

Document:-
A/CN.4/SR.969

Summary record of the 969th meeting

Topic:
Representation of States in their relations with international organizations

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>)*

969th MEETING

Friday, 5 July 1968, at 10 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tabibi, 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.1-3; A/CN.4/L.118 and Add.1-2; A/CN.4/L.129)

[Item 2 of the agenda]
(continued)

ARTICLE 16 (Permanent representative *ad interim*)¹
(continued)

1. The CHAIRMAN invited the Commission to continue consideration of article 16 of the Special Rapporteur's draft (A/CN.4/203/Add.2).
2. Mr. EL-ERIAN (Special Rapporteur) said that article 16 had given rise to some difficulties which he had not expected. Perhaps his approach had been a little too rigid. Certainly, his reply to Mr. Reuter that the article merely sought to provide for notification had been rather over-simplified.
3. It would be useful to have a separate article on the permanent representative *ad interim*, on the lines of article 19 of the Vienna Convention on Diplomatic Relations which, in the form adopted by the Commission,² had provided that, if the post of head of mission was vacant or the head was unable to perform his functions, the affairs of the mission should be conducted by a *chargé d'affaires ad interim*, whose name would be notified to the receiving State. As explained in the commentary on the Commission's draft, it had previously been provided that, in the absence of notification, the person whose name came second on the diplomatic list of the mission would be presumed to be in charge. That provision had been criticized as being without justification and it had been suggested that States should be free to decide whether or not to communicate such information.
4. At the Vienna Conference on Diplomatic Relations a new paragraph had been added to the article, providing that a member of the administrative or technical staff of the mission might be designated to be in charge of the current administrative affairs of the mission.³

¹ See previous meeting, para. 63.

² See *Yearbook of the International Law Commission, 1958*, vol. II, p. 94, article 17.

³ See United Nations, *Treaty Series*, vol. 500, p. 106, article 19, para. 2.

5. The Commission would have to decide whether or not article 16 should be more than a pure rule of notification.
6. The Commission should also ask for further information on the question of accreditation, to enable it to decide next year whether practice required the inclusion of a rule on that point.
7. Mr. ROSENNE said he was satisfied with the course suggested by the Special Rapporteur for dealing with the question of accreditation.
8. Mr. YASSEEN said that article 16 accurately reflected State practice and corresponded to the provisions of the Vienna Convention. It should, however, be made clear whether the person replacing the permanent representative was to be called a "*chargé d'affaires ad interim*" or an "acting permanent representative"; both terms were used in the article.
9. Mr. EL-ERIAN said he had purposely used different terms in the title and text of the article so as to enable the Commission to choose. Personally, he was in favour of the term "permanent representative *ad interim*" which was used in United Nations delegation lists.
10. Mr. AMADO said he would prefer the words "shall act provisionally" to be translated by the words "*exerce à titre provisoire les fonctions*" rather than by the words "*agit à titre provisoire*"; the verb "*agir*" was less precise than the verb "to act".
11. He would not like the term "*chargé d'affaires*", which was the accepted term, to be dropped, especially if it was to be replaced by "acting permanent representative". The words "permanent" and "acting" clashed when used together.
12. Mr. YASSEEN said he would prefer to retain the term "*chargé d'affaires ad interim*", but perhaps the article should also recognize the existence, in United Nations practice, of the post of deputy permanent representative.
13. Mr. TSURUOKA said he had himself noticed in New York that both the United Nations Secretariat and the staff of the permanent missions were unhappy about the existence of so many different titles, and, in particular, that the term "acting permanent representative" was not always properly understood. He therefore agreed with Mr. Amado that the term "*chargé d'affaires*" should be retained.
14. Mr. NAGENDRA SINGH said he preferred the term "acting permanent representative", which was clear and consistent with practice.
15. Mr. ROSENNE said that the choice could be left to the Drafting Committee. The designation "*chargé d'affaires*" was often used in the United Nations "blue-book" when there was no permanent representative. The article need not go into great detail, provided it was clearly drafted.
16. He fully understood Mr. Amado's desire to retain the title *chargé d'affaires*, but permanent missions had little in common historically with diplomatic missions.
17. Mr. ALBÓNICO said that article 16 was necessary, to give expression to an existing practice. It would serve a useful purpose by recognizing the acting permanent representative as an institution. Its provisions would

reflect the daily practice of the United Nations: when the permanent representative was absent, his duties were discharged temporarily by another member of the permanent mission. An obvious example was that of the Chairman, whose duties in the Commission kept him away from New York, where he was permanent representative of Argentina; the Argentine permanent mission to the United Nations was consequently headed for the time being by an acting permanent representative.

18. From the point of view of terminology, he agreed that the qualifications "permanent" and "ad interim" should not be juxtaposed. It was possible to speak of an "acting permanent representative"—in Spanish "*representante permanente interino*" or "*representante permanente suplente*"—but never of a "permanent representative *ad interim*".

19. Mr. YASSEEN said he had mentioned the deputy permanent representative because in practice the sending State considered that the person holding that title generally performed all the functions of the permanent representative in his absence. The title of acting permanent representative should be reserved for that person, subject to the linguistic problem which had been mentioned. When there was no deputy permanent representative, however, the traditional term "*chargé d'affaires ad interim*" should be used to designate the person who replaced the permanent representative.

20. Mr. AMADO said that States should not be asked to accept the additional obligation of appointing a deputy permanent representative as well as the permanent representative.

21. Mr. TABIBI said that, according to the list in the "blue-book", there was a head of mission, who had to present his credentials to the organization, and a deputy permanent representative if the permanent representative was absent or had not been appointed. In that case his functions were carried out by an acting permanent representative, who might be put in charge of special negotiations.

22. Mr. TSURUOKA said the debate had shown that the question was whether the Commission wished to make a minor innovation, in the name of the progressive development of international law, or whether it wished to maintain the *status quo*. The differences in terminology resulted from differences in the practice of sending States. Before deciding whether to try to achieve some degree of uniformity or to allow sending States complete freedom of action, it might be better to await the views of Governments, which would certainly be requested in the usual way. The Commission should also ascertain whether the differences in terminology caused any real difficulties in practice.

23. Mr. BARTOŠ said that at the previous meeting he had suggested following the practice of some States of designating in advance a member of the diplomatic staff of their permanent mission as *chargé d'affaires présumé*. That might also be the simplest solution in the present case.

24. In existing United Nations practice, the titles used for those replacing the permanent representative varied widely from one mission to another. As Mr. Tsuruoka had

rightly pointed out, the Commission must choose between the *status quo* and standardization. From the point of view of standardization, the Special Rapporteur had done well to reflect traditional diplomatic practice by using the title of *chargé d'affaires ad interim*.

25. In any case, the title was not the real issue; the important point was to determine with certainty who would head the mission when there was no permanent representative or when the permanent representative was absent. Notification was all the more useful because in some missions two or three people had the same title.

26. States should be left complete freedom with regard to the choice of title, for it was usually a political question connected with the person designated and even with relations between the parties in the governing coalition, and not a question of the hierarchy of functions.

27. Mr. RAMANGASOAVINA said that article 13 specified the persons who could be members of a permanent mission. After having stated that a permanent mission consisted of a head of mission and other persons, it might be added that, in the absence of the head of mission, the sending State could appoint a replacement, whose title it would itself decide.

28. However, it was also necessary to take account of the fact that, in United Nations practice, there were deputy permanent representatives as well as permanent representatives.

29. Mr. YASSEEN suggested that the following wording for article 16 be submitted to the Drafting Committee: "If the post of permanent representative is vacant, or if the permanent representative is unable to perform his functions, a *chargé d'affaires ad interim* shall act provisionally as permanent representative. The name of the *chargé d'affaires ad interim* shall be notified to the Organization either . . .".

30. Mr. AMADO said he found the suggested wording entirely satisfactory, subject to replacement of the words "act provisionally as" by the words "exercise provisionally the functions of".

31. Mr. REUTER said he agreed with Mr. Amado's previous comment on the wording of the article. The terms "*chargé d'affaires ad interim*" and "acting permanent representative" could not both be used in the same text to designate the same person.

32. He would not express a definite opinion on the question whether a title need be given to the person who replaced the permanent representative. The first sentence of the article could be worded to read: "If the post of permanent representative is vacant, or if the permanent representative is unable to perform his functions, a member of the permanent mission shall provisionally perform the functions of permanent representative, as *chargé d'affaires ad interim*." If it was considered preferable not to give a specific title to the replacement, the words "as *chargé d'affaires ad interim*" could be omitted.

33. Mr. USHAKOV pointed out that Mr. Reuter's version of the wording proposed by Mr. Amado involved a repetition of the word "perform".

34. Mr. AGO said he feared that the Commission was once again being unduly influenced by the formalism

characteristic of diplomatic relations. The “*chargé d'affaires ad interim*” was an institution typical of relations between States. When the head of a permanent mission to an international organization was absent or unable to perform his functions, another member of the mission was appointed to replace him, but was not given the title of “*chargé d'affaires ad interim*”.

35. It would also be a mistake for the Commission to follow too exclusively the practice of permanent missions to the United Nations in New York. Among the many other international organizations, there were some whose member States had not established permanent missions, or at least not all of them had done so.

36. Permanent missions did not always have a deputy head. In Geneva, for example, many permanent missions were accredited to several organizations: their members specialized in the work of different organizations, and there was no difference in rank between them.

37. By institutionalizing the acting permanent representative, the Commission might complicate the situation unnecessarily and create difficulties. The article, which, after all, dealt with a relatively minor question, should be as simple as possible and leave States as free as possible.

38. The wording proposed by Mr. Reuter might be suitable, provided the words “as *chargé d'affaires ad interim*” were deleted.

39. Mr. AMADO, while acknowledging that Mr. Ago's remarks were quite justified, emphasized that other delegations must know whom to address themselves to when the head of a permanent mission was absent. The Commission could not be too specific on that point.

40. Mr. BARTOŠ observed that there was a general tendency to treat permanent missions on the same footing as diplomatic missions, and although the Secretariat had at first tried to resist that trend, it had finally given way.

41. It was particularly important, however, to stress that the United Nations had originated the practice of conferences of heads of mission, which was unknown in traditional diplomacy. When convening such conferences, it was essential to know whom the invitation should be addressed to, in other words, who was the head of mission. The solution of appointing a *chargé d'affaires présumé* would establish a presumption which could simplify the problem; in any case, it was even more necessary to know who was performing the functions of head of mission at any given time in the case of permanent missions to international organizations than in the case of ordinary diplomatic missions.

42. Many instruments linked certain acts with the post of head of mission. For example, the full powers in due form of the *ad hoc* representatives of a member State could be replaced by a provisional attestation by the head of the permanent mission. Article 16 showed that the Special Rapporteur had well understood the importance of knowing who had been appointed to replace the head of the permanent mission as acting head.

43. Mr. ALBÓNICO, replying to Mr. Ago's point about the importance of leaving States as free as possible, said that any codified rule of international law must of necessity limit the freedom of action of States. Membership of the

United Nations itself implied a limitation of the freedom of action, competence and sovereignty of Member States in any matter that could be decided by a vote.

44. In the present instance, if it was desired to leave States completely free the Commission would have to give up its attempt to codify the rules. But as far as article 16 was concerned, it was perfectly possible to reconcile the interests of an organization with those of the sending State, the host State and third States, by drawing up provisions in terms that were both flexible and elegant, and calculated to attract the broadest possible measure of acceptance by States.

45. Mr. EL-ERIAN (Special Rapporteur), summing up the discussion, said he agreed that the expression “permanent representative *ad interim*” was a contradiction in terms. It would be better to borrow the term “*chargé d'affaires ad interim*” from traditional diplomacy, since the two situations were virtually the same.

46. The other points of drafting raised during the discussion could be referred to the Drafting Committee, which would then have before it a wealth of data on which to work.

47. There was general agreement in the Commission on the desirability of retaining article 16 as an independent article, rather than as an addition to the article on notifications. It also seemed to be agreed that its provisions should be modelled on the corresponding article of the Vienna Convention on Diplomatic Relations.

48. With regard to the various issues raised by Mr. Ago, he would point out, first, that as early as 1963, when he had been appointed Special Rapporteur, he had consulted the specialized agencies, so that his work was not based entirely or even predominantly on United Nations practice. In fact, he had consulted the legal advisers not only of the specialized agencies, but also of such regional organizations as the Organization of American States, the Council of Europe and the League of Arab States, and had obtained much valuable information from them, both in writing and orally. He had also drawn on the Secretariat's valuable study on the practice of the United Nations family (A/CN.4/L.118 and Add.1-2), which had proved so useful both to United Nations officials and to scholars and students of international law.

49. The fact remained, however, that the United Nations was the parent body and whatever it did inevitably had an effect on the work of the other organizations. The United Nations Charter had influenced the charters and constituent instruments of all the other organizations. The Convention on the Privileges and Immunities of the United Nations had been copied almost word for word in the corresponding instruments for the specialized agencies and the regional organizations. It was therefore natural that, while the practice of the specialized agencies was taken into account, special attention should nevertheless be given to the United Nations.

50. The Commission had been urged by Mr. Ago not to curtail the freedom of States by introducing a rule. But the very purpose of the draft articles was to propose some kind of standards in order to introduce a measure of uniformity into what was a very varied practice. In the Commission's draft on the law of treaties, a number of

descriptive provisions had been included on such secondary questions as the form of full powers. The criticism had been voiced in some quarters that such provisions were more suited to an expository code than to a convention; but they had nevertheless ultimately been retained because, where practice was varied, it was sometimes found useful to introduce a unifying factor.

51. It was the Commission's task to inquire into the practice, to codify it if established, and to introduce an element of unity if it proved varied and fragmentary. A provision which did that need not tie the hands of States. His proposals for article 16 would provide organizations in general with a useful prototype.

52. He suggested that article 16 be referred to the Drafting Committee for consideration in the light of the discussion.

53. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to adopt the course suggested by the Special Rapporteur.

*It was so agreed.*⁴

ARTICLE 17

54. *Article 17*
Precedence

Heads of permanent mission shall take precedence in the order established in accordance with the rule applicable in the Organization concerned.

55. The CHAIRMAN drew attention to the Secretariat note on the precedence of representatives to the United Nations (A/CN.4/L.129).

56. Mr. EL-ERIAN (Special Rapporteur) said that article 17 (A/CN.4/203/Add.2) should be treated as purely provisional, because the question of precedence of heads of permanent missions had not been included in the questionnaire circulated by the Legal Counsel of the United Nations; moreover, the replies from the specialized agencies had not contained any information on precedence. He had therefore requested the Secretariat to provide him with any relevant data in its possession and the information furnished would be found in the note mentioned by the Chairman.

57. The first problem to be faced with regard to article 17 was that the classification of diplomatic agents into ambassadors, ministers and *chargés d'affaires en pied* was not applicable to permanent missions. He had therefore drafted article 17 in different terms from article 16 of the Vienna Convention on Diplomatic Relations,⁵ and made no reference to classes of heads of mission.

58. One basic fact concerning permanent representatives was that there was no accreditation in the traditional sense. The head of a diplomatic mission always presented a copy of his credentials to the Foreign Ministry of the receiving State and arranged for an appointment with the Head of State to submit his credentials. The precedence of the head of mission then depended on the date of submission, either of the copy of the credentials or of the

original; the practice varied according to the country, but in any given State, one or the other system was followed without discrimination.

59. In the United Nations, the system of accreditation was not the same. The Secretariat note gave information on the practice and dealt largely with delegations to the General Assembly and to the various organs of the United Nations.

60. Particularly notable was the use in the United Nations of the criterion of the alphabetical order of the names of the States represented, subject to drawing every year, before the opening of the General Assembly, the name of a country from which the alphabetical order would start throughout the following year (A/CN.4/L.129, para. 6). Since his report had been prepared, a revised edition of the *Manuel pratique de protocole* had come to his notice, which stated: "Les chefs des représentations permanentes, qu'ils soient titulaires ou intérimaires, forment une première catégorie dont les membres se disposent, dans les cérémonies officielles où ils figurent en corps, dans l'ordre alphabétique, en anglais, des Etats qui les ont délégués".⁶ The English alphabetical order to which that passage referred was replaced by the French alphabetical order when United Nations organs met in French-speaking countries. He had no definite information on the practice of the specialized agencies, and the draft must be regarded as temporary pending the receipt of information from them. He understood, however, that their practice was not very different from that of the United Nations.

61. Mr. CASTRÉN said he thought that, in the form proposed, article 17 did not add anything to the general reservation in article 4 and did not even have a residuary value.

62. The Commission should at least try to formulate a residuary rule, so taking article 13 and article 16, paragraph 1 of the Vienna Convention on Diplomatic Relations as a basis, he proposed the following redraft:

"Heads of permanent missions shall take precedence in the order of the date and time of presentation of their credentials to the competent organ of the organization to which they are accredited."

63. The Secretariat note contained information that would be extremely useful to the Commission when it came to consider the question of the precedence of members of delegations to organs and conferences of international organizations, which was dealt with in article 52 of the draft. But that information, which in any case related to United Nations practice only, could hardly be of use to the Commission in formulating article 17, which dealt with the precedence of heads of permanent missions. There were wide differences in the position and rank of members of delegations to conferences, but for heads of permanent missions, it should be possible to formulate a simple, democratic and more homogeneous rule.

64. Mr. BARTOŠ said he was opposed to Mr. Castrén's amendment, because there was no more difference in rank between heads of permanent mission than there was between heads of delegation, especially in the United Nations. The alphabetical order, which was followed as

⁴ For resumption of discussion, see 985th meeting, paras. 47-54.

⁵ United Nations, *Treaty Series*, vol. 500, p. 104.

⁶ See Jean Serres, *Manuel pratique de protocole* (1965), p. 432.

a matter of convenience, did not establish a real order of precedence. If the Commission re-established the idea of precedence between heads of permanent missions, it would be a retrograde step, because the general rule was that of the sovereign and juridical equality of States.

65. If the Commission decided to lay down a real rule of precedence, he would be unable to vote for that decision and would be obliged to state a separate opinion. If the Commission shared his view, it could retain the formula proposed by the Special Rapporteur, with a slight modification to specify that the order of precedence to be adopted was the alphabetical order established by the organization concerned.

66. Mr. ALBÓNICO said he supported the Special Rapporteur's approach to article 17. The article constituted a saving clause which reserved the application of the relevant rule of the organization. That solution was the simplest and most practical, bearing in mind the practice mentioned in the Secretariat note (A/CN.4/L.129), which referred to a wide variety of representatives to the United Nations and its organs, and of officers of those organs.

67. A conclusion in the Secretariat note was worth considering: "The foregoing criteria are not sufficient to settle all questions of precedence, since there may be persons of equal rank in almost all classes" (para. 6). That made it clear that it would be difficult to draw any definite conclusions from the practice of the organizations, and in those circumstances the most convenient solution was that embodied in the Special Rapporteur's text of article 17.

68. Mr. TABIBI said that, in view of the difficulties created by the varied practice of the United Nations and the specialized agencies, it was desirable to adopt a flexible rule; a strict rule would create difficulties for member States. States themselves sometimes adopted special practices in the matter of precedence; for instance, when the United Nations Economic and Social Council had met at Mexico City, the representative of Spain had been given special precedence as the representative of Mexico's mother country.

69. The system of English alphabetical order, starting with the name of a country drawn by lot, was the best for settling questions of precedence.

70. As to the provisions of article 17, he supported the idea of leaving both organizations and States free to follow their own practice.

71. Mr. CASTAÑEDA said he agreed with Mr. Bartoš and Mr. Tabibi. At least in the United Nations family, no real questions of precedence arose, at any rate not in the sense in which the term was understood in bilateral relations. The principle of equality was so strong in the international organizations that precedence there was merely a question of protocol without any real importance. It was precisely to show the unimportance of that question that in some organs the alphabetical order of precedence was adopted, the name of the State which should come first being drawn by lot each year.

72. The solution proposed by the Special Rapporteur was therefore a good one: each organization would establish its practice according to its needs.

73. Mr. ROSENNE said that article 17 dealt with a very delicate matter which was also extremely uncertain, and to some extent deliberately flexible. It would be better to have no article at all than one which dealt with a single aspect of a vast and delicate problem that was not expounded in the legal literature. He also thought it would be undesirable to press the Secretariat to give further information in writing; a written reply by the Secretariat could of itself introduce elements of rigidity into the practice.

74. If the Commission wished to include a provision on precedence in the draft, he preferred the approach adopted by the Special Rapporteur.

75. Mr. AGO endorsed Mr. Bartoš's remarks. He would even prefer the draft not to contain any article on precedence at all. Permanent missions were not the only ones; there were also delegations. What would the rule be when heads of permanent mission and heads of delegation came together? The Commission should certainly avoid introducing unnecessary complications to solve non-existent problems.

76. Mr. AMADO said he supported Mr. Castañeda's comments. Mr. Ago's suggestion that the article be deleted, was too drastic a solution. There was no objection to adopting the text proposed by the Special Rapporteur, since it left organizations completely free to settle as they pleased what was admittedly a minor problem, but one that might have some importance in practice.

77. Mr. EUSTATHIADES said that the Commission had a choice between three solutions: to say nothing, as proposed by Mr. Ago; to refer to the rules of the organization concerned, as proposed by the Special Rapporteur; or to formulate a rule such as that proposed by Mr. Castrén.

78. The last solution would involve stating that the rule was applicable subject to the particular rules of the organization concerned, and choosing a criterion which, by and large, did not conflict with those rules. It would also involve drawing a distinction between a representative and an acting representative, specifying that the rule did not settle questions of precedence within each of the organs of the organization, and perhaps mentioning the case of associate members.

79. The solution proposed by the Special Rapporteur was provisional, which was justified by the fact that international organizations other than the United Nations had not made their views known. By adopting the article proposed by the Special Rapporteur the Commission would show that, in its opinion, the question of precedence did not warrant the establishment of special criteria.

80. Mr. YASSEEN said that a distinction should be made between questions of precedence of permanent representatives, and questions of precedence between permanent representatives and other persons having representative functions. For the precedence of permanent representatives, the Commission might formulate a rule based on the diplomatic rank of the person concerned, and, for persons of the same rank, a rule based on the criterion of date and time adopted in Mr. Castrén's proposal. Precedence between permanent representatives and other persons should be governed by the rule applic-

able in the organization concerned, as the Special Rapporteur had proposed. It was the organization which would know, for example, whether the Chairman of a particular organ should take precedence over the Vice-Chairman of another organ, or vice-versa.

81. In his opinion, therefore, article 17 should be completed by the addition of a rule on precedence between permanent representatives.

82. Mr. BARTOŠ observed that some permanent representatives had no diplomatic title, but they did not on that account belong to an inferior or different category. From the point of view of the organization, all permanent representatives were equal. Thus their situation was quite different from that of the diplomatic agents covered by the Vienna Convention on Diplomatic Relations.

83. He was in favour of retaining the article proposed by the Special Rapporteur, but suggested that the wording should be slightly modified to show that it referred not only to the rules, but also to the practice of international organizations.

The meeting rose at 1.5 p.m.

970th MEETING

Monday, 8 July 1968, at 3 p.m.

Chairman: Mr. José María RUDA

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Kearney, 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.1-3; A/CN.4/L.118 and Add.1-2; A/CN.4/L.129)

[Item 2 of the agenda]
(continued)

ARTICLE 17 (Precedence)¹ (continued)

1. The CHAIRMAN invited the Commission to continue consideration of article 17 of the Special Rapporteur's draft (A/CN.4/203/Add.2).

2. Mr. CASTRÉN observed that some members of the Commission had found his draft on precedence² too rigid and thought that the rule should be made more flexible, as in the Special Rapporteur's text. But the text of his own proposal was not at all rigid and in any case article 17 was subject to the general reservation in article 4.

¹ See previous meeting, para. 54.

² *Ibid.*, para. 62.

What he had proposed was a residuary rule and hence nothing more than a recommendation.

3. He noted, however, that few members of the Commission were prepared to support his proposal and he would therefore withdraw it.

4. He might support the suggestion by Mr. Rosenne and Mr. Ago that article 17 be deleted. Certainly the article added nothing new, but since it was only provisional, it might be worth retaining in the draft in order to ascertain the reaction of Governments.

5. Mr. AMADO said he would be interested to hear from Mr. Castrén what precedents the rule in his proposal had been based on.

6. Mr. CASTRÉN said that Mr. El-Erian's report pointed out that the practice of international organizations was very diverse and that no uniform rule on the subject existed.

7. Mr. TABIBI said it was clear from the discussion that there was no uniform rule on precedence in the United Nations or in other international organizations, so something very flexible was needed. In the United Nations, for seating purposes the alphabetical order of the names of countries was used in recognition of the sovereign equality of States, while sometimes, for certain ceremonial purposes, the five permanent members of the Security Council were given precedence. In the International Atomic Energy Agency some eminent scientists were given precedence. In the International Bank for Reconstruction and Development, the number of shares held by a country was the determining factor.

8. The rule drafted by the Special Rapporteur was flexible enough and acceptable.

9. Mr. AMADO said he thought it would be difficult to improve on article 17 as drafted. The Special Rapporteur had offered the best solution of the problem, which in any case was only of relative importance.

10. Mr. BARTOŠ said that in the United Nations and in several other international organizations there was no fixed rule on precedence. There was a series of rules of minor importance which gave precedence to certain officials or representatives of the organization's members. The chairman, for example, was always regarded as having absolute priority; then came the vice-chairmen, rapporteurs and former chairmen. When he attended the meetings of the Sixth Committee, the senior member of the International Law Commission was always accorded precedence. Thus there were always certain rules, but they were rules of courtesy, not rules of law. At Vienna, for example, Nobel prize-winners among the heads of permanent missions to the International Atomic Energy Agency always had some precedence; that was a personal tribute. When Mr. Molotov, the former Minister for Foreign Affairs of the Soviet Union, had been head of the permanent mission of the USSR to the International Atomic Energy Agency, special courtesy had been extended to him because of his personal qualities and the fact that he had sometimes presided over the General Assembly; thus it was his personal authority which had been the determining factor.

11. He was in favour of article 17 as worded by the Special Rapporteur.