

Document:-  
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**Summary record of the 1134th meeting**

Topic:  
**Representation of States in their relations with international organizations**

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## 1134th MEETING

Monday, 12 July 1971, at 3.25 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. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, 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 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; A/CN.4/L.177 and Add.1)

[Item 1 of the agenda]

(continued)

#### CONSOLIDATED DRAFT ARTICLES PROPOSED BY THE WORKING GROUP

(continued)

#### ARTICLE 50 (General facilities) (continued)

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). At the previous meeting, it had begun to discuss article 50.

2. Mr. AGO, speaking on behalf of the Working Group, said that article 50 was modelled on article 20, the corresponding article relating to missions.

3. Mr. EUSTATHIADES asked why the word "functions", which was used in article 20, had been replaced by the word "tasks".

4. Mr. AGO, speaking on behalf of the Working Group, said that, in view of the temporary nature of delegations and the purpose of their activities, the Working Group had thought it appropriate to use a slightly different term.

5. Mr. USTOR said it would be advisable to state in the commentary that the Commission had deliberately refrained from including an article on the functions of delegations to conferences.

6. Mr. AGO, speaking on behalf of the Working Group, said it should be explained in the commentary that in the case of permanent missions it was easy to define certain basic functions which did not vary, but that the same did not apply to delegations, so that the use of different terms was justified.

7. The CHAIRMAN put article 50 to the vote.

*Article 50 was adopted by 15 votes to none.*

#### ARTICLE 51<sup>1</sup>

8.

##### Article 51

##### *Premises and accommodation*

The host State shall assist the delegation, if it so requests, in procuring the necessary premises and obtaining suitable accommodation for its members. The Organization or, as the case may be, the conference shall, where necessary, assist the delegation in this regard.

9. Mr. AGO, speaking on behalf of the Working Group, said that in the French version the word "logement" should be in the plural in the title, as it already was in the text of the article.

10. Mr. ALCÍVAR said that observation also applied to the Spanish version.

11. Mr. ROSENNE said that in the English version, the word "accommodation" could remain in the singular.

12. The CHAIRMAN put article 51 to the vote.

*Article 51 was adopted by 16 votes to none.*

#### ARTICLE 52<sup>2</sup>

13.

##### Article 52

##### *Assistance in respect of privileges and immunities*

The Organization or, as the case may be, the Organization and the conference shall, where necessary, assist the sending State, its delegation and the members of the delegation in securing the enjoyment of the privileges and immunities provided for in the present articles.

14. Mr. AGO, speaking on behalf of the Working Group, said that article 52 was modelled on article 22, the corresponding article relating to missions.

15. Mr. CASTRÉN suggested that the words "the Organization and" be deleted. The article would then read more logically: "The Organization or, as the case may be, the conference. . .".

16. Mr. AGO speaking on behalf of the Working Group, said that the repetition of the words "the Organization" was intentional, the Working Group having considered that, in the case of conferences, the assistance function might sometimes be entrusted to the organization, and sometimes to both the organization and the conference.

17. The CHAIRMAN put article 52 to the vote.

*Article 52 was adopted by 18 votes to none.*

#### ARTICLE 53<sup>3</sup>

18.

##### Article 53

##### *Inviolability of the premises*

1. The premises of the delegation shall be inviolable. The agents of the host State may not enter them except with the

<sup>1</sup> Formerly article 93.

<sup>2</sup> Formerly article 92.

<sup>3</sup> Formerly article 94.

consent of the head of delegation. 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 delegation.

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

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

19. Mr. AGO, speaking on behalf of the Working Group, said that, apart from the necessary substitution of the word "delegation" for the word "mission", article 53 followed exactly the wording of article 23, the corresponding article relating to missions.

20. Mr. ALCÍVAR asked for a separate vote, by roll-call, on the last sentence of paragraph 1.

21. Mr. EL-ERIAN said that a roll-call vote was unnecessary since members were permitted to explain their votes.

22. Mr. ALCÍVAR withdrew his request for a roll-call vote.

23. The CHAIRMAN put the last sentence of paragraph 1 to the vote separately.

*The last sentence of paragraph 1 was adopted by 11 votes to 3, with 4 abstentions.*

24. The CHAIRMAN put article 53 to the vote as a whole.

*Article 53 as a whole was adopted by 17 votes to none, with 1 abstention.*

25. Mr. ALCÍVAR, explaining his vote, said he had voted against the last sentence of paragraph 1 for the reasons he had already made known to the Commission on various occasions. He had voted for article 53 as a whole, however, because he did not wish to oppose the principle of inviolability. He reserved his position with respect to the last sentence in paragraph 1.

#### ARTICLE 54<sup>4</sup>

26.

##### *Article 54*

##### *Exemption of the premises from taxation*

1. The sending State and the members of the delegation acting on behalf of the delegation shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the delegation 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 with a member of the delegation.

<sup>4</sup> Formerly article 95.

27. Mr. AGO, speaking on behalf of the Working Group, said that article 54 was modelled on article 24, the corresponding article relating to missions.

28. The CHAIRMAN put article 54 to the vote.

*Article 54 was adopted by 18 votes to none.*

#### ARTICLE 55<sup>5</sup>

29.

##### *Article 55*

##### *Inviolability of archives and documents*

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

30. Mr. AGO, speaking on behalf of the Working Group, said that article 55 reproduced the now traditional formula concerning the inviolability of archives and documents.

31. The CHAIRMAN put article 55 to the vote.

*Article 55 was adopted by 18 votes to none.*

#### ARTICLE 56<sup>6</sup>

32.

##### *Article 56*

##### *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 to all members of the delegation such freedom of movement and travel in its territory as is necessary for the performance of the tasks of the delegation.

33. Mr. AGO, speaking on behalf of the Working Group, said that article 56 closely followed the text of article 26. In the French version the word "*fonctions*" should be replaced by the word "*tâches*".

34. The CHAIRMAN put article 56 to the vote.

*Article 56 was adopted by 18 votes to none.*

#### ARTICLE 57<sup>7</sup>

35.

##### *Article 57*

##### *Freedom of communication*

1. The host State shall permit and protect free communication on the part of the delegation 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 delegation may employ all appropriate means, including couriers and messages in code or cipher. However, the delegation may install and use a wireless transmitter only with the consent of the host State.

<sup>5</sup> Formerly article 92.

<sup>6</sup> Formerly article 96.

<sup>7</sup> Formerly article 97.

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

3. Where practicable, the delegation shall use the means of communication, including the bag and the courier, of the permanent diplomatic mission, of the permanent mission or of the permanent observer mission of the sending State.

4. The bag of the delegation shall not be opened or detained.

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

6. The courier of the delegation, 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.

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

8. The bag of the delegation 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 delegation. By arrangement with the appropriate authorities of the host State, the delegation 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.

36. Mr. AGO, speaking on behalf of the Working Group, said that in the second sentence of paragraph 1 the word "other" should have been inserted between the words "and" and "delegations", as had been proposed at an earlier meeting by Mr. Castrén.<sup>9</sup>

37. Mr. ROSENNE asked why that change was considered necessary.

38. Mr. AGO, speaking on behalf of the Working Group, said that the free communication provided for in paragraph 1 was bound to be between the delegation concerned and the other delegations of the sending State.

39. The CHAIRMAN said that if there were no objection he would take it that the Commission agreed to the proposed change.

*It was so agreed.*

40. The CHAIRMAN put article 57, thus amended, to the vote.

*Article 57, as amended, was adopted by 17 votes to none.*

#### ARTICLE 58<sup>9</sup>

41.

##### *Article 58*

##### *Personal inviolability*

The persons of the head of delegation and of other delegates and members of the diplomatic staff of the delegation 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.

42. Mr. AGO, speaking on behalf of the Working Group, said that article 58 closely followed article 28, the corresponding article relating to missions.

43. The CHAIRMAN put article 58 to the vote.

*Article 58 was adopted by 17 votes to none.*

#### ARTICLE 59<sup>10</sup>

44.

##### *Article 59*

##### *Inviolability of private accommodation and property*

1. The private accommodation of the head of delegation and of other delegates and members of the diplomatic staff of the delegation shall enjoy the same inviolability and protection as the premises of the delegation.

2. Their papers, correspondence and, except as provided in paragraph... of article 60 their property shall likewise enjoy inviolability.

45. Mr. AGO, speaking on behalf of the Working Group, said that article 59 was modelled on article 29, the corresponding article relating to missions.

46. The CHAIRMAN put article 59 to the vote.

*Article 59 was adopted by 17 votes to none.*

#### ARTICLE 60<sup>11</sup>

47.

##### *Article 60*

##### *Immunity from jurisdiction*

##### ALTERNATIVE A

1. The head of delegation and other delegates and members of the diplomatic staff of the delegation 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 delegation;

(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 delegation where those damages are not recoverable from insurance.

2. The head of delegation and other delegates and members of the diplomatic staff of the delegation are not obliged to give evidence as witnesses.

<sup>9</sup> See 1125th meeting, para. 87.

<sup>9</sup> Formerly article 98.

<sup>10</sup> Formerly article 99.

<sup>11</sup> Formerly article 100.

3. No measures of execution may be taken in respect of the head of delegation or any other delegate or member of the diplomatic staff of the delegation 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 accommodation.

4. The immunity of the head of delegation and of other delegates and members of the diplomatic staff of the delegation from the jurisdiction of the host State does not exempt them from the jurisdiction of the sending State.

#### ALTERNATIVE B

1. The head of delegation and other delegates and members of the diplomatic staff of the delegation shall enjoy immunity from the criminal jurisdiction of the host State.

2. (a) The head of delegation and other delegates and members of the diplomatic staff of the delegation shall enjoy immunity from the civil and administrative jurisdiction of the host State in respect of all acts performed in the exercise of their official functions.

(b) No measures of execution may be taken in respect of the head of delegation or any other delegate or member of the diplomatic staff of the delegation unless the measures concerned can be taken without infringing the inviolability of his person or his accommodation.

3. The head of delegation and other delegates and members of the diplomatic staff of the delegation are not obliged to give evidence as witnesses.

4. The immunity from jurisdiction of the head of delegation and of other delegates and members of the diplomatic staff of the delegation does not exempt them from the jurisdiction of the sending State.

48. Mr. AGO, speaking on behalf of the Working Group, said that in paragraph 1 (d) of alternative A the words "exercise of the functions" should be replaced by the words "performance of the tasks".

49. It should be noted that there was a close connexion between alternative A and paragraph 5 of article 61, formerly article 101.

50. Mr. USTOR said that the Commission should reflect carefully before changing the expression "outside the exercise of the functions", which was firmly rooted in the tradition of diplomatic law.

51. Mr. AGO, speaking on behalf of the Working Group, said that he understood Mr. Ustor's concern, but the tradition to which he had referred related solely to diplomatic missions or missions ranking as such, not to delegations, with regard to which the Commission was innovating. There was little difference between the expressions "exercise of the functions" and "performance of the tasks", but it was preferable to speak of the performance of tasks in article 60 in order to be consistent with the other articles on delegations.

52. The CHAIRMAN observed that the majority of the members of the Commission appeared to prefer alternative A. He would therefore ask the Commission to vote on alternative A as the text for article 60.

*Alternative A for article 60 was adopted by 14 votes to 2, with 1 abstention.*

53. Mr. EUSTATHIADES, explaining his vote, said that he had voted for alternative A because alternative B, which he preferred, had been rejected by the majority.

54. Mr. CASTRÉN said that he had voted against alternative A because, in his opinion, it granted too wide an immunity from jurisdiction, thus departing from the practice of the majority of organizations of a universal character. He would have preferred alternative B.

55. Mr. REUTER said that he had voted against alternative A because it did not establish a proper balance between the positions of the host State and the sending State.

#### ARTICLE 61<sup>12</sup>

56.

##### *Article 61*

##### *Waiver of immunity*

1. The immunity from jurisdiction of the head of delegation and of other delegates and members of the diplomatic staff of the delegation and of persons enjoying immunity under article 66 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 them 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 judgement, 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.

57. Mr. AGO, speaking on behalf of the Working Group, said that article 61 was modelled on article 31, the corresponding article relating to missions.

58. The CHAIRMAN put article 61 to the vote.

*Article 61 was adopted by 17 votes to none.*

59. Mr. USTOR said that it should be made clear in the commentary to paragraph 1 that immunity could be waived in respect of persons enjoying immunity under article 67.

#### ARTICLE 62<sup>13</sup>

60.

##### *Article 62*

##### *Exemption from social security legislation*

1. Subject to the provisions of paragraph 3, the head of delegation and other delegates and members of the diplomatic staff of the delegation 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.

<sup>12</sup> Formerly article 101.

<sup>13</sup> Formerly article 104.

2. The exemption provided for in paragraph 1 shall also apply to persons who are in the sole private employ of the head of delegation or of any other delegate or member of the diplomatic staff of the delegation, 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 delegation and other delegates and members of the diplomatic staff of the delegation 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.

61. Mr. AGO, speaking on behalf of the Working Group, said that article 62 followed the pattern of article 32, the corresponding article relating to missions.

62. The CHAIRMAN put article 62 to the vote.

*Article 62 was adopted by 17 votes to none.*

#### ARTICLE 63<sup>14</sup>

63.

##### *Article 63*

##### *Exemption from dues and taxes*

The head of delegation and other delegates and members of the diplomatic staff of the delegation 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 delegation;

(c) estate, succession or inheritance duties levied by the host State, subject to the provisions of paragraph 4 of article 68;

(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, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 54.

64. Mr. AGO, speaking on behalf of the Working Group, said that article 63 followed the wording of article 33, the corresponding article relating to missions.

65. The CHAIRMAN put article 63 to the vote.

*Article 63 was adopted by 15 votes to none, with 2 abstentions.*

<sup>14</sup> Formerly article 102.

#### ARTICLE 64<sup>15</sup>

66.

##### *Article 64*

##### *Exemption from personal services*

The host State shall exempt the head of delegation and other delegates and members of the diplomatic staff of the delegation 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.

67. Mr. AGO, speaking on behalf of the Working Group, said that article 64 reproduced the wording of article 34, the corresponding article relating to missions.

68. The CHAIRMAN put article 64 to the vote.

*Article 64 was adopted by 17 votes to none.*

#### ARTICLE 65<sup>16</sup>

69.

##### *Article 65*

##### *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 delegation;

(b) articles for the personal use of the head of delegation or of any other delegate or member of the diplomatic staff of the delegation.

2. The personal baggage of the head of delegation or of any other delegate or member of the diplomatic staff of the delegation shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemption 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.

70. Mr. AGO, speaking on behalf of the Working Group, said that article 65 reproduced the former article 103 verbatim.<sup>17</sup>

71. Mr. USTOR said that there seemed to be a slight difference between the English and French versions of the title.

72. Mr. TESLENKO (Deputy Secretary of the Commission) said that the French word "*douanière*" covered both duties and inspection.

73. Mr. SETTE CÂMARA said that while the French "*exemption douanière*" covered both duties and inspection, in English it was necessary to mention them both.

74. The CHAIRMAN put article 65 to the vote.

*Article 65 was adopted by 16 votes to none.*

<sup>15</sup> Formerly article 104.

<sup>16</sup> Formerly article 103.

<sup>17</sup> See 1126th meeting, para. 78.

CONSOLIDATED DRAFT ARTICLES SUBMITTED BY  
THE WORKING GROUP ON SECOND READING

ARTICLE 2

75. The CHAIRMAN invited the Commission to consider the texts of articles 2, 4 and 11 submitted by the Working Group on second reading (A/CN.4/L.177/Add.1), starting with article 2,<sup>19</sup> the proposed text for which read:

*Article 2*

*Scope of the present articles*

1. The present articles apply to the representation of States in their relations with international organizations of universal character and to their representation at conferences convened by or under the auspices of such organizations.

2. The fact that the present articles do not extend to other international organizations is without prejudice to the application to the relations of States with such other organizations of any of the rules set forth in the present articles to which they would be subject under international law independently of these articles.

3. The fact that the present articles do not extend to conferences other than those convened by or under the auspices of international organizations of universal character is without prejudice to the application to those conferences of any of the rules set forth in the present articles which would apply under international law independently of these articles.

4. Nothing in the present articles shall preclude States from agreeing that the present articles apply in respect of:

(a) international organizations other than those of universal character, or

(b) conferences other than those convened by or under the auspices of such organizations.

76. Mr. AGO, speaking on behalf of the Working Group, said the question of the scope of the articles was connected with that of the title to be given to the draft as a whole. The Working Group therefore considered that it should now propose a title for the draft articles, which was: "Draft articles on the representation of States in their relations with international organizations". That title retained the word "relations", which it was desired to preserve in order to show that the draft was cognate with the Vienna Conventions on diplomatic relations and consular relations, and at the same time conveyed the limitation imposed by the fact that relations between States and international organizations went far beyond the mere question of representation.

77. Paragraph 1 of the article was worded accordingly, and paragraph 2 was now drafted on the same lines as paragraph 3.

78. Paragraph 3 had been drafted in the light of the discussion which had taken place at the first reading. Thus the formulation "conferences other than those convened by or under the auspices of international organizations of universal character" referred both to conferences convened both by States and to conferences convened by

international organizations which were not of a universal character.

79. Mr. USHAKOV said he did not think the text of paragraph 3 was sufficiently clear. The reference to "those conferences", after the words "without prejudice to the application to", was ambiguous. It should be possible to follow the formulation used in paragraph 2.

80. Mr. ROSENNE said he congratulated the Working Group on the improved text it had submitted for article 2 and on the new title for the draft articles, which considerably simplified the understanding of the whole draft.

81. In paragraph 2, however, he found the reference to "the application to the relations of States with such other organizations" somewhat unsatisfactory. The draft applied to the representation of States, not to the relations of States with international organizations. He suggested that the words in question be replaced by the somewhat heavier, but more precise wording: "the application to the representation of States in their relations with such other organizations". There were relations between States and international organizations other than those dealt with in the present draft articles.

82. Mr. ELIAS said that he would like to know why the word "extend" was used in paragraphs 2 and 3 instead of the word "apply".

83. Mr. AGO said that in the English version the Working Group had preferred the words "do not extend" because of the apparent contradiction between the words "do not apply" and the words "without prejudice to the application", which appeared later in the same sentence.

84. Mr. ROSENNE suggested that the word "extend", in both paragraph 2 and paragraph 3, be replaced by the word "relate", which had been used by the Commission in article 3 of its draft on the law of treaties.<sup>19</sup>

85. Mr. EUSTATHIADES said he wondered whether the words "international law" in paragraph 2 did not refer solely to customary international law, since conventional international law was covered by paragraph 4. If that was the case, it should be made clear.

86. Mr. BARTOŠ said that he had already raised the problem of the use of the words "under international law" at the first reading.<sup>20</sup> It had then been objected that it was unnecessary to define those words in the draft articles because the problem had been solved by the Vienna Convention on the Law of Treaties. But the Vienna Convention distinguished between *jus cogens* and international law generally applied. That distinction was lacking in the present instance.

87. Unless article 2 specified what was covered by the expression "international law", the door would be left open for different interpretations. As at the first reading, he would therefore be unable to vote for article 2.

88. Mr. AGO speaking on behalf of the Working Group, said that article 2 had been modelled on article 3

<sup>19</sup> For previous text and discussion see 1132nd meeting, paras. 6-40.

<sup>19</sup> See *Yearbook of the International Law Commission, 1966*, vol. II, p. 190.

<sup>20</sup> See 1132nd meeting, para. 25.

of the Vienna Convention on the Law of Treaties, which read:

*International agreements not within the scope of the present Convention*

“The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form shall not affect:

“(a) the legal force of such agreements;

“(b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;

“(c) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.”

89. Mr. USHAKOV said that the words “international law” had already been used without any qualification in article 21 of the Convention on Special Missions.<sup>21</sup>

90. Mr. EL-ERIAN (Special Rapporteur) said he agreed with the explanations given by Mr. Ago and Mr. Ushakov.

91. It was his intention to include in the introduction to the present draft articles a paragraph similar to the one in the introduction to the Commission’s draft articles on the law of treaties, explaining that the present draft constituted both codification and progressive development of international law, and adding: “as was the case with several previous drafts, it is not practicable to determine into which category each provision falls”.<sup>22</sup>

92. The provision now under discussion was a saving clause indicating that although the draft articles were intended to serve for organizations of a universal character, regional organizations could be subject to the same rules, in which case the source of those rules would not be draft articles, but general international law.

93. Mr. BARTOŠ said that the text adopted by the Commission for article 21 of the Convention on Special Missions<sup>23</sup> was different from the text which he, as Special Rapporteur, had proposed.<sup>24</sup> Moreover, that article referred to the rules of international law on a clearly defined subject, namely, the facilities, privileges and immunities to be enjoyed by Heads of State when leading a special mission and by persons of high rank taking part in such a mission. Since article 2 of the present draft did not relate to a clearly defined area of international law, it might be inferred that there was a general possibility of derogating from any of the rules

in the draft, although the Commission was called upon to codify those rules.

94. Mr. AGO, speaking on behalf of the Working Group, said he wished to reassure Mr. Bartoš. The purpose of the article was not to open up a general possibility of derogating from the rules of the draft; it was merely precautionary, since the content of the draft was already in force in many instances, either through custom or under the provisions of a particular convention. And the custom or provisions concerned would thus continue to apply to cases not covered by the draft even after it had entered into force. That was the meaning of paragraph 2.

95. Mr. EUSTATHIADES said that article 3 of the Vienna Convention on the Law of Treaties, which Mr. Ago had read out, dealt separately with the application of its rules under international law, sub-paragraph (b), and their application under international agreements, sub-paragraph (c), to cases outside the scope of the Convention. It therefore seemed necessary to explain, at least in the commentary, that the expression “international law”, as used in paragraph 2 of article 2, meant general international law, that was to say customary law and the general principles of law.

96. Mr. AGO, speaking on behalf of the Working Group, said that there were really three cases to be covered; future conventions extending the scope of the draft to cases other than those with which it was concerned, existing conventions, and customary law. Consequently, since paragraph 4 of article 2 related solely to conventions subsequent to the draft articles, the expression “international law” as used in paragraph 2 referred both to customary international law and to existing conventional rules.

97. Mr. BARTOŠ said that he approved the contents of paragraph 4, which reflected the principle of independence of will, whereby the rules of the draft could be extended to cases outside its scope. But in view of the explanations which had been given, the intended meaning of the words “international law” in paragraph 2 should be clearly stated, at least in the commentary. Otherwise, everyone would be free to interpret the rule as he wished, and that would nullify its effect. If necessary, he would be content with a reference in the commentary to the Vienna Convention on the Law of Treaties; failing that he would vote against the article.

98. Mr. ROSENNE said he hoped Mr. Bartoš would not insist on the inclusion in the commentary of a definition of the words “under international law” because all definitions were dangerous.

99. He accepted the explanation given by Mr. Ago that the last part of paragraph 3 was based on the language of article 3 of the Vienna Convention on the Law of Treaties.

100. It should be noted, however, that the words “under international law” did not appear in the Commission’s original draft article 3 on the law of treaties.<sup>25</sup> Sub-

<sup>21</sup> See General Assembly resolution 2530 (XXIV), Annex.

<sup>22</sup> See *Yearbook of the International Law Commission, 1966*, vol. II, p. 177, para. 35.

<sup>23</sup> *Op. cit.*, 1967, vol. II, p. 359.

<sup>24</sup> *Ibid.*, p. 77 (article 17 *quater*).

<sup>25</sup> *Op. cit.*, 1966, vol. II, p. 190.

paragraph (b) of that article safeguarded the application to international agreements outside the scope of the draft articles of any of the rules set forth in the draft articles to which those agreements "would be subject independently of these articles". It was the Vienna Conference on the Law of Treaties which had introduced the words "under international law" into sub-paragraph (b) of article 3, in the phrase "to which they would be subject under international law independently of the Convention", which appeared in the final text of the Convention.<sup>26</sup>

101. Since the Commission would indicate in the commentary to article 2 that the concluding words of paragraph 3 had their origin in article 3(b) of the Vienna Convention on the Law of Treaties, any attempt to define the words "under international law" in the commentary might be misconstrued as an attempt to interpret article 3 of the Vienna Convention.

102. In fact, the Commission was not concerned either with the meaning of the expression "under international law" or with the relation between codified and non-codified international law. It was concerned only with the interpretation to be given to the reservation contained in paragraph 3 of article 2. The Commission's intention could be explained briefly in the commentary to that article.

103. Mr. USHAKOV said that the words "international law" were used without any qualification in the Preamble and in Article 13 of the United Nations Charter.

104. Mr. YASSEEN said he thought that paragraph 2 should be interpreted in the following manner: since the Commission had decided to restrict the scope of the draft articles to organizations of a universal character, it had derived a number of rules from international customs and from existing bilateral and multilateral conventions, but that did not mean that it intended the scope of those rules to be restricted in the future solely to organizations of a universal character if they applied to other organizations by virtue of a source other than the draft articles. Consequently, in paragraph 2, the expression "international law" meant all international law with the exception of the present convention. He would vote in favour of the article on that understanding.

105. Mr. EUSTATHIADES said he was satisfied with the explanations that had been given.

106. Mr. AGO, speaking on behalf of the Working Group, said that in order to take account of Mr. Rosenne's proposal and Mr. Ushakov's request for clarification of paragraph 3, he would propose a number of amendments to article 2.

107. In paragraphs 2 and 3, the word "extend" should be replaced by the word "relate".

108. In paragraph 2, the words "the application to the relations of States with such other organizations" should be replaced by the words "the application to the repre-

sentation of States in their relations with such other organization".

109. In paragraph 3, the words "conferences other than those convened by or under the auspices of international organizations of universal character" should be replaced by the words "other conferences".

110. Also in paragraph 3, the words "the application to those conferences" should be replaced by the words: "the application to the representation of States at such other conferences".

111. The CHAIRMAN said that if there were no objection he would ask the Commission to vote on article 2 as amended by Mr. Ago.

*Article 2, as amended, was adopted by 13 votes to 1, with 1 abstention.*

The meeting rose at 6.10 p.m.

## 1135th MEETING

*Tuesday, 13 July 1971, at 10.10 a.m.*

*Chairman: Mr. Senjin TSURUOKA*

*Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, 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 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; A/CN.4/L.177/Add.1)

[Item 1 of the agenda]

(continued)

CONSOLIDATED DRAFT ARTICLES SUBMITTED BY  
THE WORKING GROUP ON SECOND READING

(continued)

### ARTICLE 4

1. The CHAIRMAN invited the Commission to continue consideration of the texts of articles submitted by the Working Group on second reading (A/CN.4/L.177/Add.1), starting with article 4.

<sup>26</sup> See para. 88 above.