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Summary record of the 982nd meeting

Topic:
Representation of States in their relations with international organizations

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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.

9. The CHAIRMAN put the Drafting Committee's text to the vote.

Article 9 was adopted by 15 votes to none.

ARTICLE 9 *bis* (Appointment to a permanent mission of persons having the nationality of the host State)

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

Appointment to a permanent mission of persons having the nationality of the host State

Permanent representatives and members of the diplomatic staff of the permanent mission may not be appointed from among persons having the nationality of the host State, except with the consent of that State.

11. The Drafting Committee had drafted the new article 9 *bis* to take account of points raised during the discussion. Some members had argued that the tacit consent of the host State was sufficient and that appointments could consequently be made unless the host State objected, but the Drafting Committee had decided to refer expressly to the consent of the host State. As a general rule, express consent was needed.

12. One member of the Drafting Committee had suggested that sub-paragraph (f) of article 1 should define more precisely the persons whose appointment depended on the consent of the host State. The Special Rapporteur and the Drafting Committee would examine that suggestion in connexion with article 1.

13. Mr. ROSENNE said he would like to know why article 9 *bis* differed so greatly from article 8 of the Vienna Convention on Diplomatic Relations,³ article 7 of the Vienna Convention on Consular Relations,⁴ and article 10 of the draft articles on special missions;⁵ also whether the Drafting Committee had considered including at the end of the text a clause reading, "which consent may be withdrawn at any time".

14. Sir Humphrey WALDOCK said that the difference between article 9 *bis* and the articles mentioned by Mr. Rosenne was very marked and was a matter of some importance.

15. Mr. CASTRÉN (Chairman of the Drafting Committee) said that during the general discussion the majority opinion in the Commission had been that there was no need for the draft articles on permanent missions to attach the same weight to the problem of nationality as the Vienna Convention on Diplomatic Relations. The legal position of permanent missions to international organizations was very different from that of diplomatic missions.

16. The text adopted by the Drafting Committee did not deal with the problem of nationals of a third State or with the case of persons possessing dual nationality.

17. Nor did it provide for the possibility of a host State withdrawing its consent, because some members believed that tacit consent was sufficient.

³ *Ibid.*

⁴ See *United Nations Conference on Consular Relations, Official Records*, vol. II, p. 176.

⁵ See *Official Records of the General Assembly, Twenty-second Session, Supplement No. 9 (A/6709)Rev.1*, p. 8.

18. Mr. YASSEEN, referring to the problem of third States, said that it would be desirable, in order to avoid conflict of national allegiance or loyalties, to insert a paragraph on the lines of paragraph 1 of article 8 of the Vienna Convention on Diplomatic Relations which read: "Members of the diplomatic staff of the mission should in principle be of the nationality of the sending State".

19. Also, article 9 *bis* should follow paragraph 2 of article 8 of the Vienna Convention on Diplomatic Relations in stating that the consent of the host State to the appointment of one of its nationals might be withdrawn at any time.

20. Mr. BARTOŠ said that the consent of the host State to the appointment of one of its nationals as a member of a permanent mission to an international organization whose headquarters were in its territory should be given beforehand and in express terms, and might be withdrawn at any time.

21. He questioned what would be the position of a member of a permanent mission to the United Nations in New York who acquired United States nationality. Would the United States have the right in such a case to object to its new national continuing to exercise his functions as a member of the permanent mission on its territory? As the case had already occurred in practice, the Commission should take a position in the matter and state its opinion in the commentary. He personally thought that the host State had a right to decline to permit its new national to continue to exercise his functions as a member of a permanent mission on its territory.

22. He also wondered what was the position of members of permanent missions to the United Nations in New York who possessed dual nationality, where one nationality was that of the host State, the United States. United States law provided penalties where a person who had obtained United States nationality by naturalization returned to his country of origin without prior authorization. Also, any person who had acquired United States nationality by naturalization and remained in his country of origin without authorization for a specified period could be considered as having forfeited United States nationality. Would, therefore, a member of a permanent mission who possessed dual nationality, one nationality being that of the United States, be considered a United States citizen and, as such, have to request authorization to visit his country of origin, or would he be considered a foreign agent in United States territory? In his view, the question was of considerable importance and should be dealt with in article 9 *bis*.

23. Mr. EL-ERIAN (Special Rapporteur) said that there were fundamental differences between article 9 *bis* and article 8 of the Vienna Convention on Diplomatic Relations. The main reason why States objected to their own nationals being appointed members of permanent missions was that they did not wish to grant them privileges and immunities. However, the practice was now becoming rare and would eventually disappear altogether.

24. It would be undesirable to make the article unduly rigid by stipulating that the consent could be withdrawn at any time.

25. No restrictions should be placed on the appointment of nationals of third States to permanent missions.

26. Mr. AGO said that the application of article 9 *bis* should be limited to members of the diplomatic staff of the permanent mission. He accordingly proposed the deletion of the words "Permanent representatives and" at the beginning of the article.

27. Article 9 *bis* dealt with the consent of the host State, but he did not see why it should not also deal with the consent of the international organization concerned. That omission could give rise to difficult and delicate problems. An international organization might have expelled a State or applied sanctions against it; in that case, could it consent to a member of a permanent mission accredited to it being a national of the State which had been expelled or had had sanctions applied against it? The organization should be asked for its prior consent, particularly in the case of nationals of a third State.

28. He also proposed the addition of a new paragraph modelled on paragraph 3 of article 8 of the Vienna Convention on Diplomatic Relations.

29. Mr. USHAKOV said that article 9 *bis* was necessary because it dealt with the privileges and immunities of members of permanent missions who were at the same time nationals of the host State. Members of permanent missions who were nationals of the host State could enjoy certain privileges and immunities only with the consent of that State. The phrase "except with the consent of that State" implied that consent could be withdrawn, but to make the text clearer, it should be stated expressly, as in article 8 of the Vienna Convention on Diplomatic Relations, that the host State might withdraw its consent at any time.

30. He agreed with Mr. Ago that the opening words "Permanent representatives and" should be deleted; the position of the permanent mission would become very difficult if the host State could at any time withdraw its consent to the appointment of the permanent representative when that representative was one of its nationals.

31. Mr. KEARNEY said he agreed with the Special Rapporteur that the status of permanent missions raised different problems from that of diplomatic missions. He would not wish the contents of article 8, paragraph 1, of the Convention on Diplomatic Relations to be incorporated in article 9 *bis*. Permanent representatives should in principle be of the nationality of the sending State but that should not be an absolute rule.

32. He could agree to the inclusion of a clause to the effect that the consent of the host State could be withdrawn at any time, but he did not favour incorporating article 8, paragraph 3, of the Vienna Convention in article 9 *bis*.

33. As far as he was aware, the problem of dual nationality had not caused any particular difficulties between the United States and the United Nations, and he saw no need for a special provision to cover that possibility.

34. Mr. NAGENDRA SINGH, said that, if the purpose of codification was to prevent international disputes, there was a lot to be said for following paragraph 2 of article 8 of the Vienna Convention on Diplomatic Relations and

providing expressly that consent might be withdrawn at any time. If the article was silent on the matter it could give rise to varying interpretations and lead to disputes.

35. He asked that the opening words "Permanent representation and" should be deleted and that the wording used in paragraph 1 of article 8 of the Vienna Convention should be inserted. On the other hand, he saw no need to incorporate paragraph 3 of article 8 of that Convention.

36. Mr. TABIBI said he agreed that there was a clear distinction between permanent missions and regular diplomatic missions and that article 9 *bis* should not be excessively rigid but adapted to practice. Nationals of States other than the sending State were appointed to permanent missions and that fact should be taken into account, particularly in order to safeguard the interests of small States which might not have persons of suitable qualifications to conduct certain negotiations.

37. Mr. YASSEEN said there was an undeniable difference between the situation of permanent missions and that of diplomatic missions as regards the nationality of their members, and article 9 *bis* should take that difference into account.

38. The article should follow paragraph 2 of article 8 of the Vienna Convention on Diplomatic Relations and state that the host State might withdraw its consent at any time.

39. With regard to the question of third States, although a conflict of loyalties might occur even in the case of permanent missions, it would be undesirable to mention paragraph 3 of article 8 of the Vienna Convention on Diplomatic Relations in article 9 *bis*.

40. Article 9 *bis* should be modelled on paragraph 1 of article 8 of the Vienna Convention on Diplomatic Relations and state that members of the diplomatic staff of the mission should in principle be of the nationality of the sending State. Some members of permanent missions were not of the nationality of the sending State, but that was an exception rather than the rule.

41. Mr. USHAKOV, replying to the point raised by Mr. Ago, said that an international organization was neither a State nor a sovereign body; he did not see how an international organization could oppose the appointment of a member of a permanent mission. To make the appointment of a member of a permanent mission subject to the consent of the organization concerned would constitute a serious infringement of the sovereignty of States. Besides, what was meant by "the consent of the organization concerned"? Was the consent given by the Secretary-General or by a decision of the General Assembly? The Secretary-General's consent could certainly not be regarded as the consent of the organization.

42. In view of the difference between the position of permanent missions and that of diplomatic missions, it was right not to include in article 9 *bis* a paragraph along the lines of paragraph 3 of article 8 of the Vienna Convention on Diplomatic Relations, which dealt with the possibility that the receiving State might refuse the appointment of nationals of a third State.

43. For the same reason, there was no need to reproduce paragraph 1 of article 8 of the same Convention, which

provided that members of the diplomatic staff of the mission should in principle be of the nationality of the sending State, since a certain number of States did appoint nationals of third States as members of their permanent missions to international organizations.

44. Finally, it would not be appropriate to add a paragraph providing that the permanent representative should in principle be of the nationality of the sending State.

45. Mr. ROSENNE said that the difference between diplomatic and permanent missions should not be exaggerated. The Commission would need to consider to what extent departures from the Vienna Convention on Diplomatic Relations were justified.

46. In his opinion, something on the lines of article 8, paragraph 1 of the Vienna Convention should be included in article 9 *bis*, with the substitution of the words "as far as possible" for the words "in principle". The article should read "The permanent representative and the members of the diplomatic staff of the permanent mission should, as far as possible, be of the nationality of the sending State."

47. A proviso to the effect that the consent of the host State could be withdrawn at any time should be added, in order to avoid problems of interpretation.

48. The CHAIRMAN, speaking as a member of the Commission, said he agreed with the general view that the provision in article 8, paragraph 3, of the Vienna Convention need not be included, as the host State should not have a say in the composition of the permanent mission.

49. He had no strong feelings about the inclusion of the provision in article 8, paragraph 1 but was in favour of reproducing the provision in article 8, paragraph 2, so as to avoid misunderstanding.

50. There were a number of cases when nationals of host countries were heads of permanent missions of certain Central American States. He did not consider that an international organization was competent to interfere in such appointments, or to express any view on the matter.

51. Mr. AGO said that, if the majority of the Commission considered that making appointments subject to the consent of the international organization might involve practical difficulties, he would accept that general view.

52. He must emphasize, however, that he entirely disagreed with Mr. Rosenne's and Mr. Ushakov's remarks on the subject of international organizations and rejected the obsolete notion that international organizations were, so to speak, second-class subjects of international law. In his opinion, international organizations were just as sovereign as States.

53. Sir Humphrey WALDOCK said that he would have no objection to a provision on the lines of article 8, paragraph 1, of the Vienna Convention on Diplomatic Relations with the substitution of the words "as far as possible" for the words "in principle". There was a real difference between permanent and diplomatic missions, in that the former very often required technical experts in specialized fields.

54. Care should be taken not to allow the host State to exercise pressure on the work of the organization by

refusing to accept certain persons as members of delegations. At the same time, thought would have to be given to the problems that could arise if a member of a permanent delegation became unacceptable to the host State. Perhaps some machinery for consultation would have to be provided for so as to ensure that the host State was not put at the mercy of undesirable activities.

55. He had no firm view about the inclusion of a provision on the lines of that contained in article 8, paragraph 3 of the Vienna Convention on Diplomatic Relations.

56. Mr. BARTOŠ said that the host State had no right to interfere in the organization's affairs or to exercise control over the members of permanent missions or special missions to international organizations. That was a well-established practice in the United Nations. Cases could be quoted where an international organization had refused to intervene when the composition of a mission was not acceptable to the host State.

57. There was a great difference between the position of diplomatic missions vis-à-vis the host State and the position of permanent missions vis-à-vis an international organization. The host State had a right to consider undesirable any member of a diplomatic mission, because his activities could be regarded as an interference in the domestic affairs of that State. And a State had the right to break off diplomatic relations with another State. On the other hand, the activities of members of permanent missions in an organization corresponded to the right of the sending State to express its opinion and even to participate in the organization's decisions, since the organization represented all the States belonging to it. The organization could not even expel a State except by a long procedure governed by the constituent instrument of the organization.

58. As for the composition of permanent missions, the organization could exert some influence on the sending State through its organs, but that was not a right, only a matter of unofficial approaches.

59. He did not think it possible, therefore, to model article 9 *bis* on the Vienna Convention on Diplomatic Relations. On the other hand, he was prepared to accept the text submitted by the Drafting Committee with some of the amendments which had been proposed.

60. Mr. EL-ERIAN (Special Rapporteur), replying to the point raised by Sir Humphrey WaldoCK, said that article 42 of the draft would specify the obligation of members of the permanent mission to respect the laws and regulations of the host State.

61. Article 44 would deal with modes of termination, but would not, of course, include the provision in article 43 (b) of the Vienna Convention on Diplomatic Relations, which specified that the functions of a diplomatic agent came to an end on notification by the receiving State to the sending State that it refused to recognize the diplomatic agent as a member of the diplomatic mission. As stated in his second report,⁶ the fact that representatives to international organizations were not accredited to

⁶ See Document A/CN.4/195, para. 39.

the host State rendered inapplicable the remedy of declaring a representative *persona non grata*.

62. At the close of the Sixth Committee's discussion on the privileges and immunities of representatives to the United Nations, at the twenty-second session of the General Assembly, the Legal Counsel of the United Nations had stated that the Secretary-General, in interpreting diplomatic privileges and immunities, "would look to provisions of the Vienna Convention so far as they would appear relevant *mutatis mutandis* to representatives to United Nations organs and conferences". The Legal Counsel had pointed out, however, that some provisions such as those relating to *agrément*, nationality or reciprocity "have no relevancy in the situation of representatives to the United Nations".⁷

63. He intended to attach to his commentary to article 44 a note explaining the reasons for not including in the draft articles any provision enabling the host State to refuse to recognize a member of a permanent mission.

64. The only general convention on privileges and immunities which provided for the possibility of expulsion was the 1947 Convention on the Privileges and Immunities of the Specialized Agencies.⁸ Article VII, section 25, paragraph 1 of that Convention specified that, in the case "of abuse of privileges of residence" by a representative of a specialized agency, the representative could be required to leave by the Government of the country concerned. It was explained in the Secretariat study, however, that there was no case on record of the application of that provision: "In the absence of any cases in which article VII of the Specialized Agencies Convention, or any similar provision in a headquarters agreement, has been applied, no practice has been developed regarding its interpretation".⁹

65. In the circumstances, it was his intention to prepare and submit to the Commission in due course an article which would be general in scope and would deal with the remedies available to the host State in terms of consultation with the sending State and the organization concerned. The basic consideration underlying the article would be that the system of *agrément* and that of declaration of *persona non grata* were not applicable in the relations between States and international organizations.

66. He could assure Sir Humphrey Waldock that the problem over which he had expressed concern would be covered in articles 42 and 44 and in the general article that would set forth the remedies available against abuse of privileges or misbehaviour by a representative, and any other grievances of the host State.

67. Mr. USHAKOV said that the opening words of article 9 *bis*, "Permanent representatives", should be corrected to read "The permanent representative".

68. Mr. CASTRÉN (Chairman of the Drafting Committee), summing up the discussion, said that there had been little support for the idea of including in article 9 *bis*

a paragraph on the lines of paragraph 3 of article 8 of the 1961 Vienna Convention, and the Special Rapporteur had given convincing reasons for not doing so. Nor had Mr. Ago's suggestion to make provision for the approval of the organization concerned received support.

69. On the other hand, most members had supported the idea of including a new opening paragraph, in the form proposed by Mr. Rosenne.

70. There had also been general support for the proposal to insert the words "which may be withdrawn at any time" at the end of the Drafting Committee's sole paragraph, which would now become paragraph 2.

71. Lastly, he noted the correction suggested by Mr. Ushakov; since there was normally only one permanent representative, the plural "Permanent representatives" was inaccurate.

72. Mr. KEARNEY said that his own proposal for the opening paragraph was substantially different from Mr. Rosenne's. He himself had proposed that the provisions of the opening paragraph should be confined to the permanent representative himself; it would thus be open to the sending State to employ aliens as members of the diplomatic staff. A provision on those lines would be of assistance to small States.

73. Since the proposed opening paragraph would in any case be only in the nature of an exhortation, its form was not of great consequence, but his own text would be more flexible.

74. Mr. YASSEEN said that he was not in favour of drawing a distinction between the permanent representative and the members of the diplomatic staff of the permanent mission.

75. Mr. BARTOŠ said he agreed with that view. Members of the diplomatic staff of the permanent mission were entrusted with the same functions as the permanent representative, and it was quite common for one of them to function as the acting chief of the mission.

76. Mr. AGO said that it was undesirable to depart from the wording used in paragraph 1 of article 8 of the Vienna Convention. If the expression "as far as possible" were used, comparison with the words "in principle", used in the corresponding text of the Vienna Convention, could lead to difficulties of interpretation.

77. From the point of view of drafting, it would be an improvement to combine the two paragraphs into one and he therefore proposed the following wording:

"The permanent representative and the members of the diplomatic staff of the permanent mission should in principle be of the nationality of the sending State. They may not be appointed from among persons having the nationality of the host State, except with the consent of that State, which may be withdrawn at any time."

78. Mr. BARTOŠ said he supported Mr. Ago's proposal.

79. Mr. USHAKOV said he did not consider that the opening sentence was needed at all. However, if it were to be included, the language used should be the same as that of the corresponding provision in the Vienna Con-

⁷ See *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 98, document A/C.6/385, para. 4.

⁸ See United Nations, *Treaty Series*, vol. 33, p. 261.

⁹ See Document A/CN.4/118, part one, B, para. 36.

vention. With the words "in principle" the clause would state a rule of law; if those words were replaced by the words "as far as possible", the provision would cease to have a legal character.

80. In view of the changes that were now suggested to the wording of article 9 *bis* he proposed that the title also be amended to read: "Nationality of the members of the permanent mission".

81. Mr. ROSENNE said that there was not much difference between the opening sentence with the words "in principle" and the same sentence with "as far as possible"; both were devoid of juridical content. He had suggested his own formula merely to reflect the slight difference between the two situations. If, however, Mr. Ago's wording commended itself to the Commission, he would not press his own text.

82. The CHAIRMAN put to the vote article 9 *bis* in the form proposed by Mr. Ago, with the title amended as proposed by Mr. Ushakov.

Article 9 bis, as thus amended, was adopted by 15 votes to none, with 1 abstention.

ARTICLE 10 (Credentials of the permanent representative)¹⁰

83. Mr. CASTRÉN (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 10:

Credentials of the permanent representative

The credentials of the permanent representative shall be issued either by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or by another minister if such is the practice in the Organization, and shall be transmitted to the competent organ of the Organization.

84. The text of article 10 as proposed by the Drafting Committee was based on paragraph 1 of the text submitted by the Special Rapporteur. The Drafting Committee had made a number of changes, both of form and of substance. After the words "Minister for Foreign Affairs", it had added the words "or by another Minister if such is the practice in the organization". It had not wanted to mention in that connexion the competent organs and authorities of the State, because it considered that credentials were generally issued by a Minister. If any exception occurred it would be covered by the general reservation contained in article 4.

85. The words "shall be transmitted to the Secretary-General" had been replaced by the words "shall be transmitted to the competent organ of the Organization".

86. In the light of the opinion of some members that paragraph 2 stated internal rules of secondary importance, it had been deleted. The title also had been modified.

87. Mr. YASSEEN said he supported the new draft of article 10, which took account of the practice of certain organizations where credentials could be signed by the Minister of Health, the Minister of Labour or the Minister of Communications. The Drafting Committee was right not to speak of State organs or authorities in that con-

nexion; it was necessary to insist that the credentials of the representative of a State to an organization should be signed by a responsible political figure.

88. Mr. CASTAÑEDA said he wondered whether the French word "*émanent*" was exactly equivalent to the English words "shall be issued". The French term suggested a source and the English a document. The English term appeared to be preferable.

89. Mr. ROSENNE said that a comma should be inserted after the words "Foreign Affairs" in the English text. As for the phrase "or by another minister if such is the practice in the organization", which had been added, he wondered whether it was necessary to repeat a reservation already covered by article 4. Besides, the practice of States also should be taken into consideration. It would be best to delete the phrase and just mention the point in the commentary.

90. Mr. AGO said he agreed with the new text of article 10 in principle, but wondered whether, in inserting the phrase "or by another minister", the Drafting Committee had not been thinking of the practice adopted in appointing delegations to an international organization. In that case it was obvious that the appointment could be made by a Minister responsible for a special field, such as health or labour. But in the case of members of a permanent mission, the appointment ought to be issued by the Minister for Foreign Affairs. He would like to hear the opinion on that point of members with greater experience of the matter.

91. Mr. Rosenne's point concerning the practice of States was very pertinent. It would be more precise to speak of "the practice of member States with respect to a particular organization".

92. Mr. BARTOŠ said that the members of a permanent mission should be appointed in accordance with the practice in the organization, provided the appointment was also in conformity with the constitution of the sending State, since the organization could not interfere in a matter which fell within the exclusive competence of States.

93. He wished to draw attention to the difference between the French term "*pouvoirs*", which applied to the authorization granted, and the term "*lettres de créance*", which designated the instrument itself. The meaning of those two terms had been discussed at length in connexion with the drafting of rules 27, 28 and 29 of the rules of procedure of the General Assembly. The question was, of course, only one of terminology, but it might also perhaps deserve consideration on its merits.

94. The CHAIRMAN pointed out that Mr. Bartoš's last observation applied only to the French text.

95. Mr. EL-ERIAN (Special Rapporteur) said it was true that, as a general rule, the credentials of a permanent representative were signed by the Head of State, Head of Government or Minister for Foreign Affairs of the sending State. Accreditation by other ministers usually took place in the case of delegates to conferences or to organs of an organization. In the case, however, of a few specialized agencies, the credentials of permanent representatives

¹⁰ For earlier discussion, see 954th meeting, para. 1-74.

could also be issued by the member of Government responsible for the department corresponding to the field of competence of the organization concerned. Thus, credentials for representatives to the International Civil Aviation Organization were usually signed by the Minister for Foreign Affairs or the Minister of Communications or Transport. In the World Health Organization, credentials must be issued by the Head of State, the Minister for Foreign Affairs, the Minister of Health or any other appropriate authority.

96. Since the possibility thus existed of credentials being issued by a minister other than the Minister for Foreign Affairs, where such was the practice in the organization concerned, it was desirable to retain in article 10 the provision under discussion.

97. Mr. YASSEEN said that article 10 offered many possibilities to States. Those possibilities were listed and corresponded to the practice at present followed in the various organizations. It was right and proper to take account of the broadening of international relations and of the fact that many ministers were now concerned with international relations.

98. Only the practice in the organizations should be taken into consideration. Whether they required that credentials should be signed by the Head of Government, the Minister for Foreign Affairs or by another minister, the decision in the matter was theirs. The practice of States did not play an important part in the matter. If the State considered that any public official could sign the credentials, the organization was entitled to refuse to accept them. The practice of States must, of course, conform with the provisions of the constitution of the State concerned, but that was not sufficient. What mattered was the practice in the organization.

99. Mr. NAGENDRA SINGH said he entirely agreed with Mr. Yasseen. In the case of the United Nations Conference on Trade and Development (UNCTAD), for example, credentials were issued by the Minister of Trade. The phrase "or by another minister" should therefore be maintained.

100. Moreover, the practice in the organization should be followed; to accept the practice of individual States would create confusion. There had to be a common denominator. He would vote in favour of the text submitted by the Drafting Committee.

101. Mr. AGO said that he was more and more convinced that what members were talking about was representatives to the assemblies of organizations. Several organizations had been quoted as examples, but there were no permanent missions to some of them, UNCTAD for example.

102. He would not prolong the discussion because the article as drafted by the Drafting Committee would not give rise to any great difficulties. He would, however, like the Commission to use some such wording as "the practice as regards a particular organization", since in his view, the point was the practice established between the State and the organization.

103. Mr. USHAKOV said that there were a number of discrepancies between the English and French versions.

For example, the English version spoke of "the practice in the organization" and the French of "*la pratique de l'organisation*". Furthermore, the phrase "shall be issued by the Head of State" did not correspond to "*émanant du chef de l'Etat*". The two texts required revision.

104. Mr. ROSENNE said he supported Mr. Ushakov's remarks.

The meeting rose at 1 p.m.

983rd MEETING

Friday, 26 July 1968, at 10 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Ago, Mr. Bartoš, 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 Waldock, Mr. Yasseen.

Fourth Seminar on International Law

1. Mr. RATON (Secretariat), on behalf of the Director-General of the United Nations Office at Geneva and of the participants, thanked the Commission for its generous and valuable support of the Seminar. While the administrative arrangements for the Seminar were, of course, handled by the Secretariat, without the Commission's instructional contribution, the Seminar could not be held. He was particularly grateful to those members who had addressed the Seminar and regretted that others who had expressed their willingness to speak had not been able to do so. That was because the number of meetings of the Seminar was unfortunately limited and it was essential to maintain an equitable geographical and language distribution. The rota system which had now been adopted should, however, enable all members of the Commission who wished to address the Seminar to do so.

2. The fellowships awarded by Denmark, the Federal Republic of Germany, Finland, Israel, the Netherlands, Norway and Sweden had enabled the organizers to improve geographical representation and the present year's Seminar had been attended by participants from the most distant parts of the globe. The organizers hoped that the Seminar would continue to receive the support not only of the Commission but also of the Sixth Committee, and that Governments which already supported it would continue to do so.

3. The CHAIRMAN said that the Commission was keenly interested in establishing contact with the new generation. He congratulated Mr. Raton on his success in organizing the Seminar, and expressed the hope that Governments would give it increasing support and that the number of participants from the farthest corners of the earth would continue to grow.