Document:-

A/CN.4/SR.1058

Summary record of the 1058th meeting

Topic:

Representation of States in their relations with international organizations

Extract from the Yearbook of the International Law Commission:-

1970, **vol. I**

that credentials should be submitted "one week before the date fixed". Lastly, the expression "opening of the session" was meaningless when applied to a body which was continuously in session.

56. In article 66, the use of the expression "in virtue of their functions" was dubious, since the functions of representatives of States to organs of international organizations could differ very widely, so that it was not correct to say that such representatives were authorized to adopt the text of a treaty in virtue of their functions. Moreover, article 66 was contrary to the practice by which only one representative was authorized to adopt the text of a treaty, and not all organs could do so. In the case of permanent missions, only the permanent representative had powers under article 14 to represent his State in the adoption of the text of a treaty, and not all treaties at that, but only a treaty between that State and the international organization to which he was accredited. In the case of conferences, the rule raised no difficulty if the conference was convened to adopt a treaty; but the situation was quite different if the conference was not convened to adopt a treaty, for in that case the representative of a State needed a special authorization. Furthermore, the adoption of a treaty and its signature were governed by different rules.

57. Consequently, in article 66, as in the previous articles, separate rules should be laid down for delegations to organs of international organizations and delegations to conferences. In the case in point, a single article should be drafted for delegations to conferences, stating the precise conditions under which the representative of a State participating in a conference might participate in the adoption, and sign the text, of a treaty.

58. Mr. AGO said that in his opinion articles 65 and 66 bristled with difficulties. He wished first to draw the Special Rapporteur's attention to the need to draft a text which was both consistent with practice and comprehensive; unless that were done, the Commission would have to be less ambitious and content itself with laying down a few rules on the status of permanent missions of member States.

59. With regard to article 65, he agreed with Mr. Rosenne and Mr. Ushakov that the matters contemplated in paragraphs 3 and 4 were completely different from those contemplated in paragraphs 1 and 2. In paragraph 1, the term "representatives" could denote not only representatives appointed to represent a State at a particular session of an organ of an international organization, but also permanent representatives appointed once and for all, who could also represent their State at a session of an organ of an international organization. It might happen, of course, that the same person acted in both capacities, but that would be pure chance. That situation should be taken into account in the drafting of the articles and the Special Rapporteur should therefore supplement paragraph 1 by referring to the two categories of person he had just mentioned.

60. With regard to the persons who could issue representatives' credentials, he considered, unlike Mr. Ushakov, that the list was justified, but he would ask the Special Rapporteur to examine very carefully the practice followed in international organizations.

61. Paragraph 2 of article 65 raised substantive difficulties; for although the rule laid down was justifiable in the case of representatives appointed to represent a State at a particular session of an organ of an international organization, the same did not apply to permanent representatives appointed once and for all, since they did not need credentials and consequently the rule in paragraph 2 could not apply to them.

62. He also had doubts about the application of article 65 to delegations to conferences. Although the position of those delegations was rather similar to that of delegations to a particular session of an organ of an international organization, he was inclined to think, like Mr. Ushakov, that a single provision would not suffice. Furthermore, the title of the draft articles was "Relations between States and international organizations" and he thought that was an additional reason why the rule laid down was not appropriate for delegations to conferences, even when they were convened by international organizations. It also seemed clear that in the case of conferences, notifications to the host State could be of an entirely different character according to whether the conference met only once or met regularly at the same place.

63. In article 66 two different situations were again involved: for in the case of treaties concluded by organs of international organizations the requirements for credentials were known beforehand, whereas in the case of treaties concluded at conferences the credentials required for negotiation were not the same as those required for the adoption of the Final Act and signature. Moreover, as Mr. Rosenne had pointed out, the case of conferences adopting resolutions also had to be considered.

The meeting rose at 1 p.m.

1058th MEETING

Thursday, 28 May 1970, at 10.15 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/227 and Add.1 and 2)

[Item 2 of the agenda]

(continued)

ARTICLE 65 (Credentials and notifications) and
ARTICLE 66 (Full powers to represent the State in the conclusion of treaties) *(continued)*

1. The CHAIRMAN invited the Commission to continue consideration of articles 65 and 66 in the Special Rapporteur's fifth report (A/CN.4/227/Add.2).

2. Mr. CASTAÑEDA said he supported the basic conception and general formulation of articles 65 and 66.

3. Paragraphs 1 and 2 of article 65 were based on the provisions of article 12,[1] but with two differences. The first was the addition of the words "or by an appropriate authority designated by one of the above", which covered the case in which the credentials were issued by an official other than a minister. The reason for that difference was that whereas it was logical to require credentials issued by a minister in the case of a permanent mission, which was at a high level, the situations covered by article 65 could be very different; it was quite common in the United Nations to accredit a representative to an organ of little importance. In those cases, the credentials were signed by the permanent representative, and consisted of a communication informing the organization that the person concerned had been appointed representative to the organ in question. Such a communication in fact constituted credentials in simplified form. The second respect in which article 65 differed from article 12 was that in the case of permanent missions, the communication of credentials to the organization and the host State was dealt with in a separate article, and rightly so, as that question related to a different legal situation, in which the two States and the organization were involved.

4. As to the proposed time-limit of one week for the communication of credentials, he saw no use in it. In United Nations practice the time-limit varied from twenty-four hours to two weeks; that being so, he thought it would not be appropriate to prescribe a time-limit of one week in article 65. Paragraph 2 might therefore be dropped, provided that the concluding words of article 12—"and shall be transmitted to the competent organ of the Organization"—were added at the end of paragraph 1.

5. Mr. Ago had referred to the difference between representatives to permanent organs and representatives to a session of an organ. It was true that in permanent organs a representative was usually appointed for the duration of the term of office of his country. It should be noted, however, that permanent organs usually met at stated intervals, unlike the Security Council, which could meet at any time. In a body like the Security Council, therefore, a representative needed permanent immunities, whereas a representative who merely came to Geneva for thirty days for the session of the Economic and Social Council did not need permanent immunities in that city; his situation was very much the same as that of a representative to a session of an organ.

6. Since the situation did not justify any difference in the treatment accorded to the representatives, the Special Rapporteur had very properly not established any difference in article 65.

7. It has been rightly pointed out that article 65 dealt with two different subjects, namely, credentials and notifications. He supported Mr. Rosenne's suggestion that the two subjects should be dealt with in two separate articles on the lines of articles 12 and 17.[2] Paragraph 4 should be dropped; it was devoid of legal content and merely mentioned a faculty which the sending State obviously possessed.

8. Article 66 raised a number of questions. It contained a rule that belonged more properly to the law of treaties. Nevertheless, he favoured its retention in the present draft because, unfortunately, the unity of the international legal order was not yet a reality. It was quite possible that the convention which would result from the present draft would not have the same parties as the Vienna Convention on the Law of Treaties.

9. He had been impressed by Mr. Rosenne's argument that the adoption of the text of a treaty was not legally different from a vote on its articles. If that argument were accepted, a representative would not need special credentials to adopt such a text. He himself had not fully made up his mind on that issue, but he was inclined to favour the retention of article 66. He would like to know Sir Humphrey Waldock's opinion on the point, however.

10. Mr. RUDA said he noted that the Special Rapporteur's intention in dealing with credentials and notifications in a single article had been to simplify the treatment of the two questions. But many of the problems confronting the Commission were due to that attempt to combine in one provision two subjects that could not readily be taken together, and he therefore supported the idea that they should be dealt with in separate articles.

11. If the term "representatives" in article 65, paragraph 1, were taken to have the same meaning as it had in article 62, paragraph 2, it would include advisers, technical experts and secretaries of delegations, in other words persons to whom credentials were not issued. That contradiction could be removed by omitting the words "of representatives to an organ of an international organization or to a conference convened by an international organization" in paragraph 1 of article 65, so that the paragraph would begin with the words "Credentials shall be issued either by the Head of State . . .".

[1] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 204.

[2] *Ibid.*, p. 209.

12. In paragraph 2, the words "and the names of the members of a delegation", which covered a matter outside the scope of article 65, should be deleted. The purpose of the paragraph was to state what authority credentials should be submitted to; the communication of the names of the members of a delegation was a matter of notification which should be dealt with elsewhere.

13. An attempt had been made in paragraph 3 to draft a very concise rule. Personally, he would prefer a more detailed text on the lines of article 17. In practice, the most important problem was to determine who enjoyed privileges and immunities and, for that purpose, detailed provisions were necessary.

14. He agreed that paragraph 4 should be deleted, but in that case paragraph 4 of article 17 would also have to be dropped.

15. The provisions of article 66 were almost identical with those of article 7, paragraph 2 (*c*) of the Vienna Convention on the Law of Treaties.[3] Subject to Sir Humphrey Waldock's views, he thought the article should be dropped.

16. Mr. BARTOŠ said that in trying to lay down, in article 65, a rule that would be applicable both to delegations to organs of international organizations and to delegations to conferences convened by international organizations, the Special Rapporteur had made a commendable effort at condensation, but he had been unable to avoid the pitfall of imprecision. The Special Rapporteur and the Drafting Committee should consider whether separate rules should be laid down for permanent representatives to an organ and representatives sent specially to one session of an organ. He agreed with Mr. Rosenne that the provisions in paragraphs 1 and 2 and those in paragraphs 3 and 4 should form two separate articles, since the former concerned relations between the States represented and certain international organizations, whereas the latter dealt with relations between the States represented and host States.

17. The rule set out in paragraph 1 brought up the question whether a rule in an international convention could give rise to constitutional powers. Could a head of State, head of government, minister for foreign affairs or other competent minister delegate to some other authority the right to issue credentials to persons representing the State in an organ of an international organization or at a conference, if there was a rule to the contrary in the State's internal law? His experience as a member of various credentials committees showed that the answer to that question was not always the same. It would therefore be advisable to allow the State concerned to rely on the rules of its internal law, and he suggested that the last part of paragraph 1 might be amended to read: ". . . designated by one of the above if that is allowed by the internal law of the State concerned and by the practice followed in the Organization." That would place the State represented and the international organization on an equal footing, and the Commission would be remaining within contemporary international law by preventing any interference with the constitutional law of States and by not obliging international organizations to change their practice.

18. He agreed with Mr. Ushakov's comments on the use of the expression "the names of the members" in paragraph 2.[4] The practice was to submit not only the names of the members of a delegation, but also the posts they held in the delegation and their titles. If a member of a delegation was called upon to perform certain functions, it was necessary to show that he satisfied the requisite conditions for performing them; hence, his competence must be stated.

19. With regard to the time-limit, he was glad the Special Rapporteur had used the expression "if possible," as that implied that it was not mandatory, but merely recommended. In conference practice States were free to change the composition of their delegations up to the last moment, since a delegate might die in the interval between his appointment and the beginning of the conference, or there might be a change of government during that interval. On the other hand, it was preferable that the communications in question should be made in advance, not only in the interests of the host State and the organizers of the conference, who needed to know the number of participants in order to make the necessary arrangements, but also in the interests of the other States represented, which sometimes decided on the membership of their delegations in the light of the composition of the delegations of other States. He therefore suggested that the phrase "not less than one week before" should be replaced by some such phrase as "as soon as possible".

20. He was not very satisfied with the words "the opening of the session of the organ", since some organs, such as the Security Council, were continuously in session. Not all States sat on the Security Council: many only attended meetings dealing with matters of direct concern to them, to which they sent special representatives, chosen according to the importance of the matter discussed.

21. The notifications provided for in paragraph 3 should concern the posts and titles of the members of delegations and reference could hardly be made to the notifications referred to in paragraph 2, since credentials were not notified: it was the representatives who submitted their credentials to the conference.

22. He was in favour of deleting paragraph 4, which did not lay down a legal rule, as it used the word "may". The provision might be of some value, however, if it were amended to provide that even if the sending State did not maintain diplomatic relations with the host State, it might send it the notifications mentioned.

23. With regard to article 66, he agreed with all the speakers who had drawn a distinction between the credentials required for establishing the text of a treaty and the credentials required for acceptance of that

[3] *United Nations Conference on the Law of Treaties, Official Records*, Documents of the Conference, document A/CONF.39/27 (United Nations publication, Sales No.: E.70.V.5).

[4] See previous meeting, para. 54.

text as a source of international obligations. At the first Conference on the Law of the Sea,[5] representatives of States had been asked to produce special full powers to sign the international instruments giving rise to obligations which had emerged from the Conference. Article 66 should therefore be made more specific in that respect, for if the Commission adopted an incomplete text it might create difficulties for States. Generally speaking, he thought it wrong to provide detailed solutions for some problems and not for others; the Commission should either confine itself to stating general principles or draw up a complete and detailed set of rules.

24. Mr. USTOR said that for the present he had no comments to make on article 65. With regard to article 66, he noted that paragraph (6) of the commentary stated that that article was based on the relevant provisions of article 7 of the Vienna Convention on the Law of Treaties. He wondered whether the Commission should include a provision which appeared in another multilateral treaty; it might be worth while to ascertain whether instances of copying provisions in that way were to be found in other multilateral treaties or whether article 66 represented the first instance of such a practice. As Mr. Yasseen had observed, if the rule was a sound rule, it should be spread.

25. He supported article 66 in principle, but would point out that, although it referred to the notion of "full powers", it did not define it. The term was defined, however, in article 2, paragraph 1 (*c*) of the Convention on the Law of Treaties. Since the terms "full powers" and "credentials" were apt to overlap, it might perhaps be well to add something to article 66, as otherwise it might be necessary to fall back on the definition in the Convention on the Law of Treaties.

26. Article 66 was concerned only with the adoption of the text of a treaty, whereas the Convention on the Law of Treaties had separate articles on adoption and authentication. Since article 10 of that Convention provided that the text of a treaty could be authenticated, *inter alia*, by the signature of "the Final Act of a conference incorporating the text", draft article 66 should perhaps include some reference to the signature of the Final Act, in order to avoid confusion.

27. The expression "full powers" in the title of article 66 seemed to refer to a process, whereas the same expression in article 2, paragraph 1 (*c*) of the Convention on the Law of Treaties referred to a document.

28. Mr. TESLENKO (Deputy Secretary to the Commission), replying to the questions raised by Mr. Rosenne and Mr. Bartoš, said that, at the Vienna Conference on the Law of Treaties and other codification conferences he had attended, the credentials representatives were required to produce for participating in the conference had been regarded as being sufficient for the signature of the Final Act. He had nevertheless cabled to the Office of Legal Affairs in New York asking whether there had been any cases in practice where, owing to the special character of a particular Final Act, additional powers had been required for its signature.

29. Mr. USTOR said that some special authorization might be necessary for the signature of a treaty, but that such an authorization might be included in the credentials.

30. Mr. TESLENKO (Deputy Secretary to the Commission) said that a distinction should be made between the Final Act of a conference and the instruments it adopted—conventions and, if necessary, protocols. No additional powers were required for signing the Final Act, but either a special authorization, or credentials specifying that the bearer was authorized to sign the instrument in question, were required for signing conventions and protocols.

31. Mr. ROSENNE said that there appeared to be some confusion in the Commission between "credentials" as such and "full powers" as such. Under the Convention on the Law of Treaties, "full powers" were the authorization by which an individual could assume obligations in one form or another on behalf of his State, including the kind of inchoate obligation which resulted from signature to be followed by ratification, whereas the term "credentials" related to the authorization of an individual to represent his State in an organ or at a meeting. It seemed to him that what both article 65 and article 66 were dealing with was something which in the course of time had become little more than a mere ornament, namely, the concept of "plenipotentiaries". Hence much confusion might be avoided if the Drafting Committee could revert to that time-honoured diplomatic conception and distinguish between the plenipotentiary or plenipotentiaries and other members of the delegation. Credentials would be required for the plenipotentiary, but probably no more than notification would be necessary for the other members.

32. Mr. BARTOŠ said that a distinction should be made between the capacities of representatives, according to whether they were acting as participants in a conference and signed the Final Act in that capacity, or acting as plenipotentiaries of a State on behalf of which they accepted an international obligation, even if that obligation was embodied in the text of the Final Act. In the latter case they must be furnished with special full powers as the representatives of States, not as participants in the conference.

33. Mr. ALBÓNICO said that articles 65 and 66 were both in Part IV, which dealt with delegations to organs of international organizations and to conferences convened by international organizations; basically, therefore, they both referred to delegations. The term "delegation" was defined in article 0, sub-paragraph (*a*), which stated that a delegation was "the person or body of persons charged with the duty of representing a State at a meeting of an organ of an international organization or at a conference". Article 62, paragraph 2, on the other hand, stated that the expression "representatives" included all "delegates, deputy delegates, advisers, tech-

[5] United Nations Conference on the Law of the Sea, Geneva, 24 February-27 April 1958.

nical experts and secretaries of delegations". It seemed to him, therefore, that article 65 should make clear who were representatives and who were members of delegations; it should specify the persons in whose favour the credentials were issued.

34. Paragraph 1 should state by whom the credentials were issued, but it should also take account of any specific rules which might be prescribed by an organ or conference.

35. In paragraph 2 there seemed to be some confusion between representatives and members of a delegation. As to notifications, he did not consider it important to lay down a time-limit; it would be sufficient to provide that they should be submitted within a reasonable time.

36. He thought that paragraphs 3 and 4 were necessary, since they obviously referred to two different cases. Paragraph 4 presumably referred to conferences held in a State other than that in which the organization had its headquarters.

37. Article 66 reproduced almost word for word article 7, paragraph 2 (*c*), of the Vienna Convention on the Law of Treaties. In his view, and as another member had pointed out, when a rule on a matter already existed in an international instrument of a generally normative character which had been adopted and ratified, there was no need to include a similar rule in another instrument; the latter instrument should be governed by the rules of general public international law. It was true that as yet there was no generally applicable international legal order, but, as a legal and scientific body, the Commission should try to establish what ought to be done rather than merely what was being done.

38. Mr. NAGENDRA SINGH said he agreed with all those members who had proposed that article 65 should be divided into two separate articles, one on credentials and the other on notifications. He also agreed that the term "delegations" would be better than "representatives", though if that change were made, article 62 would require a consequential amendment. In the context of article 66, however, he understood that a representative would be the head or deputy head of a delegation, but not any other member of the staff.

39. Article 65, paragraph 1, stated that credentials should be issued "either by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or by another competent minister or by an appropriate authority designated by one of the above". The practice of the specialized agencies appeared to differ in that respect, since he knew from his own experience that IMCO accepted credentials issued by an ambassador. He suggested, therefore, that the provision in paragraph 1 might be made more liberal by deleting the words "or by an appropriate authority designated by one of the above" and substituting the words "or by any other appropriate authority".

40. The suggestion had been made that the meaning of the word "practice" in the final clause of paragraph 1 should be widened so as to include not only the practice followed in the organization, but also that recognized under municipal law. That would lead to a very confusing and dangerous situation, since it was difficult to imagine who would settle conflicts arising between the law and practice of the organization and municipal law. He fully appreciated the importance of municipal law in binding the State concerned, but when a State adhered to the constituent instrument of an organization it was bound to make its laws conform to the needs of that organization. If a legitimate rule was adopted by the organization, or a practice established, a member State was bound to respect it. The introduction of municipal law as another governing element would lead to a multiplicity of factors regulating the subject and cause confusion. It would be better to limit the reference to practice to that of the organization and not add more conditions which, though legally justified, might lead to conflicts and confusion.

41. With regard to paragraph 2, he supported Mr. Castañeda's suggestion that the Commission should not prescribe any definite time-limit; it could adopt the formula used at the end of article 12[6] and merely say that the credentials "shall be transmitted to the competent organ of the Organization".

42. If paragraph 4 were deleted, it would also be necessary to delete paragraph 4 of article 17, which had already been accepted. It had been objected that that paragraph only added to the obligations of the sending State, but it should be noted that while the word "shall" was used in connexion with the organization in paragraph 3, the word "may" was used in paragraph 4. Again, he was not in favour of deleting paragraph 4 of article 17 and allowing paragraph 4 of article 65 to stand. The host State had to be informed of the position and if it was informed by both the organization and the sending State that would be helpful rather than otherwise; it was better to have two sources of information than one. No deletions were necessary.

43. Turning to article 66, he said that although the practice no doubt varied from time to time, he thought the article appeared to be in order. At the Brussels Diplomatic Conference on Maritime Law, for example, which had produced numerous conventions on maritime law, the right of representatives to sign without having full powers was admitted. In IMCO, on the other hand, representatives had to produce credentials stating explicitly that they had full powers to sign. The difficulty might be overcome by including some such phrase as "subject to the practice of those organs or conferences", though that condition was covered by article 3. On balance, he was inclined to think that representatives would generally be allowed to sign without there being any specific mention of full powers in their credentials.

44. Mr. KEARNEY said that, as a result of the discussion, he agreed with Mr. Ushakov that it was necessary to distinguish between conferences convened by international organizations and meetings held by organs of such organizations. Those conferences and meetings

[6] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 204.

were of a different character and involved different problems of credentials and notifications.

45. In article 65, paragraph 1, the phrase "by an appropriate authority designated by one of the above if that is allowed by the practice followed in the Organization" created certain difficulties, since it was not clear to what that phrase referred. The problem was whether it referred to the "relevant rules of the Organization" mentioned in article 3, since paragraph (5) of the commentary to that article[7] stated that the expression included the practice prevailing in the organization. Perhaps it would be better to put it another way and say "or in any other manner allowed by the practice of the Organization". In the case of conferences, however, it might be necessary to be more precise, since they generally had no specific rules on the matter.

46. Various members had questioned the value of transmitting notifications to the host State. On the basis of the experience of his own Government, he would say that such notifications were most valuable, particularly when received well in advance, since they enabled the host State to prevent unpleasant incidents. On one occasion, a foreign diplomat who had been withdrawn from Washington as *persona non grata* had unexpectedly turned up in New York as a member of a permanent delegation, without any notification being given to the United States Government.

47. He considered article 66 to be of only marginal value; in any case, its title should be changed. In reply to Mr. Ustor's inquiry about the practice of using the same article in different conventions, he could say that the Inter-American Convention on Human Rights, signed at San José, Costa Rica, in November 1969, had provided that the provision on reservations in that convention should be the same as that contained in the Vienna Convention on the Law of Treaties. There were other precedents, particularly in connexion with intellectual property.

48. Mr. REUTER said that he would not speak on article 65, since other members of the Commission had made the comments he had intended to make.

49. He had no objection to article 66 being deleted if the Commission thought that desirable. If it were to be retained, however, he thought it should be amended as suggested by Mr. Ustor and Mr. Kearney; moreover, he was greatly perplexed about its substance. It was true that the article contained a provision reproduced almost word for word from the Vienna Convention on the Law of Treaties, but, as was well known, only a few brief provisions of that Convention were concerned with international organizations and the problem of their treaty relations. Those provisions could not appropriately be inserted in a text devoted essentially to international organizations, because they would be seen in quite a different light and have quite a different significance in the context of the other articles. Consequently, if the Commission wished to avoid casting doubt on the actual effect of the relevant articles of the Convention on the Law of Treaties, it should either remain wholly silent on the point or decide to examine the problem and not content itself with a single provision of that Convention. The reason had been given by Mr. Bartoš: representatives to a conference, and especially representatives to an organ, acted as representatives of States, in other words as persons whose powers were determined solely by States. In the case of a conference, it would be absurd to say that delegates were representatives at the conference but had no authority to adopt the text which was the outcome of the negotiations. The provision in article 66 was therefore unnecessary.

50. In the case of organs the provision was misleading, for it was inconsistent to speak of representatives "to" an organ and of a text adopted "in" that organ; the two cases were entirely different. A distinction must be made between representatives to certain organs who acted as representatives of States, and persons who were members of an organ and were subject to its rules. In the latter case, it was perfectly clear that it was not by virtue of their functions as representatives of States that such persons could adopt a treaty, but rather in their capacity as members of the organ, if the adoption of international instruments lay within its competence. The wording of article 66 was ambiguous in that respect, as it implied that any organ of an international organization was by its nature competent to adopt treaties, which was not the case. While that problem caused no difficulties in most of the larger organizations, it did raise considerable difficulties in other organizations, where it was not always clear whether, as a result of the meeting of an organ, the persons concerned, meeting in a kind of conference, had adopted the text of a convention as representatives of States, or whether it was the organ itself which, after deliberation, had adopted a text that was merely an act of the organ. That was a very real situation which gave rise to constant difficulties in the European Communities.

51. Consequently, if article 66 was retained, it would be better to say nothing about representatives to a conference, since the rule was self-evident. As to the rule concerning representatives to an organ, the Commission should be extremely precise: it should state the reservation concerning the relevant rules of the organization, and not employ the expression "in virtue of their functions", which was ambiguous.

52. The CHAIRMAN, speaking as a member of the Commission, said that two questions should be considered in connexion with article 65: Who should issue the credentials referred to in paragraph 1? And was it necessary to include a reference to the relevant rules of the Organization? In regard to the second question it had been suggested that a reference should also be included to the constitutional law of the host State.

53. Paragraph 2 dealt with the submission of credentials, but it had been rightly objected by some members that the idea of notification, which was implicit in that paragraph, tended to complicate the issue. Some members had questioned the need for specifying a time-limit and had suggested that the Commission adopt the language of article 12, but he thought it would be diffi-

[7] *Ibid.*, pp. 197-198.

cult to adopt that article *in toto*, because of the phrase "or by another competent minister".

54. Mr. Ago's idea of an intermediate stage between paragraphs 1 and 2[8] might be adopted, but it might then be necessary to redefine the word "representatives" when dealing with articles 62 or 0. Alternatively, some other term might be used, such as the word "plenipotentiary" suggested by Mr. Rosenne, but the Commission should be cautious about introducing new terms.

55. It appeared to be the general view that the question of notifications, the subject-matter of paragraphs 3 and 4, could best be dealt with in a separate article on the lines of article 17.

56. He agreed with those members who thought that article 66 would be acceptable if amended as suggested by Mr. Reuter and Mr. Ago. He did not favour deleting the article altogether, because the principle underlying it was highly important for the law of international organizations.

The meeting rose at 1 p.m.

[8] See previous meeting, paras. 58-63.

1059th MEETING

Friday, 29 May 1970, at 9.40 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/227 and Add.1 and 2)

[Item 2 of the agenda]
(continued)

ARTICLE 65 (Credentials and notifications) and
ARTICLE 66 (Full powers to represent the State in the conclusion of treaties) *(continued)*

1. Mr. EL-ERIAN (Special Rapporteur), summing up the discussion on articles 65 and 66, said there was general agreement in the Commission that credentials and notifications should be dealt with separately. There should also be a detailed list of the notifications to be made, as there was in article 17,[1] in order to meet Mr. Ushakov's objection that the information called for in article 65 was inadequate.

2. It had been pointed out that it was difficult to deal jointly with delegations to organs and delegations to conferences; it might be necessary to draft separate provisions, and possibly even separate chapters, for the two kinds of delegation.

3. The question of credentials had also raised the problem of who were representatives and what was a delegation. During the discussion of article 62,[2] Mr. Bartoš had objected that all the persons described as "representatives" in paragraph 2 of that article would hardly be entitled to privileges and immunities. He (the Special Rapporteur) had therefore agreed to delete that paragraph and to include an article which would define representatives as persons authorized by the sending State to represent it to the organ of an international organization. A delegation would be deemed to be composed of one or more representatives and might also include administrative, technical and service staff. As to credentials, he suggested that only representatives who voted should be required to have them; that should be subject, however, to the organization's rules of procedure or to the verification of credentials by its Credentials Committee.

4. Some doubt had been expressed as to whether the words "another competent minister" should be used in connexion with the issuing of credentials; it had been suggested that the situation would be adequately covered by the phrase "an appropriate authority". His view was that the present formulation should be retained, since otherwise it would be necessary to delete the phrase "another competent minister" in article 12. In any case, the Commission should await the views of governments and put the paragraph into final form at its next session.

5. Mr. Kearney had expressed some misgivings about the expression "the practice followed in the Organization", but he thought that the issue of credentials was governed more by the practice than by the rules of procedure or the constituent instrument of an organization. The question would, of course, be reconsidered on second reading, but he personally did not share Mr. Kearney's fears.

6. Instead of the time-limit provided for in paragraph 2, Mr. Bartoš had suggested some such wording as "as soon as possible", but it seemed to him that from a practical point of view it would be useful to remind governments that credentials must be submitted, if possible, not less than one week before the date fixed for the opening of the session.

7. A number of members wished to delete paragraph 4. The same situation had arisen in connexion with article 17 (formerly article 15) at the twentieth session,[3] but it had been finally agreed that the sending State should be given the option of transmitting notifications to the host State. If paragraph 4 of article 65 were

[1] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 209.

[2] See 1052nd, 1053rd and 1054th meetings.

[3] See *Yearbook of the International Law Commission, 1968*, vol. I, pp. 147-148 and 240-242.