

Document:-
A/CN.4/SR.956

Summary record of the 956th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1968, vol. I

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

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. Eusta-

thiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Raman-gasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldoock, 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.

the problem to which he had drawn attention should be examined.

6. He agreed that there was no need to include a provision on the lines of article 7 of the Vienna Convention on Diplomatic Relations. However, since in some instances specialized advisers on military, naval and air matters were included in a permanent mission, the language of the second sentence of article 13 would have to be adjusted to cover such cases. He therefore suggested that the word "advisers" be inserted after the words "diplomatic staff"; that word would also serve to cover other unusual cases.

7. Mr. TABIBI said he agreed with the contents of article 13, but would like to see the wording modified so as not to give the impression that the members of a permanent mission, covered by the term "one or more representatives", were all of equal rank. In the case of a diplomatic mission, the head of the mission held the rank of ambassador, bore letters of credence and was subject to the *agrément* of the receiving State; his position was therefore clear. In the case of a permanent mission to an international organization, it was necessary to stress the importance of the head of the mission, especially as he might be a cabinet minister or person of equivalent rank. It would be wrong to suggest that there was little difference between him and the other representatives serving on the permanent mission.

8. On the question of terminology, the term "resident representative" was perhaps more correct and logical than "permanent representative", which had gained currency because of its similarity to the term "permanent mission". The use of the adjective "permanent" was appropriate for a permanent mission, precisely because permanence was its characteristic feature, distinguishing it from delegations to organs and conferences; but the "permanent representative" was liable to transfer in the same way as any other diplomatic agent.

9. The head of a permanent mission always submitted to the Secretary-General letters of credence from the Minister for Foreign Affairs, sometimes even from the Prime Minister, of his country. That distinguished him from other members of the diplomatic staff of the permanent mission and should be emphasized.

10. The commentary on article 13 should contain a reference to military advisers, for since the adoption of the "Uniting for Peace" resolution,² the permanent missions of States other than the permanent members of the Security Council might need such advisers.

11. Mr. USHAKOV said he shared Mr. Tabibi's opinion that there should be only one permanent representative: the head of the permanent mission. The permanent representation to an international organization was closer akin to a permanent diplomatic mission than to a special mission, because it had the general functions listed in article 6. Moreover, the solution adopted for special missions also took account of special cases in which several members of the special mission were authorized to speak for the sending State.

12. The articles so far examined, particularly articles 10 and 11, had been drafted on the assumption that there

was only one permanent representative. The drafting of article 11, for instance, would be extremely difficult if it had to cover the possibility of there being several permanent representatives. It might perhaps be sufficient to say in the commentary on article 13 that the sending State could appoint more than one permanent representative. It would then be understood that that situation was not to be taken as the basis for the draft articles, but was merely a special case.

13. Mr. USTOR said that article 13 did not involve any question of principle, but only questions of drafting or nomenclature. The Special Rapporteur had had a choice between the model of the 1961 Vienna Convention on Diplomatic Relations, which provided for a head of mission, diplomatic staff, administrative and technical staff and service staff, and that of the draft on special missions,³ which provided for a special category of "representatives", placed above the others. The Special Rapporteur had apparently chosen to include a category of "representatives" in the present draft and the wording of article 13 should be carefully examined in the light of that choice.

14. If article 1 remained as it stood, the head of the permanent mission would be called the "permanent representative" and the other representatives would be called "representatives" without any adjective. That terminology had the disadvantage of making it appear that the head of the permanent mission had a permanent character which his colleagues did not possess. The practice, particularly in New York, showed that a permanent mission usually had a head—the permanent representative—one or two, but not more, deputy permanent representatives, a diplomatic staff, an administrative and technical staff and a service staff.

15. It might make for easier drafting if article 13 were to state that the permanent representative was the head of the permanent mission and that members of the diplomatic staff could be entrusted with representative functions; reference could also be made to the category of deputy permanent representatives.

16. Mr. CASTRÉN said that, on the whole, he could accept draft article 13 subject to drafting changes. He agreed with the Special Rapporteur on the question of military attachés; there were good reasons for not making special provision for them. He was not averse to Mr. Kearney's proposal to add "advisers," to the list of persons composing the permanent mission; they could include military advisers.

17. With regard to the number of permanent representatives, he agreed with Mr. Ushakov that the position of a permanent mission was closer to that of a permanent diplomatic mission than to that of a special mission. The Commission's decision should be based on that consideration.

18. Paragraph 3 of the commentary reproduced what was more fully expressed in paragraph 9 of the commentary on article 1, and could therefore be deleted from the final report.

² General Assembly resolution 377 (V).

³ See *Official Records of the General Assembly, Twenty-second session, Supplement No. 9*, p. 4.

19. Article 1 had been put aside for the time being, so the Commission could consider Mr. Tabibi's proposal to replace the term "permanent representative" by "resident representative" when it reverted to that article.

20. Mr. YASSEEN said it was his view too that permanent missions to international organizations were closer to permanent diplomatic missions than to special missions; it was impossible to visualize a permanent mission without a head. The words "the sending State may appoint a head" were therefore inappropriate and not in keeping with present State practice.

21. It would be better to speak of diplomatic staff instead of "one or more representatives". The members of the diplomatic staff would naturally enjoy the status of representatives. The formula "it may also include diplomatic staff" raised doubts about the position of the representatives by its implication that they were not within the category of diplomatic staff. The article could state that a permanent mission included diplomatic staff whose members had representative status if authorized to represent the State at meetings of the organization.

22. With regard to the rank of the various members of the permanent mission, a point which Mr. Tabibi had raised, even when a permanent mission was headed by a cabinet minister, it was United Nations practice to treat him as an ambassador. He would like to hear from the Secretariat whether the United Nations gave such ministers precedence over other ambassadors. It would be best to follow the model of permanent diplomatic missions in that matter and give precedence according to the date of submission of credentials. There was some difference between the two institutions, however: permanent missions to international organizations could have several ambassadors, whereas permanent diplomatic missions could have only one.

23. Mr. AMADO said he thought that, as worded, article 13 meant that the sending State was bound to choose the head of the mission from among the representatives. But in his opinion, the head of the mission should not be placed on the same footing as its other members: he should come first. The article could say that a permanent mission consisted of a head of the mission and other persons, who would then be enumerated. It was important to keep as closely as possible to the pattern adopted for permanent diplomatic missions.

24. Mr. RAMANGASOAVINA said that, although article 13 was modelled on the corresponding articles of the Vienna Convention on Diplomatic Relations and the draft articles on special missions, it had intentionally been made very flexible because of the difference, which Mr. Yasseen had pointed out, between permanent diplomatic missions and permanent missions to an international organization.

25. A permanent mission to an international organization could include several high-ranking persons, each of whom represented the sending State in his own special field. In that case, the sending State might not appoint a head of mission. At Geneva, for example, a State might appoint one permanent representative to the ILO and another to the High Commissioner for Refugees, without making any distinction between them as to rank, and each

might have service staff attached to him. The wording of the first sentence of article 13 allowed for that situation. The article therefore had his support, subject to any drafting improvements the Drafting Committee might make.

26. Mr. ROSENNE said that there should be no great difficulty over article 13; he agreed with most of the drafting suggestions which had been made, particularly those by Mr. Amado.

27. The Drafting Committee should consider the possibility of merging article 13, amended as proposed by Mr. Amado, with article 5; that would help to solve some of the problems raised during the discussion.

28. Paragraph 5 of the commentary should be adjusted so as to take account of the distinction between diplomatic rank as such, and the titles frequently used in permanent missions. Such titles were very different from those used in diplomatic missions, since they included not only "permanent representative" and "deputy permanent representative" but also "alternate permanent representative".

29. Sir Humphrey WALDOCK said that, in view of the carefully drafted provisions on the use of terms in article 1, perhaps article 13 might not appear absolutely necessary.

30. If retained, article 13 should state that a permanent mission consisted of a head of mission and other staff appointed by the sending State. It would thus both reflect existing practice and serve a useful purpose by providing that there should always be an identifiable head of the permanent mission; both the organization and the host State must be able, in case of difficulty, to look to someone who represented the sending State.

31. With regard to the use of the term "representative" in the draft on special missions, the representative character of such missions had been taken as the criterion for making them subject to the Commission's draft articles, as distinct from non-representative missions which fell outside the scope of that draft. In article 13, a distinction appeared to be made between "representatives" and "diplomatic staff"—a distinction which was slightly awkward because diplomatic staff were inherently representative in character. The difficulty, of course, arose because the term "permanent representative" had become a term of art in United Nations practice and the word "representative" was being used in the article as a technical term.

32. Mr. AMADO said that the allocation of specialized tasks among the various persons composing the permanent mission was a question of internal organization which came under the authority of the head of the mission. In principle, specialists were not heads of missions.

33. Mr. CASTAÑEDA said that the article should be worded so as to make it clear that there could only be one head of mission. Not only was that the practice, but also, as with diplomatic missions, someone had to take the primary responsibility for the sending State's affairs with respect to the international organization and the host country. The first sentence should therefore be amended as proposed by Mr. Amado.

34. It was important to retain the idea that the mission consisted "of one or more representatives". That idea was

followed in practice, particularly in the United Nations, which recognized the existence of representatives who were not necessarily subordinate to heads of mission; they might be persons duly appointed to represent the State in important organs such as the Economic and Social Council. It might even happen that a State's representative in the Security Council was not its permanent representative.

35. The article should also refer specifically to the post of deputy representative, so as to reflect a practice which was of great importance in the United Nations system, but did not exist in the case of diplomatic missions or special missions.

36. Finally, due account should be taken of the fairly frequent case in which a person other than the head of the permanent mission led the delegation to a very important organ, such as the United Nations General Assembly which sat for three months every year. Such delegations could not be assimilated to special missions; provision should be made for them, either in article 13 or in some other article.

37. Mr. EUSTATHIADES said it seemed from the discussion that the Commission wished to rely mainly on United Nations practice, which was already accepted and hardly raised any difficulties. It might be more useful to formulate a rule suitable for all international organizations.

38. He had some doubts about the idea that a permanent mission could include more than one representative. He did not think that was the most general case. In addition, he was not sure what the difference was between a representative and a member of the diplomatic staff. The introduction of too many finely differentiated notions might unnecessarily complicate the problem for the very many international organizations outside the United Nations system, particularly with regard to delegations. In a delegation, according to article IV, section 16, of the Convention on the Privileges and Immunities of the United Nations,⁴ all the members were representatives: not only the delegate and the deputy delegate, but also advisers, technical experts and even the secretary of the delegation. It would be better if the article on the composition of the permanent mission refrained from mentioning representatives.

39. He agreed with Mr. Yasseen, Mr. Amado and Sir Humphrey Waldock that it was difficult not to require the sending State to appoint a head of its permanent mission. If the mission consisted of more than one person, it was essential that the organization and other States should know who headed it. The obligation to appoint a head of the permanent mission met a practical need and could hardly add to the burden of the sending State.

40. Mr. NAGENDRA SINGH said that it was logical for article 13 to draw its inspiration from the provisions on diplomatic missions and on the heads of such missions contained in the 1961 Vienna Convention on Diplomatic Relations; permanent missions had more affinity with diplomatic missions than with special missions. Once that basic idea was accepted, it followed that the provisions

of article 13 should focus on the permanent representative, who was the head of the permanent mission.

41. With regard to the various categories of staff to be mentioned in the article, he doubted whether even the inclusion of the term "advisers" would exhaust the list. He suggested that the Drafting Committee be instructed to formulate article 13 so as to state that the permanent mission would consist of a head of mission and certain categories of staff specified by way of illustration. That presentation would show that the list was not meant to be exhaustive and would give a clearer idea of what article 13 was intended to convey.

42. Mr. ALBÓNICO said he thought members were unduly preoccupied with the United Nations system, whereas the draft was intended to lay down rules for international organizations in general. There was a trend towards international regionalism in political, economic and social matters, which pointed to a sort of world federalism so that ideas of narrow nationalism must be abandoned in the interests of the development of international organizations.

43. There were some international organizations that did not make provision for permanent representatives, deputy permanent representatives, alternates or advisers, which were the subject matter of article 13. It was true that article 4 would safeguard the special rules of such organizations, but the question nevertheless arose whether the present provisions of article 13, which were so closely tied to a particular system, were appropriate. In considering article 13, the Commission's sole concern should be to formulate provisions which would facilitate rather than hinder the work of international organizations, regardless of their character.

44. The CHAIRMAN, speaking as a member of the Commission, said that the provisions of article 13 were much more important than appeared at first sight. They drew a distinction between representatives and other members of the diplomatic staff of a permanent mission. That distinction was based on the functions of the officials concerned. Under the provisions of article 6 of the draft articles on the law of treaties approved by the Committee of the Whole at the recent Vienna Conference,⁵ it was only representatives of States to international conferences or organizations who were empowered by virtue of their functions to act in the adoption of the text of a treaty. Other members of the diplomatic staff of a permanent mission, such as diplomatic secretaries, had no such powers. Article 13 should therefore be carefully worded so as to make that distinction clear. It should begin with the statement that the permanent mission had a head, and then go on to say that he could be assisted by deputies, alternates, advisers, and so on.

45. Sir Humphrey WALDOCK said that a "permanent mission" had been defined in article 1 as a "mission of representative and permanent character", and in the same article, a "permanent representative" had been defined as the person charged with "the duty of acting as the head of a permanent mission". If it were now desired to acknowledge the concept of "representative" as a term of

⁴ See United Nations, *Treaty Series*, vol. 1, p. 24.

⁵ A/CONF.39/C.1/L.370.

art, and to give to that term a meaning distinct from the ordinary representative character of a diplomatic agent, it would be necessary to establish the use of that term in article 1.

46. Mr. EL-ERIAN (Special Rapporteur), summing up the discussion, said there appeared to be some doubt as to whether article 13 should be modelled on the Vienna Convention on Diplomatic Relations or on the draft articles on special missions. As had already been pointed out, if an analogy was to be drawn, it should be between a permanent mission and a permanent diplomatic mission, not a special mission. But the question was not as simple as that, because permanent missions to an international organization had, in some respects, a hybrid character.

47. He had drafted article 13 with a view to combining the features of both the permanent diplomatic mission and the special mission, but feared that he might have overloaded it by including staff other than the head of the permanent mission, since, basically, the article referred to the head of the permanent mission as defined in article 1 (c). As Sir Humphrey Waldock had pointed out, it was essential to have some person who would be identifiable as the head of the permanent mission. But since in practice a number of representatives were appointed to a permanent mission without any indication of which of them was to serve as the head, he had considered it advisable to draft the article in such a way as to cover the concept of representatives.

48. In the case of inter-State permanent diplomatic missions, the head might be an ambassador, a minister or a chargé d'affaires, but the situation with respect to permanent missions to international organizations was not so clear-cut. As Mr. Castañeda had said, such missions might include special representatives appointed for specific purposes, such as serving on the Security Council, the Economic and Social Council, the Committee on Disarmament in Geneva, and so on. He had drafted article 13 with a view to covering that situation, but had not attempted to define "representatives", since, in the context of delegations to international conferences or their organs, the term might mean something different.

49. He had likewise considered it undesirable to introduce the generic term "diplomatic agent", which was often used in referring to permanent representatives and members of the diplomatic staff of permanent missions.

50. Some members had expressed doubts about the advisability of modelling article 13 on United Nations practice; it was impossible, however, to ignore the fact that the United Nations was the mother body and that the prototypes for the present draft articles were to be found in the Conventions on privileges and immunities concluded under United Nations auspices in 1946 and 1947,⁶ and in General Assembly resolution 257 A (III). While using those instruments as a guide, however, it was necessary, as Mr. Eustathiades had pointed out, to produce a flexible draft which would cover other international organizations as well.

51. On the question of military attachés, it had been

suggested that reference should also be made to advisers. In paragraph 5 of his commentary on article 13, he had referred to "specialized officials such as military, naval, air, commercial, cultural or other attachés". Permanent missions usually also included legal advisers, who were an integral part of the diplomatic staff and should not be confused with the administrative staff. He had not considered it necessary to include advisers, since article 13 did not attempt to specify the various categories of diplomatic staff, such as first, second and third secretaries. While personally opposed to the idea of specifying such categories, he felt that the matter was one which would have to be decided by the Drafting Committee.

52. It had also been asked who would be the head of a permanent mission if the sending State had not appointed one. That question came within the purview of article 17, which dealt with precedence. As he had pointed out in his commentary, that article was of a provisional character, since precedence was not one of questions included in the questionnaire prepared by the Legal Counsel of the United Nations (see document A/CN.4/195, para. 3). The precedence of heads of permanent missions was determined in accordance with the rules applied in the organizations in question. In the Vienna Convention on Diplomatic Relations, it depended on the order in which credentials, or a copy thereof, were submitted to the Ministry of Foreign Affairs.

53. It had been pointed out that a number of articles referred to "the permanent representative"; that representative occupied a special position, since he was the only one who submitted his credentials to the secretary-general. He agreed that article 13 should be drafted with a view to granting the permanent representative a special position and bringing out the fact that a permanent mission had a head.

54. There was general agreement in the Commission that article 13 was necessary, although some members had suggested that it should be combined with article 5. That was a question which could be left to the Drafting Committee.

55. Doubts had been expressed about the introduction of the concept of "representatives", although some members had thought that it should be retained. There were two possibilities open to the Commission: either to discard the concept altogether, which would be the simplest solution, or to specify those characteristics which distinguished a permanent mission from an inter-State diplomatic mission. The permanent mission consisted of permanent representatives, of whom there might be one or more, and it might also include diplomatic staff, administrative and technical staff and service staff. The Drafting Committee should reflect carefully on that problem and decide whether it would retain or reject the concept of representatives.

56. Mr. KEARNEY said that Mr. Castañeda had drawn attention to the problem which arose when there was more than one permanent representative in a permanent mission. The Special Rapporteur had referred to them as special representatives, but in Geneva, for example, there could be a number of permanent representatives to different international organizations, all of whom belonged to the same mission. If each was to be accepted as the head

⁶ See United Nations, *Treaty Series*, vol. 1, p. 16 and vol. 33, p. 262.

of a separate permanent mission, what would be the consequences? There might be three, four or five different missions, thus placing an additional burden on the host State. The problem was primarily one of terminology and he hoped that the Drafting Committee could solve it.

57. Mr. EL-ERIAN (Special Rapporteur) said he agreed that the problem was a difficult one, but he still thought it was possible for a State to have more than one permanent mission. At Geneva, for example, one permanent mission could be accredited to the ILO, another to GATT, another to the United Nations Office and still another to the Committee on Disarmament. That might create certain difficulties for the host State, but it also involved additional expense for the sending State.

58. On the question of military attachés, he could assure Mr. Tabibi that the practice of including such personnel in permanent missions was followed by permanent members of the Security Council and would be referred to in the commentary.

59. Mr. BARTOŠ said that Mr. Kearney's remarks should encourage the Commission to distinguish between the permanent mission as such, in the sense envisaged by the Special Rapporteur, and the officials composing it. The official list of permanent missions to the United Nations in New York showed that the permanent missions of some countries included permanent representatives to different Councils: the Security Council, the Economic and Social Council and the Trusteeship Council. Those representatives were not subject to the authority of the head of the permanent mission; they exercised their functions autonomously in accordance with instructions received direct from their governments. The various representatives of one and the same State residing in the same locality made up a single permanent mission, for premises and administrative and financial services were shared by the permanent mission for practical reasons.

60. At Geneva, the permanent mission was often a sort of agency to facilitate contacts with international organizations, and included several special representatives to various organizations. Legally, there was something of a defect in the distinction between the mission and the individual. That difficulty had already been mentioned in the discussion on article 12. In practice, the cases were very varied and complex. One member of a permanent mission might be appointed as permanent representative to an organization and another member of the same mission be appointed both as his alternate and as permanent representative to another organization.

61. Perhaps the Drafting Committee, with the help of the Special Rapporteur, could find a solution to the problem raised by Mr. Kearney, which certainly existed in practice.

62. With regard to members of a permanent mission who had functions analogous to those of a military attaché or military adviser, there were quite a number of organizations, at least ten or so, including the Inter-Governmental Maritime Consultative Organization, to which States appointed permanent missions that nearly always included military members. The presence of such persons in an international organization in a foreign State was usually subject to the consent of that State. The question therefore

arose whether the host State was bound to receive them as members of a permanent mission to the international organization, or whether its consent must be obtained.

63. Mr. EL-ERIAN (Special Rapporteur) said he doubted whether the diplomatic staff would include such personnel as advisers. The only provision concerning military attachés in the Vienna Convention on Diplomatic Relations (article 7) was that the receiving State could require their names to be submitted beforehand, for its approval. Either the question could be regarded as one of terminology, as Mr. Kearney had suggested, and submitted to the Drafting Committee, or a special rule could be included in the article to cover military attachés.

64. The CHAIRMAN said that if there were no objection, he would take it that the Commission agreed that article 13 be referred to the Drafting Committee.

It was so agreed.⁷

VIEWES OF NON-MEMBER STATES ON SUBJECTS CONSIDERED BY THE COMMISSION

65. Mr. MOVCHAN (Secretary to the Commission) said that at the 944th meeting⁸ Mr. Rosenne had requested the Secretariat to furnish information, before the work on item 2 of the agenda for the present session was completed, on what had been the practice of the Commission in obtaining the views of governments of non-member States on subjects examined by the Commission.

66. Article 16 of the Commission's Statute authorized it to request from governments, first, data and information relevant to items included in its plan of work, and secondly, comments on the drafts it adopted. Since its first session, the Commission had consistently made such requests through the Secretary-General. No decision had been taken, or suggestion made, by the Commission, to the effect that the Secretary-General should request information or comments from non-member States. Accordingly, the Secretary-General had always communicated the Commission's requests to all governments of Members of the United Nations.

67. When the Government of Switzerland, a non-member State, had expressed the wish to have an opportunity of submitting its comments on the Commission's draft articles on diplomatic intercourse and immunities, in view of the fact that many international institutions had their offices in Swiss territory, the matter had been drawn to the attention of the Commission⁹ and the Secretary-General had sent the draft articles to the Swiss Government with a special letter. That had been an *ad hoc* arrangement made in regard to a particular non-member State and a particular topic, based on the position of that State as a host country to many international organizations. The Swiss Government's comments had been taken into consideration by the Commission when it had proceeded to revise its draft in the light of governments' comments. Comments by the Swiss Government on the

⁷ For resumption of discussion, see 984th meeting, paras. 66-80.

⁸ Para. 36.

⁹ See *Yearbook of the International Law Commission, 1958*, vol. I, pp. 3 and 257.

draft articles on consular relations had also been received and taken into consideration by the Commission.

68. Mr. ROSENNE thanked the Secretary for his full reply.

69. Mr. USTOR asked the Secretary whether the Secretary-General would act in the same way in the case of a non-member State other than Switzerland.

70. Mr. MOVCHAN (Secretary to the Commission) said that the information he had just given was based on twenty years of practice of the International Law Commission. He had mentioned one case in which the Swiss Government had taken the initiative; that case had been discussed in the Commission and the Secretary-General had acted in accordance with its recommendation. An account of the discussion on the matter in the Commission could be found in volume I of the *Yearbook for 1958*.¹⁰

71. Mr. BARTOŠ said he wished to draw the Secretary's attention to another point. In preparing his present report the Special Rapporteur had considered information obtained from international organizations. Moreover, the Commission had before it a study by the Secretariat on the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities (A/CN.4/L.118 and Add.1-2). The Commission was willing to take into consideration any wishes which international organizations might express concerning their relations with States. That being so, he would like to know whether international organizations had been invited to send observers to the present session, at which the Commission was discussing matters that affected them so closely. The presence of such observers, even if they were not entitled to take part in the discussion, could help the Commission by facilitating unofficial contacts. The Commission had earlier expressed its intention of strengthening its relations with international organizations in connexion with the codification of international law. The topic now being studied was one in which such relations were especially necessary.

72. Mr. AMADO said he understood Mr. Bartoš's concern, but must point out that governments, to which the texts of the Commission's drafts were always transmitted for comment, sent neither representatives nor observers to its sessions. It was difficult to see how international organizations, which were extremely numerous, could follow the meetings of the Commission. If their observers were not entitled to participate in the discussions, they would have to submit written comments afterwards. The same result could be achieved more conveniently by simply transmitting to the organizations the texts of the draft articles adopted by the Commission.

73. Mr. BARTOŠ said he agreed that that should be done, at least for the fourteen organizations related to the United Nations as specialized agencies.

74. Mr. MOVCHAN (Secretary to the Commission) said it could be assumed that international organizations were well informed about the items on the Commission's agenda at its present session. The Secretariat had received

several letters from international organizations at Geneva expressing interest in certain items; it had replied to those letters that the meetings of the International Law Commission were open to the public and that any person interested could attend as a visitor.

75. With regard to the organizations to which the Commission's documents should be sent, discussions were still in the preliminary stage and any further steps should be decided by the Commission itself.

76. Mr. BARTOŠ said he was fully satisfied with the Secretary's reply. The international organizations, in particular those connected with the United Nations, had been informed of the work undertaken by the Commission; the meetings of the Commission were public; and the Commission's report, together with the final summary records of its meetings, would be transmitted to them. They would therefore have every opportunity of submitting their comments in good time. He thought those comments would be taken into consideration during the second reading of the draft.

77. Mr. TABIBI said he was satisfied with the Secretary's reply, but he wished to draw attention to the special procedure in one organ of the United Nations, the Economic and Social Council, which reviewed the list of international organizations every year and decided which should be invited to participate in its work.

78. Mr. ROSENNE said it had been the consistent practice of the Commission not to permit the presence of observers from States. That question had last arisen in connexion with the work of the Sub-Committees on State responsibility and State succession.¹¹

79. An entirely different question was to whom the first text of the draft articles should be sent, together with an invitation to submit comments on them. It was not the Commission's practice to ask international organizations to submit comments; in the case of the law of treaties, that had meant that the observations of the United Nations and other international organizations¹² had not been available to the Commission itself, and had been scrutinized only by the Vienna Conference. The Commission should consider carefully which international organizations the present draft articles should be sent to after the first reading.

The meeting rose at 1.5 p.m.

¹¹ See *Yearbook of the International Law Commission, 1963*, vol. II, pp. 228-9 and 262.

¹² A/6827/Add.1. Parts B and C; A/CONF.39/7 and Add.1.

957th MEETING

Wednesday, 19 June 1968, at 10.10 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Ago, 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,

¹⁰ *loc. cit.*