

Document:-  
**A/CN.4/SR.1077**

**Summary record of the 1077th meeting**

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

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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.

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### 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.

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### Relations between States and international organizations

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

[Item 2 of the agenda]

(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)<sup>1</sup>

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

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<sup>1</sup> For previous discussion, see 1059th meeting, paras. 10-62 (article 67).

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.<sup>2</sup> 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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<sup>2</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 211.

11. In the first sentence of paragraph 1, reference was made to "a competent authority" of the sending State. It had been considered that such informality was justified because of the pressure of time.

12. Paragraph 2 dealt with the case where the delegation had only one representative. The first sentence contained the broad provision that "another person" could be designated if the single representative were not available. However, since credentials would be needed in order to establish the right of that person to speak and vote, a second sentence had been added, requiring such credentials to be issued and transmitted in accordance with article 65.

13. Mr. CASTRÉN said that the notification provided for in article 64 *ter* had to be made "to the Organization or to the conference", whereas according to the text adopted by the Drafting Committee for article 82, the end of the functions of a member of a delegation had to be notified "to the organ or the conference". A choice must be made between "organ" and "Organization", but in any event the same term should be used in both articles.

14. Mr. KEARNEY (Chairman of the Drafting Committee) said that the term "organ" was perhaps better than "Organization". It was quite common for an organ to meet elsewhere than at the seat of the organization concerned.

15. Mr. ROSENNE said that he could accept paragraph 2 in principle, but had considerable difficulties with paragraph 1, which did not conform to existing practice.

16. To begin with, it was quite common for credentials to designate a vice-chairman of the delegation, in which case there might be no difficulty. But if they did not, he did not think a State really could be bound, in the event of the inability of the head of its delegation to act, to the simple course of appointing another representative even as acting head of the delegation. It would be going too far to say that, if the credentials were silent on the point, nobody but one of the other representatives could be appointed.

17. Another difficulty was the form of words used, which, as in article 65, amounted to a personification of the conference as a body to which communications were made. The definition of "conference" in article 00 brought in the element of the international organization concerned. In practice, such communications were received by the Executive Secretary of the conference, who represented the Secretary-General, or by the Director-General of the organization concerned.

18. In the second sentence of paragraph 1, he would prefer to see the reference to notification to the "Organization" retained; the term "Organization" would have the meaning attached to it in article 1. As for the term "conference", it was already connected with "Organization" in article 00, and if that article were made a continuation of article 1, the position would become much clearer and certain controversial aspects would be removed.

19. Mr. USHAKOV said there was an error of translation in the French version of the article. In paragraph 1, the expression "the other representatives in the delegation" had been translated as "*les autres représentants de la délégation*", whereas it should read "*dans la délégation*".

20. Mr. NAGENDRA SINGH said that he preferred the term "organ" to the term "Organization" because the provisions of the last sentence of paragraph 1 related to a delegation to an organ rather than to a permanent mission accredited to the organization as such.

21. Mr. ROSENNE said he wished to place on record his formal objection to the whole of paragraph 1.

22. From the point of view of drafting, he could not accept the replacement of the term "Organization" by "organ". When an organ of the United Nations met at Geneva, the practice was for the permanent mission of the sending State in New York to notify the Secretary-General of the names of the representatives to the organ in question.

23. The CHAIRMAN said that Mr. Rosenne's objection would be noted. If there were no further comments, he would consider that the Commission agreed to adopt article 64 *ter* subject to the replacement of the word "Organization" by the word "organ" in the second sentence of paragraph 1.<sup>3</sup>

*It was so agreed.*

ARTICLE 66 (Full powers to represent the State in the conclusion of treaties)<sup>4</sup>

24. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 66:

*Article 66*

*Full powers to represent the State  
in the conclusion of treaties*

1. Heads of State, Heads of Government and Ministers for Foreign Affairs, in virtue of their functions and without having to produce full powers, are considered as representing their State for the purpose of performing all acts relating to the conclusion of a treaty in a conference or in an organ.

2. A representative to an organ or in a delegation to a conference, in virtue of his functions and without having to produce full powers, is considered as representing his State for the purpose of adopting the text of a treaty in that organ or conference.

3. A representative to an organ or in a delegation to a conference is not considered in virtue of his functions as representing his State for the purpose of signing a treaty (whether in full or *ad referendum*) concluded in that organ or conference unless it appears from the circumstances that the intention of the Parties was to dispense with full powers.

<sup>3</sup> This decision was later reversed. See below, para. 39.

<sup>4</sup> For previous discussion, see 1057th meeting, paras. 32-63, 1058th meeting, paras. 1-56, 1059th meeting, paras. 1-9, and 1061st meeting, paras. 3-7.

25. The article substantially reproduced the provisions of article 14,<sup>5</sup> itself based on article 7 of the 1969 Vienna Convention on the Law of Treaties.<sup>6</sup> The Drafting Committee had adopted an abridged wording which in its view would be sufficient to deal with the normal problems arising in connexion with full powers of delegations to represent their States in the conclusion of treaties.

26. Mr. ROSENNE said that he had no objection to paragraphs 1 and 2, subject to his remarks concerning articles 14 and 54 *ter*.<sup>7</sup>

27. Paragraph 3, however, was not a copy of any previous provision and he suggested that it be dropped, since it added very little to the law. His main objection was to the use of the term "Parties" in the particular context. He would be glad to hear the views of Sir Humphrey Waldock on that point.

28. Sir Humphrey WALDOCK said that paragraph 3, as he understood it, was designed simply to protect the position of the State concerned by making it clear that a representative to an organ did not have the power to sign, as distinct from adopt, a treaty simply by virtue of his functions.

29. Mr. USTOR said that Mr. Rosenne was right in his view that paragraph 3 was redundant. Since paragraph 2 stated that the representative could only represent the State for the purpose of adopting the text of the treaty, it naturally followed that he did not have the power to sign the treaty. However, since a provision on the lines of paragraph 3 already existed in article 14, it would be better to retain it in article 66 for the time being. On second reading the Commission could consider eliminating the provision from both articles.

30. Mr. KEARNEY (Chairman of the Drafting Committee) said he could agree to that course. The retention of paragraph 3 would enable the Commission to obtain the comments of governments on that point.

31. The CHAIRMAN said that, if there were no objection, he would consider that the Commission agreed to adopt article 66 as proposed by the Drafting Committee, on the understanding that the commentary would contain an explanation of the difficulties that had arisen in connexion with paragraph 3.

*It was so agreed.*

#### ARTICLE 67 (Notifications)<sup>8</sup>

32. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 67:

<sup>5</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 206.

<sup>6</sup> *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference, document A/CONF.39/27* (United Nations publication, Sales No.: E.70.V.5).

<sup>7</sup> See 1062nd meeting, para. 31.

<sup>8</sup> For previous discussion, see 1057th meeting, paras. 32-63, 1058th meeting, paras. 1-56, and 1059th meeting, paras. 1-9 (article 65).

#### Article 67

##### Notifications

1. The sending State, with regard to its delegation to an organ or to a conference, shall notify the Organization or, as the case may be, the conference, of:

(a) The appointment, position, title and order of precedence of the members of the delegation, their arrival and final departure or the termination of their functions with the delegation;

(b) The arrival and final departure of a person belonging to the family of a member of the delegation and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the delegation;

(c) The arrival and final departure of persons employed on the private staff of members of the delegation and the fact that they are leaving that employment;

(d) The engagement and discharge of persons resident in the host State as members of the delegation or persons employed on the private staff entitled to privileges and immunities;

(e) The location of the premises occupied by the delegation and of the private accommodation enjoying inviolability under articles . . . , as well as any other information that may be necessary to identify such premises and accommodation.

2. Whenever possible, prior notification of arrival and final departure shall also be given.

3. The Organization or, as the case may be, the conference, shall transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

4. The sending State may also transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

33. The wording substantially reproduced that of article 17,<sup>9</sup> with the necessary changes. The main difference was the insertion of the new sub-paragraph (e), the provisions of which were all the more necessary since members of delegations were often accommodated in different hotels.

34. He suggested that article 67 be adopted on the understanding that on second reading consideration would be given to the inclusion of sub-paragraph (e) in article 17 as well.

35. Mr. USHAKOV said that in paragraph 1 and 3, the word "Organization" should be replaced by the word "organ", as had been done in article 64 *ter*.

36. Mr. ROSENNE said that the reference in article 67 could only be to the Organization because that article clearly referred to the Secretariat.

37. Mr. ALCÍVAR said he supported Mr. Rosenne's view. For example, notifications were made to the United Nations in the case of delegations to the General Assembly, which was an organ of the Organization. The position was different in the case of a conference, which enjoyed a certain autonomy.

38. Mr. CASTRÉN said that if the Commission were now to decide to revert to the term "Organization" in article 64 *ter*, it should bear in mind the need to bring article 82 into line as well.

39. The CHAIRMAN said that, if there were no objection, he would consider that the Commission agreed to

<sup>9</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 209.

reverse its decision in respect of article 64 *ter* and to revert to the term "Organization".

*It was so agreed.*

*Article 67 was adopted on the understanding expressed by the Chairman of the Drafting Committee.*

#### ARTICLE 67 bis (Precedence)<sup>10</sup>

40. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 67 bis:

*Article 67 bis*  
*Precedence*

Precedence among delegations to an organ or to a conference shall be determined by the alphabetical order used in the host State.

41. The provision was merely a residuary rule to cover the case where an organization had not adopted any rule or practice on the question of precedence.

42. Mr. THIAM said he disliked the use of the word "precedence", since it seemed to imply that certain delegations were superior in rank to others, which was impossible among delegations of sovereign States. Either another expression should be found, or it should at least be explained in the commentary that it was only a question of determining, for example, the order in which delegations were seated in a conference room.

43. Mr. ALCÍVAR said that he had the same doubts as Mr. Thiam. The text did not refer to precedence but simply to the order of seating.

44. Mr. KEARNEY (Chairman of the Drafting Committee) said that he sympathized with the remarks by the previous speakers, but the word "precedence" had been used in previous texts to describe the order in which delegations were dealt with.

45. Mr. ROSENNE said that he agreed in principle with Mr. Thiam. The present text differed in one respect from the text originally proposed by the Special Rapporteur in that it referred to "precedence among delegations" instead of to "precedence among heads of delegations."

46. That being said, he agreed with the Chairman of the Drafting Committee that the term "precedence" had acquired a special connotation in the United Nations.

47. The CHAIRMAN said that, if there were no objection, he would consider that the Commission agreed to adopt article 67 bis on the understanding that an explanation would be included in the commentary on the point which had been raised during the discussion.

*It was so agreed.*

#### ARTICLE 68 (Status of the Head of State and persons of high rank)

48. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 68:

*Article 68*

*Status of the Head of State and persons of high rank*

1. The Head of the sending State, when he leads a delegation to an organ or to a conference, shall enjoy in the host State or in a third State the facilities, privileges and immunities accorded by international law to Heads of State on an official visit.

2. The Head of the Government, the Minister for Foreign Affairs and other persons of high rank, when they take part in a delegation of the sending State to an organ or to a conference, shall enjoy in the host State or in a third State in addition to what is granted by the present Part, the facilities, privileges and immunities accorded by international law.

49. The text was based on article 21 of the Convention on Special Missions.<sup>11</sup> It had been thought desirable to include it in the present draft because it was quite common for a delegation to an organ to include persons of high rank.

*Article 68 was adopted.*

#### ARTICLE 69 (Privileges, immunities and obligations in general)<sup>12</sup>

50. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 69:

*Article 69*

*Privileges, immunities and obligations in general*

The provisions of articles 22, 24, 27, 35, 37, 39, 41, 46 and 48 shall apply also in the case of a delegation to an organ or to a conference.

51. The article had been drafted on the lines of the corresponding provision, article 60-B, in Part III on permanent observer missions.<sup>13</sup>

52. The Drafting Committee sought the approval in principle of article 69, on the understanding that its final drafting might be changed. When all the articles of the draft had been approved, it might be necessary to split article 69 into two or more articles covering the various sections.

53. Mr. USHAKOV asked why the words "obligations in general" had been introduced into the title.

54. Mr. KEARNEY (Chairman of the Drafting Committee) said it was because the text referred to such articles as article 46, which dealt with an obligation and not with a privilege or an immunity. The title was provisional and if the article were later to be broken up into two or more articles, separate titles would of course be adopted for each.

<sup>11</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 101.

<sup>12</sup> For previous discussion, see 1059th meeting, paras. 63-80, 1060th meeting, paras. 1-51, and 1061st meeting, paras. 8-54.

<sup>13</sup> See 1064th meeting, para. 21.

<sup>10</sup> For previous discussion, see 1059th meeting, paras. 10-62 (article 68).

55. Mr. REUTER suggested that it might be preferable to entitle the article "Privileges, immunities and miscellaneous obligations". The reference was not to obligations in general, but to certain obligations only.

56. The CHAIRMAN said that the difficulty might be overcome by dropping the words "in general".

57. Mr. ROSENNE suggested that the Drafting Committee be asked to prepare a separate article containing the reference to the articles of section 3, namely article 45 *et seq.*, and place it at the end of the draft.

58. Mr. BARTOŠ said he did not understand what was meant by "approval in principle" of the article. The Commission should either adopt the article or send it back to the Drafting Committee, and should communicate to governments only articles which it had adopted definitively. He disliked the new practice of communicating to them articles which it had only half adopted.

59. Mr. KEARNEY (Chairman of the Drafting Committee) said that the intention was that the article should be approved in substance. When all the articles had been approved and numbered, the actual wording might be changed.

60. Mr. ALCÍVAR said that the intention was probably to adopt article 69 provisionally.

61. Sir Humphrey WALDOCK said that the Commission would be approving article 69 in substance. The intention was that the article would go back to the Drafting Committee for further consideration as to its most appropriate form.

62. Mr. NAGENDRA SINGH suggested that article 69 be approved for the time being, on the understanding that it would be reviewed at a later stage.

63. Mr. ROSENNE said that it was his understanding that, when the Commission came to consider its draft report, it would have before it all the articles in their final order and would be able to adopt them formally.

64. The CHAIRMAN said that, if there were no further comments, he would consider that the Commission agreed to adopt article 69 in substance, on the understanding that the Drafting Committee would reconsider the drafting. In addition, the words "in general" would be dropped from the title.

*It was so agreed.*

#### ARTICLE 70 (Premises and accommodation)

65. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 70:

##### *Article 70*

##### *Premises and accommodation*

The host State shall assist a delegation to an organ or to a conference, if it so requests, in procuring the necessary premises and obtaining suitable accommodation for its members. The Organization shall, where necessary, assist the delegation in this regard.

66. That text was a combination of the provision on premises and accommodation in the Convention on Special Missions<sup>14</sup> and of article 24, on assistance by the organization, of the Commission's 1969 draft on permanent missions.<sup>15</sup> The Convention on Special Missions had been taken as a model because delegations resembled special missions.

67. Mr. USHAKOV said he would like it to be explained in the commentary that the second sentence of the article referred to a delegation to an organ as well as to a delegation to a conference. The organization convening the conference should, in that case too, assist delegations.

68. The CHAIRMAN said that, if there were no objection, he would consider that the Commission agreed to adopt article 70, on the understanding that the point raised by Mr. Ushakov would be mentioned in the commentary.

*It was so agreed.*

#### ARTICLE 70-B (Inviolability of the premises)

69. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 70-B:

##### *Article 70-B*

##### *Inviolability of the premises*

1. The premises where a delegation to an organ or to a conference is established shall be inviolable. The agents of the host State may not enter the said premises, except with the consent of the head of the delegation or, if appropriate, of the head of the permanent diplomatic mission of the sending State accredited to the host State. Such consent may be assumed in the case of fire or other disaster that seriously endangers public safety, and only in the event that it has not been possible to obtain the express consent of the head of the delegation or of the head of the permanent diplomatic mission.

2. The host State is under a special duty to take all appropriate steps to protect the premises of the delegation against any intrusion or damage and to prevent any disturbance of the peace of the delegation or impairment of its dignity.

3. The premises of the delegation, their furnishings, other property used in the operation of the delegation and its means of transport shall be immune from search, requisition, attachment or execution.

70. The text was similar to that of the corresponding article of the Convention on Special Missions, article 25.<sup>16</sup> The problems of delegations and those of special missions were identical since both were usually housed in hotels.

71. Mr. USHAKOV said he would like it to be explained in the commentary that the Commission was intending to add to article 00, which had been approved at the

<sup>14</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 101, article 23.

<sup>15</sup> *Ibid.*, Supplement No. 10, p. 5.

<sup>16</sup> *Ibid.*, Supplement No. 30, p. 102.

1069th meeting, a definition of the premises of the organization which was not at present included.

72. Mr. THIAM said that "attachment" could be considered as a measure of execution and that, consequently, it was incorrect to speak in paragraph 3 of "attachment or execution".

73. Mr. BARTOŠ said that attachment was a precautionary measure, whereas execution had an effect of finality with respect to the property subject to it.

74. Mr. TESLENKO (Deputy Secretary to the Commission) said that the formula was taken word for word from article 22 of the Convention on Diplomatic Relations<sup>17</sup> and had already been used in article 25 of the present draft, which had been adopted by the Commission at its previous session.<sup>18</sup>

75. Mr. ALCÍVAR said he reserved his position with regard to paragraph 1. In the General Assembly, he had opposed the inclusion of a similar provision in the Convention on Special Missions.

76. Mr. USTOR said that he reserved his position with regard to the last sentence of paragraph 1.

77. The CHAIRMAN said he would consider that, subject to the reservations which had been expressed, the Commission agreed to adopt article 70-B.

*It was so agreed.*

#### ARTICLE 71 (Exemption of the premises of the delegation from taxation)

78. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 71:

##### *Article 71*

##### *Exemption of the premises of the delegation from taxation*

1. To the extent compatible with the nature and duration of the functions performed by a delegation to an organ or to a conference, the sending State and the members of the delegation acting on behalf of the delegation shall be exempt from all national, regional or municipal dues and taxes in respect of the premises occupied by the delegation, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the host State by persons contracting with the sending State or with a member of the delegation.

79. The text followed closely that of article 26 on exemption of the premises of the permanent mission from taxation.<sup>19</sup>

80. Mr. ROSENNE asked that a note should be made, for the second reading, of the need to examine more closely the words "acting on behalf of the delegation". Those words could be confusing, particularly since the

adoption of article 64 *ter* on the acting head of the delegation.<sup>20</sup>

*Article 71 was adopted.*

#### ARTICLE 72 (Freedom of movement)

81. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 72:

##### *Article 72*

##### *Freedom of movement*

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the host State shall ensure to all members of a delegation to an organ or to a conference such freedom of movement and travel in its territory as is necessary for the performance of the functions of the delegation.

82. The text was identical with that of article 27 of the Convention on Special Missions.<sup>21</sup>

*Article 72 was adopted.*

#### ARTICLE 72 bis (Freedom of communication)

83. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 72 bis:

##### *Article 72 bis*

##### *Freedom of communication*

1. The host State shall permit and protect free communication on the part of a delegation to an organ or to a conference for all official purposes. In communicating with the Government of the sending State, its diplomatic missions, consular posts, permanent missions, permanent observer missions, special missions and delegations, wherever situated, the delegation may employ all appropriate means, including couriers and messages in code or cipher. However, the delegation may install and use a wireless transmitter only with the consent of the host State.

2. The official correspondence of the delegation shall be inviolable. Official correspondence means all correspondence relating to the delegation and its functions.

3. Where practicable, the delegation shall use the means of communication, including the bag and the courier, of the permanent diplomatic mission, of the permanent mission or of the permanent observer mission of the sending State.

4. The bag of the delegation shall not be opened or detained.

5. The packages constituting the bag of the delegation must bear visible external marks of their character and may contain only documents or articles intended for the official use of the delegation.

6. The courier of the delegation, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the host State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

7. The sending State or the delegation may designate couriers *ad hoc* of the delegation. In such cases the provisions of paragraph 6 of this article shall also apply, except that the

<sup>17</sup> United Nations, *Treaty Series*, vol. 500, p. 108.

<sup>18</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10*, p. 5.

<sup>19</sup> *Ibid.*, p. 6.

<sup>20</sup> See above, para. 8.

<sup>21</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 102.

immunities therein mentioned shall cease to apply when the courier *ad hoc* has delivered to the consignee the delegation's bag in his charge.

8. The bag of the delegation may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. The captain shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the delegation. By arrangement with the appropriate authorities, the delegation may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

84. The text was almost identical with that of article 28 of the Convention on Special Missions.<sup>23</sup> The only difference was in paragraph 3 where, in view of the limited requirements of a delegation, it was suggested that, where practicable, it should use the facilities of the permanent mission or the permanent observer mission.

85. Mr. ROSENNE suggested, as a drafting point, that paragraphs 3 and 4 be combined into a single paragraph simply to preserve the numbering of article 29 of the draft, which was the major article in the present group.

86. Mr. KEARNEY (Chairman of the Drafting Committee) said that the presentation followed was that of article 28 of the Convention on Special Missions. In any case, it seemed to him that the ideas in the two paragraphs were quite different.

87. Mr. USHAKOV said that it would be necessary to explain in the commentary that the word "delegations", as used in the second sentence of paragraph 1, meant delegations to organs or to conferences.

88. The CHAIRMAN said that, if there were no objection, he would consider that the Commission agreed to adopt article 72 *bis* on the understanding that the point raised by Mr. Ushakov would be mentioned in the commentary.

*It was so agreed.*

#### ARTICLE 72 *ter* (Personal inviolability)

89. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 72 *ter*:

##### *Article 72 ter* *Personal inviolability*

The persons of the representatives in a delegation to an organ or to a conference and of the members of its diplomatic staff shall be inviolable. They shall not be liable to any form of arrest or detention. The host State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity.

90. The text was similar to that of article 29 of the Convention on Special Missions.<sup>23</sup>

*Article 72 ter was adopted.*

<sup>23</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 102.

<sup>24</sup> *Ibid.*, p. 102.

#### ARTICLE 72 *quater* (Inviolability of the private accommodation)

91. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 72 *quater*:

##### *Article 72 quater* *Inviolability of the private accommodation*

1. The private accommodation of the representatives in a delegation to an organ or to a conference and of the members of its diplomatic staff shall enjoy the same inviolability and protection as the premises of the delegation.

2. Their papers, their correspondence and, except as provided in paragraph ... of article 72, their property shall likewise enjoy inviolability.

92. The text was similar to that of article 30 of the Convention on Special Missions.<sup>24</sup>

*Article 72 quater was adopted.*

#### ARTICLE 73 (Immunity from jurisdiction)

93. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 73:

##### *Article 73* *Immunity from jurisdiction*

###### *Alternative A*

1. The representatives in a delegation to an organ or to a conference and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the host State.

2. They shall also enjoy immunity from the civil and administrative jurisdiction of the host State, except in the case of:

(a) A real action relating to private immovable property situated in the territory of the host State, unless the person concerned holds it on behalf of the sending State for the purposes of the delegation;

(b) An action relating to succession in which the person concerned is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) An action relating to any professional or commercial activity exercised by the person concerned in the host State outside his official functions;

(d) An action for damages arising out of an accident caused by a vehicle used outside the official functions of the person concerned.

3. The representatives in the delegation and the members of its diplomatic staff are not obliged to give evidence as witnesses.

4. No measures of execution may be taken in respect of a representative in the delegation or a member of its diplomatic staff except in the cases coming under sub-paragraphs (a), (b), (c) and (d) of paragraph 2 of this article and provided that the measures concerned can be taken without infringing the inviolability of his person or his accommodation.

5. The immunity from jurisdiction of the representatives in the delegation and of the members of its diplomatic staff does not exempt them from the jurisdiction of the sending State.

###### *Alternative B*

1. The representatives in a delegation to an organ or to a conference and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the host State.

<sup>24</sup> *Ibid.*, p. 102.

2. (a) The representatives and members of the diplomatic staff of the delegation shall enjoy immunity from the civil and administrative jurisdiction of the host State in respect of all acts performed in the exercise of their official functions.

(b) No measures of execution may be taken in respect of a representative or a member of the diplomatic staff of the delegation unless the measures concerned can be taken without infringing the inviolability of his person or his accommodation.

3. The representatives and members of the diplomatic staff of the delegation are not obliged to give evidence as witnesses.

4. The immunity from jurisdiction of the representatives and the members of the diplomatic staff of the delegation does not exempt them from the jurisdiction of the sending State.

94. The Drafting Committee had prepared alternative texts for the article. Alternative A was modelled directly on article 31, on immunity from jurisdiction, in the Convention on Special Missions.<sup>25</sup>

95. Alternative B was a somewhat more restrictive proposal and came closer to article IV, section 11, of the Convention on the Privileges and Immunities of the United Nations,<sup>26</sup> although it went somewhat beyond that instrument in providing for immunity from the criminal jurisdiction of the host State. It followed section 11 in limiting immunity from civil jurisdiction to acts performed in the exercise of official functions.

96. The provisions concerning measures of execution laid down in paragraph 2 (b) of alternative B were slightly different in so far as such measures could not be taken unless they would not infringe the inviolability of the person or accommodation of the representative in question. The limitations on execution in alternative A, on the other hand, came into play only in the case of the four specific conditions, as described in sub-paragraphs (a), (b), (c) and (d) of paragraph 2, under which civil jurisdiction might be exercised.

97. The question the Commission now had to decide was whether it should submit both alternatives in its report or adopt one or the other of them.

98. Mr. CASTRÉN said he was in favour of alternative B, because he approved of the way in which it limited the scope of the privileges and immunities.

99. Mr. ROSENNE said that he did not think that at the present stage the Commission should take a decision on either alternative.

100. From the point of view of general international law, there was no *lex lata* on the subject, since immunities varied from organization to organization and from conference to conference. He suggested that the Commission include both alternatives in its report, with a view to eliciting the views of governments for consideration at the second reading.

101. Mr. USTOR said that, on the basis of principle, he was inclined to favour alternative A, since he did not think that any distinction should be made between various kinds of representatives; on the basis of practice, he did not think that the adoption of alternative A would impose any serious sacrifice on host States.

102. Mr. REUTER said he associated himself with the views of Mr. Rosenne. If he had to choose between the two alternatives, he would opt for alternative B, which in practice hardly differed from alternative A. To adopt it would, therefore, avoid giving host States the impression that an attempt was being made to overburden them by placing all the staff of a delegation on the same footing as ambassadors.

103. Mr. EUSTATHIADES said that, fundamentally, there was no great practical difference between alternatives A and B. Alternative B merely laid down a more general principle, but it was difficult to see what acts other than those listed in paragraph 2 of alternative A could be regarded as being outside official functions. Alternative B was, therefore, more restrictive in its effect, because in case of doubt it provided for the application of a principle which was not contained in alternative A but which, basically, was subject to the same exceptions.

104. Mr. USHAKOV said he saw little difference between alternatives A and B but preferred alternative A because it was more precise. He would, however, accept the majority view if the Commission decided to refer both alternatives to governments.

105. Sir Humphrey WALDOCK said that, in his opinion, the Commission should submit both alternatives to governments.

106. He personally felt that, while there were some merits in alternative A, alternative B was much more likely to prove acceptable to host States. After all, there were some differences between the two alternatives, since there were cases when the member of a delegation concluded a contract for the purpose of exercising the functions of the delegation, which might involve the lease of an apartment, the purchase of a car and so on, and it was not clear whether such cases were covered by alternative A. Quite a number of States today acted as hosts to international conferences in which many individuals were involved; he was inclined to think, therefore, that host States would tend to prefer alternative B. The question was as much one of policy as of law and it should be put frankly to governments. In any event, a reference to both alternatives should be included in the commentary.

107. Mr. NAGENDRA SINGH said that he agreed with Sir Humphrey Waldock that the Commission should invite the comments of governments on both alternatives. If one were to assume, however, that host States would prefer alternative B and that sending States would prefer alternative A, the majority of replies would surely be in favour of alternative A, since the number of sending States far exceeded that of host States. In that event it would be appropriate for the Commission to take a stand and choose one of the two alternatives. However, if the Commission so wished he would not object to circulating both the alternatives to governments for their opinion. He personally preferred alternative A, as it was precise and clear.

108. Mr. AGO said that he preferred alternative A because he found alternative B ambiguous. A wording as vague as that of sub-paragraph 2 (a) lent itself to any

<sup>25</sup> *Ibid.*, p. 102.

<sup>26</sup> United Nations, *Treaty Series*, vol. 1, p. 20.

interpretation, liberal or restrictive. Besides, the Commission had already adopted provisions similar to those of alternative A in previous drafts and, if it changed the formula now, that might in the first place cause some surprise and the Commission would have to explain its action; secondly, it might create unjustifiable differences between members of the same delegation. In the interests of the unity of the system, therefore, alternative A was preferable.

109. Moreover, the Commission should not unload part of its responsibilities on to governments, whose replies, after all, might not be of much use to it. Indeed, there was a danger that governments would opt rather hastily for alternative B, because it was shorter. He would, however, bow to the opinion of the majority if it decided to take such a step, provided it was clearly indicated in the commentary that alternative B departed from the system so far followed in all other cases.

110. Mr. RUDA said that he wished to associate himself with the remarks made by Mr. Ago concerning alternative B, although it would seem prudent to send both alternatives to governments. From the point of view of host States, alternative A would probably be more acceptable, since it clearly defined those cases when representatives would not enjoy immunity.

111. Mr. EUSTATHIADES said that the advantage of alternative A was that it detailed the cases in which acts were not performed in the exercise of official functions, and the advantage of alternative B was that it laid down a principle, which was not to be found in alternative A.

112. Under the terms of alternative B, in the event of a dispute, the presumption was that there was no immunity from civil and administrative jurisdiction where the acts in question were not performed in the exercise of official functions. However, it might well be asked whether, on so new a subject, it would not be preferable to leave that interpretation to the actual practice of States.

113. If the Commission did not submit both alternatives to governments, it would not learn their general views. As a possible compromise, perhaps the two texts could be combined by taking alternative B as the basis and adding at the end of sub-paragraph 2 (a), after replacing the full stop by a semi-colon, the phrase "such immunity shall not apply, however, in the case of:", followed by sub-paragraphs (a) to (d) of paragraph 2 of alternative A.

114. Mr. ALCÍVAR said that he could not agree that the difference between the two alternatives was a small one; there was definitely a difference of substance, since alternative A referred to immunity from civil and administrative jurisdiction in an absolute way, subject only to four specific exceptions, whereas alternative B referred to such immunity only in respect of all acts performed in the exercise of official functions. He was inclined, therefore, to favour alternative A.

115. Mr. CASTRÉN said that perhaps he should explain the reasons why he preferred alternative B. Alternative A was not, as some thought, clearer and more precise since, first, its list of exceptions was not

exhaustive, and secondly it contained in sub-paragraph (c) the formula "outside his official functions", and in sub-paragraph (d) the formula "outside the official functions of the person concerned". Mr. Ago had claimed that paragraph 2 (a) of alternative B was open to every kind of interpretation, but that criticism applied even more strongly to the two phrases he had quoted.

116. Furthermore, the limitation of immunities under the terms of alternative B was justified by the fact that the functions of members of delegations to an organ or to a conference were temporary and often very short-lived. There was every reason to believe that the Scandinavian States, which were in favour of such limitation of privileges and immunities, would opt for that alternative. In any event, governments should be consulted.

117. Mr. Eustathiades's proposal to combine the two alternatives was an interesting one and deserved at least to be mentioned in the commentary.

118. Mr. ROSENNE said that he found it difficult at the present stage of the discussion to believe that all host States would necessarily favour one alternative, while all sending States would favour another, since host States were also sending States.

119. In general, he preferred alternative A, although it caused him some perplexity inasmuch as it was drafted in a form which would seem to interfere with the right of States to choose the composition of their delegations. He was thinking, as one example, of the case of a representative who might have been involved in a traffic accident in the host State on some former occasion and who had proceedings brought against him when he returned there to participate in a conference.

120. It had been suggested that alternatives A and B might be combined, but he doubted whether that was really possible. He still felt that the Commission should not take a decision on the matter at the present time but should submit both alternatives to governments.

121. Lastly, he would like to ask the Chairman of the Drafting Committee whether the words "for the purposes of the delegation", in paragraph 2 (a) of alternative A, were really necessary and whether it would not be better to end the sentence after the words "sending State".

122. Sir Humphrey WALDOCK said that he could see some justification for considerable civil immunities for representatives at conferences, for the very reason that conferences were generally of comparatively short duration. The less time there was for completing the work, the greater the interference with the delegate's performance of his functions was likely to be if he was involved in legal proceedings. He could also see, however, that such immunities might give rise to abuse because of the large number of people involved.

123. From a purely drafting point of view, he preferred alternative A, since paragraph 2 (d), in particular, covered the very delicate question of motor vehicle accidents.

124. He suggested that governments be asked to express their views on both alternatives; but if the Commission elected to adopt one of the two alternatives, the other should be set out in the commentary.

125. Mr. KEARNEY (Chairman of the Drafting Committee), replying to Mr. Rosenne, said the words "for the purposes of the delegation" in paragraph 2 (a) of alternative A had been included in order to eliminate any possible confusion between different types of immunity, such as sovereign immunity and diplomatic immunity.

126. As a member of the Commission, he personally favoured alternative B but thought that both alternatives should be sent to governments for their comments. It should be borne in mind that the United Nations Convention which provided immunity from civil jurisdiction only for official acts had not given rise to any really serious problems in the past twenty years.

127. Mr. THIAM said that in his view it would be a wise move and would allow time for reflection to send both alternatives to governments, whose comments would, of course, be based not just on juridical considerations but on political and diplomatic considerations as well.

128. There was a fundamental difference of approach between the two texts, and alternative A left very little freedom of action. If he had to choose, he would opt for alternative A, since it best met the needs of his country.

129. Mr. SETTE CÂMARA said that he wished to state for the record that he preferred the flexible formula used in alternative B, although he would not object to both alternatives being sent to governments.

130. The CHAIRMAN suggested that both alternatives should be sent to governments for their comments, since that seemed to be the view of the great majority of speakers.

*It was so agreed.*

#### ARTICLE 74 (Waiver of immunity)

131. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 74:

##### *Article 74* *Waiver of immunity*

1. The immunity from jurisdiction of the representatives in a delegation to an organ or to a conference, of the members of its diplomatic staff and of persons enjoying immunity under article . . . may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by any of the persons referred to in paragraph 1 of this article shall preclude them from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

132. The article followed the pattern of article 33 of the present draft<sup>27</sup> and that of article 41 of the Con-

vention on Special Missions.<sup>28</sup> Paragraph 3, in particular, had been modelled on paragraph 3 of article 41 of the Convention on Special Missions, on the ground that that formulation was clearer and more precise than the one used in article 33.

133. The Drafting Committee considered that it should be pointed out in the commentary that the Commission would review article 33 at its next session.

*Article 74 was adopted.*

#### ARTICLE 75 (Exemption from dues and taxes)

134. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 75:

##### *Article 75*

##### *Exemption from dues and taxes*

The representatives in a delegation to an organ or to a conference and the members of its diplomatic staff shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) Indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) Dues and taxes on private immovable property situated in the territory of the host State, unless the person concerned holds it on behalf of the sending State for the purposes of the delegation;

(c) Estate, succession or inheritance duties levied by the host State, subject to the provisions of article . . . ;

(d) Dues and taxes on private income having its source in the host State and capital taxes on investments made in commercial undertakings in the host State;

(e) Charges levied for specific services rendered;

(f) Registration, court or record fees, mortgage dues and stamp duty, subject to the provisions of article 71;

[(g) Excise duties or sales tax.]

135. With one exception the article followed the pattern of exemptions listed in other conventions on the subject. That exception was contained in sub-paragraph (g), which would include excise duties or sales tax. Because of the administrative difficulties involved, that exemption had given rise to complaints on the part of host States.

136. Mr. ROSENNE said that he could not accept the reference to excise duties; the reference to sales tax should however be included, in view of the very wide variety of such taxes, sometimes down to city level, in many countries.

137. Mr. RUDA, Mr. USHAKOV, Mr. SETTE CÂMARA and Mr. ALCÍVAR said that, in their view, sub-paragraph (g) should be deleted.

138. The CHAIRMAN said that there appeared to be general agreement that sub-paragraph (g) should be deleted.

*It was so agreed.*

139. Mr. REUTER asked whether the deletion of sub-paragraph (g) meant that the exception referred to was

<sup>27</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10*, p. 10.

<sup>28</sup> *Ibid.*, *Supplement No. 30*, p. 104.

covered by sub-paragraph (a) or that it did not apply to members of delegations.

140. The CHAIRMAN said that that question would have to be decided in connexion with sub-paragraph (a).

*Article 75, as amended by the deletion of sub-paragraph (g), was adopted.*

ARTICLE 76 (Exemption from customs duties and inspection)

141. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 76:

*Article 76*

*Exemption from customs duties and inspection*

1. Within the limits of such laws and regulations as it may adopt, the host State shall permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(a) Articles for the official use of a delegation to an organ or to a conference;

(b) Articles for the personal use of the representatives in the delegation and the members of its diplomatic staff.

2. The personal baggage of the representatives in a delegation to an organ or to a conference and of the members of its diplomatic staff shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host State. In such cases, inspection shall be conducted only in the presence of the person concerned or of his authorized representative.

142. The article followed the pattern of article 35 of the Convention on Special Missions.<sup>29</sup>

*Article 76 was adopted.*

The meeting rose at 1.05 p.m.

<sup>29</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 103.

**1078th MEETING**

*Friday, 26 June 1970, at 10.20 a.m.*

*Chairman: Mr. Taslim O. ELIAS*

*Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castrén, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, 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]

(continued)

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

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE  
(continued)

ARTICLE 77 (Privileges and immunities of other persons)

2. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 77:

*Article 77*

*Privileges and immunities of other persons*

1. If representatives in a delegation to an organ or to a conference or members of its diplomatic staff are accompanied by members of their families, the latter shall enjoy the privileges and immunities specified in articles ... to ..., provided they are not nationals of or permanently resident in the host State.

2. Members of the administrative and technical staff of the delegation shall enjoy the privileges and immunities specified in articles ... to .... Members of their families who accompany them and who are not nationals of or permanently resident in the host State shall enjoy the same privileges and immunities.

3. Members of the service staff of the delegation shall enjoy immunity from the jurisdiction of the host State in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment, and exemption from social security legislation as provided in article ....

4. Private staff of the members of the delegation who are not nationals of or permanently resident in the host State shall be exempt from dues and taxes on the emoluments they receive by reason of their employment. In all other respects, they may enjoy privileges and immunities only to the extent permitted by the host State. However, the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the delegation.

3. The article followed the pattern of article 40 of the Convention on Special Missions.<sup>1</sup> It was important to note that the text would require revision along the lines of article 36 of the Convention on Special Missions if alternative B of article 73 were adopted. The number of the articles referred to in paragraphs 1, 2 and 3 had not yet been inserted, but article 77 would include the same range of privileges and immunities as were referred to in article 40 of the draft articles on permanent missions.<sup>2</sup>

4. Incidentally, the Drafting Committee had noted that paragraph 2 of article 40 of the present draft contained an error in that it stated that the persons referred to would enjoy the privileges and immunities specified in articles 30 to 37. But article 33, concerning waiver of immunity, and article 34, concerning settlement of civil

<sup>1</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 104.

<sup>2</sup> *Ibid.*, Supplement No. 10, p. 13.