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Summary record of the 1111th meeting

Topic:
Representation of States in their relations with international organizations

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it would be more difficult to justify the change proposed by Mr. Yasseen. It might therefore be better to revert to the text proposed by the Special Rapporteur.

58. Sir Humphrey WALDOCK said that, as he saw it, the point of using the word “ensuring” was to allow for the possibility that, when a delegation was present, the function of representation might take a somewhat different form.

59. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the Chairman of the Drafting Committee had proposed two alternative texts for the beginning of sub-paragraph (a): “ensuring representation” and “ensuring the representation”. The Drafting Committee had adopted for the first alternative, but in view of the objections raised in the Commission, he could accept the second.

60. Mr. BARTOŠ said that, in practice, a permanent mission generally confined itself to ensuring representation of the sending State. It was responsible for notifying who was to represent the sending State, not for deciding, on behalf of that State, who would represent it. Often, it provided liaison between the organization and the sending State: it asked the government of the sending State who would be authorized to represent it, and communicated its reply to the organization. If the sending State did not expressly appoint a representative, the mission itself was entitled to represent it. In the light of current practice, therefore, he was not in favour of the expression “ensuring the representation of the sending State”.

61. Mr. EUSTATHIADES said that the functions listed in article 7 were not performed exclusively by the permanent mission itself. However, he would not oppose the use of the expression “ensuring the representation of the sending State”, if the Commission preferred it to the expression “representing the sending State”.

62. After a procedural discussion in which Mr. ALBÓNICO, Mr. CASTAÑEDA, the CHAIRMAN, Mr. USHAKOV, Mr. ROSENNE, Mr. YASSEEN and Mr. ELIAS took part, the CHAIRMAN said that, if there were no objections, he would take it that the Commission provisionally approved article 7 as proposed by the Drafting Committee and amended by Mr. Yasseen.

It was so agreed.⁸

The meeting rose at 5.30 p.m.

1111th MEETING

Wednesday, 2 June 1971, at 10.10 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 6; A/CN.4/241 and Add.1 to 6; A/CN.4/L.162/Rev.1; A/CN.4/L.168 and Add.1)

[Item 1 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

1. The CHAIRMAN invited the Commission to continue consideration of the draft articles proposed by the Drafting Committee (A/CN.4/L.168 and Add.1).

ARTICLE 8

2. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that article 8, paragraph 1, as adopted by the Commission in 1968¹ had provided *in fine* that the sending State might assign a permanent representative “as a member” of another of its permanent missions. That expression included administrative and technical staff and service staff. The Drafting Committee had taken the view that, to avoid offending anyone, the scope of the provision should be confined to the assignment of a permanent representative to the diplomatic staff of another mission. It had therefore inserted the words “of the diplomatic staff” after the words “as a member”.

3. For similar reasons the Drafting Committee had inserted the word “diplomatic” before the word “staff” in the first part of paragraph 2. In view of that addition it had revised the second part of the paragraph to make it clear that it applied to members of the staff of the permanent mission.

4. In addition, the Drafting Committee had noted that the words “other international organizations” in paragraph 2 had no antecedent. It had therefore inserted the expression “international organizations” in the first phrase of the paragraph.

5. The Committee had made a consequential amendment to the title of the article.

⁸ For resumption of the discussion see 1132nd meeting, para. 67.

¹ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 201.

6. With those changes the text proposed by the Drafting Committee for article 8 read:

Article 8

Appointment or accreditation to two or more international organizations or assignment to two or more permanent missions

1. The sending State may accredit the same person as permanent representative to two or more international organizations or assign a permanent representative as a member of the diplomatic staff of another of its permanent missions.

2. The sending State may accredit a member of the diplomatic staff of a permanent mission to an international organization as permanent representative to other international organizations or assign a member of the staff of a permanent mission as a member of the staff of another of its permanent missions.

7. Mr. ROSENNE said he found the text adopted by the Drafting Committee extremely restrictive. He did not understand why the Committee had departed so significantly from the conception of article 8 as adopted by the Commission in 1968; he suggested that the Commission should seriously consider reverting to that conception of the article.

8. Mr. ALBÓNICO supported the text adopted by the Drafting Committee, which introduced into the second part of paragraph 1 and the first part of paragraph 2 the useful clarification that those provisions related to members of the diplomatic staff.

9. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that, as the Committee saw it, article 8 did not provide for an obligation, but merely a faculty and hence was not restrictive.

10. Mr. ROSENNE said that, if the sending State was free to appoint or to assign anyone to the posts mentioned in article 8, he saw no reason why only diplomatic staff should be covered by the last part of paragraph 1 and the first part of paragraph 2.

11. The two principles involved were, first, the basic freedom of appointment and secondly, the rule that the same person could be accredited as permanent representative to more than one organization or assigned to more than one permanent mission. Since that rule applied in all cases, he saw no reason to restrict any of the provisions of article 8 to diplomatic staff.

12. Mr. USTOR explained that the Drafting Committee had made the change of wording in article 8 because in practice a permanent representative would only be assigned to the diplomatic staff of another permanent mission and, similarly, only a member of the diplomatic staff of a permanent mission to an international organization would normally be accredited as permanent representative to another international organization. He did not believe that there was any case on record in which a permanent representative had been assigned as a member of the administrative and technical staff of another permanent mission, or in which a member of that staff had been accredited as a permanent representative.

13. The CHAIRMAN, speaking as a member of the Commission, said it need only be made clear in the com-

mentary that the Drafting Committee regarded article 8 as optional. The commentary should also explain that article 8, like many other provisions, dealt with normal cases and not with extreme cases which constituted exceptions. With those explanations in the commentary, article 8 would seem to be well-balanced and could be approved.

14. Mr. ROSENNE said he still had misgivings about the text adopted by the Drafting Committee and could not support it.

15. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission provisionally approved the text of article 8 proposed by the Drafting Committee.

It was so agreed.²

ARTICLE 9

16. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the Committee had made several changes in article 9.

17. First, the Committee had considered that article 9 should not mention assignment to temporary functions such as those of a member of a special mission. On the other hand, it was necessary to mention accreditation as a permanent observer and assignment as a member of a permanent observer mission. The Committee had amended paragraph 1 accordingly.

18. For the reasons he had stated in connexion with article 8, it should not be provided in article 9 that the head of a permanent mission might be assigned as a member of the administrative and technical staff or the service staff of a diplomatic mission or that a member of the administrative and technical staff or the service staff of a permanent mission might be accredited as the head of a diplomatic mission. Paragraph 2 reflected those considerations.

19. The Committee had had to draft a new paragraph 3 to cover the case of members of the staff of a permanent mission in general. The former paragraph 3 had become paragraph 4.

20. The Committee had considered that the provisions of the former paragraph 4 adopted by the Commission in 1968³ were redundant, because they stated a self-evident truth. It had therefore deleted that paragraph, but thought that the reasons for its deletion should be explained in the commentary to article 9.

21. The text proposed by the Drafting Committee for article 9 read:

Article 9

Accreditation, assignment or appointment of a member of a permanent mission to other functions

1. The permanent representative of a State to an international organization may be accredited as head of the diplomatic mission

² For resumption of the discussion see 1132nd meeting, para. 75.

³ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 202.

of that State to the host State or to another State or as permanent observer to another international organization. He may also be assigned as a member of the diplomatic staff of the diplomatic mission of his State to the host State or to another State or as a member of the diplomatic staff of a permanent mission to another international organization.

2. A member of the diplomatic staff of a permanent mission of a State to an international organization may be accredited as head of the diplomatic mission of that State to the host State or to another State or as a permanent observer to another international organization.

3. A member of the staff of the permanent mission of a State to an international organization may be assigned as a member of the staff of the diplomatic mission of that State to the host State or to another State or as a member of the staff of the permanent observer mission of that State to another international organization.

4. A member of a permanent mission of a State to an international organization may be appointed as a member of a consular post of that State in the host State or in another State.

22. Mr. EUSTATHIADES said he acknowledged that paragraph 4 of the former text added nothing of substance to the provisions of article 9, but it did help to make the article clear by adding some useful particulars. It might not be advisable to delete it.

23. Mr. USTOR pointed out that, when article 9 had been drafted, the Commission had not had Part IV, on delegations, before it, so that no reference had been made to the possibility of a member of a permanent mission being appointed a member of a delegation. That possibility went without saying, but perhaps the same was true of most of the provisions of article 9. It was true that the article would later be considered for incorporation in a general article applicable to the whole draft, but in the meantime the possibility of appointing a member of a permanent mission as a member of a delegation ought to be mentioned, at least in the commentary. With that proviso he was prepared to support article 9 as proposed by the Drafting Committee.

24. Mr. ROSENNE observed that the original intention had been to leave all temporary missions outside the scope of article 9. But if the Commission finally decided to include delegations, which were temporary missions to international organizations, it would also have to consider including the other form of temporary missions, namely, special missions.

25. He associated himself with the remarks made by Mr. Eustathiades regarding the former paragraph 4 of article 9. In that connexion he assumed that the provisions of article 59, paragraph 2, on the retention of privileges and immunities in cases of dual function would be made applicable to the whole draft.

26. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the Committee intended to prepare a general provision clearly stating that the privileges and immunities of persons appointed to several posts were not affected by the plurality of functions. That was why the Committee was not proposing any provision to that effect in the part of the draft concerning permanent missions.

27. The CHAIRMAN suggested that, with that explanation and taking into account the comments made by some members, the Commission should be able provisionally to approve article 9 as proposed by the Drafting Committee.

*It was so agreed.*⁴

ARTICLE 10

28. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the Committee had decided to insert a reference to article 8 in article 10 (A/CN.4/L.168), but had reconsidered that decision.

29. The text now proposed was that adopted by the Commission in 1968, which read:

Article 10

Appointment of the members of the permanent mission

Subject to the provisions of articles 11 and 16, the sending State may freely appoint the members of the permanent mission.

30. The CHAIRMAN said that, if there were no comments, he would take it that the Commission provisionally approved the text of article 10 proposed by the Drafting Committee.

*It was so agreed.*⁵

ARTICLE 11

31. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the Committee had made no change in the text of article 11 adopted by the Commission in 1968, which read:

Article 11

Nationality of the members of the permanent mission

The permanent representative and the members of the diplomatic staff of the permanent mission should in principle be of the nationality of the sending State. 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.

32. Mr. ALBÓNICO asked whether the approval of an article also implied approval of the 1968 commentary attached to it.

33. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said it was the Commission's practice to give final approval to the articles with their commentaries when it adopted its report to the General Assembly. The commentaries would appear in the Commission's report.

34. Mr. EUSTATHIADES observed that during the Commission's discussions members had often withdrawn amendments to the text of an article on the understanding that their ideas would be recorded in the commentary;

⁴ For resumption of the discussion see 1132nd meeting, para. 78.

⁵ For resumption of the discussion see 1132nd meeting, para. 82.

provided that the Special Rapporteur or the Commission saw no objection, those ideas were regarded as expressing the Commission's general opinion on the article in question. Whenever the Commission approved an article, therefore, it would be well to recall what was to appear in the commentary on particular points.

35. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said he had undertaken to mention any suggestions which the Committee wished to make to the Commission concerning the commentaries to the articles. That need not prevent members of the Commission from making other proposals regarding the commentaries.

36. Mr. BARTOŠ stressed the importance of the commentaries and their close relationship to the text of the articles. The Commission's practice was to draft the articles and the commentaries separately. The points requiring explanation emerged in the course of discussion, so that the commentary could not be completed until the text of an article was finally settled. Moreover, the acceptance of an article by a particular member of the Commission was often subject to a passage in the commentary clarifying its meaning. It was obvious, therefore, that if the Commission amended the text of an article, it must also amend the commentary accordingly. Adopting the articles and the commentaries separately was a double precaution, which provided an opportunity of checking both the text of the article and the interpretation of it given in the commentary. Thus each member of the Commission could influence the meaning of an article by having his ideas recorded in the commentary, and that might cause other members to withdraw their approval of the article.

37. To enable the Special Rapporteur to prepare complete commentaries it was necessary to inform him, through the Drafting Committee, of what the members of the Commission wished to be included. When the Commission examined the texts of the articles proposed by the Drafting Committee, it would also be well to remind members of what it had already been decided to include in the commentary during the debate preceding reference of each article to the Drafting Committee. When the Commission had the commentaries drafted on that basis before it, it could still make any necessary changes, and the revised text finally adopted would then be a genuine expression of the Commission's wishes, which would be communicated to the General Assembly in its report.

38. Mr. KEARNEY said that during the previous discussion of article 11⁶ the question had been raised whether a specific reference should be made to article 50. The text of article 11 was the outcome of the Commission's discussions on the relationship between article 50 and the draft as a whole, and on the possibility of improving the language and coverage of article 50. It was a matter for regret that the Commission was now reviewing the draft articles without having a revised text of article 50 before it so that it could determine the relationship between the various articles and the method to be

proposed for settling any disputes arising out for their provisions.

39. However, it had been established at the previous meeting that all decisions taken by the Commission on the various articles were contingent on the final form of article 50 and the other general provisions.⁷

40. The CHAIRMAN said that, if there were no objections, he would take it that the Commission provisionally approved article 11 as proposed by the Drafting Committee, subject to all the comments made during the discussion.

*It was so agreed.*⁸

ARTICLE 12

41. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that during the previous discussion of article 12,⁹ some members of the Commission had supported the Special Rapporteur's proposal that the words "by another competent minister" should be replaced by the words "by another competent authority A/CN.4/241/Add.2, para. 161). The Drafting Committee had not acted on the proposal. It had taken the view that since the intention was to lay down a general rule from which international organizations and States could derogate under articles 3, 4 and 5, it was preferable to provide that credentials must be issued by an organ of the government. The Committee had considered that the words "competent minister" did not refer to a minister in the strict sense of the term, since in many countries the government also included the chairmen of certain committees.

42. Other members had expressed concern that article 12 might be laying down a rule, binding on States, on the question who was competent under internal law to issue credentials.¹⁰ The Drafting Committee had considered that fear unfounded. It was the internal law of each sending State that determined whether there was, in addition to the Minister for Foreign Affairs, another minister competent to issue credentials to a permanent representative. In order to dispel any doubts on the subject, the Committee had inserted the words "of the sending State" after the words "another competent minister". It further proposed that the explanation he had just given should be included in the commentary.

43. The text proposed by the Drafting Committee read:

Article 12

Credentials of the permanent representative

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

⁷ See previous meeting, paras. 17, 20 and 22.

⁸ For resumption of the discussion see 1135th meeting, para. 37.

⁹ See 1091st meeting, para. 13 *et seq.*

¹⁰ *Ibid.*, para. 46.

⁶ See 1090th and 1091st meetings.

44. Mr. BARTOŠ said he could not support the proposed text. In some countries authorities other than ministers were competent to perform certain acts. The words "another competent minister" expressed an idea of hierarchy, not of functions, an idea of personal, not of collegiate competence. The explanation given by Mr. Ushakov was not applicable to Yugoslavia, where the chairmen of certain councils for particular sectors were not members of the Government, or to many other countries where certain powers were held by organs whose decisions were taken collectively and whose members were not in the Government. That was why he and other members of the Commission had been in favour of the words "or by another competent authority". As proposed by the Drafting Committee, the article was not in conformity with the practice of many organizations, which left it to each State to decide what authority should issue the credentials of a permanent representative.
45. Moreover, he could not approve of the mixing of internal law with international law. Rules of international law took precedence over rules of internal law, so it could not be said that the latter would modify what was laid down in a rule of international law.
46. Mr. EUSTATHIADES said that the views of the Drafting Committee, as expressed by Mr. Ushakov, accurately reflected the Commission's discussions and intentions, but the text proposed for article 12 did not.
47. It would be right to explain in the commentary that it was for the sending State to decide what authority was competent under its internal law to issue credentials to a permanent representative, but the commentary could not cover the point made by Mr. Bartoš, namely, that that authority might not be a minister. In an international text listing the organs which could issue credentials to a permanent representative, there was no reason why other authorities should not be mentioned, since there were countries in which they were competent to issue credentials. There really seemed to be no reason why the words "or by another competent authority" should not be added after the words "by another competent minister", since the phrase would in any case be qualified by the proviso "if that is allowed by the practice followed in the Organization". He therefore proposed that those words should be inserted in the text of the article.
48. Mr. ELIAS said that in the Drafting Committee he had been one of those who had maintained that the words "or by another competent minister of the sending State" were not accurate in law. That point had also been made in a number of governments' comments and had been emphasized in the Commission before the article had been referred to the Drafting Committee. The majority of the Committee had decided in favour of the phrase, but he still considered that the words "competent minister" should be replaced by the words "competent authority". It was for the law of the country concerned to say whether that authority was a minister or, say, the chairman of a committee. Under the normal rules of interpretation, the words "another competent authority", coming after the references to the Head of State, the Head of Government and the Minister for Foreign Affairs, could only be taken to mean an authority of high rank.
49. Mr. USHAKOV, speaking as a member of the Commission, observed that the Commission's own view was that the competence of the organ empowered to issue credentials to a permanent representative depended not only on the sending State, but also on the international organization concerned. Under international law the Head of State, the Head of Government and the Minister for Foreign Affairs were always competent, but other ministers or organs were competent only if accepted by the practice of the organization. Hence it would be a mistake to say in the commentary that it was for the sending State alone to decide which was the competent organ. If the Commission was called upon to take a decision on the words "or by another competent minister" or on the words "or by another competent authority", he would abstain.
50. Mr. ROSENNE said he shared Mr. Elias's views on the right wording for article 12.
51. Mr. USTOR said that article 12 was an innovation inasmuch as none of the conventions concluded on diplomatic relations, consular relations and special missions contained an article specifying which authority was entitled to issue credentials to a permanent representative. To replace the words "another competent minister" by the words "another competent authority" would have the effect of reducing the importance of the article to a quite general statement. In his opinion the Drafting Committee had been right in preferring the word "minister" to the word "authority", as being more consistent with the importance of having the credentials issued by high authorities. He was prepared to support the article as it stood.
52. Mr. KEARNEY said he agreed with Mr. Elias in preferring the word "authority" to the word "minister"; it was less restrictive.
53. Mr. SETTE CÂMARA said he preferred the word "minister", because the formal character of the issue of credentials should be stressed in order to discourage any undue proliferation of "authorities". He was, however, prepared to accept Mr. Elias's suggestion provided that the matter was dealt with in the commentary.
54. Mr. YASSEEN said he was not opposed to the retention of the words "or by another competent minister" in article 12, but he reserved his position with regard to the corresponding provisions in other parts of the draft, where the words "or by another competent authority" should be used.
55. Mr. USHAKOV speaking as a member of the Commission, observed that one disadvantage of using the words "or by another competent authority" would be the implication that that other authority was placed on an equal footing with the Head of State, the Head of Government and the Minister for Foreign Affairs, whose competence under general international law to issue credentials to permanent representatives was far above that of any other authority.

56. Mr. BARTOŠ said that the Drafting Committee had completely distorted the Commission's thinking. Reference to "another competent authority" would cover cases in which, under the constitutional law of the sending State, it was not a minister who was competent but, for example, a collegiate body. In many countries where the principle of self-management was applied, the credentials of permanent representatives were not issued by a minister, but by an organ in which the trade unions were represented. That case was not covered by the present wording of article 12. If the omission was merely a mistake by the Drafting Committee, it should be corrected; it was intentional, the Drafting Committee's attitude was unacceptable.

57. The point at issue was not merely a matter of drafting and could not be settled by interpretation, since an authority of the kind he was referring to could not be assimilated to a minister.

58. Mr. REUTER said he thought that article 12 should be referred back to the Drafting Committee, for it was inadvisable to deal with four different possibilities in a single sentence. The competence of the Head of State, the Head of Government and the Minister for Foreign Affairs to issue credentials derived solely from international law. If the Commission wished to allow a fourth possibility, and to make it subject both to the constitutional law of the sending State and to the practice followed in the Organization, it should adopt a liberal attitude and not restrict the provision to cases in which a person of ministerial rank was competent under the constitutional law of a State. The present wording would oblige States to amend their constitutional law, and any organizations established in the future would be prevented from adopting a practice by which they would recognize the competence of a collegiate body.

59. If the Drafting Committee did not redraft article 12 as a whole, it should at least replace the phrase "another competent minister" by "another competent authority".

60. The CHAIRMAN observed that general agreement seemed to be emerging; he suggested that article 12 should be referred back to the Drafting Committee for reconsideration in the light of the discussion.

*It was so agreed.*¹¹

ARTICLE 13

61. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that only drafting changes had been made in article 13. In paragraph 1 the Committee had replaced the word "submitted" by "transmitted", which was the word used in article 12. In paragraph 2 it had made a change in the French text only: the words "*il n'est pas prescrit*" had been replaced by the words "*il n'existe pas*".

62. The text proposed for article 13 read:

¹¹ For resumption of the discussion see 1114th meeting, para. 2.

Article 13

Accreditation to organs of the Organization

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

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

63. Mr. ROSENNE said he was not sure that paragraph 1 was necessary. At all events, if the Commission wished to emphasize the representative character of the permanent mission, and in particular what had been termed its "residual representative quality", the Drafting Committee might do well to consider reversing the order of paragraphs 1 and 2.

64. Mr. TESLENKO (Deputy Secretary to the Commission) replying to a comment made by Mr. Eustathiades, explained that, in the French text of paragraph 2, the words "*ne stipule autrement*" had been replaced by the words "*n'en décide autrement*", because the verb "*stipuler*" could not be used intransitively.

65. The CHAIRMAN said that, if there were no objections, he would take it that the Commission provisionally approved article 13 as proposed by the Drafting Committee.

*It was so agreed.*¹²

ARTICLE 14

66. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that in view of the definition given in article 1, sub-paragraph (c), the Committee had replaced the words "the international organization to which he is accredited", wherever they appeared in article 14, by the words "the Organization".

67. Sharing the opinion expressed by Mr. Castrén,¹³ the Committee had considered that the last part of paragraph 2 should be more closely modelled on article 7, paragraph 1 (b), of the Vienna Convention on the Law of Treaties,¹⁴ and had accordingly replaced the words "unless it appears from the circumstances" by the words "unless it appears from the practice of the Organization, or from other circumstances".

68. As the Netherlands Government had noted in its observations (A/CN.4/221, section B.7), the text of article 14 referred to only one type of treaty, namely, treaties concluded with international organizations, whereas the title of the article referred to the conclusion of treaties in general. To eliminate that inconsistency, the Drafting Committee had amended the title.

¹² For resumption of the discussion see 1132nd meeting, para. 87.

¹³ See 1091st meeting, para. 71.

¹⁴ *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).

69. The text proposed for article 14 read:

Article 14

Full powers in the conclusion of a treaty with the Organization

1. A permanent representative in virtue of his functions and without having to produce full powers is considered as representing his State for the purpose of adopting the text of a treaty between that State and the Organization.

2. A permanent representative is not considered in virtue of his functions as representing his State for the purpose of signing a treaty (whether in full or *ad referendum*) between that State and the Organization unless it appears from the practice of the Organization, or from other circumstances, that the intention of the parties was to dispense with full powers.

70. Mr. REUTER said that, in the French version, the words "*les pleins pouvoirs*", at the end of paragraph 2, should be replaced by "*de pleins pouvoirs*"; that wording would be more consistent with paragraph 1 and closer to the English text.

71. The CHAIRMAN suggested that the text might be improved if the brackets in paragraph 2 were deleted.

72. Mr. ROSENNE said he welcomed the change which the Drafting Committee had made in paragraph 2. Provision had now been made for practice like that of the International Atomic Energy Agency, which did not expect full powers from permanent representatives in bilateral relations, because it did not issue them to its own representatives.

73. If the Commission decided to delete the words in brackets in paragraph 2, some reference to the two different modes of signature provided for in the Vienna Convention on the Law of Treaties should be made in the commentary.

74. Mr. NAGENDRA SINGH considered that the words in brackets should be deleted, but agreed with Mr. Rosenne that some mention of the two modes of signature should be made in the commentary.

75. Mr. EUSTATHIADES pointed out that the parties referred to at the end of paragraph 2 were the sending State and the organization. The present wording could give the impression that the State might require its representative to produce full powers, whereas that could only be done by the organization. Perhaps in the French text the use of the verb "*requérir*", which also applied to the sending State, contributed to the lack of clarity.

76. Mr. TESLENKO (Deputy Secretary to the Commission) pointed out that the verb "*requérir*" was used in the corresponding provision of the Vienna Convention on the Law of Treaties, article 7, paragraph 1 (b).

77. Mr. USHAKOV, speaking as a member of the Commission, said that the sending State as well as the organization could have the intention to dispense with full powers. He therefore accepted the final phrase of article 14.

78. The CHAIRMAN said that, if there were no objections, he would take it that the Commission provisionally approved article 14 as proposed by the Drafting

Committee, with the amendment to the French text proposed by Mr. Reuter.

It was so agreed.¹⁵

ARTICLE 15

79. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that only a minor change in the French text had been made to article 15: the words "*En plus du*" had been replaced by the word "*Outre*".

80. The text proposed for article 15 read:

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.

81. The CHAIRMAN said that, if there were no objections, he would take it that the Commission provisionally approved article 15 as proposed by the Drafting Committee.

It was so agreed.¹⁶

ARTICLE 16

82. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that only a drafting change in the French text had been made to article 16: the word "*existant*" had been inserted between the word "*conditions*" and the words "*dans l'Etat hôte*".

83. The text proposed for article 16 read:

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.

84. Mr. ALBÓNICO said he could accept article 16 provided that it was made clear in the commentary that any difficulty or problem which might arise in connexion with the number of members of a permanent mission would be subject to the provisions of article 50, on consultations between the sending State, the host State and the organization, to which he attached great importance.

85. Mr. REUTER, replying to a comment by Mr. Yasseen, said that the expression "*circonstances et conditions*" was very bad French, but was based on precedents. It was a little less ugly when followed by the word "*existant*".

86. Mr. EUSTATHIADES suggested that, in view of Mr. Reuter's comment, the Drafting Committee should perhaps not retain the expression "*circonstances et conditions*".

87. Mr. USHAKOV, speaking as a member of the Commission, stressed that there were precedents for the

¹⁵ For resumption of the discussion see 1132nd meeting, para. 97.

¹⁶ For resumption of the discussion see 1132nd meeting, para. 101.

expression, though the formula used in article 11, paragraph 1, of the 1961 Vienna Convention on Diplomatic Relations¹⁷ was slightly different, the words “*qui règnent*” being used instead of the word “*existent*”. He preferred the wording proposed by the Drafting Committee.

88. The CHAIRMAN said that, if there were no objections, he would take it that the Commission provisionally approved article 16 as proposed by the Drafting Committee.

*It was so agreed.*¹⁸

The meeting rose at 12.55 p.m.

1112th MEETING

Thursday, 3 June 1971, at 10.5 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, 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; A/CN.4/L.168 and Add.1)

[Item 1 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

1. The CHAIRMAN invited the Commission to continue consideration of the draft articles proposed by the Drafting Committee.

ARTICLE 17

2. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that, as suggested by the United Nations Secretariat (A/CN.4/L.162/Rev.1) the Committee had aligned paragraph 1 (a) of article 17 with the corresponding sub-paragraph of article 89, which was more concise.

¹⁷ United Nations, *Treaty Series*, vol. 500, p. 103.

¹⁸ For resumption of the discussion see 1132nd meeting, para. 104.

3. In paragraph 1 (b) the Committee had brought the English and French texts into line with the Spanish, by replacing the words “of a person” by the words “of any person” and the words “*d’une personne*” by the words “*de toute personne*”. The same change would have to be made in paragraph 1 (b) of article 89. The new wording seemed to the Committee to be more consistent with normal legal usage.

4. Paragraph 1 (d), as adopted by the Commission in 1968, read:

“(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”.

The Drafting Committee had considered that the expression “engagement and discharge” was too narrow; for instance, it did not cover the case of the death of one of the persons referred to. The Committee had therefore replaced that expression by the words “the beginning and the termination of the employment”. Furthermore, in the case of a permanent representative that notification would duplicate the transmittal of credentials provided for in article 12. The Committee had therefore inserted the words “of the staff” between the words “members” and “of the permanent mission”, so as to exclude permanent representatives. The Committee had also noted that under article 41, paragraph 2, persons on the private staff who were resident in the host State would enjoy privileges and immunities only to the extent admitted by the host State. It had therefore replaced the words “entitled to privileges and immunities” by “enjoying privileges and immunities”.

5. The Drafting Committee had also made a few other minor changes in the English, French and Spanish texts. Although they were all merely drafting amendments, they would have to be explained in the commentary, because the text of article 17 now differed from the corresponding provisions of previous conventions.

6. The new text proposed for article 17 read:

Article 17

Notifications

1. The sending State shall notify the Organization of:

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

(b) the arrival and final departure of any 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 beginning and the termination of the employment of persons resident in the host State as members of the staff of the permanent mission or as persons employed on the private staff enjoying privileges and immunities.

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