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Summary record of the 981st meeting

Topic:
Representation of States in their relations with international organizations

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word "developments" which appeared in the Vienna Convention was superfluous, because the word "conditions" was already there. Yet the authors of the Convention had thought it fit to add the word "developments" which, in fact, added precision to the sentence. The French translation of the word was satisfactory and he considered that the text proposed by the Drafting Committee should be maintained.

111. Mr. BARTOŠ said it was very important to mention "developments" so as to emphasize that a permanent mission had to ascertain not only activities in the organization but also any changes that might occur and the reasons for those changes. A wording such as "*l'évolution des événements y relatifs*" could perhaps be used to make clear what kind of developments were meant.

112. Mr. YASSEEN said that a permanent mission had to ascertain intelligently what was happening. It should always take an interest in the activities of the organization viewed in their international context. It was not merely a question of commenting on the day-to-day activities of the organization. The word "*événements*" was not explained in the French text as it stood. The draft would be acceptable only if, as Mr. Bartoš had suggested, something were included explaining the sense in which the word "*événements*" was used.

113. Mr. CASTRÉN (Chairman of the Drafting Committee), suggested that if the French version were amended to read "*l'évolution des événements dans l'organisation*", misinterpretation would be impossible.

114. Mr. CASTAÑEDA said that, when a State formed part of an organization, it had other functions than those listed in the various sub-paragraphs of article 6. For example, the essential function of voting was not mentioned. It might perhaps be said that when there was voting, there was representation, but that would not be entirely correct. The State contributed to the formation of the collective will of the organization. That function was perhaps implied in sub-paragraph (e) which spoke of "promoting co-operation for the realization of the purposes and principles of the organization", but the terms employed were too vague. Mention should be made of the participation of the State in the creation of the common will, and the most appropriate place to do that would appear to be in article 6, which listed the functions of a permanent mission.

115. Mr. BARTOŠ said he could not agree that voting was a regular function of a permanent mission. It was a function of the diplomatic representatives of the State. A permanent mission was not required to represent the State in assemblies of the organization. It might, of course, happen that a member of a permanent mission was given certain powers for that purpose, but that would be a special case. Voting could not be mentioned as a function in article 6.

116. With regard to sub-paragraph (d), it was correct to say that reporting to its government was one of the functions of a permanent mission, but that was an internal matter for the sending State between its mission and its government; there was no need to mention it in article 6.

117. Mr. ROSENNE said that he agreed with Mr. Bartoš's reply to the interesting point raised by Mr.

Castañeda. Article 6 did not claim to give an exhaustive catalogue of the functions of a permanent mission. It simply listed certain diplomatic functions which were not usually provided for specifically in the constituent instruments of organizations; those instruments normally dealt with such matters as voting by delegations.

118. In the light of the discussion, he now doubted whether sub-paragraph (d) was necessary at all, especially if the function of reporting was merely an internal matter for the sending State.

119. He noted that in the English version the word "reporting" was followed by the word "thereon", which clearly referred to both "activities" and "developments". The French version where "thereon" was rendered by "*à ce sujet*", in the singular, did not appear to correspond exactly to the English. He would like to have the views of the Secretariat on the point.

120. Mr. TESLENKO (Deputy Secretary of the Commission) said that exact equivalence was rarely achieved in translation, but the expression "*à ce sujet*" referred to both "*activités*" and "*l'évolution des événements*".

121. Mr. NAGENDRA SINGH said that he also felt that sub-paragraph (d) might not be necessary but, if it were desired to retain it, he would suggest as an alternative wording: "(d) participating in the work of the Organization and keeping the Government of the sending State informed of activities and developments relating to the Organization".

122. Mr. USHAKOV observed that there was no question as yet of approving article 6 in final reading. The present wording, with the change in the French version, would appear adequate for the moment.

123. The CHAIRMAN said that, no formal amendments having been submitted, he would put article 6 to the vote as it stood, on the understanding that in the French version of sub-paragraph (d), the words "*dans l'organisation*" would be moved to after "*événements*", and that in the Spanish version, the concluding words of sub-paragraph (a) would be corrected to read "*ante la organización*".

124. Mr. ROSENNE asked for a separate vote on sub-paragraph (d).

Sub-paragraph (d) was adopted by 8 votes to none, with 6 abstentions.

Article 6 as a whole was adopted by 11 votes to none, with 3 abstentions.

The meeting rose at 1.15 p.m.

981st MEETING

Wednesday, 24 July 1968, at 10 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina,

Mr. Rosenne, Mr. Tabibi, Mr. Tammes, 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.1-4; A/CN.4/L.118
and Add.1 and 2)

[Item 2 of the agenda]
(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE
(continued)

1. The CHAIRMAN invited the Commission to continue consideration of the draft articles adopted by the Drafting Committee on second reading.

ARTICLE 7 (Accreditation to two or more organizations) ¹

2. Mr. CASTRÉN (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 7:

Accreditation to two or more organizations

The sending State may accredit the same permanent representative to two or more organizations. (A/CN.4/L.130/Add.1/Corr.1.)

3. The Drafting Committee had amended the title of the article, which was now shorter and more precise. The new text no longer spoke of the appointment of a permanent mission but of accrediting a permanent representative. The Committee had drafted a first text (A/CN.4/L.130/Add.1) which referred to members of the diplomatic staff of the permanent mission, but had decided that it was sufficient to speak of the head of the permanent mission, since, if it was possible to accredit the same permanent representative to two or more organizations, it would appear equally possible to assign any member of the mission's staff to a subordinate post in a mission to another organization.

4. The fact that the same permanent representative could be accredited to two or more organizations did not exclude the possibility of a permanent representative to an organization being assigned to a subordinate post in a mission to another organization. However, the Committee had felt that there was no need to make express mention of that possibility.

5. Sir Humphrey WALDOCK said that the Drafting Committee's text dealt only with the case where the same person was appointed permanent representative to two or more organizations; it did not deal with the case where a member of the staff of a permanent mission was accredited to more than one organization.

6. Mr. EL-ERIAN (Special Rapporteur) said that his original draft had referred to permanent missions in general, but the Drafting Committee had decided to confine the provisions of article 7 to permanent repre-

¹ For earlier discussion, see 951st meeting, paras. 45-74, and 952nd meeting, para. 10.

sentatives, thereby laying down the principle for the most important cases. It could be explained in the commentary that a member of the staff of a permanent mission could also be appointed to more than one organization by virtue of the principle *qui peut le plus peut le moins*.

7. Sir Humphrey WALDOCK said he must point out that a totally different drafting technique had been adopted in the Drafting Committee's text of article 8 ² to deal with a similar situation. In article 8, paragraph 1 dealt with duality of functions of a permanent representative, and paragraph 2 dealt with the same problem in the case of members of a permanent mission.

8. MR. USHAKOV said that in article 7 the Drafting Committee had wished to speak exclusively of the possibility of a permanent representative being accredited to two or more organizations; that situation had to be regulated in the convention. Since it was always possible for a member of a diplomatic mission to be accredited as permanent representative to another organization, the Committee had not deemed it necessary to mention that possibility.

9. Mr. ROSENNE said that there were two good reasons for adopting different drafting techniques for articles 7 and 8. The first was that the case mentioned by Sir Humphrey Waldoock in respect of article 7 was quite rare, except in the special situation at Geneva. The second was that paragraph 4 of article 8 laid down an important rule of law which was applicable only in the circumstances envisaged in article 8.

10. Sir Humphrey WALDOCK said that he still saw no reason why article 7 should not specify that a member of the staff of a permanent mission could be assigned to the sending State's permanent mission to another organization. If nothing were said on that point in article 7, a comparison with article 8 could lead to the interpretation that such a possibility was ruled out. He therefore suggested the insertion after the words "a permanent representative", of the words "or assign a member of the staff of the permanent mission".

11. Mr. NAGENDRA SINGH said that no harm could be done by making the suggested insertion.

12. Mr. ROSENNE said that members of the staff of a mission were not accredited but appointed; to allow for that difference would mean formulating a rather cumbersome text.

13. Mr. KEARNEY said that there was much force in Sir Humphrey Waldoock's argument that a comparison with article 8 could lead to a mistaken interpretation; he therefore supported his suggested insertion.

14. Mr. USHAKOV said that the case could be covered in paragraph 2 of article 8, which dealt with the assignment of a member of a permanent mission as a member of a diplomatic mission or of a special mission, merely by amending it to read "may be assigned as a member of a diplomatic mission or of another permanent mission". Article 8, as its title indicated, dealt with the assignment of a member of a permanent mission to other functions, whereas article 7 dealt exclusively with the possibility of simultaneous assignment of a head of mission to two or more organizations.

² See paragraph 60 below.

15. Mr. CASTRÉN (Chairman of the Drafting Committee) said he did not think that the case envisaged by Sir Humphrey Waldock could be dealt with in paragraph 2 of article 8.
16. Mr. CASTAÑEDA said that the two situations should be dealt with separately. Article 7 provided for accreditation to several organizations, whereas article 8 envisaged the possibility of a member of a permanent mission being assigned as a member of a diplomatic mission to a State. Article 8 ought not to be further complicated by mentioning assignment to another organization.
17. It would be easy to give satisfaction to Sir Humphrey Waldock by reverting to the first text submitted by the Drafting Committee (A/CN.4/L.130/Add.1) and adding the words "as the case may be". That text would appear to cover all cases.
18. Mr. EL-ERIAN (Special Rapporteur) said that if the Commission wished to make the article comprehensive, it would need to cover several cases: first, the case of a permanent representative being accredited to two or more organizations; secondly, the case of a member of the diplomatic staff of a permanent mission being appointed permanent representative to another organization; thirdly, the case of a counsellor or first secretary being accredited to two or more organizations; and fourthly, the case of a technical or administrative officer being assigned to the staff of the permanent missions of the sending State to two or more organizations.
19. The best way of dealing with all those cases would be to make the text proposed by the Drafting Committee the first paragraph of article 7 and then add a second paragraph reading:
- "2. The sending State may likewise accredit or assign, as the case may be, a member of the permanent mission to more than one organization."
20. The title of the article would then have to be amended to read: "Accreditation or assignment to two or more organizations".
21. Mr. USHAKOV said that the case dealt with in the proposed second paragraph would be entirely different from that covered in the first paragraph. Article 7 dealt with the accreditation of the same permanent representative to two or more organizations. Obviously any person, whether or not a member of a permanent mission, could be accredited as head of a permanent mission.
22. If the intention was to speak of the assignment of a member of a permanent mission to another mission, then another article should be devoted to that case. There could be no doubt that a member of a permanent mission could be assigned to another mission, but that possibility could not be mentioned in an article concerned with accreditation. It could, however, be mentioned in article 8, which dealt with assignment.
23. Mr. KEARNEY said that if there was any difficulty in accepting that article 7 should deal with the two different types of appointment, the simplest answer would be to make a separate article of the additional paragraph suggested by the Special Rapporteur.
24. Sir Humphrey WALDOCK said that the Special Rapporteur's solution of introducing a second paragraph was quite appropriate to deal with a matter which was largely one of drafting. Whether the Commission inserted the additional provision or not, States would still be free to accredit or assign the head or member of a permanent mission to two or more organizations.
25. Mr. CASTRÉN (Chairman of the Drafting Committee) said that the text proposed by the Drafting Committee seemed to him adequate, but he saw no objection to amending it along the lines suggested by the Special Rapporteur.
26. It would be better to deal with the case mentioned by Sir Humphrey Waldock in article 7, which dealt with the activities of the same person in two or more organizations, rather than in article 8, which dealt with the case of a person who belonged to a permanent mission and was then assigned to a State as a member of a diplomatic mission. There was a considerable difference between accreditation or assignment to an organization and accreditation or assignment to a State.
27. Mr. ROSENNE suggested that the Drafting Committee be invited to formulate a new text for article 7 in the light of the discussion.
28. Mr. YASSEEN said he doubted whether the Drafting Committee would have time to examine the article again. It seemed to him that the Commission could itself settle the problem, which was now only a matter of drafting. Articles 7 and 8 dealt with two different situations. As the subject of accreditation of a permanent representative and that of the assignment of a member of a permanent mission were both dealt with in article 8, he could not see why they could not also both be dealt with in article 7.
29. The CHAIRMAN, speaking as a member of the Commission, suggested that the second paragraph should follow closely the wording of paragraph 2 of article 8 and therefore read:
- "2. A member of a permanent mission of a State to an international organization may be assigned as a member of a permanent mission of that State to another international organization."
30. Mr. USHAKOV said that, if it were stated that a member of a permanent mission could be accredited to an organization as a permanent representative, that meant that members of the service staff could also be accredited as permanent representatives. Such a situation might, of course, arise but it would be best not to mention it.
31. Mr. USTOR said that, according to article 1, the term "members of the permanent mission" included both the permanent representative and the members of the staff of the mission. The text suggested by the Chairman would thus cover the case of the permanent representative to one organization being appointed a member of the staff of the sending State's permanent mission to another international organization. But it had the disadvantage of overlapping with paragraph 1, since it could be taken to include the case of a permanent representative being accredited to two international organizations.
32. Mr. ROSENNE said that the Chairman's suggested text for paragraph 2 would cover the case mentioned in paragraph 1, but would not cover the case of a member of

the staff of the permanent mission being accredited as permanent representative to another organization.

33. Article 7 should be referred back to the Drafting Committee, with instructions to formulate a comprehensive text.

34. Sir Humphrey WALDOCK said that the wording suggested by Mr. Castañeda would cover all the cases.

35. Mr. CASTAÑEDA said that amending the second paragraph would be tantamount to going back to his original proposal to add to the Drafting Committee's first text for article 7 (A/CN.4/L.130/Add.1) the words "as the case may be"; that wording would cover all possibilities.

36. Mr. KEARNEY said that he had no objection in principle to the text suggested by Mr. Castañeda but must warn the Commission that its proper interpretation would lead to the conclusion that a permanent representative could only be accredited as permanent representative to another organization, and could not therefore be appointed a member of the permanent mission to another organization.

37. Mr. YASSEEN said that the expression "members of the mission" included the head of the mission. If paragraph 1 spoke of the permanent representative and paragraph 2 of the members of the mission, that might be interpreted as meaning that paragraph 2 did not apply to the head of the mission.

38. Mr. USHAKOV said that the Drafting Committee took the view that a permanent representative was "accredited to an organization" but that the members of a mission were "assigned to a mission to an organization".

39. Mr. BARTOŠ said that the possibility of administrative and technical staff being assigned to one or more missions should also be covered. He agreed with Mr. Ushakov; the Commission could hardly state that the staff of a mission might be assigned to an organization. That did happen sometimes when an international organization needed assistance and borrowed the services of a person belonging to a mission, but in his view that was not the case envisaged in article 7.

40. Mr. EUSTATHIADES said that the difficulty arose from the attempt to cover in a single sentence two very different situations: the appointment of a member of a permanent mission as a permanent representative to another organization, and the appointment of the permanent representative as a member of the staff of a mission to another organization. The only way of obtaining a clear text and of avoiding attempts at interpretation would seem to be to treat the two cases separately.

41. Mr. EL-ERIAN (Special Rapporteur) said that the point raised by Mr. Kearney could be covered by making a slight change in the wording suggested by Mr. Castañeda, so that it read: "... may accredit or assign, as the case may be, the permanent representative or a member of the diplomatic staff of the permanent mission to two or more organizations".

42. Mr. KEARNEY said that drafting problems arose from the fact that the term "accreditation" applied to an organization, whereas "assignment" applied to a per-

manent mission. In order to overcome the drafting difficulty, he suggested that the two problems be treated separately by means of a text on the following lines:

"1. The sending State may accredit the same permanent representative to two or more organizations or assign a permanent representative to its permanent mission to other organizations.

"2. The sending State may accredit a member of the staff of a permanent mission as permanent representative to other organizations or assign him to its permanent missions to other organizations."

43. Mr. USHAKOV said that the appointment of a person as a member of a permanent mission to an organization depended exclusively on the sending State. The organization could not oppose such an appointment, so there was no question of a legal rule in that case. On the other hand, the organization could oppose the appointment of the same person as head of a permanent mission to several organizations, and that was why that situation should be regulated by a provision of international law.

44. Mr. USTOR suggested that all the situations could be covered in a single short paragraph reading:

"The permanent representative and the other members of the permanent mission may be accredited or assigned, as the case may be, as permanent representative or members of another permanent mission."

45. Mr. YASSEEN said he did not share Mr. Ushakov's view. If no legal rule were established, the second organization could oppose the assignment or accreditation of a member of a permanent mission. The Vienna Convention on Diplomatic Relations³ provided for that case.

46. He could endorse the texts proposed by Mr. Kearney and Mr. Ustor, which covered all the cases.

47. Mr. EUSTATHIADES said that Mr. Ustor's condensed text was not lacking in legal precision, while Mr. Kearney's was clearer. The Commission should endeavour rather to prepare a clear and concrete text, which would not be difficult for governments to apply.

48. Mr. NAGENDRA SINGH said that to refer the article back to the Drafting Committee, as Mr. Rosenne had urged, would only lead to further delay; he suggested that the Commission simply choose between the two texts proposed by Mr. Kearney and Mr. Ustor.

49. Mr. TABIBI suggested that the authors of those two texts endeavour to combine them.

50. Mr. CASTRÉN (Chairman of the Drafting Committee) said that he had consulted Mr. Kearney and Mr. Ustor, and was now in a position to submit to the Commission the following text which would cover all the cases:

Accreditation to two or more international organizations or assignment to two or more permanent missions

1. The sending State may accredit the same permanent representative to two or more organizations or assign him as a member of its other permanent missions.

2. The sending State may accredit a member of the staff of a permanent mission as permanent representative to other organizations or assign him to its other permanent missions.

³ See United Nations, *Treaty Series*, vol. 500, p. 96.

51. Mr. USHAKOV said that, in bilateral diplomacy, the head of a diplomatic mission could be appointed a member of the diplomatic staff of the sending State's mission to another receiving State. That special case was not dealt with in the 1961 Vienna Convention on Diplomatic Relations. The powers of the sending State in the matter did not need to be specified.

52. Similarly, there was no reason to include in the proposed paragraph 1 the concluding words: "or assign him to its other permanent missions". There was no need to make express provision for the undoubted right of the sending State to create that unusual situation.

53. The provisions of paragraph 2 were equally unnecessary, in that they did not state any rule of international law; the sending State was always free to appoint any person as permanent representative, whether that person was or was not already a member of one of its permanent missions. Since there was no question of *agrément* or of a declaration of *persona non grata* in relations with international organizations, there could also be no question of an organization objecting to the appointment of a person as permanent representative.

54. Although those passages of the proposed new text were unnecessary, he would not vote against the article because the issue involved was not a major one.

55. Sir Humphrey WALDOCK said the proposed new text was acceptable in principle, but he would suggest, as a drafting improvement, that it be recast to read:

Accreditation to two or more international organizations or assignment to two or more permanent missions

1. The sending State may accredit the same person as permanent representative to two or more organizations or assign a permanent representative as a member of another of its permanent missions.

2. The sending State may accredit a member of the staff of a permanent mission as permanent representative to other organizations or assign him as a member of another of its permanent missions.

56. Mr. YASSEEN said that Sir Humphrey Waldock's new text was acceptable, subject to the formulation of a suitable French version.

57. Mr. ROSENNE said he noted that the two expressions "member of the permanent mission" and "member of the staff of the permanent mission" appeared to be used with the same meaning in the two proposed paragraphs.

58. He had reached the conclusion that, in the form now proposed, article 7 did not add much to international law and he would be unable to vote for it.

59. The CHAIRMAN put article 7 to the vote in the wording suggested by Sir Humphrey Waldock, subject to suitable French and Spanish texts being formulated.

*Article 7 was adopted by 15 votes to 1.*⁴

ARTICLE 8 (Accreditation, assignment or appointment of a member of a permanent mission to other functions)⁵

60. Mr. CASTRÉN (Chairman of the Drafting Com-

⁴ For a later amendment to the text of article 7, see 989th meeting, para. 17.

⁵ For earlier discussion, see 952nd meeting, paras. 11-47.

mittee) said that the Drafting Committee proposed the following text for article 8:

Accreditation, assignment or appointment of a member of a permanent mission to other functions

1. The permanent representative of a State to an international organization may be accredited as head of a diplomatic mission or assigned as a member of a special mission of that State to the host State or to another State.

2. A member of a permanent mission of a State to an international organization may be assigned as a member of a diplomatic mission or of a special mission of that State to the host State or to another State.

3. A member of a permanent mission of a State to an international organization may be appointed as a member of a consular post in the host State or in another State.

4. The accreditation, assignment or appointment referred to in paragraphs 1, 2 and 3 of this article shall be governed by the rules of international law concerning diplomatic and consular relations.

61. The Drafting Committee had considerably altered and amplified the text proposed by the Special Rapporteur in the light of the discussion in the Commission.

62. The title of the article had been changed to cover generally all the cases dealt with separately in paragraphs 1, 2 and 3. Like the new text of article 7, article 8 spoke of the permanent representative or the members of a mission and not of the permanent mission itself.

63. Some members of the Commission had suggested that article 8 should deal with the case where a member of a permanent mission was assigned as an observer to another international organization. The Drafting Committee had considered that an observer was also a representative and that the case was already covered by article 7.

64. At the request of some members of the Commission, the Drafting Committee had added a paragraph 4, containing a general reservation to take account of problems of *agrément*, exequatur and other forms of consent of the receiving State; it was modelled on article 70, paragraph 4, of the Vienna Convention on Consular Relations.⁶

65. The Drafting Committee had asked the Special Rapporteur to adapt the commentary to the new wording of article 8 and to draft a new article for insertion in section II, on facilities, privileges and immunities, to cover the case of members of permanent missions exercising the two functions mentioned in article 8.

66. Mr. ROSENNE said that article 8 in its new form was on the right lines and he particularly welcomed the inclusion of paragraph 4, which was very much needed.

67. According to paragraph 1, a permanent representative could be accredited as a head of a permanent mission or as a head or member of a special mission, but paragraph 2 apparently did not admit of a member of a permanent mission being accredited as a head of a diplomatic mission. That possibility did arise in practice; for example, some members of the permanent mission of Israel to the United Nations had been accredited as non-resident ambassadors. That possibility ought to be provided for.

⁶ See *United Nations Conference on Consular Relations, Official Records*, vol. II, p. 186.

68. The words "of that State" should be inserted after the words "a consular post" in paragraph 3. He would not have thought that the words "in the host State or in another State" were necessary. It would suffice to replace them by the words "in any State".

69. Mr. YASSEEN said that paragraph 3 was contrary to the practice of certain host States, which were opposed to a member of a permanent mission to an international organization also fulfilling consular functions.

70. Mr. BARTOŠ said that, according to article 8, paragraph 1, the permanent representative of a State to an international organization might also be accredited as head of a diplomatic mission; but sometimes the permanent representative was assigned as a member and not as head of a diplomatic mission. Paragraph 1 should be amended to take that possibility also into account.

71. With regard to the point raised by Mr. Yasseen, the United States had declared that the functions of consul and those of head of a permanent mission to an international organization were incompatible, in view of the fact that a consul and a head of a permanent mission did not enjoy the same rights and immunities.

72. On the other hand, the Vienna Convention on Consular Relations provided⁷ that consuls could also be members of missions to international organizations. Article 8 raised the same problem, but in reverse. If the holder of a consul's post could be a member of a permanent mission to an international organization, then the question arose whether a member of a permanent mission to an international organization could at the same time be the holder of a consular post. That was a logical consequence which States which had ratified the Vienna Convention on Consular Relations had to accept.

73. He approved the text of paragraph 4 as it now stood; in his opinion, it would make it possible to solve any conflicts that might arise between article 8 and the rules of international law concerning diplomatic and consular relations.

74. In paragraph 1 it would be as well to insert the words "of a diplomatic mission or" after the words "assigned as a member"; in practice, the heads of permanent missions to the United Nations in New York were sometimes members of their country's diplomatic mission with important duties. It also happened that some diplomats were members of a permanent mission at the same time as heads of a diplomatic mission.

75. Mr. USHAKOV said that the Drafting Committee had understood the expression "a member of a permanent mission" in paragraph 2 as covering the head of the mission who could, therefore, be assigned as a member of a diplomatic mission.

76. Where a member of a permanent mission was accredited as an ambassador, that was to say, as head of a diplomatic mission, article 5 of the Vienna Convention on Diplomatic Relations would apply because the head or any member of a diplomatic mission could act as representative of the sending State to any international organization.

77. Mr. BARTOŠ said that, if the expression "a member of a permanent mission" covered the head of the permanent mission, he saw no reason why the words "or assigned as a member of a special mission of that State to the host State or another State", already appearing in paragraph 1 which only concerned the head of a permanent mission, should be repeated in paragraph 2. If those words were deleted from paragraph 1, Mr. Ushakov's interpretation would be correct.

78. Members of a permanent mission could also be accredited as heads of a diplomatic mission, at all events as *chargés d'affaires*. Either, then, the words "accredited as head of a diplomatic mission or" should be added after the words "may be" in paragraph 2, or the words "or assigned as a member of a special mission" in paragraph 1 should be deleted.

79. Mr. USHAKOV said it would be better to delete the words "or assigned as a member of a special mission".

80. Mr. CASTRÉN (Chairman of the Drafting Committee), replying to Mr. Rosenne's remark concerning paragraph 1, said that the case where a member other than the head of a permanent mission was accredited as head of a diplomatic mission was covered by article 5 of the Vienna Convention on Diplomatic Relations.

81. Mr. Rosenne's two remarks concerning paragraph 3 were a drafting matter; it would be an improvement to insert the words "of that State" after the word "post" and to replace the words "in the host State or in another State" by "in any State".

82. The words "or assigned as a member of a special mission" in paragraph 1 should be deleted in order to avoid dealing with the same question in both paragraphs 1 and 2.

83. The Commission might adopt paragraph 3 provisionally and defer a final decision until it had seen the comments of Governments.

84. Mr. ROSENNE said he accepted the explanations by Mr. Ushakov and Mr. Castrén concerning paragraph 1 but would ask that its relationship to the Vienna Convention on Diplomatic Relations be explained in the commentary.

85. Mr. EL-ERIAN (Special Rapporteur) said that the practice of employing members of permanent missions as consular officers raised problems of privileges and immunities. He was preparing an article on the problem of double functions.

86. Mr. KEARNEY said it was desirable to make the article as complete as possible, even at the risk of some repetition. In paragraph 1, the words "diplomatic or" should accordingly be inserted after the words "assigned as a member of a", while in paragraph 2 the words "the staff of" should be inserted after the words "a member of" at the beginning of the paragraph and the words "accredited as head of a diplomatic mission or" should be inserted after the words "to an international organization may be".

87. He could agree to Mr. Rosenne's proposal to insert the words "of that State" in paragraph 3, but the rest of the paragraph ought to be retained for reasons of caution, since it was the host State that was concerned with

⁷ See article 17, paragraph 2.

problems arising from members of permanent missions acting in other capacities and possessing other immunities.

88. Mr. EUSTATHIADES said that paragraph 3 was necessary, because the duties of a permanent mission to an international organization might be very limited. Furthermore, certain States might adopt the practice referred to in paragraph 3 because of a shortage of staff.

89. Mr. USTOR said that, in paragraphs 2 and 3, the words "of a State to an international organization" should be dropped because they were unnecessary. He was not opposed to Mr. Kearney's amendments to paragraph 2.

90. Mr. BARTOŠ said that to delete the words "of a State" might create confusion. In his view, the Drafting Committee had been right to include those words, as they helped to clarify the meaning of the article.

91. Mr. CASTRÉN (Chairman of the Drafting Committee) proposed that only the words "to an international organization", in paragraphs 2 and 3, be deleted.

92. Mr. Kearney's proposal improved the present wording and met the point made by Mr. Rosenne.

93. Mr. USHAKOV said he accepted Mr. Kearney's proposal, but to state that the head of a permanent mission could become a member of a diplomatic mission was inelegant and even superfluous.

94. The CHAIRMAN said that he would put article 8 to the vote with the following amendments. In paragraph 1, the words "to an international organization" to be deleted and the words "diplomatic or" inserted after the words "as a member of a". In paragraph 2, the words "the staff of" to be inserted after the words "a member of", at the beginning of the sentence; the words "to an international organization" to be deleted, and the words "accredited as head of a diplomatic mission or" inserted after the words "may be". In paragraph 3, the words "to an international organization" to be deleted and the words "of that State" inserted after the words "consular post".

Article 8, as amended, was adopted by 16 votes to none.

The meeting rose at 1.15 p.m.

982nd MEETING

Thursday, 25 July 1968, at 10 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, 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.1-4; A/CN.4/L.118 and Add.1 and 2)

[Item 2 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE
(continued)

1. The CHAIRMAN invited the Commission to continue consideration of the draft articles proposed by the Drafting Committee.

ARTICLE 9 (Appointment of the members of the permanent mission)¹

2. Mr. CASTRÉN (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 9:

Appointment of the members of the permanent mission

Subject to the provisions of articles 9 *bis* and 14, the sending State may freely appoint the members of the permanent mission.

3. The only change made to the text proposed by the Special Rapporteur was the addition of the proviso, "Subject to the provisions of articles 9 *bis* and 14", at the beginning of the article. The new article 9 *bis* dealt with the problem of the nationality of the members of the permanent mission and article 14 concerned the size of the permanent mission. The provisions of those two articles could limit the free choice of the sending State in appointing the members of the permanent mission.

4. Mr. ROSENNE asked whether the intention was to exclude the right of a sending State to appoint a member of a diplomatic mission to be permanent representative to an international organization.

5. Mr. EL-ERIAN said that in the original draft of article 9 there was no reservation requiring the consent of the host State to the appointment of one of its nationals to a permanent mission. Members of a permanent mission were not accredited to the host State, which was not in the same position as the receiving State in bilateral diplomatic relations.

6. Mr. Ustor had raised the problem of remedies, and the Commission had decided to consider a general article providing for them.

7. Mr. USTOR said that the answer to Mr. Rosenne's question was to be found in article 5, paragraph 3, of the Vienna Convention on Diplomatic Relations² which stated in principle that the receiving State could not object to a head or member of a diplomatic mission acting as a permanent representative.

8. Mr. ROSENNE asked that the point be explained in the commentary.

¹ For earlier discussion, see 953rd meeting, paras. 1-66.

² See United Nations, *Treaty Series*, vol. 500, p. 100.