

Document:-
A/CN.4/L.168/Add.4

**Text of articles adopted by the Drafting Committee: articles 65, 55, 66 bis, 67, 67 bis and 68-77
- reproduced in A/CN.4/SR.1122 and SR.1123**

Topic:
Representation of States in their relations with international organizations

Extract from the Yearbook of the International Law Commission:-
1971, vol. I

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article should provide for cases in which the organization, the organ or the conference invited States to send observer delegations.

79. Provision should also be made for the possibility of States members of an organization being able to participate as observers in the work of any of its organs whatsoever, which likewise did not always depend on the rules of procedure of the organization or organ.

80. Article 118 should therefore consist of several paragraphs covering the various possible situations.

81. Mr. CASTRÉN said he approved of article 118 in substance, but the drafting was unsatisfactory in several respects. He proposed that paragraph 1 be amended to read:

“A State not a member of the Organization may send an observer delegation, in accordance with the rules of procedure, to the meetings of one or more organs of the Organization.”

82. In paragraph 2, the word “observer” should be inserted before the word “delegation”. Furthermore, since the sending of an observer delegation was a form of participation, the paragraph should be amended to read:

“The participation of a State in a conference as an observer depends on the rules of procedure of that conference.”

83. As Mr. Ushakov had suggested, provision should also be made for the possibility of an invitation from the organization or conference.

84. Mr. KEARNEY said he wished to protest strongly against the misuse of the terms “delegation” and “representative” throughout the articles in Part V. A “delegate” was a full participant in a meeting or conference and a “delegation” consisted of a number of delegates. There was therefore no justification for using the expression “observer delegation”. An observer could in no instance be regarded as a full participant. The expression “observer delegation” should be replaced throughout by the word “observer”.

85. Similarly, it was a misnomer to speak of an “observer representative”; the appropriate term to use was again “observer”.

86. In article 118, paragraph 1 should specify the right of a State which was not a member of an organ to “send an observer” thereto and paragraph 2 should similarly empower a State not participating in a conference to “send an observer” thereto.

87. Mr. ROSENNE said that the Drafting Committee should consider carefully whether it was appropriate to use the expression “not participating in a conference”, because of the meaning given to the term “participating” in the 1969 Vienna Convention on the Law of Treaties and in paragraph (4) of the commentary to article 78 of the present draft articles.¹³

The meeting rose at 1 p.m.

¹³ See *Yearbook of the International Law Commission, 1970*, vol. II, document A/8010/Rev.1, chapter II, section B.

1122nd MEETING

Monday, 21 June 1971, at 3.5. p.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castrén, Mr. Eustathiades, Mr. Nagendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Tamames, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 7; A/CN.4/241 and Add.1 to 6; A/CN.4/L.162/Rev.1; A/CN.4/L.168/Add.4 and 5; A/CN.4/L.173)

[Item 1 of the agenda]

(continued)

ARTICLE 118 (Sending of observer delegations) (continued)

1. The CHAIRMAN invited the Commission to continue consideration of article 118, as proposed by the Special Rapporteur (A/CN.4/L.173).
2. Mr. SETTE CÂMARA said that Part V of the draft, which dealt with observer delegations of States to organs and to conferences, was necessary to complete the Commission's work on item 1 of its agenda. The subject was related to the everyday practice of States, which frequently sent such observers.
3. It would be going too far, however, to place those observers on a par with delegations which actually participated in the work of an organ or conference. The Special Rapporteur had perhaps been led in that direction by considerations of symmetry. Practice, however, did not show that States were eager to send observer delegations with all the attributes of normal delegations or of permanent observer missions. To use the terminology of article 120, a temporary observer delegation of such a size would be neither reasonable nor normal.
4. The draft articles on observer delegations should therefore be simplified and reduced to the lower level of individual observers, which would be more in conformity with State practice. If the Commission were to take a decision on those lines, it would be easy for the Drafting Committee to purge the articles of their inflationary excesses.
5. The wording of article 118 needed some correction. For example, in paragraph 2, the words “a delegation” should be replaced by the words “an observer delegation” so as to be in line with paragraph 1.
6. Paragraph 2 referred to the sending of such a delegation by a State “not participating in a conference”.

In fact, situations could arise in which a State was a member of an organ or a participant in a conference, but did not actually take part in its deliberations. Such cases had occurred in the Security Council and there was also the case of France, which was a non-participating member of the Conference of the Committee on Disarmament. Obviously in such cases the State concerned had the right to send a delegation, and not merely an observer delegation, whenever it so wished. The Drafting Committee should endeavour to adjust the language of paragraph 2 to cover those cases.

7. Mr. USTOR said there was no need for a long series of articles on observer delegations; the concern expressed by Mr. Kearney on that point was shared by all members.

8. Nevertheless, the set of draft articles prepared by the Special Rapporteur for Part V provided a useful basis for discussion, which would enable the Commission to ascertain the similarities as well as the differences between regular delegations and observer delegations. When that process had been completed, it might be possible to merge the provisions on the two types of delegation, thereby shortening the draft.

9. The main difference between the two types of delegation related to their functions, but he noted that Part IV, on delegations of States to organs and to conferences, did not contain an article on functions. The Special Rapporteur had perhaps believed that such an article was unnecessary because of the provisions of sub-paragraphs (c) and (d) of article 78, on use of terms, which defined delegations, and thus brought out the difference between them and the observer delegations defined in sub-paragraphs (c) and (d) of article 117.

10. The Commission would consider at a later stage whether there were also differences between the two types of delegation with respect to their legal position and their privileges and immunities. At first sight it would seem that the privileges and immunities would have to be very much the same, since both types of delegation represented States.

11. It had been pointed out during the discussion that an observer delegation very often consisted of only one observer. In fact, the delegation of a member State could also consist of a single representative. On the other hand, there had been cases of observer delegations with a membership of nearly 100: for example, at the Geneva Conference of Foreign Ministers in 1959.

12. Mr. KEARNEY said that his basic objection to the concept of "observer delegations" was not connected with their size, but with the fact that an observer was not a delegate in the normal sense of the term. A delegate was a person who attended a conference or a meeting of an organ as the representative of a State and fully participated as such in the conference or meeting. If the draft articles were to refer to "observer delegations", they would cause confusion by suggesting that an observer was similar to a delegate, which was not the case.

13. Mr. USTOR said that the question was essentially one of terminology. It would be necessary to find an

expression to designate the representative of a State who did not fully participate in a conference or meeting, but who acted as an observer.

14. Mr. ROSENNE said that in article 78, sub-paragraph (d), a "delegation to a conference" was stated to mean "the delegation sent by a participating State to represent it at the conference", and in paragraph (4) of the commentary to that article,¹ it was explained that the word "participating" was used in that provision "in the same general sense as that word is used in article 9 of the Vienna Convention on the Law of Treaties".²

15. It was worth recalling that, in connexion with that article of the Vienna Convention, there had been a discussion on the problem of a delegation which did not take part in the work of a conference, but which at the very end merely voted for the adoption of the instrument formulated by the conference; the conclusion had been reached that such a delegation would be the delegation of a "participating State". In view of those considerations, the Drafting Commission should examine carefully the use, in article 78 and articles 117 and 118, of the expressions "participating State" and "State not participating in a conference", in order to ensure that there was no conflict with the provisions of the Vienna Convention on the Law of Treaties.

16. Mr. YASSEEN said he had never been in favour of the Commission drafting articles on observer delegations to organs and conferences. But since it had started on that course, it must now examine the subject in all its aspects.

17. The very concept of an "observer" was extremely complex. An observer could be sent by a State which was a member of an organization but was not represented in one of its organs, or by a State which was not a member of the organization. In the case of conferences, an observer could be sent by a State entitled to participate in the conference, or by a State which was not entitled to participate.

18. The task of the Commission, which was considering Part V of the Draft at first reading only, was therefore extremely complicated. It would have been sufficient to state the two rules governing the whole subject, which were set out in article 118, but it had been decided to draft a series of separate articles and the Drafting Committee would have to consider the substance as well as the form of the new provisions. First, however, the question should be considered by the Working Group.

19. Mr. KEARNEY said he agreed that it would be dangerous for the Commission to undertake the drafting of provisions concerning observers; references to that subject should be kept to a minimum.

¹ See *Yearbook of the International Law Commission, 1970*, vol. II, document A/8010/Rev.1, chapter II, section B.

² *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference*, p. 290 (United Nations publication, Sales No. E.70.V.5).

20. He appreciated the desire to deal with the subject in the interests of completeness and of the balance of the draft, but it should be appreciated that the Commission did not have before it the necessary material to determine the proper course of action. He had consulted a number of books on conferences and on diplomacy and had been unable to find any reference to research on the subject of observers. The Commission was taking up the subject without any observations by the Special Rapporteur to provide guidance on principle or on practice. It was embarking on a course which would lead it to propose draft articles destined to form part of an international treaty, without first having submitted them to governments for their comments.

21. Mr. EUSTATHIADES said he noted that the provisions proposed by the Special Rapporteur, in particular articles 118 and 121, used the term "observer delegation" and clearly implied that a delegation consisted of a number of persons. The term "observer delegation" had come into use with the establishment of international organizations. Previously, it had been customary to speak of one or more observers. As a single observer might be sent to an organ or to a conference, that possibility should be clearly indicated in the articles under consideration. He therefore suggested that the term "observer delegation" be replaced by the term "observer or observer delegation", both in the titles and in the texts of the articles.

22. Mr. USHAKOV said that the Commission could not ignore the question of observer delegations to organs and conferences, because such delegations did exist. It was clear from the discussion that the Commission was aware of the need to deal with the subject; it only remained to be seen what decision it would ultimately take. It might add to the draft articles a Part V which it had considered at first reading; or after discussing the question it might be unable to reach agreement on a text and have to postpone that part of its work.

23. Mr. YASSEEN explained that the purpose of his previous remarks had been to stress the difficulty of the tasks confronting the Working Group and the Drafting Committee. Since the Commission had decided to study the question, it was important that its work should be complete.

24. Mr. NAGENDRA SINGH said he agreed with those members who thought that the problem of observer delegations should be covered by the draft articles for the sake of completeness, but he also agreed with Mr. Yasseen that the Commission should consider the matter thoroughly.

25. On the question of the number of persons serving on an observer delegation, he suggested that, in article 117, on the use of terms, the provisions of sub-paragraphs (c) and (d) should be so framed as to make it clear that an observer delegation could consist of one or more persons. It was, of course, very common for an observer delegation to consist of a single observer.

26. Mr. REUTER said he fully supported Mr. Yasseen. He was worried that the Commission was now moving into an area with which he himself was quite unfamiliar.

Even if his colleagues were better informed, there was no denying that the practice regarding observer delegations was very little known.

27. It was surprising that none of the articles proposed by the Special Rapporteur dealt with the functions of an observer delegation. It was not enough to say, as was implied in sub-paragraphs (c) and (d) of articles 117, that the function of an observer delegation was to represent the sending State. Every State official exercised a function of representation, but it was always combined with some other function. In the present case it was combined with the function of observing.

28. As Mr. Yasseen had pointed out, there were many ways of observing; and the best observers were not, perhaps, always to be found in observer delegations. The function of a delegation to an organ such as the Security Council was not so much to observe as to take part in discussions of direct concern to the sending State. The function of representation prevailed over the function of observation. The first essential, therefore, was to set out the various functions which an observer delegation could perform.

29. Mr. AGO said that the Commission had already had to make several choices. It had decided, first, to deal not only with the permanent missions and delegations of States members of an organization, but also with those of non-member States. When it had drafted the articles on permanent observer missions, it had gone so far as to say that a member of a permanent observer mission could represent his State in an organ of an organization or at a conference. It was that provision which had induced it later to draft separate articles on observer delegations.

30. The articles proposed by the Special Rapporteur seemed to be modelled too closely on those of the other parts of the draft. They did not reflect the essential difference between a member State and a non-member State, with respect to representation in an organ or participation in a conference. To devote a separate article to the size of an observer delegation was to take little account of reality, since a single observer might well be sent to an organ or to a conference.

31. As certain questions of substance would have to be settled before the whole matter was referred to the Drafting Committee, the articles proposed by the Special Rapporteur should first be examined by the Working Group under the chairmanship of Mr. Kearney.

32. Mr. ROSENNE said he noted that there was no proposal to reject the set of articles prepared by the Special Rapporteur on observer delegations (A./CN.4/L.173), but merely a proposal to refer them either to the Drafting Committee or to the small Working Group.

33. That being so, he wished to draw attention to an example taken from his own experience as representative of his country. In that capacity, he had sat in the Security Council, although his country was not a member of the Council. He had thus participated in the discussion of a question brought before the Security Council in which the interests of his country were specially affected. He

had spoken and taken part in the discussions as of right, and he had been consulted by the President of the Security Council in the course of consultations carried out by the President.

34. When the Commission had adopted article 78, on the use of terms, in Part IV of the draft, he had been under the impression that the type of representation he had described was covered by the provisions of that article. But a comparison of the definition of a "delegation to an organ" in sub-paragraph (c) of article 78 with sub-paragraph (c) of article 117 on the meaning of the term "observer delegation to an organ", showed that the example he had given appeared to fall outside the scope of both provisions.

35. The Drafting Committee would therefore have to consider carefully the wording of sub-paragraph (c) of article 78 and sub-paragraph (c) of article 117, because those two provisions, if taken together, were certainly not correct.

36. Sir Humphrey WALDOCK said that the draft articles on observers, which the Special Rapporteur had prepared in response to the Commission's request, were based largely on analogy. In the short time available, they had necessarily been formulated by an intellectual process rather than as a result of a thorough examination of the practice in the matter, which was not easy to ascertain quickly.

37. The Commission should at any rate make an attempt to deal with the subject of observers and he would be prepared to agree to the suggestion that the whole subject be referred to the small Working Group, which would examine whether some modified form of the Special Rapporteur's articles 117 to 127 could be included in the Commission's draft, either as an integral part of the draft or as an annex.

38. The Secretariat could perhaps assist the Working Group by providing it with some information on the subject of observers sent to organizations having their headquarters at Geneva. He was not suggesting that any major study be undertaken, but simply that such information as could be readily obtained should be given orally to the Group.

39. Mr. MOVCHAN (Secretary to the Commission) said it would be possible for the Secretariat to give the Working Group, even as soon as its next meeting, some information that was available at Geneva. For example, it could supply information on participation by observers for States that were not Members of the United Nations, but were parties to the Statute of the International Court of Justice, in the work of the General Assembly on amendments to the Statute of the Court.

40. Mr. BARTOŠ said it was important to note the distinction between passive and active observer delegations. That distinction was not always made in practice, but it should be taken into account by the Drafting Committee. It would even be advisable to devote a separate paragraph in each article to each of those categories.

41. An observer delegation was passive so long as it confined itself to observing. It became active when its

function also included taking action to protect the interests of the sending State. When the observer delegation of a State not a member of an organization objected to specific acts by member States, it was representing the sending State and playing a really active role. In such cases the head of the observer delegation abandoned his role of vigilant observer to request permission to speak and to intervene actively in the proceedings, as sometimes happened in the Security Council.

42. Active and passive observer delegations should therefore be dealt with separately in the articles of Part V of the draft.

43. Mr. KEARNEY said the discussion had shown that the subject of observers involved many difficult problems on which there was not much information available. To give one example, article 118, paragraph 2, provided that a State not participating in a conference might send a "delegation" thereto "in accordance with the rules of procedure of that conference". In fact, the rules of procedure of a conference were always adopted after the conference had begun, so that the State sending the observer would not know whether he would be admitted or not. The question was a difficult one and he would not venture to give a definite answer to it at that stage.

44. Mr. USTOR said there was general agreement that the Commission should endeavour to draft a complete set of articles; it should therefore do its best not to omit the subject of observer delegations.

45. The discussion had shown that there were many different kinds of delegations. To illustrate their diversity, he would give an example from a non-universal organization, the Council for Mutual Economic Assistance (CMEA). Yugoslavia, was not a member of the Council, but had entered into a special agreement with it, in virtue of which it participated in the Council's work with a wide range of rights. The delegations of Yugoslavia to certain bodies of the CMEA were more than observers, but less than full fledged delegations of member States.

46. The Commission had now before it the texts of articles 81 to 86, on delegations, as proposed by the Drafting Committee (A/CN.4/L.168/Add.5). Sub-paragraphs (c) and (d) of article 78, on the use of terms, stated the meaning of the terms "delegation to an organ" and "delegation to a conference", without specifying whether those delegations came from member States or from non-member States. The Drafting Committee should consider whether those provisions should take that aspect of the matter into account and whether a separate provision on the functions of delegations should be included in the draft articles.

47. Mr. BARTOŠ said that Mr. Ustor's remarks about Yugoslavia's participation in the CMEA also applied to its participation in a European organization of an entirely different political complexion. To the CMEA, Yugoslavia had sent an observer delegation, appointed as such in accordance with the rules of procedure of that organization. On certain questions, Yugoslavia had undertaken to co-operate and participate in decisions; on others, its delegation had to confine itself to observing and to expressing the opinion of its Government.

48. The position of Yugoslavia was rather different in the Organisation for Economic Co-operation and Development. There, its delegation played an active role in organs and conferences in which matters of direct concern to it were discussed. If it had no direct interest in the questions to be discussed, it was not invited and performed only observer functions.

49. Many other countries were in a similar situation. In addition, some so-called "protecting" States participated in conferences as observers to assist the States taking part. At some regional conferences, there were a number of different statuses for different participating States, some of them allowing the exercise of observer functions pure and simple, and some active participation which might be partial or total.

50. After the First World War, the allies had invited certain States to take part in the drafting of the peace treaties, believing that they had only a limited interest in the proceedings. A distinction had been made between States entitled to be consulted and States entitled to ask to be consulted; thus their observer delegations had not been of the same character. After the Second World War, at the Paris Conference, a similar distinction had been made, together with an additional distinction relating to the oral or written character of the consultations.

51. The sending States had always claimed that their delegations had an active role to play in those conferences. The so-called principal Allied Powers, on the other hand, had maintained that, in view of the so-called "legitimate" interests of the great Powers, the sending States could play only an observer role.

52. The question was thus exceedingly complex; it was important to simplify it as much as possible and not to disregard the two modes of expression he had mentioned.

53. The CHAIRMAN, speaking as a member of the Commission, said he must admit that in spite of his long diplomatic experience, he had little knowledge of the subject under discussion.

54. When the Commission had drafted the Convention on the Law of Treaties, it had excluded unwritten agreements and no one criticized it on that account. It could do the same in the present case. He did not wish to exaggerate the difficulties, but it must be admitted that it would be risky to draft provisions on a little known subject. It was true that the Commission was required to work on the codification and progressive development of international law, but it must not ignore custom and practice either.

55. As matters stood, it should not be too ambitious, but should make a last effort to draw up some simple, easily applicable articles.

56. Sir Humphrey WALDOCK said that all the remarks made about difficulties of the present subject were really connected with the meaning to be attached to the term "observer". The discussion had shown that there were different types of participant and various

degrees of participation in a conference. An attempt should be made to define the term "observer".

57. The CHAIRMAN said that the Commission might perhaps wish to refer the whole of Part V to the Working Group for review in the light of the discussion.

58. Mr. ROSENNE said he had no objection to that course; the Working Group might examine whether a new proposal could be submitted to the Commission. First of all, however, it might be desirable for the Commission to examine briefly articles 119 to 127.

59. Mr. USHAKOV said he thought such an examination would be a waste of time.

60. Mr. SETTE CÂMARA said that the debate on article 118 had shown that the Special Rapporteur's draft articles did not provide an adequate basis for a discussion of the subject of observers. He therefore favoured the idea of referring the document immediately to the Working Group without examining articles 119 to 127.

61. Mr. ALBÓNICO suggested that the Special Rapporteur should be informed of the present discussion and invited to reply to the comments of members.

62. Mr. ROSENNE said that he had not raised any formal objection to the whole series of articles being referred to the Working Group.

63. Mr. CASTRÉN said he was in favour of referring the Special Rapporteur's working paper to the Working Group without further discussion.

64. The CHAIRMAN said that if there were no objections he would take it that the Commission agreed to refer the Special Rapporteur's working paper (A/CN.4/L.173) to the Working Group, together with the comments made at the present meeting and the previous meeting.

It was so agreed.³

QUESTION OF CONFERENCES NOT CONVENED BY INTERNATIONAL ORGANIZATIONS

65. Mr. TAMMES said that he would like to repeat a proposal he had made at an earlier meeting, namely, that the Special Rapporteur be asked to submit an article covering conferences not convened by international organizations.⁴

66. Mr. EUSTATHIADES said that a distinction could be made between, on the one hand, conferences meeting under the auspices of international organizations of a universal character or under the auspices of other international organizations, and on the other hand, conferences not convened by international organizations, that was to say primarily political conferences. That was a question, the Working Group might be asked to clarify.

67. Mr. USHAKOV observed that the last sentence of article 2, paragraph 2, made the draft articles applicable

³ For resumption of the discussion see 1139th meeting.

⁴ See 1105th meeting, paras. 19-23.

to the representatives of States to international organizations not of a universal character if the States members of such organizations so agreed, so that it would be sufficient to draft a similar provision applicable to delegations to conferences not meeting under the auspices of an international organization of a universal character. That being so, it would be better to wait until the Commission came to consider the general provisions before deciding to draft new articles.

68. Mr. ROSENNE said that he too thought the answer to the question would be found in a revised version of article 2, which would be made applicable to the whole draft.

69. Mr. EUSTATHIADES said that the question raised by Mr. Tammes ought not to be ignored. In order to avoid analogies, it ought to be made clear why a distinction should be made between conferences meeting under the auspices of an international organization of a universal character and conferences not connected with any international organization, which might be regional or universal, but would be primarily political in character. However, the scope of the Commission's terms of reference should be carefully considered.

70. Mr. TAMMES said he was not pressing the Commission to ask the Special Rapporteur to prepare articles on the question he had mentioned.

71. Mr. USHAKOV said that in that case perhaps the Working Group might be asked to deal with it.

72. The CHAIRMAN said that if there were no objections he would take it that the Commission agreed to ask the Working Group to study the question of delegations to conferences not meeting under the auspices of an international organization of a universal character.

It was so agreed.⁵

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE
(*resumed from the previous meeting*)

73. The CHAIRMAN invited the Commission to consider articles 65 to 77 as proposed by the Drafting Committee (A/CN.4/L.168/Add.4).

ARTICLE 65

74. Mr. AGO (Chairman of the Drafting Committee) said that the Drafting Committee had considered it advisable to retain the intentional difference in wording between article 65 and the corresponding article in Part II, namely, article 22. In the latter article, the words "all facilities" were used, whereas article 65 spoke of "the facilities required".

75. The text proposed by the Drafting Committee for article 65, which was unchanged, read:

Article 65
General facilities

The host State shall accord to the permanent observer mission the facilities required for the performance of its functions.

⁵ For resumption of the discussion see 1132nd meeting, para. 9.

The Organization shall assist the permanent observer mission in obtaining those facilities and shall accord to the mission such facilities as lie within its own competence.

76. Mr. YASSEEN said he approved of the wording proposed.

77. Mr. USTOR said that the article as a whole was quite acceptable to him, though he wondered whether the different nuances in the wording of articles 22 and 65 were really necessary.

78. Mr. AGO (Chairman of the Drafting Committee) said that the Drafting Committee would try to meet Mr. Ustor's point at a later stage.

79. The CHAIRMAN said that if there were no objections he would take it that the Commission provisionally approved article 65, on the understanding that it would be re-examined in conjunction with article 22.

It was so agreed.⁶

ARTICLES 66 and 66 bis

80. Mr. AGO (Chairman of the Drafting Committee) said that article 66, as adopted by the Commission in 1970, had dealt with two different questions,⁷ and the Committee had considered it advisable to split it into two separate articles, numbered provisionally 66 and 66 bis, modelled on articles 23 and 24 respectively.

81. The texts proposed for articles 66 and 66 bis read:

Article 66

Premises and accommodation

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

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

Article 66 bis

Assistance by the Organization in respect of privileges and immunities

The Organization shall, where necessary, assist the sending State, its permanent observer mission and the members of the permanent observer mission in securing the enjoyment of the privileges and immunities provided for by the present articles.

82. Mr. BARTOŠ said that article 66 bis was very useful, because practice had shown that an organization often had to intervene with its member States to secure the enjoyment of some of the recognized rights of permanent observer missions.

83. Mr. YASSEEN said there seemed to be a discrepancy in article 66, between the words *dans le cadre de sa législation*, in the French version, and the words "in accordance with its laws", in the English version.

⁶ For resumption of the discussion see 1132nd meeting, para. 127.

⁷ For previous text and discussion see 1104th meeting, para. 76 *et seq.*

84. Mr. TESLENKO (Deputy Secretary to the Commission) said that the wording in question was taken from article 21 of the Vienna Convention on Diplomatic Relations.⁸

85. The CHAIRMAN said that if there were no objections he would take it that the Commission provisionally approved articles 66 and 66 *bis* as proposed by the Drafting Committee.

*It was so agreed.*⁹

ARTICLES 67¹⁰ and 67 *bis*

86. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change in article 67. Article 67 *bis* made the provisions of article 27 *bis*¹¹ applicable to Part III of the draft. The wording of both articles would probably have to be changed when Parts II and III of the draft were combined.

87. The texts proposed for articles 67 and 67 *bis* read:

Article 67

Privileges and immunities of the permanent observer mission

The provisions of articles 25, 26, 27, 29 and 38, paragraph 1 (a), shall apply also in the case of permanent observer missions.

Article 67 bis

Entry into the territory of the host State

The provisions of article 27 *bis* shall apply also in the case of members of the permanent observer mission and members of their families forming part of their respective households.

88. The CHAIRMAN said that if there were no objections he would take it that the Commission provisionally approved articles 67 and 67 *bis* as proposed by the Drafting Committee, pending examination of the texts to be submitted to it after Parts II and III of the draft had been combined.

*It was so agreed.*¹²

The meeting rose at 6.00 p.m.

1123rd MEETING

Tuesday, 22 June 1971, at 10.10 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castrén, Mr. Eustathiades, Mr. Kearney, Mr. Nagnendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 7; A/CN.4/241 and Add.1 to 6; A/CN.4/L.162/Rev.1; A/CN.4/L.168/Add.4 and 5; A/CN.4/L.173)

[Item 1 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

ARTICLE 68

1. The CHAIRMAN invited the Commission to continue consideration of the draft articles proposed by the Drafting Committee, starting with article 68, on freedom of movement (A/CN.4/L.168/Add.4).

2. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change in article 68, the text of which read:

Article 68

Freedom of movement

The provisions of article 28 shall apply also in the case of members of the permanent observer mission and members of their families forming part of their respective households.

*Article 68 was provisionally approved.*¹

ARTICLE 69

3. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change in article 69, the text of which read:

Article 69

Personal privileges and immunities

1. The provisions of articles 30, 31, 32, 35, 36, 37 and 38, paragraphs 1 (b) and 2, shall apply also in the case of the permanent observer and the members of the diplomatic staff of the permanent observer mission.

¹ For resumption of the discussion see 1133rd meeting, para. 8.

⁸ United Nations, *Treaty Series*, vol. 500, pp. 106-107.

⁹ For resumption of the discussion see 1132nd meeting, para. 130.

¹⁰ For previous discussion see 1104th meeting, para. 80 *et seq.*

¹¹ For text and previous discussion see 1113th meeting, para. 13 *et seq.*

¹² For resumption of the discussion see 1133rd meeting, para. 3, and 1135th meeting, para. 64.

2. The provisions of article 40, paragraph 1, shall apply also in the case of members of the family of the permanent observer forming part of his household and the members of the family of a member of the diplomatic staff of the permanent observer mission forming part of his household.

3. The provisions of article 40, paragraph 2, shall apply also in the case of members of the administrative and technical staff of the permanent observer mission, together with members of their families forming part of their respective households.

4. The provisions of article 40, paragraph 3, shall apply also in the case of members of the service staff of the permanent observer mission.

5. The provisions of article 40, paragraph 4, shall apply also in the case of the private staff of members of the permanent observer mission.

Article 69 was provisionally approved.²

ARTICLE 70

4. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change in article 70, the text of which read:

Article 70

Nationals of the host State and persons permanently resident in the host State

The provisions of article 41 shall apply also in the case of members of the permanent observer mission and persons on the private staff who are nationals of or permanently resident in the host State.

Article 70 was provisionally approved.³

ARTICLE 71

5. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had brought the title of article 71 into line with that of article 33 as provisionally approved by the Commission.⁴ Article 71, which referred back to article 33, might perhaps be merged with that article.

6. The text proposed for article 71 read:

Article 71

Waiver of immunity

The provisions of article 33 shall apply also in the case of persons enjoying immunity under article 69.

Article 71 was provisionally approved.⁵

ARTICLE 72

7. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change in article 72, the text of which read:

Article 72

Exemption from laws concerning acquisition of nationality

The provisions of article 39 shall apply also in the case of members of the permanent observer mission not being nationals of the host State and members of their families forming part of their household.

Article 72 was provisionally approved.⁶

ARTICLE 73

8. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change in article 73, the text of which read:

Article 73

Duration of privileges and immunities

The provisions of article 42 shall apply also in the case of every person entitled to privileges and immunities under the present section.

Article 73 was provisionally approved.⁷

ARTICLE 74

9. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change in article 74, the text of which read:

Article 74

Transit through the territory of a third State

The provisions of article 43 shall apply also in the case of the members of the permanent observer mission and members of their families, and the couriers, official correspondence, other official communications and bags of the permanent observer mission.

Article 74 was provisionally approved.⁸

ARTICLE 75

10. Mr. AGO (Chairman of the Drafting Committee) said that the wording of article 75 was identical with that of article 44. The positions of those articles in the final text of the draft had not yet been settled.

11. The text proposed for article 75 read:

Article 75

Non-discrimination

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

12. Mr. YASSEEN said that article 75 should undoubtedly be placed among the general provisions.

13. Mr. KEARNEY said he saw no valid reason for using the expression "as between States"; the same

² For resumption of the discussion see 1133rd meeting, para. 14.

³ For resumption of the discussion see 1133rd meeting, para. 50.

⁴ See 1113th meeting, paras. 69-70.

⁵ For resumption of the discussion see 1133rd meeting, para. 26.

⁶ For resumption of the discussion see 1135th meeting, para. 40.

⁷ For resumption of the discussion see 1133rd meeting, para. 53.

⁸ For resumption of the discussion see 1135th meeting, para. 70.

meaning could be expressed by the shorter form "between States".

14. Mr. AGO (Chairman of the Drafting Committee) said that Mr. Kearney's comment applied only to the English text; he would leave it to the English-speaking members of the Commission to settle the point. Article 75 reproduced the wording of article 44, the article on non-discrimination in Part II of the draft.

15. Sir Humphrey WALDOCK said that the only explanation for the use of the expression "as between" was that it had already been used in the corresponding articles of the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations and the 1969 Convention on Special Missions.

16. Mr. YASSEEN said that if there were no other justification for their use, he would suggest that the words "as between" be replaced by the word "between".

17. Mr. ROSENNE said he fully agreed that article 75 could be moved into the group of general provisions applicable to the whole draft.

18. He was not at all certain, however, that the proposed text reflected the meaning intended. The original purpose of the two separate provisions in articles 44 and 75, on non-discrimination, had been to state, first, that in the application of all the articles on permanent missions, there must be no discrimination between those missions, and secondly, that in the application of all the articles on permanent observer missions there must be no discrimination between those missions. Care should be taken not to couch the proposed general provision in language which might suggest that there would be no differentiation between permanent missions and permanent observer missions in regard to the non-discrimination rule.

19. Mr. AGO (Chairman of the Drafting Committee) said there could be no question of including in the general provisions a text which might be misconstrued as suggesting that member States and non-member States would be treated in the same way.

20. Mr. KEARNEY said that Mr. Rosenne had raised a valid point, but the opening words of article 75: "In the application of the provisions of the present articles..." would seem to afford sufficient protection, since those provisions did establish a number of differences between the various types of mission. The rule on non-discrimination was only concerned with the application of the provisions of the various draft articles.

21. Mr. ROSENNE said that the point was a difficult one. For his part, he would be satisfied if it could be considered by the small Working Group, in order to ensure that the provision on non-discrimination clearly stated the intended meaning.

22. Sir Humphrey WALDOCK said that the point was not a new one. The general understanding in the matter was along the lines indicated by Mr. Kearney. It would certainly be borne in mind in the final retouching of the articles, when the rule on non-discrimination would be made to cover a considerable number of different provisions.

23. The CHAIRMAN said he noted that the Commission was prepared to approve article 75 provisionally in the form proposed by the Drafting Committee, subject to final retouching and to the general harmonization of the draft articles; the word "as" would be provisionally retained in the English version.

*Article 75 was provisionally approved.**

ARTICLE 76

24. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change to article 76, which was likely to be merged with the corresponding provision in Part II.

25. The text proposed for article 76 read:

Article 76

Conduct of the permanent observer mission and its members

The provisions of articles 45 and 46 shall apply also in the case of permanent observer missions.

Article 76 was provisionally approved.⁹

ARTICLE 77

26. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change in article 77 which, like the previous article, was likely to disappear at a later stage.

27. The text proposed for article 77 read:

Article 77

End of functions

The provisions of articles 47, 48 and 49 shall apply also in the case of permanent observer missions.

Article 77 was provisionally approved.¹⁰

PART IV. Delegations of States to organs and conferences

ARTICLE 81

28. The CHAIRMAN invited the Commission to consider articles 81 to 86 as proposed by the Drafting Committee (A/CN.4/L.168/Add.5). In article 81, the words "the sending State may appoint a head" had been replaced by the words "the sending State shall appoint a head". The permissive formula, "may appoint", appeared in article 9 of the 1969 Convention on Special Missions¹² and was justified in that Convention, but in the present case it should be replaced by a mandatory formula. A delegation to an organ or to a conference needed

⁹ For resumption of the discussion see 1135th meeting, para. 78.

¹⁰ For resumption of the discussion see 1135th meeting, para. 46.

¹¹ For resumption of the discussion see 1133rd meeting, para. 56.

¹² See General Assembly resolution 2530 (XXIV), Annex.

a head who would be responsible for the activities of the delegation.

29. The text proposed by the Drafting Committee for article 81 read:

Article 81

Composition of the delegation

A delegation to an organ or to a conference shall consist of one or more representatives of the sending State from among whom the sending State shall appoint a head. It may also include diplomatic staff, administrative and technical staff and service staff.

30. Mr. USHAKOV, referring to a remark by Mr. Ustor,¹⁸ said that the general question of the status of delegations to organs needed clarification.

31. Although the wording of article 78, dealing with the use of terms in the articles on delegations, was only provisional, it should be noted that according to subparagraph (c), a "delegation to an organ" meant "the delegation designated by a State member of the organ to represent it therein". That wording did not appear to cover the case of the delegation of a State member of an organization which was invited to participate in the work of an organ of which it was not a member, as sometimes happened in the Security Council of the United Nations. In his view, the articles in Part IV should apply to such cases.

32. The Drafting Committee or the Working Group should therefore consider the possibility of widening the scope of the definition of a "delegation to an organ". No such widening was needed for the definition of a "delegation to a conference".

33. Mr. ROSENNE said he had some misgivings about article 81, especially after the Commission's discussion on articles 117 and 118 at the previous meeting.

34. He could not accept the change made in the first sentence of article 81, replacing the words "may appoint" by the words "shall appoint".

35. He was also uneasy about the whole concept of representation as it appeared in article 81. The discussion at the previous meeting had revolved round the distinction between representation and participation in the light of the Vienna Convention on the Law of Treaties. Reference had been made to cases which were not at all rare in which a State sent a person to be present at a meeting or conference, with instructions not to participate in it. It would therefore be going too far to say in article 81 that the sending State "shall appoint" a head of delegation.

36. For those reasons, he reserved his position on article 81 and would ask that the provisions on the various types of delegation, contained in articles 78 and 117, be examined thoroughly.

37. Mr. REUTER said he agreed with Mr. Ushakov's remarks. Everything connected with the organs of an

organization was governed by the relevant rules of the organization.

38. Notwithstanding the general reservation in article 3, the question arose whether the group of articles under consideration did not deal with a case which, although the most frequent, was also a very special one. The members of the delegation of a State to an organ were not always representatives of the State; they were not always appointed by the State and did not necessarily constitute a government delegation provided with a head.

39. It would be interesting to know what was the practice followed by the International Labour Organisation (ILO), for example, where the tripartite character of delegations hardly seemed to fit the provisions under consideration.

40. Mr. AGO (Chairman of the Drafting Committee) said that it was important to take account of the case mentioned by Mr. Ushakov, in which a State member of an organization sent a delegation to an organ of which it was not a member. For example, when States members of the United Nations which were not members of the Economic and Social Council participated in a meeting of that Council, they were not in the same position as States which participated in such a meeting but were not Members of the United Nations.

41. Speaking as a member of the Commission, in reply to Mr. Reuter's question, he explained that at an International Labour Conference, the delegation of each State consisted of two representatives appointed by the government, one representative appointed by the employers' organization, and one representative appointed by the workers' organization. As a body, those four representatives constituted the delegation of the State, to which the articles now under consideration would apply. The situation with regard to the ILO Governing Body was rather different. The persons appointed to the Governing Body by the employers and by the workers did not represent the sending State, but the whole employers' group and the whole workers' group respectively. That situation, however, was peculiar to the ILO and the reservation in article 3 was sufficient to cover it.

42. With regard to the question of the head of the delegation, one of the two government representatives on a delegation to an International Labour Conference was normally senior to the other; but that did not make him the head of the delegation over the employers' and workers' representatives. That was also a peculiarity of the ILO, due to the fact that some members of the delegation were not appointed by the government.

43. Those questions, like many others, arose from the analogies established between Parts II and III of the draft on the one hand, and Part IV on the other.

44. Mr. EUSTATHIADES said he was not sure that the Drafting Committee had been right in making the appointment of a head mandatory for delegations to organs and conferences. While such an appointment appeared to be normal in the case of an international conference, it seemed less consistent with the practice concerning organs of an organization. A delegation to

¹⁸ See previous meeting, para. 45.

an organ might consist of only two persons and the sending State might not wish one of them to be regarded as the superior of the other. Moreover, the obligation to appoint a head of delegation was emphasized by article 86, on the acting head of the delegation.

45. He therefore suggested that the Commission should either restore the former wording of article 81 and merely provide for the faculty to appoint a head of delegation, or make a distinction between delegations to conferences and delegations to organs.

46. Mr. USHAKOV said he believed it was quite usual to appoint a head of delegation, both for delegations to organs and for delegations to conferences. The former wording, "the sending State may appoint a head", had been in conflict with the following articles of the draft, most of which were based on the assumption that there was a head of delegation. Hence the present wording of article 81 was acceptable; it was in conformity with the general practice, subject to the reservation regarding the particular rules of organizations.

47. Mr. REUTER said that while he had no objection to the Commission's continuing to consider the articles in Part IV in the form proposed, he was not in favour of adopting common provisions for delegations to organs and delegations to conferences. The articles proposed were quite satisfactory for conferences, but where organs were concerned the law of the organization should prevail. Assimilating the meeting of an organ to a conference gave the impression that such a meeting constituted a small conference, which might perhaps be true of principle organs, but not of subsidiary organs.

48. Mr. YASSEEN said that the proper functioning of a delegation logically required the appointment of a head. Logic, however, was not sufficient to justify a legal rule. While it was true that there was no customary rule which made such an appointment compulsory, the practice was certainly widespread. In the United Nations, when a head of delegation was not expressly appointed, it was even assumed that the first name on the list of members of the delegation was that of the head, unless otherwise indicated.

49. The present wording of article 81 did not reflect the real position exactly, but it could nevertheless contribute to the progressive development of international law.

50. Mr. CASTRÉN said that, by making it compulsory to appoint a head of delegation, the Drafting Committee had formulated a rule which would contribute to the satisfactory operation of organs and conferences. That rule did not have any drawbacks and was consistent with the general practice. There were exceptions to that practice, but they should not be encouraged. The proposed text of article 81 was therefore quite satisfactory.

51. Mr. AGO (Chairman of the Drafting Committee) said that Mr. Reuter's comments were very apt; he agreed with him and Mr. Ushakov that it was not possible to place conferences and organs on an equal footing, particularly organs with a small membership. In the case of the International Labour Conference or the

World Health Assembly, which had the characteristics of conferences, it was almost mandatory to appoint a head from among the members of each delegation, because it was necessary in certain circumstances for a single person to represent the delegation. On the other hand, for such organs as councils and committees, delegations to which generally consisted of only one person, it was less appropriate to provide for the appointment of a head or to refer to the staff of a delegation.

52. Hence it might perhaps be advisable for the Working Group to try to find more adequate wording.

53. Mr. USTOR said the discussion had shown that there was a considerable difference in kind between a conference and a meeting of an organ. The different situations would have to be kept clearly in mind when drafting the various articles.

54. In the draft, the Commission had been concerned exclusively with delegations appointed by States; it had thus excluded organs consisting of persons who did not act as representatives of States, such as the International Law Commission itself.

55. At a conference of representatives of States, the situation was comparatively simple; the participating States played a full role in the conference, as distinct from the observers. A meeting of an organ, however, could be attended by representatives both of member States and of non-member States. At the previous meeting, he had referred to the case of the Council for Mutual Economic Assistance, in which certain non-members participated with full rights, on a par with the representatives of the member States.

56. There were two kinds of observer at meetings of organs: first, an observer for a State not a member of the organization, and second, an observer for a State which was a member of the organization, but not of the organ in question. Those facts should be borne in mind when drafting definitions and other provisions.

57. Sir Humphrey WALDOCK said he hoped the Commission would not try to include in the draft any provisions on the subject of persons who were members of an organ but did not act as representatives of States. The Commission had adopted the title "Relations between States and international organizations" for the express purpose of putting some limitation on the investigation; its work on that topic was designed to establish a bridge between diplomatic law and the law of international organizations.

58. The intention was to deal with the representation of States. Apart from members of organs who acted in their personal capacity, there were other persons who participated in the work of an international organization. To give one example, in the United Nations individuals had been summoned to give their opinions or to state facts. The participation of such individuals in meetings of the Organization raised important problems. Any attempt to cover all those situations would lead the Commission too far; for example, it would not be possible to exclude consideration of the case of judges of the International Court of Justice, who had a special position as members of the highest judicial body of the Organization.

59. On the subject of the different kinds of participation, he thought the Commission would become involved in difficult problems if it tried to cover every conceivable case. It should deal with the main categories, without being unduly concerned if certain particular cases were not covered. Considerable care would have to be exercised, however, with regard to terminology; it might even be necessary to convert the term "observer" into a term of art. For example, the representative of a member State who participated in the meeting of an organ of which his State was not a member and who took part in the discussion without the right to vote, was not an observer in the sense in which that term was used in the present draft.

60. Mr. USTOR said he agreed that some limits had to be set to the Commission's work on the present topic. He had not made any formal proposal, but had merely enlarged upon an idea put forward by Mr. Reuter. It was obvious that at the present stage it would be very difficult to extend the scope of the Commission's work on the item under study.

61. The CHAIRMAN observed that the Chairman of the Drafting Committee had himself suggested that the wording of article 81 be re-examined and his suggestion had received wide support; he therefore proposed that the Commission refer article 81 back to the Drafting Committee for review in the light of the opinions expressed during the discussion.

*It was so agreed.*¹⁴

ARTICLE 82

62. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that article 82 corresponded to article 16, on the size of the permanent mission. In order to align those parts of the text which were common to both articles, the Committee had made two changes in article 82: it had replaced the expression "a delegation" by "the delegation", and the expression "reasonable or normal" by "reasonable and normal".

63. Article 16 referred to "the functions of the Organization"; article 82 had previously referred to "the tasks of the Conference". In the commentary to article 82,¹⁵ it was stated that "The Commission was of the opinion that the word 'tasks' was more appropriate than 'functions' in relation to conferences". The Drafting Committee, too, thought that the same term could not be employed for organizations and for conferences, but it considered that in the case of conferences it was preferable to replace the word "tasks" by "object".

64. The Committee had also moved the words "as the case may be" to make the text read easily. Lastly, it had slightly changed the drafting of the French and Spanish versions.

65. The text proposed by the Drafting Committee for article 82 read:

Article 82

Size of the delegation

The size of the delegation to an organ or to a conference shall not exceed what is reasonable and normal, having regard, as the case may be, to the functions of the organ or the object of the conference, as well as the needs of the particular delegation and the circumstances and conditions in the host State.

66. Mr. EUSTATHIADES said he approved of the changes made by the Drafting Committee.

67. With regard to the substance of the article, it should be clearly understood that, in drafting the provisions relating to delegations to organs and to conferences, the Commission had in many cases been prompted by a desire to simplify and unify the draft as a whole. Thus each provision did not necessarily correspond to a need, and in the particular case of article 82, which the Commission had wished to align with the corresponding article on permanent missions, there was some danger of lack of clarity, in particular as to what was "reasonable and normal" for the size of the respective delegations of different States, depending on the importance they attached to the meeting or conference. It was important that clear explanations should be given in the commentary.

68. Mr. ROSENNE said he found it difficult to accept article 82 in its present form; in his opinion, it was far too closely aligned with article 16. What was "reasonable and normal" could be understood in connexion with article 16, but he did not see how those words could be used with reference to a conference, which might meet only once in a human lifetime, or with reference to the meetings of an organ which, like the Economic and Social Council, might meet three or four times a year, for a different purpose on each occasion. While the word "reasonable" might be retained, he suggested that it would be better to delete the words "and normal".

69. Mr. CASTRÉN said that, in principle, he was opposed to the provision contained in article 82, particularly the condition imposed by the words "having regard... to... the circumstances and conditions in the host State", which could lend themselves to any interpretation. However, in the interests of uniformity he was prepared to accept the article, on condition that, as Mr. Eustathiades had requested, it was made clear in the commentary how the provisions should be interpreted in practice.

70. Mr. USHAKOV, speaking on behalf of the Drafting Committee said that in the phrase "reasonable and normal", to which Mr. Rosenne objected, the two adjectives were more or less synonymous, so that there was no reason why they should not be used side by side.

71. Speaking as a member of the Commission, he said he had doubts about the reservations relating to "the needs of the particular delegation" and, particularly, "the circumstances and conditions in the host State", since a State did not invite an organ or a conference to meet in its territory unless the circumstances and conditions were appropriate. Those points were of minor importance, however, and he could accept the article as drafted.

¹⁴ For resumption of the discussion see next meeting, para. 4.

¹⁵ See *Yearbook of the International Law Commission, 1970*, vol. II, document A/8010/Rev.1, chapter II, section B.

72. Mr. ROSENNE said that if the words "reasonable" and "normal" were synonymous, the present expression was a mere pleonasm and the words "and normal" should be deleted.

73. Mr. SETTE CÂMARA said he had always maintained that those words were not synonymous. He suggested that the expression be amended to read "reasonable or normal"; alternatively, some clarification should be provided in the commentary.

74. Mr. KEARNEY said he could see little difference between the expressions "reasonable and normal" and "reasonable or normal". The only purpose of article 82 was to balance article 81, and if the latter article was accepted, he felt that article 82 should be retained as it stood.

75. Mr. USHAKOV said that both in article 16 of the draft and in article 11 of the Vienna Convention on Diplomatic Relations it was the word "and" that was used, and it was by mistake that the word "or" had been used in the former version of article 82.

76. Mr. ALBÓNICO said that the fundamental idea in article 82 was that the size of the delegation should not exceed what was necessary for performing the functions of the organ or for the object of the conference. Anything in addition to the word "necessary" was therefore superfluous and should be deleted.

77. Sir Humphrey WALDOCK said that the present formulation was to be found in the Vienna Conventions on diplomatic and consular relations, but not in the Convention on Special Missions. It was true that the word "reasonable" overlapped in some degree with the word "normal". But the latter word did seem to introduce an additional criterion, which was perhaps even more valid in multilateral than in bilateral diplomacy; for "normality" could be measured by reference to the general practice of the member States as a whole. He therefore thought that the Commission could retain the present wording of article 82 without too many difficulties.

78. Mr. BARTOŠ said he was in favour of retaining the two words "reasonable" and "normal". Not only had they been used in previous conventions, but they were used in the present case to take account of the fact that staffing requirements for any given conference varied from one State to another, depending on how important the conference was both in general ("normal") and to each State ("reasonable"). The Commission should not allow itself to be guided by purely aesthetic considerations and should not hesitate to use particular terms if they covered general needs and the special needs of the States concerned.

79. Mr. NAGENDRA SINGH said it was true that delegations to conferences were of a different nature from permanent missions and there was considerable force in the argument that while the word "reasonable" might be applicable to them the word "normal" was not, since conferences were essentially *ad hoc* by nature and there was no normality about them. However, conferences were now being convened very frequently, so that

a norm might develop for them too. On the whole, therefore, he was inclined to think that the present text of article 82 should be accepted.

80. Mr. REUTER said that article 82 was a compromise which could not completely satisfy any member of the Commission. But as the articles constituting Part IV of the draft would apply only to organs which resembled conferences, he was prepared to accept it.

81. The CHAIRMAN said that if there were no objection he would take it that the Commission provisionally approved article 82 as proposed by the Drafting Committee, on the understanding that the opinions which might throw light on its meaning would be mentioned in the commentary.

It was so agreed.¹⁶

ARTICLE 83

82. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that with a view to improving the drafting of article 83 without changing the substance, the Committee proposed that it should read:

Article 83

Principle of single representation

The delegation of a State to an organ or to a conference may represent only that State.

83. The Drafting Committee thought it would be useful to stress in the commentary that the principle stated in article 83 was subject to the general reservations in articles 3, 4, 79 and 80 and hence did not affect the multiple representation practices mentioned by several governments in their written observations.

84. The Committee had noted that Parts II and III of the draft contained no provisions corresponding to article 83. It considered that there would be less objection to multiple representation in the case of a permanent mission or a permanent observer mission than in the case of a delegation to an organ or to a conference. In the latter case, however, it was possible to derogate from the general principle by virtue of the rules of procedure of the organ or conference.

85. The Drafting Committee's proposals thus related more to the commentary than to the text of the article.

86. Mr. REUTER said he could accept the text of article 83, but for different reasons in the two different cases of delegations to organs and delegations to conferences. In the first case, there was no other possible solution and the article expressed a very important rule of law, which was indisputable as a general principle. In the second case, he also accepted that rule because the question of a delegation representing several States raised very delicate political problems and what had weighed with the Drafting Committee had been the description of the practice followed by the United

¹⁶ For resumption of the discussion see 1133rd meeting, para. 105.

Nations in the case of conferences convened under its auspices, namely, that it did not accept one delegation representing several States, but that, should the need arise, a member of a delegation could cease to belong to that delegation in order to represent another State. There was undoubtedly a problem, and the door should be left open for a more flexible solution where conferences were concerned.

87. Mr. CASTRÉN said that several governments had criticized article 83 (A/CN.4/240 and Add.1 to 7) on the grounds that it was too rigorous, particularly for small States. Several members of the Commission, including himself, shared their concern and had proposed amendments to make the text more flexible.¹⁷

88. Cases of multiple representation were not uncommon in practice. The Special Rapporteur himself had proposed that the wording be made more flexible by adding the words "As a rule" at the beginning of the article (A/CN.4/241/Add.5), and it had even been suggested that the article should be deleted. The possibility of being able to call on certain members of a delegation to represent another State was only a partial solution of the problem, and article 85, on the nationality of the members of the delegation, imposed further restrictions.

89. For those reasons, he would either vote against article 83 or abstain.

90. Mr. ROSENNE said that, in the light of the comments of governments and of discussion in the Sixth Committee, he was still not convinced that there was any justification for making article 83 more stringent than it had been in 1970. In particular, the addition of the words "of a State" seemed to him quite unnecessary.

91. He agreed with Mr. Reuter that there was a difference between a delegation to an organ and a delegation to a conference, and that what was involved in article 83 was not so much a delegation as an individual representative.

92. He could not accept article 83 in its present form; in his opinion, it should be deleted and an appropriate paragraph included in the commentary.

93. Mr. USTOR said he thought the Commission could accept article 83, provided that it was stated explicitly in the commentary that the Commission was fully aware of the reasons why the article departed from the corresponding articles of the Vienna Conventions on diplomatic and consular relations.

94. Alternatively, the article might be amended to read: "The delegation of a State to an organ or to a conference shall in principle represent only that State."

95. Sir Humphrey WALDOCK said he feared that article 83 in its present form was too strict and would not be accepted by States. He would prefer some such wording as "The delegation of a State to an organ or to a conference may represent more than one State if the rules of the organ or the conference so admit".

96. Mr. NAGENDRA SINGH said he agreed with

Sir Humphrey Waldoock that article 83 in its present form would not be acceptable to States. It would be better to leave the matter to be decided in accordance with the rules of the organ or conference.

97. Mr. USHAKOV said his impression from the discussion was that members were not divided on the substance of article 83 so much as on how to express the idea it contained.

98. The principle that the delegation of a State could represent only that State was incontestable, but there were possible exceptions, provided for in article 80 which the Commission had not yet examined since it was a general provision under which the provisions of article 83 were subject to the rules of procedure of a conference. Moreover, article 3 made the application of the draft articles as a whole subject to the relevant rules of the organization. He saw no objection to referring back to the provisions of articles 3 and 80 in article 83, though it seemed to be a needless repetition. In his view, the Commission could accept the article as it stood.

99. Mr. EUSTATHIADES said he thought the discussion showed that the provision was too rigid. Various amendments had been proposed. Personally, he was in favour of using a positive rather than a negative formulation and saying "The delegation of a State to an organ or to a conference shall represent only one State".

100. In addition, it should be explained in the commentary that the word "delegation" meant a delegation as a whole, but that some of its members could represent another State; that would make for more flexibility and take account of the exceptional cases.

101. The CHAIRMAN observed that the differences of opinion did not relate to the substance of the article, but several drafting changes had been proposed. If there were no objection he would take it that the Commission wished to refer article 83 back to the Drafting Committee for reconsideration in light of the proposals made.

*It was so agreed.*¹⁸

The meeting rose at 1.15 p.m.

¹⁸ For resumption of the discussion see next meeting, para. 19.

1124th MEETING

Friday, 25 June 1971, at 10.15 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldoock, Mr. Yasseen.

¹⁷ See 1105th meeting, para. 54 *et seq.* and 1106th meeting.