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Summary record of the 1060th meeting

Topic:
Representation of States in their relations with international organizations

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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.

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.

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).

2. Mr. EL-ERIAN (Special Rapporteur) said that, in reply to questions asked at the previous meeting, he would give some additional explanations regarding the two alternatives he had put forward for article 69.

3. If the Commission decided to adopt alternative A, which gave representatives to organs and conferences the same privileges as permanent representatives, some adjustments would be necessary to adapt those privileges to their case. For example, exemptions of fiscal character, which presupposed a long sojourn, were not applicable to delegates to sessions of organs or to conferences.

4. If the Commission adopted alternative B, a number of additional provisions would have to be drafted to deal with such matters as waiver of immunity, duration of privileges and immunities and what persons other than representatives were entitled to those privileges and immunities: members of the family, for example. He had thought it best not to prepare those additional provisions until the Commission decided which of the alternatives it wished to adopt.

5. In paragraph (3) of the commentary, he had referred to the 1928 Convention regarding Diplomatic Officers.¹ Another interesting example was the Agreement of 17 August 1951 between the French Government and the United Nations regarding the sixth session of the General Assembly, which had been held in Paris that year; under that Agreement, representatives accredited to the Paris session of the General Assembly had been granted the same privileges, immunities, exemptions and facilities as were accorded to diplomatic officers accredited to the French Government.

6. Mr. CASTRÉN said that the provisions on the facilities, privileges and immunities of delegations to organs and conferences should be based strictly on the theory of functional necessity. It should also be borne in mind that, as a rule, the functions of those delegations were of relatively short duration, even as compared with those of special missions, not to mention that they differed in character from special missions. Consequently, such delegations could not be assimilated to special missions where facilities, privileges and immunities were concerned. Their status and that of their members also differed from the status of diplomatic missions and of permanent missions to international organizations and their members. It therefore seemed necessary to draw up special rules on the facilities, privileges and immunities to be accorded to delegations and their members, who did not need all the rights, freedoms and other advantages generally accorded to ordinary diplomats and to permanent representatives. Furthermore, several of the rules in articles 22 to 44² governing the legal status of permanent representatives could hardly apply to delegations and their members, because of the short time for which they remained in the host State.

7. In view of those general considerations, he could not accept either of the two alternatives proposed for

article 69. Alternative A, which was very liberal, seemed to go even further than alternative B, for it placed the delegations in question on the same footing as permanent missions, by making the provisions relating to the latter apply to them "as appropriate"—a phrase even more imprecise than the words "*mutatis mutandis*" used by the Special Rapporteur in some of the other articles of his draft. It was true that he proposed another reservation when he said, in paragraph (7) of the commentary, that if the Commission adopted alternative A, some adjustments would be needed, for instance, with respect to privileges and exemptions of a fiscal character. But the biggest lacuna in alternative A was that it only mentioned delegations, and did not mention the legal status of their members.

8. Alternative B was based mainly on the relevant provisions of the 1946 Convention on the Privileges and Immunities of the United Nations,³ which established a fairly liberal régime that might also be used, with some modifications, as a model for establishing the legal status of representatives to international conferences. The main difference between the Special Rapporteur's proposal and the Convention was that the Special Rapporteur, in sub-paragraph (b), proposed to grant representatives to conferences and delegates to organs full immunity from the criminal jurisdiction of the host State, whereas in the Convention, the immunity from jurisdiction was limited to words spoken or written and all acts done by representatives in their capacity as such. The Special Rapporteur stated in the commentary that authors generally agreed that representatives to international conferences enjoyed full diplomatic privileges, and that was also provided in the 1928 Convention regarding Diplomatic Officers. But he was reluctant to accept the Special Rapporteur's proposal regarding unlimited immunity from criminal jurisdiction. The immunity from any form of arrest or detention provided for in sub-paragraph (a) of alternative B seemed to him a sufficient safeguard to protect representatives, in the performance of their functions, against any unduly strict measures that might be taken by the host State.

9. If sub-paragraph (b) was retained, he would propose that in sub-paragraph (c), either the word "other" should be inserted before the words "legal process", or the reference should be to civil and administrative jurisdiction, since criminal jurisdiction had already been mentioned in the preceding paragraph.

10. As the Special Rapporteur said in paragraph (7) of the commentary, should the Commission prefer alternative B, additional provisions would be needed concerning such matters as waiver of immunity, duration of privileges and immunities and the persons covered by them other than representatives. Perhaps a provision corresponding to article 41, on nationals of the host State and persons permanently resident in that State, a provision corresponding to article 44, on non-discrimination, and certain provisions on the legal status of delegations themselves should be added. But he did not see any need to reproduce, with certain adjustments, all the

¹ League of Nations, *Treaty Series*, vol. CLV, p. 261.

² See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10*, pp. 4-15.

³ United Nations, *Treaty Series*, vol. 1, p. 16.

corresponding articles of the Convention on Special Missions.⁴

11. Sub-paragraphs (a) and (h) of alternative B overlapped, as both of them dealt with the régime applicable to the personal baggage of representatives. Sub-paragraph (i) might cause misunderstanding in that it seemed to provide for an ill-defined extension of privileges, immunities and facilities beyond what had already been specified in the previous sub-paragraphs; it might be thought that the provisions in sub-paragraphs (a) and (h) were sufficient and that sub-paragraph (i) could be deleted.

12. Mr. TAMMES said that neither of the two suggested alternatives was very simple. In alternative A, the formula "shall apply, as appropriate" did not cover all situations. For example, the provisions of article 40 (Privileges and immunities of persons other than the permanent representative and the members of the diplomatic staff) were not applicable *mutatis mutandis* to delegations to organs and conferences. If alternative B were chosen, a great many articles would have to be adapted. For example, explicit provisions would have to be included on the duration of privileges and immunities and the nationality of representatives. There was also the question of the duty of the host State to take all appropriate steps to prevent any attack on the person, freedom or dignity of representatives, referred to in article 30 of the draft. That duty had been the subject of a communication to the Commission from the President of the Security Council.⁵

13. There were really more than two options before the Commission. In view of the importance attached to immunity from criminal jurisdiction, alternative B should be divided into two further alternatives: one with and one without that immunity.

14. Three points should be borne in mind in examining the choice between the various possibilities: first, the distinction, if any, which it was proposed to make between categories of representatives within a delegation; second, the legal difference, if any, between representation in organs and representation at conferences; third, the authority of the principles underlying the United Nations Conventions in force, in relation to the ideas on which article 69 was based.

15. On the first point, it seemed to him that it would not be in accordance with existing practice to make the scope of privileges and immunities dependent upon a person's position in his delegation. Representatives, alternate representatives, experts and advisers normally worked in different subsidiary bodies of the organ or conference concerned; all of them spoke on behalf of their delegations, prepared drafts and voted. It was only the final formal vote which was cast by the representative or alternate. The work performed by the various members of a delegation was equally important and it was a condition of the final result that all the members of

a delegation should do their best to bring it about. No useful purpose would be served by making conditions more agreeable for one member of the delegation than for another.

16. On the second point, he believed that there was a difference between the legal situation of an organ and that of a conference. The presence of the seat of an organ in a country was an established fact regulated by an agreement with the host State, whereas the holding of a conference was subject to the specific consent of the host State, which could attach conditions to its consent. Even if alternative A were in force, article 5 of the draft⁶ would always make it possible for a State giving its consent to the holding of a conference to contract out of any general obligation to grant particular privileges and immunities.

17. On the third point, he believed that the basic idea underlying Article 105 of the Charter, the Conventions on the privileges and immunities of the United Nations and the specialized agencies⁷ and the Headquarters Agreement⁸ had not been altered by any different tendency in later agreements. On the contrary, the fact that the number of accessions to, and ratifications of, the general Convention was still increasing was an indication that the cautious approach to privileges and immunities of the late 1940s was far from obsolete.

18. Article IV, section 14, of the Convention on the Privileges and Immunities of the United Nations read: "Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded". The notion of complete immunity from criminal jurisdiction would hardly fit into such a scheme. It was a matter in which practical and factual considerations were more important than technical legal considerations. Even from the legal point of view it would be a semantic *tour de force*, in the case of persons who were members of a delegation of limited duration, to regard representative status as symbolic of the sovereignty of the sending State.

19. He favoured alternative B, but the inclusion of immunity from criminal jurisdiction should be reconsidered.

20. Mr. SETTE CÂMARA said that alternative A would accord unduly broad privileges and immunities, the only restriction being that introduced by the words "as appropriate". But who would decide what constituted "appropriate" privileges and immunities? If the

⁴ See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 99.

⁵ See 1054th meeting, para. 1.

⁶ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 198.

⁷ United Nations, *Treaty Series*, vol. 33, p. 262.

⁸ *Op. cit.*, vol. 11, p. 12.

decision were left to the host State—even in consultation with the organization concerned—that State would have excessive powers in deciding the status of representatives.

21. Privileges and immunities were always a delicate question and anyone who had had the experience of directing a mission, whether permanent or temporary, would agree that it was a question which it was desirable to settle in clearly defined terms. For that reason, he would prefer an enumeration of privileges and immunities. The enumeration in alternative B was an abridged version of the existing texts. If the Commission decided to choose that alternative, he would speak again on points of detail.

22. Mr. ALBÓNICO said that alternative B was based on the Conventions on the privileges and immunities of the United Nations and the specialized agencies and on Article 105 (2) of the Charter.

23. In contrast with the tendency of certain writers to advocate broader privileges, there was a marked trend in the opposite direction on the part of national courts. For example, the Chilean Supreme Court, in a judgement of 20 December 1969, had adopted a restrictive interpretation of the provisions on privileges and immunities in the Vienna Convention on Diplomatic Relations;⁹ the case had related to an offence begun in Chile by a diplomatic agent accredited to that country, but continued elsewhere when he had been transferred, and the Court had found that the Chilean courts had jurisdiction. He could cite numerous other decisions by courts in Latin American countries in which a restrictive approach to privileges and immunities had been adopted on the basis of the functional necessity principle. The 1928 Convention regarding Diplomatic Officers cited by the Special Rapporteur in paragraph (3) of the commentary had been drawn up at a time when the great expansion of international organizations of a universal character had not yet been foreseen.

24. Delegations to conferences and to sessions of organs had two well defined characteristics: their short duration and their specialized nature. In view of those characteristics, members of such delegations did not require the same privileges and immunities as permanent representatives; they only required what was necessary to enable them to perform their duties.

25. For those reasons, he favoured alternative B, subject to the inclusion of provisions on such matters as waiver of immunity, duration of privileges and immunities and duties of third States. On that basis, the Drafting Committee could prepare a set of articles that could be submitted to governments for their comments.

26. Mr. ROSENNE said there could be no doubt that article 69 was the most important in the present group of articles. That being so, the question arose whether it should not constitute a separate section, as was to some extent suggested in paragraph (1) of the general comments on Part IV (A/CN.4/227/Add.1).

27. The choice between the two alternative methods of approach was not easy; one of the difficulties was that practical and administrative convenience would have to be balanced against theoretical considerations. In discussing the whole question, it was necessary to bear in mind that the rules now being drafted were residuary rules by virtue of articles 3, 4 and 5, and would be resorted to only when no other rule applied. His own general position, which he had stated in 1968 during the general debate on the present agenda item,¹⁰ was that the time had come to try to evolve a more closely integrated system for the status, privileges and immunities of the different types of representative, on the basis of guidance furnished in the political organs. In that connexion, he drew attention to General Assembly resolution 2328 (XXII). Though headed "Question of diplomatic privileges and immunities", the agenda item concerned had included a sub-item dealing with the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, and the resolution envisaged a higher degree of uniformity than at present existed in the matter.

28. That view was supported by the statement of the Legal Counsel at the 1016th meeting of the Sixth Committee, in which he had said that the Secretary-General, in interpreting diplomatic privileges and immunities, would look to the provisions of the Vienna Convention on Diplomatic Relations in so far as they appeared relevant, *mutatis mutandis*, to representatives to United Nations organs and conferences.¹¹

29. During the discussion in the Sixth Committee on the United Kingdom proposal to include an article on conferences in the Convention on Special Missions,¹² it had been generally agreed that the Conventions on privileges and immunities, the Convention on Diplomatic Relations, the Convention on Consular Relations and the Convention on Special Missions should be placed on the same general level as precedents. Those instances gave a clear indication of the direction of political thinking on the matter and would justify the adoption of alternative A and the enunciation of a representative-functional approach. However, all the articles in Part II would need to be closely scrutinized before the final decision could be made.

30. Whichever alternative, as a matter of drafting technique, received the support of the majority in the Commission, it was clear that the details would have to be left for the Drafting Committee to work out and the task of that Committee would not be an easy one.

¹⁰ See *Yearbook of the International Law Commission, 1968*, vol. I, pp. 9-10.

¹¹ See *Official Records of the General Assembly, Twenty-second Session, Annexes*, Agenda item 98, document A/C.6/385, para. 4.

¹² See *Official Records of the General Assembly, Twenty-fourth Session, Annexes*, Agenda item 87, document A/7799, paras. 175-178.

⁹ United Nations, *Treaty Series*, vol. 500, p. 96.

31. He believed that it was a mistake to place all the emphasis on the privileges and immunities of representatives and their conduct; there should be some reference to the fundamental duties of the host State. None was to be found in the commentary, yet those duties formed the subject of article 29 of the Convention on Diplomatic Relations, article 40 of the Convention on Consular Relations,¹³ article 29 of the Convention on Special Missions and article 30 of the present draft. It was surprising that there was no reference to them in the concluding sentence of paragraph (7) of the commentary.

32. Failure to deal with the duties of the host State would be all the more likely to be misunderstood in view of the communication sent to the Chairman by the President of the Security Council on 14 May 1970. The Commission should send an answer drawing attention to the Commission's work on the subject and to the relevant provisions of the international conventions based on that work.

33. At the second reading, the texts of articles 1-49 should be adjusted so that they would not be so closely centred on permanent missions and could be made applicable to all representatives of States covered by the draft. The Drafting Committee might consider adopting the system followed in the Convention on Consular Relations in dealing with honorary consuls.

34. Certain provisions would be necessary regardless of the alternative adopted. For instance, a provision on the lines of article 9, paragraph 2, of the Convention on Special Missions would be needed, either to replace, or to be combined with, paragraph 4 of article 9 of the present draft; it should be expressed in general terms so as to cover all representative functions contemplated by the draft. An article corresponding to article 21 (Status of the Head of State and persons of high rank) of the Convention on Special Missions would also be needed. That would deal with the problem of a cabinet minister who headed a delegation and found that he was in theory entitled to more limited privileges and immunities than a counsellor or secretary from the permanent mission or permanent diplomatic mission who was a member of the same delegation.

35. He was not unduly disturbed by the difficulty of drafting articles to apply under the formula in alternative A. It would not be necessary to cover all possible violations; after all, representatives were not the kind of people who habitually committed offences.

36. Lastly, there was the question whether the differences between a meeting held at a headquarters city, such as New York or Geneva, and one held elsewhere were great enough to need to be reflected in the draft. That point might be covered by the idea that the draft articles constituted residuary rules.

37. Mr. AGO said that neither of the two alternatives was really satisfactory. Alternative A was a typical

example of *petitio principii* and should in any case be rejected. Some of the rules to which it referred, using the expression "as appropriate", were applicable, others were not and others, again, might be applicable with some changes. Thus it did nothing to solve the problems that arose.

38. Alternative B was also open to many objections. In any event, it was impossible to try to provide in one article for a single régime applicable to two different situations: that of representatives to organs who were appointed permanently and that of delegations to particular sessions of organs or to conferences, which were temporary. The situation of representatives to organs of international organizations was generally provided for in the rules of the organization, but that of delegates to a conference was not. Hence all the more attention should be devoted to the régime applicable to the latter. In any case, the scope of the facilities, privileges and immunities for representatives to organs proposed by the Special Rapporteur in alternative B was far more limited than that of the facilities, privileges and immunities accorded by the Swiss Government, for example—which was not one of the most generous—to representatives of States on the Governing Body of the ILO, the Executive Board of WHO and similar bodies, particularly with regard to personal inviolability and inviolability of residence, immunity from all jurisdiction and exemption from dues and taxes. There seemed to be no reason why that should be so. Furthermore, the meaning of sub-paragraph (i) was not clear. The Commission would be wrong to leave it entirely to the Drafting Committee to settle all those points, which were matters of substance. He appreciated that the Commission wished to speed up its work, but he urged further reflexion.

39. Mr. USTOR said he preferred the Special Rapporteur's alternative A, because he believed that representatives to organs and to conferences should have privileges and immunities very similar to, if not identical with, those of members of permanent missions. His preference was not based on purely theoretical grounds, but on the great body of material already in existence, including the Conventions on diplomatic and consular relations and the Convention on Special Missions, the provisions of which could be adapted, with the necessary changes, to the needs of article 69. In the case of Customs duties, for example, the delegations referred to in article 69, being of a temporary character, would not, of course, have the same requirements as permanent delegations. Nevertheless, the leading representatives, that was to say the head of the delegation and his alternates, should have the same basic rights as permanent representatives, such as personal inviolability and immunity from civil and criminal jurisdiction. As Mr. Ago had said, those were the basic rights which were recognized by Switzerland as a host State.

40. Mr. RUDA said there could be no doubt that with article 69 the Commission was entering on the most important part of the draft. The Special Rapporteur had submitted two alternative solutions for the very important problem of facilities, privileges and immunities, but

¹³ United Nations, *Treaty Series*, vol. 596, p. 296.

he (Mr. Ruda) felt bound to agree with Mr. Ago that neither was completely satisfactory. In paragraph (5) of the commentary, the Special Rapporteur had stated his position that the representatives in question should be accorded, in principle, and with particular reference to immunity from criminal jurisdiction, diplomatic privileges and immunities such as those accorded to members of permanent missions to international organizations. The Special Rapporteur had given two reasons for his position: first, that there was a tendency in contemporary international law to widen the scope of privileges and immunities in general and, secondly, that missions to organs and conferences were temporary in character and could therefore be roughly equated with the special missions of bilateral diplomacy. There appeared, however, to be certain contradictions in the Special Rapporteur's chain of reasoning; he could agree with him up to a point, but could not share his conclusions, and he feared that alternative A would not lead the Commission in the right direction.

41. The Special Rapporteur's alternative B was based on the Conventions on the privileges and immunities of the United Nations and the specialized agencies. Sub-paragraphs (a) to (h) said nothing about immunity from civil jurisdiction, but sub-paragraph (i) provided for "such other privileges, immunities and facilities, not inconsistent with the foregoing, as diplomatic envoys enjoy . . .". Yet article 31 of the Vienna Convention on Diplomatic Relations expressly provided that a diplomatic agent should enjoy immunity from the civil and administrative jurisdiction of the receiving State, subject to certain exceptions. What, then, was the legal situation of representatives under article 69 with respect to immunity from civil jurisdiction?

42. Mr. NAGENDRA SINGH said he preferred alternative B to alternative A. There were numerous sources for article 69, but the most important ones, and the ones which the Commission should take as its guide, were the Conventions on the privileges and immunities of the United Nations and the specialized agencies. Other sources of the law for article 69 were the Conventions on diplomatic and consular relations, the Convention on Special Missions, the draft articles on permanent missions and those already approved on permanent observer missions.

43. In the Convention on Diplomatic Relations, the representative character was paramount, whereas in the draft articles on permanent missions the functional aspect was the most important. In article 69, it was necessary to distinguish between the full representative, or head of delegation, and his advisory, administrative and service staff. To do so, the Commission should take article 37 of the Convention on Diplomatic Relations as a model. It was also of the greatest importance to specify clearly when privileges and immunities would begin and when they would end. Again, immunity from criminal and civil jurisdiction should be granted only for the duration of the conference and could not be expected to extend beyond that period.

44. In his view, the most important immunities which

should be included in article 69 were the inviolability of the representative's person, and of his documents, residence and correspondence, as provided for in articles 29 and 30 of the Convention on Diplomatic Relations. There was some overlapping between the provisions concerning immunities and facilities for personal baggage in sub-paragraphs (a) and (h) of alternative B. A provision on the lines of article 35 of the Convention on Special Missions could be inserted with advantage.

45. Mr. YASSEEN said that alternative A left unsettled the question how the facilities, privileges and immunities to be accorded in each case would be determined.

46. The method of enumeration used in alternative B should therefore be adopted, as it had been for permanent missions. But the enumeration should be exhaustive, and paragraph (i) was therefore inappropriate since it provided no means of determining what facilities, privileges and immunities were or were not inconsistent with what was required by the status of representatives to organs and delegations to conferences.

47. Instead of concerning itself with matters of detail, the Commission should discuss method, for only the adoption of an appropriate method would make it possible to break the deadlock. As members knew, he was an advocate of the functional theory. The facilities, privileges and immunities to be accorded should be determined by the functions of representatives to organs and delegations to conferences. All the provisions concerning permanent missions should be taken into consideration, those which were suitable should be retained and further provisions should also be considered if necessary. What was essential in the present instance, as it had been before in the case of permanent missions, was to make as complete an enumeration as possible of the facilities, privileges and immunities to be accorded to representatives to organs and to delegations to conferences. It was also necessary to include provisions on the status of those facilities, privileges and immunities.

48. The Special Rapporteur could do that work himself and submit a proposal to the Drafting Committee for consideration. It might perhaps be advisable to take as a guide the rules already accepted by host States, so that the draft would truly reflect international practice.

49. Mr. CASTAÑEDA said that, in weighing the comparative merits of alternatives A and B, it was necessary to consider what really reflected the practice of international organizations. He believed that, basically, those organizations granted the same privileges and immunities to delegations to organs and conferences as they accorded to members of permanent missions, with some exceptions. In alternative A, those exceptions were covered by the phrase "as appropriate", but, as Mr. Ago had rightly pointed out, that phrase begged the question. As suggested by the Special Rapporteur in paragraph (5) of his commentary, the exceptions appeared to derive from the temporary character of the task of the delegations in question.

50. On balance, he was inclined to prefer alternative A, subject to one or two exceptions, such as those relating to the exemptions of a fiscal character referred to in

paragraph (7) of the commentary. He also agreed with Cahier, quoted by the Special Rapporteur in paragraph 4 of his commentary, that the present trend should be towards uniformity in the status of *ad hoc* diplomacy, delegates to conferences and representatives of States to meetings of organs of international organizations.

51. Sir Humphrey WALDOCK said he was afraid that if the Commission adopted alternative A, the reaction of most governments would be that it had taken the line of least resistance and had not considered the problem in sufficient depth. He was no happier about alternative B, which, although it listed a number of exemptions, omitted others and concluded with a sweeping final clause, in sub-paragraph (i), which was open to almost any interpretation.

52. There appeared at present to be two contradictory trends with regard to privileges and immunities. The Special Rapporteur had emphasized the trend towards granting representatives to organs and conferences full diplomatic status, but it was also possible to observe a trend towards greater restriction of privileges and immunities. To his mind the question was one that could only be resolved by a careful study of existing practice; in particular, the Commission might obtain valuable guidance from a study of the practice in Switzerland, which must have had as much experience of the questions now before the Commission as any other State, if not more.

The meeting rose at 6 p.m.

1061st MEETING

Tuesday, 2 June 1970, at 9.40 a.m.

Chairman: Mr. Taslim O. ELIAS

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

Welcome to Mr. Alcívar

1. The CHAIRMAN welcomed Mr. Alcívar, who had been elected a member of the Commission to fill one of the casual vacancies caused by the election of two former members as Judges of the International Court of Justice.

2. Mr. ALCÍVAR expressed his gratitude to the members for electing him.

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]

(resumed from the previous meeting)

ARTICLE 66 (Full powers to represent the State in the conclusion of treaties) (resumed from the 1059th meeting)

3. Mr. TESLENKO (Deputy Secretary to the Commission) said that, during the discussion of article 66, the Secretariat had been asked whether credentials to participate in a United Nations conference had always been considered sufficient to empower a representative to sign the Final Act of the conference.

4. At the time, he had answered that to his knowledge such credentials had usually been considered sufficient for the signature of Final Acts, but that he was referring the question to the Legal Counsel, since a definite answer could only be given after studying the records of all United Nations conferences.¹

5. He had now received a cable from the Legal Counsel stating that in United Nations practice credentials to participate in a conference had always been considered sufficient for the signature of the Final Act, because the Final Acts of United Nations conferences had not embodied substantive obligations. Those Final Acts had always been of a purely formal character and the text of the instrument adopted at the conference had frequently been annexed to them. Even in the case of the Final Act of the 1964 United Nations Conference on Trade and Development, which contained various recommendations and principles, special credentials had not been required for signature. The Legal Counsel added that, in any event, article 66 reproduced *mutatis mutandis* the relevant portion of article 7 of the 1969 Vienna Convention on the Law of Treaties,² and he presumed that the United Nations would make its practice conform to that text.

6. He (Mr. Teslenko) wished to add that in some cases the treaty or convention adopted at a conference was not annexed to the Final Act, but was actually incorporated in it. That had been the case with the 1969 Vienna Convention on the Law of Treaties.

7. Mr. ROSENNE thanked the Deputy Secretary and the Legal Counsel for their enlightening replies to the questions raised by Mr. Bartoš and himself during the discussion of article 66. He suggested that, regardless of the decision which would be taken on article 66, the Commission should find some way of including the substance of those replies in the commentary.³

¹ See 1058th meeting, paras. 28 and 30.

² *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).

³ For resumption of the discussion, see 1077th meeting, para. 24.