Document:-

A/CN.4/SR.955

Summary record of the 955th meeting

Topic:

Representation of States in their relations with international organizations

Extract from the Yearbook of the International Law Commission:-

1968, vol. I

various organs of the organization. Article 11 dealt with the question of representation, and its provisions should allay the fears expressed during the discussion of article 6 (Functions of a permanent mission), in particular, regarding sub-paragraph (*b*) which specified the function of representation.

67. With regard to the relationship between paragraphs 1 and 2 of article 11, he had had to choose between a number of possibilities. One was to take the principle of general competence embodied in paragraph 2 and state it as the general rule; but such a formulation would have gone too far. He had therefore taken as his point of departure the idea that it was for the sending State to decide on the organs in which the permanent representative was entitled to represent it and he had embodied that idea in paragraph 1. In paragraph 2, he had endeavoured to consolidate the present tendency of States to give general competence to permanent missions. In the Secretary-General's 1967 report on Permanent Missions, it was recorded that no less than 81 Member States of the United Nations had empowered their permanent representatives to represent them in all organs of the United Nations.

68. At the same time, it was necessary to take into account the varying practices of the specialized agencies. Since the draft articles were intended to regulate the matter for all organizations, he could hardly go beyond the statement of a residuary rule in paragraph 2, with some elements of progressive development.

69. With regard to the wording of paragraph 2, there had been some criticism of the opening proviso: "Subject to the rules of procedure of the organization concerned", on the grounds that rules on credentials were occasionally to be found in a constituent instrument. He would have no objection to replacing those words by: "Subject to the relevant rules of the organization concerned", but in fact the provisions on credentials were usually in the rules of procedure. Paragraph 2 and its opening proviso should, moreover, be so drafted as to show that the competence of the credentials committee of the organ concerned was unimpaired; that committee had power to examine the credentials, a power which the secretary-general did not possess.

70. To sum up, he noted that there had been some support for the idea of combining articles 10 and 11 in one article. He could agree to that course, provided it proved possible to arrive at a comparatively short formulation. But he was opposed to the deletion of paragraph 2 of article 10 and hoped that the Drafting Committee would carefully consider its content before taking a decision.

71. For article 11, some members favoured a formulation beginning with a statement of the general rule in paragraph 2, and continuing with the contents of paragraph 1 as an exception to that general rule; others wished to delete paragraph 1 and redraft paragraph 2. He suggested that the choice be left to the Drafting Committee.

72. In conclusion, he suggested that articles 10 and 11 be referred to the Drafting Committee for consideration in the light of the discussion.

73. Mr. ROSENNE said he still believed that paragraph 2 of article 10, as at present worded, was probably not necessary; but the discussion had shown that the real problem was not so much that of the Secretary-General transmitting information, or even formal reports, to an organ of general competence, as that of keeping other member States, and more particularly the host State, informed of the existence of the permanent mission and of the identity of its head and of the members of its staff. That matter was partly covered by article 15. He therefore suggested that the Drafting Committee consider whether it was necessary to state in article 10 that States other than the host State were entitled, as a matter of law, to receive that information about permanent missions.

74. The CHAIRMAN said that, if there were no objection, he would assume that the Commission agreed to refer articles 10 and 11 to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.[5]

The meeting rose at 1.00 p.m.

[5] For resumption of the discussion on article 10, see 982nd meeting, paras. 83-104, and 983rd meeting, paras. 7-48. For resumption of the discussion on article 11, see 983rd meeting, paras. 49-67, and 984th meeting, paras. 1-28.

955th MEETING

Monday, 17 June 1968, at 3 p.m.

Chairman: Mr. José María RUDA

Present: Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, 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)

ARTICLE 12

1. *Article 12*

Full powers and action in respect of treaties

1. Permanent representatives are not required to furnish evidence of their authority to negotiate, draw up and authenticate treaties drawn up within an international organization to which they are accredited or concluded between their State and the organization.

2. Permanent representatives shall be required to furnish evidence of their authority to sign (whether in full or *ad referendum*) on behalf of their State a treaty drawn up within an international organization to which they are accredited or between their State and the organization by producing an instrument of full powers.

2. The CHAIRMAN invited the Special Rapporteur to introduce article 12 (A/CN.4/203/Add. 2).

3. Mr. EL-ERIAN (Special Rapporteur) said that the provisions of paragraph 1 of article 12 were modelled on the 1962 version of article 4, paragraph 2 (*b*), of the Commission's draft articles on the law of treaties,[1] rather than on the stricter 1966 text of that same provision.[2] The paragraph accordingly specified that permanent representatives were not required to furnish evidence of their authority to negotiate, draw up or authenticate treaties drawn up within an international organization to which they were accredited or concluded between their State and the organization.

4. Since he had written his report, there had been a significant development in the matter. At the first session of the recent Vienna Conference, the Committee of the Whole had adopted article 6 of the draft articles on the law of treaties (Full powers to represent the State in the conclusion of treaties) [3] in a form which was close to the International Law Commission's 1962 approach. Paragraph 2 (*c*) of that article provided that "representatives accredited by States to an international conference or to an international organization or one of its organs" were considered as representing their State" for the purpose of the adoption of the text of a treaty in that conference, organization or organ". The Committee of the Whole had thus reintroduced the idea that a permanent representative did not require to produce full powers for the purpose of the adoption of the text.

5. Paragraph 2 of article 12, which required full powers for purposes of signature, was based on the existing practice of international organizations. There were only limited exceptions to to that rule in IAEA and UNESCO and the limited exemption granted by IAEA was at present under review.

6. Mr. CASTRÉN said he approved of the ideas expressed in article 12. He could accept in principle both paragraph 1, which stated a rule of progressive development, and paragraph 2, which was based on the practice of international organizations, as mentioned in paragraph 3 of the commentary.

7. With regard to the wording of the article, he noted that in several places the French translation departed from the English original, was different from the wording of article 4 of the draft on the law of treaties and did not employ the same terminology in both paragraphs. In paragraph 1, the words "*élaborés dans le cadre*" should be replaced by the words "*rédigés au sein*". In paragraph 2, the words "by producing an instrument of full powers" were unnecessary and should be deleted. The words "*dans le cadre*" should again be replaced by the words "*au sein*". Towards the end of paragraph 2, the word "concluded" should be inserted in the English text before the words "between their State".

8. The wording of paragraph 2 was too categorical. There was probably no necessity to lay down an absolute obligation; it should be sufficient if permanent representatives were required to furnish evidence of their authority on request. The word "shall" in the English text should therefore be replaced by "may" and the French text amended accordingly.

9. Mr. TSURUOKA said that at the first session of the Vienna Conference on the Law of Treaties, both the Drafting Committee and the Committe of the Whole had decided in favour of the expressions which Mr. Castrén had just suggested, and the same expressions should obviously be used in the draft now being prepared. If the Vienna Conference decided at its second session to alter those expressions, the Commission would have to amend its draft, in order to be consistent with the text adopted by the Conference.

10. Mr. USHAKOV said he too considered that the ideas expressed in article 12 were correct. His comments would be directed mainly to the drafting of the article, though they also had some bearing on the substance.

11. Paragraph 1 dealt with two cases: that of the negotiation and conclusion of treaties within an international organization—in the French version, the words "*au sein de*" were to be preferred to "*dans le cadre de*"—and that of the negotiation and conclusion of treaties between a sending State and an international organization.

12. With regard to the first case, he was not sure that the terms "negotiate" and "draw up" were quite correct; they suggested, rather, the work carried out at a conference or between States. Within an organization, it was not the States themselves which negotiated and drafted treaties, but an organ of the organization, which drew them up or prepared them.

13. Further, it was perhaps not necessary to speak of the authority of representatives in such a case; for where the representation of a State in an organ was concerned, any person appointed as a representative of the State to the organ in question was authorized to discuss any question on that organ's agenda. Moreover, it would follow from article 11 that the permanent representative was authorized to represent the State in the different organs and consequently had full powers to participate in the drafting of a convention by any one of them, so that there was no reason to require special powers.

14. In the second case, that of a treaty between the sending State and an international organization, it was again perhaps not necessary to speak of the authority of representatives, seeing that article 6, which dealt with the functions of a permanent mission, provided for negotiation, which obviously included the possibility of negotiating a treaty.

15. In considering paragraph 1 it should also be borne in mind that it was concerned more with the law of treaties than with relations between States and international organizations. Moreover, it should not be forgotten that the Conference on the Law of Treaties had before it a draft resolution recommending the General Assembly to refer to the International Law Commission the study of the question of treaties concluded between States and international organizations or between two or more international organizations.[4]

[1] See *Yearbook of the International Law Commission, 1962*, vol. II, p. 165.

[2] *Op.cit. 1966*, vol. II, p. 192.

[3] A/CONF.39/C.1/L.370.

[4] A/CONF.39/C.1/L.370/Add.7.

16. Paragraph 2 of article 12 was useful; it could and should be retained, but the drafting could be improved. In particular, the word "*conclu*" in the French version, was not satisfactory, because if the treaty was concluded, it was already signed, and the question of authority to sign no longer arose.

17. Mr. ROSENNE said that he had as yet no firm views on article 12, but he shared some of the doubts of previous speakers, particularly since there was to be in Part III of the draft (Delegations to organs of international organizations and conferences convened by international organizations)[5] another article, article 50, also entitled "Full powers and action in respect of treaties".

18. In principle, he had nothing against the ideas contained in article 12 and during the Commission's discussion on the draft articles on the law of treaties he had put forward very much the same views as those of the Special Rapporteur. But the law of treaties had progressed a great deal since those days and article 6 of the draft on the law of treaties had been substantially revised at Vienna by comparison with the Commission's 1966 text; significant changes had been introduced not only in paragraph 1 (*c*), but also in paragraph 1 (*b*). The new text of article 4 of the draft articles on the law of treaties, and perhaps other provisions of that draft, would also have to be taken into account.

19. With regard to the wording of article 12, he saw no need for the reference to negotiation, in view of the Commission's decision in 1965 to drop all references to negotiation from the draft on the law of treaties.[6] Questions of authentication and the adoption of the text were regulated by the draft articles on the law of treaties.

20. There appeared to be only one question covered by article 12 which had not been covered so far in the draft on the law of treaties, either by the Commission or by the Vienna Conference, and that was the question of bilateral treaties between States and international organizations; it was a question which, as he had said at the 781st meeting,[7] could be regulated in the manner proposed by the Special Rapporteur, if the Commission was of the opinion that the matter properly fell within the scope of the present topic. Alternatively, however, the best course might perhaps be to include a paragraph on the subject in the Commission's report for the present session, in the hope that the Vienna Conference would take the matter up at its second session in 1969.

21. If the Commission wished to deal with the question of full powers in the present draft, it would be well advised to follow closely the text adopted at the first session of the Vienna Conference by the Committee of the Whole, subject to any further revision which might be made at the second session. Particular attention should be given to the change in paragraph 1 (*b*) of article 6 on the law of treaties, where the reference to the circumstances of the conclusion of a treaty had been replaced by a reference to the "practice of the States concerned" or to "other circumstances" as evidence of those States' intention "to dispense with full powers".

22. It should be noted that the opinion of the Legal Counsel, referred to in paragraph 3 of the Special Rapporteur's commentary on article 12, and the other opinions indicated in the footnote, related only to multilateral treaties concluded under the auspices of an international organization and to the role of the Secretary-General as depositary; they did not relate to a bilateral treaty concluded by a State with an international organization—a type of treaty for the conclusion of which a permanent representative frequently did not require full powers. The case was similar to that of the head of a permanent diplomatic mission who was often empowered to conclude treaties on behalf of the sending State with the receiving State, especially treaties in simplified form.

23. Article 12, if retained, should be limited to matters not already covered by the texts adopted at the Vienna Conference, and the wording should be brought into line with those texts. The article should be confined to treaties between the sending State and the organization to which the permanent representative was accredited; but if the Commission reached the conclusion that the subject properly belonged to the law of treaties, instead of adopting an article it should include a passage in its report for the attention of the second session of the Vienna Conference.

24. Mr. TAMMES said he agreed with the grounds put forward in paragraph 2 of the Special Rapporteur's commentary for adopting a wider interpretation of the practice than that which had been accepted by the Commission in 1966. The accreditation of a permanent representative in that capacity should imply, without the need to produce any further evidence, the authority to negotiate, draw up and authenticate treaties of the type mentioned in article 12. The proposed wider authority should extend to any negotiation conducted in accordance with Article 33 of the Charter with a view to the termination or suspension of the operation of a treaty.

25. Paragraph 2 was in keeping with existing practice and with the strong views of the United Nations Secretariat; it provided sufficient safeguards for the comprehensive negociating capacity provided for in paragraph 1 of the article.

26. Mr. USTOR said that the main issue was whether the contents of article 12 should be included in the present draft or left to the law of treaties. The fact that no provision on the power to conclude treaties had been included, either in the 1961 Convention on Diplomatic Relations or in the draft on special missions, militated against the inclusion of an article on the lines of article 12. However, since provisions conferring a certain general competence on the permanent representative had been included in article 11, there was something to be said for retaining article 12, paragraph 2 of which defined the limits of that general competence by excluding the authority to sign a treaty. Hence he would not oppose the inclusion of article 12, with which he was in general agreement, subject to the drafting points already made by other speakers.

27. Paragraph 2 envisaged two possibilities: first, that of a treaty signed within an international organization; second, that of a treaty concluded between the sending

[5] A/CN.4/203/Add.5.

[6] See *Yearbook of the International Law Commission, 1965*, vol. I, p. 255.

[7] *Ibid.*, p. 42, paras. 82-83.

State and the organization. But a third possibility could arise from the functions of the permanent representative in multilateral diplomacy: the permanent representative could be authorized by his State to sign a treaty concluded by that State with another member State of the organization; the treaty might or might not be connected with the business of the organization. In view of that third possibility, he suggested the elimination of the dual enumeration in paragraph 2; that paragraph should simply state that the permanent representative was required to furnish evidence of his authority to sign a treaty on behalf of his State by producing an instrument of full powers.

28. Mr. ALBÓNICO said that article 12 was necessary to complete the provisions of the draft on relations between States and international organizations.

29. The provisions of the article should conform in substance to the relevant provisions of the draft articles on the law of treaties being considered by the Vienna Conference. They should also conform to United Nations practice, which was the most important in the matter.

30. Article 12 should be drafted in flexible terms, since treaties of the type it referred to would, in the future, constitute the main source of codified international law. It should deal with three types of treaty. The first was treaties concluded by States with an organization; examples of such treaties were those provided for in Articles 43, 62, 77 and 105 of the United Nations Charter. The second was treaties between member States of an organization concluded under its auspices. The third was bilateral treaties between two members of an organization, concluded on the recommendation of the organization. An example of that type of treaty would be a treaty entered into by two States at the behest of the Security Council, in the interests of the maintenance of peace—a type of treaty not clearly covered by article 12.

31. The drafting points which had been raised during the discussion should be referred to the Drafting Committee.

32. Mr. KEARNEY said he had some doubts regarding the use of the term "permanent representative" in article 12. He was not sure that all representatives in a permanent mission could be considered as having the authority specified in article 12 in regard to the treaty-making process. The "permanent representative" had been defined as the head of a permanent mission, but the representative engaged in the treaty-making process might not be the head of a permanent mission.

33. Referring to the question of a treaty between a State and an international organization, he pointed out that article 12 dealt with only half of the problem: it set out rules relating to evidence of the full powers of the representative of the State, but said nothing about the full powers of the representative of the international organization engaged in the treaty negotiation. He doubted, however, whether that problem formed part of the subject of the present set of draft articles. That raised the question whether it would not be better to consider the entire subject of treaties to which international organizations were parties in connexion with the study recommended by the Vienna Conference on the Law of Treaties, thus avoiding a piecemeal approach.

34. He also shared the doubts which had been expressed concerning the desirability of retaining article 12, in view of the provisions adopted by the Vienna Conference. Any attempt to deal with the same matter in two separate conventions would involve the danger of conflict between the two instruments. For example, it was apparent from the wording of article 12 that the expressions "to negotiate" and "draw up" were used as the equivalent of "adoption" in article 6 of the draft articles on the law of treaties.

35. A thorough study should be made of article 12 in order to determine whether it would add anything to the draft on the law of treaties and also to ensure that its provisions did not conflict with those adopted at Vienna. If the conclusion reached was that article 12 could only repeat what was already in the Vienna text, there would seem to be no justification for retaining it.

36. Mr. NAGENDRA SINGH said that he supported the principles underlying article 12 as proposed by the Special Rapporteur, but its provisions should be carefully drafted so as not to conflict with those adopted at Vienna and so as to avoid duplication. The Drafting Committee should consider what were the best terms to replace "to negotiate" and "draw up"; perhaps the reference should be to the discussion and formulation of the text of a treaty.

37. In the conclusion of a treaty, it was necessary to draw a distinction between two stages: the preparatory stage and the stage of formulation of the treaty. From his experience of treaty-making in a specialized agency, he could say that in the preparatory stage there was no need for a permanent representative to produce full powers. Such powers were, however, necessary at the stage of formulation of the treaty.

38. He supported the element of progressive development embodied in the departure from the unduly strict approach adopted by the Commission in 1966.

39. Mr. REUTER said he recognized the existence of the problem dealt with in article 12 and agreed that the Commission should try to solve it. But before it could pronounce on the article it would need, first, to see the report of the Committee of the Whole on the first session of the Conference on the Law of Treaties, and, secondly, to have a fairly clear idea of the contents of article 50 of the draft, which also dealt with full powers and action in respect of treaties.

40. The expression "within an international organization" might be suitable, but it was questionable whether it covered the cases of organs of organizations and conferences convened by organizations, which were dealt with in Part III of the draft. It was also necessary to decide what difference in meaning there was between the term "within" and the expression "under the auspices of", which was the expression used by the United Nations Legal Counsel.

41. Paragraph 2 dealt with signature, but not all agreements concluded in organs of international organizations were signed.

42. Article 12 thus raised serious drafting problems, and he therefore hoped that the revision of the text would be deferred until the Commission had more precise information before it.

43. Mr. EUSTATHIADES said he agreed with Mr. Reuter that it would be useful to know the contents of article 50 before finally settling the questions raised by article 12. Regardless of whether the French version used the expression "*dans le cadre de*" or "*au sein de*", a distinction would have to be made between treaties drawn up in an organ of an international organization and treaties drawn up at a conference convened under the auspices of an international organization.

44. He endorsed the Special Rapporteur's conclusion, set out in paragraph 2 of his commentary, in favour of a rule entailing progressive development of international law.

45. Mr. EL-ERIAN (Special Rapporteur) said he wished to reply to the preliminary questions which had been raised.

46. With regard to the relationship between article 12 and article 50, the problems dealt with in article 12 did not arise in the same manner for the representatives to organs and conferences dealt with in article 50: those representatives had to produce credentials in order to represent their State and to participate in all the activities of the organ or conference concerned. The activities would include the preparation of a convention, so that the negotiations would be covered by the credentials.

47. It should also be remembered that the Commission had not yet decided whether to include in the draft articles a Part III dealing with delegations to organs of international organizations and conferences convened by international organizations. In view of that fact, and since, in the case of permanent representatives, there arose the problem of their *ex officio* powers in the treaty-making process, the question of the retention of article 12 should not be connected with article 50.

48. Another preliminary question which had been raised was whether article 12 could be dispensed with on the grounds that neither the 1961 Convention on Diplomatic Relations nor the draft on special missions contained any provisions on the authority to sign treaties. His first inclination had been to follow those precedents but, on reflection, he had reached the conclusion that the present draft could make a slight departure from them. The draft dealt with the powers of permanent representatives and, for the sake of completeness, it should include a provision on full powers and action in relation to treaties.

49. He fully agreed that the provisions of article 12 should be scrupulously co-ordinated with whatever provisions were adopted by the Vienna Conference on the Law of Treaties. The article should only supplement the provisions of the draft articles on the law of treaties, not overlap with them. The Conference, however, had decided to confine the future convention on the law of treaties to treaties concluded between States; hence it would not deal with treaties between States and international organizations, though it would deal with treaties concluded within international organizations, which were, of course, treaties between States.

50. He would therefore suggest that the Commission proceed with its work on article 12 on the basis that there would not necessarily be a subsequent article on full powers and action in respect of treaties by delegations to organs of international organizations and conferences convened by international organizations. The Commission should also co-ordinate both the substance and the terminology of article 12 with any decision that might eventually be taken by the Vienna Conference. By the time the Commission came to consider the present draft on second reading, it should have before it the results of the second session of the Vienna Conference and be able to ensure that there was no conflict between the provisions of the future convention on the law of treaties and the present draft.

51. Mr. USHAKOV said that he found the English expression "within an international organization" sufficiently clear; the French version should read "*dans*" rather than "*dans le cadre de*".

52. The words "treaties drawn up within an international organization" obviously meant treaties drawn up in the organs of an organization, so that it was a matter of representation in those organs. If the Commission wished to retain article 12, paragraph 1, the text should refer only to the conclusion of treaties between the sending State and the international organization, not to conferences, which were a separate matter.

53. The CHAIRMAN, speaking as a member of the Commission, said he did not think that paragraph 1 was in conformity either with the practice of international organizations or with the discussions which had taken place on that point at the Vienna Conference.

54. In the case of treaties concluded between States and international organizations, there was no doubt that permanent representatives were the only ones with the capacity to negotiate and draw them up; but when a treaty was drawn up under the auspices of the organization, those functions could be performed by any representative accredited to the organization, not only by permanent representatives. Article 6, paragraph 2 (*c*) of the draft articles on the law of treaties [8] referred to "representatives accredited by States" and not to permanent representatives; moreover, article 13 of the Special Rapporteur's draft specified that a permanent mission consisted of "one or more representatives of the sending State from among whom the sending State may appoint a head". Hence, if the term "permanent representatives" were retained in article 12, the logical conclusion would be that the other members of the mission were not authorized to negotiate and draw up treaties. It was important that article 12 should conform with the articles on the law of treaties.

55. The question of a representative's authority to authenticate treaties, as distinguished from negotiating and drawing them up, was a delicate one, since it involved granting powers that went beyond a representative's normal functions.

56. He fully approved of paragraph 2, though the Spanish text needed some revision.

57. Mr. BARTOŠ said he supported article 12, paragraph 1, which established a presumption that permanent

[8] See *Yearbook of the International Law Commission, 1966*, vol. II p. 192.

representatives were authorized to negotiate, draw up and authenticate the texts of treaties drawn up within an international organization. That solution accorded with the practice of a great many international organizations and had already been adopted by the Commission in the draft articles on the law of treaties. But the expression "within an international organization" was unsatisfactory; treaties concluded at conferences held under the auspices of international organizations should also be covered.

58. In drafting article 12, paragraph 2, the Special Rapporteur had remained faithful to the old United Nations practice. He personally agreed with that approach, even though a contrary tendency was developing. But the solution to be adopted in article 12, paragraph 2, must be consistent with the future convention on the law of treaties. It was unthinkable that two different systems should be established by two instruments both emanating from the Commission. In his opinion the provisions of the draft articles on the law of treaties should prevail, because they dealt with the real substance of the matter, whereas the present draft was concerned only with a secondary aspect of it.

59. Mr. TABIBI said that article 12 was necessary, and he fully supported the idea underlying it.

60. Paragraph 1 reflected the present practice of international organizations, but paragraph 2 established a régime slightly different from that provided for in the draft articles on the law of treaties, inasmuch as the latter dealt with treaties between States, whereas article 12 covered treaties drawn up within an international organization or concluded between a State and an organization. After the second session of the Vienna Conference, the Commission should be in a better position to harmonize the two texts.

61. Mr. ROSENNE said that Mr. Bartoš's observations led him to ask whether article 12, if retained, should not state that its provisions would be subject to the terms of the credentials issued by States to their permanent representatives. The sending State was surely entitled either to broaden or to restrict, as it saw fit, the authority it gave to its representatives. It was true that the credentials issued to permanent representatives in the United Nations did sometimes contain certain general standing powers, but the Secretariat frequently had to verify exactly how far those powers extended in a concrete case.

62. In paragraph 2, the phrase "drawn up within an international organization" was far from clear to him in English or in any other language.

63. Mr. EUSTATHIADES said that the words "*conclu*", in both paragraphs of the French version of article 12, and "concluded", in paragraph 1 of the English version, were incorrect. A concluded treaty had already passed through several stages, including negotiation, drawing-up, authentication and signature. He proposed that in paragraph 1 the phrase be amended to read "or treaties between their State and the organization", and in paragraph 2 "or a treaty between their State and that organization".

64. Mr. EL-ERIAN (Special Rapporteur), summing up the discussion, said it had been asked whether the negotiation of treaties could properly be included among the functions of permanent representatives, and the Chairman had raised the question whether the function of negotiating a treaty should be restricted to permanent representatives. Those difficulties could perhaps be overcome by using the language of article 6, paragraphs 2 (*b*), and (*c*), of the draft articles on the law of treaties, which merely said: "... for the purpose of adopting the text of a treaty". He had deliberately introduced the concept of negotiation of treaties as one of the functions of permanent missions, because it was in conformity with present practice in multilateral diplomacy.

65. When the South West Africa cases had been before the International Court of Justice in 1966,[9] for example, South Africa had challenged the jurisdiction of the applicants, Ethiopia and Liberia, on the ground that they had not exhausted all possible forms of negotiation, as required under article 7 of the Mandate. The Court had ruled, however, that the discussion of the question of South West Africa in the General Assembly could be construed as "negotiations" for the purposes of that article.

66. Mr. Kearney had pointed out that a permanent representative was defined in article 1 (*c*) as "the person charged by the sending State with the duty of acting as the head of a permanent mission". Would members other than the head of the permanent mission, then, have authority to negotiate, draw up and authenticate treaties? That was a question which he (the Special Rapporteur) thought should be discussed in connexion with article 13, concerning the composition of the permanent mission.

67. The Chairman had pointed out that article 6, paragraph 2 (*c*), of the draft articles on the law of treaties referred to "representatives", not to "permanent representatives". That might be because the paragraph referred to representatives who were accredited either to an international conference or to an organ of an international organization; obviously, permanent representatives could only be accredited to an organ of an international organization. He agreed that article 12 should not be confined to permanent representatives, and hoped that the Drafting Committee would take that point into account.

68. Article 12 did not cover treaties concluded between two or more States relating to the work of an international organization; it referred to only two kinds of treaty: those concluded between a State and an international organization, and those drawn up within an organ of an international organization. The draft convention on special missions, for example, would be drawn up within the Sixth Committee, which was an organ of the General Assembly.

69. Two or three members had questioned whether article 12 was necessary at all, since the subject seemed to belong more properly to the law of treaties. The majority, however, were in favour of the article, although some members thought that, in order not to duplicate the draft articles on the law of treaties, it should deal only with treaties concluded between a State and an international organization. He himself would prefer to have a self-contained article which would refer only to the powers of permanent representatives.

[9] See *I.C.J. Reports, 1966*, p. 6.

70. Paragraph 2 presented no difficulties, although Mr. Kearney had said he would prefer the question of the powers of representatives of international organizations also to be dealt with. In view of the other important items on the Commission's agenda, however, it was uncertain when it would be able to consider the representation of international organizations.

71. Mr. Rosenne had suggested that a sending State might wish to broaden or restrict the authority given to its representatives. There was nothing to prevent a State from specifying the exact extent of its representative's authority in his credentials; if the credentials were silent on the point, paragraph 1 would operate as a residuary rule.

72. To conclude, there appeared to be general agreement that article 12 should follow the terminology of article 6, paragraphs 2 (*b*) and (*c*), of the draft articles on the law of treaties. As Mr. Tabibi had observed, the Commission could subsequently harmonize its text with the final text drawn up at the second session of the Vienna Conference. In the event of a conflict between the two, the Vienna articles would prevail.

73. Mr. YASSEEN said he fully endorsed the Special Rapporteur's conclusions. Article 12 represented common ground between the present draft and the draft articles on the law of treaties. It would therefore be essential to harmonize its provisions with those finally adopted at the second session of the Vienna Conference.

74. He stressed that the article met real needs. It should cover not only treaties concluded between States and international organizations, but also treaties concluded within an international organization, for such treaties were becoming increasingly numerous. The fact that one particular class of treaty was already covered by the draft articles on the law of treaties was no reason for omitting it from the present draft. Every international convention should be self-sufficient. Unlike internal laws, which affected previous legislation and were in turn affected by new laws, international conventions must be independent, since they did not all have the same contracting parties.

75. The need for such independence did not preclude the textual harmonization to which reference had been made. That was a matter for the Drafting Committee.

76. The CHAIRMAN suggested article 12 be referred to the Drafting Committee.

It was so agreed.[10]

The meeting rose at 5.50 p.m.

[10] For resumption of discussion, see 983rd meeting, paras. 68-81, and 984th meeting, paras. 29-65.

956th MEETING

Tuesday, 18 June 1968, at 10 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, 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)

ARTICLE 13

1. *Article 13*

Composition of the permanent mission

A permanent mission consists of one or more representatives of the sending State from among whom the sending State may appoint a head. It may also include diplomatic staff, administrative and technical staff and service staff.

2. The CHAIRMAN invited the Special Rapporteur to introduce article 13 (A/CN.4/203/Add. 2).

3. Mr. EL-ERIAN (Special Rapporteur) said that, as explained in paragraph 1 of the commentary, article 13 was modelled on the corresponding provisions of the 1961 Vienna Convention on Diplomatic Relations.[1] The use of the terms "permanent representative" and "representative" was discussed in paragraphs 3 and 4 of the commentary, where it was pointed out that the term "representative" was generally accepted as covering all delegates, deputy delegates, advisers, technical experts and diplomatic secretaries of delegations.

4. He had included a note on military, naval and air attachés in order to explain why, unlike the Vienna Convention on Diplomatic Relations, the present draft did not contain any provision on such attachés. They did not normally form part of the staff of permanent missions to international organizations other than restricted organizations having military purposes, but there was one exception to that rule: the permanent members of the Security Council of the United Nations, which included in their permanent missions officials specializing in military, naval and air matters for the purposes of the Military Staff Committee.

5. Mr. KEARNEY said that article 13 was, on the whole, satisfactory; but it raised the problem of ascertaining the consequences of not appointing a head of the permanent mission. It was true that the normal practice was to appoint a head, but article 13 simply stated that "the sending State may appoint a head"; it thus left open the possibility that no such head might be appointed. That permissive formulation was difficult to reconcile with the wording of article 16, which appeared to presuppose that the sending State would appoint a head of the permanent mission. He was not proposing that the provisions of article 13 should be made mandatory, but he thought

[1] See United Nations, *Treaty Series*, vol. 500, p. 96.