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Summary record of the 1133rd meeting

Topic:
Representation of States in their relations with international organizations

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ARTICLE 23

136.

*Article 23**Inviolability of the premises*

1. The premises of the mission shall be inviolable. The agents of the host State may not enter them, except with the consent of the head of mission. Such consent may be assumed in case of fire or other disaster that seriously endangers public safety, and only in the event that it has not been possible to obtain the express consent of the head of mission.

2. The host State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

137. Mr. KEARNEY (Chairman of the Working Group) said that article 23 was the same as the former article 25, except for the use of the word "mission" in place of the "permanent mission", and the words "head of mission" in place of "permanent representative".

At the request of Mr. Alcívar, a vote was taken by roll-call on the last sentence of paragraph 1.

In favour: Mr. Ago, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Sir Humphrey Waldock.

Against: Mr. Alcívar, Mr. Bartoš, Mr. Ushakov, Mr. Ustor.

Abstaining: Mr. Castañeda, Mr. Yasseen.

The last sentence of paragraph 1 was adopted by 14 votes to 4, with 2 abstentions.

138. The CHAIRMAN put article 23 to the vote as a whole.

Article 23 was adopted by 19 votes to none, with 1 abstention.

139. Mr. CASTAÑEDA, explaining his vote, said that since he had abstained from voting on the last sentence of paragraph 1, which was an essential part of the text, he had thought he ought to abstain from voting on the article as a whole.

140. Mr. USHAKOV said that, although he had voted in favour of the article as a whole, he still objected to the last sentence of paragraph 1.

141. Mr. ALCÍVAR said he had voted against the last sentence of paragraph 1, but not against the article as a whole, because it stated the principle of inviolability.

142. He still reserved his position on the last sentence of paragraph 1.

143. Mr. EL-ERIAN said he had voted in favour of the last sentence of paragraph 1 in order to remain

consistent with the position he had adopted as Special Rapporteur. He had voted for that provision, however, on the understanding that it would be applied *stricto sensu* by the host State.

144. Mr. BARTOŠ said that although he had voted for the article as a whole, he was still opposed to the last sentence of paragraph 1.

145. Mr. USTOR said he had voted for article 23 as a whole because it embodied the principle of inviolability. He had voted against the last sentence of paragraph 1, however, because it could be interpreted as weakening that principle.

The meeting rose at 1.5 p.m.

1133rd MEETING

Thursday, 8 July 1971, at 3.30 p.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, 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 to 3; 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.174 and Add.1 and 2)

[Item 1 of the agenda]

(continued)

CONSOLIDATED DRAFT ARTICLES PROPOSED
BY THE WORKING GROUP

(continued)

ARTICLE 24

1. The CHAIRMAN invited the Commission to continue consideration of the consolidated draft articles proposed by the Working Group (A/CN.4/L.174/Add.2), starting with article 24.

2.

*Article 24**Exemption of the premises from taxation*

1. The premises of the mission of which the sending State or any person acting on its behalf is the owner or the lessee shall

be exempt from all national, regional or municipal dues and taxes other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the host State by persons contracting with the sending State or any person acting on its behalf.

3. Mr. KEARNEY (Chairman of the Working Group) said that article 24 combined the former article 26 with the relevant provisions referred to in the former article 67. The only change introduced by the Working Group had been to replace the concluding words of the former article 26, paragraph 2,¹ "the permanent representative or another member of the permanent mission acting on behalf of the mission", by the words "or any person acting on its behalf", meaning on behalf of the sending State. That change had been rendered necessary by the adoption for paragraph 1 of a text based on the corresponding article 32, paragraph 1, of the Vienna Convention on Consular Relations.²

4. The CHAIRMAN put article 24 to the vote.

Article 24 was adopted by 13 votes to none.

ARTICLE 25

5.

Article 25

Inviolability of archives and documents

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

6. Mr. KEARNEY (Chairman of the Working Group) said that no changes had been introduced in article 25, except those rendered necessary by the process of consolidating the former article 27 with the relevant provisions referred to in article 67.

7. The CHAIRMAN put article 25 to the vote.

Article 25 was adopted by 13 votes to none.

ARTICLE 26

8.

Article 26

Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the host State shall ensure freedom of movement and travel in its territory to all members of the mission and members of their families forming part of their respective households.

9. Mr. KEARNEY (Chairman of the Working Group) said that no changes had been introduced in article 26 except those rendered necessary by the process of consolidating the former articles 28 and 68.

10. The CHAIRMAN put article 26 to the vote.

Article 26 was adopted by 13 votes to none.

ARTICLE 27³

11.

Article 27

Freedom of communication

1. The host State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government of the sending State, its diplomatic missions, consular posts, permanent missions, permanent observer missions, special missions and delegations, wherever situated, the mission may employ all appropriate means, including couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the host State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The bag of the mission shall not be opened or detained.

4. The packages constituting the bag of the mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the mission.

5. The courier of the mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the host State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate couriers *ad hoc* of the mission. In such cases the provisions of paragraph 5 shall also apply, except that the immunities therein mentioned shall cease to apply when the courier *ad hoc* has delivered to the consignee the mission's bag in his charge.

7. The bag of the mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a courier of the mission. By arrangement with the appropriate authorities of the host State the mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

12. Mr. KEARNEY (Chairman of the Working Group) said that in paragraph 1 of article 27 the Working Group had rearranged the list of the different types of mission contained in the former article 29⁴ and had added a reference to "delegations". There had been no change of substance in paragraphs 2 to 5. In paragraph 6, the words "of this article" had been dropped after the words "paragraph 5". The Working Group had made a similar change throughout the draft wherever any article contained a reference to one of its own paragraphs. In paragraph 7, the last sentence had been amended so as to bring it into line with the corresponding provision of article 57 (A/CN.4/L.174/Add.2) on delegations.

13. The CHAIRMAN put article 27 to the vote.

Article 27 was adopted by 13 votes to none.

¹ See 1113th meeting, para. 6.

² United Nations, *Treaty Series*, vol. 596, p. 288.

³ Formerly articles 29 and 67.

⁴ See 1113th meeting, para. 23.

ARTICLE 28

14.

*Article 28**Personal inviolability*

The persons of the head of mission and of the members of the diplomatic staff of the mission shall be inviolable. They shall not be liable to any form of arrest or detention. The host State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity.

15. Mr. KEARNEY (Chairman of the Working Group) said that no change of substance had been introduced in article 28, which combined the former article 30 with the relevant provisions of the former article 69.

16. The CHAIRMAN put article 28 to the vote.

Article 28 was adopted by 13 votes to none.

ARTICLE 29

17.

*Article 29**Inviolability of residence and property*

1. The private residence of the head of mission and of the members of the diplomatic staff of the mission shall enjoy the same inviolability and protection as the premises of the mission.

2. Their papers, correspondence and, except as provided in paragraph 3 of article 30, their property, shall likewise enjoy inviolability.

18. Mr. KEARNEY (Chairman of the Working Group) said that no material change had been introduced in article 29, which combined the former article 31 with the relevant provisions of the former article 69.

19. The CHAIRMAN put article 29 to the vote.

Article 29 was adopted by 13 votes to none.

ARTICLE 30

20.

*Article 30**Immunity from jurisdiction*

1. The head of mission and the members of the diplomatic staff of the mission shall enjoy immunity from the criminal jurisdiction of the host State. They shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) a real action relating to private immovable property situated in the territory of the host State unless the person in question holds it on behalf of the sending State for the purposes of the mission;

(b) an action relating to succession in which the person in question is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the person in question in the host State outside his official functions;

(d) an action for damages arising out of an accident caused by a vehicle used by the person in question outside the exercise

of the functions of the mission where those damages are not recoverable from insurance.

2. The Head of mission and the members of the diplomatic staff of the mission are not obliged to give evidence as witnesses.

3. No measures of execution may be taken in respect of the head of mission or a member of the diplomatic staff of the mission except in cases coming under sub-paragraphs (a), (b), (c) and (d) of paragraph 1, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of the head of mission or of a member of the diplomatic staff of the mission from the jurisdiction of the host State does not exempt him from the jurisdiction of the sending State.

21. Mr. KEARNEY (Chairman of the Working Group) said that no changes had been introduced in article 30 other than those necessary to consolidate the former article 32 with the relevant provisions of the former article 69.

22. The CHAIRMAN put article 30 to the vote.

Article 30 was adopted by 13 votes to none.

23. Sir Humphrey WALDOCK, explaining his vote, said that he had voted in favour of the proposed text of article 30 because it could attract general agreement. He would have preferred somewhat stricter provisions.

24. Mr. USTOR asked whether the Working Group had considered the possibility of amalgamating the present set of articles on privileges and immunities with the articles on the privileges and immunities of delegations in Part III (A/CN.4/L.174/Add.2). There appeared to be only small differences between the privileges and immunities prescribed for missions in Part II and those provided for in Part III.

25. Mr. KEARNEY (Chairman of the Working Group) said that while the Working Group had found it was feasible to amalgamate the articles on permanent observer missions with those on permanent missions, it had decided against consolidation of the articles on delegations, because that process would have created difficulties in harmonizing the various provisions.

ARTICLE 31

26.

*Article 31**Waiver of immunity*

1. The immunity from jurisdiction of the head of mission and members of the diplomatic staff of the mission and of persons enjoying immunity under article 36 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by any of the persons referred to in paragraph 1 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.

5. If the sending State does not waive the immunity of any of the persons mentioned in paragraph 1 in respect of a civil action, it shall use its best endeavours to bring about a just settlement of the case.

27. Mr. KEARNEY (Chairman of the Working Group) said that the proposed text of article 31 was a consolidation of the former article 35⁵ with the former article 71. Paragraph 5 was, of course, the paragraph which the Drafting Committee had recommended should replace the former article 34; that recommendation had been approved by the Commission at its 1117th meeting.⁶

28. Mr. USTOR said that paragraph 1 of article 31 had its origin in article 32, paragraph 1 of the Vienna Convention on Diplomatic Relations,⁷ which referred to "persons enjoying immunity under Article 37", although in fact certain persons could enjoy immunity under article 38 of that Convention. That lacuna was now reflected in the present article 31, paragraph 1 of which referred to "persons enjoying immunity under article 36" and ignored the fact that the immunities specified in draft article 37 could also be waived by the sending State.

29. He would not propose any amendment to article 31, but suggested that it be explained in the commentary that the wording had been taken from the corresponding provision of the Vienna Convention on Diplomatic Relations, and that article 31 should not be construed as meaning that the sending State could not waive the immunity of the persons mentioned in article 37.

30. Mr. ROSENNE said he noted that the waiving of immunity was expressed as an act of the sending State, but that the invoking of immunity was expressed as an act of the individual concerned. In fact, both were acts of the sending State; the individual concerned acted as an agent of the sending State when he invoked immunity.

31. Sir Humphrey WALDOCK said that, in practice, the first step had to be taken by the individual concerned, who invoked immunity in order to protect his position in the proceedings, although the immunity he was invoking was, of course, that of the State, or in the case of an international official, that of the organization.

32. Mr. ROSENNE said that his remark did not relate to international officials, but to permanent representatives and other persons covered by the present draft. Those persons were invariably agents of their own State and it was his belief that the invocation of immunity went a long way to resolve the problems of imputability when a question of the international responsibility of that State arose from the act in respect of which the immunity was invoked.

33. The CHAIRMAN put article 31 to the vote.

Article 31 was adopted by 15 votes to none.

⁵ See 1113th meeting, para. 69.

⁶ See paras. 20-30.

⁷ United Nations, *Treaty Series*, vol. 500, p. 112.

ARTICLE 32

34.

Article 32

Exemption from social security legislation

1. Subject to the provisions of paragraph 3, the head of mission and the members of the diplomatic staff of the mission shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the host State.

2. The exemption provided for in paragraph 1 shall also apply to persons who are in the sole private employ of the head of mission or of a member of the diplomatic staff of the mission, on condition:

(a) that such employed persons are not nationals of or permanently resident in the host State; and

(b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. The head of mission and the members of the diplomatic staff of the mission who employ persons to whom the exemption provided for in paragraph 2 does not apply shall observe the obligations which the social security provisions of the host State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 shall not preclude voluntary participation in the social security system of the host State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

35. Mr. KEARNEY (Chairman of the Working Group) said that no changes had been introduced in article 32 other than those necessary to consolidate the former article 35 with the relevant provisions of the former article 69.

36. Mr. USTOR said that the commentary to article 32 should explain that its text was based on earlier instruments, but that paragraph 3 also applied to the sending State itself. If the sending State employed non-exempted persons, it had to make such social security contributions as were required by the laws of the host State.

37. The CHAIRMAN put article 32 to the vote.

Article 32 was adopted by 15 votes to none.

ARTICLE 33

38.

Article 33

Exemption from dues and taxes

The head of mission and the members of the diplomatic staff of the mission shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) dues and taxes on private immovable property situated in the territory of the host State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;

(c) estate, succession or inheritance duties levied by the host State, subject to the provisions of paragraph 4 of article 38;

(d) dues and taxes on private income having its source in the host State and capital taxes on investments made in commercial undertakings in the host State;

(e) charges levied for specific services rendered;

(f) registration, court or record fees, mortgages dues and stamp duty, with respect to immovable property, subject to the provisions of article 24.

39. Mr. KEARNEY (Chairman of the Working Group) said that no changes had been introduced in article 33 other than those necessary to consolidate the former article 36 with the relevant provisions of the former article 69.

40. The CHAIRMAN put article 33 to the vote.

Article 33 was adopted by 15 votes to none.

ARTICLE 34

41.

Article 34

Exemption from personal services

The host State shall exempt the head of mission and the members of the diplomatic staff of the mission from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

42. Mr. KEARNEY (Chairman of the Working Group) said that no changes had been introduced in article 34 other than those necessary to consolidate the former article 37 with the relevant provisions of the former article 69.

43. The CHAIRMAN put article 34 to the vote.

Article 34 was adopted by 15 votes to none.

ARTICLE 35

44.

Article 35

Exemption from customs duties and inspection

1. The host State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services, on:

(a) articles for the official use of the mission;

(b) articles for the personal use of the head of mission or a member of the diplomatic staff of the mission, including articles intended for his establishment.

2. The personal baggage of the head of mission or a member of the diplomatic staff of the mission shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host State. In such cases, inspection shall be conducted only in the presence of the person enjoying the exemption or of his authorized representative.

45. Mr. KEARNEY (Chairman of the Working Group) said that no changes had been introduced in article 35 other than those necessary to consolidate the former article 38 with the relevant provisions of the former articles 67 and 69.

46. The CHAIRMAN put article 35 to the vote.

Article 35 was adopted by 15 votes to none.

ARTICLE 36

47.

Article 36

Privileges and immunities of other persons

1. The members of the family of the head of mission forming part of his household and the members of the family of a member of the diplomatic staff of the mission forming part of his household shall, if they are not nationals of the host State, enjoy the privileges and immunities specified in articles 28, 29, 30, 32, 33, 34 and paragraphs 1 (b) and 2 of article 35.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households who are not nationals of or permanently resident in the host State, shall enjoy the privileges and immunities specified in articles 28, 29, 30, 32, 33 and 34, except that the immunity from civil and administrative jurisdiction of the host State specified in paragraph 1 of article 30 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in paragraph 1 (b) of article 35 in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption provided for in article 32.

4. Private staff of members of the mission shall be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

48. Mr. KEARNEY (Chairman of the Working Group) said that article 36 combined the former article 40^{*} with the relevant provisions of the former article 69.^{*} The title had been shortened on the pattern of the title of the relevant section of the part of the draft dealing with delegations. In paragraph 2, there had been a slight rearrangement of the wording in the interests of clarity. In paragraphs 3 and 4, the description of the persons concerned as "not nationals of or permanently resident in the host State" had been deleted as unnecessary; the exclusion of those persons was covered by the broad terms of article 37.

49. The CHAIRMAN put article 36 to the vote.

Article 36 was adopted by 16 votes to none.

ARTICLE 37

50.

Article 37

Nationals of the host State and persons permanently resident in the host State

1. Except in so far as additional privileges and immunities may be granted by the host State, the head of mission and any

^{*} See 1114th meeting, para. 28.

^{*} See 1123rd meeting, para. 3.

member of the diplomatic staff of the mission who are nationals of or permanently resident in that State shall enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of their functions.

2. Other members of the staff of the mission and persons on the private staff who are nationals of or permanently resident in the host State shall enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those members and persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

51. Mr. KEARNEY (Chairman of the Working Group) said that no changes had been introduced in article 37 other than those necessary to consolidate the former article 41 with the former article 70.

52. The CHAIRMAN put article 37 to the vote.

Article 37 was adopted by 17 votes to none.

ARTICLE 38

53.

Article 38

Duration of privileges and immunities

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the host State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the host State by the Organization or by the sending State.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the host State or of a member of his family forming part of his household, the host State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property which is in the host State solely because of the presence there of the deceased as a member of the mission or of the family of a member of the mission.

54. Mr. KEARNEY (Chairman of the Working Group) said that article 38 combined the provisions of the former article 42¹⁰ with those of the former article 73.¹¹ The last sentence of paragraph 4 had been reworded in order to bring it into line with the formula used in paragraph 4 of article 68 in Part III, dealing with delegations (A/CN.4/L.174/Add.2).

55. The CHAIRMAN put article 38 to the vote.

Article 38 was adopted by 17 votes to none.

ARTICLE 39

56.

Article 39

End of the functions of the head of mission or of a member of the diplomatic staff

The functions of the head of mission or of a member of the diplomatic staff of the mission shall come to an end, *inter alia*:

(a) on notification of their termination by the sending State to the Organization;

(b) if the mission is finally or temporarily recalled.

57. Mr. KEARNEY (Chairman of the Working Group) said that no changes had been introduced in article 39 other than those necessary to consolidate the former article 47 with the relevant provisions of the former article 77.

58. The CHAIRMAN put article 39 to the vote.

Article 39 was adopted by 17 votes to none.

ARTICLE 40

59.

Article 40

Protection of premises, property and archives

1. When the mission is temporarily or finally recalled, the host State must respect and protect the premises as well as the property and archives of the mission. The sending State must take all appropriate measures to terminate this special duty of the host State within a reasonable time. It may entrust custody of the premises, property and archives of the mission to a third State acceptable to the host State.

2. The host State, if requested by the sending State, shall grant the latter facilities for removing the property and the archives of the mission from the territory of the host State.

60. Mr. KEARNEY (Chairman of the Working Group) said that no changes had been introduced in article 40 other than those necessary to consolidate the former article 49 with the relevant provisions of the former article 77.

61. Mr. USHAKOV said that the words "all appropriate measures" in the second sentence of paragraph 1 were not satisfactorily rendered in the French version by the words "*toutes dispositions*" which, he suggested, should be replaced by the more suitable wording "*les mesures appropriées*".

62. Mr. ALCÍVAR said that the Spanish version was also unsatisfactory; the words "*todas las disposiciones pertinentes*" should be replaced by the words "*las medidas apropiadas*".

63. The CHAIRMAN said that those suggestions would be noted for the final revision of the articles. He then put article 40 to the vote.

Article 40 was adopted by 18 votes to none.

¹⁰ See 1114th meeting, para. 34.

¹¹ See 1123rd meeting, para. 8.

PART III. *Delegations to organs and conferences*

ARTICLE 41

64.

*Article 41**Delegations to organs and to conferences*

A State may send a delegation to an organ or to a conference in accordance with the rules and decisions of the Organization.

65. Mr. KEARNEY (Chairman of the Working Group) said that article 41 was a new article which laid down the principle that a State could send a delegation to an organ or to a conference in accordance with the rules and decisions of the organization concerned. The reference to the "rules and decisions of the Organization" had been made deliberately in order to give as much scope as possible to the organization.

66. Mr. ROSENNE suggested that the words "Delegations to organs and delegations to conferences" be used as the title of Part III, since those were the terms defined in article 1.

67. Mr. ELIAS said he thought the formulation was already sufficiently clear and that it was unnecessary to repeat the word "delegations".

68. Sir Humphrey WALDOCK said he could agree to the words "Delegations to organs and to conferences" for the title of Part III.

69. Mr. REUTER said he supported Mr. Rosenne's suggestion. It would be wrong for Part III to have the same title as article 41.

70. Mr. EUSTATHIADES suggested that articles 41 and 42 be merged under a joint title, unless a new title could be found for article 41.

71. Sir Humphrey WALDOCK said that in the Working Group he had suggested, in order to maintain the parallel with the article on the establishment of permanent observer missions, that the title of article 41 should read "Sending of delegations to organs and to conferences".

72. Mr. BARTOŠ said he was opposed to combining articles 41 and 42, but he supported Sir Humphrey Waldock's suggestion for the title of article 41.

73. Mr. ROSENNE proposed that the title of article 41 be amended to read simply "Sending of delegations", which he thought would be sufficient.

74. The CHAIRMAN said that if there were no objection the word "to" would be added to the title of Part III before the word "conferences", and the title of article 41 would be amended as proposed by Mr. Rosenne.

It was so agreed.

75. The CHAIRMAN put article 41, as amended, to the vote.

Article 41, as amended, was adopted by 15 votes to none.

ARTICLE 42

76.

*Article 42**Appointment of the members of the delegation*

Subject to the provisions of articles 45 and 71, the sending State may freely appoint the members of the delegation.

77. Mr. KEARNEY (Chairman of the Working Group) said that article 42 was based on the former article 84.¹²

78. The CHAIRMAN put article 42 to the vote.

Article 42 was adopted by 15 votes to none.

ARTICLE 43

79.

*Article 43**Credentials of delegates*

The credentials of the head of delegation and of other delegates shall be issued either by the Head of State or by the Head of Government or by the Minister for Foreign Affairs, or, if the rules of the Organization or the rules of procedure of the conference so admit, by another competent authority of the sending State, and shall be transmitted, as the case may be, to the Organization or to the conference.

80. Mr. KEARNEY (Chairman of the Working Group) said that apart from consolidation of the two paragraphs of the former article 87,¹³ on which article 43 was based, the only change was in the last line, which now provided that the credentials should be transmitted to the organization or to the conference rather than of their competent organs.

81. Mr. USTOR asked why the Working Group had consolidated some articles and not others.

82. Mr. KEARNEY (Chairman of the Working Group) said that there had been consolidation with respect to delegations to organs and to conferences, but that to put as many as four things together in one section was extremely difficult.

83. Mr. USHAKOV asked why the words "shall be issued" had been translated into French by the words "*sont délivrés*" in article 43, and also in article 10, instead of by the verb "*émaner*", as in previous versions. The meaning of the two terms was not identical and a correction seemed necessary.

84. Mr. TESLENKO (Deputy Secretary to the Commission) said that the word "issued" had been translated by "*délivrés*" because it had been impossible, for grammatical reasons, to use the verb "*émaner*" in article 11. In order to keep the terminology consistent, it had seemed preferable to use the same translation in articles 10 and 43 as in article 11.

85. Mr. ROSENNE said that he appreciated Mr. Ushakov's difficulties. However, the expressions in question were time-honoured ones, used in the rules of procedure

¹² See 1124th meeting, para. 32.

¹³ *Ibid.*, para. 51.

of the General Assembly and other bodies, so he thought the Secretariat might be asked to bring the text into line with accepted usage.

86. Mr. REUTER said that in current usage "*délivrer un document*" meant to hand a document over physically, the person handing it over not necessarily being its author, whereas the verb "*émaner*" applied to the author of the document. But it did seem that in diplomatic parlance the verb "*délivrer*" could have the latter meaning as well.

87. Mr. ROSENNE proposed that the words "when required", between commas, be added after the word "shall" in the first phrase of article 43, since credentials were not always required for delegates to organs.

88. Mr. CASTRÉN proposed that in order to simplify the text, which at present consisted of one long sentence, a full stop should be placed after the words "sending State". The article would then resume: "The credentials shall be transmitted . . .".

89. Mr. USTOR proposed that a definition of the term "Conference", with a capital "C", should be inserted in article 1, since that article included a definition of "Organization", with a capital "O", in paragraph 1 (3).

90. Mr. KEARNEY said that since the term "the conference" was used on numerous occasions, and since an effort was being made to make the articles as nearly parallel as possible, Mr. Ustor might be right.

91. Mr. EL-ERIAN said that Mr. Ustor's proposal might help to perfect the draft, although he was not sure that he would go so far as to assimilate the conference to the organization. After all, the conference was convened by the organization.

92. Mr. USHAKOV said that there was less risk of ambiguity with respect to conferences than with respect to organizations. Hence the definition proposed by Mr. Ustor seemed unnecessary.

93. Mr. CASTRÉN said he was opposed to the addition of the definition proposed by Mr. Ustor. Such a definition was justified in the case of organizations, because it was with them that the draft articles were primarily concerned.

94. He was also opposed to the amendment proposed by Mr. Rosenne, because it would change a small obligation into a mere faculty.

95. Mr. ROSENNE said that, in article 87 of the text adopted at the Commission's last session,¹⁴ a distinction had been made between the credentials of a representative to an organ and those of a delegate to a conference. Mr. Castrén had correctly interpreted the intention of his (Mr. Rosenne's) amendment.

96. Mr. ELIAS proposed that the Commission accept the text of article 43 as it stood. In his opinion, Mr. Rosenne's proposal to add the words "when required" would only complicate the article.

97. Mr. KEARNEY supported that view.

98. Sir Humphrey WALDOCK said he was somewhat attracted by Mr. Castrén's idea of placing a full stop after the words "sending State", since the sentence would otherwise be rather ponderous.

99. Mr. USHAKOV said that in his view article 3 already settled the point raised by Mr. Rosenne.

100. The CHAIRMAN suggested that the Commission adopt the proposal made by Mr. Castrén and supported by Sir Humphrey Waldock.

It was so agreed.

101. The CHAIRMAN put article 43, thus amended, to the vote.

Article 43, as amended, was adopted by 17 votes to none.

ARTICLE 44

102.

Article 44

Composition of the delegation

In addition to the head of delegation, the delegation may include other delegates, diplomatic staff, administrative and technical staff and service staff.

103. Mr. KEARNEY (Chairman of the Working Group) said that article 44, formerly article 81,¹⁵ had been slightly changed to bring it into line with the corresponding article on missions (A/CN.4/L.174/Add.2, article 13).

104. The CHAIRMAN put article 44 to the vote.

Article 44 was adopted by 17 votes to none.

ARTICLE 45

105.

Article 45

Size of the delegation

The size of the delegation 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.

106. Mr. KEARNEY (Chairman of the Working Group) said that article 45, formerly article 82, remained virtually unchanged.

107. The CHAIRMAN put article 45 to the vote.

Article 45 was adopted by 17 votes to none.

¹⁴ See *Yearbook of the International Law Commission, 1970*, vol. II, document A/8010/Rev.1, chapter II, section B.

¹⁵ See 1123rd meeting, para. 29.

ARTICLE 46

108.

Article 46
Notifications

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

(a) the composition of the delegation, including the position, title and order of precedence of the members of the delegation, and any subsequent changes therein;

(b) the arrival and final departure of members of the delegation and the termination of their functions with the delegation;

(c) the arrival and final departure of any person accompanying a member of the delegation;

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

(e) the location of the premises of the delegation and of the private accommodation enjoying inviolability under articles 53 and 59 as well as any other information that may be necessary to identify such premises and accommodation.

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

3. The Organization or, as the case may be, the conference shall transmit to the host State the notifications referred to in paragraphs 1 and 2.

4. The sending State may also transmit to the host State the notifications referred to in paragraphs 1 and 2.

109. Mr. KEARNEY (Chairman of the Working Group) said that some changes had been made in the former article 89,¹⁶ which had now become article 46, to bring it into line with the corresponding article on missions (A/CN.4/L.174/Add.2, article 15). Thus paragraph 1 (a) no longer referred to the "appointment" of the members of the delegation, while paragraph 1 (b) was now modelled on the corresponding text in the Convention on Special Missions, as was also paragraph 1 (c), which covered members of the family.¹⁷ Paragraph 1 (d) remained substantially the same, but used the expression "persons . . . entitled to privileges and immunities" rather than the expression "persons . . . enjoying privileges and immunities". Paragraph 1 (e) was basically the same as paragraph 1 (e) of the former article 89. The other paragraphs remained unchanged.

110. Mr. CASTRÉN said that the words "with regard to its delegation" in the first line of paragraph 1 were unnecessary, since the delegation was referred to in each sub-paragraph; he proposed that those words be deleted.

It was so agreed.

111. The CHAIRMAN put article 46, as amended, to the vote.

Article 46, as amended, was adopted by 16 votes to none, with 1 abstention.

¹⁶ See 1125th meeting, para. 11.

¹⁷ See General Assembly resolution 2530 (XXIV), Annex, article 11.

ARTICLE 47

112.

Article 47
Acting head of the delegation

1. If the head of delegation is absent or unable to perform his functions, an acting head shall be designated from among the other delegates by the head of 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, as the case may be, to the Organization or to the conference.

2. If a delegation does not have another delegate available to serve as acting head, another person may be designated for that purpose. In such case credentials must be issued and transmitted in accordance with article 43.

113. Mr. KEARNEY (Chairman of the Working Group) said that there were no changes in article 47, which had formerly been article 86.

114. The CHAIRMAN put article 47 to the vote.

Article 47 was adopted by 17 votes to none.

ARTICLE 48

115.

Article 48
Precedence

Precedence among delegations shall be determined by the alphabetical order of the names of their States used in the Organization.

116. Mr. KEARNEY (Chairman of the Working Group) said that article 48, formerly article 90,¹⁸ had been aligned with the corresponding article on missions (A/CN.4/L.174/Add.2, article 17).

117. In the expression "the names of their States," the word "their" referred to delegations.

118. Mr. USHAKOV said that he thought the translation of the English words "their States" into French by the words "*des Etats*" must be a mistake.

119. Mr. REUTER said that the possessive adjective was out of place at that point, at least in French.

120. He suggested that the words "their States" be replaced by the words "the sending States".

121. Mr. ROSENNE said that, since the host State could also be a sending State, it would not be out of the way to use the expression "the sending States", which had already been used in articles 6, 7, 8 and 9 in a sense which comprised the host State.

122. Sir Humphrey WALDOCK suggested that the words "the States" might be sufficient.

123. Mr. EL-ERIAN said that if Mr. Reuter's suggestion was adopted, it might convey a false impression that the host State had a privileged position. He suggested that the word "their" simply be deleted.

¹⁸ See 1125th meeting, para. 16.

124. Mr. CASTRÉN said he supported Mr. Reuter's suggestion and endorsed the argument put forward by Mr. Rosenne.

125. Sir Humphrey WALDOCK said he was still convinced that the present expression "their States" was unobjectionable from the point of view of the English language, although the words "the States" were used in the Convention on Special Missions.

126. Mr. KEARNEY said that in the discussion on article 48 in the Working Group, it had been pointed out that some meetings of organs were attended by States which were non-members, so that their names did not appear on the list. He wondered, therefore, if it might not be better to use the expression "names of States".

127. The CHAIRMAN suggested that the words "their States", in the English version of article 48, be replaced by the words "the States" and that the words "*de leurs Etats*" in the French version of article 17 should be replaced by the words "*des Etats*". The words "*de sus Estados*" in the Spanish version of article 48 would accordingly be replaced by the words "*de los Estados*".

It was so agreed.

128. The CHAIRMAN put article 48, thus amended, to the vote.

Article 48, as amended, was adopted by 17 votes to none, with 1 abstention.

ARTICLE 49

129.

Article 49

Status of the Head of State and persons of high rank

1. The Head of the sending State, when he leads the delegation, shall enjoy in the host State or in a third State, in addition to what is granted by the present articles, the facilities, privileges and immunities accorded by international law to Heads of State.

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, shall enjoy in the host State or in a third State, in addition to what is granted by the present articles, the facilities, privileges and immunities accorded by international law to such persons.

130. Mr. KEARNEY (Chairman of the Working Group) said that the only change introduced in article 49, formerly article 91¹⁹ was the addition of the words "to such persons" at the end of paragraph 2.

131. Mr. RUDA said that the French and Spanish versions of that addition, namely, "*à ces personnalités*" and "*à esas personalidades*", did not mean quite the same thing as the English words "to such persons".

132. Mr. ALCÍVAR suggested that the Spanish version be amended to read "*à esas personas*".

133. Mr. EUSTATHIADES said that if the word "persons" was used in the English and Spanish versions, he thought it could be used in the French version as well.

134. The CHAIRMAN suggested that, in the French version the word "*personnalités*" be replaced by the word "*personnes*" in the title of the article and in paragraph 2, where it appeared twice.

It was so agreed.

135. The CHAIRMAN put article 49, thus amended, to the vote.

Article 49, as amended, was adopted by 16 votes to none, with 1 abstention.

ARTICLE 50

136.

Article 50

General facilities

The host State shall accord to the delegation all facilities for the performance of its tasks. The Organization or, as the case may be, the conference shall assist the delegation in obtaining those facilities and shall accord to the delegation such facilities as lie within their own competence.

137. Mr. KEARNEY (Chairman of the Working Group) said that article 50 raised the fundamental issue of the approach the Commission should adopt to the matter of drafting. It replaced the former article 92,²⁰ which had been based on the principle of referring back to other articles, in that case to articles 22, 24 and 27. The Working Group had decided, in view of the difficulties which might arise in cases of double reference, that it was preferable to set out the articles in full.

138. Mr. ELIAS proposed that, in view of the many implications of article 50, the Commission defer its consideration of it until the next meeting.

It was so agreed.

139. Mr. USTOR asked whether the Working Group would consider the possibility of including a general saving clause concerning privileges and immunities of permanent missions and delegations of the host State. Such a clause would make it clear that the latter's missions and delegations occupied a special position in that they did not enjoy the same privileges and immunities as those of other States.

140. Mr. KEARNEY (Chairman of the Working Group) said that that possibility had not been discussed in the Working Group; it had been referred to on a number of occasions, however, and certainly deserved consideration.

The meeting rose at 6.00 p.m.

¹⁹ See 1125th meeting, para. 20.

²⁰ See 1107th meeting, para. 24.