIRECTOR OF THE LEGAL OFFICE

[*Original text: French*]

Observations concerning permanent observer missions to international organizations (part III of the draft)

1. There are in practice two general categories of observers from non-member States to WHO, the main distinction being whether they are temporary or permanent. The first category covers certain situations where States which are not members but which are on the point of becoming members attend the World Health Assembly as observers, pending a decision by the Assembly on their application for membership. Provision for this is contained in rule 3 of the rules of procedure of the Assembly, which stipulates that the Director-General may invite States which have made application for membership or territories on whose behalf an application for associate membership has been made to send observers to sessions of the Assembly. Again, situations of this type have arisen in the case of associate members which have acceded to independence on a date which, under the rules, did not allow them to submit their application for membership in the organization. Such States were nevertheless invited as observers and the rules of procedure of the Assembly were changed later, after the adoption of appropriate resolutions by the Executive Board and Health Assembly.[12]

Aside from these temporary situations, there are others where quasi-permanent observers participate regularly in the work of the Health Assembly. Permanent observers from non-member States of WHO are in a special situation, which is similar to, yet different from, the situation in the United Nations. The similarity lies in the fact that the status of the permanent observers from non-member States is not established in any special provision and is not mentioned in the Constitution, the headquarters agreement or the resolutions adopted by the Executive Board or the Assembly. It exists solely as a result of the practice followed by the organization. However, the situation is different because such permanent observer missions to WHO are few in number and also because the legal bodies in question are of a very special character. In the United Nations, the establishment of permanent observer missions is justified because a number of States are not members of the Organization. On the other hand, most of them are members of WHO. The Federal Republic of Germany, the Republic of Korea, Switzerland and the Republic of Viet-Nam are cases in point, so that at present there are only three examples of permanent observers. In addition, these are very special situations in the context of international law, since they involve the Holy See, San Marino and the Order of Malta.

2. The relations established in these three cases are derived solely from practice and have no foundation in any written text. San Marino applied for membership in WHO in 1948, but the First Health Assembly declared the application inadmissible for procedural reasons. The application was submitted again in 1949, but it was accompanied by a reservation concerning San Marino's financial contribution.[13] The reservation was not accepted by the Assembly.[14]

[12] Resolution EB27.R25 (*Official Records of the World Health Organization, 108*, 10); resolution WHA14.45 (*ibid., 110*, 19). This happened, for example, in the case of Togo in 1960 (*ibid., 103*, 21).

[13] *Official Records of the World Health Organization*, No. 21, p. 312.

[14] Resolution WHA2.98 (*ibid.*, p. 54).

and, since that time, San Marino has been invited to each Health Assembly as an observer. Relations have been maintained on that basis ever since. Moreover, San Marino has in Geneva a permanent observer mission to the United Nations and other international organizations.

Relations with the Holy See also date back to the same period. The Holy See did not participate in the First Health Assembly. However, when the Second Assembly was convened at Rome in 1949, it was decided to invite the Vatican to participate in the work of the Assembly as an observer. Since that time, the Holy See has been invited regularly to the sessions of the Health Assembly. Like San Marino, it has a permanent observer mission to the United Nations Office and the specialized agencies at Geneva.

WHO's relations with the Order of Malta have an unusual origin, and were established much more recently. In 1950, the Order of Malta applied for admission to WHO, but consideration of the application was deferred. In 1952, a new application was submitted to the Assembly and included in its agenda. However, it was withdrawn, on the initiative of the Order itself. Ten years went by and in 1962 the Order of Malta asked, not for admission, but to be invited to attend WHO meetings as an observer. The Director-General decided that he would invite the Order to participate in the Assembly as an observer whenever the agenda included items which might be of interest to it. In fact, since that time the Order has regularly been invited to attend the Assemblies and has moreover established a permanent delegation to international organizations at Geneva.

3. The present status of permanent observers is in fact no different from that of the other observers covered by the WHO regulations. When these three observer missions were established, WHO was informed and it received a notification. They are invited to each Health Assembly and the names of the observers are communicated to the Director-General. They are granted the facilities laid down in the regulations for observers in general. Rule 19 of the Rules of Procedure of the Health Assembly stipulates that, unless the Assembly decides otherwise, plenary meetings are open to them. In addition, under rule 46 of the rules of procedure, they may participate in any public meeting of the main committees of the Assembly and, upon the invitation of the Chairman or with the consent of the Assembly or committee make a statement on the subject under discussion. Moreover, such observers have access to non-confidential documents and to such other documents as the Director-General may see fit to make available. They may also submit memoranda to the Director-General, who determines the nature and the scope of their circulation.

The privileges and immunities which may be accorded such observers, regardless of privileges they may enjoy in other respects, are governed by the relevant provisions of the Headquarters Agreement [15] when the meeting is held at Geneva or of other agreements, concluded either previously or for the occasion, when the meeting is held away from Headquarters. As a general rule, these agreements provide for a minimum of freedom of entry and sojourn for all persons irrespective of nationality, summoned by WHO, as is the case with observers to whom an official invitation has been extended.

Observations concerning delegations of States to organs or to conferences (part IV of the draft)

WHO would like first to comment on points relating to some of the draft articles. It will then offer observations concerning the facilities and privileges accorded to delegations of States.

1. The first comment concerns *article 78*. Subparagraph *e* says that a "representative" means any person designated by a State to represent it in an organ or at a conference. WHO uses a different term. Under article 11 of its Constitution, the persons who represent States are called "delegates". Under article 47 of the Constitution, the term "representative" is used in the case of WHO Regional Committees. The draft articles should therefore take account of the special system laid down in WHO's constituent instruments.

Article 82 states that the size of a delegation shall not exceed what is reasonable or normal. Article 11 of WHO's Constitution provides that each member State shall be represented by not more than three delegates while article 12 provides that alternates and advisers may accompany delegates. There is no written provision limiting the number of alternates and advisers, and the size of the delegation varies considerably according to the country concerned.

The principle of single representation embodied in *article 83* of the draft also applies in WHO, although it may be noted that WHO practice also allows delegates from a member State to represent one or indeed more non-governmental organizations in the Assembly.

Article 85 of the draft states that the members of a delegation should in principle be of the nationality of the sending State. WHO has no rule in this connexion, although the principle always seems to have been observed, at least so far as delegations to the Assembly are concerned. It will be noted, however, that in the Executive Board, which is made up not of delegates but of "persons" designated by twenty-four States selected by the Assembly (article 24 of the Constitution), a State has sometimes chosen a person who was not one of its nationals—for example, the members of the Benelux union.

In the case of credentials, referred to in *article 87* of the draft, rule 22 of the rules of procedure of the Health Assembly states that they shall be issued by the Head of State or by the Minister for Foreign Affairs or by the Minister of Health or by any other competent authority. The Health Assembly's practice has been to regard as a "competent authority", apart from those mentioned above, the ministerial departments responsible for health matters, embassies and permanent delegations.

Article 89 relates to notifications concerning delegations. WHO is notified of the members of the delegation, as already stated, but notification is not required in the other instances set out in article 89, paragraph 1 (persons belonging to the family of a member of the delegation, persons employed by members of a delegation, etc.).

Article 90 establishes that precedence among delegations shall be determined by the alphabetical order used in the host State. In WHO, precedence is determined by using English or French alphabetical order in alternate years, in accordance with the rules of procedure.

2. The facilities, privileges and immunities of delegations participating in WHO conferences are established in a number of texts. Article 67 (*b*) of the Constitution provides that representatives of member States, persons designated to serve on the Board and technical and administrative personnel of the Organization shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization. The Convention on the Privileges and Immunities of the Specialized Agencies also contains a number of special provisions which require no comment. So far as WHO headquarters is concerned, these provisions were supplemented in the Headquarters agreement concluded with the Swiss Federal Council in 1948. Similar agreements have also been envisaged for each of the six regional offices and for the International Agency for Research on Cancer. When conferences are held in countries with which there is no special agreement, an *ad hoc* agreement is concluded which either contains a number of special provisions or refers to an existing agreement—most often the Convention on the Privileges and Immunities of the Specialized Agencies.

The legal system laid down in such agreements is well known and needs no special comment. It will, however, be noted that some of the obligations imposed in some articles of the draft do not apply to WHO. For example, *article 93* states that, where necessary, the organization shall assist a delegation in securing premises or accom-

[15] United Nations, *Treaty Series*, vol. 26, p. 331.

modation for its members. To date, WHO has not followed this practice.

It will be noted in connexion with *article 96*, concerning freedom of movement, that as a general rule WHO has always refused to allow any discrimination to be practised by the host country among the delegates attending a conference. In one most unusual case, however, it agreed to a certain restriction on the movements of a delegation from a particular country, but the situation never materialized because the conference was later transferred as a result of important political changes in the country where it was originally to have been held.

The other articles of the draft required no special comment on the part of WHO.

6. International Bank for Reconstruction and Development

OBSERVATIONS COMMUNICATED BY LETTER DATED 14 JANUARY 1971 FORM THE GENERAL COUNSEL

[*Original text: English*]

Introduction

1. The International Bank for Reconstruction and Development (IBRD) has reviewed with interest, on its own account and on behalf of the organizations affiliated with it (IFC, IDA, ICSID), the draft articles on representatives of States to international organizations circulated on behalf of the International Law Commission during the past several years. IBRD recognizes that the instrument that is thus being formulated is likely to be merely the first in a series that will give general definition and structure to the still relatively fluid law of international organizations.[16] Indeed, for the reasons indicated below, the most important of the following comments are addressed not to the substance of the draft articles but to the procedure by which they are to become part of international law (see paras. 4 and 5 below).

2. IBRD recognizes that an instrument on the subjects dealt with in the draft articles will have at most a minor direct effect on either the Bank itself or on its affiliates. This is due primarily to the particular structure and in part to the activities and methods of operation of these organizations.[17] As a consequence of this special structure and other features, neither member nor non-member States have established any permanent missions to the organization of the IBRD Group, nor is it likely that they will do so. Members and a few non-member States send delegations to the annual meetings of the Boards of Governors of the Bank, IFC and IDA (and of the Administrative Council of ICSID), but these sessions are relatively brief (traditionally some five days) so that many of the questions dealt with in part IV of the draft articles are unlikely to arise. With the exception of several groups of legal experts convened to assist in the formulation of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States [hereafter referred to as the SID Convention],[18] the members of the IBRD Group have established no special organs and have convened no conferences to which the draft articles would apply—though of course it is always possible that they will do so in the future. Finally, as the Bank has explained, the variety of posts held from time to time by its executive directors and the different ways in which individual directors perform their duties makes it inappropriate to treat them as being exclusively either "representatives" or "officials".[19]

3. Moreover, even to the extent that the draft articles are relevant to the operations of the IBRD Group, any impact of the proposed instrument is likely to be delayed for a considerable time because for the present most relevant questions appear to be adequately regulated by a number of existing instruments: the Articles of Agreement of IBRD,[20] IFC,[21] and IDA [22] (and the SID Convention in relation to ICSID), the Convention on the Privileges and Immunities of the Specialized Agencies and the United Nations Headquarters Agreement—the provisions of all of which are, by draft articles 3-5 and 79-81, to be preserved from supersession by the proposed instrument; in addition, reference must be made to national legislation, in particular the Bretton Woods Agreement Act and the International Organizations Immunities Act of the host State of the IBRD Group. However, in the long run it is likely that certain of these instruments may be interpreted or even altered to conform to the provisions of the proposed instrument, if, as is intended, that instrument comes to be accepted as expressing the consensus of the world community as to the questions to which it is to relate.

Procedural observations

4. The World Bank understands that no decision has yet been reached on the procedure for formulating a definitive instrument on the basis of the draft articles. It is therefore hoped that, in whatever standing or *ad hoc* forum this is to be done, the substantial interest of organizations in the proposed instrument will be recognized by devising a procedure whereby these might participate actively in at least the final stages of the drafting process. While it may not be feasible to devise a mechanism allowing the organizations to vote in such a forum, it would be desirable if they could participate through representatives entitled to speak and to introduce proposals directly rather than only through observers whose restricted role is appropriate for most international legislative endeavours but would in this instance be inconsistent with the intention to formulate rules of direct relevance to the organizations.

5. Even more important than any arrangements for the effective participation of international organizations in the formulation of the proposed instrument, is to devise some procedure whereby each organization (i.e., its member States) could choose whether or not, or how, it should be covered by such instrument—which, as now formulated, would place several direct obligations on the organizations covered (see, for example, draft articles 22-24). While various means to this end could be proposed, it would seem that the pertinent

[16] The International Law Commission has already started the consideration of treaties concluded between States and international organizations or between two or more international organizations, and has identified the topic of the succession of States in respect of membership in international organizations.

[17] The special nature of the representative organs of IBRD, IFC and IDA was described in replies made by the Bank to questionnaires distributed by the United Nations Secretariat at the beginning of the International Law Commission study of this subject, which are summarized in an annex to part I of the study prepared by the United Nations Secretariat on the practice of the United Nations, its specialized agencies and IAEA concerning their status, privileges and immunities (hereafter referred to as the "Study by the Secretariat").[a] Though the Bank's replies did not refer to ICSID, and its structure differs substantially from that of the financial organizations in the IBRD Group, most of the following remarks also apply to ICSID.

[18] United Nations, *Treaty Series*, vol. 575, p. 159. The groups referred to are the four regional Consultative Meetings of Legal Experts and the Legal Committee on Settlement of Investment Disputes (see ICSID, *History of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States—Analysis of Documents Concerning the Origin and the Formulation of the Convention* (Washington, 1970), vol. I, pp. 6 *et seq.*).

[19] Study by the Secretariat, op. cit., p. 205, para. 71.

[20] United Nations, *Treaty Series*, vol. 2, p. 134.

[21] *Ibid.*, vol. 264, p. 117.

[22] *Ibid.*, vol. 439, p. 249.

[a] Study by the Secretariat, *Yearbook of the International Law Commission, 1967*, vol. II, p. 204, document A/CN.4/L.118 and Add.1 and 2, part one, annex.

provisions of the Convention on the Privileges and Immunities of the Specialized Agencies present the most useful model, which, with minor changes, could be incorporated into the proposed instrument as well as into subsequent ones having a similar scope:

(*a*) Each organization potentially within the ambit of the proposed instrument should be able to decide (presumably through its competent representative organ) whether or not it is to be covered by the proposed instrument. As with respect to the Specialized Agencies' Convention, this decision might be made and communicated in connexion with that foreseen in subparagraph *b* below.

(*b*) Each organization to be covered would be permitted to devise an "annex" to the instrument in which it would specify any deviations, with respect to it, of the terms of the principal instrument. This right, which is provided for in the Specialized Agencies' Convention, is somewhat analogous to the right of a party to a multilateral treaty to propose a reservation on becoming a party to it; however, if the right of an organization to choose whether or not to be covered by the instrument is admitted (see subparagraph *a*), it is not essential, though it may still be useful, that the right here proposed also be granted.

(*c*) States, on becoming parties to the instrument or at any subsequent time, would indicate the organizations with respect to which they are to be bound by the instrument. If an organization changes its annex (subparagraph *b*), such altered provisions would also have to be individually approved by the States already parties with respect to the organization.

(*d*) If reservations are formulated by a State, each organization affected could object thereto and prevent the application to it of the altered instrument.[23]

(*e*) Under the above-stated conditions, every intergovernmental organization might be permitted to choose coverage by the convention. Though there may be objections to abandoning all limitations, it should be considered that such a decision can only be effected with the concurrence of an appropriate majority of the member States of the organization (subparagraph *a*) and that no State (whether or not a member of an organization) could be bound without its consent with respect to any particular organization (subparagraph *c*). Alternatively, the General Assembly of the United Nations might be authorized to admit organizations to coverage by the Convention. One advantage of either of these approaches would be to eliminate any uncertainty about the automatic or potential coverage of the Convention resulting from any indefiniteness in the relevant definitions in the instrument.[24]

Observations relating to particular provisions

6. Article 2, paragraph 1, would restrict the application of the Convention to "international organizations of universal character", which are defined by article 1 (*b*) as those "whose membership and responsibilities are on a world-wide scale". Since, in effect, none of the existing international organizations is truly universal in character as all have some provisions for accepting (and thus implicitly for excluding) and sometimes for expelling or permitting the resignation of member States, it may be preferable to refer in article 2, paragraph 1, to organizations having a " world-wide scope ".

7. Because of the considerable variations in the legal instruments relating to, and the practices of, international organizations (even if only the specialized agencies are considered), IBRD attributes considerable importance to the maintenance of *article 3* of the present draft, with an interpretation at least as broad as indicated in paragraph 5 of the related commentary.[25]

8. Similarly, IBRD attributes considerable importance to the maintenance of draft *articles 4, 5 and 79* (the last two of which might conveniently be consolidated), since it is highly desirable that States be permitted to make, with each other and with organizations, arrangements especially suitable to the requirements of particular organizations. It is of course recognized that international agreements formulated subsequent to the promulgation of the instrument here under consideration are likely to be, and indeed should be, influenced by it.

9. The proposed rule in *articles 11, 56 and 85* that a State should in principle be represented by its nationals appears to enter an area that might best be omitted from the proposed instrument. Whether a State, particularly one newly independent with perhaps still unsettled rules of nationality and probably a severe shortage of trained officials, is able to place sufficient trust in a non-national and whether it finds among its own nationals one it considers suitable to represent it and who can be spared from other, perhaps more urgent assignments, would seem to be a question that each State should be able to resolve for itself, without extraneous considerations such as the preference that would be expressed by the proposed instrument. Similarly, whether a State permits one of its nationals to become an official or representative of another would also seem to be a matter in which it is not necessary to intervene. The Commission's obvious embarrassment with the proposed subject appears from the term "in principle"—one most unusual in an instrument of this type and in practice incapable of interpretation and enforcement.

10. Paragraph 1 of the commentary to *article 33* quotes section 14 (article IV) of the Convention on the Privileges and Immunities of the United Nations, including the provision that

> "a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded".

Though paragraph 2 of the commentary indicates that this commendable provision also appears in a number of other instruments, it is regrettable that it only appears in weakened form in *article 34* (and therefore also *article 71*) and has tentatively been omitted from part IV of the draft articles.

11. Since part IV of the draft is restricted to "Delegations of States to organs and to conferences" and *article 78* (*c*) makes it clear that a "delegation to an organ" is to represent the State "therein", no provision of the proposed instrument appears to cover delegations sent by States to negotiate with the organization itself. In the practice of the financial institutions of the IBRD Group (and probably of certain other international organizations) delegations of this type considerably outnumber those to which part IV is addressed, but international law is most deficient with respect to the former for they are referred to neither in the Articles of Agreement of any of the IBRD Group of organizations, nor in the Specialized Agencies' Convention or in other similar agreements. This would thus seem to be a significant lacuna in the existing international legal structure, to which the proposed instrument might well address itself.

12. Though part IV of the draft covers delegations to both organs and conferences, *article 80* refers only to the rules of procedure of conferences. In the light of the commentary, it is assumed that a reference to rules of procedure of organs was omitted as these are considered to be covered by the "rules of the Organization" referred to in draft article 3.

7. International Development Association

See paragraph 1 of the observation submitted by the International Bank for Reconstruction and Development, reproduced above.

[23] By analogy to article 20, paragraph 4, of the Vienna Convention on the Law of Treaties.

[24] These definitions are now contained in draft articles 1, subparagraphs *a* and *b*, and 2, paragraph 1.

[25] See also para. 12 below.

8. International Finance Corporation

See paragraph 1 of the observations submitted by the International Bank for Reconstruction and Development, reproduced above.

9. International Monetary Fund

(*a*) PARTS I AND II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 26 NOVEMBER 1969 FROM THE GENERAL COUNSEL AND DIRECTOR, LEGAL DEPARTMENT

[*Original text: English*]

In the Study by the Secretariat [26] it was recognized that questions relating to permanent representatives or member delegations to international organizations are not applicable to IMF in the light of the Fund's organizational structure. It would appear that the draft articles are not intended to apply to IMF by virtue of the specific subject-matter of their coverage. Moreover, draft *articles 3 and 4* may also be taken to lead to the same conclusion of non-applicability to IMF. The Special Rapporteur may wish to consider the desirability of explicitly stating that the draft articles are not applicable to IMF.

(*b*) PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY A LETTER DATED 28 JANUARY 1971 FROM THE GENERAL COUNSEL AND DIRECTOR, LEGAL DEPARTMENT

[*Original text: English*]

Our observations on parts III and IV of the draft articles would not be very different from what we said in our letter dated 26 November 1969, concerning parts I and II. As mentioned in the Study by the Secretariat, questions relating to permanent representatives or member delegations to international organizations are not applicable to the Fund. The structure of the Fund precludes the application of the draft articles to the Fund. It might be useful, therefore, to make it clear that the draft is not applicable to IMF.

10. Universal Postal Union

(*a*) PARTS I AND II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 18 SEPTEMBER 1970 FROM THE DEPUTY DIRECTOR-GENERAL OF TNE INTERNATIONAL BUREAU

[*Original text: French*]

1. My remarks refer, first and foremost, to the question of the application to the Universal Postal Union of the parts of the draft submitted for our consideration.

2. Up to now relations between UPU and the member countries have been conducted in principle, and in accordance with the Acts of UPU through the Postal Administrations. There is no written provision concerning permanent missions. Relations between the permanent missions and UPU have developed *de facto* and on the fringe, as it were, of the relations that the permanent missions maintain with the specialized agencies that have their headquarters at Geneva. This is due to the essentially technical nature of the activities of our organization. We have therefore deemed it necessary to explain the *de jure* situation of UPU, our practice and the reasons for it, in order that the problems to which the full application of the draft to UPU would give rise may be better understood.

3. The role of the various organs is at present as follows:

[26] Study by the Secretariat, op. cit., p. 206, paras. 76–78.

(a) *The International Bureau*

Article 20 of the Constitution of UPU reads as follows: [27]

"A central office operating at the seat of the Union under the title of the International Bureau of the Universal Postal Union, directed by a Director-General under the general supervision of the Government of the Swiss Confederation, serves as an organ of liaison, information and consultation for Postal Administration."

This article therefore places the International Bureau at the disposal of the Postal Administrations which are the State bodies directly authorized by the Acts of UPU to ensure the execution of the international postal service.

In fact, one important task of the Bureau is to produce, with the help of information provided by the Postal Administrations, numerous publications concerning the various branches of the postal service. Another important part of the work of the International Bureau is its co-operation in the many studies undertaken in the small collective organs, namely the Executive Council and the Consultative Council for Postal Studies. These organs, which are composed of representatives of the Postal Administrations, require direct and continuous contact with those Administrations.

To complete the picture, it should be pointed out that the International Bureau does not assume the function of depositary of the Acts of the Union and has no part in the procedure for admission or accession to the Union. That is the function of the Swiss Government. Consequently, the International Bureau, unlike the secretariats of the other specialized agencies, has nothing to do with the diplomatic procedure required for the procedure of admission or accession.

(b) *Congress*

The Congress, which is the supreme organ of UPU and which meets every five years in a different member country, deals mainly with the revision of the Acts of the Union. Although it is composed of plenipotentiaries authorized to sign the treaties thus revised, the members are for the most part representatives of Postal Administrations who are given *ad hoc* powers, for the discussions are essentially concerned with postal problems and require the participation and commitment of those who are responsible for postal services, especially as the proposals submitted to theCongress are drawn up and submitted on behalf of the Postal Administrations.

(c) *Executive Council and Consultative Council for Postal Studies*

In the small collective organs, namely the Executive Council (EC) and the Consultative Council for Postal Studies (CCPS), the representative of each of the member countries must be appointed by the Postal Administration of his country and be a qualified official (General Regulations,[28] article 102, para. 3, and article 104, para. 2). The members of diplomatic missions or permanent missions may form part of the delegation, but if they are alone the Council has in the past granted them the capacity and rights of an observer, i.e. the possibility of participating without the right to vote.

4. We shall have occasion to revert to the organs referred to in subparagraphs *b* and *c* above when submitting our observations concerning part IV of the draft articles.

5. Despite what we have just said, we cannot fail to recognize that the intervention of permanent missions has developed and has been justified mainly in relation to the problems of technical assistance and to UNDP. Thus UPU, which is taking an increasing part in

[27] United Nations, *Juridical Yearbook, 1964* (United Nations publication, Sales No.: 66.V.4), p. 195.

[28] UPU, *Constitution of Règlement général de l'Union* (Berne, Bureau de l'Union, 1965).

these programmes, cannot escape this general practice, since it has to do with questions in which State authorities other than Postal Administrations may be concerned. For that reason there must be a certain flexibility in the development of the relations between permanent missions and UPU.

6. In view of the above consideration, it is clear that the full application to UPU of the provisions drawn up by the International Law Commission would present a large number of legal and practical problems. We therefore consider that it would be useful, and indeed necessary, to refer more explicitly to the particular practice of international organizations than is done in certain articles in part I, especially in *article 3* (Relationship between the present articles and the relevant rules of international organizations). It is rightly stated in the commentary on this article that its first purpose is to detect the common denominator and lay down the general pattern which regulates the diplomatic law of relations between States and international organizations. The second purpose is to safeguard the particular rules which may be applicable in a given international organization. Consequently this is a matter not simply of the *structural* peculiarities of international organizations but also of the peculiarities in the *current practice* of one or another given organization. In our opinion, article 3 does not seem to provide a full guarantee of the autonomous development of relations between permanent missions and UPU, of a kind which would serve the interests of both parties, in accordance with the purpose of this international organization. Draft article 3 uses the same terminology as article 5 of the Convention on the Law of Treaties. We interpret this terminology as indicating respect for the *de jure* and *de facto* situation in regard to the subject-matter of part II of the draft articles. In our opinion, it would be desirable to expand the commentary on the article in question.

7. *Article 2* deals with the scope of the draft articles. Since the treaty now being drawn up lays down the rights and obligations not only of the States parties to the treaty but also of international organizations of universal character, being subjects of international law, the question arises of the procedure for establishing the legal relationship between the treaty in question and a given organization. It seems to us imperative that this question should be settled, for otherwise one would be forced to the conclusion that, in the case of an international organization for which no link has been established (in accordance with its constitutional rules) in relation to the treaty, the provisions of the treaty are *res inter alios acta*.

8. Lastly—although this is a secondary question—we think that the notification procedure laid down in *article 17*, paragraph 3, is somewhat cumbersome in cases where several organizations have their headquarters in the same host country. The host State is supposed to receive the same notification from each organization. This point is all the more valid in that, according to the commentary (para. 7), paragraph 4 of article 17 provides a supplement to, and not an alternative or substitute for, the procedure prescribed for international organizations.

(*b*) PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS TRANSMITTED BY LETTER DATED 27 JANUARY 1971 FROM THE DEPUTY DIRECTOR-GENERAL

[*Original text: French*]

PART III.—Permanent observer missions to international organizations

Article 52

This article leaves the way open for the establishment of permanent observer missions to international organizations by non-member States. The practice of UPU does not correspond to the general scope of this provision, because there is certain reticence towards non-member countries. Admittedly the right is not unconditional but is dependent on the rules or practice of the organization. For these reasons, we wish to reiterate the need to settle the question of the establishment of the legal relationship between the proposed convention and international organizations (see paragraph 7 of the observations by UPU on the first two parts of the draft articles and paragraph 20 *in fine* of the report of the Sixth Committee to the General Assembly).[29]

Article 53

As we have already explained, the International Bureau deals directly with the Postal Administrations of member countries and only exceptionally with the permanent missions of member States. This is because of the nature of the activities of UPU and the regulations in force, which make the International Bureau serve the Postal Administrations (article 20 of the Constitution).

PART IV.—Delegations of States to organs and to conferences

Article 83

In connexion with this article, it should be pointed out that the regulations in force in UPU allow a delegation to represent only one member country other than its own (article 101, para. 2, of the General Regulations of UPU). For this reason, we share the reservations expressed by certain members of the Commission about this article and agree with the reasoning advanced by them.

Lastly, we are inclined to believe that, despite the reservation in article 80, some of the suggested provisions would complicate existing practice, without meeting any real need. In addition, so far as UPU is concerned, the regulations on the subject embodied in the Convention on the Privileges and Immunities of the Specialized Agencies (article V) and the Switzerland/United Nations agreement on the privileges and immunities of the United Nations [30] (article IV), which is applied *mutatis mutandis* to UPU, have not proved to be in any way inadequate or imperfect. Moreover, they cover the case of observers to organs and conferences, which is not dealt with in the draft articles.

11. International Telecommunication Union

(*a*) PARTS I AND II OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 14 MAY 1970 FROM THE LEGAL ADVISER

[*Original text: English/French*]

... Our practice is not entirely reflected in some of the draft articles, e.g. draft *articles 7, 12, 13 and 17*. For example: it is the United Nations which receives the credentials of permanent representatives accredited to the United Nations and ITU, and ITU addresses its official communications directly to the Telecommunication Administrations and not through the Permanent Missions. In so far, however, as any divergencies between the draft articles and our practice can be attributed to our rules, the situation would appear to be regulated by draft *article 3*. But, unless the phrase "relevant rules" can be interpreted to include "practice", we feel that there may be some differences that *article 3* does not cover.

We are in the process of negotiating a Headquarters Agreement with Switzerland to replace the exchange of letters of 1948 whereby we were granted the benefits of the Agreement between it and the United Nations. It may be of interest to know that the Confederation

[29] *Official Records of the General Assembly, Twenty-fifth Session, Annexes*, agenda item 84, document A/8147.

[30] United Nations, *Treaty Series*, vol. 1, p. 163, and *ibid.*, vol. 509, p. 309.

has requested that the following article be included in the new Agreement:

"*Article 13—Objet des privilèges et immunités accordés aux représentants*

"*Les privilèges et immunités sont accordés aux représentants des membres de l'Union non à leur avantage personnel, mais dans le but d'assurer en toute indépendance l'exercice de leurs fonctions en rapport avec l'Union. Par conséquent, un membre de l'Union a non seulement le droit, mais le devoir, de lever l'immunité de son représentant dans tous les cas où, à son avis, l'immunité entraverait l'action de la justice et où elle peut être levée sans compromettre les fins pour lesquelles elle avait été accordée.*"

[Provisional translation:]

"*Article 13.—Purpose of the privileges and immunities accorded to representatives*

"Privileges and immunities are accorded to the representatives of members of the Union, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the Union. Consequently, a member not only has the right but is under a duty to waive the immunity of its representatives in any case where, in the opinion of the member, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded."

(*b*) PARTS III AND IV OF THE PROVISIONAL DRAFT

OBSERVATIONS COMMUNICATED BY LETTER DATED 21 DECEMBER 1970 FROM THE LEGAL ADVISER

[*Original text: English*]

PART III.—Permanent observer missions to international organizations

1. With regard to permanent observer missions (draft articles 51-77), I wish to state that under article 27 of the International Telecommunication Convention (Montreux, 1965),[31] each member of the Union reserves the right to fix the conditions under which it admits telecommunications exchanged with a State not party to the Convention. The Convention makes no other provision for relations between the ITU and non-member States, which are not admitted to conferences of the Union. The relationship between the General Secretariat of the Union and such States is regulated by resolution No. 88 of the Administrative Council of the Union.[32] The Secretary-General of the ITU is given no power to accept the accreditation of a permanent observer mission, nor the credentials of its permanent observer.

PART IV.—Delegations of States to organs and to conferences

2. The provisions of part IV of the draft articles are not entirely applicable to the pattern of work of the ITU, as is explained below.

3. Members of delegations to ITU conferences are not usually diplomats and in most cases do not hold diplomatic passports. If it may be assumed however that all persons who have been formally accredited by a sending State are to be considered as having diplomatic status and are therefore "members of the diplomatic staff" for the purposes of *article 78 (h)*, it would seem that the definitions in this article reflect the practice generally applied to delegations of States members of the ITU to plenipotentiary and administrative conferences of the Union. These definitions do not entirely correspond to those in the Convention.[33]

4. It may be remarked, however, that in addition to delegations of States the following may be admitted to ITU conferences:

(*a*) Observers of the United Nations, the specialized agencies and IAEA;

(*b*) Observers of certain other international organizations;

(*c*) Representatives of certain recognized private operating agencies.

The provisions of the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies respectively accord the necessary facilities, privileges and immunities to persons in category *a* where the host State is a party to them.

There is no provision for any facilities for persons in categories *b* and *c* in the Headquarters Agreement between the United Nations and the Swiss Confederation which is applied by analogy to ITU, but in practice no difficulties have arisen in connexion with ITU conferences held in Switzerland.

The final draft of the Headquarters Agreement now under negotiation between the Union and the Confederation contains the following article which would be applicable in such cases:

"The Swiss authorities shall take the necessary measures to facilitate the entry into, sojourn in, and departure from Swiss territory of all persons, irrespective of nationality, summoned by the Union in their official capacity." [*Provisional translation.*]

As for ITU conferences outside Switzerland, such observers and representatives could enjoy special status only by virtue of any relevant provisions which might be included in *ad hoc* agreements between the Union and host States.

5. In addition to its Administrative Council, the Union has two organs (hereinafter called the CCI's for short) the meetings of which are attended by persons representing their Governments, namely:

(*a*) The International Radio Consultative Committee (CCIR), and

(*b*) The International Telegraph and Telephone Consultative Committee (CCITT).

6. Persons appointed by a member country to serve on the Council are accredited and would, according to the interpretation mentioned in paragraph 3 above, be included in the category of "members of the diplomatic staff" for the purposes of the draft treaty.

7. The CCI's, however, do not seem to fit into the pattern envisaged in article 78 of the International Law Commission's draft. As these bodies do not have the power to draw up treaties or regulations, but merely make recommendations, no system of formal accreditation for representatives of States is used. It would seem questionable therefore whether such persons enjoy diplomatic status for the purposes of article 78 although they have the same need for facilities, privileges and immunities as "members of the diplomatic staff" to ITU conferences. In actual practice, they are treated no differently from accredited representatives at conferences of the Union.

8. In addition to persons representing Governments, certain representatives of entities—usually non-governmental—attend CCI plenary assemblies and meetings of their study groups.

As will be seen from annex 2, the term "representative" as used in the Montreux Convention refers to a "person sent by a recognized private operating agency". Such agencies may, with the approval of the members of ITU which have recognized them, become members of the CCI's (Montreux Convention, No. 769) and, under certain circumstances, they may vote in Plenary Assemblies (*idem*, No. 789).

[31] United Nations, *Juridical Yearbook, 1965* (United Nations publication, Sales No.: 67.V.3), p. 173.

[32] See annex 1 below.

[33] See annex 2 below.

Furthermore, scientific and industrial organizations engaged in telecommunication work may participate in an advisory capacity in meetings of the study groups of the CCI's (*idem*, No. 773).

These agencies and organizations contribute towards defraying the expenses of the CCI's (*idem*, No. 224).

International organizations which co-ordinate their work with ITU and which have related activities may be admitted to participate in the work of the CCI's.

9. Non-governmental representatives make a major contribution to the work of the CCI's. These persons need to enjoy most the privileges and immunities granted to representatives of States in order to perform their tasks. In practice, host Governments have always accorded them the necessary facilities but the situation is anomalous.

10. As article 79 and article 5 of the draft make allowance for the existence of different practices, we assume that nothing in the draft will affect the ITU. We wonder, however, whether the International Law Commission might not wish to consider making some treaty provisions for a special status for persons authorized by the basic instruments of international organizations to attend conferences or meetings of their organs but not sent by States, since this category of participant plays an important part in the work of many technical organizations.

11. The terms of *article 82* conflict with the definition of "delegations" in the Montreux Convention [34] in which it is stated: "Each Member and Associate Member shall be free to make up its delegation as it wishes."

12. The terms of *article 83* conflict with chapter 5, paragraphs 6, 7 and 8, of the General Regulations [35] annexed to the Montreux Convention, the texts of which are as follows:

"**640** 6. As a general rule, Members of the Union should endeavour to send their own delegations to conferences of the Union. However, if a Member is unable, for exceptional reasons, to send its own delegation, it may give the delegation of another Member of the Union powers to vote and sign on its behalf. Such powers must be conveyed by means of an instrument signed by one of the authorities mentioned in 629 or 630, as appropriate."

"**641** 7. A delegation with the right to vote may give to another delegation with the right to vote a mandate to exercise its vote at one or more meetings at which it is unable to be present. In such a case it shall, in good time, notify the Chairman of the conference in writing."

"**642** 8. A delegation may not exercise more than one proxy in any of the cases referred to in 640 and 641."

13. With reference to *article 85*, it is observed that it is the practice of some States members of the Union to include in their delegations from time to time nationals of other States.

14. With reference to *article 86*, it is the practice in ITU conferences that if a head of a delegation is going to be absent, he informs the President or Chairman of the Conference through the Secretariat and indicates which member of the delegation will act in his absence.

15. ITU does not follow, as regards representatives to CCI meetings, the practice laid down in paragraph 1 of *article 87*.[36]

16. We consider that paragraph 3 of *article 88* is a useful clarification.

17. ITU does not accept responsibility for notifying to host States the information envisaged in paragraph 3 of *article 89* and is not therefore interested to have information regarding arrival and departure of delegates and their families or the movements of other persons employed in delegations.

18. *Article 90* is not in accordance with ITU practice, which is always to seat delegations in the alphabetical order of the French names of the countries represented (Montreux Convention, No. 658). It is in this order that the delegations are called in case of a roll-call vote. These are the only cases in which it is the practice of the Union to invoke an order of precedence between delegations.

19. ITU accepts no responsibility for finding premises and accommodation for delegations. The last sentence of *article 93* would therefore be inapplicable to ITU conferences.

I have commented at some length on the draft articles as we feel that the International Law Commission should be aware of the extent to which the provisions of part IV depart from the practice in organizations such as the Union. We believe that the draft in its final form will be widely accepted and that difficulties may well arise in connexion with ITU conferences and meetings, despite the provisions of articles 5 and 79, if so great a discrepancy between its provisions and ITU practice remains.

Annex 1

Administrative Council resolution No. 88 (amended) [37]

RELATIONS OF THE GENERAL SECRETARIAT OF THE UNION WITH STATES OR ADMINISTRATIONS WHICH ARE NOT MEMBERS OR ASSOCIATE MEMBERS OF THE UNION

The Administrative Council

Considering that it is advisable to give precise instructions to the Secretary-General in regard to the attitude he must adopt in the event of receiving communications from States or administrations which are not Members or Associate Members of the Union, and also in regard to the dispatch of documents of the Union that such States or administrations might request.

Resolves that

1. With the exceptions specified below, the Secretary-General may correspond with or forward documents to the Members and Associate Members listed in annexes 1 and 2 of the Convention (Geneva, 1959) [38] and those that have become or will become Members or Associate Members in accordance with the procedures laid down in the Convention;

2. The Secretary-General is authorized to correspond with States or administrations not mentioned in paragraph 1 above, with a view to informing them on accession to the Union and the implementation of the Convention or Regulations, or in the case of formal requests to accede, transmitted in accordance with the procedure laid down in the Convention;

3. In respect of any other communication he may receive from a State or administration which is not a Member or Associate Member, the Secretary-General shall take the following steps:

(*a*) If the communication concerns a matter of policy that the Council should normally consider and resolve, or in the case of doubt, he shall restrict himself to acknowledging it, informing the sender that it will be referred to the Administrative Council;

(*b*) If the communication is clearly of a factual nature, connected with the telecommunication services, the Secretary-General shall acknowledge it, informing the sender that a copy will be sent to the Members and Associate Members of the Union for their information, and shall take action accordingly in each case;

[34] See annex 2 to these observations.

[35] ITU, *International Telecommunication Convention (Montreux, 1965)*, Geneva, General Secretariat of ITU, annex 4, p. 99.

[36] See para. 7 above.

[37] ITU, Supplement No. 2 (August 1967) to the *Volume of Resolutions and Decisions of the Administrative Council of ITU.*

[38] United States of America, Department of State, *United States Treaties and other International Agreements* (Washington, U.S. Government Printing Office, 1962), vol. 12, part 2 (1961), p. 1761.

4. (1) In cases referred to in paragraph 3 (*b*) above, the Secretary-General shall publish the communication received under the heading: "Information received from sources outside the Union", followed by a note to the effect that the publication of the information in question does not imply recognition of the status of the sender in relation to the Union;

(2) However, if the nature of the information received is such as to warrant its inclusion in official documents, it shall not be published separately but shall be incorporated in the appropriate documents, under the title and with the explanatory note referred to in paragraph 4 (1);

5. (1) Requests for documents, public sale of which is authorized, may be complied with in return for payment;

(2) All notifications, communications and circular letters distributed gratis by the Secretary-General to Members and Associate Members of the Union shall be furnished by him to any private individual or to any organization on request in return for payment at a price to be fixed by the Secretary-General;

6. Until Germany becomes a Member once again, the Secretary-General is authorized to correspond with the Allied Control Commission in Germany; he shall, as a practical measure, be provisionally authorized to correspond with the occupation zones of Germany, bearing in mind the practice at present in force.

Ref.: Doc. 265/CA3—October 1948; Doc. 535, 542, 546 and 549/CA4—September 1949; Doc. 803/CA5—October 1950; and Doc. 1606/CA9—May 1954.

Annex 2

Definition of certain terms used in the International Telecommunication Convention and its annexes [39]

...

Delegate: A person sent by the Government of a Member or Associate Member of the Union to a plenipotentiary conference, or a person representing a Government or an administration of a Member or Associate Member of the Union at an administrative conference, or at a meeting of an international consultative committee.

Representative: A person sent by a recognized private operating agency to an administrative conference, or to a meeting of an international consultative committee.

Expert: A person sent by a national scientific or industrial organization which is authorized by the Government or the administration of its country to attend meetings of study groups of an international consultative committee.

Observer: A person sent by:

— The United Nations in accordance with article 29 of the Convention;

— One of the international organizations invited or admitted in accordance with the provisions of the General Regulations to participate in the work of a conference;

— The Government of a Member or Associate Member of the Union participating in a non-voting capacity in a regional administrative conference held under the terms of article 7 of the Convention.

Delegation: The totality of the delegates and, should the case arise, any representatives, advisers, attachés or interpreters sent by the same country.

Each Member and Associate Member shall be free to make up its delegation as it wishes. In particular, it may include in its delegation in the capacity of delegates, advisers or attachés, persons belonging to private operating agencies which it recognizes or persons belonging to other private enterprises interested in telecommunications.

[39] Annex 2 to the International Telecommunication Convention (Montreux, 1965) [for the reference to the Convention, see footnote 31 above].

12. World Meteorological Organization

OBSERVATIONS COMMUNICATED BY LETTER DATED 30 OCTOBER 1970 FROM THE DEPUTY SECRETARY-GENERAL

[*Original text: English*]

I have no comments of substance to submit concerning the texts of the draft articles adopted by the International Law Commission on "Relations between States and international organizations". I should like however to submit for the attention of the Commission some specific features governing the relations between WMO and its Members (States and territories). These observations are contained in a note attached to the present letter.

Note on some aspects of the relations between the World Meteorological Organization and its Members as regards representation of Members in the Organization

(*a*) *Permanent representatives*

The basis for the nomination of permanent representatives with WMO by Member States and member Territories of WMO is stipulated in Regulation 6 of the WMO General Regulations [40] which contains a definition of the functions of the permanent representative. Regulation 6 reads as follows:

> "Each Member shall designate by written notification to the Secretary-General a Permanent Representative who should be the Director of the Meteorological Service to act on technical matters for the Member between sessions of Congress. Subject to approval of their respective governments, Permanent Representatives should be the normal channel of communications between the Organization and their respective countries and shall maintain contact with the competent authorities, governmental or non-governmental, of their own countries on matters concerning the work of the Organization."

It should be noted that the main purpose for which these representatives were instituted was to provide a means of conveying to the Organization the position of its Members on technical matters falling within the sphere of competence of the Organization. In addition, Regulation 6 provides that, "subject to the approval of their respective governments", the functions of these permanent representatives could be extended so that they could represent their government before the Organization. In fact, about half of the WMO permanent representatives have been granted the right by the Minister of Foreign Affairs of their country to communicate with the Organization on behalf of their government on all matters. There are other cases, however, where the functions of the WMO permanent representative have been restricted to technical matters only. In such cases, the communications on non-technical matters are addressed to WMO by the government of the Member, either directly from the Minister of Foreign Affairs or through the permanent mission of the Member in Geneva.

In those cases where both a WMO permanent representative has been designated to act on behalf of his government on all matters concerning WMO and a permanent mission of a member in Geneva has been accredited to WMO, some difficulties have been experienced. In most of these cases, a *modus vivendi* has been found and, in general, communications of a non-technical nature are accepted from both sources.

[40] WMO, *General Regulations*, Offprint of *Basic Documents—Edition 1971* (WMO—No. 15), p. 32.