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Summary record of the 1091st meeting

Topic:
Representation of States in their relations with international organizations

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be examined by the conciliation commission referred to in its comment on article 50 (A/CN.4/239, section C.II).

86. With regard to article 11, he agreed with the Special Rapporteur that the problems of stateless persons were adequately covered by the first sentence in that article, which read: "The permanent representative and the members of the diplomatic staff of the permanent mission should in principle be of the nationality of the sending State." The words "in principle" surely implied that it was not impossible that persons other than nationals could be appointed.

87. Mr. EUSTATHIADES said he thought there was no need to make express provision for the very unlikely case of a State appointing a person previously convicted of a serious criminal offence. Moreover, if such a case did arise, the host State could invoke article 45, paragraph 2.

88. The case of *persona non grata*, on the other hand, led to a conflict of interests: those of the host State and those of the organization, which wished to safeguard its proper functioning. The opposition of the host State could not be ignored, but neither could that State be given a right of veto. The word "freely" left the host State very little latitude.

89. In order to reduce the problem to its proper dimensions, perhaps only the case of a person already declared *persona non grata* should be considered. In that case, a "question" arose between the States concerned, and consultations between them could be held in accordance with the provisions of article 50. In his view, it would not be necessary for the sending State to communicate the name of the person to the host State; the latter State could take action when that communication was made to the organization and indirectly brought to its attention.

90. He proposed that article 50 should be mentioned in the text of article 10, which would then begin; "Subject to the provisions of articles 11, 16 and 50...". That compromise solution seemed to him to be the minimum that would partly meet the justified fears expressed during the discussion.

91. Mr. EL-ERIAN (Special Rapporteur), summing up the discussion, said that, as in 1968, a majority of the Commission seemed to be attached to the basic principle of the sending State's freedom of choice of its permanent representative, a principle which itself was based on the fundamental difference between bilateral and multilateral diplomacy. There was general agreement, therefore, that articles 10 and 11 should be retained in their present form.

92. Mr. Elias, supported by other speakers, had suggested that some reference should be made in the commentary to the need for certain exceptions in the case of past criminal activities on the part of proposed members of missions. Mr. Ruda had suggested that the commentary should include some mention of article 50. He realized that the commentary was bound to disappear eventually, but it was nevertheless a part of the *acte préparatoire* of the draft convention.

93. There was always a risk of abuse in connexion with basic immunities, but as Mr. Ushakov had said, it was necessary to assume good faith on the part of the sending State and to allow it freedom of choice. Article 45, paragraph 2, relating to the sending State's recall of members of its mission in the event of grave violations of the law, used the word "shall", and that implied an obligation. There were, however, many delicate considerations which might make a member of a diplomatic mission *persona non grata*, but which would not automatically disqualify a member of a permanent mission to an international organization.

94. Mr. KEARNEY said he reserved the right to revert to the problems presented by articles 10 and 11 at the next meeting.

The meeting rose at 1.20 p.m.

1091st MEETING

Monday, 3 May 1971, at 3.10 p.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Thiam, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 6; A/CN.4/241 and Add.1 to 3; A/CN.4/L.162/Rev.1)

[Item 1 of the agenda]

(continued)

ARTICLE 10 (Appointment of the members of the permanent mission) and

ARTICLE 11 (Nationality of the members of the permanent mission) (continued)

1. The CHAIRMAN invited the Commission to continue consideration of articles 10 and 11.

2. Mr. KEARNEY said he was rather perplexed by the proposal that the problems raised in connexion with articles 10 and 11 should be dealt with in the commentary. He seemed to recall that at the Vienna Conference on the

Law of Treaties it had been agreed that if the meaning of a provision was clear in the light of the ordinary meaning of the words as used in their context, the preparatory work would be referred to only if application of the literal meaning of the provision led to an absurd or unreasonable result.¹ He could see nothing ambiguous in the text of article 10; it was plain and clear and imposed no restrictions except in respect of articles 11 and 16. It would seem strange if the Commission relied on the commentary to solve any difficulties in connexion with article 10, for that course would suggest that it thought the article was likely to lead to some absurd or unreasonable result.

3. Any reference in the commentary to the consultation procedure provided for in article 50 would not be fruitful; there could be no reason for any conciliation procedure in connexion with article 10 because, under its provisions, the sending State had complete freedom to appoint the members of the permanent mission.

4. Mr. NAGENDRA SINGH said he would like to amplify the remarks he had made at the previous meeting, when he had proposed that some reference to article 50 be included in article 10 in order to meet the suggestion of the Swiss Government regarding the establishment of a conciliation commission (A/CN.4/239, section C.II). It was his firm belief that the practice of inviting the comments of governments was the main foundation of the work of codification on which the Commission was engaged. Those comments, whether they represented the views of one State or of many, should be welcomed impartially. If they ran counter to the accepted principles of international law, the Commission was entitled to ignore them; otherwise, the comments of even the smallest State should be given serious consideration, since the work of codification was not a legislative process governed by majority rule.

5. In articles 10 and 11, three entities were involved: the sending State, the host State and the international organization. The relationship was essentially between the sending State and the organization, but it was not an exclusively bilateral one; the host State had certain legitimate interests which could not be ignored. Consequently, to cover the three contingencies referred to by the Governments of Israel and Switzerland—the case of a person who had been previously convicted of a serious criminal offence in the host State, the case of a person who had previously been declared *persona non grata* by the host State, and the case of stateless persons—it seemed to him only reasonable to include a reference to article 50 in article 10.

6. He agreed with the Special Rapporteur that it would be calamitous to include any provision which would tend to reduce the privileges and immunities of the members of the permanent missions.

7. Mr. EL-ERIAN (Special Rapporteur) said he agreed

that the basic principle of article 10, namely, the freedom of the sending State to appoint the members of its permanent mission, might give rise to abuses. In the case of a person who had been convicted of a serious criminal offence, however, a remedy already existed under article 45, paragraph 2, which read: "In case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from criminal jurisdiction, the sending State shall, unless it waives this immunity, recall the person concerned, terminate his functions with the mission or secure his departure, as appropriate".

8. The case of persons who had previously been declared *persona non grata* by the host State seldom arose in practice, because governments were naturally concerned to appoint representatives of high quality and character. Moreover, recourse could always be had to the consultation machinery provided for in article 50, to which article 10 was subject, but he feared that to add a specific reference to article 50 in article 10 might create a certain ambiguity, since it might seem to imply that consultations should be held prior to the appointment of the members of the mission.

9. With regard to Mr. Kearney's objection to dealing with problems in the commentary, he would not like to think that the Commission's commentaries served no other purpose than that of *actes préparatoires*. In his opinion, the commentaries should accompany the articles after their adoption and should always be referred to in case of doubt.

10. Mr. EUSTATHIADES said that at the previous meeting he too had proposed that a reference to article 50 be included in article 10. It was true that a situation which was, after all, exceptional should not be treated as a basic problem, but it was a situation that could arise and provision should be made for settling it, in order to protect the interests of the host State beside those of the sending States. A reference to article 50 in article 10 was the most generally acceptable of the solutions proposed.

11. Mr. USHAKOV said that, with regard to the application of the procedure laid down in article 50 to situations which might arise from articles 10 and 11, it should be made clear, at least in the commentary to article 50, which organization the consultations should be held with in cases where a member of the permanent mission was appointed to several organizations.

12. The CHAIRMAN said that, if there were no objection, he would consider that the Commission agreed to refer articles 10 and 11 to the Drafting Committee for review in the light of the discussion, bearing in mind that the Commission was anxious to safeguard, either by an appropriate formula in the body of the articles or in some other way, both the freedom of the sending State to appoint the members of the permanent mission and the legitimate interests of the host State.

*It was so agreed.*²

¹ See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference*, p. 293, article 32 (United Nations publication, Sales No.: E.70.V.5).

² For resumption of the discussion see 1111th meeting, paras. 28 and 31.

ARTICLES 12 and 13

13. The CHAIRMAN invited the Special Rapporteur to introduce articles 12 and 13.

14.

*Article 12**Credentials of the permanent representative*

The credentials of the permanent representative shall be issued either by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or by another competent minister if that is allowed by the practice followed in the Organization, and shall be transmitted to the competent organ of the Organization.

*Article 13**Accreditation to organs of the Organization*

1. A member State may specify in the credentials submitted in accordance with article 12 that its permanent representative shall represent it in one or more organs of the Organization.

2. Unless a member State provides otherwise its permanent representative shall represent it in the organs of the Organization for which there are no special requirements as regards representation.

15. Mr. EL-ERIAN (Special Rapporteur) said that the only amendment he proposed to article 12 was to replace the words "or by another competent minister" by the words "or by another competent authority".

16. As to article 13, there had been a suggestion in the Sixth Committee of the General Assembly that the word "accreditation" should be replaced by "appointment", but the Commission had decided in favour of the former word. Those were the only basic issues raised by the two articles.

17. Mr. YASSEEN said he saw no objection to replacing the words "competent minister" in article 12 by "competent authority", which was a more general formula, fully in keeping with international practice. He was also in favour of retaining the words "if that is allowed by the practice followed in the Organization", which granted the organization the right to give or withhold its consent.

18. The solutions proposed in article 13 were satisfactory and in accordance with international practice, and the article could be adopted as it stood, subject to any changes of form that the Drafting Committee might consider appropriate.

19. Mr. USTOR said he could accept the substance of article 12 as submitted by the Special Rapporteur. The article provided for four possibilities: the credentials might be issued by the Head of State, by the Head of Government, by the Minister for Foreign Affairs or, where that practice was recognized, by another competent authority. It should be noted that, even if the last possibility were omitted, the results would be the same, since article 3 provided that the rules of the organization should prevail.

20. In the interests of uniformity, the Drafting Committee should review all similar articles which included a specific reference to the rules of the organization. Article 6, for example, concerning the establishment of permanent missions, would be subject to article 3, although no reference to that article was included in it.

21. Mr. NAGENDRA SINGH said he welcomed the replacement of the words "competent minister" by "competent authority" in article 12.

22. He was not sure, however, about the words "the practice followed in the Organization", and he agreed with Mr. Ustor that the Drafting Committee should examine other similar articles in order to ensure uniformity. He wondered whether it might not be better to speak of "the laws of the sending State". He himself would attach more importance to the laws of the sending State than to the practice of the organization, since the aim was to bind the sending State more firmly.

23. With regard to article 13, the Sixth Committee had considered the word "accreditation" incorrect because it was based on the concepts of *agrément* and *persona non grata*, which were not applicable in the case of international organizations, since they were not sovereign States. The title "Accreditation to organs of the Organization" might perhaps be replaced by "Representation in organs of the Organization".

24. It had also been suggested that there was an inconsistency between paragraphs 1 and 2, but he could not agree with that view. The words "Unless a member State provides otherwise", in paragraph 2, actually covered what was stated in paragraph 1, which thus became almost superfluous. The words "in the organs of the Organization", in paragraph 2, might be replaced by "in all the organs of the Organization", but he would not quarrel with the text as it stood.

25. With regard to the observation by the Government of Ecuador (A/CN.4/241/Add.2, para. 165), he agreed with the Special Rapporteur that there was no inconsistency between article 13 and article 7, since the latter was a general provision. He also agreed with the Special Rapporteur in preferring the present text of article 13 to the formulation in paragraph (7) of the commentary.³

26. Mr. AGO said that, for the same reasons as Mr. Yasseen, he thought it would be preferable to replace the words "competent minister" by "competent authority" and to retain the reference to the practice followed in the organization.

27. With regard to article 13, a very clear distinction should be made between permanent representative *to* the organization, which was the correct expression to use, and representatives, whether permanent or not, *in* one or more organs of the organization. Article 13 was intended to provide for the possibility of a permanent representative to the organization being the representative of his State *in* one or more organs, rather than *to* the organs

³ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 206.

of the organization. The Drafting Committee should see that that difference was observed in the French version of paragraph 2, where the words "*auprès de*" were used instead of "*dans*", and in any other article where it might appear.

28. Mr. ROSENNE said he was inclined to think that there was more in articles 12 and 13 than met the eye. In considering article 12, the Drafting Committee should look very closely at the text adopted at first reading, the text suggested by one Government as a drafting amendment, and the text now proposed by the Special Rapporteur (A/CN.4/241/Add.2, paras. 157-161), since in each case the word "competent" was used with a different meaning.

29. The problem of the word "accreditation" should be considered by the Drafting Committee when it had completed its work. Article 13, as it stood, was extremely ambiguous and the Drafting Committee should make an effort to reduce it to clarity and order.

30. Mr. BARTOŠ said it should be specified, either in the body of article 12 or in the commentary, whether the organization could refuse to recognize a permanent representative whose credentials had been issued by the Head of State, the Head of Government or the Minister for Foreign Affairs, if its practice required the credentials of a permanent representative to be issued by some other clearly defined authority.

31. With regard to article 13 and Mr. Ago's comments, it could happen that the permanent representative had to be both representative to the organization and in the organization. That applied, for example, to the Office of the United Nations High Commissioner for Refugees. The Drafting Committee should take care not to exclude one of those two possibilities when amending the text of paragraph 2.

32. Paragraph 1 raised a different problem. There were cases in which the rules of the organization required the representative of a State to be expressly appointed to an organ; that applied, for example, to the United Nations Security Council. In such a case the general specification provided for in paragraph 1 would not be enough. Perhaps the Special Rapporteur and the Drafting Committee would think over that question.

33. Mr. CASTRÉN said that in general he approved article 12, with the change proposed by the Special Rapporteur. It might, however, be advisable to insert the words "of the sending State" after the words "another competent authority", in order to exclude international authorities.

34. On the other hand, given the general reservation in article 3, it was hardly necessary to include the reservation relating to the practice followed in the organization. However, if prudence required it, he would not object to the retention of the words "if that is allowed by the practice followed in the Organization".

35. Paragraph 1 of article 13, the deletion of which had already been discussed at length during the first reading, should be retained.

36. He hoped the Special Rapporteur would take account, in the commentary, of the observations concerning the commentary to articles 12 and 13 made by the Legal Counsel of FAO (A/CN.4/239/Add.1, section D.10).

37. Mr. SETTE CÂMARA said that article 12 dealt with a subject which pertained more to internal law, since it defined the authorities who were competent to issue credentials. In his opinion, it was altogether necessary, since that matter could not be left to States themselves.

38. He could understand the concern of the Government of Yugoslavia about the character of representation, but the needs of technical organizations must not be ignored. The ILO, for example, would be the concern of the Minister of Labour, WHO that of the Minister of Health, UNESCO that of the Minister of Education, and so on. By using the words "or by another competent authority", the Special Rapporteur had given the article added flexibility; however, the power to issue credentials should be confined to authorities of the highest rank and not allowed to fall into the hands of those of second or third rank.

39. With regard to the title of article 13, he could not agree with the Sixth Committee's criticism of the word "accreditation". Surely, if permanent representatives arrived at the organization bearing formal instruments, one must speak of accreditation and not of appointment.

40. In considering the problem of reconciling article 13 with article 7, it should be remembered that article 7 was a general provision, whereas article 13 dealt with a particular hypothesis. In the comments of governments, there was a certain confusion between permanent missions and permanent representatives; only the latter could be accredited to organs of the organization.

41. He considered article 13 satisfactory as it stood.

42. Mr. RAMANGASOAVINA said he was not in favour of replacing the words "competent minister" by "competent authority". It was essential that the permanent representative of a State should be appointed by someone in a high position and there was some danger of opening the door to anarchy on the pretext of respecting the sovereignty of the State. However, by providing that the right of the State to have its representative appointed by an authority other than the Head of State, the Head of Government or the Minister for Foreign Affairs, was subject to "the practice followed in the Organization", the Special Rapporteur had proposed an acceptable compromise.

43. Mr. USHAKOV said that the reference to the Minister for Foreign Affairs in article 12 clearly did not mean the Minister himself, but a member of the Government competent in foreign affairs. The same applied to the reference to "another competent minister". In both cases, the idea was that the credentials of the permanent representative must be issued at least by a member of the Government; it mattered little whether the term "minister" or "authority" was used, but the wording

adopted at first reading was preferable to that proposed by the Special Rapporteur.

44. Mr. ALCÍVAR said it was not clear to him whether the clause "if that is allowed by the practice followed in the Organization" in article 12, applied only to the other "competent authority" or also to the "Head of State", "Head of Government" and "Minister for Foreign Affairs". If the former was the case, the article should be expanded. He also doubted whether the question who was the "competent authority" was clearly regulated by the internal law of all States.

45. With regard to article 13, it should be noted that a permanent representative had a dual function; he represented his State both *to* the organization and *in* the organization. A permanent representative *to* the United Nations, for example, might also represent his State in the Security Council. The order of the paragraphs of article 13 should be reversed, since it was more logical to state the general rule first, and that was the rule in paragraph 2. The rule stated in paragraph 1, which was the exception, should follow.

46. Mr. KEARNEY said that the discussion on article 12 could give rise to some confusion as to its purport. Some of the remarks which had been made appeared to suggest that, in addition to specifying the type of credentials which an organization was obliged to accept, article 12 might also be laying down a rule, binding upon States, on the question who was competent under internal law to sign or issue credentials. In those States in which a treaty, once ratified, became part of internal law and in which the Minister for Foreign Affairs was constitutionally competent to issue credentials, another authority, relying on article 14, might dispute that competence. The Drafting Committee must ensure that the language of article 12 did not lend itself to the interpretation that a national authority could issue credentials in defiance of the competence of the Minister for Foreign Affairs under internal law.

47. Mr. REUTER said he shared the views of previous speakers, particularly those of Mr. Ago, Mr. Alcívar and Mr. Kearney. The Drafting Committee should be guided by the wording used in the Vienna Convention on the Law of Treaties, especially that of article 7, paragraph 2 (c), concerning representatives accredited to an international conference or to an international organization or one of its organs.⁴

48. Mr. EL-ERIAN (Special Rapporteur) said that the purpose of the reference to another competent authority in article 12 was to accommodate the position of technical organizations. For an organization of a political character, the credentials would always be issued by the Head of State, the Head of Government or the Minister for Foreign Affairs. But the draft articles were intended to cover all organizations, and in the practice of some technical organizations, credentials issued by other authorities

were allowed. The provisions of article 12 were purely permissive. They simply meant that, if the practice of the Organization allowed it, credentials could be issued by an authority other than the Head of Government, Head of State or Minister for Foreign Affairs.

49. Mr. Alcívar had asked what the words "if that is allowed by the practice followed in the Organization" applied to. They applied only to the immediately preceding words, "or by another competent authority"; they did not apply to the Head of State, the Head of Government or the Minister for Foreign Affairs, who were in all cases entitled to represent the State, regardless of any practice of the organization.

50. He could accept Mr. Castrén's suggestion that the words "of the sending State" be added after "competent authority". The idea was already implicit in the text, but he had no objection to its being made explicit.

51. He was also prepared to include a passage in the commentary explaining that the provision on the issue of credentials by another competent authority constituted an exception and a departure from the general rule.

52. Mr. Ustor had made the valid point that if the words "if that is allowed by the practice followed in the Organization" were omitted, the matter would still be covered by article 3. Nevertheless, a specific reference to the practice of the organization would be useful in article 12.

53. He noted that there was general agreement to retain article 12 in its present form. The same applied to article 13; there had been no support for the suggestion that it should be replaced by the text appearing in paragraph (7) of the commentary. He suggested that articles 12 and 13 be referred to the Drafting Committee.

54. Mr. USTOR suggested, for the consideration of the Special Rapporteur and the Drafting Committee, the inclusion of a provision between articles 13 and 14 to the effect that nothing precluded the sending State from appointing the permanent representative or a member of the permanent mission as a member of a delegation to an organ or conference. Perhaps that matter could be dealt with simply by means of a paragraph in the commentary to article 13.

55. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to refer articles 12 and 13 to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*⁵

ARTICLE 14

56. The CHAIRMAN invited the Special Rapporteur to introduce article 14.

⁴ See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference*, p. 290 (United Nations publication, Sales No.: E.70.V.5).

⁵ For resumption of the discussion see 1111th meeting, paras. 41 and 61.

57.

Article 14

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

1. A permanent representative 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 between that State and the international organization to which he is accredited.

2. A permanent representative 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*) between that State and the international organization to which he is accredited unless it appears from the circumstances that the intention of the Parties was to dispense with full powers.

58. Mr. EL-ERIAN (Special Rapporteur) said he had not been convinced by the Swiss Government's argument that article 14 should be dropped because the subject of treaties between States and international organizations might eventually be codified (A/CN.4/241/Add.2, para. 172). The provisions of article 14 would serve a useful purpose until an international convention was actually concluded on the subject of treaties between States and international organizations.

59. The point raised by the Government of Belgium (*ibid.*, para. 173) related to treaties concluded under the auspices of organizations, which involved delegations to organs or conferences. That matter belonged in Part IV of the draft.

60. He had accepted the idea put forward by the Government of the Netherlands (*ibid.*, para. 174) and proposed that the title of the article be reworded to read: "Representation of States in the conclusion of treaties with international organizations".

61. He had not accepted the Swedish Government's suggestion that the expression "adopting the text" of a treaty be replaced by the term "negotiating" and the term "treaty" by "agreement" (*ibid.*, para. 175). In accordance with the prevailing opinion in the Commission, he thought that article 14 should conform with the wording of the Vienna Convention on the Law of Treaties.

62. Mr. YASSEEN said he was in full agreement with the Special Rapporteur. Article 14 did not pertain exclusively to the law of treaties, for it was not applicable to any treaty whatsoever, but only to treaties between the sending State and the international organization concerned. The limited scope of the article justified its inclusion in the draft and the Commission should not follow the Belgian Government's suggestion.

63. On the other hand, he was in favour of changing the title of the article as proposed by the Netherlands Government. As to the word "adopting", it had been used in the Convention on the Law of Treaties and could therefore be retained in article 14. Similarly, the term "treaty" had been given a very broad meaning in the Convention, so it should not be replaced by the word "agreement".

64. Mr. ROSENNE said he believed that article 14 could be retained, at any rate in substance. He had

reservations on the change of title and thought it would be preferable either to keep closer to the original title, or to go so far as to adopt the title "Full powers" of article 7 of the Vienna Convention on the Law of Treaties; but that was a matter which could ultimately be left to the Drafting Committee.

65. Article 14 was one of those general articles which should be taken out of Part I and merged, in the present instance at least, with article 88 and—if it survived—with article 58 also, into a single article covering the limited aspects of representation which had been left over from the Vienna Convention on the Law of Treaties.

66. Mr. NAGENDRA SINGH said that the question of the title could be considered by the Drafting Committee, but he thought it was necessary to use language more in keeping with the contents of the article. The provisions of article 14 dealt only with bilateral treaties, and the title would suggest that it covered a much wider field.

67. He agreed with the Special Rapporteur that there was no need to await the codification of the topic of treaties between States and international organizations and that the provisions of article 14 should be included in the draft. He also agreed with the Special Rapporteur's reasons for retaining the present text and not adopting the changes suggested by the Swedish Government.

68. Mr. BARTOŠ asked whether the Commission intended to take account of the possible differences between the general rules of the Vienna Convention on the Law of Treaties and the particular rules of international organizations. Two approaches were possible: it could be held that the Vienna Convention contained unifying rules which took precedence over the rules of organizations; or it could be held that those rules, although general, were not *ius cogens*, and that organizations could have their own rules.

69. Though not opposed to the view of the Special Rapporteur, who had adopted the first approach, he would point out that some organizations required permanent representatives to produce express authority for the purpose of adopting an instrument. That practice could not be ignored and he suggested that the Drafting Committee should add, at the end of the first paragraph of article 14, some such reservation as "unless the rules of the organization concerned provide otherwise". The Commission should take care not to impose a unification whose effect might be contrary to that desired.

70. Mr. CASTRÉN said he supported the change in the title of article 14 proposed by the Netherlands Government. He had some doubts about the usefulness of the article, but would not go so far as to propose its deletion. It was likely, however, that the Convention on the Law of Treaties would enter into force before the adoption of the present articles.

71. He suggested that the drafting of paragraph 2 should be modelled on the corresponding provision of the Convention on the Law of Treaties, namely, article 7, paragraph 1 (b); the last part of the paragraph might then read: "unless it appears from the practice of the organization concerned, or from other circumstances, that the intention of parties was to dispense with full powers".

72. Mr. EL-ERIAN (Special Rapporteur) said he would submit a rewording of the title to the Drafting Committee in the light of the discussion.

73. With regard to the remark by Mr. Castrén, he wished to make it clear that what he (Mr. El-Erian) had been referring to was not the coming into force of the Vienna Convention on the Law of Treaties, but the codification of the topic of treaties between States and international organizations.

74. He noted that no member of the Commission had suggested the deletion of article 14 and that the various points that had been raised could be referred to the Drafting Committee.

75. Mr. EUSTATHIADES, referring to the word "adopting", used in paragraph 1 of article 14, and to the comments to the effect that that term was used, in particular, with reference to multilateral treaties, as in article 9 of the Vienna Convention on the Law of Treaties, observed that it was also used in article 7, paragraph 2 (b) of that Convention with reference to bilateral treaties. Without going so far as to support the Swedish Government's proposal that the word "adopting" be replaced by the word "negotiating", he thought that the later term might be added. It could, of course, be presumed that the person competent to adopt the text of a treaty was *a fortiori* competent to negotiate it, but the negotiation might be entrusted to different persons.

76. Mr. EL-ERIAN (Special Rapporteur) said that article 7, paragraph 2 (b) of the Vienna Convention on the Law of Treaties specified that heads of diplomatic missions were considered as representing their State, without having to produce full powers, "for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited". That provision clearly referred to bilateral treaties and used the expression "adopting the text".

77. He could accept Mr. Castrén's suggestion that a reference to "the practice of the organization concerned" be added in the last phrase of paragraph 2 of article 14.

78. Mr. SETTE CÂMARA said that he wished to give his reasons for supporting the Special Rapporteur's text for article 14, despite certain differences of opinion revealed by the discussions in the Sixth Committee and the observations of governments.

79. Article 7, paragraph 2 (c) of the Vienna Convention on the Law of Treaties dispensed a representative accredited by a State to an international organization from the requirement of producing full powers for the purpose of adopting the text of a treaty in that organization. Article 14, paragraph 1 of the draft dispensed a representative to an international organization from the requirement of producing full powers only for the purpose of adopting the text of a treaty between his State and the international organization to which he was accredited.

80. The provisions of article 14 were thus narrower than those of article 7, paragraph 2 (c), of the Vienna Convention on the Law of Treaties, and the Government of Belgium had suggested that treaties concluded under

the auspices of the organization might also be covered (A/CN.4/239, section B.1.II). He himself favoured the more restrictive provision of article 14 as it stood, because of the need for caution in the matter.

81. He also supported the provisions of article 14, paragraph 2, which required the production of full powers for signing a treaty unless there was evidence of a clear intention of the parties to dispense with full powers.

82. He did not agree with the suggestion that the codification of the subject of treaties between States and international organizations could justify the deletion of article 14.

83. Mr. ROSENNE said he was not in favour of introducing a reference to negotiation into article 14. The 1962 draft on the law of treaties had included a whole article on negotiation,⁵ but in response to the reaction by governments the Commission had decided to delete it. At the time, he had been against the deletion, but he was now convinced of its wisdom.

84. In the present instance, it was not advisable to deal with the question of negotiation in the context of full powers. The subject of negotiations with the organization was dealt with in article 7, sub-paragraph (c), in connexion with the functions of a permanent mission.

85. The final title of the article could not be settled until a decision had been taken on the relationship between article 14 and articles 58 and 88.

86. Mr. YASSEEN said he saw no point in mentioning negotiations. One of the functions of the permanent mission was, precisely, to conduct negotiations. The present wording of article 14 was sufficiently broad to cover them.

87. Mr. AGO said he thought that negotiations should not be mentioned. The Commission had discussed the matter at length before reaching agreement on the wording of article 7, paragraph 2 (b), of the Vienna Convention on the Law of Treaties, and it would seem strange to introduce a concept which did not appear in that Convention. Since adoption was more important than negotiation, the latter was certainly implied. He was in favour of absolute parallelism with the Vienna Convention on that point.

88. With regard to the title proposed by the Netherlands Government (A/CN.4/241/Add.2, para. 174), he suggested that the words "in the conclusion" be replaced by "for the conclusion", thus substituting an idea of finality for a purely temporal idea.

89. Mr. REUTER, referring to Mr. Bartoš's suggestion that the possibility of a contrary practice by the international organization should be reserved, asked whether there should not also be a reservation covering the possibility of a contrary practice by the sending State. The term "competent authority" in article 12 constituted a reference to the constitutional law of States. Like article 12, article 14 was of a residuary nature in relation

⁵ See *Yearbook of the International Law Commission, 1962*, vol. II, p. 38.

to the constitutional law of States and to the practice—not to mention the “constitutional law”—of international organizations.

90. Mr. YASSEEN asked whether Mr. Reuter really thought that the practice of States should prevail. A reservation in favour of international organizations was justified by the fact they consisted of a large number of States. To introduce such a reservation in favour of States would again raise a question which had been discussed at length in connexion with the law of treaties: the question of the relationship between internal law and international law.

91. The CHAIRMAN said that if there were no objection he would take it that the Commission agreed to refer article 14 to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.⁷

The meeting rose at 6.5 p.m.

⁷ For resumption of the discussion see 1111th meeting, para. 66.

1092nd MEETING

Tuesday, 4 May 1971, at 10.10 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, Mr. Thiam, Mr. Ushakov, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 6; A/CN.4/241 and Add.1 and 2; A/CN.4/L.162/Rev.1)

[Item 1 of the agenda]

(continued)

ARTICLES 15 and 16

1. The CHAIRMAN invited the Special Rapporteur to introduce articles 15 and 16, on the composition and size of the permanent mission.

2. *Article 15*

Composition of the permanent mission

In addition to the permanent representative, a permanent mission may include members of the diplomatic staff, the administrative and technical staff and the service staff.

Article 16

Size of the permanent mission

The size of the permanent mission shall not exceed what is reasonable and normal, having regard to the functions of the Organization, the needs of the particular mission and the circumstances and conditions in the host State.

3. Mr. EL-ERIAN (Special Rapporteur) said that, apart from a proposal to delete paragraph (4) of the commentary, the only observation on article 15 had suggested that it should be combined with article 6 to form a second paragraph of that article (A/CN.4/241/Add.2, para. 181). He did not favour that suggestion and preferred to keep article 15 in its present place in order to maintain the necessary co-ordination with the Vienna Convention on Diplomatic Relations and the Convention on Special Missions.

4. A number of observations had been made by governments and secretariats of international organizations on article 16, and were described in his sixth report (*ibid.*, paras. 183 to 186). All the points made had been thoroughly discussed in the Commission when article 16 had been drafted. He therefore proposed that no change be made in the text of that article.

5. Mr. YASSEEN said he had no comments to offer on article 15, which should be retained in its present form.

6. Article 16 stated a reasonable legal rule, which included the objective criteria governing its application; those criteria were the functions of the organization, the needs of the permanent mission and the circumstances and conditions in the host State. And since there were criteria, it was surprising that one international organization should have asked by what criteria it was to be decided what was reasonable and normal.

7. There was no justification for providing, as one government advocated, that the rule in the article was subject to the right of the host State to intervene; every international legal rule must necessarily recognize that right, so that no specific rule on it was required. In the present instance, recourse could be had to the consultations provided for in article 50, or to any other means of settlement of disputes recognized by international law. He found it hard to understand why some critics should see fit to raise, in regard to the application of article 16 only, a general problem which might arise in regard to the application of any other legal rule and whose solution did not belong to the topic being studied by the Commission. In his opinion, article 16 should be referred to the Drafting Committee unchanged.

8. Mr. REUTER said that in fact, if not in the text of the article, the responsibility for deciding what was reasonable and normal was borne by the organization. It intervened in bilateral consultations only if there was disagreement and, although it did not have the final say, its views carried weight. Any suggestion that the application of article 16 should be made subject to article 50 called in question the organization's powers of mediation.

9. The CHAIRMAN suggested that articles 15 and 16