

Document:-
A/CN.4/SR.1135

Summary record of the 1135th meeting

Topic:
Representation of States in their relations with international organizations

Extract from the Yearbook of the International Law Commission:-
1971, vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

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.²⁶

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.

²⁶ See para. 88 above.

2.

*Article 4**Relationship between the present articles and other international agreements*

The provisions of the present articles

(a) are without prejudice to other international agreements in force between States or between States and international organizations of universal character, and

(b) shall not preclude the conclusion of other international agreements regarding the representation of States in their relations with international organizations.

3. Mr. AGO, speaking on behalf of the Working Group, said that the Working Group had revised the text of article 4 in the light of the Commission's previous discussion.¹

4. The CHAIRMAN put article 4 to the vote.

Article 4 was adopted by 15 votes to none.

ARTICLE 11

5.

*Article 11**Accreditation to organs of the Organization*

1. A member State may specify in the credentials issued to its permanent representative that he is authorized to act as a delegate to one or more organs of the Organization.

2. Unless a member State provides otherwise its permanent representative may act as a delegate to organs of the Organization for which there are no special requirements as regards representation.

3. A non-member State may specify in the credentials issued to its permanent observer that he is authorized to act as an observer to one or more organs of the Organization when this is admitted.

6. Mr. AGO, speaking on behalf of the Working Group, said that the Working Group had revised the text of article 11 in the light of the Commission's previous discussion.²

7. Mr. ROSENNE said that, under paragraph 1 (9) of article 1, as adopted by the Commission³ the term "delegation to an organ" meant "the delegation sent by a State to represent it at the organ". There was an element of ambiguity in that provision—an ambiguity which was deliberate and was intended to cover the extreme variety of situations in which a member State of an organization could be represented at an organ of the organization. To give one obvious example, under Article 32 of the Charter, a Member State of the United Nations which was not a member of the Security Council could, under certain conditions, participate without voting in the Council's discussions.

8. He would vote in favour of article 11 on the clear understanding that paragraph 1 was based on the same broad concept as paragraph 1 (9) of article 1, and that

the term "delegate" was not restricted to members of the organ in question.

9. Mr. AGO, speaking on behalf of the Working Group, said that article 11 was intended to refer to States members of the organization, not to the members of the organ in question.

10. In paragraphs 1 and 2 of the French version, the words "*délégués auprès*" should be replaced by the words "*délégué à*", and in paragraph 3 of the French version, the words "*observateur auprès*" should be replaced by the words "*observateurs à*". In all three paragraphs of the English version, where the word "to" followed the words "delegate" or "observer" it should be replaced by the word "at", in view of the decision taken by the Commission when it had settled the definitions.

11. Mr. REUTER said he did not think it was correct to make that change in paragraph 3. In any case, before amending paragraph 3 of the English version, the Commission ought perhaps to wait until it could consult Mr. Kearney and Sir Humphrey Waldock.

12. The CHAIRMAN said that if there were no objection he would take it that the Commission accepted the suggested amendments to paragraphs 1 and 2, but wished to postpone its decision on paragraph 3.

It was so agreed.

13. The CHAIRMAN put paragraphs 1 and 2 of article 11, as amended, to the vote.

Paragraphs 1 and 2 of article 11, as amended, were adopted by 16 votes to none.

CONSOLIDATED DRAFT ARTICLES PROPOSED BY
THE WORKING GROUP
(A/CN.4/L.174/Add.2)

(resumed from the previous meeting)

ARTICLE 66⁴

14.

*Article 66**Privileges and immunities of other persons*

1. The members of the family of the head of delegation who accompany him, and the members of the family of any other delegate or member of the diplomatic staff of the delegation who accompany him shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 58, 59, 60, 62, 63, 64, in paragraphs 1 (b) and 2 of article 65 and in article 72.

2. Members of the administrative and technical staff of the delegation, together with members of their families who accompany them and who are not nationals of or permanently resident in the host State, shall enjoy the privileges and immunities specified in articles 58, 59, 60, 62, 63, 64 and 72 except that the immunity from civil and administrative jurisdiction of the host State specified in paragraph 1 of article 60 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in paragraph 1 (b)

¹ See 1132nd meeting, para. 54-61.

² *Ibid.*, paras. 87-96.

³ See 1130th meeting, para. 13 and 1131st meeting, para. 49.

⁴ Formerly article 105.

of article 65 in respect of articles imported at the time of their entry into the territory of the host State to attend the meeting of the organ or conference.

3. Members of the service staff of the delegation 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 from social security legislation provided for in article 62.

4. Private staff of members of the delegation 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 tasks of the delegation.

15. Mr. AGO, speaking on behalf of the Working Group, said that the former title of the article, as adopted at the twenty-second session,⁵ had been preferred to the rather long title proposed by the Drafting Committee⁶ and that, as in all the articles on delegations, the words "performance of the tasks" had replaced the words "exercise of the functions", used in the articles on missions.

16. The reference to article 72 in paragraphs 1 and 2 was a mistake and should be deleted.

17. The CHAIRMAN said that if there were no objection he would take it that the Commission accepted the correction required in paragraphs 1 and 2.

It was so agreed.

18. The CHAIRMAN put article 66, as corrected, to the vote.

Article 66 was adopted by 15 votes to none with 1 abstention.

ARTICLE 67⁷

19.

Article 67

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 delegation and any other delegate or member of the diplomatic staff of the delegation 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 delegation 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 tasks of the delegation.

20. Mr. AGO, speaking on behalf of the Working Group, said that whereas the former text had been drafted simply by reference to article 41, the corresponding article on permanent missions, the present text was modelled on that article, which had become article 37 (A/CN.4/L.174/Add.2).

21. The CHAIRMAN put article 67 to the vote.

Article 67 was adopted by 16 votes to none.

ARTICLE 68

22.

Article 68

Duration of privileges and immunities

1. Every person entitled to privileges and immunities under the provisions of the present articles shall enjoy such privileges and immunities from the moment he enters the territory of the host State for the purpose of attending the meeting of an organ or conference or, if he is already in its territory, from the moment when his appointment as a member of the delegation is notified to the host State by the Organization, by the conference or by the sending State.

2. When the functions of a person entitled to privileges and immunities under these articles 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 delegation, immunity shall continue to subsist.

3. In case of the death of a member of the delegation, 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 delegation not a national of or permanently resident in the host State or of a member of his family accompanying him, 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 delegation or of the family of a member of the delegation.

23. Mr. AGO, speaking on behalf of the Working Group, said that article 68, which combined the former articles 108 and 109, was modelled on article 38, which was the corresponding article relating to missions.

24. Mr. YASSEEN said that in paragraph 1 of the French version the words "*pénètre sur*" should be replaced by the words "*entre dans*".

25. Mr. CASTRÉN and Mr. REUTER agreed.

26. The CHAIRMAN said that if there were no objection the words "*pénètre sur*" would be replaced by the words "*entre dans*" in paragraph 1 of the French version.

It was so agreed.

27. Mr. USHAKOV asked whether, in the second sentence of paragraph 2, the words "in the exercise of his functions" should not be replaced by the words "in the performance of his tasks".

⁵ See *Yearbook of the International Law Commission, 1970*, vol. II, document A/8010/Rev.1, chapter II, section B.

⁶ See 1126th meeting, para. 88.

⁷ Formerly article 106.

28. Mr. ROSENNE said that, while it was appropriate to refer to the "tasks" of a delegation, the correct word to use in the present context was "functions" because paragraph 2 of article 68 referred to the functions of an individual member of a delegation and not to the tasks of the delegation itself.

29. Mr. USHAKOV said he accepted that explanation.

30. The CHAIRMAN put article 68 to the vote.

Article 68 was adopted by 15 votes to none.

ARTICLE 69

31.

Article 69

End of the functions of the head of delegation or any other delegate or member of the diplomatic staff

The functions of the head of delegation or of any other delegate or member of the diplomatic staff of the delegation shall come to an end, *inter alia*:

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

(b) upon the conclusion of the meeting of the organ or the conference.

32. Mr. AGO speaking on behalf of the Working Group, said that no significant change had been made in the text of article 69, which had formerly been article 114. A new title had been proposed.

33. The CHAIRMAN put article 69 to the vote.

Article 69 was adopted by 16 votes to none.

ARTICLE 70

34.

Article 70

Protection of premises, property and archives

1. When the meeting of an organ or a conference comes to an end, the host State must respect and protect the premises of the delegation so long as they are assigned to it, as well as the property and archives of the delegation. The sending State must take all appropriate measures to terminate this special duty of the host State within a reasonable time.

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

35. Mr. AGO speaking on behalf of the Working Group, said that no change had been made in the text of article 70, which had formerly been article 116.

36. The CHAIRMAN put article 70 to the vote.

Article 70 was adopted by 16 votes to none.

PART IV. General provisions

ARTICLE 71

37.

Article 71

Nationality of the members of the mission or the delegation

The head of mission and members of the diplomatic staff of the mission, the head of delegation, other delegates and mem-

bers of the diplomatic staff of the delegation should in principle be of the nationality of the sending State. They may not be appointed from among persons having the nationality of the host State, except with the consent of that State which may be withdrawn at any time.

38. Mr. AGO, speaking on behalf of the Working Group, said that article 71 was the first article in Part IV (General Provisions). The only changes made in the text of the article were those necessary to consolidate the provisions of the former articles 11, 56 and 85.

39. The CHAIRMAN put article 71 to the vote.

Article 71 was adopted by 16 votes to none.

ARTICLE 72

40.

Article 72

Laws concerning acquisition of nationality

Members of the mission or the delegation not being nationals of the host State, and members of their families forming part of their household or, as the case may be, accompanying them, shall not, solely by the operation of the law of the host State, acquire the nationality of that State.

41. Mr. AGO, speaking on behalf of the Working Group, said that the only changes made in the text of article 72 were those necessary to consolidate the former articles 39 and 72 with the relevant provisions of article 104.

42. The CHAIRMAN put article 72 to the vote.

Article 72 was adopted by 16 votes to none.

ARTICLE 73

43.

Article 73

Privileges and immunities in case of multiple functions

When members of the permanent diplomatic mission or of a consular post in the host State are included in a mission or delegation, they shall retain their privileges and immunities as members of their permanent diplomatic mission or consular post in addition to the privileges and immunities accorded by the present articles.

44. Mr. AGO, speaking on behalf of the Working Group, said that article 73 was modelled on article 9, paragraph 2, of the 1969 Convention on Special Missions⁵ and replaced the former article 107.

45. The CHAIRMAN put article 73 to the vote.

Article 73 was adopted by 16 votes to none.

ARTICLE 74

46.

Article 74

Respect for the laws and regulations of the host State

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities

⁵ See General Assembly resolution 2530 (XXIV), Annex.

to respect the laws and regulations of the host State. They also have a duty not to interfere in the internal affairs of that State.

2. In case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from jurisdiction, the sending State shall, unless it waives the immunity of the person concerned, recall him, terminate his functions with the mission or the delegation or secure his departure, as appropriate. The sending State shall take the same action in case of grave and manifest interference in the internal affairs of the host State. The provisions of this paragraph shall not apply in the case of any act that the person concerned performed in carrying out the functions of the mission or the tasks of the delegation.

3. The premises of the mission and the premises of the delegation shall not be used in any manner incompatible with the exercise of the functions of the mission or the performance of the tasks of the delegation.

47. Mr. AGO, speaking on behalf of the Working Group, said that the only changes made in the text of article 74 were those necessary to consolidate the former articles 45 and 112 with the relevant provision of article 76.

48. The CHAIRMAN put article 74 to the vote.

Article 74 was adopted by 16 votes to none.

ARTICLE 75⁹

49.

Article 75

Professional or commercial activity

The head of mission and members of the diplomatic staff of the mission, the head of delegation, other delegates and members of the diplomatic staff of the delegation shall not practise for personal profit any professional or commercial activity in the host State.

50. Mr. AGO, speaking on behalf of the Working Group, said that the question whether members of a delegation should be placed on the same footing as members of a permanent mission in the matter of professional and commercial activities in the host State had been discussed in some detail at an earlier meeting.¹⁰ The Working Group had reconsidered the question and had reached the conclusion that they should; but as a member of the Commission, he could not support that view unless the precise scope of article 75 was clearly explained in the commentary.

51. Mr. EUSTATHIADES said he shared Mr. Ago's opinion.

52. Mr. ROSENNE said that, while the provisions of article 75 were quite acceptable in the case of missions, they were not acceptable for delegations. There had been a long discussion on that subject in the Commission and the general feeling had been that delegations should not be treated in the same way as missions with regard to the question of the professional or commercial activities of their members.

53. He suggested that article 75 be referred back to the Working Group with instructions to examine the question with respect to missions and to delegations separately, so that the Commission could take separate decisions.

54. Mr. USHAKOV said he agreed that missions and delegations should not be treated alike, but he did not see how that view could be reflected in the wording of the article. The Commission should therefore state the principle in the article and explain in the commentary that it was possible to derogate from it. In any case, if the article were referred back to the Working Group, it would find it difficult to amend the text without precise instructions.

55. Mr. ELIAS said that nothing would be gained by referring the article back to the Working Group, since the Commission had no fresh points to place before it.

56. It would therefore be better to accept the principle as formulated in the article and explain the possibilities of derogation in the commentary.

57. Mr. EUSTATHIADES and Mr. CASTRÉN supported Mr. Elias's view.

58. Mr. YASSEEN said that the scope of an article should be defined by its text, not by the commentary.

59. Mr. BARTOŠ said he regretted that the new text of the article had not retained the proviso desired by several members of the Commission, consisting in the phrase "except with the prior consent of the host State". The principle should be applied strictly in the case of missions, but could be relaxed for delegations, in view of their temporary nature, if the host State needed to make the exercise of professional or commercial activity subject to its prior consent.

60. Mr. ROSENNE suggested that the Working Group consider the possibility of limiting article 75 to missions, for which there was no problem.

61. In the case of delegations, no similar provision was necessary, in view of the provisions of article 67, on nationals of the host State and persons permanently resident in the host State.

62. Mr. AGO said that in fact it was to be feared that adding the proviso of the prior consent of the host State would not solve the problem, since its consent might not be obtainable in time if the meeting was a short one. On the other hand, a person resident in the host State could not be expected to suspend his professional activities there for the period during which he was a member of a delegation of his State of nationality. It would therefore be better to drop the provision in the case of delegations and leave the matter to practice.

63. The CHAIRMAN suggested that article 75 be referred back to the Working Group for review in the light of the discussion on the understanding that any member of the Commission might submit concrete proposals to the Group.

It was so agreed.¹¹

⁹ Formerly articles 46, 76 and 113.

¹⁰ See 1109th meeting, para. 107 *et seq.*

¹¹ Article 75 was subsequently deleted by the Working Group; see document A/CN.4/L.181.

ARTICLE 76

64.

*Article 76**Entry into the territory of the host State*

1. The host State shall permit entry into its territory of
 - (i) members of the mission and members of their families forming part of their respective households, and
 - (ii) members of the delegation and members of their families accompanying them.
2. Visas, when required, shall be granted as promptly as possible to any person referred to in paragraph 1.

65. Mr. AGO, speaking on behalf of the Working Group, said that the only changes introduced in article 76 were those necessary to consolidate the former articles 27*bis*, 67 and Z (A/CN.4/241/Add.6, para. 4 under article 115).

66. The CHAIRMAN put article 76 to the vote.

Article 76 was adopted by 16 votes to none.

ARTICLE 77

67.

*Article 77**Facilities for departure*

The host State shall, if requested, grant facilities to enable persons enjoying privileges and immunities, other than nationals of the host State, and members of the families of such persons irrespective of their nationality, to leave its territory.

68. Mr. AGO, speaking on behalf of the Working Group, said that the only changes introduced in article 77 were those necessary to consolidate the former articles 48 and 115 with the relevant provisions of the former article 77.

69. The CHAIRMAN put article 77 to the vote.

Article 77 was adopted by 16 votes to none.

ARTICLE 78¹²

70.

*Article 78**Transit through the territory of a third State*

1. If a head of mission or a member of the diplomatic staff of the mission, a head of delegation, other delegate or member of the diplomatic staff of the delegation passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return.

2. The provisions of paragraph 1 shall also apply in the case of:

- (i) members of the family of the head of mission or of a member of the diplomatic staff of the mission forming part of his household and enjoying privileges and immunities, whether travelling with him or travelling separately to join him or to return to their country;

- (ii) members of the family of the head of delegation, of any other delegate or member of the diplomatic staff of the delegation who are accompanying him and enjoy privileges and immunities, whether travelling with him or travelling separately to join him or to return to their country.

3. In circumstances similar to those specified in paragraphs 1 and 2, third States shall not hinder the passage of members of the administrative and technical or service staff, and of members of their families through their territories.

4. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the host State. They shall accord to the couriers of the mission or of the delegation, who have been granted a passport visa if such visa was necessary, and to the bags of the mission or of the delegation in transit the same inviolability and protection as the host State is bound to accord.

5. The obligations of third States under paragraphs 1, 2, 3 and 4 shall also apply to the persons mentioned respectively in those paragraphs, and to the official communications and bags of the mission or of the delegation when they are present in the territory of the third State owing to *force majeure*.

71. Mr. AGO, speaking on behalf of the Working Group, said that paragraph 2 had been divided into two sub-paragraphs in order to mark the difference between members of the family of a member of the mission forming part of his household and members of the family of a member of the delegation who were accompanying him.

72. The CHAIRMAN put article 78 to the vote.

Article 78 was adopted by 16 votes to none.

73. Mr. USHAKOV said the Commission would remember the difficulties to which the use of the words "their States" had given rise in article 48, on precedence.¹³ He noticed that paragraph 2 of article 78 used the expression "*rentrer dans leur pays*" in the French version, and he wondered whether it might not be possible to use the words "*leurs pays*" in article 17, at any rate for the French version.

74. Mr. REUTER said that "*leurs pays*" was certainly a broader term than "*leurs Etats*" and might be suitable.

ARTICLE 79

75.

*Article 79**Non-recognition of States or governments or absence of diplomatic or consular relations*

1. The rights and obligations of the host State and of the sending State under the present articles shall be affected neither by the non-recognition by one of those States of the other State or of its government nor by the non-existence or the severance of diplomatic or consular relations between them.

2. The establishment or maintenance of a mission, the sending or attendance of a delegation or any act in application of the present articles shall not by itself imply recognition by the sending State of the host State or its government or by the host State of the sending State or its government.

¹² Formerly articles 43, 74 and 110.

¹³ See 1133rd meeting, paras. 117-128.

76. Mr. AGO, speaking on behalf of the Working Group, said that article 79 merely consolidated the former articles 49 *bis*, 77 *bis* and 116 *bis*.

77. The CHAIRMAN put article 79 to the vote.

Article 79 was adopted by 17 votes to none.

ARTICLE 80

78.

Article 80

Non-discrimination

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

79. Mr. AGO, speaking on behalf of the Working Group, said that no changes had been introduced in the text of article 80, which merely consolidated the former articles 44, 75 and 111.

80. The CHAIRMAN put article 80 to the vote.

Article 80 was adopted by 17 votes to none.

The meeting rose at 11.5 a.m.

1136th MEETING

Wednesday, 14 July 1971, at 10.20 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Elias, Mr. Eustathiades, Mr. Kearney, 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/Add.3)

[Item 1 of the agenda]

(continued)

THIRD REPORT OF THE WORKING GROUP

1. The CHAIRMAN invited Mr. Kearney, Chairman of the Working Group, to introduce its third report (A/CN.4/L.174/Add.3). He suggested that articles 81 and 82 and the proposed new sub-paragraph (3) *bis* of article 1, paragraph 1, be considered together.

ARTICLES 81 and 82, and new sub-paragraph (3) *bis* of article 1, paragraph 1

2.

Article 81

Consultations between the sending State, the host State and the Organization

If any dispute between one or more sending States and the host State arises out of the application or interpretation of the present articles, consultations between: (i) the host State, (ii) the sending State or States concerned, and (iii) the Organization or, as the case may be, the Organization and the conference, shall be held upon the request of any such State or of the Organization itself.

3.

Article 82

Conciliation

1. If the dispute is not resolved through the consultations referred to in article 81 within three months from the date of their inception, it may be submitted by any State party to the dispute to such procedure applicable to the settlement of the dispute as may be established in the Organization. In the absence of any such procedure, any State party to the dispute may bring it before a conciliation commission to be constituted in accordance with the provisions of this article by giving written notice to the other States participating in the consultations and to the Organization.

2. A conciliation commission will be composed of three members, of whom one shall be appointed by the host State, and one by the sending State. Two or more sending States may agree to act together, in which case they shall jointly appoint the member of the conciliation commission. These two appointments shall be made within two months of the written notice referred to in paragraph 1. The third member, the Chairman, shall be chosen by the other two members.

3. If either side has failed to appoint its member within the time limit referred to in paragraph 2, the Executive Head of the Organization shall appoint such member within a further period of one month. If no agreement is reached on the choice of the Chairman within four months of the written notice referred to in paragraph 1, either side may request the Executive Head of the Organization to appoint the Chairman within a further period of one month.

4. Any vacancy shall be filled in the same manner as the original appointment was made.

5. The Commission shall establish its own rules of procedure and shall reach its decisions by a majority vote. With the authorization of the General Assembly of the United Nations the Commission may request an advisory opinion from the International Court of Justice regarding the interpretation or application of these articles.

6. If the Commission is unable to secure agreement among the participating States on a resolution of the dispute within six months of its initial meeting, it shall prepare as soon as possible a report of its proceedings and transmit it to the parties and to the Organization. The report shall include the Commission's findings upon the facts and the law and its recommendations as to the course of action that should be followed to achieve an amicable settlement of the difference. The time limit for the preparation of the report may be extended by decision of the Commission. The report shall not be binding upon the participating States or upon the Organization.

7. Nothing in the preceding paragraphs shall preclude a conference from adopting any other appropriate procedure for the settlement of a dispute arising in connexion with the conference.