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Summary record of the 952nd meeting

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representative at Geneva was thus permanent representative to certain organs of the United Nations and to some other agencies, and at the same time observer to the United Nations. The representative of the Holy See was in a similar position. The Holy See was a member of several international organizations having their seats at Geneva and its representative to those organizations was also an observer in the United Nations. Those were cases in point. The two functions were combined under the title of permanent mission, which had been selected by the State in question and was tolerated by the United Nations.

66. The Universal Postal Convention specified that UPU was a union of countries, not States—a provision which had been used as a pretext for denying East Germany the capacity to be a member. That interpretation, which was of a political character, had been approved on several occasions by a majority of the member countries. The question arose whether or not the member countries of UPU could establish permanent missions to that specialized agency, in other words, whether there was an inter-State relationship, a relationship between States and an international organization, or something else, and whether members of that organization, as a specialized agency brought into relationship with the United Nations, had the right to participate in international conferences convened by the United Nations to draw up major conventions unifying and codifying various branches of international law (law of the sea, diplomatic law, consular law, law of treaties, etc.). The legal position of the representation of member countries to UPU was a separate issue, however, because the Special Rapporteur had strictly adhered to the notion of a State, leaving it to other texts to say what a State was. It could thus be seen that the permanent representation of States to international organizations could be pure, combined with some other capacity, or dubious from the point of view of interpretation.

67. Mr. AMADO said he was in favour of retaining the term "sending State", which was used in the Vienna Conventions. By doing so the Commission would be reserving the future, because the more restrictive notion of a member State might be a source of difficulties.

68. The CHAIRMAN,* speaking as a member of the Commission, agreed with the Special Rapporteur that the possibility of simultaneous representation in several organizations did not make the non-objection of the organizations concerned necessary. Practice confirmed that view. There was no analogy between permanent missions to international organizations and special or permanent diplomatic missions.

69. He was in favour of retaining article 7, subject to a few drafting changes. In particular, he thought the words "or one of its members" should be added after the words "permanent mission". With regard to the term "sending State", opinion was divided; he would prefer the term "member State", because of the absence of any analogy between permanent diplomatic missions and permanent missions to international organizations. Moreover, where the host State was a member of the organization, it did not need to send a mission. He was also in favour of replacing the word "appoint" by the word "accredit".

* Mr. Castrén.

It might be sufficient to say: "A State may accredit ...", without qualifying the word "State".

70. Mr. EL-ERIAN (Special Rapporteur) pointed out that he had used the words "sending State" throughout Parts II and III of the draft articles. If the words "member States" were used in Part II, it would be necessary to qualify that expression, since both the host State and third States could be members. He had not considered it necessary to define a "sending State" in article 1, since the term was self-explanatory. It was necessary, however, to distinguish between the State to which the permanent mission belonged, the host State in whose territory it operated and a third State which would have to accord privileges and facilities to it under article 40.

71. He agreed with Mr. Kearney that article 7, as drafted at present, was too restrictive and that the Drafting Committee should consider adding some such phrase as "or members thereof".

72. With regard to Mr. Reuter's suggestion that permanent missions to one organization might also be appointed as observers to another, he would fill that gap when he dealt with the articles on observers, since such cases undoubtedly did exist.

73. Reference had been made to the situation in which a permanent mission might have to be appointed to two different seats of the same organization. That was not a practical difficulty, since article 7 covered the case in which more than one organization had its seat in the same general locality. With regard to the possibility of a permanent mission being appointed simultaneously to a universal and a regional organization whose seats were far apart, he drew Mr. Ushakov's attention to paragraph 3 of his commentary. United Nations Headquarters, for example, was in New York, while the seat of the Organization of American States was in Washington, D.C. The final text of article 7 would, of course, depend on whether the Commission decided that the draft articles as a whole should cover both universal and regional organizations.

74. Mr. Bartoš had suggested that article 7 should not be confined to organizations having their seat in the same locality. In its present form, the article stated the principle in general terms, but he agreed that it might be advisable for the Drafting Committee to make it less restrictive.

The meeting rose at 12.55 p.m.

952nd MEETING

Wednesday, 12 June 1968, at 10.15 a.m.

Chairman: Mr. Erik CASTRÉN

Present: Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. El-Erian, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Also present: Mr. Sen, Observer for the Asian-African Legal Consultative Committee.

Co-operation with other bodies

[Item 5 of the agenda]

STATEMENT BY THE OBSERVER FOR THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

1. The CHAIRMAN invited the Observer for the Asian-African Legal Consultative Committee to address the Commission.
2. Mr. SEN, Observer for the Asian-African Legal Consultative Committee, said that his Committee had been established, *inter alia*, to help Asian and African countries to examine questions that were under consideration by the International Law Commission, to place their views before the Commission and to formulate opinions on the Commission's recommendations. Such co-operation was considered to be of particular importance, because the Commission was engaged in developing a system of law which should be universally acceptable to the new nations of Asia and Africa. Another important function of the Committee, provided for in its Statutes, was to consider any legal problems referred to it by the Governments of member States.
3. He regretted that so far the Committee had been unable to submit its views on the subjects discussed by the Commission. That was because much of the Committee's time, during the first years of its existence, had been devoted to topics of immediate interest to member countries, such as the status and rights of refugees, problems of dual or multiple nationality, the legality of nuclear tests, the extradition of refugee offenders and the status and treatment of aliens. The Commission's reports were carefully studied by the Committee at its regular annual sessions, and the recommendations they contained had been found to provide the best possible solutions for problems about which opinions differed in different parts of the world. That could perhaps be ascribed to the inclusion in the Commission's membership of eminent jurists from Asia and Africa, as well as to the breadth of vision of its other members. The Committee had twice been called upon to advise its member Governments on draft articles prepared by the Commission: first, in connexion with the preparations for the United Nations Conference on Diplomatic Intercourse and Immunities, when the Commission's views had been found to differ from those of the Committee on only two minor matters; and a second time in connexion with the Law of Treaties, when the Commission's draft articles had been found generally acceptable.
4. The Committee greatly valued its close relations with the International Law Commission and hoped to be able to assist in its future work, particularly that on the topics of State responsibility, the right of asylum and the treatment of aliens. Although it had only eleven fully participating members, the Committee had found that its views were treated with respect even by countries outside the Asian and African regions. That was perhaps because its membership was fairly representative of those regions and its sessions were usually attended by a large number of observers from non-member countries and regional organizations.
5. He noted with satisfaction that the International Law Commission had been represented at the Committee's sessions since 1961, on three occasions by its Chairman. He was particularly grateful to Mr. Ago, Mr. Jiménez de Aréchaga and Mr. Yasseen for their contributions to the Committee's work. The value of that kind of co-operation had recently been stressed in an article by Robert R. Wilson in the *American Journal of International Law*, entitled "A Decade of Legal Consultation: Asian-African Collaboration".¹ He hoped that the Commission would be represented at the Committee's next session, which was to be held in Pakistan in December 1968. The main topic for consideration on that occasion would be the law of treaties, in the light of the first session of the United Nations Conference on that subject.
6. The CHAIRMAN, thanking Mr. Sen for his statement, said that the International Law Commission was gratified at the excellent co-operation maintained with the Asian-African Legal Consultative Committee for several years. That co-operation was mutually beneficial and should be further developed in the future. He also thanked Mr. Sen for his invitation to the Commission to send a representative to the Committee's next session; as soon as its Chairman returned, the Commission would decide on a representative.
7. Mr. YASSEEN said he had had the honour to attend the last session of the Asian-African Legal Consultative Committee at the invitation of the Commission's previous Chairman, Sir Humphrey Waldock, who had been unable to be present himself. He had been struck by the high standard of representation in the Committee, the quality of whose debates had been excellent. The Committee should have a privileged position in the Commission's relations with other bodies, for under its Statutes, all questions on the agenda of the International Law Commission must also be placed on the Committee's agenda, so that it could define the position of the Asian-African countries regarding those questions. An international community based on the idea of equality called for universal participation in the codification of international law. That work should be guided by the views of the peoples of all parts of the world, whose aspirations should be taken into account. In that respect, the Asian-African Legal Consultative Committee was rendering a great service to the Commission and to the work of codification of international law in general.
8. He had been able to note at the Committee's last session, which had been largely devoted to the draft articles on the law of treaties, that the Committee approached its problems from a universalist viewpoint, and did not attempt to obstruct the codification of general international law by introducing regionalist considerations. It had approved the great majority of the Commission's recommendations and had confined itself to making reservations on questions which affected interests considered vital by the countries of Africa and Asia.
9. He expressed his gratitude for the warm and very friendly welcome he had received and especially thanked the Chairman of the Committee's last session and its

¹ See *American Journal of International Law*, 1967, vol. 61, No. 4, p. 1011.

Secretary-General. The Secretary-General of the Asian-African Legal Consultative Committee was not merely an administrative official. He took part in the Committee's scientific work and performed the duties of Special Rapporteur for several items on its agenda. He (Mr. Yasseen) had had the pleasure of observing the zeal, experience and learning with which Mr. Sen performed those duties. He thanked him once again for showing a kindness worthy of his country and expressed his gratitude for their friendly welcome to Mr. Nagendra Singh, his colleague on the International Law Commission, and Mr. Krishna Rao, the Legal Adviser to the Indian Ministry of Foreign Affairs.

**Relations between States
and inter-governmental organizations**

(A/CN.4/195 and Add.1; A/CN.4/203 and Add.1-2; A/CN.4/L.118 and Add.1-2)

[Item 2 of the agenda]
(*resumed from the previous meeting*)

ARTICLE 7 (Appointment of the same permanent mission to two or more organizations) (*continued*)²

10. The CHAIRMAN said that the Commission had completed its discussion on article 7, which all members, with one exception, wished to retain. He suggested that article 7 should be referred to the Drafting Committee.

*It was so agreed.*³

ARTICLE 8

11. *Article 8*

Appointment of a permanent mission to the host State and/or one or more other States.

The sending State may appoint a permanent mission to the host State and/or one or more other States.

12. The CHAIRMAN invited the Special Rapporteur to introduce article 8 (A/CN.4/203/Add.1).

13. Mr. EL-ERIAN (Special Rapporteur), introducing article 8, read out paragraphs 5, 6 and 7 of his commentary. He pointed out that the case in which a permanent mission or its members were accredited to more than one State was regulated by article 5 of the Vienna Convention on Diplomatic Relations.

14. The CHAIRMAN,* speaking as a member of the Commission, said that article 8 seemed redundant, and in any case it was not very happily worded. In practice, it was very rare for an established permanent mission to an international organization to be subsequently appointed to the host State, and possibly to one or more other States, as a permanent diplomatic mission. On the other hand, a permanent diplomatic mission or one of its members was often appointed to an international organization whose seat was in the receiving country or in a third country, as the commentary pointed out. The Special

Rapporteur had probably wished to cover the latter situation and make it clear that there were no obstacles to a State being represented in an international organization by a member of its permanent diplomatic mission.

15. Consequently, if the Commission decided to retain the article, it should be amended to read: "A State may appoint to an international organization a member of its permanent diplomatic mission accredited to the host State or to a third State." It should, however, be possible to delete article 8, since article 9 stipulated that the sending State could freely appoint the members of the permanent mission; and if the choice was free, there was nothing to prevent the State from choosing members of its permanent diplomatic mission, who were generally also well qualified for duties in international organizations.

16. Mr. YASSEEN regretted that he could not agree with the Chairman. He regarded the article as useful because it reflected an existing practice and because the absence of such an article might hinder the development of that practice.

17. He had reservations about the drafting, however. He doubted whether a State could appoint the permanent mission as such to the host State or other States. The words "permanent mission" should be replaced by "permanent representative", for it was usually the head of the permanent mission who was accredited personally to the host State, just as in diplomatic practice it was the ambassador, and not the embassy, who was accredited to the receiving State. Lastly, he proposed that the word "appoint" should be replaced by the word "accredit".

18. Mr. KEARNEY said he was sorry to disagree with Mr. Yasseen, but in view of the Special Rapporteur's statement he considered article 8 superfluous. If the receiving State was free to accept or reject a proposal that a member of a permanent mission should be accredited to it as head or member of a diplomatic mission, as provided in article 5 of the Vienna Convention on Diplomatic Relations, that seemed to cover the situation. The receiving State could refuse its *agrément* on the grounds that it did not wish the member of the permanent mission to be accredited to it in a diplomatic capacity. Thus article 8 was, at the most, a hortatory statement designed to encourage the appointment of members of permanent missions as members of diplomatic missions, and it might have some retroactive effect on the Vienna Convention.

19. Mr. RAMANGASOAVINA said he thought that, on the contrary, the article was necessary and met a practical need. It was not unusual for a young State to entrust the head of an already established permanent mission to a universal or regional international organization with the duties of ambassador to the host State. For instance, the head of the permanent mission of Madagascar to the European Economic Community had also been appointed ambassador to Belgium and permanent representative to the United Nations Office at Geneva. That practice was also followed by other countries.

20. The wording of the article was not very clear and should be reviewed by the Drafting Committee. He proposed that it should read: "The sending State may also entrust the permanent mission with diplomatic functions in the host State ...".

* Mr. Castrén.

² See previous meeting, para. 45.

³ For resumption of discussion, see 981st meeting, paras. 2-59.

21. Mr. ROSENNE said that article 8 would be unnecessary if the matter was fully covered by the Vienna Convention, but he was not certain that it was. He hoped, therefore, that the article would be very closely examined by the Drafting Committee.

22. There appeared to be some confusion about paragraphs 5, 6 and 7 of the commentary; those paragraphs properly belonged in the commentary on article 9, since they dealt with the members of the permanent mission rather than the mission as such.

23. The Special Rapporteur had stated that the provisions of the Vienna Convention should take precedence, but in view of article 26 of the draft articles on the law of treaties,⁴ that fact should be clearly stated in article 8 as well as in the commentary.

24. With regard to drafting, he repeated his objection to the use of the expression "and/or" and requested that some less ambiguous wording be used. Moreover, States did not, in fact, appoint permanent missions, as defined in article 1, to other States; they appointed diplomatic, consular or special missions. The formulation of article 8 showed that the term "sending State" was the correct one, for that and for other related articles.

25. Mr. USHAKOV observed that paragraph 5 of the Special Rapporteur's commentary stated that article 8 corresponded to article 5, paragraph 3, of the Vienna Convention on Diplomatic Relations.⁵ But the latter provision dealt with the converse situation. For whereas article 8 of the draft provided for the case in which a permanent mission to an international organization was additionally charged by the sending State with diplomatic functions, article 5, paragraph 3, of the Vienna Convention covered the case of the head of a diplomatic mission who was also appointed as the sending State's representative to an international organization. Moreover, article 5, paragraph 3, of the Vienna Convention referred to "A head of mission or any member of the diplomatic staff of the mission", whereas article 8 of the draft referred to the mission itself. Consequently, the two articles did not correspond.

26. He agreed however, that there might be cases in which it would be useful for the sending State to entrust diplomatic functions to one or more members of its permanent mission to an international organization; but then the relevant provisions of the Vienna Convention on Diplomatic Relations would have to be complied with. According to article 2 of that instrument, however, the establishment of permanent diplomatic missions took place by mutual consent, whereas draft article 8, as it stood, provided for the appointment of "a permanent mission to the host State and/or one or more other States" as though that were a purely unilateral act. Again, article 12 of the Vienna Convention required the prior express consent of the receiving State for the establishment of offices of the mission in localities other than those in which the mission itself was established. The condition of prior express consent was not included in draft article 8; thus the article was not in conformity with

the provisions of the Vienna Convention on Diplomatic Relations and could not be accepted by States.

27. Consequently, if a provision of that kind was to be retained, as Mr. Yasseen advocated, it would have to be very different from draft article 8. As Mr. Yasseen had pointed out, it should refer to the permanent representative, not to the mission itself. It should also conform to the rules established by the Vienna Convention on Diplomatic Relations, in particular, those relating to the consent of receiving States.

28. Mr. ALBÓNICO said that if the Commission wished to codify existing practice, article 8 was necessary and should be retained. He agreed with Mr. Ushakov, however, that it did not really correspond to article 5 of the Vienna Convention. Moreover, as it stood, the article was perhaps not sufficiently clear. He therefore proposed that it should be amended to read: "The sending State may appoint a permanent mission accredited to an international organization to the host State and/or one or more other States".

29. Mr. USTOR said that, while there might be some duplication between article 8 and the Vienna Convention, he thought that the article should be retained and that it should be drafted in language which was as close as possible to that of the corresponding provision of the Vienna Convention. Moreover, since the Vienna Convention did contain a provision to the effect that the head of a diplomatic mission could act in some other capacity, the Commission should consider the possibility of other duplications of office by members of permanent missions. The head of a permanent mission, for example, might conceivably be entrusted with consular functions or appointed as an observer to some other international organization. He hoped that the Commission would consider all those possibilities in connexion with articles 7 and 8.

30. Mr. AMADO drew the Commission's attention to paragraph 7 of the commentary, which showed that the Special Rapporteur had been aware of the question raised and provided an answer. He (Mr. Amado) was in favour of draft article 8, subject to acceptance of Mr. Yasseen's proposal that it should refer to the permanent representative rather than to the permanent mission.

31. Mr. BARTOŠ pointed out that under article 5, paragraph 3, of the Vienna Convention on Diplomatic Relations and article 17, paragraph 2, of the Vienna Convention on Consular Relations, the head of a permanent diplomatic mission, a member of its diplomatic staff or a consular officer could act as representative of the sending State to an international organization, even without permission from the receiving State. In draft article 8, the Special Rapporteur had adopted a different approach: he had referred not to individuals, but to the permanent mission itself, and said that it could be appointed to represent the sending State in the host State or other States. The case covered by the article was infrequent, but it could happen that the members of a permanent mission to an international organization were also accredited to a State, but retained their status as members of the permanent mission. For instance, the permanent mission of Yugoslavia to the United Nations

⁴ See *Yearbook of the International Law Commission, 1966*, vol. II, p. 214.

⁵ See United Nations, *Treaty Series*, vol. 500, p. 100.

in New York had for some time constituted a sort of reserve on which the Yugoslav Government drew when it needed to send a chargé d'affaires *ad interim* to an American State. He accepted the idea expressed in article 8, but believed, like other speakers, that the article should refer to the members of the permanent mission, not to the mission itself.

32. Members of a permanent mission appointed to represent the sending State in the host State or other States did not thereby lose their status as members of the permanent mission. That rule should be embodied in the text of the article itself. Similarly, under article 15, paragraph 4, of the Vienna Convention on Consular Relations, a member of a permanent diplomatic mission who was put in charge of a consulate did not lose his status as a diplomatic agent.

33. The question of the *agrément* or *exequatur* need not be mentioned in article 8, for Part II of the draft dealt only with the position of members of permanent missions to international organizations. The functions those persons could perform as diplomatic representatives would be governed by other rules of international law, in particular those of the Vienna Convention on Diplomatic Relations.

34. Some members of the Commission had envisaged the possibility of a member of a permanent mission being called upon to perform consular functions. That was an interesting idea. He recalled that the United States of America, as host State to the United Nations, had made a reservation on the appointment of consular officials as members of permanent missions to the Organization. At the time, before the adoption of the Vienna Convention on Consular Relations, that restriction had been admissible, since members of permanent missions ranked as diplomats, whereas, in the absence of a special agreement, consular officials had a different status. The reservation had never been applied in practice, but it had not been withdrawn either, so that a State which disregarded it could not be considered to have acted in good faith. On the other hand, the Consul-General of France at Geneva had for years also been permanent representative to the United Nations Office. That situation had created no difficulties, because under an agreement between Switzerland and France, consuls-general ranking as ministers plenipotentiary enjoyed diplomatic privileges.

35. Those examples showed that it might be advisable for the draft articles to cover the question of the plurality of functions, where the functions of consul were combined with those of permanent representative or of members of a permanent mission to an international organization. A rule of international law on the subject already existed in the Vienna Convention on Consular Relations, and it was not only applied between States Parties to that Convention, but also constituted a general source of international law for other States invoking it. The Commission should take care that the texts it prepared did not conflict with texts already in force.

36. In Part IV of the draft, concerning observers,⁶ the Commission could specify that the members of a permanent mission to an international organization could

also perform the functions of observer in another organization. The Consul-General of Yugoslavia at Strasbourg acted both as its representative and as its observer in the Council of Europe, depending on whether the Council was dealing with questions in respect of which Yugoslavia was considered to be an associate member, or with other questions. The Council was, of course, a regional organization, but the same situation might arise in a universal organization.

37. Mr. REUTER said he thought there was almost general agreement on two points. First, despite the objections raised by Mr. Castrén and Mr. Kearney, it was considered that the Special Rapporteur had done well to tackle the problem dealt with in article 8 of his draft. Secondly, it seemed that the article should refer to the members of the permanent mission, not to the mission itself.

38. Opinions differed, however, when it came to deciding what the relationship should be between article 8 and the other rules of international law, whether they were to be found in multilateral or bilateral treaties or in customary law. The most satisfactory solution might be to avoid too precise and complicated wording. He would suggest a formula such as: "No provision of the present articles shall prevent the members of a permanent mission to an international organization from being entrusted with the functions of..." followed by a fairly extensive enumeration including not only the functions of a diplomatic representative, but also those of a consular official, a member of a special mission and an observer. Such a formula would make it clear that the Commission was not laying down any new condition, but respecting existing conditions. The Commission could not call existing rules in question because of the rules it was formulating on permanent missions to international organizations.

39. Mr. YASSEEN said it was generally considered that a State to which it was proposed to accredit, as diplomatic representative, a person who was already a member of a permanent mission to an international organization, should be entitled to object to the appointment. But he doubted whether the question was really covered by the Vienna Convention on Diplomatic Relations. If the person to be appointed was already an ambassador to another State, the situation was not quite the same as if he was permanent representative to a universal international organization. A mere reference to the Vienna Convention on Diplomatic Relations would not suffice. The convention which the Commission was preparing might be signed and ratified by States which were not parties to the Vienna Convention. If it was desired that the State to which such a person was to be accredited should have some choice in the matter, that should be made clear in the article itself.

40. Mr. BARTOŠ said he fully agreed with Mr. Yasseen. The fact that a person was a permanent representative to an international organization did not *ipso facto* mean that he could be appointed as the sending State's representative to another State. The latter State might have objections, either on account of its relations with the organization or with the sending State, or on personal grounds. Organizations, however, were not entitled to declare a person *non grata*. As the starting-point was

⁶ A/CN.4/203/Add.5.

different, article 8 could not simply be the converse of the corresponding provisions of the Vienna Conventions. The situation contemplated in article 8 should be subject to the general rules of international law relating to diplomatic relations, in other words, not only to the institution of *agrément*, but also to that of declaration as *persona non grata*. The State concerned was entitled to avail itself of all its prerogatives under diplomatic law.

41. Mr. EL-ERIAN (Special Rapporteur), summing up the discussion on article 8, said he had considered the question of the article's position in the draft and had decided that the most appropriate place for it was in the first group of articles, which dealt with the institutional aspects of permanent missions, rather than among the later articles, which dealt in detail with the status of the head and members of the permanent mission.

42. Article 8 was cast as a general formula permitting a member of a permanent mission to be appointed by the sending State as a diplomatic agent. It was fairly common for a member of a permanent mission to be thus accredited to the host State or to a neighbouring State.

43. The position of the article had largely determined its wording, hence the reference to the appointment of a "permanent mission" to the host State or to one or more other States. He agreed that it would be preferable to refer to the appointment of the head of the permanent mission, or a member of the diplomatic staff of the mission, as a diplomatic agent.

44. Another question which had been raised was that of the relationship between the provisions of article 8 and those of article 5, paragraph 3 of the Vienna Convention on Diplomatic Relations. It had even been suggested that article 8 might be superfluous in view of that provision of the Vienna Convention. But article 8 of the draft dealt with the converse case; it was not identical with the corresponding provision of the Vienna Convention, and should be retained for the sake of completeness.

45. Unlike article 5, paragraph 1, of the Vienna Convention, article 8 placed no restrictions on the combination of functions. When a diplomatic agent accredited to a State was also to be appointed as representative to another State, it was normal to require that there be no objection by the first State. But when the head or a member of the diplomatic staff of a permanent mission was to be appointed as diplomatic representative to the host State or to another State, there was no need for the consent of the organization. The difficulties which arose from the possibility of conflict between States were not relevant to relations between an organization and a State.

46. He noted that there was general agreement on the need to make a number of changes in the wording of article 8. The first change was to make the article refer not to the permanent mission itself, but to the permanent representative and the members of the diplomatic staff of the mission. There was also a desire to broaden the scope of the article to cover the possibility of service not only with a permanent diplomatic mission, but also with a consulate, a special mission or the office of the observer to an organization.

47. He proposed that article 8 should be referred to the

Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*⁷

APPOINTMENT OF A JOINT PERMANENT MISSION BY TWO OR MORE STATES

48. Mr. EL-ERIAN (Special Rapporteur) said he had included in his report an explanatory note on each question regulated by the Vienna Convention on Diplomatic Relations on which he had decided not to include a corresponding article in the draft. Those notes were intended to help the Commission decide whether to confirm his decision or not.

49. The note explaining why no article had been included on the appointment of a joint permanent mission by two or more States (A/CN.4/203/Add.1) pointed out that the question did not arise for permanent missions, but did arise for representatives to organs of international organizations and to conferences convened by such organizations. It would therefore be discussed in connexion with Part III of the draft.⁸

50. Mr. ALBÓNICO, referring to dual representation to organs, pointed out that the Secretariat Study quoted in the Special Rapporteur's note stated that such representation was considered acceptable only on two conditions: first, that the rules of procedure of the particular body should clearly envisage the possibility of a single delegate representing more than one government or State; and second, that the official concerned should not act simultaneously as the representative of two countries. He would like to know whether the relevant article of Part III would take those two conditions into account.

51. Mr. EL-ERIAN (Special Rapporteur) said that article 48 (Appointment of a joint delegation to two or more organs or conferences) would conform to those conditions.

52. Mr. REUTER said it was quite exceptional for States to consider appointing a joint permanent mission to an international organization; but that practice might become more frequent in the future. For example, 'a group of States forming a customs union might find it worth while to appoint a joint permanent mission to an economic organization. Such a mission could be regarded as being sent by their restricted organization to the more general one. But in fact, particularly in a customs union, States did not find it very easy to take the step of giving the union a legal personality having the right of representation. An intermediate solution might therefore be for such States to appoint a joint permanent mission. However, the Commission could not undertake to solve problems which did not yet exist, on the pretext of progressive development of international law. He was therefore prepared to accept the Special Rapporteur's conclusions.

53. Mr. YASSEEN said he did not think the practice offered any inducement to the Commission to formulate an article on joint permanent missions. He recalled the cry of alarm of Mr. Bartoš when the 1961 Vienna

⁷ For resumption of discussion, see 981st meeting, paras. 60-94.

⁸ A/CN.4/203/Add.5.

Conference had discussed the possibility of several States being represented by the same ambassador; that idea was an innovation.

54. Mr BARTOŠ said he still considered that an institution which allowed several States joint representation was dangerous. There was always the question whether one State could disclaim the acts of the joint representative. In any case, such an institution could impair the sovereignty of a weak State, which was in fact dependent on its partner whose official was vested with the powers of permanent representative.

55. The developing countries had maintained that it was not always possible for them to be represented individually because they had insufficient trained staff and lacked financial resources, and groups of States had therefore resorted to joint representation. That was why the majority had accepted that institution in Vienna in 1961, despite the opposition of slightly less than one third of the participants. Although the Special Rapporteur had not included an article on the subject in his report, he seemed to accept the idea of joint representation. He (Mr. Bartoš) was also willing to accept it, provided that the text expressly stated that a State which was dissatisfied with the acts of the joint representative could contest their validity.

56. Mr. EL-ERIAN (Special Rapporteur) suggested that the Commission should decide provisionally, pending consideration of article 48, not to include an article on the appointment of a joint permanent mission by two or more States.

57. The CHAIRMAN said that if there were no objection, he would assume that the Commission agreed to adopt the course suggested by the Special Rapporteur.

It was so agreed.

The meeting rose at 1 p.m.

953rd MEETING

Thursday, 13 June 1968, at 10 a.m.

Chairman: Mr. Erik CASTRÉN

Present: Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. El-Erian, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Relations between States and inter-governmental organizations

(A/CN.4/195 and Add.1; A/CN.4/203 and Add.1-2; A/CN.4/L.118 and Add.1-2)

[Item 2 of the agenda]
(continued)

1. ARTICLE 9

Article 9

Appointment of the members of the permanent mission

The sending State may freely appoint the members of the permanent mission.

2. The CHAIRMAN invited the Special Rapporteur to introduce article 9 and the accompanying note on the nationality of members of a permanent mission (A/CN.4/203/Add.1).

3. Mr. EL-ERIAN (Special Rapporteur) said that, unlike article 7 of the Vienna Convention on Diplomatic Relations¹ and article 8 of the draft on special missions,² article 9 of his draft did not contain the proviso "Subject to the provisions of articles..." which limited the freedom of the sending State to appoint the members of the permanent mission by reference to a number of restrictive articles. In particular, the question of the *agrément*, either of the organization or of the host State, did not arise.

4. On the question of the nationality of members of a permanent mission, he had included a note analysing the relevant provisions of the conventions on privileges and immunities, host agreements and regional agreements. His analysis showed that the consent of a State was not required for the appointment of one of its nationals to the permanent mission of another State, but that the privileges and immunities of such a person were restricted.

5. In the light of that practice, he had framed article 9 in terms of the freedom of choice of the sending State in appointing the members of the permanent mission. Problems relating to nationality would be dealt with by limitation of privileges and immunities in the appropriate cases under article 38 (Nationals of the host State and persons permanently resident in the host State).

6. Mr. TAMMES said that the freedom of appointment provided for in article 9 meant the absence of restrictions on the sending State in three respects: the size of the permanent mission, the nationality of its members and *agrément* or consent, either by the host State or by the organization itself.

7. On the question of size, he suggested that article 9 should include a proviso reserving the provisions of article 14, which required that the size of the permanent mission should not exceed what was reasonable and normal. Those provisions were rather more flexible than the corresponding article 11 of the Vienna Convention on Diplomatic Relations, but they nevertheless laid down definite legal obligations for the sending State. Article 8 of the draft on special missions might help to solve the problem in so far as it required the sending State to inform the receiving State in advance of the size of the mission and the identity of its members.

8. With regard to the question of nationality, he agreed that it should be left open to the sending State to appoint persons who were not its nationals as members of its permanent mission. But the position should be clearly stated, especially in view of the possibility of a member of a joint permanent mission representing a State other than the sending State. The question arose whether it might not be preferable to give the host State the right to object to the appointment, rather than the right to restrict privileges and immunities in certain cases.

9. The question of the non-requirement of *agrément* or consent by the organization or by the host State, had been

¹ See United Nations, *Treaty Series*, vol. 500, p. 100.

² See *Official Records of the General Assembly, Twenty-second Session, Supplement No. 9*, p. 7.