Document:-

A/CN.4/SR.1076

Summary record of the 1076th meeting

Topic:

State responsibility

Extract from the Yearbook of the International Law Commission:-

1970, vol. I

in his questionnaire, on the three sections of chapter I, were in the affirmative, and that he accepted the broad outline of the plan suggested by the Special Rapporteur and the method he had followed.

The meeting rose at 1.10 p.m.

1076th MEETING

Wednesday, 24 June 1970, at 9.45 a.m.

Chairman: Mr. Richard D. KEARNEY

Present: Mr. Ago, Mr. Alcívar, 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]
(continued)

1. The CHAIRMAN invited the Commission to continue consideration of the Special Rapporteur's second report on State responsibility (A/CN.4/233).

2. Mr. REUTER congratulated Mr. Ago on his excellent report, with which he was in general agreement, except for a few minor points he would mention later. The Special Rapporteur had been right to begin by seeking to establish the most fundamental principles and then to proceed from the general to the particular. Such a method presupposed, of course, that until the work was completed, it would always be possible to revert to the general principles in order to amplify and clarify them. He wished to point out, however, that whereas the first two articles were of a general character, article III was not quite on the same level. He did not dispute the usefulness of that article; at the most it might be asked, as the Special Rapporteur himself had done, whether it was necessary to express the idea stated in paragraph 1, since it followed from the general principles previously stated. Moreover, in his oral presentation of the report, the Special Rapporteur had referred, in connexion with article III, to the possibility of intervention by an international organization. He himself was not sure whether, in dealing with imputability, it would not be necessary to refer to plurality, or whether the problem of the relationship between imputation to a State and imputation to an international organization could be avoided.

3. The method adopted by the Special Rapporteur was not only an excellent one, it was the only one possible. For in all legal systems, apparently even in the common law countries, there was a general régime of responsibility and several special régimes. At any rate, that was the situation in international law, and it was with the general régime that the study of the subject must begin if insuperable difficulties were to be avoided. That was the principle which the Special Rapporteur had followed and the word *"une"*, which preceded the words *"responsabilité internationale"* in the French text of article I, clearly suggested that there were several categories of responsibility.

4. But although it might be generally agreed that there was a general régime which should be studied first, there might perhaps be disagreement on whether a particular element came under the general régime or a special régime and whether a given special régime should have priority. The Special Rapporteur, in his capacity as such, had been exceedingly cautious. He himself would like to state his views at once on the problem of penal responsibility or, as it might also be called, the problem of sanctions. The term "sanctions" applied both to "enforcement" and to "punishment". As he saw it, all matters relating to enforcement lay outside the sphere of responsibility. The second aspect of penal responsibility came under a special régime and not under the general régime of responsibility. Punishment was a very serious matter; it was permissible only in special cases and subject to all kinds of safeguards. Admittedly, there was no lack of precedents, in particular very numerous arbitral awards concerning Latin America, in which the principles of a purely reparatory responsibility appeared to be outmoded. In some cases, insurance principles had served as a guide, while in others, decisions had a penal flavour. Remarkable though those precedents might be from the standpoint of international law, they might none the less explain the cautious attitude of some Latin American countries. That was why he believed that responsibility under the ordinary law should contain no penal element and that that was in keeping with the interests of the small and weak countries.

5. In the nineteenth century, sanctions had perhaps been applied for many acts which had not been serious and had not been applied for acts which deserved them. Today, reference was made to the judgement in the *Case concerning the Barcelona Traction, Light and Power Company, Limited*,[1] because of the possibility opened up by its paragraph 34. But in paragraph 91, the Court plainly stated that, even in matters of human rights, the problem of a sanction had been solved only on the regional level. The Court thus appeared to believe that a special responsibility was involved. Article 60 of the Vienna Convention on the Law of Treaties[2] was undoubtedly another example of special responsibility. It did not say that the violation of any treaty in the world, in other words violation of the *pacta sunt servanda* rule, gave

[1] *I.C.J. Reports 1970*, p. 3.

[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).

all States a right to act. But certain rights of States parties to a broken treaty had been recognized, and had been strengthened in certain circumstances; it was especially notable that the fullest rights were conferred only on the party particularly affected.

6. The method of laying down the most general rules and treating penal responsibility as a special element was therefore justified not only from the intellectual standpoint, but also from the practical standpoint of the protection of small States. Only international organization might possibly give justice the backing of force required for punishment, but such a treatment of responsibility, which was perhaps necessary, constituted a special régime.

7. With regard to terminology, he found Mr. Ago's report extremely satisfactory. Most controversies were, indeed, due to the failure of communication resulting from the absence of a common language relating to responsibility. The expression *fait illicite* was open to discussion, but it might be satisfactory, and it should be noted that article 1382 of the French Civil Code, which dealt with civil liability, began with the words *"Tout fait quelconque de l'homme..."*.

8. The expression "failure to fulfil an obligation", should be approved. He would add to what had already been said that every failure to comply with a rule did not constitute an illicit act and, conversely, although responsibility might be held to have a derived secondary character, a very large part of responsibility lay in failure to comply with what were called "standards" in English, which were perhaps not exactly rules, but certainly created obligations.

9. The Special Rapporteur contrasted illicit conduct with an illicit event. There was certainly an important distinction to be made between an obligation relating to conduct and an obligation relating to the result produced, but that was entirely different. The distinction made by the Special Rapporteur was open to criticism because it did not take sufficient account of the intention, and the example he gave would be difficult to accept.

10. Lastly, whereas in French it was perfectly satisfactory to qualify the two elements of the illicit act as *"subjectif"* and *"objectif"*, difficulties might arise in English; moreover, if the term "objective" could be avoided when referring to responsibility, it would save many misunderstandings.

11. With regard to substance, the problem of the elements of responsibility called for some comment. First, in article II, the Special Rapporteur made a distinction between conduct imputed to a State and failure to fulfil an obligation. That distinction had been made in the interests of clarity, but as the Special Rapporteur himself explained in footnote 52 to paragraph 33 of the report, the two elements were closely connected, since the imputation was to the same State as had failed to fulfil the obligation. The two elements could not be treated separately.

12. The Special Rapporteur also raised the question whether injury was a condition for responsibility and replied in the negative, because injury was implied in the violation of an obligation. That position presupposed, in reality, that the violation of an obligation always involved a moral injury.

13. But reference to the violation of an obligation immediately led to the question towards whom the obligation had been, or in other words, in regard to whom responsibility would be applied. Even if it was held that, under the general régime of responsibility, there was no need to require material injury as a separate element of responsibility, it would still be necessary to consider whether there were not special régimes under which moral injury was not sufficient and material injury was required.

14. That comment might suggest that the problem of injury was not so simple. In the light of the *Barcelona Traction* Case it might perhaps be said that some people believed that there were now illicit acts which called for reparation by themselves, independently of material injury, and that that was a manifestation of the current tendency to organize sanctions and allow all States to apply them; but that, conversely, there were less serious illicit acts relating particularly, though not exclusively, to economic assets; for those, there was no broad diplomatic protection. It had been said that property was perhaps not a human right. In the case of property offences material injury would therefore be required; without it, there would be no illicit act. For the present, he agreed that injury should not be made an element of responsibility, but he thought the Special Rapporteur might find it necessary to clarify his position on that point at a later stage.

15. Mr. USHAKOV associated himself with the congratulations addressed to the Special Rapporteur, whose clarity of thought and well-defined views were familar to members of the Commission. Despite that clarity, however, certain points were still obscure, although they arose out of the positions adopted by the Special Rapporteur on the three draft articles; the reason was no doubt that he intended to develop them later.

16. The exposition preceding article I was excellent, and he shared the ideas it set out. Two preliminary questions arose, however, one theoretical and the other practical. Was responsibility a principle of existing international law or was it a presupposition of international law as of any other legal order? In his view, there could be no doubt that responsibility was implicit in any law, since without responsibility there could be no law. Hence that was true of contemporary international law.

17. Furthermore, a distinction could be drawn between international responsibility in general and absolute international responsibility or responsibility for risk. As he saw it, there was a clear difference between the two, both as to their origin, since the former derived from illicit acts while the latter resulted from injury caused, and as to their consequences, since the former was both political and material, whereas the latter was solely material. The report dealt only with international responsibility in general, since absolute international responsibility was a particular and entirely exceptional case of responsibility. He accepted that solution, but perhaps the

second kind of responsibility could be dealt with after the articles relating to the first had been completed.

18. As to terminology, the Special Rapporteur proposed the use of the expression *"fait illicite international"*. That was perhaps the normal translation of the English term "international illicit act"; but the choice raised a point of substance, since a *"fait"* (fact) existed objectively, irrespective of the will of natural or legal persons, unlike an *"acte"* (act), which was the term he would prefer. It was true that there were facts in the ordinary sense and legal facts, and that only the latter brought legal rules into play, but all facts existed objectively.

19. It was perhaps surprising that, in article I, the Special Rapporteur should have referred to international responsibility without specifying with whom it lay. He (Mr. Ushakov) considered that international responsibility did not exist as such. The words "of that State" should therefore be added after the word "responsibility".

20. He found it difficult to accept the ideas set out in the introduction to articles II and III and given formal expression in the text of those articles. The two articles dealt with the problem of imputation and, in his view, such a legal operation did not exist.

21. What type of responsibility was in fact involved in international law? If it was responsibility for an offence, imputation would be necessary, because there would be a presumption of the innocence of the State. As he saw it, however, international responsibility was an objective responsibility and no question of culpability could arise. That was a fundamental point of the draft.

22. But then what did such imputation mean? The Special Rapporteur said that it was a legal operation. He (Mr. Ushakov) regarded it as a procedural matter. In internal law, it was the courts which made the imputation. In international law, the Special Rapporteur said that it was made by international law itself. In reality, international law could not impute an illicit act to anyone; what could be done was to impute the illicit act on the basis of international law. But in international law there was no organ which could establish the illicit act and impute it to a particular subject: hence there was no imputation. Behind the explanations given in paragraph 52 of the report there probably lay concealed the problem of culpability, and he understood that the Special Rapporteur had not wished to deal more explicitly with questions he intended to take up later in his work. But what was to be said later would follow from the position adopted at the present time.

23. Perhaps the Special Rapporteur had a different conception of imputation, however. In paragraph 37 of his report, he explained that the State was an abstract entity which was not physically capable of conduct, and that was why conduct which in fact was that of its organs had to be imputed to it. That idea seemed to be contrary to international reality. The State was a concrete political and material entity, consisting of three elements taken together—the population, the territory and the public authorities. The public authorities had a very real, not an abstract existence. It was the system of State organs which exercised power, and that system comprised both central and local organs. In his view, if those public organs of the State acted, it was the State itself which acted, whereas, according to Mr. Ago, it was necessary to establish that a particular organ was an organ of the State and then to impute to the State the conduct of that organ. That operation was no more necessary than imputing to a person the conduct of his arm. Consequently, he could not approve of the reference to imputation in draft article II.

24. Article III was surprising. It seemed to him questionable to draft a rule which, as it were, established criminal capacity. In internal law, even though it was materially possible that some individuals might act in a manner prohibited by law, conduct was presumed to be lawful. To note the fact that unlawful conduct existed was one thing; to draft a legal rule was another.

25. Paragraph 2 of article III was explained by the fact that, according to the Special Rapporteur, the conduct of the organs of the occupying State must be imputed to that State. In fact, there was no problem of limitation of capacity to commit international illicit acts; in the case contemplated, it was the occupying State which acted through its organs and it was not the criminal capacity of the occupied State which was limited, since it was not the latter State which had acted.

26. Imputation did not and could not exist in the absence of criminal, civil or administrative procedures in international law; moreover, if such procedures existed, there would no longer be an international law based on the mutual consent of States, but a world law.

27. Sir Humphrey WALDOCK said that the ability and learning displayed in the report gave promise that the Special Rapporteur would provide the Commission with an excellent basis for its work. He agreed in general with the Special Rapporteur's approach to the subject of State responsibility and with his proposed method of work.

28. It was difficult to offer a balanced and useful criticism of the three draft articles without knowing the Special Rapporteur's intentions regarding the other articles of the draft. But some of the formulations adopted did not seem entirely satisfactory, at any rate in the English text. In article I, the term "international illicit act" was unacceptable. Many illicit acts, for example, a violation of human rights, could hardly be described as international acts, though they might have international implications. Again, the English word "act" did not correspond to the French word *"fait"*; moreover, while in article I the word "act" was clearly intended to include the case of omission, it was used in article II in a manner which suggested that it did not include the case of omission. Furthermore, article I referred specifically to illicit acts committed by a State, whereas article II introduced the idea of acts imputed to it. The concepts contained in articles I and II would have to be more satisfactorily expressed in the English text.

29. Some of the difficulty might arise from the fact that it was not yet clear what the Special Rapporteur meant

by the term "international responsibility"; for that term had the key role in the draft. The Special Rapporteur seemed to place undue emphasis on the material consequences of an illicit act and on the role of what he called an external event. That was perhaps the explanation of the surprising contention, in paragraph 51, that the deliberate bombing of a hospital or failure to provide effective protection for a foreign embassy would not constitute a breach of an international obligation unless the hospital was actually hit or the embassy attacked. In his own opinion, a State committing such an act would have failed in its obligations and must be considered responsible; responsibility meant that a State was answerable in law for failing to fulfil an international obligation. A mere declaration by a State would in some cases be sufficient to make it internationally responsible. The statements in paragraph 51 could not be accepted without considerable qualification.

30. A provision that every State possessed capacity to commit international illicit acts was unlikely to commend itself. If some rule embodying the concept of capacity were needed, paragraph 1 of article III might more appropriately consist of a statement to the effect that every State possessed capacity to engage its international responsibility. He also shared the doubts expressed by previous speakers, especially Mr. Tammes, concerning paragraph 2 of article III. There could indeed be situations in which liability would be negatived, but they were more likely to be exceptions to the principle of liability than to that of capacity and should not, therefore, be dealt with in paragraph 2 of article III. In such cases the correct course seemed to be to negative liability because the act was not imputable to the State or because of *force majeure* or for some other reason.

31. He was ready to accept provisionally the Special Rapporteur's reasoning on the question of abuse of rights. No doubt it was, in principle, possible to treat cases of abuse of rights as cases of responsibility for breach of an obligation not to go beyond certain limits in the exercise of rights, which would in general be covered by article II. Special cases of responsibility could, however, arise in that connexion and a specific study of abuse of rights might be necessary in the final stages of drafting. Reference had also been made to cases of absolute liability, as they were called in English law, involving such matters as nuclear damage. Different theories had been advanced in municipal law concerning the basis of responsibility in such cases, and similar theories might be advanced in international law. The Commission might perhaps have to consider at a later stage whether specific provisions on the subject were necessary.

32. Mr. YASSEEN said he was full of admiration for the two reports the Special Rapporteur had so far submitted to the Commission, which augured well for the Commission's future work on the subject. Like Sir Humphrey Waldock, he thought it was difficult to comment on the three articles proposed in the second report without knowing the content of those that were to follow. While agreeing that rules on responsibility could only be of a general nature, he thought there should be more of them than the Special Rapporteur envisaged, since, in legislating, a choice had to be made between the various solutions proposed in the literature. Explanations in the commentaries would not be sufficient.

33. In article I, the Special Rapporteur had succeeded in formulating a provision which did not prejudge the various solutions to be found in doctrine and jurisprudence, thus leaving the Commission free to take up later the issues requiring its attention. Article I could therefore be accepted, in principle, as a starting point.

34. With regard to the legal relationship between the guilty State and the international community as a whole, he believed that international law was now sufficiently mature for recognition of responsibility of a State towards the international community, which in any case followed from the Charter.

35. As to the use of the words *"fait"* and *"acte"* in the French text, the word *"fait"* had a more general meaning and it would therefore be preferable to use the word *"acte"*, provided that it was clearly shown to cover both the idea of action and that of omission.

36. He agreed that there was a subjective element and an objective element in an international illicit act. He found the terms used acceptable, except for the word "conduct", which appeared in article II, whereas in article I the term "illicit act" was used to express the same ideas of action and omission. The two articles needed to be brought into line with one another.

37. The rule concerning capacity to commit international illicit acts, stated in article III, obviously did not refer to capacity to act; the idea it was intended to convey was that every State could be held responsible for an act it had committed. The statement was, of course, correct, but he was afraid that its inclusion in an article might have adverse psychological effects. The examples given in support of the exception stated in paragraph 2 were not all convincing, because they seemed to involve, especially in the case of occupation, not a limitation of capacity, but rather a problem of imputation of responsibility.

38. Mr. EUSTATHIADES warmly commended the Special Rapporteur on his report, which could be considered as a contribution to the theory of international responsibility, and thanked him for having mentioned his own work on that topic. It was natural that there should be differences of opinion among members of the International Law Commission on such a complex branch of international law, but it should be remembered that their comments at that stage were of a preliminary nature and could serve to guide the Special Rapporteur in his later work, especially with regard to a number of special cases, closer consideration of which might be thought premature at present. The reason why the articles proposed by the Special Rapporteur gave rise to discussion was that, in drafting them, he had tried to take into account the differences of opinion expressed at the twenty-first session. He would do better to proceed as he thought best, in conformity with general international law, and perhaps see later how specific, agreed solutions could be incorporated.

39. With regard to terminology, he thought it would be more appropriate to refer to the "generation" and "consequences" of international responsibility than to its "origin" and "content".

40. As he had emphasized at the twenty-first session, a special place should be reserved, at least in the introduction, for the subject of the third part of the report, which would be the application of responsibility.[3] The importance of application was twofold: first, in legal training, it should always be taught at the same time as the rules governing responsibility, which it complemented; and secondly, many observations would be found unnecessary, and there would then be fewer differences of opinion in the Commission, if the members kept the aspects of application in mind. He agreed that the Commission should begin by studying the sources and consequences of responsibility, but it was necessary to consider from the outset towards whom responsibility was engaged, in other words who could invoke it—an aspect which hinged on the question of application. There could be State responsibility towards an individual or towards an international organization as a whole, in the interests of international intercourse and of the international community. Examples of the latter case were violations of the Charter and crimes under international law. But he wished to point out that, from the legal standpoint, no distinction could be made between grave violations and minor violations such as violations of a right of a private person. Referring to paragraphs 19 to 23 of the report and to the statements of certain members of the Commission, he also pointed out that both in general international law and in cases of political sanctions or collective guarantees there were the beginnings of public action. To allow for such cases, it would be sufficient, at the present stage, either to mention them in the commentary, or to ensure that the general articles were drafted in such a way as to cover them. But in the last analysis it was the question of application of responsibility which came into play.

41. From the point of view of drafting, it would be more correct to use the phrase "internationally illicit act" than "international illicit act" in article I. As to substance, the article was too general, as it tried to cover too many different doctrinal aspects. Unlike the Special Rapporteur, who had preferred a neutral formula to cover cases of responsibility, including vicarious responsibility, he believed that the article should be made to specify which State incurred the responsibility, by inserting the word "its" before the words "international responsibility". Otherwise, the idea expressed would be too general. The special case of responsibility for acts of others would be covered by a separate article and the general rule stated in article I should therefore be completely unambiguous. Moreover, it should not be possible to interpret it as covering cases in which an internationally illicit act gave rise to double responsibility—of the State and of an individual—with which the Commission was not concerned, since it had been agreed that it would deal only with State responsibility. The commentary should make that clear by stating that the topic of individual responsibility warranted inclusion in the programme of future codification work. At the present stage, when only the responsibility of States was being considered and a draft convention should be the object in view, since the subject-matter was sufficiently ripe having regard to general international law and any other text would be of only limited value, article I, which would be the frontispiece of the convention, should be conceived for practical application and be capable of being invoked either independently or in conjunction with other articles; and that was a further reason for saying "its international responsibility".

42. In the case of article II, the Commission should perhaps try to find a term other than "imputation", but if there was no alternative, it must be understood that what was meant was only imputation under international law, in other words, that the problem of responsibility could not be solved by referring back from international law to internal law. For example, responsibility for acts committed by organs exceeding their authority was imputed to the State not by virtue of the internal order, but in the interests of safeguarding international relations. In addition, the words "Conduct consisting of an act", in sub-paragraph (*a*), should be replaced by "An act" and the words "Such conduct", in sub-paragraph (*b*), should be replaced by "Such act or omission". In the French text, the word *"représente"* in sub-paragraph (*b*) should be replaced by *"constitue"*.

43. With regard to the substance, it would be better to delete the phrase "in itself or as a direct or indirect cause of an external event", which raised the question whether injury, material or moral, should be mentioned as a constituent element of an international illicit act. He thought it might perhaps be better not to touch on that problem in the text of the article, for apart from possible doubts about accepting paragraphs 51 and 53 of the report, the discussion might be complicated by terminological questions: for example, the question whether the concept of moral injury covered the case of non-fulfilment of an international obligation by a State which in itself infringed the right of another State—the corollary of the responsibility—to have that obligation fulfilled. Moreover, the question of injury seemed to be indirectly linked with the problem of abuse of rights which, in the last analysis, was a violation of an obligation which caused injury. *Qui jure suo utitur, neminem lædit*; but where there was abuse of a right there was injury. From another point of view, there was responsibility in the case of legislative acts or orders, independently of their application. For those and other reasons, a discussion on the subject would take the Commission too far, without serving any useful purpose at the present stage. Hence, it would be best not to refer to the "external event" or to the question of injury in the text of article II, and either to deal with them in the commentary or to reserve them until a later stage in the work.

44. In article III, the Special Rapporteur had clearly intended to highlight the exceptions, but the examples cited in paragraphs 61 and 62 did not seem to be true

[3] See *Yearbook of the International Law Commission, 1969*, vol. I, p. 114, para. 10 *et seq.*

exceptions; for the acts were not committed by the organs of the State, but by organs of another State, and it would therefore be more appropriate, either to deal with those cases in a separate provision, or to mention them in the commentary. Moreover, the word "capacity", although often used in the textbooks, was infelicitous and it would be better to say, in paragraph 1, "Every State can incur international responsibility". It was also necessary to consider whether it would be advisable to define, either in the article or in the commentary, what was meant by a "State" for the purposes of international responsibility, for the words "every State" were too general. When the work was further advanced, and if paragraph 2 was not retained, the Commission might consider deleting article III in the light of the final text of article II.

The meeting rose at 1.10 p.m.

1077th MEETING

Thursday, 25 June 1970, at 10.10 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Kearney, 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.

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 1073rd 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 62 *bis* (Size of the delegation)[1]

2. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 62 *bis*:

Article 62 bis

Size of the delegation

The size of a delegation to an organ or to a conference shall not exceed what is reasonable or normal, having regard to the functions of the organ or, as the case may be, the tasks of the conference, as well as the needs of the delegation and the circumstances and conditions in the host State.

3. The text was similar to that of previous articles on the subject of the size of missions, except that it now referred to the "tasks" of the conference. It had been considered that "tasks" was a more appropriate term than "functions" when speaking of conferences.

4. Mr. ROSENNE suggested that the word "particular" be inserted before the word "delegation" in the phrase "the needs of the delegation" in order to bring the text into line with that of articles 16 and 56. It was desirable to avoid unnecessary differences with previous texts and, if a change was thought to be necessary, an explanation should be given in the commentary.

5. Sir Humphrey WALDOCK said he supported that suggestion.

6. Mr. KEARNEY (Chairman of the Drafting Committee) said he agreed that it was important to maintain uniformity.

7. The CHAIRMAN said that, if there were no further comments, he would consider that the Commission agreed to adopt article 62 *bis* with the change suggested by Mr. Rosenne.

It was so agreed.

ARTICLE 64 *ter* (Acting head of the delegation)

8. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 64 *ter*:

Article 64 ter

Acting head of the delegation

1. If the head of a delegation to an organ or to a conference is absent or unable to perform his functions, an acting head may be designated from among the other representatives in the delegation by the head of the delegation or, in case he is unable to do so, by a competent authority of the sending State. The name of the acting head shall be notified to the Organization or to the conference.

2. If a delegation does not have another representative available to serve as acting head, another person may be designated as in paragraph 1 of this article. In such case credentials must be issued and transmitted in accordance with article 65.

9. To a certain extent the wording followed that of previous articles on the chargé d'affaires *ad interim*, such as article 18.[2] That expression, however, had been replaced by "acting head of the delegation" because it had been thought that "chargé d'affaires *ad interim*" was rather too heavy a title in the case of a delegation.

10. It would be noticed that, by comparison with article 18, a change had been made in the procedure in order to accelerate the making of notifications. The wording now adopted permitted any form of notification, either by the sending State or by the delegation itself, whichever was more convenient in the circumstances.

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[1] For previous discussion, see 1059th meeting, paras. 10-62 (article 67).

[2] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 211.