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**Summary record of the 1106th meeting**

Topic:  
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but the Commission had to take account of the facts, including the fact that collective representation existed.

62. Mr. Reuter's idea was more logical, but it was not in conformity with practice, which was to confer full powers on a delegation as such and not on the persons composing it, in order to avoid the difficulties which might arise from changes in the membership of the delegation. Multiple representation dated back to the nineteenth century and could be a manifestation of solidarity between two States. It was practised today by certain States of the Third World, which saw in such representation, apart from its financial advantages, a means of fighting regional imperialism.

63. The powers were certainly conferred on a delegation and not on persons, as was shown by the example of Luxembourg, which traditionally entrusted its representation to Belgian and Netherlands diplomacy irrespective of changes of ambassador. Multiple representation might thus reflect the idea of a diplomatic, consular or other alliance; but it must be noted that that institution, on which the States of the Third World had placed great hopes, also aroused strong opposition. The Latin American countries, for example, had never accepted the idea of being represented by another State.

64. Consequently, in the light of realities and of present practice, the Commission could either abandon the principle of single representation, or accept the rules formulated by the Special Rapporteur and mention in the commentary both the advantages of multiple representation and the difficulties it raised, in particular, the question whether the powers should be conferred on a person or on a delegation as such.

65. Mr. USHAKOV said that the new alternatives proposed by the Special Rapporteur were unsatisfactory. In alternative A, the original wording was merely preceded by the words "As a rule", which added nothing. In alternative B, the principle stated was made subject to the rules and practice of the organ or conference. That condition was strange, to say the least, for a conference could not have any practice, or rules either for that matter. It could have rules of procedure, but there was no need to mention them in article 83 because they were already mentioned in article 80. Furthermore, it was not clear what was meant by the rules of the organ. If it was the rules of the organization that were meant, that reference was also unnecessary in view of the provisions of article 3.

66. Since the additions made by the Special Rapporteur in both alternative A and alternative B were redundant, the Commission was left with the text of the article adopted at first reading, which he supported.

67. Mr. SETTE CÂMARA said that, although the principle of single representation stated in article 83 was supported by some practice, it was far from being a general rule of international law. There was obviously a need for some provision which would permit dual representation under certain conditions. At a time when the United Nations was faced with the proliferation of micro-States and when the Secretary-General himself had referred to the possibility of associations of States, it

would ill become the Commission to place undue emphasis on the principle of single representation. In view of the impressive number of precedents for dual and multiple representation cited by the Special Rapporteur, it would seem that article 83 was emerging as a residuary rule which should be retained. He preferred the Special Rapporteur's alternative B as being more explicit; but whatever text was adopted its residual character should be made clear.

The meeting rose at 6 p.m.

## 1106th MEETING

Tuesday, 25 May 1971, at 10.30 a.m.

Chairman: Mr. Senjin TSURUOKA

*Present:* Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Castrén, Mr. Elias, Mr. Nagendra Singh, Mr. Reuter, 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 6; A/CN.4/L.162/Rev.1)

[Item 1 of the agenda]

(continued)

### ARTICLE 83 (Principle of single representation)

(continued)

1. The CHAIRMAN invited the Commission to continue consideration of article 83 on the principle of single representation.

2. Mr. ELIAS said that article 83 was one of the shortest of the draft articles and one of the most difficult to put into an acceptable form. At its last session the Commission, as indicated in the commentary, had reached two different conclusions: first, that it should review the article at the second reading in the light of the observations of governments and international organizations; secondly, that the situations envisaged were so varied that it should not propose a general rule, but should leave the matter to the rules and practices of the various international organizations.<sup>1</sup>

3. In its written observations the Government of the Netherlands had drawn attention to the fairly large and

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

representative number of international organizations which permitted multiple representation (A/CN.4/240/Add.3, section B.11), while the Government of New Zealand had explained the treaty arrangement under which it was permitted to represent the Government of Western Samoa (A/CN.4/240, section B.4). The written observations of the Government of Switzerland (*ibid.*, section C.) provided a reminder that the problem of multiple representation was not confined to new States; there might well be other cases, besides that of Liechtenstein, in which an old, but small State preferred to be represented by a larger State.

4. Instances of dual or multiple representation had occurred at the Vienna Conference on the Law of Treaties. At many meetings during that Conference, the Ivory Coast had also represented Dahomey and in some cases Upper Volta. The Central African Republic had been represented sometimes by Cameroon and sometimes by Gabon. Of course, multiple representation had its disadvantages, in that it was open to abuse for the purpose of securing votes.

5. Mr. ROSENNE had drawn attention to a further consideration: whether members of a delegation to a conference were entitled both to speak and to vote, or only to speak.

6. Having regard to articles 3, 4 and 5, he did not think that article 83 in its present form was adequate as a general residuary rule. He found both the alternatives proposed by the Special Rapporteur unacceptable and was inclined to favour the suggestions of such governments as those of Switzerland and Canada, which considered that if article 83 was to be retained at all, it should contain a second paragraph expressing the idea that a delegation to an organ or a conference might represent more than one State. He could also agree with those who thought that article 83 should be deleted.

7. Mr. ALBÓNICO said that, at the first reading, opinion on article 83 had been divided: some members, like himself, had favoured its deletion, while others had thought that it should be retained. Neither the principle of single representation nor that of multiple representation could be said to be an established rule of international law.

8. It was easy to see that the application of the principle of multiple representation might have disadvantages if it enabled any one State to use the votes of others to further its own exclusive political or economic interests. On the other hand, in certain cases the application of that principle might contribute to the progressive development of international law. For example, a group of countries might have an identity of interests, like the five South American countries which were parties to the Andean Sub-regional Integration Agreement and were represented by one delegation to the Economic Commission for Latin America, or the Member States of the European Economic Community. In such cases as those, however, the identity of interests meant that the representation was really single.

9. He could not accept either of the Special Rapporteur's alternatives and thought that article 83 should

be retained as it stood. If the Commission nevertheless decided to accept some form of multiple representation, it should be based on a real harmony or community of interests, and the possibility of transferring votes should be limited to a maximum of two additional votes. Moreover, no delegation should be allowed to represent a State which was not a member of the organ or participant in the conference concerned.

10. Mr. CASTRÉN said that the question raised by Mr. Reuter, as to whether a person who was a member of the delegation of one State could represent another State in an organ or at a conference, had already been considered at the twenty-second session, when the Commission had come to the conclusion reported in paragraph (2) of the commentary to article 83.<sup>2</sup> Hence, there was nothing to be gained by re-opening the question, especially as the Special Rapporteur too had discarded his first idea about it.

11. With regard to the question of single or multiple representation, he agreed with other members of the Commission that neither the text approved at the last session nor the alternatives proposed by the Special Rapporteur were satisfactory. As Mr. Ushakov had remarked, the only difference between alternative A and the former text was the addition of the words "As a rule", which implied the existence of certain exceptions, but did not specify them. Alternative B, though also open to criticism, was preferable.

12. In their observations, several governments and organizations had requested that the text should be amended so as to permit multiple representation. As Mr. Elias had pointed out, there were already several instances in which small States or States belonging to the same group, such as the Benelux States and the Scandinavian and Nordic States, had sent joint delegations to meetings of organs of international organizations or to international conferences on economic matters. It was hard to see why that form of representation should be condemned. Neither practical reasons nor considerations of principle justified its prohibition; on the contrary, they militated in favour of its acceptance.

13. The Special Rapporteur's changes in the 1970 text did not go far enough to meet the justified requests of governments and international organizations. He therefore proposed that alternative B be redrafted in positive terms. It might read:

"A delegation to an organ or to a conference may represent two or more States unless the rules and practice of the organ or conference provide otherwise."

The title would have to be amended accordingly.

14. If the Commission could not accept such a radical change, he proposed that the article should be deleted and the matter left to be settled by practice, as it had been in the past.

15. Mr. ALCÍVAR said he had grave doubts about the alternatives proposed by the Special Rapporteur for dealing with the problem of multiple representation: trying to solve the problem in that way would only create

<sup>2</sup> *Ibid.*

more problems. As Mr. Reuter had pointed out, much would depend on whether the concept of a "delegation to an organ or to a conference" included the individuals composing the delegation. Mr. Rosenne had drawn attention to the difference between delegations which only had the right to speak at a conference and those which also had the right to vote. Again, as Mr. Albónico had pointed out, multiple representation might present political problems.

16. He found it difficult to accept the principle of multiple representation as a general rule, though he could agree that provision might be made for it as an exception, in order to take into account the needs of both developed and developing countries. Much would depend on the type of conference concerned, and on whether a particular group of countries, such as the Andean group referred to by Mr. Albónico, could be represented at it by one delegation. He was therefore inclined to think that article 83 should be deleted and that the Commission should leave it to the conferences and organs themselves to develop some rule of positive law through practice.

17. Mr. USTOR said it was an overriding principle in all diplomatic relations that the members of a mission of any sort should, in principle, be nationals of the sending State. That principle was embodied in article 8 of the Vienna Convention on Diplomatic Relations,<sup>3</sup> article 10 of the Convention on Special Missions<sup>4</sup> and articles 11 and 85 of the present draft. By implication, therefore, it would appear that every mission should serve only one State; but that was a general rule to which some exceptions should be admitted, as authorized by article 6 of the Vienna Convention on Diplomatic Relations and by article 5 on the Convention on Special Missions. Article 6 of the Vienna Convention on Diplomatic Relations provided that:

"Two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State."

18. The Commission had not seen fit to include such a provision in its draft articles on permanent missions, because in practice there had been no case of two States employing the same permanent representative. As a concession, however, some such provision might be included for both permanent missions and permanent observer missions, in order to meet the needs of such developing countries as might wish to resort to multiple representation for reasons of convenience or economy. The Commission should therefore decide whether or not to provide for that possibility, either in the article itself or in the commentary. In any case it should take a uniform position in all four parts of the draft articles.

19. Sir Humphrey WALDOCK said that, when article 83 had been discussed at the last session, he had been in favour of the idea that one delegation could represent more than one State. He still believed that that principle would be of value and that the Com-

mission should not discourage it by adopting a negative article. The principle of multiple representation would be particularly helpful to developing States, but it would also help others, for the multiplicity of international conferences today faced all States with a staffing problem.

20. If a rule was to be adopted, he would prefer a positive to a negative one, though he was not entirely convinced of the need to have any rule at all. He agreed with Mr. Ustor that, if such a rule were adopted, it should be uniform in all parts of the draft articles.

21. Mr. TAMMES said he could not accept either of the alternatives proposed by the Special Rapporteur. After listening to all the arguments, he was convinced that article 83 should be deleted and that the question of single or multiple representation should be left to the rules and practice of the organ or conference concerned. He did not think that organs or conferences were in need of any uniform recommendation on how to organize their work most efficiently; moreover, article 83 did not lay down any principle which was essential for the application of the articles on privileges and immunities.

22. Mr. USHAKOV said that there was, of course, nothing to prevent the Commission from reversing its decision, but he could not endorse a reversal which led it to say that a principle it had confirmed in a draft article a year previously no longer existed in international law. The principle that every State must be represented by its own delegation did exist. It was possible to derogate from that principle, but the exceptions depended solely on the relevant rules of the organization, not on the Commission's preference. Indeed, the Commission had recognized that fact by adopting article 3, which made the application of the draft articles subject to the relevant rules of the organization. At a conference, the rules of procedure alone could authorize multiple representation, and the Commission had so provided in article 80.

23. For those reasons he believed that it would be wrong for the Commission to reconsider the principle of article 83 and to go back on its decision by deleting the article or radically changing its substance.

24. Mr. CASTRÉN pointed out that the Commission had not approved article 83 unanimously. As could be seen from paragraph (1) of the commentary, only a majority of the Commission had supported it; other members had expressed reservations. The Commission had approved the article provisionally and decided to review the matter at the second reading in the light of the observations it received.

25. Mr. ROSENNE thanked Mr. Ustor for calling attention to article 85, which was not mentioned in article 80, on conference rules of procedure. He suggested that the Drafting Committee should consider whether article 85 should be mentioned in article 80; that would be particularly important if the Committee decided to recommend the deletion of article 83.

26. Mr. Ustor had also rightly pointed out the need for uniform treatment of the question throughout the

<sup>3</sup> United Nations, *Treaty Series*, vol. 500, p. 100.

<sup>4</sup> General Assembly resolution 2530 (XXIV), Annex.

draft articles. But it was to be hoped that the Commission would not overburden the draft by inserting provisions similar to article 83 in all the parts.

27. He agreed with previous speakers that article 83 was a residuary rule; it did not involve a question of principle.

28. The CHAIRMAN suggested that article 83 should be referred to the Drafting Committee with the comments made during the discussion.

*It was so agreed.*<sup>5</sup>

#### ARTICLE 84

29. The CHAIRMAN invited the Commission to consider article 84, to which the Special Rapporteur had proposed no change.

30.

##### *Article 84*

##### *Appointment of the members of the delegation*

Subject to the provisions of articles 82 and 85, the sending State may freely appoint the members of its delegation to an organ or to a conference.

31. Mr. SETTE CÂMARA supported the Special Rapporteur's proposal to retain the present text of article 84. The adverse comments made by the Government of the Netherlands, the Government of Switzerland and the International Labour Office had been adequately disposed of by the Special Rapporteur in his observations on article 10 (A/CN.4/241/Add.2) and article 55 (A/CN.4/241/Add.4). The whole philosophy of the draft articles went against giving to the host State powers equivalent to the requirement of *agrément* in bilateral diplomatic relations. He therefore suggested that article 84 should be referred to the Drafting Committee as it stood.

32. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to refer article 84 to the Drafting Committee.

*It was so agreed.*<sup>6</sup>

#### ARTICLE 85

33. The CHAIRMAN invited the Commission to consider article 85, on the nationality of the members of the delegation.

34.

##### *Article 85*

##### *Nationality of the members of the delegation*

The representatives and members of the diplomatic staff of a delegation to an organ or to a conference should in principle be of the nationality of the sending State. They may not be appointed from among persons having the nationality of the host State, except with the consent of that State which may be withdrawn at any time.

35. The CHAIRMAN drew attention to the amended

text proposed by the Special Rapporteur for the second sentence, which read: "They may not be appointed from among persons having the nationality of the host State, if the host State objects, which it may do at any time."

36. Mr. SETTE CÂMARA noted that, in view of the highly technical character of certain organs and conferences, the Special Rapporteur was in favour of preserving the fullest possible freedom of appointment. He had therefore rejected the Canadian Government's suggestion that persons having permanent residence in the host State should be equated with nationals of the host State (A/CN.4/240, section B.2). The proposed new text did not make the prior consent of the host State a requirement but, instead, conferred upon that State the power to object to an appointment at any time. He supported the more liberal approach adopted by the Special Rapporteur.

37. Mr. USHAKOV observed that, in its present form, the article stipulated that members of the delegation could not be appointed from among persons having the nationality of the host State, "except with the consent of that State", which implied that the sending State must apply for such consent in advance. The Special Rapporteur's new text did not mention the necessity for such an application.

38. Mr. ROSENNE said that the question raised by Mr. Ushakov was a rather delicate one and depended on the final wording adopted for article 50 on consultations. For his part, he would be content to let the Drafting Committee examine the different versions proposed for article 85; he reserved his position until the Committee had reported on the article.

39. Sir Humphrey WALDOCK said he was inclined to agree with Mr. Ushakov. The new rule proposed by the Special Rapporteur might not work in practice. It would be awkward if an appointment were made and an objection was raised to it when the Conference was already under way. The rule stated in the text adopted at the twenty-second session was much more workable and corresponded to the more traditional way of expressing the principle involved.

40. Mr. REUTER said he thought that, if the wording proposed by the Special Rapporteur was adopted, it would be necessary to insert the words "having been previously informed" between the words "if the host State" and the word "objects"; that would have the effect of creating an obligation for the sending State to notify the host State. There would then be little difference in meaning between the two texts under consideration.

41. Mr. CASTRÉN said he shared the view expressed by Mr. Sette Câmara, but recognized that Mr. Reuter's suggestion might allay certain misgivings. With his amendment, the Special Rapporteur's new text would give the host State sufficient protection.

42. Mr. ROSENNE said that the suggested insertion of a rather vague reference to an obligation to notify the host State in advance raised certain delicate questions of principle in regard to the provisions on notification. The idea of direct bilateral relations between the host

<sup>5</sup> For resumption of the discussion see 1124th meeting, para. 19.

<sup>6</sup> For resumption of the discussion see 1124th meeting, para. 32.

State and the sending State was not part of the general scheme of the draft articles. If Mr. Reuter's suggestion were referred to the Drafting Committee, the Committee should take care to view it in the general context of the draft, which placed the emphasis on direct relations between the sending State and the organization, not between the sending State and the host State.

43. The CHAIRMAN suggested that article 85 should be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.<sup>7</sup>*

#### ARTICLE 86

44. The CHAIRMAN invited the Commission to consider article 86, on the acting head of the delegation.

45.

##### *Article 86*

##### *Acting head of the delegation*

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

2. If a delegation does not have another representative available to serve as acting head, another person may be designated as in paragraph 1 of this article. In such case credentials must be issued and transmitted in accordance with article 87.

46. The CHAIRMAN drew attention to the two drafting amendments proposed by the Special Rapporteur, which consisted in replacing the words "in case he is unable", in the first sentence of paragraph 1, by "if he is unable", and inserting the word "provided" before "in paragraph 1", in the first sentence of paragraph 2.

47. Mr. ALBÓNICO observed that the acting head of a delegation was normally designated by the sending State. Designation by the head of the delegation constituted the exception to that rule; the first sentence of paragraph 1 should be reworded accordingly.

48. Mr. USHAKOV said there was some inconsistency between articles 81 and 86. Article 81 provided that the sending State might appoint a head of the delegation, and article 86 referred to the case in which that head of delegation was absent or unable to perform his functions. Hence article 86 could be applied only when a head of delegation had been appointed in accordance with article 81. The Drafting Committee should perhaps make article 86 begin with the words "Subject to the provisions of article 81".

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

*It was so agreed.<sup>8</sup>*

<sup>7</sup> For resumption of the discussion see 1124th meeting, para. 41.

<sup>8</sup> For resumption of the discussion see 1124th meeting, para. 42.

#### ARTICLE 87

50. The CHAIRMAN invited the Commission to consider article 87, to which the Special Rapporteur had proposed no change.

51.

##### *Article 87*

##### *Credentials of representatives*

1. The credentials of a representative to an organ 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 authority if that is allowed by the practice followed in the Organization, and shall be transmitted to the Organization.

2. The credentials of a representative in the delegation to a conference 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 authority if that is allowed in relation to the conference in question, and shall be transmitted to the conference.

52. Mr. USHAKOV said that article 87 also raised a question of concordance with article 81. Article 81 provided that a delegation "shall consist of one or more representatives of the sending State", whereas article 87 gave the impression that there was only one representative. That point should also be considered by the Drafting Committee.

53. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to refer article 87 to the Drafting Committee.

*It was so agreed.<sup>9</sup>*

#### ARTICLE 88

54. The CHAIRMAN invited the Commission to consider article 88, to which the Special Rapporteur had proposed no change.

55.

##### *Article 88*

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

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

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

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

<sup>9</sup> For resumption of the discussion see 1124th meeting, para. 48.

56. Mr. ROSENNE pointed out that the draft contained three articles on the same subject. The first was article 14, which had been drafted in 1968 by Sir Humphrey Waldock, the former Special Rapporteur on the law of treaties.<sup>10</sup> He suggested that the Commission should invite Sir Humphrey to examine articles 14, 58 and 88 in the light of the 1969 Vienna Convention on the Law of Treaties and of the comments of governments on those three articles. The possibility of merging the three articles into one would no doubt also be considered.

57. Sir Humphrey WALDOCK said that he understood the comments made by certain governments as indicating that the question of full powers to represent the State in the conclusion of treaties might perhaps belong to the topic of treaties concluded between States and international organizations or between two or more international organizations. That was one reason why it had been suggested that the subject should be left outside the scope of the present draft articles.

58. If the Commission decided to deal with the subject, it would have to do so separately in each part of the draft. It could then consider whether all those provisions could be merged into one article. If the Commission so desired, he was prepared to contribute to that work.

59. Mr. USHAKOV observed that article 88 raised certain questions of substance. Paragraph 1 reproduced the relevant wording of article 7, paragraph 2, of the Vienna Convention on the Law of Treaties,<sup>11</sup> with the addition of the words "in a conference or in an organ". That addition was pointless since the powers in question could be exercised in general under the Convention on the Law of Treaties.

60. Paragraphs 2 and 3 of article 88 related to the powers of a "representative to an organ or in a delegation to a conference", and article 81 provided that "A delegation to an organ or to a conference shall consist of one or more representatives of the sending State". Consequently, where the delegation consisted of several representatives, the question arose whether each of them, or only one of them, should be regarded as representing the sending State for the purposes of article 88, paragraph 2. Perhaps the answer to that question could be found in the Convention on the Law of Treaties.

61. For the reason he had stated in connexion with paragraph 1, he doubted whether the words "in that organ or conference", at the end of paragraph 2, served any useful purpose.

62. Mr. YASSEEN said that the further the discussion proceeded, the stronger was his impression that article 88 was unnecessary. In that article, the Commission could confine itself to providing for treaties between the organization and the sending State. The conclusion of all other treaties was governed by the law of treaties or other

branches of law. In attempting to formulate detailed provisions, the Commission ran the risk of being in conflict with the Vienna Convention on the Law of Treaties.

63. Mr. CASTRÉN said he agreed with Mr. Yasseen. The Drafting Committee should at least consider the possibility of deleting paragraph 3, which the Netherlands Government considered redundant (A/CN.4/240/Add.3, section B.11).

64. Where a delegation consisted of more than one representative, it would appear that each of them could represent the sending State unless it decided otherwise.

65. Sir Humphrey WALDOCK suggested that article 88 should be referred to the Drafting Committee with the request that the Committee should consider whether such an article was appropriate for the draft or whether its subject-matter should be left to the law of treaties or to the topic of treaties concluded between States and international organizations or between two or more international organizations.

66. The CHAIRMAN said that if there was no objection he would take it that the Commission agreed to that suggestion.

*It was so agreed.*<sup>12</sup>

#### ARTICLE 89

67. The CHAIRMAN invited the Commission to consider article 89, to which the Special Rapporteur had proposed no change.

68.

#### *Article 89*

#### *Notifications*

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

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

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

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

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

(e) the location of the premises occupied by the delegation and of the private accommodation enjoying inviolability under articles 94 and 99, as well as any other information that may be necessary to identify such premises and accommodation.

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

3. The Organization or, as the case may be, the conference,

<sup>10</sup> See *Yearbook of the International Law Commission, 1968*, vol. 1, p. 236, para. 53 *et seq.*

<sup>11</sup> *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference*, p. 290 (United Nations publication, Sales No.: E.70.V.5).

<sup>12</sup> For resumption of the discussion see 1125th meeting, para. 4.

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.

69. Mr. ROSENNE, supported by Mr. USHAKOV, suggested that the Drafting Committee should carefully examine the words "shall notify . . . the conference", in the opening sentence of paragraph 1, which he believed to be incorrect.

70. Mr. USTOR drew attention to the comments of the International Labour Office on the very detailed provisions of article 89 (A/CN.4/240, section D.2). Most members of the Commission had participated in international conferences and would no doubt agree that governments rarely made all the notifications specified in the draft article. When a delegation arrived at a conference, it usually completed a form indicating the hotels at which its various members and the members of their families, if any, were staying. It was not customary to notify either the organization or the conference of the departure of delegates, much less of that of members of their families. He suggested that the Drafting Committee should be asked to consider the possibility of shortening or simplifying the text of article 89.

71. Sir Humphrey WALDOCK said that the text of article 89 should not be unduly reduced, since it was one of the few articles which contained provisions for the protection of the host State.

72. Mr. BARTOŠ said that from a purely theoretical point of view Mr. Ustor's observations were justified. Experience had shown, however, that the completion of a purely administrative form was not enough to overcome the difficulties created by certain delegations; proper notifications, as detailed as possible, should be required. Sometimes, those notifications should even be made before the members of the delegations arrived. Difficulties could arise when members of delegations or, *a fortiori*, members of their families, travelled outside the meeting-place of the conference. The notifications also enabled the organization or conference to make arrangements to provide delegations with accommodation or local staff.

73. Consequently, the Drafting Committee should put article 89 into more general terms, though still allowing the conference secretariat or the Ministry of Foreign Affairs of the host State to request such information as it considered necessary in accordance with its practice. Of course, the nature and amount of the information required varied widely from one case to another; sometimes it might be sufficient for delegations to complete a registration form.

74. The CHAIRMAN suggested that article 89 should be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*<sup>13</sup>

<sup>13</sup> For resumption of the discussion see 1125th meeting, para. 8.

## ARTICLE 90

75. The CHAIRMAN invited the Commission to consider article 90 on precedence.

76.

### *Article 90*

#### *Precedence*

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

77. He drew attention to the amendment proposed by the Special Rapporteur, which consisted in replacing the words "used in the host State" by the words "used in the Organization".

78. Mr. USHAKOV said he failed to see the purpose of article 90. He did not understand how precedence among delegations differed from precedence among States, since delegations represented States. Furthermore, if precedence was to be determined by the alphabetical order used in the organization, as proposed by the Special Rapporteur, it was inappropriate to speak of precedence in an organ of that organization; what was really involved was precedence in the organization itself. Lastly, he wondered whether there could be any question of precedence in very small organs consisting of, say, only three members.

79. Mr. USTOR said that problem could be solved by making use of the wording which the Drafting Committee had adopted for article 19, to the effect that precedence should be determined by the alphabetical order of member States used in the organization. He accordingly suggested that article 90 should be reworded to read:

"Precedence among heads of delegations to an organ or to a conference shall be determined by the alphabetical order of the names of member States used in the Organization."

80. Mr. USHAKOV said that that wording would present a problem in cases where no head of delegation was appointed.

81. Mr. ROSENNE associated himself with Mr. Ushakov's remarks. It would be necessary to determine whether article 90 should deal with precedence among delegations or among individuals. It covered a different case from that dealt with in article 19. For his part, he would suggest that the Commission should either adopt the article in the form suggested by the Special Rapporteur or delete it altogether, leaving the matter to be governed by the rules and practice of the organization concerned.

82. The CHAIRMAN, speaking as a member of the Commission, observed that, in view of the practice followed in New York, article 19 was concerned not so much with individual precedence among permanent representatives as with precedence among permanent representations. The Drafting Committee should consider whether article 90 should not be interpreted in the same sense.

83. Sir Humphrey WALDOCK asked whether it was feasible for the Drafting Committee to prepare a single article on precedence applicable to the whole draft, so as to cover all situations.

84. The CHAIRMAN suggested that article 90 should be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*<sup>14</sup>

#### Organization of work

85. The CHAIRMAN said that the officers of the Commission recommended that a working group be set up to prepare, on the basis of the texts approved by the Commission, a set of consolidated draft articles on relations between States and international organizations. The officers proposed that the working group should consist of Mr. Kearney, as chairman, Mr. Ago, Mr. Ushakov and Sir Humphrey Waldoock.

*It was so agreed.*

The meeting rose at 1 p.m.

<sup>14</sup> For resumption of the discussion see 1125th meeting, para. 16.

### 1107th MEETING

*Wednesday, 26 May 1971, at 9.30 a.m.*

*Chairman: Mr. Senjin TSURUOKA*

*Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Baroš, Mr. Castrén, Mr. Elias, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldoock, 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 6; A/CN.4/L.162/Rev.1)

[Item 1 of the agenda]

*(resumed from the previous meeting)*

#### ARTICLE 91

1. The CHAIRMAN invited the Commission to consider section 2, on facilities, privileges and immunities of delegations, beginning with article 91, to which the Special Rapporteur had proposed no change.

2.

#### Article 91

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

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

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

3. Mr. SETTE CÂMARA pointed out that article 91 was identical *mutatis mutandis* with article 21 of the 1969 Convention on Special Missions.<sup>1</sup> In view of that precedent he did not oppose retention of the article in its present form, though he recognized that there were some grounds for the criticisms advanced against it. If the additional facilities, privileges and immunities referred to were based on general international law, they did not require an express provision in the draft articles.

4. There appeared to be a discrepancy between the position of the Head of State and that of such other high-ranking authorities as the Head of Government. Paragraph 1 specified that the special privileges and immunities concerned were those accorded to Head of State "on an official visit", but no such restriction was made in paragraph 2. The implication was that the persons referred to in paragraph 2 would enjoy special privileges even if not on an official visit.

5. However, article 91 was not restrictive in spirit; the purpose of paragraph 1 was to secure for the Head of State all the special treatment to which he would be entitled on an official visit. On that understanding, he accepted the Special Rapporteur's proposal that the article be retained as it stood (A/CN.4/241/Add.6).

6. Mr. ALBÓNICO said that, although article 91 was based on the corresponding provision of the Convention on Special Missions, it did not add anything to the principle already recognized by international law. He doubted whether it was desirable to retain the article.

7. Mr. ROSENNE said that, although it was fairly common for a Head of State to visit United Nations Headquarters for a few days, it would be most unusual for one to serve as the head of a delegation to a conference or to an organ of any organization of the type to which the present draft related.

8. Mr. TESLENKO (Deputy Secretary of the Commission) said that, at the commemorative twenty-fifth session of the General Assembly, several delegations had been led by Heads of State. In United Nations practice a distinction was made between that situation and an official visit by a Head of State. When a Head of State led his delegation, he sat with it and spoke in his normal turn like any other representative. But when a Head

<sup>1</sup> General Assembly resolution 2530 (XXIV), Annex.