

Document:-  
**A/CN.4/L.177/Add.1**

**Working Group on relations between States and international organizations - Consolidated  
draft articles: articles 2, 4 and 11 - reproduced in A/CN.4/SR.1134 and SR.1135**

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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## 1134th MEETING

Monday, 12 July 1971, at 3.25 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. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, 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 and Add.1)

[Item 1 of the agenda]

(continued)

#### CONSOLIDATED DRAFT ARTICLES PROPOSED BY THE WORKING GROUP

(continued)

#### ARTICLE 50 (General facilities) (continued)

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). At the previous meeting, it had begun to discuss article 50.

2. Mr. AGO, speaking on behalf of the Working Group, said that article 50 was modelled on article 20, the corresponding article relating to missions.

3. Mr. EUSTATHIADES asked why the word "functions", which was used in article 20, had been replaced by the word "tasks".

4. Mr. AGO, speaking on behalf of the Working Group, said that, in view of the temporary nature of delegations and the purpose of their activities, the Working Group had thought it appropriate to use a slightly different term.

5. Mr. USTOR said it would be advisable to state in the commentary that the Commission had deliberately refrained from including an article on the functions of delegations to conferences.

6. Mr. AGO, speaking on behalf of the Working Group, said it should be explained in the commentary that in the case of permanent missions it was easy to define certain basic functions which did not vary, but that the same did not apply to delegations, so that the use of different terms was justified.

7. The CHAIRMAN put article 50 to the vote.

*Article 50 was adopted by 15 votes to none.*

#### ARTICLE 51<sup>1</sup>

8.

##### Article 51

##### *Premises and accommodation*

The host State shall assist the delegation, if it so requests, in procuring the necessary premises and obtaining suitable accommodation for its members. The Organization or, as the case may be, the conference shall, where necessary, assist the delegation in this regard.

9. Mr. AGO, speaking on behalf of the Working Group, said that in the French version the word "logement" should be in the plural in the title, as it already was in the text of the article.

10. Mr. ALCÍVAR said that observation also applied to the Spanish version.

11. Mr. ROSENNE said that in the English version, the word "accommodation" could remain in the singular.

12. The CHAIRMAN put article 51 to the vote.

*Article 51 was adopted by 16 votes to none.*

#### ARTICLE 52<sup>2</sup>

13.

##### Article 52

##### *Assistance in respect of privileges and immunities*

The Organization or, as the case may be, the Organization and the conference shall, where necessary, assist the sending State, its delegation and the members of the delegation in securing the enjoyment of the privileges and immunities provided for in the present articles.

14. Mr. AGO, speaking on behalf of the Working Group, said that article 52 was modelled on article 22, the corresponding article relating to missions.

15. Mr. CASTRÉN suggested that the words "the Organization and" be deleted. The article would then read more logically: "The Organization or, as the case may be, the conference. . .".

16. Mr. AGO speaking on behalf of the Working Group, said that the repetition of the words "the Organization" was intentional, the Working Group having considered that, in the case of conferences, the assistance function might sometimes be entrusted to the organization, and sometimes to both the organization and the conference.

17. The CHAIRMAN put article 52 to the vote.

*Article 52 was adopted by 18 votes to none.*

#### ARTICLE 53<sup>3</sup>

18.

##### Article 53

##### *Inviolability of the premises*

1. The premises of the delegation shall be inviolable. The agents of the host State may not enter them except with the

<sup>1</sup> Formerly article 93.

<sup>2</sup> Formerly article 92.

<sup>3</sup> Formerly article 94.

consent of the head of delegation. 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 delegation.

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

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

19. Mr. AGO, speaking on behalf of the Working Group, said that, apart from the necessary substitution of the word "delegation" for the word "mission", article 53 followed exactly the wording of article 23, the corresponding article relating to missions.

20. Mr. ALCÍVAR asked for a separate vote, by roll-call, on the last sentence of paragraph 1.

21. Mr. EL-ERIAN said that a roll-call vote was unnecessary since members were permitted to explain their votes.

22. Mr. ALCÍVAR withdrew his request for a roll-call vote.

23. The CHAIRMAN put the last sentence of paragraph 1 to the vote separately.

*The last sentence of paragraph 1 was adopted by 11 votes to 3, with 4 abstentions.*

24. The CHAIRMAN put article 53 to the vote as a whole.

*Article 53 as a whole was adopted by 17 votes to none, with 1 abstention.*

25. Mr. ALCÍVAR, explaining his vote, said he had voted against the last sentence of paragraph 1 for the reasons he had already made known to the Commission on various occasions. He had voted for article 53 as a whole, however, because he did not wish to oppose the principle of inviolability. He reserved his position with respect to the last sentence in paragraph 1.

#### ARTICLE 54<sup>4</sup>

26.

##### *Article 54*

##### *Exemption of the premises from taxation*

1. The sending State and the members of the delegation acting on behalf of the delegation shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the delegation other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the host State by persons contracting with the sending State or with a member of the delegation.

<sup>4</sup> Formerly article 95.

27. Mr. AGO, speaking on behalf of the Working Group, said that article 54 was modelled on article 24, the corresponding article relating to missions.

28. The CHAIRMAN put article 54 to the vote.

*Article 54 was adopted by 18 votes to none.*

#### ARTICLE 55<sup>5</sup>

29.

##### *Article 55*

##### *Inviolability of archives and documents*

The archives and documents of the delegation shall be inviolable at any time and wherever they may be.

30. Mr. AGO, speaking on behalf of the Working Group, said that article 55 reproduced the now traditional formula concerning the inviolability of archives and documents.

31. The CHAIRMAN put article 55 to the vote.

*Article 55 was adopted by 18 votes to none.*

#### ARTICLE 56<sup>6</sup>

32.

##### *Article 56*

##### *Freedom of movement*

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the host State shall ensure to all members of the delegation such freedom of movement and travel in its territory as is necessary for the performance of the tasks of the delegation.

33. Mr. AGO, speaking on behalf of the Working Group, said that article 56 closely followed the text of article 26. In the French version the word "*fonctions*" should be replaced by the word "*tâches*".

34. The CHAIRMAN put article 56 to the vote.

*Article 56 was adopted by 18 votes to none.*

#### ARTICLE 57<sup>7</sup>

35.

##### *Article 57*

##### *Freedom of communication*

1. The host State shall permit and protect free communication on the part of the delegation for all official purposes. In communicating with the Government of the sending State, its diplomatic missions, consular posts, permanent missions, permanent observer missions, special missions and delegations, wherever situated, the delegation may employ all appropriate means, including couriers and messages in code or cipher. However, the delegation may install and use a wireless transmitter only with the consent of the host State.

<sup>5</sup> Formerly article 92.

<sup>6</sup> Formerly article 96.

<sup>7</sup> Formerly article 97.

2. The official correspondence of the delegation shall be inviolable. Official correspondence means all correspondence relating to the delegation and its tasks.

3. Where practicable, the delegation shall use the means of communication, including the bag and the courier, of the permanent diplomatic mission, of the permanent mission or of the permanent observer mission of the sending State.

4. The bag of the delegation shall not be opened or detained.

5. The packages constituting the bag of the delegation must bear visible external marks of their character and may contain only documents or articles intended for the official use of the delegation.

6. The courier of the delegation, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the host State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

7. The sending State or the delegation may designate couriers *ad hoc* of the delegation. In such cases the provisions of paragraph 6 shall also apply, except that the immunities therein mentioned shall cease to apply when the courier *ad hoc* has delivered to the consignee the delegation's bag in his charge.

8. The bag of the delegation may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the delegation. By arrangement with the appropriate authorities of the host State, the delegation may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

36. Mr. AGO, speaking on behalf of the Working Group, said that in the second sentence of paragraph 1 the word "other" should have been inserted between the words "and" and "delegations", as had been proposed at an earlier meeting by Mr. Castrén.<sup>9</sup>

37. Mr. ROSENNE asked why that change was considered necessary.

38. Mr. AGO, speaking on behalf of the Working Group, said that the free communication provided for in paragraph 1 was bound to be between the delegation concerned and the other delegations of the sending State.

39. The CHAIRMAN said that if there were no objection he would take it that the Commission agreed to the proposed change.

*It was so agreed.*

40. The CHAIRMAN put article 57, thus amended, to the vote.

*Article 57, as amended, was adopted by 17 votes to none.*

#### ARTICLE 58<sup>9</sup>

41.

##### *Article 58*

##### *Personal inviolability*

The persons of the head of delegation and of other delegates and members of the diplomatic staff of the delegation shall be

inviolable. They shall not be liable to any form of arrest or detention. The host State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity.

42. Mr. AGO, speaking on behalf of the Working Group, said that article 58 closely followed article 28, the corresponding article relating to missions.

43. The CHAIRMAN put article 58 to the vote.

*Article 58 was adopted by 17 votes to none.*

#### ARTICLE 59<sup>10</sup>

44.

##### *Article 59*

##### *Inviolability of private accommodation and property*

1. The private accommodation of the head of delegation and of other delegates and members of the diplomatic staff of the delegation shall enjoy the same inviolability and protection as the premises of the delegation.

2. Their papers, correspondence and, except as provided in paragraph... of article 60 their property shall likewise enjoy inviolability.

45. Mr. AGO, speaking on behalf of the Working Group, said that article 59 was modelled on article 29, the corresponding article relating to missions.

46. The CHAIRMAN put article 59 to the vote.

*Article 59 was adopted by 17 votes to none.*

#### ARTICLE 60<sup>11</sup>

47.

##### *Article 60*

##### *Immunity from jurisdiction*

##### ALTERNATIVE A

1. The head of delegation and other delegates and members of the diplomatic staff of the delegation shall enjoy immunity from the criminal jurisdiction of the host State. They shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) a real action relating to private immovable property situated in the territory of the host State unless the person in question holds it on behalf of the sending State for the purposes of the delegation;

(b) an action relating to succession in which the person in question is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the person in question in the host State outside his official functions;

(d) an action for damages arising out of an accident caused by a vehicle used by the person in question outside the exercise of the functions of the delegation where those damages are not recoverable from insurance.

2. The head of delegation and other delegates and members of the diplomatic staff of the delegation are not obliged to give evidence as witnesses.

<sup>9</sup> See 1125th meeting, para. 87.

<sup>9</sup> Formerly article 98.

<sup>10</sup> Formerly article 99.

<sup>11</sup> Formerly article 100.

3. No measures of execution may be taken in respect of the head of delegation or any other delegate or member of the diplomatic staff of the delegation except in cases coming under sub-paragraphs (a), (b), (c) and (d) of paragraph 1 and provided that the measures concerned can be taken without infringing the inviolability of his person or of his accommodation.

4. The immunity of the head of delegation and of other delegates and members of the diplomatic staff of the delegation from the jurisdiction of the host State does not exempt them from the jurisdiction of the sending State.

#### ALTERNATIVE B

1. The head of delegation and other delegates and members of the diplomatic staff of the delegation shall enjoy immunity from the criminal jurisdiction of the host State.

2. (a) The head of delegation and other delegates and members of the diplomatic staff of the delegation shall enjoy immunity from the civil and administrative jurisdiction of the host State in respect of all acts performed in the exercise of their official functions.

(b) No measures of execution may be taken in respect of the head of delegation or any other delegate or member of the diplomatic staff of the delegation unless the measures concerned can be taken without infringing the inviolability of his person or his accommodation.

3. The head of delegation and other delegates and members of the diplomatic staff of the delegation are not obliged to give evidence as witnesses.

4. The immunity from jurisdiction of the head of delegation and of other delegates and members of the diplomatic staff of the delegation does not exempt them from the jurisdiction of the sending State.

48. Mr. AGO, speaking on behalf of the Working Group, said that in paragraph 1 (d) of alternative A the words "exercise of the functions" should be replaced by the words "performance of the tasks".

49. It should be noted that there was a close connexion between alternative A and paragraph 5 of article 61, formerly article 101.

50. Mr. USTOR said that the Commission should reflect carefully before changing the expression "outside the exercise of the functions", which was firmly rooted in the tradition of diplomatic law.

51. Mr. AGO, speaking on behalf of the Working Group, said that he understood Mr. Ustor's concern, but the tradition to which he had referred related solely to diplomatic missions or missions ranking as such, not to delegations, with regard to which the Commission was innovating. There was little difference between the expressions "exercise of the functions" and "performance of the tasks", but it was preferable to speak of the performance of tasks in article 60 in order to be consistent with the other articles on delegations.

52. The CHAIRMAN observed that the majority of the members of the Commission appeared to prefer alternative A. He would therefore ask the Commission to vote on alternative A as the text for article 60.

*Alternative A for article 60 was adopted by 14 votes to 2, with 1 abstention.*

53. Mr. EUSTATHIADES, explaining his vote, said that he had voted for alternative A because alternative B, which he preferred, had been rejected by the majority.

54. Mr. CASTRÉN said that he had voted against alternative A because, in his opinion, it granted too wide an immunity from jurisdiction, thus departing from the practice of the majority of organizations of a universal character. He would have preferred alternative B.

55. Mr. REUTER said that he had voted against alternative A because it did not establish a proper balance between the positions of the host State and the sending State.

#### ARTICLE 61<sup>12</sup>

56.

##### *Article 61*

##### *Waiver of immunity*

1. The immunity from jurisdiction of the head of delegation and of other delegates and members of the diplomatic staff of the delegation and of persons enjoying immunity under article 66 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by any of the persons referred to in paragraph 1 shall preclude them from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

5. If the sending State does not waive the immunity of any of the persons mentioned in paragraph 1 in respect of a civil action, it shall use its best endeavours to bring about a just settlement of the case.

57. Mr. AGO, speaking on behalf of the Working Group, said that article 61 was modelled on article 31, the corresponding article relating to missions.

58. The CHAIRMAN put article 61 to the vote.

*Article 61 was adopted by 17 votes to none.*

59. Mr. USTOR said that it should be made clear in the commentary to paragraph 1 that immunity could be waived in respect of persons enjoying immunity under article 67.

#### ARTICLE 62<sup>13</sup>

60.

##### *Article 62*

##### *Exemption from social security legislation*

1. Subject to the provisions of paragraph 3, the head of delegation and other delegates and members of the diplomatic staff of the delegation shall, with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the host State.

<sup>12</sup> Formerly article 101.

<sup>13</sup> Formerly article 104.

2. The exemption provided for in paragraph 1 shall also apply to persons who are in the sole private employ of the head of delegation or of any other delegate or member of the diplomatic staff of the delegation, on condition:

(a) that such employed persons are not nationals of or permanently resident in the host State; and

(b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. The head of delegation and other delegates and members of the diplomatic staff of the delegation who employ persons to whom the exemption provided for in paragraph 2 does not apply shall observe the obligations which the social security provisions of the host State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 shall not preclude voluntary participation in the social security system of the host State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

61. Mr. AGO, speaking on behalf of the Working Group, said that article 62 followed the pattern of article 32, the corresponding article relating to missions.

62. The CHAIRMAN put article 62 to the vote.

*Article 62 was adopted by 17 votes to none.*

#### ARTICLE 63<sup>14</sup>

63.

##### *Article 63*

##### *Exemption from dues and taxes*

The head of delegation and other delegates and members of the diplomatic staff of the delegation shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) dues and taxes on private immovable property situated in the territory of the host State, unless the person concerned holds it on behalf of the sending State for the purposes of the delegation;

(c) estate, succession or inheritance duties levied by the host State, subject to the provisions of paragraph 4 of article 68;

(d) dues and taxes on private income having its source in the host State and capital taxes on investments made in commercial undertakings in the host State;

(e) charges levied for specific services rendered;

(f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 54.

64. Mr. AGO, speaking on behalf of the Working Group, said that article 63 followed the wording of article 33, the corresponding article relating to missions.

65. The CHAIRMAN put article 63 to the vote.

*Article 63 was adopted by 15 votes to none, with 2 abstentions.*

<sup>14</sup> Formerly article 102.

#### ARTICLE 64<sup>15</sup>

66.

##### *Article 64*

##### *Exemption from personal services*

The host State shall exempt the head of delegation and other delegates and members of the diplomatic staff of the delegation from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

67. Mr. AGO, speaking on behalf of the Working Group, said that article 64 reproduced the wording of article 34, the corresponding article relating to missions.

68. The CHAIRMAN put article 64 to the vote.

*Article 64 was adopted by 17 votes to none.*

#### ARTICLE 65<sup>16</sup>

69.

##### *Article 65*

##### *Exemption from customs duties and inspection*

1. The host State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services, on:

(a) articles for the official use of the delegation;

(b) articles for the personal use of the head of delegation or of any other delegate or member of the diplomatic staff of the delegation.

2. The personal baggage of the head of delegation or of any other delegate or member of the diplomatic staff of the delegation shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemption mentioned in paragraph 1, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host State. In such cases, inspection shall be conducted only in the presence of the person enjoying the exemption or of his authorized representative.

70. Mr. AGO, speaking on behalf of the Working Group, said that article 65 reproduced the former article 103 verbatim.<sup>17</sup>

71. Mr. USTOR said that there seemed to be a slight difference between the English and French versions of the title.

72. Mr. TESLENKO (Deputy Secretary of the Commission) said that the French word "*douanière*" covered both duties and inspection.

73. Mr. SETTE CÂMARA said that while the French "*exemption douanière*" covered both duties and inspection, in English it was necessary to mention them both.

74. The CHAIRMAN put article 65 to the vote.

*Article 65 was adopted by 16 votes to none.*

<sup>15</sup> Formerly article 104.

<sup>16</sup> Formerly article 103.

<sup>17</sup> See 1126th meeting, para. 78.

CONSOLIDATED DRAFT ARTICLES SUBMITTED BY  
THE WORKING GROUP ON SECOND READING

ARTICLE 2

75. The CHAIRMAN invited the Commission to consider the texts of articles 2, 4 and 11 submitted by the Working Group on second reading (A/CN.4/L.177/Add.1), starting with article 2,<sup>19</sup> the proposed text for which read:

*Article 2*

*Scope of the present articles*

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

2. The fact that the present articles do not extend to other international organizations is without prejudice to the application to the relations of States with such other organizations of any of the rules set forth in the present articles to which they would be subject under international law independently of these articles.

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

4. Nothing in the present articles shall preclude States from agreeing that the present articles apply in respect of:

(a) international organizations other than those of universal character, or

(b) conferences other than those convened by or under the auspices of such organizations.

76. Mr. AGO, speaking on behalf of the Working Group, said the question of the scope of the articles was connected with that of the title to be given to the draft as a whole. The Working Group therefore considered that it should now propose a title for the draft articles, which was: "Draft articles on the representation of States in their relations with international organizations". That title retained the word "relations", which it was desired to preserve in order to show that the draft was cognate with the Vienna Conventions on diplomatic relations and consular relations, and at the same time conveyed the limitation imposed by the fact that relations between States and international organizations went far beyond the mere question of representation.

77. Paragraph 1 of the article was worded accordingly, and paragraph 2 was now drafted on the same lines as paragraph 3.

78. Paragraph 3 had been drafted in the light of the discussion which had taken place at the first reading. Thus the formulation "conferences other than those convened by or under the auspices of international organizations of universal character" referred both to conferences convened both by States and to conferences convened by

international organizations which were not of a universal character.

79. Mr. USHAKOV said he did not think the text of paragraph 3 was sufficiently clear. The reference to "those conferences", after the words "without prejudice to the application to", was ambiguous. It should be possible to follow the formulation used in paragraph 2.

80. Mr. ROSENNE said he congratulated the Working Group on the improved text it had submitted for article 2 and on the new title for the draft articles, which considerably simplified the understanding of the whole draft.

81. In paragraph 2, however, he found the reference to "the application to the relations of States with such other organizations" somewhat unsatisfactory. The draft applied to the representation of States, not to the relations of States with international organizations. He suggested that the words in question be replaced by the somewhat heavier, but more precise wording: "the application to the representation of States in their relations with such other organizations". There were relations between States and international organizations other than those dealt with in the present draft articles.

82. Mr. ELIAS said that he would like to know why the word "extend" was used in paragraphs 2 and 3 instead of the word "apply".

83. Mr. AGO said that in the English version the Working Group had preferred the words "do not extend" because of the apparent contradiction between the words "do not apply" and the words "without prejudice to the application", which appeared later in the same sentence.

84. Mr. ROSENNE suggested that the word "extend", in both paragraph 2 and paragraph 3, be replaced by the word "relate", which had been used by the Commission in article 3 of its draft on the law of treaties.<sup>19</sup>

85. Mr. EUSTATHIADES said he wondered whether the words "international law" in paragraph 2 did not refer solely to customary international law, since conventional international law was covered by paragraph 4. If that was the case, it should be made clear.

86. Mr. BARTOŠ said that he had already raised the problem of the use of the words "under international law" at the first reading.<sup>20</sup> It had then been objected that it was unnecessary to define those words in the draft articles because the problem had been solved by the Vienna Convention on the Law of Treaties. But the Vienna Convention distinguished between *jus cogens* and international law generally applied. That distinction was lacking in the present instance.

87. Unless article 2 specified what was covered by the expression "international law", the door would be left open for different interpretations. As at the first reading, he would therefore be unable to vote for article 2.

88. Mr. AGO speaking on behalf of the Working Group, said that article 2 had been modelled on article 3

<sup>19</sup> For previous text and discussion see 1132nd meeting, paras. 6-40.

<sup>19</sup> See *Yearbook of the International Law Commission, 1966*, vol. II, p. 190.

<sup>20</sup> See 1132nd meeting, para. 25.

of the Vienna Convention on the Law of Treaties, which read:

*International agreements not within the scope of the present Convention*

“The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form shall not affect:

“(a) the legal force of such agreements;

“(b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;

“(c) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.”

89. Mr. USHAKOV said that the words “international law” had already been used without any qualification in article 21 of the Convention on Special Missions.<sup>21</sup>

90. Mr. EL-ERIAN (Special Rapporteur) said he agreed with the explanations given by Mr. Ago and Mr. Ushakov.

91. It was his intention to include in the introduction to the present draft articles a paragraph similar to the one in the introduction to the Commission’s draft articles on the law of treaties, explaining that the present draft constituted both codification and progressive development of international law, and adding: “as was the case with several previous drafts, it is not practicable to determine into which category each provision falls”.<sup>22</sup>

92. The provision now under discussion was a saving clause indicating that although the draft articles were intended to serve for organizations of a universal character, regional organizations could be subject to the same rules, in which case the source of those rules would not be draft articles, but general international law.

93. Mr. BARTOŠ said that the text adopted by the Commission for article 21 of the Convention on Special Missions<sup>23</sup> was different from the text which he, as Special Rapporteur, had proposed.<sup>24</sup> Moreover, that article referred to the rules of international law on a clearly defined subject, namely, the facilities, privileges and immunities to be enjoyed by Heads of State when leading a special mission and by persons of high rank taking part in such a mission. Since article 2 of the present draft did not relate to a clearly defined area of international law, it might be inferred that there was a general possibility of derogating from any of the rules

in the draft, although the Commission was called upon to codify those rules.

94. Mr. AGO, speaking on behalf of the Working Group, said he wished to reassure Mr. Bartoš. The purpose of the article was not to open up a general possibility of derogating from the rules of the draft; it was merely precautionary, since the content of the draft was already in force in many instances, either through custom or under the provisions of a particular convention. And the custom or provisions concerned would thus continue to apply to cases not covered by the draft even after it had entered into force. That was the meaning of paragraph 2.

95. Mr. EUSTATHIADES said that article 3 of the Vienna Convention on the Law of Treaties, which Mr. Ago had read out, dealt separately with the application of its rules under international law, sub-paragraph (b), and their application under international agreements, sub-paragraph (c), to cases outside the scope of the Convention. It therefore seemed necessary to explain, at least in the commentary, that the expression “international law”, as used in paragraph 2 of article 2, meant general international law, that was to say customary law and the general principles of law.

96. Mr. AGO, speaking on behalf of the Working Group, said that there were really three cases to be covered; future conventions extending the scope of the draft to cases other than those with which it was concerned, existing conventions, and customary law. Consequently, since paragraph 4 of article 2 related solely to conventions subsequent to the draft articles, the expression “international law” as used in paragraph 2 referred both to customary international law and to existing conventional rules.

97. Mr. BARTOŠ said that he approved the contents of paragraph 4, which reflected the principle of independence of will, whereby the rules of the draft could be extended to cases outside its scope. But in view of the explanations which had been given, the intended meaning of the words “international law” in paragraph 2 should be clearly stated, at least in the commentary. Otherwise, everyone would be free to interpret the rule as he wished, and that would nullify its effect. If necessary, he would be content with a reference in the commentary to the Vienna Convention on the Law of Treaties; failing that he would vote against the article.

98. Mr. ROSENNE said he hoped Mr. Bartoš would not insist on the inclusion in the commentary of a definition of the words “under international law” because all definitions were dangerous.

99. He accepted the explanation given by Mr. Ago that the last part of paragraph 3 was based on the language of article 3 of the Vienna Convention on the Law of Treaties.

100. It should be noted, however, that the words “under international law” did not appear in the Commission’s original draft article 3 on the law of treaties.<sup>25</sup> Sub-

<sup>21</sup> See General Assembly resolution 2530 (XXIV), Annex.

<sup>22</sup> See *Yearbook of the International Law Commission, 1966*, vol. II, p. 177, para. 35.

<sup>23</sup> *Op. cit.*, 1967, vol. II, p. 359.

<sup>24</sup> *Ibid.*, p. 77 (article 17 *quater*).

<sup>25</sup> *Op. cit.*, 1966, vol. II, p. 190.



paragraph (b) of that article safeguarded the application to international agreements outside the scope of the draft articles of any of the rules set forth in the draft articles to which those agreements "would be subject independently of these articles". It was the Vienna Conference on the Law of Treaties which had introduced the words "under international law" into sub-paragraph (b) of article 3, in the phrase "to which they would be subject under international law independently of the Convention", which appeared in the final text of the Convention.<sup>26</sup>

101. Since the Commission would indicate in the commentary to article 2 that the concluding words of paragraph 3 had their origin in article 3(b) of the Vienna Convention on the Law of Treaties, any attempt to define the words "under international law" in the commentary might be misconstrued as an attempt to interpret article 3 of the Vienna Convention.

102. In fact, the Commission was not concerned either with the meaning of the expression "under international law" or with the relation between codified and non-codified international law. It was concerned only with the interpretation to be given to the reservation contained in paragraph 3 of article 2. The Commission's intention could be explained briefly in the commentary to that article.

103. Mr. USHAKOV said that the words "international law" were used without any qualification in the Preamble and in Article 13 of the United Nations Charter.

104. Mr. YASSEEN said he thought that paragraph 2 should be interpreted in the following manner: since the Commission had decided to restrict the scope of the draft articles to organizations of a universal character, it had derived a number of rules from international customs and from existing bilateral and multilateral conventions, but that did not mean that it intended the scope of those rules to be restricted in the future solely to organizations of a universal character if they applied to other organizations by virtue of a source other than the draft articles. Consequently, in paragraph 2, the expression "international law" meant all international law with the exception of the present convention. He would vote in favour of the article on that understanding.

105. Mr. EUSTATHIADES said he was satisfied with the explanations that had been given.

106. Mr. AGO, speaking on behalf of the Working Group, said that in order to take account of Mr. Rosenne's proposal and Mr. Ushakov's request for clarification of paragraph 3, he would propose a number of amendments to article 2.

107. In paragraphs 2 and 3, the word "extend" should be replaced by the word "relate".

108. In paragraph 2, the words "the application to the relations of States with such other organizations" should be replaced by the words "the application to the repre-

sentation of States in their relations with such other organization".

109. In paragraph 3, the words "conferences other than those convened by or under the auspices of international organizations of universal character" should be replaced by the words "other conferences".

110. Also in paragraph 3, the words "the application to those conferences" should be replaced by the words: "the application to the representation of States at such other conferences".

111. The CHAIRMAN said that if there were no objection he would ask the Commission to vote on article 2 as amended by Mr. Ago.

*Article 2, as amended, was adopted by 13 votes to 1, with 1 abstention.*

The meeting rose at 6.10 p.m.

## 1135th MEETING

*Tuesday, 13 July 1971, at 10.10 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. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, 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/Add.1)

[Item 1 of the agenda]

(continued)

CONSOLIDATED DRAFT ARTICLES SUBMITTED BY  
THE WORKING GROUP ON SECOND READING

(continued)

### ARTICLE 4

1. The CHAIRMAN invited the Commission to continue consideration of the texts of articles submitted by the Working Group on second reading (A/CN.4/L.177/Add.1), starting with article 4.

<sup>26</sup> See para. 88 above.

2.

*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 international agreements regarding the representation of States in their relations with international organizations.

3. Mr. AGO, speaking on behalf of the Working Group, said that the Working Group had revised the text of article 4 in the light of the Commission's previous discussion.<sup>1</sup>

4. The CHAIRMAN put article 4 to the vote.

*Article 4 was adopted by 15 votes to none.*

## ARTICLE 11

5.

*Article 11**Accreditation to organs of the Organization*

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

2. Unless a member State provides otherwise its permanent representative may act as a delegate to organs of the Organization for which there are no special requirements as regards representation.

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

6. Mr. AGO, speaking on behalf of the Working Group, said that the Working Group had revised the text of article 11 in the light of the Commission's previous discussion.<sup>2</sup>

7. Mr. ROSENNE said that, under paragraph 1 (9) of article 1, as adopted by the Commission<sup>3</sup> the term "delegation to an organ" meant "the delegation sent by a State to represent it at the organ". There was an element of ambiguity in that provision—an ambiguity which was deliberate and was intended to cover the extreme variety of situations in which a member State of an organization could be represented at an organ of the organization. To give one obvious example, under Article 32 of the Charter, a Member State of the United Nations which was not a member of the Security Council could, under certain conditions, participate without voting in the Council's discussions.

8. He would vote in favour of article 11 on the clear understanding that paragraph 1 was based on the same broad concept as paragraph 1 (9) of article 1, and that

the term "delegate" was not restricted to members of the organ in question.

9. Mr. AGO, speaking on behalf of the Working Group, said that article 11 was intended to refer to States members of the organization, not to the members of the organ in question.

10. In paragraphs 1 and 2 of the French version, the words "*délégués auprès*" should be replaced by the words "*délégué à*", and in paragraph 3 of the French version, the words "*observateur auprès*" should be replaced by the words "*observateurs à*". In all three paragraphs of the English version, where the word "to" followed the words "delegate" or "observer" it should be replaced by the word "at", in view of the decision taken by the Commission when it had settled the definitions.

11. Mr. REUTER said he did not think it was correct to make that change in paragraph 3. In any case, before amending paragraph 3 of the English version, the Commission ought perhaps to wait until it could consult Mr. Kearney and Sir Humphrey Waldock.

12. The CHAIRMAN said that if there were no objection he would take it that the Commission accepted the suggested amendments to paragraphs 1 and 2, but wished to postpone its decision on paragraph 3.

*It was so agreed.*

13. The CHAIRMAN put paragraphs 1 and 2 of article 11, as amended, to the vote.

*Paragraphs 1 and 2 of article 11, as amended, were adopted by 16 votes to none.*

CONSOLIDATED DRAFT ARTICLES PROPOSED BY  
THE WORKING GROUP  
(A/CN.4/L.174/Add.2)

*(resumed from the previous meeting)*

ARTICLE 66<sup>4</sup>

14.

*Article 66**Privileges and immunities of other persons*

1. The members of the family of the head of delegation who accompany him, and the members of the family of any other delegate or member of the diplomatic staff of the delegation who accompany him shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 58, 59, 60, 62, 63, 64, in paragraphs 1 (b) and 2 of article 65 and in article 72.

2. Members of the administrative and technical staff of the delegation, together with members of their families who accompany them and who are not nationals of or permanently resident in the host State, shall enjoy the privileges and immunities specified in articles 58, 59, 60, 62, 63, 64 and 72 except that the immunity from civil and administrative jurisdiction of the host State specified in paragraph 1 of article 60 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in paragraph 1 (b)

<sup>1</sup> See 1132nd meeting, para. 54-61.

<sup>2</sup> *Ibid.*, paras. 87-96.

<sup>3</sup> See 1130th meeting, para. 13 and 1131st meeting, para. 49.

<sup>4</sup> Formerly article 105.

of article 65 in respect of articles imported at the time of their entry into the territory of the host State to attend the meeting of the organ or conference.

3. Members of the service staff of the delegation shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment, and the exemption from social security legislation provided for in article 62.

4. Private staff of members of the delegation shall be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the tasks of the delegation.

15. Mr. AGO, speaking on behalf of the Working Group, said that the former title of the article, as adopted at the twenty-second session,<sup>5</sup> had been preferred to the rather long title proposed by the Drafting Committee<sup>6</sup> and that, as in all the articles on delegations, the words "performance of the tasks" had replaced the words "exercise of the functions", used in the articles on missions.

16. The reference to article 72 in paragraphs 1 and 2 was a mistake and should be deleted.

17. The CHAIRMAN said that if there were no objection he would take it that the Commission accepted the correction required in paragraphs 1 and 2.

*It was so agreed.*

18. The CHAIRMAN put article 66, as corrected, to the vote.

*Article 66 was adopted by 15 votes to none with 1 abstention.*

#### ARTICLE 67<sup>7</sup>

19.

##### *Article 67*

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

1. Except in so far as additional privileges and immunities may be granted by the host State, the head of delegation and any other delegate or member of the diplomatic staff of the delegation who are nationals of or permanently resident in that State shall enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of their functions.

2. Other members of the staff of the delegation and persons on the private staff who are nationals of or permanently resident in the host State shall enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those members and persons in such a manner as not to interfere unduly with the performance of the tasks of the delegation.

20. Mr. AGO, speaking on behalf of the Working Group, said that whereas the former text had been drafted simply by reference to article 41, the corresponding article on permanent missions, the present text was modelled on that article, which had become article 37 (A/CN.4/L.174/Add.2).

21. The CHAIRMAN put article 67 to the vote.

*Article 67 was adopted by 16 votes to none.*

#### ARTICLE 68

22.

##### *Article 68*

##### *Duration of privileges and immunities*

1. Every person entitled to privileges and immunities under the provisions of the present articles shall enjoy such privileges and immunities from the moment he enters the territory of the host State for the purpose of attending the meeting of an organ or conference or, if he is already in its territory, from the moment when his appointment as a member of the delegation is notified to the host State by the Organization, by the conference or by the sending State.

2. When the functions of a person entitled to privileges and immunities under these articles have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so. However, with respect to acts performed by such a person in the exercise of his functions as a member of the delegation, immunity shall continue to subsist.

3. In case of the death of a member of the delegation, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the delegation not a national of or permanently resident in the host State or of a member of his family accompanying him, the host State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property which is in the host State solely because of the presence there of the deceased as a member of the delegation or of the family of a member of the delegation.

23. Mr. AGO, speaking on behalf of the Working Group, said that article 68, which combined the former articles 108 and 109, was modelled on article 38, which was the corresponding article relating to missions.

24. Mr. YASSEEN said that in paragraph 1 of the French version the words "*pénètre sur*" should be replaced by the words "*entre dans*".

25. Mr. CASTRÉN and Mr. REUTER agreed.

26. The CHAIRMAN said that if there were no objection the words "*pénètre sur*" would be replaced by the words "*entre dans*" in paragraph 1 of the French version.

*It was so agreed.*

27. Mr. USHAKOV asked whether, in the second sentence of paragraph 2, the words "in the exercise of his functions" should not be replaced by the words "in the performance of his tasks".

<sup>5</sup> See *Yearbook of the International Law Commission, 1970*, vol. II, document A/8010/Rev.1, chapter II, section B.

<sup>6</sup> See 1126th meeting, para. 88.

<sup>7</sup> Formerly article 106.

28. Mr. ROSENNE said that, while it was appropriate to refer to the "tasks" of a delegation, the correct word to use in the present context was "functions" because paragraph 2 of article 68 referred to the functions of an individual member of a delegation and not to the tasks of the delegation itself.

29. Mr. USHAKOV said he accepted that explanation.

30. The CHAIRMAN put article 68 to the vote.

*Article 68 was adopted by 15 votes to none.*

#### ARTICLE 69

31.

##### *Article 69*

*End of the functions of the head of delegation or any other delegate or member of the diplomatic staff*

The functions of the head of delegation or of any other delegate or member of the diplomatic staff of the delegation shall come to an end, *inter alia*:

(a) on notification of their termination by the sending State to the Organization or the conference;

(b) upon the conclusion of the meeting of the organ or the conference.

32. Mr. AGO speaking on behalf of the Working Group, said that no significant change had been made in the text of article 69, which had formerly been article 114. A new title had been proposed.

33. The CHAIRMAN put article 69 to the vote.

*Article 69 was adopted by 16 votes to none.*

#### ARTICLE 70

34.

##### *Article 70*

*Protection of premises, property and archives*

1. When the meeting of an organ or a conference comes to an end, the host State must respect and protect the premises of the delegation so long as they are assigned to it, as well as the property and archives of the delegation. The sending State must take all appropriate measures to terminate this special duty of the host State within a reasonable time.

2. The host State, if requested by the sending State, shall grant the latter facilities for removing the property and the archives of the delegation from the territory of the host State.

35. Mr. AGO speaking on behalf of the Working Group, said that no change had been made in the text of article 70, which had formerly been article 116.

36. The CHAIRMAN put article 70 to the vote.

*Article 70 was adopted by 16 votes to none.*

#### PART IV. General provisions

#### ARTICLE 71

37.

##### *Article 71*

*Nationality of the members of the mission or the delegation*

The head of mission and members of the diplomatic staff of the mission, the head of delegation, other delegates and mem-

bers of the diplomatic staff of the delegation 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.

38. Mr. AGO, speaking on behalf of the Working Group, said that article 71 was the first article in Part IV (General Provisions). The only changes made in the text of the article were those necessary to consolidate the provisions of the former articles 11, 56 and 85.

39. The CHAIRMAN put article 71 to the vote.

*Article 71 was adopted by 16 votes to none.*

#### ARTICLE 72

40.

##### *Article 72*

*Laws concerning acquisition of nationality*

Members of the mission or the delegation not being nationals of the host State, and members of their families forming part of their household or, as the case may be, accompanying them, shall not, solely by the operation of the law of the host State, acquire the nationality of that State.

41. Mr. AGO, speaking on behalf of the Working Group, said that the only changes made in the text of article 72 were those necessary to consolidate the former articles 39 and 72 with the relevant provisions of article 104.

42. The CHAIRMAN put article 72 to the vote.

*Article 72 was adopted by 16 votes to none.*

#### ARTICLE 73

43.

##### *Article 73*

*Privileges and immunities in case of multiple functions*

When members of the permanent diplomatic mission or of a consular post in the host State are included in a mission or delegation, they shall retain their privileges and immunities as members of their permanent diplomatic mission or consular post in addition to the privileges and immunities accorded by the present articles.

44. Mr. AGO, speaking on behalf of the Working Group, said that article 73 was modelled on article 9, paragraph 2, of the 1969 Convention on Special Missions<sup>5</sup> and replaced the former article 107.

45. The CHAIRMAN put article 73 to the vote.

*Article 73 was adopted by 16 votes to none.*

#### ARTICLE 74

46.

##### *Article 74*

*Respect for the laws and regulations of the host State*

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities

<sup>5</sup> See General Assembly resolution 2530 (XXIV), Annex.

to respect the laws and regulations of the host State. They also have a duty not to interfere in the internal affairs of that State.

2. In case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from jurisdiction, the sending State shall, unless it waives the immunity of the person concerned, recall him, terminate his functions with the mission or the delegation or secure his departure, as appropriate. The sending State shall take the same action in case of grave and manifest interference in the internal affairs of the host State. The provisions of this paragraph shall not apply in the case of any act that the person concerned performed in carrying out the functions of the mission or the tasks of the delegation.

3. The premises of the mission and the premises of the delegation shall not be used in any manner incompatible with the exercise of the functions of the mission or the performance of the tasks of the delegation.

47. Mr. AGO, speaking on behalf of the Working Group, said that the only changes made in the text of article 74 were those necessary to consolidate the former articles 45 and 112 with the relevant provision of article 76.

48. The CHAIRMAN put article 74 to the vote.

*Article 74 was adopted by 16 votes to none.*

#### ARTICLE 75<sup>9</sup>

49.

##### *Article 75*

##### *Professional or commercial activity*

The head of mission and members of the diplomatic staff of the mission, the head of delegation, other delegates and members of the diplomatic staff of the delegation shall not practise for personal profit any professional or commercial activity in the host State.

50. Mr. AGO, speaking on behalf of the Working Group, said that the question whether members of a delegation should be placed on the same footing as members of a permanent mission in the matter of professional and commercial activities in the host State had been discussed in some detail at an earlier meeting.<sup>10</sup> The Working Group had reconsidered the question and had reached the conclusion that they should; but as a member of the Commission, he could not support that view unless the precise scope of article 75 was clearly explained in the commentary.

51. Mr. EUSTATHIADES said he shared Mr. Ago's opinion.

52. Mr. ROSENNE said that, while the provisions of article 75 were quite acceptable in the case of missions, they were not acceptable for delegations. There had been a long discussion on that subject in the Commission and the general feeling had been that delegations should not be treated in the same way as missions with regard to the question of the professional or commercial activities of their members.

53. He suggested that article 75 be referred back to the Working Group with instructions to examine the question with respect to missions and to delegations separately, so that the Commission could take separate decisions.

54. Mr. USHAKOV said he agreed that missions and delegations should not be treated alike, but he did not see how that view could be reflected in the wording of the article. The Commission should therefore state the principle in the article and explain in the commentary that it was possible to derogate from it. In any case, if the article were referred back to the Working Group, it would find it difficult to amend the text without precise instructions.

55. Mr. ELIAS said that nothing would be gained by referring the article back to the Working Group, since the Commission had no fresh points to place before it.

56. It would therefore be better to accept the principle as formulated in the article and explain the possibilities of derogation in the commentary.

57. Mr. EUSTATHIADES and Mr. CASTRÉN supported Mr. Elias's view.

58. Mr. YASSEEN said that the scope of an article should be defined by its text, not by the commentary.

59. Mr. BARTOŠ said he regretted that the new text of the article had not retained the proviso desired by several members of the Commission, consisting in the phrase "except with the prior consent of the host State". The principle should be applied strictly in the case of missions, but could be relaxed for delegations, in view of their temporary nature, if the host State needed to make the exercise of professional or commercial activity subject to its prior consent.

60. Mr. ROSENNE suggested that the Working Group consider the possibility of limiting article 75 to missions, for which there was no problem.

61. In the case of delegations, no similar provision was necessary, in view of the provisions of article 67, on nationals of the host State and persons permanently resident in the host State.

62. Mr. AGO said that in fact it was to be feared that adding the proviso of the prior consent of the host State would not solve the problem, since its consent might not be obtainable in time if the meeting was a short one. On the other hand, a person resident in the host State could not be expected to suspend his professional activities there for the period during which he was a member of a delegation of his State of nationality. It would therefore be better to drop the provision in the case of delegations and leave the matter to practice.

63. The CHAIRMAN suggested that article 75 be referred back to the Working Group for review in the light of the discussion on the understanding that any member of the Commission might submit concrete proposals to the Group.

*It was so agreed.<sup>11</sup>*

<sup>9</sup> Formerly articles 46, 76 and 113.

<sup>10</sup> See 1109th meeting, para. 107 *et seq.*

<sup>11</sup> Article 75 was subsequently deleted by the Working Group; see document A/CN.4/L.181.

## ARTICLE 76

64.

*Article 76**Entry into the territory of the host State*

1. The host State shall permit entry into its territory of
  - (i) members of the mission and members of their families forming part of their respective households, and
  - (ii) members of the delegation and members of their families accompanying them.
2. Visas, when required, shall be granted as promptly as possible to any person referred to in paragraph 1.

65. Mr. AGO, speaking on behalf of the Working Group, said that the only changes introduced in article 76 were those necessary to consolidate the former articles 27*bis*, 67 and Z (A/CN.4/241/Add.6, para. 4 under article 115).

66. The CHAIRMAN put article 76 to the vote.

*Article 76 was adopted by 16 votes to none.*

## ARTICLE 77

67.

*Article 77**Facilities for departure*

The host State shall, if requested, grant facilities to enable persons enjoying privileges and immunities, other than nationals of the host State, and members of the families of such persons irrespective of their nationality, to leave its territory.

68. Mr. AGO, speaking on behalf of the Working Group, said that the only changes introduced in article 77 were those necessary to consolidate the former articles 48 and 115 with the relevant provisions of the former article 77.

69. The CHAIRMAN put article 77 to the vote.

*Article 77 was adopted by 16 votes to none.*

ARTICLE 78<sup>12</sup>

70.

*Article 78**Transit through the territory of a third State*

1. If a head of mission or a member of the diplomatic staff of the mission, a head of delegation, other delegate or member of the diplomatic staff of the delegation passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return.

2. The provisions of paragraph 1 shall also apply in the case of:

- (i) members of the family of the head of mission or of a member of the diplomatic staff of the mission forming part of his household and enjoying privileges and immunities, whether travelling with him or travelling separately to join him or to return to their country;

(ii) members of the family of the head of delegation, of any other delegate or member of the diplomatic staff of the delegation who are accompanying him and enjoy privileges and immunities, whether travelling with him or travelling separately to join him or to return to their country.

3. In circumstances similar to those specified in paragraphs 1 and 2, third States shall not hinder the passage of members of the administrative and technical or service staff, and of members of their families through their territories.

4. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the host State. They shall accord to the couriers of the mission or of the delegation, who have been granted a passport visa if such visa was necessary, and to the bags of the mission or of the delegation in transit the same inviolability and protection as the host State is bound to accord.

5. The obligations of third States under paragraphs 1, 2, 3 and 4 shall also apply to the persons mentioned respectively in those paragraphs, and to the official communications and bags of the mission or of the delegation when they are present in the territory of the third State owing to *force majeure*.

71. Mr. AGO, speaking on behalf of the Working Group, said that paragraph 2 had been divided into two sub-paragraphs in order to mark the difference between members of the family of a member of the mission forming part of his household and members of the family of a member of the delegation who were accompanying him.

72. The CHAIRMAN put article 78 to the vote.

*Article 78 was adopted by 16 votes to none.*

73. Mr. USHAKOV said the Commission would remember the difficulties to which the use of the words "their States" had given rise in article 48, on precedence.<sup>13</sup> He noticed that paragraph 2 of article 78 used the expression "*rentrer dans leur pays*" in the French version, and he wondered whether it might not be possible to use the words "*leurs pays*" in article 17, at any rate for the French version.

74. Mr. REUTER said that "*leurs pays*" was certainly a broader term than "*leurs Etats*" and might be suitable.

## ARTICLE 79

75.

*Article 79**Non-recognition of States or governments or absence of diplomatic or consular relations*

1. The rights and obligations of the host State and of the sending State under the present articles shall be affected neither by the non-recognition by one of those States of the other State or of its government nor by the non-existence or the severance of diplomatic or consular relations between them.

2. The establishment or maintenance of a mission, the sending or attendance of a delegation or any act in application of the present articles shall not by itself imply recognition by the sending State of the host State or its government or by the host State of the sending State or its government.

<sup>12</sup> Formerly articles 43, 74 and 110.

<sup>13</sup> See 1133rd meeting, paras. 117-128.

76. Mr. AGO, speaking on behalf of the Working Group, said that article 79 merely consolidated the former articles 49 *bis*, 77 *bis* and 116 *bis*.

77. The CHAIRMAN put article 79 to the vote.

*Article 79 was adopted by 17 votes to none.*

#### ARTICLE 80

78.

##### *Article 80*

##### *Non-discrimination*

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

79. Mr. AGO, speaking on behalf of the Working Group, said that no changes had been introduced in the text of article 80, which merely consolidated the former articles 44, 75 and 111.

80. The CHAIRMAN put article 80 to the vote.

*Article 80 was adopted by 17 votes to none.*

The meeting rose at 11.5 a.m.

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### 1136th MEETING

*Wednesday, 14 July 1971, at 10.20 a.m.*

*Chairman: Mr. Senjin TSURUOKA*

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

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#### 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/Add.3)

[Item 1 of the agenda]

(continued)

#### THIRD REPORT OF THE WORKING GROUP

1. The CHAIRMAN invited Mr. Kearney, Chairman of the Working Group, to introduce its third report (A/CN.4/L.174/Add.3). He suggested that articles 81 and 82 and the proposed new sub-paragraph (3) *bis* of article 1, paragraph 1, be considered together.

ARTICLES 81 and 82, and new sub-paragraph (3) *bis* of article 1, paragraph 1

2.

##### *Article 81*

##### *Consultations between the sending State, the host State and the Organization*

If any dispute between one or more sending States and the host State arises out of the application or interpretation of the present articles, consultations between: (i) the host State, (ii) the sending State or States concerned, and (iii) the Organization or, as the case may be, the Organization and the conference, shall be held upon the request of any such State or of the Organization itself.

3.

##### *Article 82*

##### *Conciliation*

1. If the dispute is not resolved through the consultations referred to in article 81 within three months from the date of their inception, it may be submitted by any State party to the dispute to such procedure applicable to the settlement of the dispute as may be established in the Organization. In the absence of any such procedure, any State party to the dispute may bring it before a conciliation commission to be constituted in accordance with the provisions of this article by giving written notice to the other States participating in the consultations and to the Organization.

2. A conciliation commission will be composed of three members, of whom one shall be appointed by the host State, and one by the sending State. Two or more sending States may agree to act together, in which case they shall jointly appoint the member of the conciliation commission. These two appointments shall be made within two months of the written notice referred to in paragraph 1. The third member, the Chairman, shall be chosen by the other two members.

3. If either side has failed to appoint its member within the time limit referred to in paragraph 2, the Executive Head of the Organization shall appoint such member within a further period of one month. If no agreement is reached on the choice of the Chairman within four months of the written notice referred to in paragraph 1, either side may request the Executive Head of the Organization to appoint the Chairman within a further period of one month.

4. Any vacancy shall be filled in the same manner as the original appointment was made.

5. The Commission shall establish its own rules of procedure and shall reach its decisions by a majority vote. With the authorization of the General Assembly of the United Nations the Commission may request an advisory opinion from the International Court of Justice regarding the interpretation or application of these articles.

6. If the Commission is unable to secure agreement among the participating States on a resolution of the dispute within six months of its initial meeting, it shall prepare as soon as possible a report of its proceedings and transmit it to the parties and to the Organization. The report shall include the Commission's findings upon the facts and the law and its recommendations as to the course of action that should be followed to achieve an amicable settlement of the difference. The time limit for the preparation of the report may be extended by decision of the Commission. The report shall not be binding upon the participating States or upon the Organization.

7. Nothing in the preceding paragraphs shall preclude a conference from adopting any other appropriate procedure for the settlement of a dispute arising in connexion with the conference.