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Summary record of the 1092nd meeting

Topic:
Representation of States in their relations with international organizations

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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.¹

The meeting rose at 6.5 p.m.

¹ 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

be referred to the Drafting Committee for consideration in the light of discussion.

*It was so agreed.*¹

ARTICLE 17

10. The CHAIRMAN invited the Special Rapporteur to introduce article 17, on notifications.

11.

Article 17

Notifications

1. The sending State shall notify the Organization of:

- (a) the appointment of the members of the permanent mission, their position, title and order of precedence, their arrival and final departure or the termination of their functions with the permanent mission;
- (b) the arrival and final departure of a person belonging to the family of a member of the permanent mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the permanent mission;
- (c) the arrival and final departure of persons employed on the private staff of members of the permanent mission 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 permanent mission or persons employed on the private staff entitled to privileges and immunities.

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

3. The Organization 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.

12. Mr. EL-ERIAN (Special Rapporteur) said that the drafting points raised in the written observations of governments on article 17 (A/CN.4/241/Add.2, para. 191) could be referred to the Drafting Committee.

13. With regard to the substance, only two comments had been made. The first was by the Government of Switzerland which had suggested that the permanent mission rather than the organization should notify the host State (*ibid.*, para. 189). He had not accepted that suggestion because the rule in article 17 was based on recognition of the direct relationship between the sending State and the organization; notifications should accordingly be made to the host State by the organization.

14. The second comment was by the International Labour Organisation, which had suggested that, in cases of accreditation to several organizations, the notification could be made to only one of them, which would then be responsible for informing the host State and the other organizations (*ibid.*, para. 190). Such a system might work at Geneva, where the United Nations Office had a central position in the United Nations system; since most of the organizations at Geneva were specialized agencies

of the United Nations, the latter could make a single notification to the host State on behalf of all of them. But it was very difficult to generalize that rule, because of the independence of international organizations from one another. He therefore suggested that the matter be left to the practice of the organizations themselves and that no rule on it be introduced into article 17.

15. Mr. ROSENNE said he was in general agreement with the Special Rapporteur, who had confirmed that article 17 was not intended to make any change in the rather special position obtaining at Geneva.

16. He found the text of paragraph 3 much too general; it was not sufficient to require the organization to transmit the notifications "to the host State". Consideration should be given to the advisability of specifying that the normal addressee in the host State was either the Minister for Foreign Affairs, or the organ designated by the host State itself. Such a provision would conform with the approach adopted in article 10 of the Vienna Convention on Diplomatic Relations,² article 24 of the Vienna Convention on Consular Relations³ and article 11 of the Convention on Special Missions.⁴ He was not certain, however, that it was necessary to introduce similar precision into paragraph 4. In fact, he had some doubt about the need to include that paragraph at all, since it simply stated a faculty of the sending State. If it was thought desirable to retain paragraph 4, however, consideration might perhaps be given to the advisability of specifying that the notification, if the sending State chose to make it, should be made to the Minister for Foreign Affairs of the host State, or to the permanent mission of that State at the headquarters of the organization.

17. Mr. NAGENDRA SINGH said he agreed with the Special Rapporteur that the objection made by the International Labour Organisation was not valid. It was not possible to designate a single organization to make the notifications to the host State on behalf of several organizations.

18. The comments by the Government of Switzerland appeared to be directed only at paragraphs 3 and 4 of article 17. He saw no reason why paragraph 4 should not lay down an obligation of the sending State to notify the host State. In its present permissive form, the paragraph was not very useful. Since the members of the permanent mission were entering the territory of a sovereign State, it was normal to require the sending State to notify the host State of their arrival. He therefore suggested that the opening words of paragraph 4, "The sending State may also transmit to the host State. . .", be replaced by some such wording as: "The sending State or its permanent mission shall also transmit to the host State. . .".

19. Mr. KEARNEY said that in its comments on articles 8 and 9 the Government of Switzerland had drawn attention to the difficulties that could arise in cases of multiple accreditation unless the accreditation were

¹ For resumption of the discussion see 1111th meeting, paras. 79 and 82.

² United Nations, *Treaty Series*, vol. 500, p. 102.

³ *Op. cit.*, vol. 596, p. 283.

⁴ See General Assembly resolution 2530 (XXIV), Annex.

notified to the host State and had suggested that a provision should be introduced into article 17 to require such notification (A/CN.4/239, section C.II). He believed that when that comment had been discussed by the Commission during its consideration of articles 8 and 9,⁵ it had been decided to deal with the matter when the Commission came to examine article 17.

20. In fact, the point made by the Government of Switzerland raised a larger problem, namely, that of determining whether, under the provisions of article 17, paragraph 1 (a), there was an obligation of the sending State to notify changes in the status of its permanent mission or of the members of that mission. In bilateral diplomacy, a diplomatic mission would notify the receiving State of any changes in the titles and positions of the members of the missions. He suggested that the Drafting Committee consider the possibility of slightly amending the language of paragraph 1 (a) in order to ensure that the host State was notified of such cases.

21. Mr. YASSEEN said that article 17 was based on the principle that the organization should be informed of certain facts which the host State should also know. The question was how the information communicated to the organization should be transmitted to the host State. In article 17 the system of indirect notification had been chosen. However, although certain facts concerned the organization just as much as the host State, there were others that more especially concerned the latter: for example, the arrival and departure of members of the family of a member of the permanent mission. Consequently, in the interests of efficiency and convenience, it would be better to provide that the sending State must transmit the necessary notifications to the host State, either through the organization or direct, and to amend paragraph 4 accordingly.

22. Mr. AGO said he entirely agreed with Mr. Yasseen. The essential purpose of article 17 was to ensure that members of the permanent mission and members of their families, and also the service staff, were able to enjoy the privileges and immunities granted by the host State. Those were matters which concerned the host State much more than the organization, and that made it preferable for the host State to be notified direct, quite apart from the fact that its notification through the organization entailed long delays and that, where a permanent mission was accredited to several organizations, as was often the case at Geneva, it would be absurd for each of them to transmit the same information to the host State.

23. Paragraphs 3 and 4 should therefore be deleted and paragraph 1 should begin with the words "The sending State shall notify the Organization and the host State of:".

24. Mr. CASTRÉN said he agreed with Mr. Yasseen and Mr. Ago. Paragraph 4, as it stood, was of no practical value, since it stated a mere faculty and not an obligation. It could therefore be deleted and paragraph 1 amended as Mr. Ago had proposed.

25. Mr. EL-ERIAN (Special Rapporteur) said that he was reluctant to accept the suggestion that paragraphs 3

and 4 should specify that notification should be made to the Minister for Foreign Affairs, as in the corresponding provisions of the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations and the Convention on Special Missions. Very often, as was the case in New York and at Geneva, the international organization was not in the capital of the host State. In New York, the normal channel of communication was the Permanent Mission of the United States to the United Nations. He therefore suggested that the flexible provisions in the text of paragraphs 3 and 4 be retained, with the reference to transmission to the host State in general terms.

26. The point raised by the Government of Switzerland concerning the need to notify multiple accreditation was a valid one and he agreed that it ought to be covered in paragraph 1 (a).

27. It had been suggested that paragraph 3 should be dropped and its provisions merged with those of paragraph 1, which would then prescribe a simplified procedure, laying down an obligation of the sending State to notify both the organization and the host State. At its twentieth session, in 1968, the Commission had drafted article 17 in terms which made a subtle distinction between notification to the organization and notification to the host State; allowance had thus been made for certain cases in which no relations existed between the sending State and the host State, because of such circumstances as non-recognition, tension and even armed conflict.

28. He therefore suggested that paragraphs 3 and 4 be left as they stood. In particular, the provisions of paragraph 4 should remain flexible; notification of the host State by the sending State should be optional and not form an integral part of the compulsory notification system.

29. Mr. YASSEEN said he quite understood that the Special Rapporteur had wished to take account of exceptional situations, in which it was difficult for the sending State to communicate directly with the host State; for example, when there were no diplomatic relations between them. But international organizations had always found means of solving the practical problems resulting from such situations. He saw no objection to the Commission's taking account of those problems and providing solutions for them, but there was no justification for formulating a general rule on the basis of an exception.

30. Mr. EL-ERIAN (Special Rapporteur) referring to the point raised by Mr. Ago concerning the cumbersome procedure of multiple notifications, said that there was no difficulty at Geneva, where the United Nations Office acted for the other organizations of the United Nations family. He suggested that the Commission should leave the matter to be settled by the organizations in their own practice, rather than attempt to settle it by a provision in the draft.

31. Mr. ALCÍVAR said that the problem did not arise in New York where all notifications were made through the United Nations, which communicated them to the

⁵ See 1090th meeting.

United States Permanent Mission. He was inclined to agree with the Special Rapporteur on the need for flexibility, bearing in mind, in particular, that Geneva and New York, where many of the organizations had their offices, were not capital cities. The best course was to leave it in each case to the organization concerned to transmit the notifications to the host State.

32. He suggested that the Drafting Committee be invited to deal with the problem in the light of the discussion.

33. Mr. AGO said that Geneva was not the only city that was host to several international organizations. Like Mr. Yasseen, he considered that any general rule should be based on the normal situation. The absence of diplomatic relations being the exception, it should be provided that the sending State must transmit the necessary notifications direct to the host State and use the organization as an intermediary only in exceptional cases.

34. Mr. CASTRÉN said that the absence of diplomatic relations did not prevent notification through a third State, even in the case of armed conflict. Even if diplomatic relations had been broken off, members of permanent missions could not avoid having a minimum of relations with the host State. Furthermore, the draft articles contained many provisions on the obligations of the host State in regard to other member States. Hence there was no reason why provision should not be made for direct notification of the host State.

35. Mr. EL-ERIAN (Special Rapporteur) said that it was not really a matter of making a distinction between normal and exceptional situations. The principle underlying all the draft articles, and article 17 in particular, was that a relationship existed between the sending State and the organization. Thus, on the arrival of a permanent representative, he was received by the Chief of Protocol of the organization, not by the Chief of Protocol of the host State. It was on the basis of that principle that the rule was laid down in article 17 that the notification by the sending State must be made to the organization, which transmitted it to the host State.

36. He suggested that the Drafting Committee be asked to examine the question raised by Mr. Ago, Mr. Castrén and Mr. Yasseen.

37. Mr. THIAM said that the Commission was studying the relations between States and international organizations, and more particularly, the status of the representatives of States to those organizations, and practical problems should not be allowed to obscure the fact that the main subject was representation in the organization. It was true, as Mr. Ago had said, that it would be absurd for the host State to receive the same notifications from several organizations, but the same situation would occur if the sending State were obliged to notify the host State in respect of each representation in an organization. That was the kind of difficulty the Commission was likely to come up against if it did not follow the principle that the main question to be regulated was that of the relations between the sending State and the organization, and that the relations between the sending State and the host State were a secondary matter.

38. Mr. USTOR said that the point raised by Mr. Ago, Mr. Castrén and Mr. Yasseen was really a practical one. From the practical point of view it was, of course, useful for the sending State to notify the host State of the arrival of the members of its permanent mission; the persons concerned would then immediately receive the necessary identity cards and enjoy their privileges and immunities. In some cases, that notification could also obviate the need for elaborate correspondence.

39. However, the Commission should refrain from imposing fresh obligations on the member States of organizations. At present, they had no obligation to notify the host State of the arrival of members of their permanent missions; they had the right to do so and it was, of course, useful, but there was no binding obligation to make such a notification. He was therefore inclined to favour the retention of the present text with its subtle distinction between the obligation to notify the organization and the right or option to notify the host State.

40. Mr. ALBONÍCO said that on the whole he shared the views expressed by Mr. Thiam. The whole draft was based on the relationship between the organization and its member States. That was why article 17, paragraph 3, imposed on the organization the obligation to transmit the notifications to the host State, whereas paragraph 4 merely stated a faculty of the sending State; whether the sending State would make a notification to the host State would depend on the circumstances of each case. For those reasons, he agreed that article 17 should be retained as it stood, without prejudice to the possibility of the Drafting Committee improving the text.

41. Mr. BEDJAoui said he thought the draft proposed by the Special Rapporteur was the most satisfactory. The Commission should not delete paragraphs 3 and 4, but refer them to the Drafting Committee with a request to consider only their form.

42. Notification of the host State was not a formal legal obligation for the sending State. Article 17, as drafted, was well balanced. The problem of substance was settled in paragraphs 1 and 2, after which a provision had been added giving the sending State the faculty of settling the practical problems promptly. No one questioned that faculty of the sending State to make the notifications mentioned in paragraphs 1 and 2 direct to the host State in normal cases if it so desired, but that faculty should not be made into a legal obligation.

43. In the case of armed conflict, it was not, as Mr. Castrén had said, a third State that should be the intermediary, but rather the organization.

44. Mr. AGO said he did not dispute that the basic principle was the relations between the sending State and the organization, but the question was what obligations those relations entailed for the host State. In the particular case of article 17, the question was whether the host State should be notified direct or through the organization. For the reasons he had already given, he found paragraph 4 insufficient, in that it only stated a faculty which the sending State would have in any case, not an obligation, as he thought advisable. It might also

be asked whether the organization too should notify the host State, if the sending State exercised that faculty.

45. Furthermore, if the organization and the sending State both notified the host State on different dates, when would the obligations of the host State take effect? For all those reasons, it would be better to delete paragraph 4.

46. Mr. YASSEEN said it was true that the Commission was considering the relations between States and international organizations, but the draft articles contained numerous rules concerning the relations between the sending State and the host State and, especially, the obligations of the host State. No member of the Commission denied that the host State should be informed of the facts referred to in paragraphs 1 and 2 of article 17; indeed it would be illogical that it should not be so informed, since its obligations came into effect only when it received the information. The sending State was not, perhaps, legally obliged to notify the host State, but it must do so if it wished the members of its permanent mission in practice to enjoy, without delay, the privileges and immunities to which they were entitled.

47. He did not see why the Commission should hesitate to provide for direct notification of the host State, since in any case the establishment of a permanent mission generally created direct bilateral relations between the host State and the sending State, and in exceptional situations the practice followed by the organizations had always provided satisfactory palliatives hitherto.

48. Mr. THIAM said it would be advisable to make clear in the text that it was primarily to the organization that the permanent mission was accredited and that the fact that the host State was the receiving country did not give it the right to encroach on certain prerogatives of the organization.

49. Mr. RAMANGASOAVINA said it was for the organization to transmit the notifications to the host State, because it was to the organization that the permanent mission was accredited. That obligation was laid down in paragraph 3.

50. Paragraph 4 therefore seemed unnecessary, especially as, in practice, the host State would often be aware, through its visa-issuing services, of the arrival on its territory of the nationals of the sending State. If no entry visa was required, the host State would, of course, be unaware of their arrival, but if it had friendly relations with the sending State, it would be a simple matter for the latter to send it a copy of the notification to the organization. In other cases, the organization would act.

51. Mr. EUSTATHIADES said it was quite natural that the host State should wish to know, as quickly as possible, what was happening on its territory, if only in order to guarantee the enjoyment of the privileges and immunities granted to the members of permanent missions. It was in that light that the comments of the Swiss Government and the need for the transmissions provided for in article 17 should be understood. There was every reason to believe that the transmission to the host State by the sending State, which was a faculty in the draft articles, would become an obligation of direct

notification in any bilateral agreements concluded under article 5. In any event, if direct notification to the host State remained optional for the sending State in article 17, the organization should at least be required to carry out such notification without delay. He suggested covering that point in the text of the article by adding the words "without delay" in paragraph 3.

52. It would also be well to provide that the notification to the host State under paragraph 2 must be made in advance in order to avoid, as far as possible, any need for the host State to resort to the procedure provided for in article 50.

53. In principle, he was in favour of direct notification of the host State, and his proposals were only made as a compromise.

54. Mr. BEDJAOUÏ said he was not convinced by the last argument put forward by Mr. Ago for the deletion of paragraph 4. Mr. Ago had said that, if the sending State were given the faculty of making direct notification, difficulties might arise, particularly with regard to the date on which privileges and immunities would come into effect. But it was laid down in article 42 that "every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the host State". Consequently, there was no objection to retaining paragraph 4.

55. Article 17 quite rightly stated that the host State should be notified, but indirectly, because it was with the organization that the sending State had direct relations. But—and that was the purpose of paragraph 4—it could be notified by more direct channels and, hence, more quickly.

56. Mr. REUTER said that bearing in mind the problem of the kidnapping of diplomats and persons assimilated to diplomats, which involved the responsibility of the host State, he wished to propose the following wording: "The sending State or, at its request, the Organization, shall notify the host State." If it was desired to be more specific the words "in order to obtain the benefit of immunities" could be added, but they were not necessary. The proposed wording left the sending State free either to transmit the notifications direct to the host State or to request the organization to do so, or, if it did not maintain diplomatic relations with the host State, to use a third State as an intermediary—though in reality it would be transmitting the notification itself through the person authorized to represent it.

57. Mr. NAGENDRA SINGH suggested that, before leaving article 17, the Commission should ask the Secretariat to ascertain whether, in current State practice, it was necessary for the sending State to notify the host State, or the organization, or both. If the sending State had to notify only the host State, then article 17, in his opinion, was out of line, whereas if it had to notify only the organization, the article was perfectly correct. It would be helpful to the Drafting Committee to have some clarification on that point.

58. Mr. RAMANGASOAVINA said that he wished to clarify his views on article 17. In practice, the sending

State notified appointments to the host State as and when it made them. Such notification took place indirectly through the request for a visa which preceded the arrival of a member of the permanent mission in the host State. The majority of States would probably consider it an infringement of their sovereignty if it were left to the organization to make such notifications instead.

59. It might happen that there was no prior notification by the sending State to the host State, as was the case in relations between the States members of the European Economic Community, where the principle of free movement had been established. In such cases, the question of the enjoyment of privileges and immunities could arise during the transitional period between the time when the member of the permanent mission arrived on the territory of the host State and the time when the host State was duly informed of his appointment. But in practice there would be no difficulty, because the member of the permanent mission would always hold a diplomatic passport or a service passport.

60. In brief, notification by the sending State to the organization, and notification by the organization to the host State, were obligatory; but notification by the sending State to the host State was optional, as stated in paragraph 4. In practice, notification was nearly always made by the sending State to the host State and if not, the persons concerned were protected by their passports.

61. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to refer article 17 to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.⁶

ARTICLE 18

62. The CHAIRMAN invited the Special Rapporteur to introduce article 18.

63.

Article 18

Chargé d'affaires ad interim

If the post of permanent representative is vacant, or if the permanent representative is unable to perform his functions, a *chargé d'affaires ad interim* shall act as head of the permanent mission. The name of the *chargé d'affaires ad interim* shall be notified to the Organization either by the permanent representative or, in case he is unable to do so, by the sending State.

64. Mr. EL-ERIAN (Special Rapporteur) said that article 18 had not evoked many comments by governments, although one had suggested that the temporary head of a permanent mission should ordinarily be designated as "acting permanent representative", while another had noted that no provision had been made for the accreditation of "*chargés d'affaires ad interim*", although the post of permanent representative was sometimes vacant for a considerable time (A/CN.4/241/Add.2, paras. 196-197). He did not think that practice supported that view.

⁶ For resumption of the discussion see 1112th meeting, para. 2.

65. Mr. NAGENDRA SINGH said he fully endorsed the Special Rapporteur's remarks. Article 18 should be retained as it stood.

66. The CHAIRMAN suggested that article 18 be referred to the Drafting Committee.

It was so agreed.⁷

ARTICLE 19

67. The CHAIRMAN invited the Special Rapporteur to introduce article 19.

68.

Article 19

Precedence

Precedence among permanent representatives shall be determined by the alphabetical order or according to the time and date of the submission of their credentials to the competent organ of the Organization, in accordance with the practice established in the Organization.

69. Mr. EL-ERIAN (Special Rapporteur) said he accepted the suggestion by the United States Government that the alphabetical order rule be adopted and the United Nations Secretariat's drafting suggestion (A/CN.4/241/Add.2, paras. 202 and 204). Referring to the ILO suggestion (*ibid.*, para. 203), he pointed out that at United Nations Headquarters in New York the English alphabetical order was followed, while at Geneva the French alphabetical order was sometimes used. The text he now proposed for article 19 (*ibid.*, para. 206) read:

Article 19

Precedence

Precedence among permanent representatives shall be determined by the alphabetical order, in accordance with the practice established in the Organization.

70. Mr. USHAKOV said that, if the Commission decided not to mention the time and the date of the submission of credentials, the text proposed by the Special Rapporteur should be amended, since the words "in accordance with the practice established in the Organization" were only justified in the former version, in which the Organization was given a choice. He himself would suggest that they be replaced by the words "in accordance with the practice applied in the Organization".

71. Mr. NAGENDRA SINGH said he supported the revised text proposed by the Special Rapporteur. Following alphabetical order was the most salutary and egalitarian practice.

72. Mr. ELIAS said he agreed with Mr. Ushakov that it would be closer to the point of view adopted by the Commission in 1968⁸ to use some such wording as "applied" or "followed" in the organization.

⁷ For resumption of the discussion see 1112th meeting, para. 8.

⁸ See *Yearbook of the International Law Commission, 1968*, vol. I, pp. 153-158 and 242-243.

73. Mr. RAMANGASOAVINA said that both systems contained an element of arbitrariness. The alphabetical order system was certainly the lesser evil, because it was more democratic; on the other hand, it was more rigid than the seniority rule, which produced an order that changed with each new arrival and departure. In order to avoid the rigidity of alphabetical order, he proposed the remedy of drawing lots every year, for it was not simply a matter of position, but of precedence.

74. Mr. BARTOŠ said that the Commission had already discussed the question of precedence many times, and had decided in favour of alphabetical order. Since there were several alphabetical orders, the matter must be left either to general practice or to the practice adopted by each Organization when it drew up its rules of precedence. It would be for the Drafting Committee to find an appropriate formula.

75. Mr. ALCÍVAR asked whether the alphabetical order applied to the names of the permanent representatives or the names of their countries. If it applied to the latter, that should be specified.

76. Mr. SETTE CÂMARA said he was entirely in favour of the new text proposed by the Special Rapporteur, which had the advantage of being simpler and more in keeping with the practice of States. The practice of drawing lots, which had been suggested by Mr. Ramangasoavina, was followed by the General Assembly and might serve as a corrective in the case of article 19.

77. Mr. EL-ERIAN (Special Rapporteur) said that the suggestion made by Mr. Ushakov and supported by Mr. Elias improved the text of article 19 and removed any possible ambiguities.

78. Referring to Mr. Ramangasoavina's proposal, he drew attention to the fact that in the General Assembly both the seating arrangements at each annual session and the order of voting in roll-call votes were determined by drawing lots.

79. In reply to Mr. Alcívar, he said that the alphabetical order applied to the name of the country, not to that of the permanent representative.

80. Mr. CASTRÉN said he agreed with Mr. Alcívar that it would be better to specify that the alphabetical order was that of member States.

81. The CHAIRMAN suggested that article 19 be referred to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.⁹

ARTICLE 20

82. The CHAIRMAN invited the Special Rapporteur to introduce article 20.

83.

Article 20

Offices of permanent missions

1. The sending State may not, without the prior consent of the host State, establish offices of the permanent mission in localities other than that in which the seat or an office of the Organization is established.

2. The sending State may not establish offices of the permanent mission in the territory of a State other than the host State, except with the prior consent of such a State.

84. Mr. EL-ERIAN (Special Rapporteur) said that two observations had been made on the substance of article 20. The Government of Belgium had considered that article unnecessary and had pointed out that some cases were already covered by articles 8 and 9. He was unable to share that view, since articles 8 and 9 dealt with an entirely different question. The United States Government had observed that paragraph 1 contained a slight ambiguity as a result of the use of the word "localities", but he had replied to that objection in his report (A/CN.4/241/Add.2, para. 211). The drafting suggestions made by one Government (*ibid.*, para. 209) could be referred to the Drafting Committee.

85. Mr. KEARNEY said that his Government's query (*ibid.*, para. 208) had been prompted by the belief that there was a certain ambiguity in paragraph 1 if the possibility of two host States existed, although he did not think that it presented a serious difficulty. The ambiguity might be removed by inserting the words "within the host State" after "localities", as proposed in paragraph 209 (2), of the Special Rapporteur's report.

86. The CHAIRMAN suggested that article 20 be referred to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.¹⁰

ARTICLE 21

87. The CHAIRMAN invited the Special Rapporteur to introduce article 21.

88.

Article 21

Use of flag and emblem

1. The permanent mission shall have the right to use the flag and emblem of the sending State on its premises. The permanent representative shall have the same right as regards his residence and means of transport.

2. In the exercise of the right accorded by this article, regard shall be had to the laws, regulations and usages of the host State.

89. Mr. EL-ERIAN (Special Rapporteur) said that two comments by governments on article 21 were contained in paragraphs 214 and 215 of his report, while his replies to those comments were given in paragraphs 216 to 218.

⁹ For resumption of the discussion see 1112th meeting, para. 11.

¹⁰ For resumption of the discussion see 1112th meeting, para. 20.

90. The CHAIRMAN suggested that article 21 be referred to the Drafting Committee.

*It was so agreed.*¹¹

APPOINTMENT OF A DRAFTING COMMITTEE

91. The CHAIRMAN suggested that the Commission appoint a Drafting Committee of twelve members, consisting of the first Vice-Chairman, the General Rapporteur and the following members of the Commission: Mr. Alcívar, Mr. Castrén, Mr. Elias, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Ushakov, Mr. Ustor, and Sir Humphrey Waldock.

It was so agreed.

The meeting rose at 12.40 p.m.

¹¹ For resumption of the discussion see 1112th meeting, para. 27.

1093rd MEETING

Wednesday, 5 May 1971, at 10 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Barotoš, 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. 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.1-3; A/CN.4/L.162/Rev.1)

[Item 1 of the agenda]

(continued)

ARTICLE 22

1. The CHAIRMAN invited the Special Rapporteur to introduce article 22.

2.

Article 22

General facilities

The host State shall accord to the permanent mission full facilities for the performance of its functions. The Organization shall assist the permanent mission in obtaining those facilities

and shall accord to the mission such facilities as lie within its own competence.

3. Mr. EL-ERIAN (Special Rapporteur) said that there had been a certain scepticism in the Sixth Committee about the inclusion of the second sentence, while the secretariats of two specialized agencies had expressed reservations about the implied obligation of the organization to provide office facilities for the permanent mission (A/CN.4/241/Add.3).

4. During the discussion in the Commission, Mr. Tammes had been the first to raise the question whether it was intended that the organizations themselves should become parties to the future convention.¹ He (the Special Rapporteur) had observed that that question would be decided by the organ entrusted with the formulation of the conventional instrument. He proposed that article 22 be retained in its present form.

5. Mr. KEARNEY said that article 22 raised the question of imposing obligations on the organization and thus the question of the relationship between the organization and the future convention. In his opinion, that problem was of such legal complexity that it went beyond the normal final clauses and should not be left to the future conference.

6. With a view to achieving a proper balance between the host State and the sending State in the matter of obtaining assistance, he would suggest that the second sentence might be amended to read: "The Organization shall assist the host State and the sending State in arranging for those facilities . . .". That, however, was a question which should be considered by the Drafting Committee.

7. Mr. NAGENDRA SINGH suggested that the first sentence be amended to read: "The host State shall accord to the permanent mission the facilities necessary for the performance of its functions". However, he could accept the present wording if the word "necessary" was inserted after the words "full facilities".

8. In the second sentence, he proposed that the word "also" should be inserted after the words "The Organization shall . . .", though that point might also be met by Mr. Kearney's suggested amendment.

9. He could not agree with the view of the Japanese Government, which had proposed that the second sentence should be deleted (A/CN.4/239/Add.2, section B.5), since the practice showed that organizations did assist permanent missions in obtaining facilities.

10. With regard to the observation of UNESCO (A/CN.4/239, section D.3, para. 7), he submitted that when a sending State sent a representative to an organization, the latter would be failing in its duty if it shirked the responsibility of providing assistance to that representative. In his opinion, the comments of UNESCO and WHO were not quite in keeping with the elementary courtesies expected of an international organization.

¹ See *Yearbook of the International Law Commission, 1969*, vol. I, p. 6, para. 8 and p. 17, para. 11 *et seq.*