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Summary record of the 1104th meeting

Topic:
Representation of States in their relations with international organizations

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Minister for Foreign Affairs, it could generally be assumed that he had full powers to conclude treaties. It would be unwise, however, to regard that as an automatic presumption. There could be no harm in deleting article 58, because an observer could always produce his full powers, if he had them.

87. Mr. ELIAS said that article 58 had an organic link with article 57. Consequently, unless the Commission changed its approach to article 57, he would not recommend the deletion of article 58. He urged that the Drafting Committee should retain the substance of article 58, but try to shorten the text.

88. Sir Humphrey WALDOCK said that the deletion of article 58 would not be satisfactory unless the similar provision for permanent missions was also deleted. In the light of the present structure of the draft, it would be strange if the provisions of article 58 were not included.

89. So far as the law of treaties was concerned, the provision on full powers to represent the State in the conclusion of treaties was as necessary for permanent observer missions as it was for permanent missions; its absence would leave a gap in Part III.

90. As to the substance of the provision, it could be argued that the rule in paragraph 1 should be reserved and that the presumption should be that the permanent observer had to produce full powers in order to represent his State for the purpose of adopting the text of a treaty between that State and the international organization. His own preference, was for the rule stated in the present text.

91. Mr. USTOR said he agreed with the previous speaker.

92. The CHAIRMAN suggested that article 58 be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*¹⁷

The meeting rose at 1 p.m.

¹⁷ For resumption of the discussion see 1119th meeting, para. 5.

1104th MEETING

Friday, 21 May 1971, at 10.5 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Baroš, Mr. Castrén, Mr. Elias, Mr. Ramangasoavina, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 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 4; A/CN.4/L.162/Rev.1; A/CN.4/L.166)

[Item 1 of the agenda]

(continued)

ARTICLE 59

1. The CHAIRMAN invited the Commission to consider article 59, on the composition of the permanent observer mission, to which the Special Rapporteur had proposed no change.

2.

Article 59

Composition of the permanent observer mission

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

2. When members of a permanent diplomatic mission, a consular post or a permanent mission, in the host State, are included in a permanent observer mission, their privileges and immunities as members of their respective missions or consular post shall not be affected.

3. Mr. ROSENNE said that the provisions of paragraph 2 were out of place in article 59. He suggested that the Drafting Committee should consider making them general provisions applicable to the whole draft; they might perhaps be amalgamated with the provisions of article 9, paragraph 4.¹

4. Mr. SETTE CÂMARA said that the suggestion made by one government that article 59 should include a provision to the effect that the "deputy or associate permanent observer" should enjoy the status of permanent observer when the latter was absent (A/CN.4/240, section B.2) was not consistent with the spirit of the draft or with the relevant provisions of article 51, on the use of terms. The question of substitution was dealt with in article 62, on the *chargé d'affaires*, and there was no reason to deal with it in article 59.

5. Paragraph 2 corresponded to article 9, paragraph 2, of the 1969 Convention on Special Missions,² except that it lacked the concluding words "in addition to the privileges and immunities accorded by the present Convention". Hence diplomatic or consular officers included in a permanent observer mission would have the same privileges and immunities as they had had before joining that mission; that had prompted one government to express itself "satisfied as to the recognition of the differences in privileges and immunities enjoyed by different types of delegates" (*ibid.*).

6. He did not suggest that observers should be placed on the same footing as permanent representatives, but

¹ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 202.

² General Assembly resolution 2530 (XXIV), Annex.

their privileges and immunities should not be limited to those of consuls simply because they had previously served in that capacity.

7. Mr. USHAKOV suggested that the drafting Committee should revert to the wording of the Convention on Special Missions.

8. Mr. USTOR said he agreed with Mr. Rosenne that the provisions of paragraph 2 were out of place in article 59; they had little or no connexion with those of paragraph 1 and were in fact general provisions which should apply both to permanent missions and to permanent observer missions. He therefore suggested that they should form a separate article in the general provisions section at the end of the draft, on the lines of article 70 (Exercise of consular functions by diplomatic missions) of the Vienna Convention on Consular Relations.³

9. The CHAIRMAN suggested that article 59 should be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*⁴

ARTICLE 60

10. The CHAIRMAN invited the Commission to consider article 60, on the size of the permanent observer mission, to which the Special Rapporteur had proposed no change.

11. *Article 60*

Size of the permanent observer mission

The size of the permanent observer 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.

12. Mr. YASSEEN said that the wording of article 60 should not be changed, since permanent observer missions were fully comparable to permanent missions so far as size was concerned.

13. The CHAIRMAN said that, in the absence of further comment, he took it that the Commission agreed to refer article 60 to the Drafting Committee, which would take Mr. Yasseen's observation into account.

*It was so agreed.*⁵

ARTICLE 61

14. The CHAIRMAN invited the Commission to consider article 61, on notifications, to which the Special Rapporteur had proposed no change.

15. *Article 61*
Notifications

1. The sending State shall notify the Organization of:
 - (a) the appointment of the members of the permanent observer mission, their position, title and order of preced-

³ United Nations, *Treaty Series*, vol. 596, pp. 316-318.

⁴ For resumption of the discussion see 1119th meeting, para. 8.

⁵ For resumption of the discussion see 1119th meeting, para. 11.

ence, their arrival and final departure or the termination of their functions with the permanent observer mission;

- (b) the arrival and final departure of a person belonging to the family of a member of the permanent observer 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 observer mission;
- (c) the arrival and final departure of persons employed on the private staff of members of the permanent observer 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 observer 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.

16. Mr. USTOR said that both article 60 and article 61 were of the kind which should apply both to permanent missions and to permanent observer missions. The Drafting Committee would no doubt consider how they could be merged with earlier articles so as to shorten the draft.

17. Mr. CASTRÉN pointed out that the Drafting Committee had made some changes in article 17;⁶ those changes would have to be applied to article 61.

18. Mr. AGO, supported by Mr. ELIAS, suggested that, since several articles in Part III were identical with articles in Part II, general cross-references would suffice.

19. The CHAIRMAN suggested that article 61 should be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*⁷

ARTICLE 62

20. The CHAIRMAN invited the Commission to consider article 62, on the chargé d'affaires *ad interim*, to which the Special Rapporteur had proposed no change.

21.

Article 62

Chargé d'affaires ad interim

If the post of permanent observer is vacant, or if the permanent observer is unable to perform his functions, a chargé d'affaires *ad interim* may act as head of the permanent observer mission. The name of the chargé d'affaires *ad interim* shall be notified to the Organization either by the permanent observer or, in case he is unable to do so, by the Minister for Foreign Affairs or by another competent minister if that is allowed by the practice followed in the Organization.

22. Mr. YASSEEN observed that article 62 was of the kind to which Mr. Ago's suggestion could well be applied.

⁶ See document A/CN.4/L.168.

⁷ For resumption of the discussion see 1119th meeting, para. 13.

23. Sir Humphrey WALDOCK pointed out that the United Kingdom Government had raised the question of the appropriate title for an acting permanent observer (A/CN.4/240/Add.3, section B.12). The title "chargé d'affaires *ad interim*" seemed excessive when applied to an observer. Article 62 was one in which a concession could well be made to those governments which did not wish permanent observers to be placed on exactly the same footing as permanent representatives.

24. Mr. ROSENNE said that the real object of the criticism voiced by a number of governments was the position with respect to the acting head of a permanent mission, though it also applied to an acting permanent observer. Both the term "acting permanent representative" and the term "chargé d'affaires *ad interim*" were used in New York. In any case, the provisions on permanent observer missions in article 62 should be the same as those adopted for permanent missions in article 18. He suggested that the Drafting Committee should examine the use of terms in both those articles, but should make it clear in the commentary that in both cases it was the institutions and not the title that mattered.

25. The CHAIRMAN suggested that article 62 should be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.**

QUESTION OF PRECEDENCE

26. Mr. USTOR noted the absence of an article on precedence, which in Part II, dealing with permanent missions, was the subject of article 19. He suggested that, to avoid difficulties of interpretation, article 19 should be made to apply to both permanent missions and permanent observer missions.

27. Sir Humphrey WALDOCK objected that it was not possible to deal with the two types of mission together; a permanent representative represented a member State of the organization, whereas a permanent observer did not.

28. Mr. USTOR said that, even if the two types of mission could not be treated in the same manner, he thought some provision on precedence was needed in Part III.

29. Mr. USHAKOV said that the Commission ought to explain in its commentary why it had not proposed an article on precedence. If it did draft such an article, it would have to regulate precedence not only between observers themselves, but also between observers and permanent representatives, and that was a matter for the rules of the organizations.

30. The CHAIRMAN, speaking as a member of the Commission, said he favoured the idea put forward by Mr. Ushakov. Permanent representatives and permanent observers constituted quite separate categories. In

New York it was customary to give permanent representatives precedence over observers. Precedence between observers was probably determined by alphabetical order, as it was for permanent representatives. If the Commission laid down a rule on the matter, it would also have to deal with the even more delicate question of relations between permanent representatives and members of delegations to the General Assembly. It would therefore be better to rely on the practice of organizations.

31. Mr. YASSEEN said that a practice already existed: permanent representatives took precedence over permanent observers and, within each category, precedence was determined by alphabetical order or by the time and date of the submission of credentials. But there was no need for the Commission to state those rules expressly.

32. Mr. ROSENNE said the discussion had confirmed his view that the problems of precedence were very complex and that the Commission's treatment of them had been inadequate. He therefore suggested that article 19 should be deleted and that the question of precedence for both permanent representatives and permanent observers should be the subject of a general commentary.

33. Mr. AGO observed that, even if the Commission succeeded in formulating rules on precedence between members of permanent missions and members of permanent observer missions, it would then run into enormous difficulties with the same problems for members of permanent missions and members of delegations. It would be better to say nothing and rely on practice.

34. The CHAIRMAN suggested that the question whether an article on precedence should be included in Part III or whether the matter should be dealt with in a commentary, should be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.**

ARTICLE 63

35. The CHAIRMAN invited the Commission to consider article 63, on the offices of permanent observer missions, to which the Special Rapporteur had proposed no change.

36.

Article 63

Offices of permanent observer missions

1. The sending State may not, without the prior consent of the host State, establish offices of the permanent observer 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 observer mission in the territory of a State other than the host State, except with the prior consent of such a State.

37. Mr. USHAKOV asked whether the Drafting Committee had deliberately chosen to use the expression "establish offices" (*établir des bureaux*) in article 63,

* For resumption of the discussion see 1119th meeting, para. 15.

* For resumption of the discussion see 1119th meeting, para. 18.

paragraph 1, and article 20, paragraph 1, rather than “establish the office” (*établir le bureau*) or “establish an office” (*établir un bureau*). The wording he preferred was that of article 12 of the Vienna Convention on Diplomatic Relations:¹⁰ “establish offices forming part of the mission”. Those words made it clear that there might be an office in the capital and other offices in other places.

38. Mr. ROSENNE said that Mr. Ushakov’s remark applied only to the French text. So far as the English text was concerned, the Drafting Committee should consider whether the word “offices” was not being used as a collective noun with a singular meaning.

39. Sir Humphrey WALDOCK said that the word “offices”, not “office”, was the appropriate one to use.

40. Mr. ALBÓNICO observed that, *mutatis mutandis*, the provisions of article 63 exactly reproduced those of article 20. He suggested that the Drafting Committee should replace the present text of article 63 by a simple reference to article 20. The same could be done with a number of other articles, thereby shortening the text of the draft.

41. The CHAIRMAN suggested that article 63 should be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*¹¹

ARTICLE 64

42. The CHAIRMAN invited the Commission to consider article 64, on the use of the [flag and] emblem. He pointed out that the Special Rapporteur had not proposed any change in the article, but the Commission had to decide whether or not to include the words “flag and”, which appeared in brackets in the title and in paragraph 1.

43.

Article 64

Use of [flag and] emblem

1. The permanent observer mission shall have the right to use the [flag and] emblem of the sending State on its premises.

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.

44. Mr. USHAKOV said he noted that the Government of Switzerland considered it natural to grant the mission the right to display the flag of the sending State (A/CN.4/240, section C). In his view, the Drafting Committee should retain the words “flag and” in the title and text of article 64.

45. Mr. SETTE CÂMARA said that he would prefer not merely to include the words “flag and”, but to restore the earlier wording of paragraph 1, which corresponded to that adopted at the twentieth session for

article 21, paragraph 1.¹² The Government of Switzerland, which was host to the largest number of international organizations, accepted it as natural that permanent observers should be placed on an equal footing with diplomatic agents; there was no reason why the Commission should be more restrictive than the country which had the greatest experience in the matter. And since the Commission had not hesitated to concede certain substantial privileges to observers, there was no reason why it should be more restrictive in the minor matter of the use of the flag.

46. Mr. YASSEEN said he agreed with Mr. Sette Câmara that the Commission should not be too restrictive; it had never questioned the representative character of a permanent observer.

47. Sir Humphrey WALDOCK asked whether Mr. Sette Câmara was proposing that the right to use the flag should be extended to the permanent observer’s means of transport.

48. Mr. SETTE CÂMARA said he had referred to the position of the Swiss Government, which placed no restriction on the use of the flag on the observer’s vehicle.

49. Sir Humphrey WALDOCK said he thought it was desirable to make a minor difference between permanent representatives and permanent observers in that respect, by leaving the provisions of article 64 as they stood. It was one thing for the Swiss Government to adopt a liberal attitude and another for the Commission to state a general rule.

50. Mr. AGO said that, to the best of his recollection, article 64 was a compromise reached after long discussion. Since Mr. Kearney, the former Chairman of the Drafting Committee, was absent, it would probably be better to await his return and consult him on that point.

51. Mr. YASSEEN pointed out that permanent representatives in New York and Geneva did not display the flag of the sending State on their transport. Hence the question was not of great practical importance.

52. Mr. ROSENNE said that the operative provision was paragraph 2 of the article, requiring regard for the laws, regulations and usages of the host State. He drew attention to the suggestion, referred to in paragraph (3) of the commentary to article 64,¹³ that the Commission should consider replacing the expression “regulations and usages of the host State” by “regulations and usages in the host State”. That change could help to solve the problem.

53. Mr. CASTRÉN confirmed that it was Mr. Kearney who had suggested that the means of transport should not be mentioned. It would probably be useful to hear his present opinion.

54. Mr. USTOR pointed out that the Government of Switzerland, in its written observations on article 64, had

¹⁰ United Nations, *Treaty Series*, vol. 500, p. 104.

¹¹ For resumption of the discussion see 1119th meeting, para. 21.

¹² See *Yearbook of the International Law Commission*, 1968, vol. II, p. 212.

¹³ *Op. cit.*, 1970, vol. II, document A/8010/Rev.1, chapter II, section B.

maintained that, in view of their similarity to diplomatic missions, observer missions should be granted the right to display the flag of the sending State and that that right should be extended "to the observer's residence and the vehicle he uses" (A/CN.4/240, section C).

55. The CHAIRMAN suggested that article 64 should be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*¹⁴

ARTICLE 65

56. The CHAIRMAN invited the Commission to consider section 2 (Facilities, privileges and immunities of permanent observer missions), beginning with article 65, on general facilities, to which the Special Rapporteur had proposed no change.

57.

Article 65 *General facilities*

The host State shall accord to the permanent observer mission the facilities required for the performance of its functions. The Organization shall assist the permanent observer mission in obtaining those facilities and shall accord to the mission such facilities as lie within its own competence.

58. Mr. SETTE CÂMARA observed that, in his introduction to section 2, the Special Rapporteur summarized the conflicting opinions of governments concerning the extension of facilities, privileges and immunities to permanent observers. Some had taken the view that the Commission had struck a proper balance between the preservation of the interests of the host State and the need to protect relations between permanent observer missions and organizations; others had expressed misgivings at the idea of placing permanent observer missions on a virtually equal footing with permanent missions.

59. In considering Part III, section 2, of the draft articles, the Commission would do well to heed the appeal made by Mr. Elias during the examination of article 53,¹⁵ and refrain from theoretical speculation about the representative character of permanent observer missions. But even if it dealt only with practical problems, the Commission would have difficulty in avoiding some kind of assimilation of those missions to permanent missions.

60. Those who had criticized the Commission's position had failed to suggest any other way of deciding what facilities, privileges and immunities should be granted. It was true that one government had suggested that permanent observers should be placed on the same footing as consular officers (A/CN.4/240/Add.3, section B.10), but there did not appear to be any sound legal basis for that suggestion, since neither the functions nor the status of consular officers had anything to do with those of permanent observers. The Government of Switzerland,

in its observations on article 53, likened permanent observer missions to diplomatic missions (A/CN.4/240, section C) and accordingly took a very generous view of their privileges and immunities. Considering Switzerland's authority and experience as a major host State, its attitude was bound to carry considerable weight in practice.

61. The Commission had therefore been right to depart from the very restrictive position described in the Legal Counsel's memorandum quoted in paragraph (1) of the general comments on section 2.¹⁶ In the interests of the progressive development of international law, the Commission could not accept the position of dependence on mere favours in which permanent observers were placed according to that memorandum.

62. He agreed with the Special Rapporteur that the general line taken in the articles should conform to the majority opinion in the Commission, which placed permanent observer missions on an equal footing with permanent missions because of their permanent and representative character. He accordingly supported the substance of article 67 which, by the technique of drafting by reference, extended to permanent observers the privileges and immunities prescribed by articles 25, 26, 27, 29 and 38, paragraph 1 (a).

63. Mr. ALBÓNICO said that in view of the eminently representative character of permanent observer missions, to which the Special Rapporteur referred in his sixth report, he supported article 65 as it stood.

64. Mr. ROSENNE said that the Drafting Committee could greatly reduce the length of section 2 by adopting the technique of drafting by reference.

65. Mr. CASTRÉN said that there was only a slight difference in wording between articles 22 and 65: the words "full facilities" were replaced by "the facilities required". It would be better to choose one form of words or the other, unless the slight difference was intended to mean that the privileges and immunities of permanent observer missions were more restricted.

66. Sir Humphrey WALDOCK said that the Commission had intended to make a slight difference between permanent observer missions and permanent missions. The omission of the word "full" was not of great significance; the real difference between article 22 and article 65 was that the former referred to the facilities "for the performance" of the permanent mission's functions and the latter to the facilities "required for the performance" of the permanent observer mission's functions. For his part, he was reluctant to see the two situations treated identically; the host State needed some measure of protection against inflation of observer status.

67. Mr. YASSEEN said he was not sure that the word "*nécessaires*", in the French text, was an exact translation of "required".

68. Mr. USHAKOV said that the wording of article 65

¹⁴ For resumption of the discussion see 1119th meeting, para. 23.

¹⁵ See previous meeting, para. 11 *et seq.*

¹⁶ See *Yearbook of the International Law Commission, 1970*, vol. II, document A/8010/Rev.1, chapter II, section B.

was more restrictive than that of article 22, in which the word "required" did not appear.

69. Mr. ROSENNE observed that the difference in wording between the first sentence of article 65 and the first sentence of article 22 meant that the second sentence—which was identical in the two articles—had a different effect in each case; for the second sentence referred to "those facilities", namely the facilities mentioned in the first sentence. It was not only a question of protecting the host State; the obligations imposed on the organization were also affected.

70. Sir Humphrey WALDOCK said that the attitude of the Swiss Government was influenced not only by its position as a host State, but also by its great interest in the status of permanent observers, inasmuch as it maintained a permanent observer mission in New York.

71. Mr. AGO said that the Drafting Committee would not overlook the intentional shade of difference in meaning between articles 22 and 65.

72. Mr. ALCÍVAR said that the French text of the first sentence of article 65, with its reference to *les facilités nécessaires*, was preferable to the Spanish text, which spoke of *las facilidades que se requieran*; for although that wording appeared to be closer to the English text, it suggested that the facilities granted should be those actually requested, rather than those which were necessary.

73. Mr. AGO said that the French phrase *les facilités nécessaires* was a correct translation of the English "the facilities required". If the Spanish text suggested something different, it should be brought into conformity with the other two.

74. The CHAIRMAN suggested that article 65 should be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*¹⁷

ARTICLE 66

75. The CHAIRMAN invited the Commission to consider article 66, on accommodation and assistance, to which the Special Rapporteur had proposed no change.

76.

Article 66

Accommodation and assistance

The provision of articles 23 and 24 shall apply also in the case of permanent observer missions.

77. Mr. USHAKOV said that article 66 should not refer to article 23 and article 24 together. Article 23, which concerned accommodation, imposed obligations first on the host State and secondly on the host State and the organization. Article 24, which concerned the thorny problem of privileges and immunities, imposed obligations on the organization only. The content of article 66 should therefore be set out in two separate articles. That was not merely a matter of drafting.

78. The CHAIRMAN suggested that article 66 should be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*¹⁸

ARTICLE 67

79. The CHAIRMAN invited the Commission to consider article 67, on the privileges and immunities of the permanent observer mission; he pointed out that the Special Rapporteur proposed the insertion of a reference to his new article 27 *bis* (A/CN.4/241/Add.4).

80.

Article 67

Privileges and immunities of the permanent observer mission

The provisions of articles 25, 26, 27, 29 and 38, paragraph 1 (a), shall apply also in the case of permanent observer missions.

81. Mr. CASTRÉN observed that the addition of a reference to article 27 *bis*, on entry into the host State, was the only change in article 67 proposed by the Special Rapporteur.

82. Mr. ALBÓNICO said that article 68, on freedom of movement, merely provided that the provisions of article 28 should apply also in the case of permanent observer missions. If a reference to article 28 was inserted in article 67, article 68 could be dispensed with.

83. Mr. SETTE CÂMARA supported that suggestion. The same procedure could be applied to several of the succeeding articles, thus making a substantial reduction in the length of the draft.

84. Sir Humphrey WALDOCK said it was easy to suggest that permanent observers should be granted less freedom of movement than permanent representatives and that article 68 should be amended accordingly. By retaining article 68 as it stood, the Commission would show that it was not convinced by the strong attacks made by certain governments on its principle of assimilating permanent observer missions to permanent missions in certain respects.

85. Mr. AGO said that the Drafting Committee should group cross-references together in a single provision whenever possible, but should produce separate articles wherever there were differences in treatment, however slight, between permanent missions and permanent observer missions.

86. Sir Humphrey WALDOCK said that, at the present stage, the Commission was examining every subject individually to see if there was any justification for drawing a distinction between permanent observer missions and permanent missions. At a later stage, consideration could be given to the amalgamation of certain articles relating to matters in which no distinction was made between the two types of mission.

87. Mr. USTOR said that the Commission ought perhaps to give the Drafting Committee instructions on

¹⁷ For resumption of the discussion see 1122nd meeting, para. 74.

¹⁸ For resumption of the discussion see 1122nd meeting, para. 80.

that important question of drafting. There were three possible courses. The first was to retain the articles in Part III as they stood, although in the Sixth Committee there had been criticism of the length of the draft. The second was to cover in a single article, on the lines of article 67, all the situations in which a permanent observer mission was treated in the same manner as a permanent mission. The third was to combine Part II, section 2, with Part III, section 2, and thus have only one series of articles on the facilities, privileges and immunities of both permanent missions and permanent observer missions.

88. Mr. ROSENNE said it was perhaps too early to make a choice between those three possible courses. The Commission had examined all the substantive provisions of Part III individually at its twenty-second session, and it would now have to do so again in the light of governments' comments and the Special Rapporteur's revised conclusions. Once that process had been completed, it would be for the Drafting Committee to decide the important question of drafting to which Mr. Ustor had referred. He himself preferred the second course of action: that of preparing one or two articles using the technique of drafting by reference.

89. The present procedure was admittedly somewhat tedious, but it was necessary in order to avoid the use of the formula *mutatis mutandis*, which would give rise to even greater difficulties.

90. Mr. AGO said that he too was in favour of the second course suggested by Mr. Ustor. For the sake of clarity, it would be better to cross-reference from one part of the draft to another than to include a series of provisions on privileges and immunities in each of the four parts.

91. The CHAIRMAN suggested that article 67 be referred to the Drafting Committee for consideration in the light of the discussion. The Drafting Committee should also consider the remarks made on the drafting of section 2 as a whole.

*It was so agreed.*¹⁹

ARTICLE 68

92. The CHAIRMAN invited the Commission to consider article 68 on freedom of movement, to which the Special Rapporteur had proposed no change.

93.

Article 68

Freedom of movement

The provisions of article 28 shall apply also in the case of members of the permanent observer mission and members of their families forming part of their respective households.

94. The CHAIRMAN said that, as there were no comments, he took it that the Commission was prepared to refer article 68 to the Drafting Committee.

¹⁹ For resumption of the discussion see 1122nd meeting, para. 86.

*It was so agreed.*²⁰

ARTICLE 69

95. The CHAIRMAN invited the Commission to consider article 69, on personal privileges and immunities, to which the Special Rapporteur had proposed no change.

96.

Article 69

Personal privileges and immunities

1. The provisions of articles 30, 31, 32, 35, 36, 37 and 38, paragraphs 1 (b) and 2, shall apply also in the case of the permanent observer and the members of the diplomatic staff of the permanent observer mission.

2. The provisions of article 40, paragraph 1, shall apply also in the case of members of the family of the permanent observer forming part of his household and the members of the family of a member of the diplomatic staff of the permanent observer mission forming part of his household.

3. The provisions of article 40, paragraph 2, shall apply also in the case of members of the administrative and technical staff of the permanent observer mission, together with members of their families forming part of their respective households.

4. The provisions of article 40, paragraph 3, shall apply also in the case of members of the service staff of the permanent observer mission.

5. The provisions of article 40, paragraph 4, shall apply also in the case of the private staff of members of the permanent observer mission.

97. Mr. USHAKOV observed that paragraph 1 referred direct to the corresponding articles on permanent missions, whereas paragraphs 2 to 5 referred to the corresponding paragraphs of article 40, which in turn referred to the articles mentioned in paragraph 1. Paragraphs 2 to 5 should refer to those articles direct, especially as the corresponding paragraphs of article 40 referred to articles 30 to 38 *en bloc* and, as he had pointed out during the discussion of article 40, articles 33 and 34 were not concerned with personal privileges and immunities.²¹

98. The CHAIRMAN said that, if there were no objections, he would take it that the Commission was prepared to refer article 69 to the Drafting Committee with Mr. Ushakov's comments.

*It was so agreed.*²²

ARTICLE 70

99. The CHAIRMAN invited the Commission to consider article 70. He reminded members that the Special Rapporteur had proposed a drafting change consisting in the insertion of commas before and after the words "and persons on the private staff" (A/CN.4/241/Add.4).

²⁰ For resumption of the discussion see 1123rd meeting, para. 1.

²¹ See 1096th meeting, para. 109.

²² For resumption of the discussion see 1123rd meeting, para. 3.

100.

*Article 70**Nationals of the host State and persons permanently resident in the host State*

The provisions of article 41 shall apply also in the case of members of the permanent observer mission and persons on the private staff who are nationals of or permanently resident in the host State.

101. Mr. ROSENNE said that of the two drafting suggestions made by the Secretariat of the United Nations (A/CN.4/L.162/Rev.1), he agreed with the Special Rapporteur in preferring the first.

102. The CHAIRMAN suggested that article 70 should be referred to the Drafting Committee with Mr. Rosenne's comment.

*It was so agreed.*²³

ARTICLE 71

103. The CHAIRMAN invited the Commission to consider article 71, on waiver of immunity and settlement of civil claims, to which the Special Rapporteur had proposed no change.

104.

*Article 71**Waiver of immunity and settlement of civil claims*

The provisions of articles 33 and 34 shall apply also in the case of persons enjoying immunity under article 69.

105. Mr. USHAKOV said that in his opinion article 34 should not be mentioned in article 71. Moreover, the provision was an important one, and it would be better to draft a complete article modelled on article 33, rather than rely on cross-reference.

106. Mr. ALBÓNICO said he agreed with Mr. Ushakov. Article 33 applied to persons enjoying immunity under article 40 and not under article 69.

107. Mr. ROSENNE said that the point was essentially one of drafting. Perhaps the provision in question might be generalized, inasmuch as it affected the draft articles as a whole.

108. Sir Humphrey WALDOCK said that article 34 seemed to him to be an article of some importance.

109. Mr. AGO reminded the Commission that its discussion on article 34 had centred mainly on the question whether it could make an article imposing an obligation out of what had been merely a recommendation in the previous conventions.

110. The CHAIRMAN said that, if there were no objections, he would take it that the Commission was prepared to refer article 71 to the Drafting Committee with the observations made.

*It was so agreed.*²⁴

²³ For resumption of the discussion see 1123rd meeting, para. 4.

²⁴ For resumption of the discussion see 1123rd meeting, para. 5.

ARTICLE 72

111. The CHAIRMAN invited the Commission to consider article 72. He drew attention to the drafting change proposed by the Special Rapporteur (A/CN.4/241/Add.4) which consisted in replacing the words "not being nationals" by "who are not nationals".

112.

*Article 72**Exemption from laws concerning acquisition of nationality*

The provisions of article 39 shall apply also in the case of members of the permanent observer mission not being nationals of the host State and members of their families forming part of their household.

113. Mr. YASSEEN said that, for the purposes of article 72, permanent observer missions could be assimilated to permanent missions.

114. Mr. ALBÓNICO said he could accept article 72 on the understanding that *jus soli* would not be applicable to the members of the permanent observer mission, regardless of whether they were members of the diplomatic staff, the administrative and technical staff or the service staff.

115. The CHAIRMAN suggested that article 72 should be referred to the Drafting Committee, with Mr. Albónico's comment.

*It was so agreed.*²⁵

ARTICLE 73

116. The CHAIRMAN invited the Commission to consider article 73, on the duration of privileges and immunities, to which the Special Rapporteur had proposed no change.

117.

*Article 73**Duration of privileges and immunities*

The provisions of article 42 shall apply also in the case of every person entitled to privileges and immunities under the present section.

118. The CHAIRMAN said that, if there were no objections, he would take it that the Commission was prepared to refer article 73 to the Drafting Committee.

*It was so agreed.*²⁶

ARTICLE 74

119. The CHAIRMAN invited the Commission to consider article 74. The Special Rapporteur proposed a drafting change (A/CN.4/241/Add.4) consisting in the insertion of the word "of" before the words "the couriers".

²⁵ For resumption of the discussion see 1123rd meeting, para. 7.

²⁶ For resumption of the discussion see 1123rd meeting, para. 8.

120.

*Article 74**Transit through the territory of a third State*

The provisions of article 43 shall apply also in the case of the members of the permanent observer mission and members of their families, and the couriers, official correspondence, other official communications and bags of the permanent observer mission.

121. The CHAIRMAN said that, if there were no objections, he would take it that the Commission was prepared to refer article 74 to the Drafting Committee.

*It was so agreed.*²⁷

ARTICLE 75

122. The CHAIRMAN invited the Commission to consider article 75, on non-discrimination, to which the Special Rapporteur had proposed no change.

123.

*Article 75**Non-discrimination*

In the application of the provisions of the present part, no discrimination shall be made as between States.

124. Mr. YASSEEN said that in his opinion article 75 should be included in the general provisions.

125. The CHAIRMAN observed that that was also the opinion of the Special Rapporteur. He therefore suggested that consideration of article 75 should be deferred.

*It was so agreed.*²⁸

ARTICLE 76

126. The CHAIRMAN invited the Commission to consider article 76, on the conduct of the permanent observer mission and its members, to which the Special Rapporteur had proposed no change.

127.

*Article 76**Conduct of the permanent observer mission and its members*

The provisions of articles 45 and 46 shall apply also in the case of permanent observer missions.

128. Mr. USHAKOV said that the title of article 76, like that of section 3 of Part II, on permanent missions, and section 3 of Part III, on permanent observer missions, was not very apt. It was difficult to see what constituted the conduct of a mission. The Drafting Committee should try to find a better formula.

129. Mr. CASTRÉN said he shared that opinion. It was true that article 45, paragraph 3, to which article 76 referred, was concerned with the use made of the premises of the permanent mission, but even in that case

²⁷ For resumption of the discussion see 1123rd meeting, para. 9.

²⁸ For resumption of the discussion see 1123rd meeting, para. 10.

it was the head of the permanent mission who was responsible, so it was sufficient to speak of the conduct of the persons composing the mission.

130. Mr. ROSENNE said he did not entirely agree with Mr. Castrén. In law, the responsibility in each case rested with the sending State, not with the members of the permanent observer mission.

131. He agreed with Mr. Ushakov's comment on the title of article 76.

132. Paragraph 3 of article 45 seemed out of place in that article and should be a separate article.

133. Mr. AGO said that Mr. Ushakov's comment deserved careful consideration. It was possible that there could be cases of collective conduct, and the Drafting Committee should be careful not to exclude them.

134. Sir Humphrey WALDOCK said he thought the Commission should reserve its position on article 76 until the Drafting Committee had submitted a new text.

135. The CHAIRMAN suggested that article 76 should be referred to the Drafting Committee with the comments made during the discussion.

*It was so agreed.*²⁹

ARTICLE 77

136. The CHAIRMAN invited the Commission to consider article 77, on the end of functions, to which the Special Rapporteur had proposed no change.

137.

*Article 77**End of functions*

The provisions of articles 47, 48 and 49 shall apply also in the case of permanent observer missions.

138. Mr. USHAKOV reminded the Commission that when it had considered article 48 he had intimated that he thought that article unnecessary.³⁰ If the Commission decided to delete article 48, the reference to it in article 77 should also be deleted. It was true that the previous conventions provided that the host State must grant facilities for departure in exceptional cases, for example, when diplomatic relations were broken off, but no comparable situation could arise between sending States and international organizations.

139. The CHAIRMAN suggested that article 77 should be referred to the Drafting Committee.

*It was so agreed.*³¹

The meeting rose at 12.35 p.m.

²⁹ For resumption of the discussion see 1123rd meeting, para. 24.

³⁰ See 1098th meeting, para. 81.

³¹ For resumption of the discussion see 1123rd meeting, para. 26.