

Document:-
A/CN.4/L.177

Working Group on relations between States and international organizations - Consolidated draft articles: Text submitted by the Working Group on second reading: paragraph 2 of article 1 - reproduced in A/CN.4/SR.1132

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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the United Nations Charter, the constituent instruments of other organizations and any other form of agreement between States or between States and international organizations.

118. Mr. REUTER said he strongly supported that proposal, which would also cover regulations, that was to say instruments which were not agreements, but which used the terms defined in paragraph 1.

119. Mr. YASSEEN said that if the paragraph read: "The provisions of paragraph 1 relate only to the terms used in the present articles", everything else would be excluded. That formula was even more general than a reference to "international instruments", which might give rise to difficulties of interpretation.

120. It might perhaps be advisable to mention internal law in order to avoid any misunderstanding that might result from the controversy over the relationship between internal law and international law.

121. Mr. ELIAS said that paragraph 2, as it now stood, could safely be omitted, since it said no more than the opening words of paragraph 1: "For the purposes of the present articles".

122. The paragraph could be retained, however, if a new idea was brought into it. As far as the wording was concerned, he favoured the suggestion that the concluding portion be replaced by a reference to "other international instruments", but then the term "instruments" should be defined, at least in the commentary, so as to avoid confusion. Care should also be taken to see that the paragraph, as reworded, did not merely repeat the provisions of article 4.

123. Mr. SETTE CÂMARA said he was inclined to support the view that the opening words of paragraph 1 were sufficient to achieve the intended purpose of paragraph 2. But if members wished to retain paragraph 2, the wording proposed by Mr. Ago would be an improvement, subject to the insertion of the words "in force" after the words "other international instruments", so as to limit the scope of the provision to international agreements already in force.

124. Mr. KEARNEY said that the inclusion of a reference to the internal law of any State would be particularly useful for a country like the United States of America where, under the provisions of the Constitution, a treaty, on being ratified, became part of the law of the land, and its provisions prevailed over pre-existing legislative provisions. For unless paragraph 2 were included in the draft; the provisions of the draft articles would thus prevail, in the United States, over those of the International Organizations Act.

125. The CHAIRMAN said it was clear that the majority of the Commission were in favour of retaining the idea which paragraph 2 sought to express, but thought that the paragraph should be worded more simply and in more general terms. It should also include a reference to internal law, since some members desired such a reference and none were expressly opposed to it.

126. He therefore suggested that paragraph 2 of article 1 be referred back to the Working Group for redrafting in the light of those considerations.

It was so agreed.⁷

The meeting rose at 1 p.m.

⁷ For resumption of the discussion see next meeting, para. 1.

1132nd MEETING

Thursday, 8 July 1971, at 10.15 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Elias Mr. Eustathiades, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, 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 to 3; 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.174 and Add.1 and 2; A/CN.4/L.177)

[Item 1 of the agenda]

(continued)

CONSOLIDATED DRAFT ARTICLES PROPOSED BY THE WORKING GROUP

(continued)

ARTICLE 1 (Use of Terms) (continued)

Paragraph 2

1. The CHAIRMAN invited the Commission to consider the new text proposed by the Working Group for paragraph 2,¹ which read:

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or the internal law of any State.

2. Mr. CASTRÉN said he accepted the general view that paragraph 2 should be retained, and could agree

¹ For previous text see 1130th meeting, para. 13.

to the new wording proposed by the Working Group, which was great improvement.

3. The CHAIRMAN said that if there were no objection he would take it that the Commission agreed to adopt the new paragraph 2 proposed by the Working Group.

Paragraph 2 was adopted.

4. The CHAIRMAN invited the Commission to vote on article 1 as a whole, on the understanding that a definition of the term "observer" might have to be added later.

Article 1 was adopted by 16 votes to none.

5. Mr. ROSENNE, explaining his vote, said that he had voted in favour of article 1 as a whole, but if separate votes had been taken on the various sub-paragraphs of paragraph 1, he would have abstained or would have voted against the sub-paragraphs on which he had expressed reservations at the two previous meetings or during the first reading.

Article 2³

6.

Article 2

Scope of the present articles

1. The present articles apply to relations of States with international organizations of universal character and to conferences convened by or under the auspices of such organizations.

2. The fact that the present articles do not refer to relations of States with other international organizations is without prejudice to the application to those relations of any of the rules set forth in the present articles to which they would be subject under international law independently of these articles. Likewise, it shall not preclude States from agreeing that the present articles apply to their relations with such other organizations.

3. The fact that the present articles do not refer to conferences convened by or under the auspices of other international organizations is without prejudice to the application to those conferences of any of the rules set forth in the present articles to which they would be subject under international law independently of these articles.

7. Mr. KEARNEY (Chairman of the Working Group) said that the main object of the changes made in article 2 was to bring in conferences.

8. In paragraph 1, the words "and to conferences convened by or under the auspices of such organizations" had been added; in paragraph 2, appropriate minor changes had been made; but the major change had been the addition of a new paragraph 3 which dealt specifically with the subject of conferences. Its provisions repeated, for conferences, the rule previously laid down with respect to other parts of the draft articles. He did not think any of those changes was a change of substance: they were merely part of the process of consolidation.

9. Mr. TAMMES said he noted that a reservation had been introduced into paragraphs 2 and 3 regarding organizations which were not of a universal character and conferences convened by such organizations. It would be logical to introduce a similar reservation in respect of conferences which were not convened by an international organization at all, of which many examples could be given. In the absence of such a reservation, it might be argued that such conferences were not subject to international law, or that the interested States were precluded from agreeing that the present draft articles applied to such conferences.

10. Mr. USTOR said he agreed that it would be logical to introduce such a reservation. His own view, however, was that, if nothing were said in the article, a conference not covered by the draft would still be governed by international law; and the States concerned could always agree to apply the present draft articles to such a conference. Nevertheless, it would be useful to introduce the suggested reservation for the sake of additional clarity, even though it might not be absolutely necessary.

11. Mr. EL-ERIAN (Special Rapporteur) said it was with some reluctance that the General Assembly had accepted the inclusion, in the scope of the draft articles, of conferences convened by or under the auspices of organizations of a universal character; its acceptance had been based on the consideration that such conferences were an extension of the organs of those organizations. There did not seem to be any need to make provision for the possible application of the draft articles to a conference convened by a State and not be an international organization, but for the reasons stated by Mr. Ustor he would be prepared to agree to the inclusion of the proposed reservation.

12. Mr. USHAKOV said that Mr. Tammes and Mr. Ustor were right. In the first part of paragraph 3 the word "other" should be added after the words "refer to" and the words "convened by or under the auspices of other international organizations", should be deleted.

13. Mr. SETTE CÂMARA said he would support the inclusion of the proposed reservation as an additional precaution.

14. Mr. ROSENNE said that the 1968 text of article 2 had referred to "representatives of States to international organizations", which corresponded to the title of the whole draft. That formula had now been replaced by a new one: "relations of States with international organizations", which was much too broad. Such relations embraced a great deal more than the subject-matter of the draft articles. He therefore proposed that the words "relations of States with international organizations", in paragraph 1, be replaced by the words "representatives of States to international organizations" and the consequential changes made in paragraph 2.

15. He also proposed that the concluding words of paragraph 2, "to their relations with such other organizations", be replaced by some such wording as: "to their representatives to other organizations or to other conferences". The question of conferences would then be

³ For previous text see *Yearbook of the International Law Commission, 1968*, vol. II, p. 197.

covered by paragraph 2, and paragraph 3 would be unnecessary.

16. Lastly, he proposed that, in the opening clause of paragraph 2, the word "refer" be replaced by the word "apply". The provisions of the paragraph dealt with the scope of the article and it was therefore more accurate to use the word "apply". The intention was to refer to the application of the draft articles and not to what the articles referred to, a matter which might be difficult to establish.

17. Mr. KEARNEY (Chairman of the Working Group) said that there appeared to be general support for broadening the scope of the provisions, as proposed by Mr. Ushakov. As far as the wording was concerned, he suggested, however, that it would be more precise to say "do not refer to conferences other than those convened by or under the auspices of organizations of universal character".

18. He did not favour Mr. Rosenne's proposal to replace the reference to the relations of States with international organizations by a reference to the representatives of States to international organizations, because that would be far too limited. The draft articles referred to many persons other than representatives, for example, to the members of the technical and administrative staff of a mission; they also referred to missions as a whole, which were treated in some respects as possessing a corporate status distinct from their members; and they also dealt, for certain purposes, with the host State and the sending State as States. The Working Group had therefore felt justified in using the broader language "relations of States with international organizations".

19. He could, however, accept Mr. Rosenne's proposal to replace the word "refer", in paragraph 2, by the word "apply".

20. Mr. USHAKOV said that, for his own amendment, he was prepared to accept Mr. Kearney's reformulation.

21. He too believed that it would not be correct to introduce the concept of "representatives" into paragraph 2. Unlike the 1968 draft, the present draft articles did not refer to "representatives", but to "permanent representatives", "delegations" and "delegates".

22. Mr. BARTOŠ said he felt certain that the rules drawn up by the Commission would have to be applied by international organizations of a universal character and by conferences convened by or under the auspices of such organizations. For if they were not applicable to what were known as regional conferences convened by organizations of a universal character, it was questionable whether they would be applicable in the case of organs of such organizations when the business of those organs concerned regional matters.

23. His own view was that the rules in the draft articles would be applicable to organizations of a universal character and to any conference whatsoever convened by such organizations, since what counted was the universal character of the organization, not the regional character of the conference, and the decisions of the

conference should always be in conformity with universal rules.

24. Where the rules in the draft articles were not applicable automatically, it would be for the States concerned to decide whether they wished to follow them, as was clearly stated in the last sentence of paragraph 2.

25. What was not clear was what was meant by the qualification expressed in paragraphs 2 and 3 by the words under international law. Did those words refer to general international law or to bilateral treaties concluded between the States in question? In his view, they referred to general international law. It should therefore be explained in the commentary that, in that context, the words "international law" were to be understood in their strict sense and that if States were required under the rules of international law to apply any provision of the draft articles, they must do so; that would amount to an indirect application of international law.

26. The point was important, because even though the articles did not relate to conferences convened by international organizations other than those of a universal character, that did not mean that States were free to disregard the rules of international law; it meant that they were free to apply the rules laid down in the draft articles if they wished. Those rules did not permit them to depart from any rules of international law not included in the draft articles which were rules of *jus cogens* or pertinent rules of international law.

27. Mr. ROSENNE, thanking Mr. Kearney for his explanation, which, however, did not fully satisfy him, said that since the expression "relations of States with international organizations" covered a much broader field than the draft articles, the use of that expression would have to be carefully explained in the commentary. A general reservation on that point should be included in the introductory commentary to the whole draft. It was essential not to create the impression that the draft articles purported to exhaust the whole subject of relations between States and international organizations.

28. Mr. USTOR said that, in the light of the explanations given by Mr. Kearney, it was clear that the title of the whole topic, which was at present "Relations between States and international organizations" would have to be reviewed.

29. As far as article 2 was concerned, he suggested that it be referred back to the Working Group for redrafting. The Working Group should consider including in paragraph 3 a provision on the lines of the last sentence of paragraph 2.

30. Mr. AGO said he agreed with Mr. Ustor that article 2 should be referred back to the Working Group.

31. Sir Humphrey WALDOCK concurred.

32. He fully accepted Mr. Tammes' proposal, which could be easily dealt with in the manner suggested by Mr. Kearney.

33. He also accepted Mr. Rosenne's proposal to replace the word "refer" in paragraph 2 by the word "apply".

which was the one used in article 3 of the Vienna Convention on the Law of Treaties,³ on which the present article 2 was largely based.

34. He agreed with Mr. Kearney that it was not desirable to speak of "representatives" and favoured the retention of the reference to "relations", which had the advantage of having already been used in the titles and texts of the Vienna Convention on Diplomatic Relations⁴ and the Vienna Convention on Consular Relations.⁵ An effort would have to be made to find a suitable adjective to qualify "relations" in the present instance.

35. With regard to the reference to international law, mentioned by Mr. Bartoš, it reproduced the language of article 3 of the Vienna Convention on the Law of Treaties and had been the subject of a thorough discussion in the context of the law of treaties.

36. Mr. EL-ERIAN (Special Rapporteur) replying to a point raised by Mr. Bartoš, said that the international organization concerned had to be of a universal character; the activity of the organ or conference, however, could be regional without affecting the legal qualification, which depended on the character of the organization.

37. With regard to the suggested inclusion of an explanation in the commentary, he would draw attention to the explanatory paragraphs included in the introduction to the 1968 draft articles.⁶ Similar explanations would appear in the introduction to the draft articles in the final report.

38. Mr. USHAKOV said that in 1968 the articles had wrongly been entitled "Draft articles on representatives of States to international organizations". The correct title was "Relations between States and international organizations".

39. Mr. BARTOŠ said that, where international law in general was concerned, it was sufficient to refer to the provisions of the Vienna Convention on the Law of Treaties, which laid down rules of international law that took precedence over the provisions of international instruments. He therefore asked that it should be stated in the commentary that the term "international law" had the same meaning in the draft articles as in the Vienna Convention on the Law of Treaties.

40. The CHAIRMAN said that if there were no objection he would take it that the Commission agreed to refer article 2 back to the Working Group.

It was so agreed.⁷

³ *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference*, p. 289 (United Nations publication, Sales No.: E.70.V.5).

⁴ United Nations, *Treaty Series*, vol. 500, p. 96.

⁵ *Op. cit.*, vol. 596, p. 262.

⁶ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 195-196.

⁷ For resumption of the discussion see 1134th meeting, para. 75.

ARTICLE 3

41.

Article 3

Relationship between the present articles and the relevant rules of international organizations or conferences

The application of the present articles is without prejudice to any relevant rules of the Organization or to any relevant rules of procedure of the conference.

42. Mr. KEARNEY (Chairman of the Working Group) said that the only change in the text of article 3 was the addition of the words "or to any relevant rules of procedure of the conference", to cover conferences.⁸

43. The commentary would contain a full explanation of what constituted the "rules" of the organization and of the fact that a well-established practice amounted to such a rule.

44. It had been agreed by the Working Group that, for the purposes of the draft articles, the rules of procedure of a conference should be given the same status as the rules of an organization. There was, however, the implied limitation that a conference could not completely replace the draft articles if they were in force as a treaty between all the States concerned.

45. Mr. EUSTATHIADES asked whether the proviso relating to the rules of procedure of a conference did not amount to giving all conferences the power to derogate from existing treaties, since each conference adopted whatever rules of procedure it chose.

46. Mr. ROSENNE said he had serious misgivings about the proposed text.

47. The concluding proviso concerning the rules to the procedure of a conference, had its origin in article 80. That article, in the form in which the Commission had originally adopted it in 1970,⁹ had specified the articles in Part III from which it was possible to derogate under the rules of procedures of a conference. That restriction had now disappeared, so that the only limitation would be the implication, mentioned by Mr. Kearney, that the rules of procedure could not derogate from a treaty. As he understood it, however, the whole purpose of article 3 was to permit derogation from the rules contained in the draft articles in certain cases.

48. Mr. KEARNEY (Chairman of the Working Group) said he did not believe that a conference could decide by a two-thirds majority to set aside, for example, the rule in article 74 (A/CN.4/L.174/Add.2), which required delegates to respect the laws and regulations of the host State.

49. Sir Humphrey WALDOCK said that there was a limitation implicit in the very notion of "rules of procedure". A rule such as that mentioned by Mr. Kearney could not legitimately be brought under the heading of a rule of procedure.

⁸ Formerly covered by article 80.

⁹ See *Yearbook of the International Law Commission, 1970*, vol. II, document A/8010/Rev.1, chapter II, section B.

50. Mr. AGO said he was surprised at the difficulties raised by article 3, which laid down a perfectly natural rule. None of the rules in the draft articles were peremptory, and States were entitled to substitute other rules. For example, any conference could decide to lay down in its rules of procedure that precedence would be determined by a different criterion from that specified in article 48. There were grounds for believing, however, that no conference would derogate from the rules laid down in the draft articles without precise and specific reasons.

51. The CHAIRMAN put article 3 to the vote.

Article 3 was adopted by 17 votes to none, with 1 abstention.

52. Mr. ROSENNE, explaining his vote, said that he had abstained because his misgivings had not been allayed. Almost anything could be introduced into the rules of procedure of a conference by a majority vote.

53. Mr. KEARNEY (Chairman of the Working Group) said that the concern expressed by Mr. Rosenne could be met by including in the commentary a clear explanation of what was meant by "rules of procedure".

ARTICLE 4

54.

Article 4

Relationship between the present articles and other international agreements

The provisions of the present articles

(a) are without prejudice to other international agreements in force between States or between States and international organizations of universal character, and

(b) shall not preclude the conclusion of other such international agreements.

55. Mr. KEARNEY (Chairman of the Working Group) said that the new article 4 was a combination of the former article 4, on the relationship with other existing international agreements, the former article 5, on the relationship with international agreements which might be entered into in the future, and the former article 79, dealing with both of those questions in relation to conferences.

56. As far as the wording was concerned, sub-paragraph (a) was similar to the former article 4 except that the words "of universal character" had been inserted after the concluding words "international organizations". Sub-paragraph (b) corresponded to the former article 5.

57. Sir Humphrey WALDOCK said that the wording of sub-paragraph (b) was not really adequate. It amounted to a broad and general statement that the draft articles could not prevent the conclusion of future treaties—a statement which seemed hardly worth making. The provision should be made narrower and more precise, so as to make it clear it was intended to safeguard the possibility of concluding agreements on the same subject-matter. The corresponding provision in article 73, paragraph 2, of the Vienna Convention on Con-

sular Relations,¹⁰ for example, spoke of international agreements "confirming or supplementing or extending or amplifying the provisions" of that Convention.

58. Mr. USTOR said that he entirely agreed, except that he would not favour the inclusion in article 4 of wording on the lines of article 73, paragraph 2, of the Vienna Convention on Consular Relations. That provision had given rise to considerable difficulty, as he could testify from his own experience. It did not clearly specify that derogation from the Vienna Convention was permitted, and the language made it possible to argue that a particular bilateral consular agreement conflicted with that Convention because it did not simply confirm, supplement, extend or amplify its provisions, but departed from them.

59. Mr. AGO said it was a difficult point. The use of four different verbs in the corresponding provision of the Vienna Convention on Consular Relations was due to its authors' intention to lay down a minimum régime which should at least be respected in any other conventions that might be concluded. That did not apply to the present draft articles.

60. He agreed that the wording of article 4 should be improved, but he did not think the text of article 73 of the Vienna Convention on Consular Relations could be used.

61. The CHAIRMAN said that if there were no objection he would take it that the Commission agreed to refer article 4 back to the Working Group.

*It was so agreed.*¹¹

PART II. Missions to international organizations

ARTICLE 5

62.

Article 5

Establishment of missions

1. Member States may, if the rules of the Organization so admit, establish permanent missions for the performance of the functions mentioned in article 6.

2. Non-member States may, if the rules of the Organization so admit, establish permanent observer missions for the performance of the functions mentioned in article 7.

3. The Organization shall notify to the host State the institution of a mission, if possible, prior to its establishment.

63. Mr. KEARNEY (Chairman of the Working Group) said that article 5 was a combination of the former articles 6 and 52. Paragraph 1 corresponded to the former article 6; paragraph 2 corresponded to the former article 52; and paragraph 3 was a provision common to both those articles.¹² The only change in the language was in paragraph 3, which referred to notification of the institution of a mission "if possible, prior to its

¹⁰ United Nations, *Treaty Series*, vol. 596, p. 320.

¹¹ For resumption of the discussion see 1135th meeting, para. 1.

¹² See 1118th meeting, paras. 2 and 23.

establishment". That addition brought the paragraph into conformity with certain requirements concerning notification in general.

64. Mr. ROSENNE said that the comma after the words "if possible", in paragraph 3, should be deleted.

It was so agreed.

65. Mr. EUSTATHIADES said he thought the change introduced by the Working Group was useful both to the sending State and to the organization and the host State.

66. The CHAIRMAN put article 5 to the vote as amended.

Article 5, as amended, was adopted by 19 votes to none.

ARTICLES 6 and 7

67.

Article 6

Functions of the permanent mission

The functions of the permanent mission consist *inter alia* in:

(a) ensuring the representation of the sending State to the Organization;

(b) maintaining the necessary liaison between the sending State and the Organization;

(c) negotiating with or in the Organization;

(d) ascertaining activities in the Organization and reporting thereon to the Government of the sending State;

(e) promoting co-operation for the realisation of the purposes and principles of the Organization.

68.

Article 7

Functions of the permanent observer mission

The functions of the permanent observer mission consist *inter alia* in:

(a) ensuring, in relations with the Organization, the representation of the sending State and maintaining liaison with the Organization;

(b) ascertaining activities in the Organization and reporting thereon to the Government of the sending State;

(c) promoting co-operation with the Organization and, when required, negotiating with it.

69. Mr. KEARNEY (Chairman of the Working Group) said that the Working Group had decided not to attempt any consolidation of articles 6 and 7,¹³ which accordingly remained unchanged.

70. Mr. CASTAÑEDA asked whether the word "ensuring", in the English version of each article, was a correct translation of the French word "assurer".

71. Mr. TESLENKO (Deputy Secretary to the Commission) said there was no alternative. In any case, that translation had been used throughout the draft articles.

72. Mr. USTOR said he feared that there would be some criticism of articles 6 and 7 because the functions

of "ensuring the representation of the sending State" and "maintaining the necessary liaison" did not appear in the same sub-paragraph in each article.

73. Mr. KEARNEY (Chairman of the Working Group) said that the Working Group had made no changes in those articles, which had previously been approved by the Commission.

74. The CHAIRMAN put articles 6 and 7 to the vote.

Articles 6 and 7 were adopted by 19 votes to none.

ARTICLE 8

75.

Article 8

Multiple accreditation or appointment

1. The sending State may accredit the same person as head of mission to two or more international organizations or appoint a head of mission as a member of the diplomatic staff of another of its missions.

2. The sending State may accredit a member of the diplomatic staff of the mission as head of mission to other international organizations or appoint a member of the staff of the mission as a member of the staff of another of its missions.

76. Mr. KEARNEY (Chairman of the Working Group) said that article 8 combined the former articles 8 and 54.¹⁴ The only change from the old text had been the replacement of the word "assign" by the word "appoint". The reason for that change was that the word "assign" implied a purely internal decision, whereas "appoint" could be understood in a bilateral or multilateral context.

77. The CHAIRMAN put article 8 to the vote.

Article 8 was adopted by 18 votes to none.

DELETION OF THE FORMER ARTICLE 9

78. Mr. KEARNEY (Chairman of the Working Group) said that the Working Group, in its attempt to consolidate the draft articles, had found that the former article 9¹⁵ which referred to the accreditation, assignment or appointment of a member of a permanent mission and contained four paragraphs, was long and complicated. It had come to the conclusion that the article said nothing which was not already admitted, that it was, in fact, superfluous and that it should be deleted.

79. Mr. BARTOŠ said that the statement in the footnote to article 9 (A/CN.4/L.174/Add.2) that the former article 9 had been deleted, was a decision of the Working Group on which the Commission should now be asked to pronounce.

80. The CHAIRMAN said he would treat the Working Group's decision to delete the former article 9 as a proposal and put it to the vote.

The proposal to delete article 9 was adopted by 18 votes to none.

¹³ Formerly articles 7 and 53. See 1110th meeting, para. 33; 1116th meeting, para. 58; and 1117th meeting, paras. 2 and 19.

¹⁴ See 1111th meeting, para. 6 and 1118th meeting, paras. 30 and 42.

¹⁵ See 1111th meeting, para. 21.

81. Mr. REUTER said that he had agreed to vote on the proposal on the understanding that, in such cases the Commission reserved the right to decide that there was no proposal on which to vote.

ARTICLE 9¹⁶

82.

Article 9

Appointment of the members of the mission

Subject to the provisions of articles 14 and 71, the sending State may freely appoint the members of the mission.

83. The CHAIRMAN put the new article 9 to the vote.

The new article 9 was adopted by 19 votes to none.

ARTICLE 10

84.

Article 10

Credentials of the head of mission

The credentials of the head of mission 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 Organization.

85. Mr. KEARNEY (Chairman of the Working Group) said that article 10 was a consolidation of the former articles 12 and 57. No changes had been made.

86. The CHAIRMAN put article 10 to the vote.

Article 10 was adopted by 19 votes to none.

ARTICLE 11

87.

Article 11

Accreditation to organs of the Organization

1. A member State may specify in credentials issued to its permanent representative that he is authorized to act as a delegate of the State in one or more organs.

2. Unless a member State provides otherwise its permanent representative shall represent it in the organs of the Organization for which there are no special requirements as regards representation.

3. A non-member State may specify in credentials issued to its permanent observer that he is authorized to act as an observer of the State in one or more organs when this is admitted.

88. Mr. KEARNEY (Chairman of the Working Group) said that the former article 11, on nationality of the members of the permanent mission, was now one of the general articles in Part IV. The new article 11 was a combination of articles 13 and 57 *bis*.¹⁷ Paragraph 1 was a considerable change from the language of article 13, but no change had been made in paragraph 2. In paragraph 3, which was taken from the former article 57 *bis*, a change had been made, beginning with

the words "issued to its permanent observer", in an attempt to clarify the precise nature of the activities.

89. Mr. AGO proposed that, in order to keep the terminology consistent and in view of the Commission's previous decisions, the words "in one or more organs", in paragraphs 1 and 3, be replaced by the words "to one or more organs", and that the words "in the organs of the Organization", in paragraph 2, be replaced by the words "to the organs of the Organization".

90. Mr. USHAKOV said he was concerned about the formulation of paragraph 2 in the English version, as it seemed to suggest an obligation; perhaps the word "shall" should be replaced by the word "may".

91. Mr. ROSENNE said that the word "credentials", in paragraphs 1 and 3, should be preceded by the definite article "the".

92. He endorsed Mr. Ushakov's comment.

93. He suggested that the words "of the Organization" be added after the word "organs" at the end of paragraph 1.

94. Sir Humphrey WALDOCK, referring to Mr. Ushakov's comment, said that another possibility would be to replace the words "shall represent it", in paragraph 2, by the words "represents it".

95. Mr. ROSENNE suggested that the Working Group be asked to reconsider paragraph 2, with a view to introducing the concept of "delegate".

96. The CHAIRMAN suggested that article 11 be referred back to the Working Group.

It was so agreed.¹⁸

ARTICLE 12

97.

Article 12

Full powers in the conclusion of a treaty with the Organization

1. The head of mission in virtue of his functions and without having to produce full powers is considered as representing his State for the purpose of adopting the text of a treaty between that State and the Organization.

2. The head of mission is not considered in virtue of his functions as representing his State for the purpose of signing a treaty, whether in full or *ad referendum*, between that State and the Organization unless it appears from the practice of the Organization, or from other circumstances, that the intention of the parties was to dispense with full powers.

98. Mr. KEARNEY (Chairman of the Working Group) said that article 12 was a combination of articles 14 and 58. It differed from those articles only in the use of the expression "head of mission" in place of "permanent representative" and "permanent observer".

99. The CHAIRMAN put article 12 to the vote.

Article 12 was adopted by 20 votes to none.

¹⁶ Formerly articles 10 and 55.

¹⁷ See 1111th meeting, para. 62 and 1119th meeting, para. 3.

¹⁸ For resumption of the discussion see 1135th meeting, para. 5.

100. Mr. ROSENNE said that the commentary should include a note explaining the precise import of the terms "credentials," "accreditation" and "full powers," as used in articles 10, 11 and 12.

ARTICLE 13

101.

Article 13

Composition of the mission

In addition to the head of mission, the mission may include diplomatic staff, administrative and technical staff and service staff.

102. Mr. KEARNEY (Chairman of the Working Group) said that article 13 was a combination of articles 15 and 59 and contained no changes except the reference to the head of mission.

103. The CHAIRMAN put article 13 to the vote.

Article 13 was adopted by 20 votes to none.

ARTICLE 14

104.

Article 14

Size of the mission

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

105. Mr. KEARNEY (Chairman of the Working Group) said that article 14 was a combination of articles 16 and 60 and contained no changes except the use of the word "mission" in place of the former references to the two types of mission.

106. The CHAIRMAN put article 14 to the vote.

Article 14 was adopted by 20 votes to none.

ARTICLE 15

107.

Article 15

Notifications

1. The sending State shall notify the Organization of:

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

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

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

(d) the beginning and the termination of the employment of persons resident in the host State as members of the staff of the mission or as persons employed on the private staff entitled to privileges and immunities;

(e) the location of the premises of the mission and of the private residences enjoying inviolability under articles 23 and 29,

as well as any other information that may be necessary to identify such premises and residences.

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

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

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

108. Mr. KEARNEY (Chairman of the Working Group) said that article 15 was a combination of articles 17 and 61 and contained no changes except for consolidation.

109. The CHAIRMAN put article 15 to the vote.

Article 15 was adopted by 20 votes to none.

ARTICLE 16

110.

Article 16

Chargé d'affaires ad interim

If the post of head of mission is vacant, or if the head of mission is unable to perform his functions, a *chargé d'affaires ad interim* shall act as head of mission. The name of the *chargé d'affaires ad interim* shall be notified to the Organization.

111. Mr. KEARNEY (Chairman of the Working Group) said that article 16 was a combination of articles 18 and 62. There were no changes except for the use of the term "head of mission" in place of "permanent representative" and "permanent observer".

112. The CHAIRMAN put article 16 to the vote.

Article 16 was adopted by 20 votes to none.

113. Mr. ROSENNE, explaining his vote, said he had voted in favour of article 16 with some reluctance because the term "*chargé d'affaires ad interim*" was rarely used in the sense now proposed.

ARTICLE 17

114.

Article 17

Precedence

1. Precedence among permanent representatives shall be determined by the alphabetical order of the names of their States used in the Organization.

2. Precedence among permanent observers shall be determined by the alphabetical order of the names of their States used in the Organization.

115. Mr. KEARNEY (Chairman of the Working Group) said that paragraph 1 of article 17 was the former article 19, while paragraph 2 was the former article 62 *bis*.

116. Mr. REUTER asked whether the meaning of the article was that there were two separate orders of precedence, one for permanent representatives and the other for permanent observers.

117. Mr. KEARNEY (Chairman of the Working Group) said that that was correct.

118. The CHAIRMAN put article 17 to the vote.

Article 17 was adopted by 20 votes to none.

ARTICLE 18

119.

Article 18

Office of the mission

The sending State may not, without the prior consent of the host State, establish an office of the mission in a locality within the host State other than that in which the seat or an office of the Organization is established.

120. Mr. KEARNEY (Chairman of the Working Group) said that article 18 was a combination of the former articles 20 and 63; no changes had been made beyond those required for consolidation purposes.

121. Mr. ROSENNE said he wished to draw attention to the ambiguity in the use of the expression "office" of the Organization; further consideration should be given to that point.

122. The CHAIRMAN put article 18 to the vote.

Article 18 was adopted by 20 votes to none.

ARTICLE 19

123.

Article 19

Use of flag and emblem

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

2. The permanent observer mission shall have the right to use the flag and emblem of the sending State on its premises.

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

124. Mr. KEARNEY (Chairman of the Working Group) said that paragraph 1 of article 19 was the same as paragraph 1 of the former article 21, while paragraphs 2 and 3 were the same as the two paragraphs of the former article 64.

125. The CHAIRMAN put article 19 to the vote.

Article 19 was adopted by 19 votes to none.

126. Mr. USTOR said it should be explained in the commentary why permanent representatives and permanent observers were given slightly different treatment with respect to the use of the flag.

ARTICLE 20

127.

Article 20

General facilities

1. The host State shall accord:

(a) to the permanent mission all facilities for the performance of its functions;

(b) to the permanent observer mission the facilities required for the performance of its functions.

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

128. Mr. KEARNEY (Chairman of the Working Group) said that the first part of the former article 22¹⁹ was in effect contained in paragraph 1 (a) of article 20, and the first part of the former article 65²⁰ was contained in paragraph 1 (b). Paragraph 2 was the provision common to both articles 22 and 65.

129. The CHAIRMAN put article 20 to the vote.

Article 20 was adopted by 20 votes to none.

ARTICLE 21

130.

Article 21

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 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 the mission in obtaining suitable accommodation for its members.

131. Mr. KEARNEY (Chairman of the Working Group) said that article 21 was a combination of the former articles 23 and 66. The word "latter's", which had preceded the word "mission" in the former article 23,²¹ had been deleted as superfluous.

132. The CHAIRMAN put article 21 to the vote.

Article 21 was adopted by 20 votes to none.

ARTICLE 22

133.

Article 22

Assistance by the Organization in respect of privileges and immunities

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

134. Mr. KEARNEY (Chairman of the Working Group) said that article 22 was a combination of the former articles 24 and 66. No changes had been made except for the use of the word "mission" in place of "permanent mission".

135. The CHAIRMAN put article 22 to the vote.

Article 22 was adopted by 20 votes to none.

¹⁹ See 1112th meeting, para. 30.

²⁰ See 1122nd meeting, para. 75.

²¹ See 1112th meeting, para. 36.

ARTICLE 23

136.

*Article 23**Inviolability of the premises*

1. The premises of the mission shall be inviolable. The agents of the host State may not enter them, except with the consent of the head of mission. Such consent may be assumed in case of fire or other disaster that seriously endangers public safety, and only in the event that it has not been possible to obtain the express consent of the head of mission.

2. The host State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

137. Mr. KEARNEY (Chairman of the Working Group) said that article 23 was the same as the former article 25, except for the use of the word "mission" in place of the "permanent mission", and the words "head of mission" in place of "permanent representative".

At the request of Mr. Alcívar, a vote was taken by roll-call on the last sentence of paragraph 1.

In favour: Mr. Ago, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Sir Humphrey Waldock.

Against: Mr. Alcívar, Mr. Bartoš, Mr. Ushakov, Mr. Ustor.

Abstaining: Mr. Castañeda, Mr. Yasseen.

The last sentence of paragraph 1 was adopted by 14 votes to 4, with 2 abstentions.

138. The CHAIRMAN put article 23 to the vote as a whole.

Article 23 was adopted by 19 votes to none, with 1 abstention.

139. Mr. CASTAÑEDA, explaining his vote, said that since he had abstained from voting on the last sentence of paragraph 1, which was an essential part of the text, he had thought he ought to abstain from voting on the article as a whole.

140. Mr. USHAKOV said that, although he had voted in favour of the article as a whole, he still objected to the last sentence of paragraph 1.

141. Mr. ALCÍVAR said he had voted against the last sentence of paragraph 1, but not against the article as a whole, because it stated the principle of inviolability.

142. He still reserved his position on the last sentence of paragraph 1.

143. Mr. EL-ERIAN said he had voted in favour of the last sentence of paragraph 1 in order to remain

consistent with the position he had adopted as Special Rapporteur. He had voted for that provision, however, on the understanding that it would be applied *stricto sensu* by the host State.

144. Mr. BARTOŠ said that although he had voted for the article as a whole, he was still opposed to the last sentence of paragraph 1.

145. Mr. USTOR said he had voted for article 23 as a whole because it embodied the principle of inviolability. He had voted against the last sentence of paragraph 1, however, because it could be interpreted as weakening that principle.

The meeting rose at 1.5 p.m.

1133rd MEETING

Thursday, 8 July 1971, at 3.30 p.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, 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 to 3; 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.174 and Add.1 and 2)

[Item 1 of the agenda]

(continued)

CONSOLIDATED DRAFT ARTICLES PROPOSED
BY THE WORKING GROUP

(continued)

ARTICLE 24

1. The CHAIRMAN invited the Commission to continue consideration of the consolidated draft articles proposed by the Working Group (A/CN.4/L.174/Add.2), starting with article 24.

2.

*Article 24**Exemption of the premises from taxation*

1. The premises of the mission of which the sending State or any person acting on its behalf is the owner or the lessee shall