

Document:-
A/CN.4/L.168/Add.5

**Text of articles adopted by the Drafting Committee: articles 81-86 - reproduced in
A/CN.4/SR.1123 and SR.1124**

Topic:
Representation of States in their relations with international organizations

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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.⁹

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.¹⁰

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.¹¹

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.

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.5 and 6; A/CN.4/L.170/Add.3)

[Item 1 of the agenda]

(continued)

1. Mr. ALBÓNICO said that as the present meeting was the last meeting of the Commission that he would be able to attend, he wished to take the opportunity of placing on record his thanks to the members of the Commission for the kindness they had shown him and of wishing them every success in their future work.

2. The CHAIRMAN said he was sure he had the support of the whole Commission in thanking Mr. Albónico for his valuable co-operation.

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (continued)

3. He then invited the Commission to consider article 81 as adopted by the Drafting Committee on second reading (A/CN.4/L.170/Add.3).

ARTICLE 81

4. Mr. AGO (Chairman of the Drafting Committee) said that the main question raised by article 81 was whether the appointment of a head of delegation should be optional or compulsory. At the first reading, the Drafting Committee had replaced the words "the sending State may appoint a head" by the words "the sending State shall appoint a head", but some members of the Commission had objected to that change.¹ Having thought the matter over, the Drafting Committee had decided to maintain that amendment. It considered that the host State and the organization ought to know at all times who was the person responsible for the delegation. If no head of delegation was appointed, certain provisions of the draft could not be applied, for example, the provision in article 94 relating to the consent of the head of delegation to entry of the premises in case of some disaster that seriously endangered public safety.

5. The text proposed by the Drafting Committee for article 81 accordingly 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.

6. Mr. ROSENNE said that his position on article 81 remained unchanged. The responsible person in an emergency was clearly the permanent representative, not the

head of the delegation. Since the premises of a delegation would normally form part of the premises of the permanent mission, in the event of fire, for example, the authorities would undoubtedly have to contact the head of the permanent mission, not the head of the delegation.

7. Mr. USHAKOV said it was essential, not only for practical reasons, but also to preserve the logic of the draft articles, to provide that there must be a head of delegation, since several provisions in the draft, in particular article 86, on the acting head of the delegation, and article 94, on the inviolability of the premises, would otherwise lose some of their meaning.

8. As the question was of secondary importance and as a State which did not wish to appoint a head of delegation would not in any event be obliged to do so, there was no danger that governments would not accept that provision, so there was no reason why the Commission should not approve article 81.

9. Mr. AGO, referring to Mr. Rosenne's remarks, said that the premises of a delegation were not necessarily the same as those of the permanent mission; that applied, for example, to some delegations to the Committee on Disarmament, which enjoyed complete autonomy.

10. Again, the head of the permanent mission was not necessarily head of the delegation and it was the latter who was solely responsible for everything that concerned the delegation.

11. Mr. BARTOŠ said he shared Mr. Ushakov's opinion.

12. He also agreed with Mr. Ago. Although it was true that in many cases the permanent mission and a delegation to an organ or to a conference were one and the same, that was not always the case and the Drafting Committee had therefore been right to try to keep the two questions separate.

13. Mr. ROSENNE said that the main point at issue was that the text proposed by the Drafting Committee made it mandatory for the sending State to appoint a head of delegation, in contrast to the former draft, which had been in permissive form. In his view, the former draft would meet all the points of view expressed.

14. In normal cases, a head of delegation would be appointed, but there might be particular reasons that would make it difficult to do so. It was a question which should be left to States to decide for themselves. Where a delegation had separate premises, the sending State would obviously appoint someone to be in charge. Furthermore, it could not be argued that the appointment of a head of delegation was essential for purposes of communication, since communication with a delegation as such was a normal form of diplomatic communication. He believed, therefore, that it would be preferable to retain the previous wording of article 81.

15. Mr. NAGENDRA SINGH said that there were three basic reasons why the Drafting Committee had maintained its proposal. First, State practice required that, if a delegation consisted of more than one person, a head of delegation should be appointed. Secondly, there

¹ See previous meeting, para. 28 *et seq.*

was the problem of communication. The need to enter the premises of a delegation in the event of fire was a very rare occurrence, but communication between a member State and the organization or the conference secretariat was an everyday occurrence. Consequently, if a delegation consisted of several members, it was essential that a head should be appointed for communication purposes. Thirdly, as Mr. Ushakov had pointed out, there were references to the head of the delegation in other articles, and the draft would be incomplete if provision was not made for the appointment of a head of the delegation in the article dealing with its composition.

16. Where a delegation consisted of only one member, the question clearly did not arise, but where a head of delegation was needed, the mandatory form proposed by the Drafting Committee was preferable. He therefore supported the text proposed by the Drafting Committee.

17. Sir Humphrey WALDOCK said he too thought that, on balance, it would be better to retain the mandatory form.

18. The CHAIRMAN said that if there were no objection he would take it that the Commission provisionally approved the text of article 81 as adopted on second reading by the Drafting Committee.

It was so agreed.²

ARTICLE 83 (Principle of single representation)

19. The CHAIRMAN invited the Chairman of the Drafting Committee to explain the Drafting Committee's recommendation (A./CN.4/L.170/Add.3) concerning article 83 (A./CN.4/L.168/Add.5).

20. Mr. AGO (Chairman of the Drafting Committee) said that article 83, which stated the principle of single representation, had been criticized by some members of the Commission³ and by several governments, which had cited many instances of multiple representation.

21. After due consideration, the Drafting Committee had reached the conclusion that the article mainly concerned the procedures by which organizations and conferences took their decisions in particular voting which came under the internal law of organizations and conferences, rather than relations between States and international organizations. The Committee therefore recommended that article 83 be deleted and that the decision be clearly explained in the commentary.

22. Mr. YASSEEN supported that recommendation. Since the principle of single representation was not part of positive international law, the Commission should not prejudge the settlement of that question by taking a definite position.

23. Mr. EUSTATHIADES said that he too supported the Drafting Committee's recommendation. It might

perhaps be better to deal with the question in the commentary to article 81 by saying that one delegation could not represent more than one State, but that that did not prevent one or more of its members from being attached to another delegation.

24. It should also be made clear that the Commission had not wished to give formal approval to the principle of multiple representation. However, the solution proposed was flexible enough to allow extreme cases to be settled by the rules of procedure of the organ or the conference.

25. Sir Humphrey WALDOCK said he supported the proposal to delete article 83, but for reasons slightly different from those advanced by the Chairman of the Drafting Committee. Although the question of single representation had a certain interest in the context of the diplomatic law of relations between States and international organizations, it was of much greater interest in the context of the general law of international organizations, more especially in connexion with voting. Consequently, if the principle was to be codified, it would be preferable to do so in that more general context.

26. Mr. CASTRÉN endorsed Mr. Yasseen's opinion.

27. Mr. USHAKOV said that, in his view, it was a well-established principle of contemporary international law that the delegation of a State could represent only that State. It was on the basis of that principle that the Commission had drawn up its draft articles, which presupposed that each permanent mission, each permanent observer mission, and each delegation to an organ or to a conference, represented one State.

28. Derogation from that principle was permitted if the rules of the organization or the rules of procedure of the conference did not provide otherwise, so there was no reason why the rule should not be stated, so long as it was made subject to that reservation. The principle remained, however, and the situation would be unchanged even if article 83 were deleted. Consequently, he would not press for its retention.

29. Mr. SETTE CÂMARA said he supported the recommendation that article 83 be deleted. The Drafting Committee and the Commission itself had considered many different formulations stating the principle of single representation, but including a reservation which in many cases was tantamount to a denial of the principle. It would be better, therefore, to leave the question to the practice of international organizations.

30. It might prove useful at some time in the future to recognize the principle of multiple representation, since international organizations would be increasingly faced with the problem of proliferation of membership in the form of micro-States.

31. The CHAIRMAN said that if there were no objection he would take it that the Commission approved the Drafting Committee's recommendation to delete article 83.

It was so agreed.

² For resumption of the discussion see 1133rd meeting, para. 102.

³ See previous meeting, para. 82 *et seq.*

ARTICLE 84

32. Mr. AGO (Chairman of the Drafting Committee) said that in article 84, the Committee had made only a few drafting changes in the Spanish version. The text proposed read:

*Article 84**Appointment of the members of the delegation*

Subject to the provisions of articles 82 and 85, the sending State may freely appoint the members of its delegation to an organ or to a conference.

33. Mr. EUSTATHIADES said he wished to draw attention to the weakness of the content of article 84, which amounted to nothing more than a reservation concerning articles 82 and 85. The principle of the freedom of choice accorded to the sending State in the appointment of the members of its delegation was so self-evident a fact that it added nothing essential to the text. Thus the mention of that principle was justified only by the desire for uniformity with the other parts of the draft.

34. Mr. USTOR said that Mr. Eustathiades's point was a valid one, but article 84 should be looked at in the context of existing instruments or conventions, all of which contained a similar article. It would not be advisable to drop it altogether.

35. Mr. YASSEEN said he agreed with Mr. Eustathiades. The provision in article 84 added nothing to the draft articles. It was borrowed from the Vienna Convention on Diplomatic Relations,⁴ where it was clearly useful, if only to avoid any misunderstanding over the meaning and scope of the approval of the receiving State, which was in no sense a participation in the appointment of the head of the mission, that being left to the sending State. In the case of delegations, where no *agrément* was required, there was no need for a detailed explanation.

36. Sir Humphrey WALDOCK said that the same criticisms could be made of the text of the Convention on Diplomatic Relations. The main point of the article, which was now a familiar feature of drafts of that kind, was the reference to the restricting articles 82 and 85.

37. Mr. SETTE CÂMARA said he still thought it was useful to reaffirm the principle of freedom of appointment, since it was important to emphasize that there could be no opposition whatsoever to the appointment of members of a delegation.

38. Mr. CASTRÉN said he was in favour of retaining article 84, which laid down a very important principle. To avoid any misunderstanding, that principle should be clearly stated. The presence of the article in the draft could do no harm, whereas its deletion might cause difficulties.

39. Mr. ROSENNE said he shared the view that it was essential to include the principle of free appointment of

the members of the delegation. Although there were other ways in which that principle could have been included in the draft, it was preferable to retain the article as it stood.

40. The CHAIRMAN said that if there were no objection he would take it that the Commission provisionally approved article 84 as proposed by the Drafting Committee.

It was so agreed.⁵

ARTICLE 85

41. Mr. AGO (Chairman of the Drafting Committee) said that in article 85 the Committee had made only a few drafting changes in the Spanish version. The text proposed read:

*Article 85**Nationality of the members of the delegation*

The representatives and members of the diplomatic staff of a delegation to an organ or to a conference should in principle be of the nationality of the sending State. They may not be appointed from among persons having the nationality of the host State, except with the consent of that State which may be withdrawn at any time.

Article 85 was provisionally approved⁶

ARTICLE 86

42. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made two changes in article 86. In paragraph 1, it had replaced the words "an acting head may be designated" by the words "an acting head shall be designated". Articles 18 and 62 made the designation of a *chargé d'affaires ad interim* obligatory in the absence of a permanent representative or a permanent observer. It therefore seemed logical to adopt a similar provision with respect to the head of a delegation.

43. The Drafting Committee had thought that, in paragraph 2, the words "another person may be designated as in paragraph 1 of this article" were not a happy choice and had replaced them by the words "another person may be designated for that purpose".

44. The Committee had also made some minor drafting changes in the Spanish version.

45. The text proposed for article 86 read:

*Article 86**Acting head of the delegation*

1. If the head of a delegation to an organ or to a conference is absent or unable to perform his functions, an acting head shall be designated from among the other representatives in the delegation by the head of the delegation or, in case he is unable to do so, by a competent authority of the sending State. The

⁵ For resumption of the discussion see 1133rd meeting, para. 76.

⁶ For resumption of the discussion see 1135th meeting, para. 37.

⁴ United Nations, *Treaty Series*, vol. 500, p. 100, article 7.

name of the acting head shall be notified to the Organization or to the conference.

2. If a delegation does not have another representative available to serve as acting head, another person may be designated for that purpose. In such case credentials must be issued and transmitted in accordance with article 87.

46. Mr. ROSENNE said he was opposed to the change from the permissive to the mandatory in paragraph 1, for much the same reasons as in the case of article 81. Once that change had been made, however, it was hard to see the logic of leaving paragraph 2 in the permissive form, since that would allow a delegation to remain without a head.

47. The CHAIRMAN said that Mr. Rosenne's point would be noted. If there were no other objection he would take it that the Commission provisionally approved article 86 as proposed by the Drafting Committee.

It was so agreed.⁷

ARTICLE 87^a

48. Mr. AGO (Chairman of the Drafting Committee) said that the main change made by the Drafting Committee in article 87 was the replacement of the words "if that is allowed by the practice followed in the Organization", in paragraph 1, by the words "if the rules of the Organization so admit". The Committee had also changed the position of that clause so as to make it clear that it referred only to the case in which the credentials were issued by another competent authority of the sending State.

49. The Committee had considered the word "practice" too narrow and had preferred to use the word "rules", which already appeared in articles 6 and 52 as provisionally approved at the present session. In its commentary to article 3, which stated a general reservation regarding the relevant rules of the organization, the Commission had specified that "The expression 'relevant rules of the Organization'... 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".⁸

50. The Drafting Committee had inserted the words "the competent organ of" between the words "shall be transmitted to" and "the Organization" in paragraph 1, so as to bring that paragraph into line with the corresponding provisions in articles 12 and 57. However, the Working Group might propose the adoption of the words "and shall be transmitted to the Organization" for all articles, so the Commission would be adopting a provisional text. The same applied to paragraph 2.

51. The text proposed by the Drafting Committee read:

⁷ For resumption of the discussion see 1133rd meeting, paras. 112-114.

⁸ For previous text see 1106th meeting, para. 51, 1133rd meeting, para. 112.

⁹ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 198, para. (5).

Article 87

Credentials of representatives

1. The credentials of a representative to an organ shall be issued either by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or, if the rules of the Organization so admit, by another competent authority of the sending State, and shall be transmitted to the competent organ of the Organization.

2. The credentials of a representative in the delegation to a conference shall be issued either by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or, if the rules of procedure of the conference so admit, by another competent authority of the sending State, and shall be transmitted to the competent organ of the conference.

52. Mr. CASTAÑEDA referring to paragraph 1, said it was usual for the credentials of a representative to one of the main organs of the United Nations, such as the Security Council or the General Assembly, to be issued by the Ministry of Foreign Affairs, but in the case of representatives to subordinate bodies, some of which were extremely important politically, credentials were frequently issued by the head of the permanent mission. Although, technically and legally speaking, the phrase "by another competent authority of the sending State" could be interpreted as covering that possibility, he thought it would be preferable to include a specific reference to it in the article. Those considerations did not apply to paragraph 2.

53. Mr. AGO said he thought the words "another competent authority" covered all possible cases, including those in which the credentials were not transmitted, but actually issued, by the permanent representative. The word "credentials" was also sufficiently broad.

54. Mr. ROSENNE said he was inclined to share Mr. Castañeda's misgivings. Some rules of procedure required that credentials should be issued in the form specified in the article, but in other cases there was a great deal more flexibility.

55. The reference to "another competent authority" was somewhat ambiguous, since it was not clear whether it meant competent in the eyes of the sending State, or competent in the eyes of the organization. In the case of organs, it would perhaps be better not to limit the article to credentials, since in most cases all that was required, and the only document produced, was a letter of appointment. Perhaps a sub-paragraph might be included dealing with that practice.

56. Different considerations applied to conferences, and paragraph 2 was correctly formulated.

57. With regard to the comment by the Chairman of the Drafting Committee that the phrase "the competent organ of" might be deleted, he was not sure that that would be correct in the case of paragraph 2. It might, therefore, be preferable to have two separate articles, the first dealing with appointment to organs, distinguishing between principal and other organs, and the second with credentials to participate in a conference.

58. Mr. YASSEEN said that article 87 was well drafted. It had the merit of covering all the possible cases,

including the practice of international organizations. The Commission would be making a mistake if it clung to the ceremonial formulas of nineteenth century diplomacy and dwelt on subtle distinctions between different kinds of credentials. The credentials of a representative were an instrument showing that he was authorized to act on behalf of a State, and even a note from a permanent mission, which represented the sending State, should be sufficient for that purpose.

59. Mr. EUSTATHIADES said he thought that a permanent representative was covered by the words "another competent authority", but the question, which had been raised for the first time in the Commission by Mr. Castañeda, should be clarified, at least in the commentary. The confusion might be due to the use of the words "shall be issued by": credentials did not necessarily show the original source of a representative's authority, but might be a document attesting it, which could be issued by the permanent delegation under powers conferred, for example, by the Ministry of Foreign Affairs, or by virtue of an established practice. Such details were too subtle to be easily reflected in the text of the article. Nevertheless, it would be advisable to include Mr. Castañeda's observations in the Commentary.

60. The CHAIRMAN, speaking as a member of the Commission, said that he understood Mr. Castañeda's concern. The practice he had mentioned did exist and the Commission would be well advised not to minimize unduly the role and functions of permanent representatives, who had very wide powers.

61. Mr. CASTAÑEDA said his sole concern was that what most frequently occurred in practice was precisely the case that was not mentioned in the draft article. He agreed with the Chairman of the Drafting Committee that technically and legally it was covered by the phrase "another competent authority". In using that expression, however, the Commission had mainly had in mind the possibility that other ministries might issue the credentials of representatives to conferences dealing with their particular fields. It was not true to say that the permanent representative merely transmitted credentials; in many cases it was he who decided which member of his mission should act as representative to an organ and he who signed the credentials. Consequently, he still maintained that it was worth mentioning that practice in the article.

62. Mr. KEARNEY said it was quite clear from the discussion in both the Commission and the Drafting Committee that the phrase "by another competent authority of the sending State" was intended to include permanent representatives. It would only confuse the drafting to add a specific reference to permanent representatives and it was unlikely that the present text could be improved upon.

63. Mr. YASSEEN said that the words "another competent authority" certainly referred to permanent missions. There could be no doubt that such missions were competent to attest that the representative designated had in fact been appointed by the sending State.

64. Mr. NAGENDRA SINGH said he entirely agreed with Mr. Castañeda that the permanent representative did actually issue credentials, but in his view the case was adequately covered by the words "another competent authority". The most that could be done was to mention the issue of credentials by permanent representatives in the commentary. Article 87 should be approved as it stood.

65. Sir Humphrey WALDOCK said he agreed that the present text fully covered the situation.

66. The CHAIRMAN said that if there were no objection he would take it that the Commission provisionally approved article 87 as proposed by the Drafting Committee, on the understanding that Mr. Castañeda's observations would be covered in the commentary.

*It was so agreed.*¹⁰

Co-operation with other bodies

[Item 9 of the agenda]

(resumed from the 1108th meeting)

STATEMENT BY THE OBSERVER FOR THE INTER-AMERICAN JURIDICAL COMMITTEE

67. The CHAIRMAN invited Mr. Aja Espil, observer for the Inter-American Juridical Committee, to address the Commission.

68. Mr. AJA ESPIL (Observer for the Inter-American Juridical Committee) said that the fruitful co-operation between the Committee and the International Law Commission responded to the aspiration to universality in international law, to which the regional intergovernmental organizations contributed by providing multiple approaches to legal problems.

69. The Inter-American Juridical Committee, with its new structure as one of the main organs of the Organization of American States (OAS) and its expanded membership of eleven, had met for the first time in extraordinary session from 31 August to 6 October 1970 to examine, at the express request of the OAS General Assembly, the question of the formulation of one or more draft inter-American instruments on the subject of kidnapping and other attacks against persons which could affect international relations.

70. The Committee had taken as its starting point a resolution of the OAS General Assembly condemning all acts of terrorism, in particular kidnapping and related acts of extortion, and characterizing them as serious common crimes. The Committee had thus not been called upon to express an opinion on those principles, but merely to formulate them as rules. Nevertheless, bearing in mind the different views expressed in the Committee on the formulation of the draft, its members had placed it expressly on record that that absence of

¹⁰ For resumption of the discussion see 1133rd meeting, para. 79.

unanimity did not affect the general concensus on the repudiation and condemnation of terrorism.

71. The Committee had had to consider a number of preliminary questions, such as whether the acts in question constituted crimes against municipal law or against international law, and whether, in the case of the kidnapping of diplomats, the crime was primarily a matter for the international community or for the national community. The Committee had thus had to consider the problem of internationally wrongful acts, on which it had taken into account the views expressed by certain distinguished members of the International Law Commission.

72. The Committee had noted that, as far as municipal law was concerned, practically all States had adequate provisions in their criminal law to deal with the crimes considered, so that the essence of the problem lay in its international aspects. When kidnapping diplomats, for example, the offenders succeeded in creating an international conflict of interests by inducing the sending State to bring pressure to bear on the receiving State. The sending State was thus faced with the dilemma of choosing between its anxiety to save the life of its ambassador and its concern for the inviolability of the legal order of the receiving State. A process was thus set in motion whereby State authorities were led to contribute to the undermining of the very rule of law.

73. The draft convention prepared by the Committee dealt with two situations: first, acts of terrorism, in particular kidnapping and related acts and, secondly, the perpetration of those offences against the representatives of foreign States. The Committee considered that both categories of offences, although they occurred at the national level, mainly affected the international community and therefore came within the scope of international law. The draft Convention therefore described them as common crimes having international repercussions, but did not go so far as to regard them as international crimes proper. Its approach thus largely coincided with USSR doctrine, which drew a distinction between violations of international law and international crimes such as genocide, which destroyed the very foundations of international law.

74. The central idea of the Committee's draft was the prevention and punishment of acts of terrorism in so far as those acts constituted attacks against the international community and violations of human rights. It should be noted that subsequently, in January 1971 at Washington, the member States of the OAS had adopted a Convention on the subject, though it dealt only with attacks against the life and physical integrity of persons to whom the State had a duty to extend special protection in accordance with international law.

75. The Committee had held its regular session in March and April 1971 and had examined its own draft statute, following the decision of the OAS General Assembly not to adopt an earlier draft prepared by the Committee's predecessor. An interesting problem had arisen over article 2 of the draft statute, which stated that the members of the Committee served in a personal

capacity and did not represent the States which had nominated them for election by the OAS General Assembly. The same provision specified that the members of the Committee enjoyed the privileges and immunities laid down in article 140 of the Charter of the OAS. Since that article referred to the representatives of member States in the organs of the organization, a minority had put forward the view that the members of the Committee did not enjoy those privileges and immunities. The majority, however, had upheld a constructive interpretation of the rule in question and maintained that the members of the Committee, which represented the member States of the OAS as a whole, should enjoy such privileges and immunities.

76. The Committee had also dealt with the review and evaluation of the inter-American conventions on intellectual property. The existing inter-American conventions on patents and industrial designs were based on the same legal principles as the world-wide Paris Convention. Unlike the Paris Union, however, the inter-American system did not have any machinery for revision and therefore lacked the necessary flexibility to keep it abreast of current changes.

77. When the first inter-American conventions on patents had been signed, it had been assumed that all States had the same interest in the reciprocal protection of inventions. At the present time, however, the Latin American countries were in the process of development and lagged behind the more industrialized countries in technology; they were essentially importers of products and techniques invented abroad. Foreign technology had contributed to the welfare and progress of the Latin American States, but had nevertheless created certain situations which conflicted with the public interest. A patent often made it possible to obtain a monopoly of the market for a product and deprived the importing country of any share in the benefits of technological progress. It was therefore necessary to devise some new system for the protection for industrial property that would promote the active transfer of technology, which was vital to the accelerated development of Latin America.

78. The Committee had also examined the question of bills of exchange and cheques, a subject on which it was keeping in close touch with the work of the United Nations Commission on International Trade Law.

79. Lastly, the Committee had begun the study of the law of the sea, concerning which it believed that there were still a number of unsolved problems not covered by the codification of international law on the subject. Moreover, technical progress during the past decade had given a new dimension to the exploitation of the resources of the sea.

80. The first problem faced by the Committee in that connexion was that of determining whether there existed a Latin American position on the law of the sea. A number of principles and rules had been formulated between 1950 and 1956, but the new economic and social approach to the problem in the 1970 Declarations of

Montevideo and Lima had made it necessary to re-examine the whole question. Work had been started on the formulation of a new concept of special sea areas beyond the territorial sea, over which jurisdiction would be exercised for certain purposes by the coastal State. The existence of such areas was now a reality accepted by international law and confirmed by the general practice of States.

81. The next session of the Committee would open at Rio de Janeiro on 9 August 1971 and on the Committee's behalf he had pleasure in extending an invitation to the Chairman of the International Law Commission to attend the session as an observer or to send an observer on his behalf.

82. The CHAIRMAN, thanking the observer for the Inter-American Juridical Committee for his statement, said that the Committee's work was of great value both academically and practically. Like the Commission, the Committee's aim was the establishment of peace and order throughout the world. He hoped that the ties between the two bodies would grow even stronger as the years went by. He asked Mr. Aja Espil to thank the Inter-American Juridical Committee for having appointed an observer to attend the Commission's twenty-third session.

83. In reply to the invitation to send an observer to the Committee's next session, he said that he would very much like to attend it himself, but if that proved impossible, he would appoint a member of the Commission to represent him.

84. Mr. CASTAÑEDA said that, as a member from an American country, he was particularly glad to welcome the observer for the Inter-American Juridical Committee. Co-operation between the Commission had been close for many years and the studies prepared by the Committee had been very useful to the Commission in its work, just as the Committee had not failed to profit from the Commission's studies. A number of subjects, such as the law of the sea and diplomatic privileges and immunities, had been on the programme of work of both bodies.

85. The present occasion was of special significance as it was the first appearance before the Commission of an observer for the Inter-American Juridical Committee since its reorganization as one of the main organs of the OAS with new and broader functions.

86. He expressed the hope that the ties between the two bodies would continue to be strengthened for their mutual benefit and in the interest of the codification of international law.

87. Mr. SETTE CÂMARA said that he too welcomed the observer for the Inter-American Juridical Committee, whose attendance was in keeping with a now long-standing tradition of the Commission.

88. The Committee had dealt with the grave matter of the kidnapping of foreign diplomats and related problems; as a technical body, it could not ignore the appalling reality of that phenomenon. The Committee

had condemned such acts of terrorism as common crimes which had grave repercussions on international relations.

89. The draft convention prepared by the Committee on that subject was a very full instrument, which established all the principles necessary to combat the evil. Despite some difference of opinion in the Committee on questions of detail, its members had been unanimous in condemning crimes of terrorism and in recommending measures to eradicate them.

90. With regard to the new statute of the Committee, he was glad to note that its members, who acted in a personal capacity, would enjoy privileges and immunities. Brazil, his own country, was host to the Committee and was happy to extend privileges and immunities to its members. That precedent was of interest to the Commission.

91. In connexion with the revision of the Inter-American conventions on intellectual property, he noted with satisfaction the Committee's efforts to take into account the special interests of the developing countries.

92. It was also a matter for satisfaction that the Committee had undertaken work on the new aspects of the law of the sea.

93. He associated himself with the hope which had been expressed of continued co-operation between the Committee and the International Law Commission.

94. Mr. AGO warmly welcomed Mr. Aja Espil, who had so ably represented the Inter-American Juridical Committee. That body was studying a number of topics of direct interest to the Commission, particularly the protection of diplomats against kidnapping and the responsibility of States. He hoped that there would be particularly close relations between the Committee and the Commission on the latter subject, to which the Commission intended to devote a large part of its future work.

95. Mr. ROSENNE thanked the observer for his wide-ranging and thought-provoking oral report. When the Commission considered its long-term programme of work, that report should be taken into account.

96. He had been impressed by the observer's comments on the subject of acts of political terrorism directed against foreign diplomats; those comments would be of the greatest value to all who had to deal with that alarming phenomenon, which he hoped the Commission would soon consider.

97. He had noted with interest the observer's penetrating analysis of the component elements of those crimes and of the interests that had to be balanced at the inter-State level.

98. It had always been his feeling that co-operation between the Commission and regional bodies should not be confined to exchanges of information and documentation, and he therefore hoped that the Chairman of the Commission would be able to accept the invitation to attend the Committee's next session.

99. Mr. KEARNEY said that, as a member for one of the countries of the inter-American system, he wished

to commend the observer for his lucid report. He had been interested by the observer's remarks on the subject of political terrorism and the protection of diplomats, and by his profound analysis of the elements of the crime and of the various interests to be considered. Those remarks illustrated the need to give the subject serious and urgent consideration.

100. Mr. USHAKOV said that the Inter-American Juridical Committee was not only one of the oldest intergovernmental legal organizations, but also one of the most important. In its work, the Committee kept fully abreast of legal thought and of matters of world concern, as was shown by its study on political terrorism and, more particularly, the protection of diplomats. The close and fruitful links between the Commission and the Committee would undoubtedly make it easier to find a solution to that serious problem.

101. Mr. Aja Espil deserved the thanks of the Commission for his full and thorough report which was a real tribute to the work of the Inter-American Juridical Committee. He had been pleased to note that the Committee had adopted the Soviet Union concept of crimes with international implications.

102. The CHAIRMAN said that a communication had been received from Mr. Golsong, Director of Legal Affairs of the Council of Europe, to the effect that he would attend the Commission's meetings on 15 and 16 July as observer for the European Committee on Legal Co-operation.

The meeting rose at 1.5 p.m.

1125th MEETING

Monday, 28 June 1971, at 3.10 p.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Tribute to the memory of Mr. Matine-Daftary

1. On the proposal of the CHAIRMAN, *the Commission observed one minute's silence in tribute to the memory of Mr. Matine-Daftary, the eminent jurist and President of the United Nations Association of Iran, who had been a member of the Commission from 1957 to 1961.*

2. Mr. YASSEEN said he had heard with deep sorrow of the death of Mr. Matine-Daftary, whose merits he had highly appreciated and whose outstanding participation in the work of the Commission he well remembered. He proposed that the Chairman send a message of condolence in the name of the Commission to the family of the deceased.

It was so agreed.

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.6)

[Item 1 of the agenda]

(resumed from the previous meeting)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

3. The CHAIRMAN invited the Commission to continue consideration of articles 87 to 101 as proposed by the Drafting Committee (A/CN.4/L.168/Add.6).

ARTICLE 88 (Full powers to represent the State in the conclusion of treaties)

4. Mr. AGO (Chairman of the Drafting Committee) said that the Commission had decided, on the proposal of Sir Humphrey Waldock, to refer article 88 to the Drafting Committee with a request that the Committee should consider whether such an article was appropriate for the draft or whether its subject-matter should be left to the law of treaties or to the topic of treaties concluded between States and international organizations or between two or more international organizations,¹ which was the topic being studied by the Sub-Committee presided over by Mr. Reuter.²

5. The Drafting Committee had considered that article 88 duplicated the relevant provisions of the Vienna Convention on the Law of Treaties.³ It therefore recommended that the article be deleted and that the reasons for its deletion be explained in the commentary.

6. Mr. YASSEEN said he supported the Drafting Committee's recommendation.

7. The CHAIRMAN said that if there were no objection he would take it that the Commission agreed to delete article 88.

It was so agreed.

¹ See 1106th meeting, para. 65.

² See *Yearbook of the International Law Commission, 1970*, vol. 1, p. 146, para. 82.

³ *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference*, p. 290, article 7 (United Nations publication, Sales No.: E.70.V.5).