

Document:-  
**A/CN.4/SR.1059**

**Summary record of the 1059th meeting**

Topic:  
**Representation of States in their relations with international organizations**

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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<sup>1</sup> 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.

<sup>1</sup> 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. Castién, 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,<sup>1</sup> 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,<sup>2</sup> 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,<sup>3</sup> 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

<sup>2</sup> See 1052nd, 1053rd and 1054th meetings.

<sup>3</sup> See *Yearbook of the International Law Commission, 1968*, vol. I, pp. 147-148 and 240-242.

<sup>1</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 209.

deleted, it would be necessary to explain why the corresponding paragraph of article 17 had been retained.

8. Mr. Yasseen, supported by some other members, had objected that article 66 was already covered by article 7 of the Vienna Convention on the Law of Treaties<sup>4</sup> and that it was unnecessary to repeat that provision. But as the same States would not necessarily be parties to both instruments, he (the Special Rapporteur) considered that the present draft should be as self-contained as possible, without, of course, contradicting anything in the Convention on the Law of Treaties. After all, some of the General Assembly's rules of procedure repeated certain provisions of the Charter.

9. The CHAIRMAN suggested that articles 65 and 66 be referred to the Drafting Committee.

*It was so agreed.<sup>5</sup>*

#### ARTICLES 67 and 68

10.

##### *Article 67*

##### *Size of the delegation*

The size of a delegation to an organ of an international organization or to a conference convened by an international organization shall not exceed what is reasonable and normal, having regard to the functions of the organ or conference, the needs of the particular delegation and the circumstances and conditions in the host State.

##### *Article 68*

##### *Precedence*

Precedence among heads of delegations to an organ of an international organization or to a conference convened by an international organization shall be determined by the alphabetical order, in accordance with the practice established in the Organization.

11. Mr. EL-ERIAN (Special Rapporteur) said that article 67 was based on article 16.<sup>6</sup> Delegations to organs of general competence, such as the General Assembly of the United Nations or the assemblies or conferences of the specialized agencies, were necessarily much larger than delegations to organs dealing with a limited subject. The same applied to delegations to large conferences like the United Nations Conference on the Law of the Sea, which had had five committees.

12. Article 68 corresponded to article 19.<sup>7</sup> The Commission would remember that during its twentieth session the Secretary-General had summarized the position in the United Nations in a note dated 3 July 1968.<sup>8</sup> He himself had obtained some information from the legal

advisers of the International Labour Organisation, the International Atomic Energy Agency and the Universal Postal Union. The general rule appeared to be that heads of delegations took precedence according to their rank; in case of equality of rank, they took precedence in alphabetical order, though heads of delegations who served as chairmen of committees were generally given special precedence.

13. Mr. TAMMES said that since the phrase "reasonable and normal" already appeared in the Conventions on diplomatic and consular relations, as well as in article 16 of the draft articles on permanent missions, it could not be omitted from article 67. It was particularly necessary because delegations to major conferences and to organs of general competence, such as the General Assembly, often included a large number of persons who were entitled to the facilities, privileges and immunities referred to in article 69.

14. Yet although he could, in principle, accept an article based on article 16, he had certain doubts about the drafting of article 67, particularly in regard to the word "functions", which in the context of an organ of an international organization seemed to him to refer to a definite place and a lasting role in some institutional machinery, whereas in the context of a conference it would seem to fall outside that framework and refer rather to a specific task to be performed. That was perhaps a minor point, but it must be borne in mind that a conference, even if convened by an international organization, had a legal status of its own.

15. Mr. KEARNEY suggested that the difficulty referred to by Mr. Tammes might be remedied by some such phrase as "having regard to the functions of the organ or the purposes of the conference".

16. With regard to article 68, if an organ had a specific practice according to which precedence was accorded on the basis of the time and date of the submission of credentials, there seemed to be no reason why that practice should not be followed rather than alphabetical order; but the phrase "shall be determined by the alphabetical order, in accordance with the practice established in the Organization" appeared to make the use of alphabetical order mandatory and to relegate the practice of the organization to second place. From a strictly logical point of view, that raised certain difficulties which required clarification.

17. Mr. RUDA said he agreed with the substance of article 67, which, like article 16, established the principle that the sending State was free to decide the number of members in its delegation. The rule of conduct laid down in those two articles applied to the sending State and not, like article 11 of the Vienna Convention on Diplomatic Relations,<sup>9</sup> to the receiving State.

18. He was rather concerned, however, about the problem of consultations on the size of the delegation. At the twenty-first session, the Commission had adopted article 50, on consultations between the sending State, the host State and the organization, but had deferred its

<sup>4</sup> *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).

<sup>5</sup> For resumption of the discussion, see 1061st meeting, para. 3 and 1073rd meeting, para. 99.

<sup>6</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 208.

<sup>7</sup> *Ibid.*, p. 211.

<sup>8</sup> *Ibid.*, p. 163.

<sup>9</sup> United Nations, *Treaty Series*, vol. 500, p. 102.

decision as to the position of that article in the draft.<sup>10</sup> Members should now begin to consider whether article 50 should not apply, not only to permanent missions, but to all the rest of the draft.

19. He agreed with Mr. Kearney that article 67 should refer to the "purposes" of the conference rather than its "functions".

20. He supported article 68. It was the first article to include the expression "heads of delegations to an organ... or to a conference"; a reference to "heads of delegations" might perhaps be usefully included in other articles as well.

21. Mr. CASTRÉN said that as the delegations referred to in article 67 were of a temporary character, it might perhaps not be advisable, either from the point of view of the host State or from that of privileges and immunities, to limit their size. It was true that in some organizations of a universal character, such as the United Nations, the number of delegates to the general assembly—but not the number of experts and secretaries—was limited, but those cases were covered by article 3. For conferences convened by international organizations the general practice recognized no restrictions and, even though a delegation to a conference was a kind of special mission and the Convention on Special Missions contained a provision similar to article 67,<sup>11</sup> there was an essential difference between the two kinds of mission, which lay in the bilateral character of special missions proper. Conferences convened by international organizations, on the other hand, concerned a number of States and so called for more liberal rules.

22. The wording of article 67 closely followed that of article 16, the only significant change being due to the difference between the situation of a delegation and that of a permanent mission to an international organization, as explained in the commentary.

23. Article 68 appeared to be generally acceptable, but it might be preferable, in the case of conferences, to follow the alphabetical order used by the protocol department of the State on whose territory the conference met, rather than the practice of the organization which convened the conference, as the Special Rapporteur proposed.

24. Mr. NAGENDRA SINGH said he supported the substance of articles 67 and 68, which closely followed the pattern and principle of previous corresponding articles. He agreed with Mr. Kearney that article 67 should refer to the "purposes" of the conference; alternatively, the word "functions" might be replaced by the words "nature of the activities".

25. He had no quarrel with the suggestion that article 68 should follow the precedent established in article 19, but he would point out that the question of the time and date of presentation of credentials was not as important in the case of conferences as it was

in that of permanent missions to international organizations of a universal character. All the delegations to a conference arrived together and left together. Either a sub-paragraph should be added dealing with conferences separately, or article 68 should be left unchanged.

26. He agreed with Mr. Ruda that article 50 should be made to apply to permanent observer missions, although, in view of the difference in nature between organs and conferences, it could hardly apply to delegations to conferences unless its scope was widened.

27. Mr. ROSENNE said that among the rules of procedure of international organizations which dealt with the size of delegations were rule 25 of the General Assembly, which used the words "as may be required by the delegation", rule 18 of the Economic and Social Council, which used the words "as may be required", and rule 1 of the Vienna Conference on the Law of Treaties, which used the same phrase. He believed that similar language should be used in article 67; he was not convinced that it should be so limitative as article 16.

28. He had the same difficulty as Mr. Tammes over the words "functions of the organ or conference". He wondered whether the real test was not the objectives pursued by the sending State in relation to the activities of the organ or conference at any given moment. During the United Nations Conference on the Law of the Sea, a certain vote taken by the First Committee on a critical issue had created a delicate political situation which had required his Government to make radical changes in the composition of its delegation. To replace the word "functions" by "purposes" would not cover the purposes of the sending State.

29. The phrase "the circumstances and conditions in the host State" was almost wholly irrelevant, since there was no analogy between article 67 and article 16. In the case of conferences, it would make a very great difference whether they were held in a city which was accustomed to act as a host to conferences or somewhere else. The different situations of delegations to conferences and delegations to organs should be dealt with on their merits; he would not exclude the possibility that article 67 might be drafted as two paragraphs or even as two articles. But the problem was not merely one of drafting technique; it would also be necessary to establish by inquiry whether the two types of delegations were really on the same footing.

30. He agreed with Mr. Ruda that article 50 should apply to the subject-matter of article 67. It seemed to be the Special Rapporteur's intention that consultations should be held in the case of delegations both to organs and to conferences.

31. With regard to article 68, he maintained the general reservations he had expressed in 1968 concerning article 17 (later 19);<sup>12</sup> the whole question of precedence was susceptible of so many interpretations that he doubted whether article 68 served any useful purpose. The title, at least, should be amended to limit

<sup>10</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10*, p. 18.

<sup>11</sup> *Ibid.*, Supplement No. 30, p. 100, article 8.

<sup>12</sup> See *Yearbook of the International Law Commission, 1968*, vol. I, p. 243, para. 66.

the article to precedence among heads of delegations. Moreover, he questioned whether United Nations practice was adequately reflected in the last sentence of paragraph (3) of the commentary, which stated that "In both cases a certain precedence is accorded to heads of delegations who serve as chairman of a committee of the organ concerned".

32. When the Committee of Experts for the Progressive Codification of International Law, a forerunner of the International Law Commission, at its meeting on 21 January 1926, had discussed the same problem as that dealt with in article 68, it had decided to replace the expression "rank and precedence" by "order of delegations".<sup>13</sup> The Drafting Committee might perhaps consider whether the same question did not arise at the present time.

33. Mr. YASSEEN said that he approved of article 67 in principle; it was flexible, laid down acceptable criteria and covered every aspect of the matter. The Commission was not drawing up the rules of procedure of a conference or an international organization, but stating a general rule which took account of all the factors involved. It was essential, therefore, to consider the host State, which accepted a large number of obligations in that capacity, but should not be required to assume obligations not connected with the performance of international functions. Article 67 set reasonable criteria, in particular that of the needs of the delegation, which might vary at different times and from one delegation to another. He did not agree with Mr. Kearney that the article should refer to the "purposes" rather than the "functions" of a conference. The term "functions" was readily understandable and conveyed the object of the article very well. He was, however, prepared to accept any drafting improvements the Drafting Committee could suggest.

34. With regard to article 68, it might be advisable not to limit it to precedence among heads of delegations, but to make provision for precedence among the other delegates as well. The alphabetical order was necessary, in any event, but there were exceptions nevertheless, both at conferences and in organs of international organizations, so it would be well to refer not only to the practice followed in the organization with regard to the use of alphabetical order, as the proposed text implied, but also to the practice establishing certain exceptions, for example, when delegates accepted certain positions in an organ or at a conference.

35. The Special Rapporteur had mentioned precedence among heads of delegation of the same rank. He would appreciate it if the Special Rapporteur would say whether treatment differing with the personal rank of a head of delegation would not be incompatible with the sovereign equality of States.

36. Mr. USHAKOV said he approved in principle of the idea underlying article 67, but the article should be divided into two parts to take account of the two differ-

ent situations it dealt with: two different rules could not be stated in one and the same formulation. That also applied to article 68, in which the word "delegation" did not mean the same thing when applied to a conference as it did when applied to an organ. In the case of a conference, the definition of the word did not raise any difficulty, but the Commission had not yet defined what it meant in the case of an organ. The Special Rapporteur proposed that, in addition to a head of delegation or a representative, a delegation should comprise members of the diplomatic, administrative and technical staff, as well as members of the service staff and perhaps even private staff. But according to article I, paragraph (n),<sup>14</sup> the term "organ of an international organization" meant "a principal or subsidiary organ, and any commission, committee or sub-group of any of those bodies", so the composition of a delegation to an organ could hardly be the same in all those cases. Hence, until the meaning of the expression "delegation to an organ" had been clearly defined, it was impossible to talk of heads of delegation or of precedence among them, or even of the size of a delegation, which obviously could not be the same for a sub-group as for a larger organ.

37. Legal technique required that every rule must be precise and be susceptible of only one interpretation, otherwise it was not a rule. Consequently, all the terms used in a provision must be clearly defined, and they must be clearly defined again whenever the context changed. Conventions usually contained an article on the use of terms, and the Commission had considered it desirable to give a specific definition in the Convention on Special Missions of the meaning of such terms as "permanent diplomatic mission" and "consular post", which might seem perfectly comprehensible to the man in the street, but required strict definition for the purposes of the jurist.

38. Furthermore, every legal rule must provide either for a single course of action by a subject of law, or for several specific courses of action, or for a free choice between several possibilities. In the last case, the use of the word "or" in a legal text opened up, juridically, unlimited possibilities, which could only be restricted by practical considerations. For example, when it was provided in article 5 of the Convention on Special Missions that two *or more* States might send a joint special mission, that meant, legally, that a hundred States might send a joint special mission. When the Commission said in article 64 that the sending State might freely appoint the members of its delegation to an organ *or* a conference, it was stating a legally absurd rule, for the sending State was not defined in the same way in both cases: in one case it was a State which was a member of an organ and in the other a State participating in a conference. To introduce the principle of freedom of choice into that provision was tantamount to saying that a State which was a member of an organ might appoint the members of its delegation to a conference and vice versa. That showed why it was important to

<sup>13</sup> League of Nations document C.196 M.70 1927 V [C.P.D.I. 95 (2)], p. 114.

<sup>14</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 196.

define every term and not to use the word "or" in stating a rule applicable to a single course of action. Again, it was not permissible in legal drafting to lay down rules simply by reference to other rules which were applicable to different cases or themselves referred to other provisions even further removed from the text being prepared.

39. All those considerations prompted him to urge that the Special Rapporteur should prepare, for the Drafting Committee, as many articles as were necessary to make the rules stated absolutely clear, both for permanent observer missions and for delegations to organs and delegations to conferences.

40. Mr. RAMANGASOAVINA said he approved of the substance of article 67. The purpose of the provision was to limit the size of delegations to organs of international organizations or to conferences, and the Special Rapporteur had devised a formulation that was sufficiently flexible to allow for the diversity of such organs and conferences. The article was, however, merely indicative, since many States limited the size of their delegations of their own accord, because their resources were limited and the place where the organ or conference met was far from their territory. He agreed with other members of the Commission that the meaning of the provision was obscured by the fact that the word "functions" related both to the organ and to the conference; he would suggest redrafting to read: "having regard to the nature of the conference, the functions of the organ, the needs of the delegation and . . .".

41. He also approved of the substance of article 68, which confirmed the practice followed by organs of international organizations and by conferences. But in order to allow other considerations to be taken into account in determining precedence, he would suggest that the comma between the words "alphabetical order" and "in accordance" should be deleted and the conjunction "and" inserted in its place.

42. Mr. AGO observed that the two articles under consideration presented few difficulties. He had only two comments to make on article 67, which related to drafting. First, in the French version it would probably be better to speak of a delegation "*à un organe*" than a delegation "*auprès d'un organe*", in order to keep to the customary French terminology. Secondly, it should be clearly understood that the term "delegation" applied only to delegations to sessions and not to representatives permanently appointed to an organ.

43. He wondered, however, whether article 67 was really necessary. The Commission should not be led into drawing too close a parallel between delegations and permanent missions, whose situation raised special problems. It was true that permanent missions might sometimes be too large, but the problem was quite different in the case of delegations to sessions or organs of international organizations or to conferences. If they had a fault, it was rather that they were often not large enough. Consequently, the inclusion in the draft of a provision such as article 67 might give a false impression and frustrate the aim in view, which was to impress

upon States that they should send delegations of an adequate size. Another question about article 67 was who could invoke the rule it stated. Unless that was made clear, the article would not be of much value. He was prepared to agree to its retention, however, if the Commission wished it.

44. With regard to article 68, he would merely like the Special Rapporteur to make sure exactly what the present practice was, for it was his impression that in certain international organizations special precedence was given to ministers.

45. Mr. USTOR said that the subject-matter of articles 67 and 68 was generally regulated in the rules of procedure of organizations and conferences. The Special Rapporteur had singled out the more important of the rules usually applied and had incorporated them in those two articles so that they would serve as residuary rules in cases where the rules of procedure were silent.

46. The size of delegations was occasionally regulated in the rules of procedure, but only cursorily. As a general rule, the composition of the delegation of a sending State was not subject to any restriction. The residuary rule in article 67 would apply in all such cases and he could therefore understand Mr. Ago's doubts concerning the retention of the article.

47. If article 67 were to be retained, he thought greater stress would have to be placed on the needs of the sending State and of the particular delegation. He agreed with Mr. Rosenne that circumstances and conditions in the host State were of secondary importance, if indeed they were relevant at all.

48. Rules of procedure sometimes dealt with questions of the composition of delegations other than those relating to size, such as the rank of heads of delegation and, in some cases, the professional qualifications of representatives. For example, it had been provided that delegations to the General Assembly's commemorative session, marking the twenty-fifth anniversary of the United Nations, were to be headed, if possible, by Heads of Government. Nevertheless, he agreed with the Special Rapporteur that there was no need to lay down residuary rules to cover cases of that kind.

49. It was advisable to include an article on precedence, but it should be noted that there were other points involved besides those contemplated in article 68. One of them was the seating arrangement at meetings, which was usually in alphabetical order, sometimes with a system of rotation. Another was the rank of participants, especially senior officials.

50. He thought that articles 67 and 68 should be retained and the details left to the Drafting Committee.

51. The CHAIRMAN, speaking as a member of the Commission, said he recognized the drafting imperfections of article 67, but he still thought it necessary to include an article on the size of delegations. The words "having regard to the functions of the organ or conference" should be carefully scrutinized. The Drafting Committee should consider alternative wording such as a reference to the nature or purpose of the organ or conference rather than to its functions. On the other

hand, a strong case had not been made out for the deletion of the reference to "the circumstances and conditions in the host State". In view of the responsibility of the host State for the safety and welfare of the members of delegations, conditions prevailing in that State might warrant limitation of the size of delegations at any time.

52. The point made by Mr. Ruda in regard to article 50 was a valid one. The Drafting Committee would have to find an appropriate place for that article, possibly in Part I or at the end of the whole draft.

53. Article 68 was equally necessary, despite the problems it raised. Mr. Rosenne had referred to the League of Nations Committee of Experts for the Progressive Codification of International Law, and his point seemed to be that the question in article 68 was one not so much of precedence as of the order of delegations. Seating order, for example, was not a question of precedence. Nevertheless, some kind of rule on precedence was necessary, not only for ceremonial occasions, but also because it had a bearing on the contents of article 69.

54. A number of special cases had been mentioned by various speakers, but they could not all be included, and they could be dealt with appropriately in the commentary to article 68.

55. Mr. EL-ERIAN (Special Rapporteur) said that, except for two or three members, the Commission accepted that an article on the size of delegations was necessary. Despite the temporary character of delegations, problems did arise in practice with regard to their size. It had been said that the provisions of article 67 were more restrictive than the existing rules of procedure, but the reference to "the needs of the particular delegation" seemed to cover that point.

56. Rules of procedure generally regulated the number of representatives, but not the number of advisers, secretaries and other members of a delegation. Consequently, if no provision on the lines of article 67 were included, it would be possible for a sending State, without violating the rules of procedure, to commit abuses with regard to the number of other members of the delegation, such as advisers, who were not covered by those rules.

57. It had been generally agreed during the discussion that the word "functions" was not suitable where conferences were concerned. The Drafting Committee would consider the alternative words which had been suggested, such as "purposes" and "nature". It might perhaps be necessary to deal with delegations to organs and delegations to conferences in two separate paragraphs.

58. It seemed to be generally agreed that it would be useful to have an article on precedence, limited to heads of delegation. The concluding phrase in article 68, "in accordance with the practice established in the Organization", covered more than just the question of the alphabetical order to be used; as was shown by the comma which preceded it, it made the whole system of precedence subject to the practice established in the organization. The main point of the article was to stress

that the seniority rule was not applicable to organs or conferences. That rule was satisfactory where permanent representatives were concerned, but in the case of delegations to meetings of organs or to conferences, there might well be fifty representatives who submitted their credentials on the same day.

59. He agreed that article 50 should apply to the subject-matter of article 68. The Drafting Committee would have to consider placing article 50 in such a position as to show that its application was general.

60. Mr. Yasseen had inquired about the "case of equality of rank" mentioned in the penultimate sentence of paragraph (3) of the commentary. In United Nations practice, permanent representatives took precedence over permanent representatives *ad interim*; the precedence of permanent representatives among each other was determined in accordance with alphabetical order.

61. He had referred to the League of Nations Committee of Experts for the Progressive Codification of International Law in his first report;<sup>15</sup> the question considered by that Committee had not been identical with that dealt with in article 68.

62. The CHAIRMAN suggested that articles 67 and 68 be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*<sup>16</sup>

#### ARTICLE 69

63.

##### *Article 69*

##### *Facilities, privileges and immunities*

##### *Alternative A*

The provisions of Part II, Section 2, of the present articles shall apply, as appropriate, to delegations to organs of international organizations and to conferences convened by international organizations.

##### *Alternative B*

Representatives to organs of international organizations and to conferences convened by international organizations shall enjoy the following facilities, privileges and immunities:

(a) Immunity from any form of arrest or detention and from seizure of their personal baggage;

(b) Immunity from the criminal jurisdiction of the host State;

(c) Immunity from legal process of any kind in respect of words spoken or written and all acts done by them in their capacity as representatives;

(d) Inviolability of all papers and documents;

(e) The right to use codes and to receive papers or correspondence by courier or in sealed bags;

(f) Exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions;

(g) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

<sup>15</sup> See *Yearbook of the International Law Commission, 1963*, vol. II, p. 170.

<sup>16</sup> For resumption of the discussion, see 1077th meeting, para. 32.

(h) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also

(i) Such other privileges, immunities and facilities, not inconsistent with the foregoing, as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise as part of their personal baggage) or from excise duties or sales taxes.

64. Mr. EL-ERIAN (Special Rapporteur), introducing article 69, said that the facilities, privileges and immunities of delegations to organs of international organizations and to conferences convened by international organizations were governed by the Conventions on the privileges and immunities of the United Nations<sup>17</sup> and of the specialized agencies.<sup>18</sup> Those Conventions gave members of such delegations functional immunity, but not diplomatic immunity.

65. In the commentary to article 69 he had cited a number of authors; they were in general agreement that representatives to international conferences should enjoy full diplomatic status. He had also mentioned the Convention regarding Diplomatic Officers, signed at Havana in 1928.<sup>19</sup> It was significant that that Convention, though signed at a time when representatives to conferences had not acquired the prominence they now had, accorded them full diplomatic status.

66. With regard to the article on conferences proposed by the United Kingdom during the Sixth Committee's discussion of the draft Convention on Special Missions, it should be remembered that that Committee had not discussed the substance of the matter, but had only debated whether to include such an article in the draft Convention.<sup>20</sup>

67. He wished to urge the extension of privileges and immunities to delegations to organs and conferences. It was paradoxical that a cabinet minister or under-secretary of State representing his country at a United Nations meeting should have fewer privileges and immunities than a third secretary on the permanent mission of his country in New York. He was aware of the difficulties, especially in view of the large number of persons involved, and he had accordingly submitted two alternative texts. Under the brief text of alternative A, the provisions of Part II, section 2, would apply to delegations to organs of international organizations and to conferences convened by international organizations. The text stated that those provisions would apply "as appropriate". It was true that some members had criticized the use of that expression, but he saw no reason why the Commission should deny itself a drafting tool which could be useful in difficult circumstances. Besides, the expression "as appropriate" had been used by the United Kingdom delegation itself in its proposed article on conferences.

68. Alternative B was longer and regulated the matter on the lines of article V of the Convention on the Privileges and Immunities of the United Nations. There was an important difference, however. Under sub-paragraphs (a) and (b), representatives would be given full immunity from any form of arrest or detention and full immunity from the criminal jurisdiction of the host State. As far as civil proceedings were concerned, sub-paragraph (c) laid down that immunity was extended only in respect of words spoken or written and all acts done by representatives in their capacity as representatives, as in the Convention on the Privileges and Immunities of the United Nations.

69. Mr. BARTOŠ said that a large number of States were very unwilling to accept any extension of facilities, privileges and immunities, as the General Assembly debate on the articles on special missions had made quite clear. Although the Commission had been quite cautious in that case, some States had taken the view that it had nevertheless provided for unduly extensive privileges and immunities.

70. Alternative A for article 69 had the defect of being imprecise, in that it covered all members of the delegation regardless of their position within it; in other words, unlike the Convention on Special Missions, it did not distinguish between representatives, members of a delegation having diplomatic status, members of the technical and administrative staff and members of the service staff. Moreover, all those persons would have, under alternative A, more privileges and immunities than were accorded under any existing rule of diplomatic law relating to other kinds of State representation. Hence alternative A could be accepted only if it was stipulated that it applied solely to members of delegations belonging to certain categories. If the Special Rapporteur meant that delegations were composed of the persons who were regarded by the Convention on the Privileges and Immunities of the United Nations as being assimilated to representatives, that must be stated expressly in the article. Alternative B suffered from the same defect: it made no distinctions between the different classes of staff.

71. The Commission should declare, in principle, for one system or another, and decide the extent to which it wished to accord privileges and immunities to certain members of delegations. Otherwise, it would find itself in a very awkward position. For instance, if an international organization had not requested extensive privileges and immunities, would it have to be accorded all those listed in alternative B without having asked for them, or were those privileges and immunities to be regarded as a maximum, their extent in any specific case being determined by the constitution of the international organization concerned and the treaties it had concluded with the host State? That question should be settled. Personally he did not think that all the privileges and immunities listed were indispensable, but only those whose purpose was to ensure freedom of decision and expression within organs. In short, he thought the Commission should consider the privileges and immunities listed very carefully and set their limits most

<sup>17</sup> United Nations, *Treaty Series*, vol. 1, p. 16.

<sup>18</sup> *Op. cit.*, vol. 33, p. 262.

<sup>19</sup> League of Nations, *Treaty Series*, vol. CLV, p. 261.

<sup>20</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Annexes*, Agenda item 87, document A/7799, paras. 175-178.

explicitly; otherwise, it might either not grant enough to enable members of delegations to perform their functions, or grant too much.

72. Mr. USHAKOV said that alternative A was unacceptable, because of the expression "as appropriate"; it was not clear what meaning was to be ascribed to that expression or who could decide the question. The Commission's essential task was to codify existing rules and to state precisely what was appropriate and what was not. On that question the differences of opinion in the Commission were sometimes very marked and at the level of the whole international community they became absolutely insuperable.

73. Alternative B was not acceptable either. He must once again emphasize that the question of delegations to organs of international organizations and the question of delegations to conferences must be considered separately. Where privileges and immunities were concerned, it was necessary to distinguish between members of delegations and the delegations themselves, which was not done in the draft articles. A series of articles should therefore be drafted for each of those categories. The articles dealing with delegations to conferences should be based on articles 13, 14, 17 and 19 to 49 of the Convention on Special Missions, since delegations to conferences were analogous to special missions, and some further articles could be added if necessary. Articles based on the Convention on Special Missions should also be drafted for delegations to organs of international organizations, but the situation of such delegations differed from that of delegations to conferences, inasmuch as it could hardly be said that privileges and immunities could be extended to them as delegations.

74. The best course would be to draft articles concerning delegations to conferences and articles concerning delegations to organs of international organizations; then, on the basis of those texts, the Commission could decide whether any particular article was necessary or not. Perhaps the Special Rapporteur could undertake to submit such articles to the Drafting Committee. He himself was willing to help by submitting his ideas to the Drafting Committee, provided that it was free to submit to the Commission all the articles needed to regulate the two situations he had mentioned.

75. Mr. ROSENNE said he would like to have answers to two questions. The first related to the difficult choice between alternatives A and B for article 69 and more specifically to the last sentence of paragraph (7) of the commentary, which read: "Should the Commission prefer alternative B, additional provisions would be needed, e.g. concerning waiver of immunity, duration of privileges and immunities and persons covered by them other than representatives". He would like the Special Rapporteur to say which of the articles of the present draft he considered should apply if the Commission chose alternative B.

76. His second question related to Mr. Ushakov's suggested paper: would it not be preferable for such a paper to be submitted to the Commission itself, rather than to the Drafting Committee?

77. Mr. USHAKOV said the question was one for the Commission to decide.

78. The CHAIRMAN said that the Commission had always welcomed suggestions from its members, especially suggestions in writing. The texts submitted by the Special Rapporteur were the basis of the Commission's work, but if any member had alternative ideas, it would be appropriate for him to submit them to the Commission.

79. Mr. USHAKOV said that when the Commission had decided on the method to be adopted in dealing with article 69, it might be necessary to draft a number of new articles and that task would be best performed by the Special Rapporteur himself.

80. Mr. EL-ERIAN (Special Rapporteur) said he was always at the disposal of the Commission and would be willing to draft a set of provisions giving members of delegations to organs and conferences the same privileges as members of special missions. Such an approach, however, would mean giving them full diplomatic status. It would be better if the Commission discussed the question of principle first and decided on the general approach to article 69 before he undertook the preparation of those additional articles. He would reply later to the remaining questions which had been raised.

The meeting rose at 1.10 p.m.

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## 1060th MEETING

Monday, 1 June 1970, at 3.10 p.m.

Chairman: Mr. Taslim O. ELIAS

*Present:* Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

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### 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 69 (Facilities, privileges and immunities) (continued)

1. The CHAIRMAN invited the Commission to continue consideration of article 69 in the Special Rapporteur's fifth report (A/CN.4/227/Add.2).