

Document:-  
**A/CN.4/SR.1073**

**Summary record of the 1073rd meeting**

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

Extract from the Yearbook of the International Law Commission:-  
**1970, vol. I**

*Downloaded from the web site of the International Law Commission  
(<http://www.un.org/law/ilc/index.htm>)*

61. What should be reconsidered was perhaps the reference to succession in the case of States that had lost the competence to conclude treaties, which appeared for the time being in article 1 of the draft. While it was true that the Commission could leave certain situations aside entirely, from the standpoint of competence to conclude treaties, because there was no longer any question of permitting that competence to be impaired, it must not, on the other hand, overlook cases in which a State had retained the competence, but lost the physical capability of implementing certain treaties.

62. Territorial treaties should be regarded as including all treaties which affected a territory in one way or another, not only treaties which established frontiers.

63. Lastly, with regard to the hypothesis of a rule of *jus cogens* inserted in a treaty, it must not be forgotten that such a rule, even if it was stated in a treaty, remained a rule of general international law which was valid independently of the treaty containing it. Moreover, that observation should not be confined to rules of *jus cogens*. Conventions codifying international law often laid down rules which were already in force as customary rules. Hence, even if it was possible to derogate from those rules by treaty, in other words, even if they were not rules of *jus cogens*, observance of such rules was not a question of succession to a treaty, but a simple obligation of every State to obey the general rules of international law, wherever they might be stated.

The meeting rose at 1.10 p.m.

---

## 1073rd MEETING

Friday, 19 June 1970, at 10.20 a.m.

Chairman: Mr. Richard D. KEARNEY

Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Barotoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ramangasoavina, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, 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]

(resumed from the 1069th meeting)

1. The CHAIRMAN invited the Commission to resume consideration of item 2 of the agenda.

### DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (continued)

#### ARTICLE 61-B (Derogation from the present Part)<sup>1</sup>

2. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that article 61 B had been referred back to the Drafting Committee, which now proposed the following text:

##### Article 61-B

##### Derogation from the present Part

1. Nothing in the provisions of the present Part shall preclude the conclusion of international agreements between States and international organizations having different provisions concerning conferences.

2. The rules of procedure adopted by a conference may differ from the provisions contained in articles...

3. Mr. ROSENNE said it was not possible to adopt article 61-B in its present form. Paragraph 1 departed far too much from article 5<sup>2</sup> and there was no clear reason for that departure; paragraph 2 should be cast in such a way as to establish what was loosely called "the sovereignty of the conference". He therefore suggested that the two paragraphs be reworded on the following lines:

1. Nothing in the present Part shall preclude the conclusion of other international agreements having different provisions concerning representatives of States in organs or at conferences.

2. The provisions of articles ... apply only to the extent that the rules of procedure of a conference do not provide otherwise.

4. Since the two paragraphs dealt with entirely different matters, they should become separate articles.

5. In paragraph 1 he had used the words "other international agreements" without the qualification "between States and international organizations", because there might well be other relevant agreements. He had not limited the scope of the provisions to conferences, but had included representatives to organs as well.

6. His wording for paragraph 2 took into account the fact that the rules of procedure of a conference might well be adopted after the conference had begun. He assumed that the intention was to refer, in the space left blank, only to the articles on the composition and organization of delegations and not to those dealing with privileges and immunities, which were governed by paragraph 1.

7. The question arose whether the scope of paragraph 2 should be limited to conferences. The explanation of the difficulty was perhaps to be found in the fact that, as far as representatives to organs were concerned, the matter was really covered by article 3.

8. He had serious misgivings about the very imperfect drafting techniques being used in Part IV. That part was to some extent self-contained and to some extent intended to be dovetailed with other parts. Some of the

<sup>1</sup> For previous discussion, see 1069th meeting, paras. 48-68.

<sup>2</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 198.

difficulties could be overcome by transferring the provisions of article 00<sup>3</sup> from the beginning of Part IV to Part I, as an addition to article 1.

9. He wished to raise a much more serious problem, however. The provisions of article 61-B, and to some extent those of article 5, cast very serious doubt on the value of all the articles in Part IV, just as articles 3, 4 and 5, taken in the light of existing practice, cast doubt on all the articles in Part II.

10. A further question that arose was whether the Commission could submit the articles in Part III, especially those on privileges and immunities, to governments and to the General Assembly in their present form. It might be preferable to submit only those articles which were essential to the organization of permanent observer missions and to replace the others by an explanatory passage in the report. It could be explained that at the Commission's next session it was intended to adjust the articles adopted in 1969 so that they could apply equally to permanent missions and to permanent observer missions, subject to any special treatment that might be required for an article such as article 44.

11. A similar approach could be adopted with regard to the articles in Part IV dealing with delegations to organs and to conferences. The difficulties relating to that part were, however, much greater. The Commission really needed some indication of the views of governments and of the General Assembly.

12. The time had probably come for the Commission to take note of the terms of Article 105, paragraph 3, of the United Nations Charter, which read: "The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose".

13. Paragraph 2 of Article 105 dealt with the privileges and immunities of representatives of Members of the United Nations; the Commission should ascertain whether the General Assembly wished it to prepare a draft which would enable the Assembly to make a proposal under paragraph 3 of that Article.

14. Moreover, the real relationship was not clear between the articles now under consideration and the very large quantity of treaty arrangements made by international organizations. When that situation was taken into account it might well appear that the work the Commission was now engaged in was purely academic.

15. If his amendments to article 61-B were not accepted, he would request that its two paragraphs be put to the vote separately.

16. Mr. USHAKOV said that article 61-B was not very clear. The Drafting Committee had taken the view that articles 3 and 4 applied equally to delegations to organs and delegations to conferences. That was why, as now drafted, article 61-B appeared to be complementary only to article 5. But since that was not clear from the article, the Special Rapporteur should be asked to explain in

the commentary that articles 3 and 4 would be drafted in such a way as to apply to the whole of the draft, whereas article 5 concerned only the representatives of States to an international organization and had therefore to be supplemented by provisions relating to delegations to organs and to conferences.

17. Better wording should be found for paragraph 2.

18. Mr. EUSTATHIADES said that article 61-B raised a difficulty which might be overcome at a later stage in the Commission's work. It might therefore be better if the idea expressed in the article were developed only in the commentary. Since the Commission did not yet know the views of governments on variants A and B of article 69<sup>4</sup> and some time had elapsed since the debate on articles 3 to 5, the question was too complex to be decided without a lengthy fresh discussion.

19. Sir Humphrey WALDOCK said he thought that, on the whole, some such provision as article 61-B was necessary within the general structure of the draft, but with regard to the drafting, some of the suggestions put forward by Mr. Rosenne would require consideration.

20. Most of the other questions raised by Mr. Rosenne had been discussed already and the Committee was largely committed to presenting drafts on the topics of permanent observer missions and delegations to organs and to conferences. It was, however, difficult to see what the general aspect of the whole draft would be, and it might therefore be useful if the Secretariat could circulate an informal paper showing all the articles which had so far been adopted. That would make it possible to visualize the structure of the draft as a whole.

21. The CHAIRMAN said that the Secretariat would prepare an informal paper, as suggested by Sir Humphrey Waldock.

22. Speaking as Chairman of the Drafting Committee, he said that the articles to be mentioned in paragraph 2 would be those relating to the composition and structure of delegations, and to notifications; they would not include the articles on privileges and immunities.

23. With regard to the relationship to article 3, Mr. Rosenne was right in assuming that organs had not been mentioned in paragraph 2 because delegations to organs were covered by the terms of article 3.

24. As to the over-all problem raised by Mr. Rosenne, it was because of the pressure of time and the fact that the next session would be the last for the present membership of the Commission that it had been necessary to go ahead with the work in rather difficult circumstances.

25. In order to enable the Drafting Committee to consider the drafting proposals which had just been made, he suggested that the Commission defer its decision on article 61-B until later in the meeting.

26. Mr. ROSENNE said he was quite satisfied with that suggestion.

27. With regard to the articles to be mentioned in paragraph 2, he thought the question of notifications was a borderline case: notifications could affect privileges and

<sup>3</sup> See 1069th meeting, para. 10.

<sup>4</sup> See 1059th meeting, para. 63.

immunities and were usually not dealt with in rules of procedure. Any decision taken at the present meeting would be subject to the filling of the blank in paragraph 2.

28. With regard to Article 105 of the Charter, it was true that the Commission had discussed the matter, but it had not mentioned the point he had raised in any of its reports to the General Assembly.

29. The CHAIRMAN said that, if there was no objection, he would assume that the Commission agreed to defer its decision on article 61-B until later in the meeting.

*It was so agreed.*

#### ARTICLE Z (Privileges and immunities in case of multiple functions)

30. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article Z:

##### *Article Z*

##### *Privileges and immunities in case of multiple functions*

When members of a permanent diplomatic mission, a consular post, a permanent mission or a permanent observer mission in the host State are included in a delegation to an organ or to a conference, their privileges and immunities as members of their diplomatic mission, consular post, permanent mission or permanent observer mission shall not be affected.

31. The language of article Z was similar to that of the corresponding provisions in other conventions. Its purpose was to avoid the loss of privileges and immunities through service on a delegation to an organ or conference.

32. The position of article Z had not yet been decided, but it would probably be placed after the articles on privileges and immunities.

33. Mr. SETTE CÂMARA said he doubted the usefulness of article Z. Persons who already enjoyed certain privileges and immunities would have a permanent status in the host State. That status was obtained through a formal procedure and the beneficiary usually held an identity card as evidence of his status. Unless the sending State notified the host State that his functions had been terminated, a member of a diplomatic mission, consular post, permanent mission or permanent observer mission would continue to enjoy his privileges and immunities as such; his appointment to a delegation to an organ or conference would not affect that situation in any way.

34. Mr. ROSENNE said that it was desirable to retain article Z, but he would suggest the deletion of the words "in the host State". It was not clear whether those words referred only to "a permanent observer mission" or to all the missions mentioned. Moreover, he was not at all certain that it was correct to include those words. A delegation to a meeting of an organ or to a conference often included persons drawn from posts in several countries. Some members of the delegation might therefore be diplomats accredited to States other than the host State. The question would then arise what privileges they

would be entitled to in the host State considered as a third State for the purposes of that application of article 40 of the Vienna Convention on Diplomatic Relations.<sup>5</sup>

35. Mr. USTOR said that basically Mr. Sette Câmara was right: strictly speaking, article Z was not necessary. However, since a provision of that type had been included both in the Vienna Convention on Consular Relations and in the Convention on Special Missions, failure to include a similar provision in the present draft might lead to difficulties of interpretation.

36. Mr. ALBÓNICO suggested that the Spanish version of article Z be reviewed by the Spanish-speaking members of the Commission.

37. The CHAIRMAN said the suggestion would be noted.

38. Sir Humphrey WALDOCK suggested that the drafting point raised by Mr. Rosenne should be met by the insertion of two commas, one after the words "permanent mission" and the other after "observer mission".

39. He was not in favour of dropping the words "in the host State", because that could lead to misunderstanding. One interpretation might be that a person accredited as a diplomat in a third State would be entitled to diplomatic privileges in the host State if he were included in a delegation to an organ or to a conference.

40. Mr. ROSENNE said that the clarifications which had been given were certainly useful, but he must point out that there was no corresponding article in Part II.

41. Mr. EUSTATHIADES proposed that in the French version the word "*modifiés*" should be replaced by the word "*affectés*" so as to bring it into line with the English version and make it more precise.

42. Mr. USHAKOV said he supported that proposal because the verb "*affecter*" had already been used in the French version of article 55.

43. Mr. RAMANGASOAVINA also supported the proposal.

44. In his opinion, article Z was necessary. He was opposed to the deletion of the words "in the host State", because members of a permanent diplomatic mission or a consular post performed their functions in the territory of a State with that State's consent and, consequently, did not enjoy the same privileges and immunities in other countries.

45. Mr. CASTAÑEDA said he saw no reason why the enumeration at the beginning of the article should be repeated at the end. It would be enough to say "as members of their respective missions".

46. Mr. USHAKOV said the reason was that article Z followed the wording of article 9 of the Convention on Special Missions<sup>6</sup> and article 55 of the draft, relating to permanent observer missions.

<sup>5</sup> United Nations, *Treaty Series*, vol. 500, pp. 118-120.

<sup>6</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 100.

47. The CHAIRMAN, speaking as a member of the Commission, said he favoured a simpler text on the lines suggested by Mr. Castañeda. The form would then be similar to that of article 55, paragraph 2.

48. Mr. ROSENNE, replying to Mr. Ushakov, said it should be noted that article 9 of the Convention on Special Missions was very different from the present article Z.

49. He supported Mr. Castañeda's suggestion for a simplified wording.

50. Mr. CASTRÉN pointed out that the enumeration included a consular post, to which the word "mission", if used alone at the end of the article, could not apply.

51. Mr. AGO suggested the wording "as members of their respective missions or posts".

52. He also supported the replacement of the word "modifiés" by the word "affectés" in the French version, but pointed out that more than a difference of expression was involved. To say that the privileges and immunities "shall not be affected" meant that the persons in question could not lose the privileges and immunities they already enjoyed; but they might possibly enjoy additional privileges and immunities. On the other hand, to say that the privileges and immunities "shall not be modified" meant that there could not be any change.

53. Mr. BARTOŠ said that the word "post" should always be preceded by the adjective "consular", because when used by itself it was vague and could apply to any function.

54. The CHAIRMAN said that, if there were no objection, he would assume that the Commission agreed to adopt article Z with the following changes: first, the insertion of commas after the words "permanent mission" and "observer mission"; secondly, the replacement of the words "of their diplomatic mission, consular post, permanent mission or permanent observer mission" by the words "of their respective missions or consular posts."

*It was so agreed.*

#### ARTICLE 63 (Principle of single representation)<sup>7</sup>

55. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 63:

##### *Article 63*

##### *Principle of single representation*

A delegation to an organ or to a conference may represent only one State.

56. The Drafting Committee believed that the rule thus expressed reflected the practice of international organizations, especially the United Nations.

57. It had considered whether a second paragraph should be included to provide that a member of a delegation might represent another State, but had decided that the situations envisaged were much too varied and that

it would be better to leave them to be governed by the rules of the organization concerned.

58. Mr. ROSENNE said he was not opposed to the principle embodied in article 63, but he was not at all certain that it should be laid down as a categorical rule. There was enough doubt to warrant caution in introducing the rule, for very much the same reasons for which the Drafting Committee had decided not to propose a second paragraph.

59. The CHAIRMAN said that the general principle laid down in article 63 would be subject to the limiting articles at the beginning of the draft; since article 63 thus contained only a residuary rule, there were no grounds for concern.

60. Mr. EUSTATHIADES said he could agree to the addition of a rule of the kind proposed, but at least the language should be less imperative. It was true that cases of a single delegation representing several States belonged to old-fashioned institutions such as confederations of States or personal unions; but the possibility of exceptions should be provided for, so that in exceptional cases one delegation could represent more than one State if that was necessary for some particular reason. That possibility should at least be mentioned in the commentary.

61. Mr. RAMANGASOAVINA said that he had strong reservations on the article, at least in the categorical form in which it was now worded. The rule it laid down might correspond to the situation in the major international organizations, but the draft was intended to apply to smaller organizations as well, including regional organizations. Such organizations would, of course, be free to adopt whatever rules they saw fit, but it would be better if the draft took account of the fact that some States, for reasons of convenience or economy, sometimes decided to be represented by another State.

62. Unless an adequate explanation were given in the commentary to the article, it might meet with some resistance on the part of States.

63. Mr. ALBÓNICO said that article 63, like all the other articles, would have its commentary.

64. In the case of a federation, there would be a single representation; in the case of a confederation, each member State retained its own competence and was entitled to separate representation. The provisions of article 63 were necessary in order to avoid all misunderstanding.

65. Mr. BARTOŠ said he had already expressed reservations concerning the rule in article 63 in the Drafting Committee. Since the first Vienna Conference<sup>8</sup> the principle that a delegate or diplomat could represent only one State had been discarded, and, like previous speakers, he could not see governments accepting so categorical a rule against the representation of two or more States by the same person.

<sup>8</sup> United Nations Conference on Diplomatic Intercourse and Immunities, 1961; see article 6 of the Vienna Convention on Diplomatic Relations, United Nations, *Treaty Series*, vol. 500, p. 100.

<sup>7</sup> For previous discussion, see 1055th and 1056th meetings.

66. The commentary should therefore give a very clear and cautious explanation of the position. Indeed, it should go even further and say that several members of the Commission had expressed reservations on the article and that the Commission asked governments whether the text proposed by the Drafting Committee should be retained without change or whether, on the contrary, its scope should be limited.

67. The CHAIRMAN said that the discussion would be fully reflected in the commentary.

68. It would be possible to depart from the rule in article 63 by means of a suitable provision in the rules of procedure of an organ or conference.

69. If there were no further comments, he would assume that the Commission agreed to adopt article 63.

*It was so agreed.*

ARTICLE 64 (Appointment of the members of the delegation)<sup>9</sup>

70. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 64:

*Article 64*

*Appointment of the members of the delegation*

Subject to the provisions of articles 64 *bis* and 67, the sending State may freely appoint the members of its delegation to an organ or to a conference.

71. The reference to article 67 (A/CN.4/227/Add.2) in the first line was not final, since the Commission had not yet adopted an article concerning the size of the delegation. He suggested, therefore, that the figure "67" be deleted and the space left blank.

*It was so agreed.*

*Article 64, as amended, was adopted.*

ARTICLE 64 *bis* (Nationality of the members of the delegation)

72. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 64 *bis*:

*Article 64 bis*

*Nationality of the members of the delegation*

The representatives and members of the diplomatic staff of a delegation to an organ or to a conference should in principle be of the nationality of the sending State. They may not be appointed from among persons having the nationality of the host State, if that State objects, which it may do at any time.

73. The article was substantially the same as article 11,<sup>10</sup> except for the last clause, which, in article 11, read: "except with the consent of that State which may be withdrawn at any time". The effect of the last clause in article 64 *bis* was to eliminate the requirement of the

prior consent of the host State and to permit the sending State to proceed to make the appointment; the host State could always object to it after receiving notification.

74. Mr. EUSTATHIADES said he feared that the second sentence left the host State free to withdraw its consent while the session of the organ or conference was actually in progress, which was not the Commission's intention. If that possibility was recognized, it would make the position of the representative insecure and be a threat to the stability of relations and to effective work by the organ or conference; it would be advisable to guard against such an eventuality.

75. Mr. ALBÓNICO said that the second sentence of the article provided that representatives could not be appointed from among persons having the nationality of the "host State", which in article 1, sub-paragraph (I), was defined as "the State in whose territory the Organization has its seat, or an office, at which permanent missions are established". In the case of conferences, he questioned whether it was advisable to permit the host State to oppose the appointment of one of its nationals, perhaps merely because his views differed from its own.

76. Mr. ROSENNE said he was not sure that there was any analogy between the delegations referred to in article 64 *bis* and permanent missions; but if there was, the text should be brought closer to that of article 11.

77. To his mind, the element of consent was more important than that of non-objection, and it would leave the way open for a gross abuse of good faith if the host State were permitted to object to an appointment "at any time". He feared that if the present wording of article 64 *bis* were retained, some States might object strongly and the Secretariat might have difficulties in organizing conferences away from Headquarters.

78. Mr. USHAKOV said that although, as a member of the Drafting Committee, he had helped to draft the second sentence, he wondered whether it would not be as well to revert to the wording of the second sentence of the corresponding article on permanent missions, namely, article 11, under which the prior consent of the host State was required. It was more difficult for the host State to object, after the event, to one of its nationals representing another State, and in any case it was more courteous for the two States to agree beforehand, which would also enable them to avoid the situation mentioned by Mr. Eustathiades.

79. Mr. USTOR said he agreed with Mr. Ushakov that the second sentence was not very logical, since any objection to a particular person should be made before his appointment. He therefore proposed that the last clause in the sentence be amended to follow the corresponding clause in article 11.

80. Mr. CASTRÉN, speaking as a member of the Drafting Committee, said that the Committee's intention had been to propose a more liberal régime for delegations to organs and conferences than that laid down for permanent missions. That was why prior consent was not required. In any event, even that consent could be withdrawn at any time.

<sup>9</sup> For previous discussion, see 1056th meeting, paras. 31-45 and 1057th meeting, paras. 3-31.

<sup>10</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 203.

81. It was rare in practice for a State to employ nationals of the host State to represent it and for the latter to object, but in case of doubt, there was nothing to prevent the States concerned from reaching an understanding to ensure that the host State's consent would not be withdrawn.

82. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that there appeared to be no objection to the first sentence, but that some members would prefer to see the wording of article 11 adopted for the last clause of the second sentence.

83. It had also been suggested that, in view of the short duration of conferences, the work of delegations would be unduly disrupted if host States were allowed to withdraw their consent once it had been given. As a compromise, he suggested the following text: "They may not be appointed from among persons having the nationality of the host State except with the consent of that State, which may be withdrawn only if that withdrawal will not seriously inconvenience the delegation in carrying out its functions".

84. Mr. USHAKOV said that to deny the host State the possibility of withdrawing its consent would be an infringement of its sovereignty over its nationals. Any such formulation was therefore unacceptable.

85. Mr. THIAM said that he fully understood Mr. Ushakov's point of view, but besides the sovereignty of the host State it was necessary to consider the right of the chosen national to be able to express himself freely, without being in constant fear that the host State might withdraw its consent at any moment. Once the host State had given its consent, it should not be able to withdraw it except for grave and clearly defined reasons, which should be laid down.

86. Mr. ROSENNE said that Mr. Thiam had put his finger on the crux of the problem. The Chairman had attempted, in his compromise text, to strike a balance between the different points of view, but a shorter text would be better.

87. He still did not think there was any real analogy between article 64 *bis* and article 11; in fact, the differences between them should be mentioned in the commentary.

88. Mr. USHAKOV, replying to Mr. Thiam's remarks, said that the situation was the same in the case of permanent diplomatic missions and even of special missions. In the case of special missions, the relevant provisions were now included in a Convention.<sup>11</sup>

89. Mr. CASTRÉN said he agreed with Mr. Ushakov that it would not be advisable to depart from precedents. Moreover, it would be very difficult to define what constituted a "grave reason".

90. Mr. AGO said that he, too, saw no reason for abandoning criteria which had always been followed. Besides, it was exceptional for a State to choose a nation-

al of the host State to represent it and the practice was not one to be encouraged.

91. He was in favour of reproducing literally the wording of article 11, which was clear, whereas the wording proposed by the Drafting Committee was rather ambiguous.

92. The CHAIRMAN suggested that the Commission vote on Mr. Ago's proposal that the last clause in article 64 *bis* be replaced by the last clause in article 11, which read: "except with the consent of that State which may be withdrawn at any time".

93. Mr. ROSENNE said that there was general agreement that the language of article 11 should be used; the only real dispute was about the words "which may be withdrawn at any time".

94. Mr. ALBÓNICO said he supported Mr. Ago's proposal.

95. Mr. EUSTATHIADES said that, if the Commission adopted Mr. Rosenne's approach, perhaps a passage could be included in the commentary expressing the two ideas formulated by the Chairman and Mr. Thiam, namely, that the host State could withdraw its consent, or refuse, only for grave reasons and only on condition that withdrawal did not cause difficulty to the sending State. The provision would thus be attenuated by the indication that it applied only in exceptional cases.

96. The CHAIRMAN said that there was a consensus of opinion in favour of adopting the language used in the last clause of article 11; but perhaps a vote should be taken on the words "which may be withdrawn at any time".

97. Mr. THIAM said he thought a vote might not be necessary, since members generally seemed to hold the view that the host State could withdraw its consent. That being so, the commentary should make it clear that the interests of sending States must also be safeguarded and that withdrawal of consent by the host State should at least be subject to a time-limit, so as to ensure that a sending State was not deprived of its representative, for example, just when a decision was to be taken.

98. The CHAIRMAN said he would suggest that the Commission adopt article 64 *bis*, subject to the replacement of the words "if that State objects, which it may do at any time" by the words "except with the consent of that State which may be withdrawn at any time." The Special Rapporteur would be asked to include a statement in his commentary to the effect that the host State should take such action only in the most serious circumstances and without disrupting the work of the delegation.

*Article 64 bis, as amended, was adopted.*

#### ARTICLE 65 (Credentials of representatives)<sup>12</sup>

99. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 65:

<sup>11</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 100, article 10.

<sup>12</sup> For previous discussion, see 1057th meeting, paras. 33 to 63, 1058th and 1059th meetings.

*Article 65**Credentials of representatives*

1. The credentials of a representative to an organ shall 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 authority if that is allowed by the practice followed in the Organization, and shall be transmitted to the Organization.

2. The credentials of a representative in the delegation to a conference shall 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 authority if that is allowed in relation to the conference in question, and shall be transmitted to the conference.

100. Mr. ROSENNE said he had certain objections to the personification of the "conference" which seemed to have taken place in a number of articles. He suggested that article 65 be adopted and sent to the Special Rapporteur, but that the Commission reflect further on the problem of the word "conference".

101. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee would appreciate any suggestions concerning that problem.

*Article 65 was adopted.*

**ARTICLE 61-B (Derogation from the present Part)<sup>13</sup>**  
(*resumed*)

102. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee now proposed that article 61-B be split into two articles, for which it proposed the following texts:

*Article 61-B**Derogation from the present Part*

Nothing in the present part shall preclude the conclusion of other international agreements having different provisions concerning delegations to an organ or a conference.

*Article 61-C**Conference rules of procedure*

The provisions contained in articles ... shall apply to the extent that the rules of procedure of a conference do not provide otherwise.

103. Mr. USHAKOV said he could accept that wording.

104. The CHAIRMAN suggested that article 61-B be adopted and that article 61-C be adopted provisionally, pending insertion in the blank space in the first line of the numbers of the articles to be referred to.

*It was so agreed.*

The meeting rose at 1 p.m.

**1074th MEETING**

*Monday, 22 June 1970, at 3.30 p.m.*

*Chairman: Mr. Richard D. KEARNEY*

*Present: Mr. Ago, Mr. Alcivar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Nagendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.*

**State responsibility**

(A/CN.4/233)

[Item 4 of the agenda]

1. The CHAIRMAN invited the Commission to consider the Special Rapporteur's second report on State responsibility (A/CN.4/233). A questionnaire prepared by the Special Rapporteur in connexion with his report had just been issued, which read:

*I. Section I of chapter I:*

(a) Does the Commission agree that, in defining the basic rule on responsibility, a composite formula should be adopted that would not prejudice the content of responsibility?

(b) Does the Commission agree that the formula adopted should allow for the existence both of responsibility for non-illicit acts and of responsibility arising from the acts of others?

(c) Does the Commission find the Special Rapporteur's terminology acceptable?

*II. Section II of chapter I:*

(a) Does the Commission agree that the international illicit act contains a subjective element and an objective element?

(b) Does the Commission agree that the subjective element may consist of an act or an omission imputable to the State?

(c) Does the Commission agree that imputation is a legal operation and that it is international law which imputes to the State—an international legal person—an internationally illicit act?

(d) Does the Commission agree that the objective element in an international illicit act consists of failure to fulfil an international legal obligation?

(e) Does the Commission agree that there is no need to pay special attention to the notion of abuse of rights?

(f) Does the Commission agree that a distinction should be made between illicit conduct and illicit events?

(g) Does the Commission agree that there is no need to consider a third constituent element of the international illicit act, namely, injury?

<sup>13</sup> For previous discussion, see paras. 2-29 above.