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Summary record of the 1123rd meeting

Topic:
Representation of States in their relations with international organizations

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84. Mr. TESLENKO (Deputy Secretary to the Commission) said that the wording in question was taken from article 21 of the Vienna Convention on Diplomatic Relations.⁸

85. The CHAIRMAN said that if there were no objections he would take it that the Commission provisionally approved articles 66 and 66 *bis* as proposed by the Drafting Committee.

*It was so agreed.*⁹

ARTICLES 67¹⁰ and 67 *bis*

86. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change in article 67. Article 67 *bis* made the provisions of article 27 *bis*¹¹ applicable to Part III of the draft. The wording of both articles would probably have to be changed when Parts II and III of the draft were combined.

87. The texts proposed for articles 67 and 67 *bis* read:

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.

Article 67 bis

Entry into the territory of the host State

The provisions of article 27 *bis* shall apply also in the case of members of the permanent observer mission and members of their families forming part of their respective households.

88. The CHAIRMAN said that if there were no objections he would take it that the Commission provisionally approved articles 67 and 67 *bis* as proposed by the Drafting Committee, pending examination of the texts to be submitted to it after Parts II and III of the draft had been combined.

*It was so agreed.*¹²

The meeting rose at 6.00 p.m.

1123rd MEETING

Tuesday, 22 June 1971, at 10.10 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castrén, Mr. Eustathiades, Mr. Kearney, Mr. Nagnendra 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 7; A/CN.4/241 and Add.1 to 6; A/CN.4/L.162/Rev.1; A/CN.4/L.168/Add.4 and 5; A/CN.4/L.173)

[Item 1 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

ARTICLE 68

1. The CHAIRMAN invited the Commission to continue consideration of the draft articles proposed by the Drafting Committee, starting with article 68, on freedom of movement (A/CN.4/L.168/Add.4).

2. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change in article 68, the text of which read:

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.

*Article 68 was provisionally approved.*¹

ARTICLE 69

3. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change in article 69, the text of which read:

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.

¹ For resumption of the discussion see 1133rd meeting, para. 8.

⁸ United Nations, *Treaty Series*, vol. 500, pp. 106-107.

⁹ For resumption of the discussion see 1132nd meeting, para. 130.

¹⁰ For previous discussion see 1104th meeting, para. 80 *et seq.*

¹¹ For text and previous discussion see 1113th meeting, para. 13 *et seq.*

¹² For resumption of the discussion see 1133rd meeting, para. 3, and 1135th meeting, para. 64.

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.

Article 69 was provisionally approved.²

ARTICLE 70

4. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change in article 70, the text of which read:

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.

Article 70 was provisionally approved.³

ARTICLE 71

5. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had brought the title of article 71 into line with that of article 33 as provisionally approved by the Commission.⁴ Article 71, which referred back to article 33, might perhaps be merged with that article.

6. The text proposed for article 71 read:

Article 71

Waiver of immunity

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

Article 71 was provisionally approved.⁵

ARTICLE 72

7. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change in article 72, the text of which read:

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.

Article 72 was provisionally approved.⁶

ARTICLE 73

8. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change in article 73, the text of which read:

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.

Article 73 was provisionally approved.⁷

ARTICLE 74

9. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change in article 74, the text of which read:

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.

Article 74 was provisionally approved.⁸

ARTICLE 75

10. Mr. AGO (Chairman of the Drafting Committee) said that the wording of article 75 was identical with that of article 44. The positions of those articles in the final text of the draft had not yet been settled.

11. The text proposed for article 75 read:

Article 75

Non-discrimination

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

12. Mr. YASSEEN said that article 75 should undoubtedly be placed among the general provisions.

13. Mr. KEARNEY said he saw no valid reason for using the expression "as between States"; the same

² For resumption of the discussion see 1133rd meeting, para. 14.

³ For resumption of the discussion see 1133rd meeting, para. 50.

⁴ See 1113th meeting, paras. 69-70.

⁵ For resumption of the discussion see 1133rd meeting, para. 26.

⁶ For resumption of the discussion see 1135th meeting, para. 40.

⁷ For resumption of the discussion see 1133rd meeting, para. 53.

⁸ For resumption of the discussion see 1135th meeting, para. 70.

meaning could be expressed by the shorter form "between States".

14. Mr. AGO (Chairman of the Drafting Committee) said that Mr. Kearney's comment applied only to the English text; he would leave it to the English-speaking members of the Commission to settle the point. Article 75 reproduced the wording of article 44, the article on non-discrimination in Part II of the draft.

15. Sir Humphrey WALDOCK said that the only explanation for the use of the expression "as between" was that it had already been used in the corresponding articles of the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations and the 1969 Convention on Special Missions.

16. Mr. YASSEEN said that if there were no other justification for their use, he would suggest that the words "as between" be replaced by the word "between".

17. Mr. ROSENNE said he fully agreed that article 75 could be moved into the group of general provisions applicable to the whole draft.

18. He was not at all certain, however, that the proposed text reflected the meaning intended. The original purpose of the two separate provisions in articles 44 and 75, on non-discrimination, had been to state, first, that in the application of all the articles on permanent missions, there must be no discrimination between those missions, and secondly, that in the application of all the articles on permanent observer missions there must be no discrimination between those missions. Care should be taken not to couch the proposed general provision in language which might suggest that there would be no differentiation between permanent missions and permanent observer missions in regard to the non-discrimination rule.

19. Mr. AGO (Chairman of the Drafting Committee) said there could be no question of including in the general provisions a text which might be misconstrued as suggesting that member States and non-member States would be treated in the same way.

20. Mr. KEARNEY said that Mr. Rosenne had raised a valid point, but the opening words of article 75: "In the application of the provisions of the present articles..." would seem to afford sufficient protection, since those provisions did establish a number of differences between the various types of mission. The rule on non-discrimination was only concerned with the application of the provisions of the various draft articles.

21. Mr. ROSENNE said that the point was a difficult one. For his part, he would be satisfied if it could be considered by the small Working Group, in order to ensure that the provision on non-discrimination clearly stated the intended meaning.

22. Sir Humphrey WALDOCK said that the point was not a new one. The general understanding in the matter was along the lines indicated by Mr. Kearney. It would certainly be borne in mind in the final retouching of the articles, when the rule on non-discrimination would be made to cover a considerable number of different provisions.

23. The CHAIRMAN said he noted that the Commission was prepared to approve article 75 provisionally in the form proposed by the Drafting Committee, subject to final retouching and to the general harmonization of the draft articles; the word "as" would be provisionally retained in the English version.

*Article 75 was provisionally approved.**

ARTICLE 76

24. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change to article 76, which was likely to be merged with the corresponding provision in Part II.

25. The text proposed for article 76 read:

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.

Article 76 was provisionally approved.⁹

ARTICLE 77

26. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no change in article 77 which, like the previous article, was likely to disappear at a later stage.

27. The text proposed for article 77 read:

Article 77

End of functions

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

Article 77 was provisionally approved.¹⁰

PART IV. Delegations of States to organs and conferences

ARTICLE 81

28. The CHAIRMAN invited the Commission to consider articles 81 to 86 as proposed by the Drafting Committee (A/CN.4/L.168/Add.5). In article 81, the words "the sending State may appoint a head" had been replaced by the words "the sending State shall appoint a head". The permissive formula, "may appoint", appeared in article 9 of the 1969 Convention on Special Missions¹² and was justified in that Convention, but in the present case it should be replaced by a mandatory formula. A delegation to an organ or to a conference needed

⁹ For resumption of the discussion see 1135th meeting, para. 78.

¹⁰ For resumption of the discussion see 1135th meeting, para. 46.

¹¹ For resumption of the discussion see 1133rd meeting, para. 56.

¹² See General Assembly resolution 2530 (XXIV), Annex.

a head who would be responsible for the activities of the delegation.

29. The text proposed by the Drafting Committee for article 81 read:

Article 81

Composition of the delegation

A delegation to an organ or to a conference shall consist of one or more representatives of the sending State from among whom the sending State shall appoint a head. It may also include diplomatic staff, administrative and technical staff and service staff.

30. Mr. USHAKOV, referring to a remark by Mr. Ustor,¹⁸ said that the general question of the status of delegations to organs needed clarification.

31. Although the wording of article 78, dealing with the use of terms in the articles on delegations, was only provisional, it should be noted that according to subparagraph (c), a "delegation to an organ" meant "the delegation designated by a State member of the organ to represent it therein". That wording did not appear to cover the case of the delegation of a State member of an organization which was invited to participate in the work of an organ of which it was not a member, as sometimes happened in the Security Council of the United Nations. In his view, the articles in Part IV should apply to such cases.

32. The Drafting Committee or the Working Group should therefore consider the possibility of widening the scope of the definition of a "delegation to an organ". No such widening was needed for the definition of a "delegation to a conference".

33. Mr. ROSENNE said he had some misgivings about article 81, especially after the Commission's discussion on articles 117 and 118 at the previous meeting.

34. He could not accept the change made in the first sentence of article 81, replacing the words "may appoint" by the words "shall appoint".

35. He was also uneasy about the whole concept of representation as it appeared in article 81. The discussion at the previous meeting had revolved round the distinction between representation and participation in the light of the Vienna Convention on the Law of Treaties. Reference had been made to cases which were not at all rare in which a State sent a person to be present at a meeting or conference, with instructions not to participate in it. It would therefore be going too far to say in article 81 that the sending State "shall appoint" a head of delegation.

36. For those reasons, he reserved his position on article 81 and would ask that the provisions on the various types of delegation, contained in articles 78 and 117, be examined thoroughly.

37. Mr. REUTER said he agreed with Mr. Ushakov's remarks. Everything connected with the organs of an

organization was governed by the relevant rules of the organization.

38. Notwithstanding the general reservation in article 3, the question arose whether the group of articles under consideration did not deal with a case which, although the most frequent, was also a very special one. The members of the delegation of a State to an organ were not always representatives of the State; they were not always appointed by the State and did not necessarily constitute a government delegation provided with a head.

39. It would be interesting to know what was the practice followed by the International Labour Organisation (ILO), for example, where the tripartite character of delegations hardly seemed to fit the provisions under consideration.

40. Mr. AGO (Chairman of the Drafting Committee) said that it was important to take account of the case mentioned by Mr. Ushakov, in which a State member of an organization sent a delegation to an organ of which it was not a member. For example, when States members of the United Nations which were not members of the Economic and Social Council participated in a meeting of that Council, they were not in the same position as States which participated in such a meeting but were not Members of the United Nations.

41. Speaking as a member of the Commission, in reply to Mr. Reuter's question, he explained that at an International Labour Conference, the delegation of each State consisted of two representatives appointed by the government, one representative appointed by the employers' organization, and one representative appointed by the workers' organization. As a body, those four representatives constituted the delegation of the State, to which the articles now under consideration would apply. The situation with regard to the ILO Governing Body was rather different. The persons appointed to the Governing Body by the employers and by the workers did not represent the sending State, but the whole employers' group and the whole workers' group respectively. That situation, however, was peculiar to the ILO and the reservation in article 3 was sufficient to cover it.

42. With regard to the question of the head of the delegation, one of the two government representatives on a delegation to an International Labour Conference was normally senior to the other; but that did not make him the head of the delegation over the employers' and workers' representatives. That was also a peculiarity of the ILO, due to the fact that some members of the delegation were not appointed by the government.

43. Those questions, like many others, arose from the analogies established between Parts II and III of the draft on the one hand, and Part IV on the other.

44. Mr. EUSTATHIADES said he was not sure that the Drafting Committee had been right in making the appointment of a head mandatory for delegations to organs and conferences. While such an appointment appeared to be normal in the case of an international conference, it seemed less consistent with the practice concerning organs of an organization. A delegation to

¹⁸ See previous meeting, para. 45.

an organ might consist of only two persons and the sending State might not wish one of them to be regarded as the superior of the other. Moreover, the obligation to appoint a head of delegation was emphasized by article 86, on the acting head of the delegation.

45. He therefore suggested that the Commission should either restore the former wording of article 81 and merely provide for the faculty to appoint a head of delegation, or make a distinction between delegations to conferences and delegations to organs.

46. Mr. USHAKOV said he believed it was quite usual to appoint a head of delegation, both for delegations to organs and for delegations to conferences. The former wording, "the sending State may appoint a head", had been in conflict with the following articles of the draft, most of which were based on the assumption that there was a head of delegation. Hence the present wording of article 81 was acceptable; it was in conformity with the general practice, subject to the reservation regarding the particular rules of organizations.

47. Mr. REUTER said that while he had no objection to the Commission's continuing to consider the articles in Part IV in the form proposed, he was not in favour of adopting common provisions for delegations to organs and delegations to conferences. The articles proposed were quite satisfactory for conferences, but where organs were concerned the law of the organization should prevail. Assimilating the meeting of an organ to a conference gave the impression that such a meeting constituted a small conference, which might perhaps be true of principle organs, but not of subsidiary organs.

48. Mr. YASSEEN said that the proper functioning of a delegation logically required the appointment of a head. Logic, however, was not sufficient to justify a legal rule. While it was true that there was no customary rule which made such an appointment compulsory, the practice was certainly widespread. In the United Nations, when a head of delegation was not expressly appointed, it was even assumed that the first name on the list of members of the delegation was that of the head, unless otherwise indicated.

49. The present wording of article 81 did not reflect the real position exactly, but it could nevertheless contribute to the progressive development of international law.

50. Mr. CASTRÉN said that, by making it compulsory to appoint a head of delegation, the Drafting Committee had formulated a rule which would contribute to the satisfactory operation of organs and conferences. That rule did not have any drawbacks and was consistent with the general practice. There were exceptions to that practice, but they should not be encouraged. The proposed text of article 81 was therefore quite satisfactory.

51. Mr. AGO (Chairman of the Drafting Committee) said that Mr. Reuter's comments were very apt; he agreed with him and Mr. Ushakov that it was not possible to place conferences and organs on an equal footing, particularly organs with a small membership. In the case of the International Labour Conference or the

World Health Assembly, which had the characteristics of conferences, it was almost mandatory to appoint a head from among the members of each delegation, because it was necessary in certain circumstances for a single person to represent the delegation. On the other hand, for such organs as councils and committees, delegations to which generally consisted of only one person, it was less appropriate to provide for the appointment of a head or to refer to the staff of a delegation.

52. Hence it might perhaps be advisable for the Working Group to try to find more adequate wording.

53. Mr. USTOR said the discussion had shown that there was a considerable difference in kind between a conference and a meeting of an organ. The different situations would have to be kept clearly in mind when drafting the various articles.

54. In the draft, the Commission had been concerned exclusively with delegations appointed by States; it had thus excluded organs consisting of persons who did not act as representatives of States, such as the International Law Commission itself.

55. At a conference of representatives of States, the situation was comparatively simple; the participating States played a full role in the conference, as distinct from the observers. A meeting of an organ, however, could be attended by representatives both of member States and of non-member States. At the previous meeting, he had referred to the case of the Council for Mutual Economic Assistance, in which certain non-members participated with full rights, on a par with the representatives of the member States.

56. There were two kinds of observer at meetings of organs: first, an observer for a State not a member of the organization, and second, an observer for a State which was a member of the organization, but not of the organ in question. Those facts should be borne in mind when drafting definitions and other provisions.

57. Sir Humphrey WALDOCK said he hoped the Commission would not try to include in the draft any provisions on the subject of persons who were members of an organ but did not act as representatives of States. The Commission had adopted the title "Relations between States and international organizations" for the express purpose of putting some limitation on the investigation; its work on that topic was designed to establish a bridge between diplomatic law and the law of international organizations.

58. The intention was to deal with the representation of States. Apart from members of organs who acted in their personal capacity, there were other persons who participated in the work of an international organization. To give one example, in the United Nations individuals had been summoned to give their opinions or to state facts. The participation of such individuals in meetings of the Organization raised important problems. Any attempt to cover all those situations would lead the Commission too far; for example, it would not be possible to exclude consideration of the case of judges of the International Court of Justice, who had a special position as members of the highest judicial body of the Organization.

59. On the subject of the different kinds of participation, he thought the Commission would become involved in difficult problems if it tried to cover every conceivable case. It should deal with the main categories, without being unduly concerned if certain particular cases were not covered. Considerable care would have to be exercised, however, with regard to terminology; it might even be necessary to convert the term "observer" into a term of art. For example, the representative of a member State who participated in the meeting of an organ of which his State was not a member and who took part in the discussion without the right to vote, was not an observer in the sense in which that term was used in the present draft.

60. Mr. USTOR said he agreed that some limits had to be set to the Commission's work on the present topic. He had not made any formal proposal, but had merely enlarged upon an idea put forward by Mr. Reuter. It was obvious that at the present stage it would be very difficult to extend the scope of the Commission's work on the item under study.

61. The CHAIRMAN observed that the Chairman of the Drafting Committee had himself suggested that the wording of article 81 be re-examined and his suggestion had received wide support; he therefore proposed that the Commission refer article 81 back to the Drafting Committee for review in the light of the opinions expressed during the discussion.

*It was so agreed.*¹⁴

ARTICLE 82

62. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that article 82 corresponded to article 16, on the size of the permanent mission. In order to align those parts of the text which were common to both articles, the Committee had made two changes in article 82: it had replaced the expression "a delegation" by "the delegation", and the expression "reasonable or normal" by "reasonable and normal".

63. Article 16 referred to "the functions of the Organization"; article 82 had previously referred to "the tasks of the Conference". In the commentary to article 82,¹⁵ it was stated that "The Commission was of the opinion that the word 'tasks' was more appropriate than 'functions' in relation to conferences". The Drafting Committee, too, thought that the same term could not be employed for organizations and for conferences, but it considered that in the case of conferences it was preferable to replace the word "tasks" by "object".

64. The Committee had also moved the words "as the case may be" to make the text read easily. Lastly, it had slightly changed the drafting of the French and Spanish versions.

65. The text proposed by the Drafting Committee for article 82 read:

Article 82

Size of the delegation

The size of the delegation to an organ or to a conference shall not exceed what is reasonable and normal, having regard, as the case may be, to the functions of the organ or the object of the conference, as well as the needs of the particular delegation and the circumstances and conditions in the host State.

66. Mr. EUSTATHIADES said he approved of the changes made by the Drafting Committee.

67. With regard to the substance of the article, it should be clearly understood that, in drafting the provisions relating to delegations to organs and to conferences, the Commission had in many cases been prompted by a desire to simplify and unify the draft as a whole. Thus each provision did not necessarily correspond to a need, and in the particular case of article 82, which the Commission had wished to align with the corresponding article on permanent missions, there was some danger of lack of clarity, in particular as to what was "reasonable and normal" for the size of the respective delegations of different States, depending on the importance they attached to the meeting or conference. It was important that clear explanations should be given in the commentary.

68. Mr. ROSENNE said he found it difficult to accept article 82 in its present form; in his opinion, it was far too closely aligned with article 16. What was "reasonable and normal" could be understood in connexion with article 16, but he did not see how those words could be used with reference to a conference, which might meet only once in a human lifetime, or with reference to the meetings of an organ which, like the Economic and Social Council, might meet three or four times a year, for a different purpose on each occasion. While the word "reasonable" might be retained, he suggested that it would be better to delete the words "and normal".

69. Mr. CASTRÉN said that, in principle, he was opposed to the provision contained in article 82, particularly the condition imposed by the words "having regard... to... the circumstances and conditions in the host State", which could lend themselves to any interpretation. However, in the interests of uniformity he was prepared to accept the article, on condition that, as Mr. Eustathiades had requested, it was made clear in the commentary how the provisions should be interpreted in practice.

70. Mr. USHAKOV, speaking on behalf of the Drafting Committee said that in the phrase "reasonable and normal", to which Mr. Rosenne objected, the two adjectives were more or less synonymous, so that there was no reason why they should not be used side by side.

71. Speaking as a member of the Commission, he said he had doubts about the reservations relating to "the needs of the particular delegation" and, particularly, "the circumstances and conditions in the host State", since a State did not invite an organ or a conference to meet in its territory unless the circumstances and conditions were appropriate. Those points were of minor importance, however, and he could accept the article as drafted.

¹⁴ For resumption of the discussion see next meeting, para. 4.

¹⁵ See *Yearbook of the International Law Commission, 1970*, vol. II, document A/8010/Rev.1, chapter II, section B.

72. Mr. ROSENNE said that if the words "reasonable" and "normal" were synonymous, the present expression was a mere pleonasm and the words "and normal" should be deleted.

73. Mr. SETTE CÂMARA said he had always maintained that those words were not synonymous. He suggested that the expression be amended to read "reasonable or normal"; alternatively, some clarification should be provided in the commentary.

74. Mr. KEARNEY said he could see little difference between the expressions "reasonable and normal" and "reasonable or normal". The only purpose of article 82 was to balance article 81, and if the latter article was accepted, he felt that article 82 should be retained as it stood.

75. Mr. USHAKOV said that both in article 16 of the draft and in article 11 of the Vienna Convention on Diplomatic Relations it was the word "and" that was used, and it was by mistake that the word "or" had been used in the former version of article 82.

76. Mr. ALBÓNICO said that the fundamental idea in article 82 was that the size of the delegation should not exceed what was necessary for performing the functions of the organ or for the object of the conference. Anything in addition to the word "necessary" was therefore superfluous and should be deleted.

77. Sir Humphrey WALDOCK said that the present formulation was to be found in the Vienna Conventions on diplomatic and consular relations, but not in the Convention on Special Missions. It was true that the word "reasonable" overlapped in some degree with the word "normal". But the latter word did seem to introduce an additional criterion, which was perhaps even more valid in multilateral than in bilateral diplomacy; for "normality" could be measured by reference to the general practice of the member States as a whole. He therefore thought that the Commission could retain the present wording of article 82 without too many difficulties.

78. Mr. BARTOŠ said he was in favour of retaining the two words "reasonable" and "normal". Not only had they been used in previous conventions, but they were used in the present case to take account of the fact that staffing requirements for any given conference varied from one State to another, depending on how important the conference was both in general ("normal") and to each State ("reasonable"). The Commission should not allow itself to be guided by purely aesthetic considerations and should not hesitate to use particular terms if they covered general needs and the special needs of the States concerned.

79. Mr. NAGENDRA SINGH said it was true that delegations to conferences were of a different nature from permanent missions and there was considerable force in the argument that while the word "reasonable" might be applicable to them the word "normal" was not, since conferences were essentially *ad hoc* by nature and there was no normality about them. However, conferences were now being convened very frequently, so that

a norm might develop for them too. On the whole, therefore, he was inclined to think that the present text of article 82 should be accepted.

80. Mr. REUTER said that article 82 was a compromise which could not completely satisfy any member of the Commission. But as the articles constituting Part IV of the draft would apply only to organs which resembled conferences, he was prepared to accept it.

81. The CHAIRMAN said that if there were no objection he would take it that the Commission provisionally approved article 82 as proposed by the Drafting Committee, on the understanding that the opinions which might throw light on its meaning would be mentioned in the commentary.

It was so agreed.¹⁶

ARTICLE 83

82. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that with a view to improving the drafting of article 83 without changing the substance, the Committee proposed that it should read:

Article 83

Principle of single representation

The delegation of a State to an organ or to a conference may represent only that State.

83. The Drafting Committee thought it would be useful to stress in the commentary that the principle stated in article 83 was subject to the general reservations in articles 3, 4, 79 and 80 and hence did not affect the multiple representation practices mentioned by several governments in their written observations.

84. The Committee had noted that Parts II and III of the draft contained no provisions corresponding to article 83. It considered that there would be less objection to multiple representation in the case of a permanent mission or a permanent observer mission than in the case of a delegation to an organ or to a conference. In the latter case, however, it was possible to derogate from the general principle by virtue of the rules of procedure of the organ or conference.

85. The Drafting Committee's proposals thus related more to the commentary than to the text of the article.

86. Mr. REUTER said he could accept the text of article 83, but for different reasons in the two different cases of delegations to organs and delegations to conferences. In the first case, there was no other possible solution and the article expressed a very important rule of law, which was indisputable as a general principle. In the second case, he also accepted that rule because the question of a delegation representing several States raised very delicate political problems and what had weighed with the Drafting Committee had been the description of the practice followed by the United

¹⁶ For resumption of the discussion see 1133rd meeting, para. 105.

Nations in the case of conferences convened under its auspices, namely, that it did not accept one delegation representing several States, but that, should the need arise, a member of a delegation could cease to belong to that delegation in order to represent another State. There was undoubtedly a problem, and the door should be left open for a more flexible solution where conferences were concerned.

87. Mr. CASTRÉN said that several governments had criticized article 83 (A/CN.4/240 and Add.1 to 7) on the grounds that it was too rigorous, particularly for small States. Several members of the Commission, including himself, shared their concern and had proposed amendments to make the text more flexible.¹⁷

88. Cases of multiple representation were not uncommon in practice. The Special Rapporteur himself had proposed that the wording be made more flexible by adding the words "As a rule" at the beginning of the article (A/CN.4/241/Add.5), and it had even been suggested that the article should be deleted. The possibility of being able to call on certain members of a delegation to represent another State was only a partial solution of the problem, and article 85, on the nationality of the members of the delegation, imposed further restrictions.

89. For those reasons, he would either vote against article 83 or abstain.

90. Mr. ROSENNE said that, in the light of the comments of governments and of discussion in the Sixth Committee, he was still not convinced that there was any justification for making article 83 more stringent than it had been in 1970. In particular, the addition of the words "of a State" seemed to him quite unnecessary.

91. He agreed with Mr. Reuter that there was a difference between a delegation to an organ and a delegation to a conference, and that what was involved in article 83 was not so much a delegation as an individual representative.

92. He could not accept article 83 in its present form; in his opinion, it should be deleted and an appropriate paragraph included in the commentary.

93. Mr. USTOR said he thought the Commission could accept article 83, provided that it was stated explicitly in the commentary that the Commission was fully aware of the reasons why the article departed from the corresponding articles of the Vienna Conventions on diplomatic and consular relations.

94. Alternatively, the article might be amended to read: "The delegation of a State to an organ or to a conference shall in principle represent only that State."

95. Sir Humphrey WALDOCK said he feared that article 83 in its present form was too strict and would not be accepted by States. He would prefer some such wording as "The delegation of a State to an organ or to a conference may represent more than one State if the rules of the organ or the conference so admit".

96. Mr. NAGENDRA SINGH said he agreed with

Sir Humphrey Waldoock that article 83 in its present form would not be acceptable to States. It would be better to leave the matter to be decided in accordance with the rules of the organ or conference.

97. Mr. USHAKOV said his impression from the discussion was that members were not divided on the substance of article 83 so much as on how to express the idea it contained.

98. The principle that the delegation of a State could represent only that State was incontestable, but there were possible exceptions, provided for in article 80 which the Commission had not yet examined since it was a general provision under which the provisions of article 83 were subject to the rules of procedure of a conference. Moreover, article 3 made the application of the draft articles as a whole subject to the relevant rules of the organization. He saw no objection to referring back to the provisions of articles 3 and 80 in article 83, though it seemed to be a needless repetition. In his view, the Commission could accept the article as it stood.

99. Mr. EUSTATHIADES said he thought the discussion showed that the provision was too rigid. Various amendments had been proposed. Personally, he was in favour of using a positive rather than a negative formulation and saying "The delegation of a State to an organ or to a conference shall represent only one State".

100. In addition, it should be explained in the commentary that the word "delegation" meant a delegation as a whole, but that some of its members could represent another State; that would make for more flexibility and take account of the exceptional cases.

101. The CHAIRMAN observed that the differences of opinion did not relate to the substance of the article, but several drafting changes had been proposed. If there were no objection he would take it that the Commission wished to refer article 83 back to the Drafting Committee for reconsideration in light of the proposals made.

*It was so agreed.*¹⁸

The meeting rose at 1.15 p.m.

¹⁸ For resumption of the discussion see next meeting, para. 19.

1124th MEETING

Friday, 25 June 1971, at 10.15 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldoock, Mr. Yasseen.

¹⁷ See 1105th meeting, para. 54 *et seq.* and 1106th meeting.