

Document:-  
**A/CN.4/SR.986**

**Summary record of the 986th meeting**

Topic:  
**Representation of States in their relations with international organizations**

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there was no information on what was the practice in the specialized agencies.

65. It would be worth considering a rule for establishing precedence according to the date and time of presentation of credentials on the lines of that applied in bilateral diplomacy.

66. Mr. ROSENNE said that the discussion had confirmed his view that for the time being the Commission should submit no rule on precedence, which varied according to circumstances. The Secretariat's note (A/CN.4/L.129) indicated that the precedence of permanent representatives might easily raise delicate problems. The Commission might perhaps mention the three possible alternatives in the introduction to its report on item 2 of the agenda.

67. As far as the three variants were concerned, there was little difference between A and C because in all cases article 4 would apply. The choice would lie between A and B and he preferred the former.

68. Once all the articles had been adopted and the Commission had more information about how precedence was established, it could decide whether or not to include a rule on the subject.

69. Sir Humphrey WALDOCK said it would be useful to put forward a residual rule on the subject so as to elicit the views of Governments. In his opinion alternative B was the usual system applied to permanent representatives and was in accordance with the principle of the equality of States. The alphabetical system gave an unfair advantage to certain States.

70. Mr. RAMANGASOAVINA said that, if the aim was to harmonize the practice of the various organizations, then alternative B was the most reasonable.

71. The CHAIRMAN, speaking as a member of the Commission, said he agreed with Sir Humphrey Waldock that the Commission should formulate a residual rule, but he favoured alternative C because the alphabetical system was used at United Nations Headquarters.

72. Mr. USHAKOV said that, when discussing alternative C, the Drafting Committee had been aware that the alphabetical order was established by drawing lots, but it had found that notion difficult to express. The point could be explained in the commentary if the Commission submitted all three alternatives.

73. Mr. CASTRÉN (Chairman of the Drafting Committee) said that the majority of the Commission favoured alternative B, but he thought it would be best to submit all three alternatives. In alternative C, the amendment suggested by Mr. Bartoš should be adopted.

74. Mr. YASSEEN said that alternative A added nothing to what was already provided by article 4. Similarly, there was no advantage in merging the first two alternatives, since alternative B combined with article 4 led to the same result. The Commission might therefore submit alternative B, and state in the commentary that some members had favoured alternative C.

75. Mr. ROSENNE said that he was opposed to submitting more than one alternative. The Commission should put forward only the text which was supported by the majority and leave the other two to be mentioned in the

commentary. It was difficult for Governments to comment on three variants and to submit alternatives was an undesirable practice.

76. Mr. CASTAÑEDA said that alternative C corresponded most closely to actual practice.

77. Mr. BARTOŠ said he agreed with that view; alternative C was the easiest to apply in the light of the principle of equality of nations laid down in the United Nations Charter.

78. However, it should not be forgotten that questions of precedence often gave rise to problems not only of form but also of substance. That being so, it would probably be best for the Commission to submit all three alternatives and leave it to Governments to take a decision.

79. Mr. YASSEEN suggested that the Commission choose one alternative by vote; the other alternatives could then be mentioned in the commentary.

80. Mr. USTOR said that there was no uniform practice in the matter of precedence, and alternative B had the greatest merit as a new rule that should be acceptable to organizations.

81. Mr. EL-ERIAN (Special Rapporteur) suggested a new text for article 17 reading: "Precedence among permanent representatives shall be determined by the alphabetical order or according to the time and date of the submission of their credentials to the competent organ of the Organization, in accordance with the practice established in the Organization".

82. That text would cover alternatives B and C. In the unlikely event of there being any other system, it would be covered by article 4.

83. Mr. NAGENDRA SINGH said that the most prevalent system was that of the alphabetical order. He supported the Special Rapporteur's formula which would leave the choice of system to the organization concerned.

84. Mr. YASSEEN formally proposed that a vote be taken on alternative B as the text to be submitted by the Commission.

85. The CHAIRMAN said the Commission should choose between alternative B, as proposed by Mr. Yasseen and the new text put forward by the Special Rapporteur. He would put alternative B to the vote first, and then the Special Rapporteur's new text.

*6 votes were cast in favour of alternative B and 8 votes in favour of the Special Rapporteur's new text.*

86. The CHAIRMAN declared that the Special Rapporteur's new text was adopted for submission to the General Assembly.

The meeting rose at 1 p.m.

## 986th MEETING

*Wednesday, 31 July 1968, at 9.30 a.m.*

*Chairman:* Mr. José María RUDA

*Present:* 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 Waldock, 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)

ARTICLES 18 and 19 (combined text)(Offices of permanent missions)<sup>1</sup>

1. Mr. CASTRÉN (Chairman of the Drafting Committee) said that the Drafting Committee had combined articles 18 and 19 into a single text, which read:

*Offices of permanent missions*

1. The sending State may not, without the prior consent of the host State, establish offices of the permanent mission in localities other than that in which the seat or the office of the Organization is established.

2. The sending State may not establish offices of the permanent mission in the territory of a State other than the host State, except with the prior consent of such a State.

2. He explained that the Drafting Committee had decided to deal with the question of offices of permanent missions only; he was not sure that it was correct to speak of the seat of a permanent mission. The word "localities" had been criticized, but the Drafting Committee had preferred to maintain it since it was employed in the Vienna Convention on Diplomatic Relations.<sup>2</sup> The words "or the office" had been inserted to take into account the United Nations Office at Geneva.

3. Mr. ROSENNE said that, on the whole, the combined articles 18 and 19 were well drafted. Paragraph 1, however, should speak of "an office" rather than "the office" of the organization, because the United Nations Office at Geneva was not unique; for example, a permanent mission might be established at the office of a regional economic commission.

4. Mr. CASTRÉN (Chairman of the Drafting Committee) said that he was prepared to accept Mr. Rosenne's amendment.

5. Mr. EL-ERIAN (Special Rapporteur) said he also found Mr. Rosenne's amendment acceptable. Permanent missions had been appointed to the Economic Commission for Africa at Addis Ababa.

*Mr. Rosenne's amendment was adopted.*

<sup>1</sup> For earlier discussion of articles 18 and 19, see 970th meeting, paras. 55-106, and 971st meeting, paras. 34-39.

<sup>2</sup> See United Nations, *Treaty Series*, vol. 500, p. 104, article 12.

*The combined text of articles 18 and 19, as amended, was adopted unanimously.*

ARTICLE 20 (Use of flag and emblem)<sup>3</sup>

6. Mr. CASTRÉN (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 20:

*Use of flag and emblem*

1. The permanent mission shall have the right to use the flag and emblem of the sending State on its premises. The permanent representative shall have the same right as regards his residence and means of transport.

2. In the exercise of the right accorded by this article, regard shall be had to the laws, regulations and usages of the host State.

7. Article 20, paragraph 1, corresponded to the text proposed for article 20 by the Special Rapporteur, which was modelled on article 20 of the Vienna Convention on Diplomatic Relations;<sup>4</sup> the Committee had introduced some drafting changes. The reservation made in paragraph 2 was also to be found in the Vienna Convention on Consular Relations<sup>5</sup> and in the draft articles on special missions.<sup>6</sup>

8. Mr. ROSENNE said that the second sentence of paragraph 1 seemed to him unnecessary. If it was put to the vote separately, he would vote against it.

9. Mr. USHAKOV noted that the Drafting Committee's text differed considerably from article 20 of the Vienna Convention on Diplomatic Relations which, in his opinion, was not a very satisfactory text. An explanation of the differences should be given in the commentary.

*Article 20 was adopted unanimously.*

ARTICLE 1 (Use of terms)<sup>7</sup>

10. Mr. CASTRÉN (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 1:

*Use of terms*

For the purposes of the present articles:

(a) An "international organization" means an inter-governmental organization;

(b) An "international organization of universal character" means an organization whose membership and responsibilities are on a world-wide scale;

(c) The "Organization" means the international organization in question;

(d) A "permanent mission" is a mission of representative and permanent character sent by a State member of an international organization to that organization;

<sup>3</sup> For earlier discussion, see 972nd meeting, paras. 1-38.

<sup>4</sup> See United Nations, *Treaty Series*, vol. 500, p. 106.

<sup>5</sup> See *United Nations Conference on Consular Relations, Official Records*, vol. II, p. 180, article 29.

<sup>6</sup> See *Official Records of the General Assembly, Twenty-second Session, Supplement No. 9 (A/6709/Rev.1)*, p. 13, article 19.

<sup>7</sup> For earlier discussion, see 945th meeting, paras. 45-81; 946th meeting, paras. 1-18; 974th meeting, paras. 34-41.

(e) The “permanent representative”<sup>8</sup> is the person charged by the sending State with the duty of acting as the head of a permanent mission;

(f) The “members of the permanent mission” are the permanent representative and the members of the staff of the permanent mission;

(g) The “members of the staff of the permanent mission” are the members of the diplomatic staff, the administrative and technical staff and the service staff of the permanent mission;

(h) The “members of the diplomatic staff” are the members of the staff of the permanent mission, including experts and advisers holding diplomatic rank;

(i) The “members of the administrative and technical staff” are the members of the staff of the permanent mission employed in the administrative and technical service of the permanent mission;

(j) The “members of the service staff” are the members of the staff of the permanent mission employed by it as household workers or for similar tasks;

(k) The “private staff” are persons employed exclusively in the private service of the members of the permanent mission;

(l) The “host State” is the State in whose territory the Organization has its seat or an office at which permanent missions are established;

(m) An “organ of an international organization” means a principal or subsidiary organ, and any commission, committee or subgroup of any of those bodies;

11. As instructed, the Drafting Committee had prepared the definitions having regard only to articles 1 to 20, which had already been examined by the Commission. Accordingly, no mention of the terms “conference” and “delegation” would be found in the new text. The term “Secretary-General” had also been dropped because, in the articles already adopted by the Commission, it had been replaced by the expression “the competent organ of the Organization”. The definitions of the terms “member State” and “non-member State” had been deleted as unnecessary. The definition of “the Organization”, which had been placed at the end of the article, now appeared in sub-paragraph (c).

12. In sub-paragraph (a) of his draft article 1, the Special Rapporteur had given a fairly detailed definition of an international organization. That definition had been criticized. The Committee had considered that, for the purposes of the present articles, it would be sufficient to state that the term “international organization” meant an inter-governmental organization.

13. The definition given in sub-paragraph (b) amplified that given in sub-paragraph (a). It was based on Article 57 of the United Nations Charter, which described certain characteristics of specialized agencies.

14. In sub-paragraph (d) only the English text had been changed, the words “one State” being replaced by “a State”.

<sup>8</sup> The Drafting Committee had appended the following footnote to its proposed text for the article (A/CN.4/L.130/Add.6):

“Some members of the Drafting Committee considered that the expression ‘permanent representative’ should be replaced by the expression ‘head of permanent mission’ so as to preclude all possibility of confusion with other permanent representatives and to bring the text into line with the Vienna Conventions on Diplomatic Relations and Consular Relations and the draft articles on special missions.”

15. Sub-paragraph (e) remained unchanged, but a footnote<sup>9</sup> had been added to the effect that some members of the Committee would have liked to amend that sub-paragraph drastically. However, the Committee had not had time to go into the question thoroughly at the present session.

16. In sub-paragraph (h) the meaning of the term “members of the diplomatic staff” had been expanded to include experts and advisers.

17. Sub-paragraph (l) now referred only to the territory in which the Organization had its seat or an office; the reference to the territory in which a conference was held had been dropped.

18. Speaking as a member of the Commission, he expressed the view that the right place for sub-paragraph (m) was directly after sub-paragraph (c). The Drafting Committee had not discussed that question.

19. The CHAIRMAN invited the Commission to examine article 1 sub-paragraph by sub-paragraph.

*Sub-paragraph (a)*

*There were no comments.*

*Sub-paragraph (b)*

20. Mr. ROSENNE said that, for the reasons he had stated at the 973rd meeting,<sup>10</sup> during the discussion on article 2, he was unable to support the definition given in sub-paragraph (b). The Drafting Committee, in attempting to define an international organization of universal character by using the synonym “on a world-wide scale”, had merely gone round in a circle. The inference was that the definition referred to the United Nations, the specialized agencies and such bodies as the International Atomic Energy Agency; if so, problems would arise concerning the relationship between the draft articles under consideration and Articles 104 and 105 of the United Nations Charter.

21. Sir Humphrey WALDOCK questioned whether the word “responsibilities” was exactly equivalent to the word “attributions” used in the French text. He thought the word “functions” would be more appropriate.

22. Mr. CASTRÉN (Chairman at the Drafting Committee), pointed out that the word “responsibilities” was used as the equivalent of “attributions” in Article 57 of the Charter. Mr. Rosenne’s remark did not seem entirely justified; while it was true that the terms “of universal character” and “on a world-wide scale” had approximately the same meaning, the reference to the membership and responsibilities of the organization made the definition more precise.

23. The CHAIRMAN, speaking as a member of the Commission, said that he saw no need to define an international organization of universal character. The attempt to do so might lead to complications in the future. Moreover the Spanish text was inconsistent with Article 57 of the Charter, which used the phrase “*amplias atribuciones internacionales*”. He would vote in favour of sub-paragraph (b), but with reservations.

24. Mr. BARTOŠ said that, in his view, the membership and responsibilities of an international organization could

<sup>9</sup> See footnote 8.

<sup>10</sup> See paras. 8-12.

not be described as being on a world-wide scale. That was indeed the aim, but it was not always achieved. Furthermore, the expression "responsibilities on a world-wide scale" was not very apt. He asked for a separate vote on sub-paragraph (b); he would abstain when that vote was taken.

25. Mr. KEARNEY said he did not think that the definition given in sub-paragraph (b) was a good one, but he doubted whether the Commission would succeed in finding a better. However, nothing would be gained by deleting the sub-paragraph, so he would support it.

26. Mr. EL-ERIAN (Special Rapporteur) said that, speaking as a member of the Commission, he did not think the definition was necessary; but it was part of a compromise reached on article 2. He shared the previous speaker's doubts about the possibility of producing a satisfactory text but, as Special Rapporteur, would vote in favour of the sub-paragraph.

27. Mr. CASTRÉN (Chairman of the Drafting Committee) acknowledged that it was very difficult to find a good definition of an international organization. The Drafting Committee had discussed the matter at length and had arrived at a compromise; it would welcome any suggestion that would be an improvement.

*Sub-paragraph (c)*

*There were no comments.*

*Sub-paragraph (d)*

28. Sir Humphrey WALDOCK suggested that, for consistency with the definition given in sub-paragraph (c), the words "that organization" should be replaced by the words "the Organization".

*It was so agreed.*

*Sub-paragraph (e)*

29. Mr. BARTOŠ asked for a separate vote on sub-paragraph (e).

30. Mr. USTOR said he found the sub-paragraph acceptable; but it should be mentioned in the commentary that the sending State might appoint a permanent mission consisting of one person only.

31. Mr. EL-ERIAN (Special Rapporteur) said that that point was made in paragraph 2 of the commentary to article 13, on the composition of the special mission.

*Sub-paragraph (f)*

32. Mr. YASSEEN asked whether the term "members of the staff of the permanent mission" used in sub-paragraph (f) included members of the service staff.

33. Mr. EL-ERIAN (Special Rapporteur) replied that there was a difference between a person in the private service of a member of the mission and a member of the service staff; the latter was a member of the mission. The same distinction was made in the Vienna Convention on Diplomatic Relations.

34. Mr. USHAKOV said that the Conference on Diplomatic Intercourse and Immunities had decided to regard members of the service staff as members of the staff of the mission because it had been thought convenient to cover in a single article all persons enjoying diplomatic privileges and immunities.

35. Mr. EL-ERIAN (Special Rapporteur) said that the difference in functions was reflected in the privileges and immunities of the persons concerned.

36. Mr. CASTAÑEDA said that, even though members of the service staff were members of the mission, there was a difference in their treatment both by the sending State and by the host State. They must nevertheless be regarded as members of the staff of the mission.

37. Mr. EUSTATHIADES pointed out that the terms "members of the service staff" and "private staff" were defined in sub-paragraphs (j) and (k). Nevertheless it did not seem entirely normal for members of the service staff to be regarded as members of the staff of the mission.

38. Mr. BARTOŠ said that the question had been discussed at length at the Conference on Diplomatic Intercourse and Immunities, when it had been generally acknowledged that service staff should enjoy the same privileges and immunities as the other members of the mission. Members of the service staff, such as messengers, drivers, porters and door-keepers, were engaged by the sending State and could play an important part in the functioning of the mission. They had certain duties and responsibilities and needed certain safeguards. That applied both to diplomatic missions and to permanent missions.

*Sub-paragraph (g)*

*There were no comments.*

*Sub-paragraph (h)*

39. Mr. USHAKOV pointed out that, in both English and French, the wording of sub-paragraph (h) differed from that of the Vienna Convention. Sub-paragraph (h) used the words "holding diplomatic rank" and "*qui ont un rang diplomatique*"; article 1 (d) of the Convention used the words "having diplomatic rank" and "*qui ont la qualité de diplomates*".

40. Mr. ROSENNE said that it was perhaps unduly rigid to talk of diplomatic rank in the context of permanent missions. He suggested that the words "holding diplomatic rank" should be replaced by the words "who have diplomatic status", which were used in article 1 (h) of the draft articles on special missions. A comma should be inserted after the word "advisers".

41. Mr. KEARNEY agreed that there was no reason for introducing a more onerous requirement than diplomatic status in a text on permanent missions, which had a less rigid structure than diplomatic missions.

42. Mr. CASTAÑEDA said that in his view the Drafting Committee had followed the Vienna Convention too closely. There was a great difference in composition between diplomatic missions and permanent missions. Permanent missions often included experts and advisers, who played a more important role than the secretaries of the mission but who were not accorded diplomatic rank. Under sub-paragraph (h), such persons would be denied the privileges and immunities corresponding to the importance of their functions. To require them to hold diplomatic rank was unduly rigid.

43. Mr. BARTOŠ said he agreed with Mr. Castañeda. In permanent missions there were always some persons who held diplomatic rank, but from time to time there

were also persons employed, for instance, as commercial, political or military experts. It sometimes happened that, for various reasons, the sending State did not wish to give those persons diplomatic rank, or that they themselves did not wish to hold it. Hence it was preferable to speak, not of "rank", but of activities. For example, the text might read: "The members of a permanent mission who perform diplomatic activities, as well as technical experts and advisers who are treated as diplomats, are considered to be members of the diplomatic staff;".

44. Mr. EL-ERIAN (Special Rapporteur) said that in his draft article on definitions he had used the wording just suggested by Mr. Rosenne, so as to allow for the fact that permanent representatives to some technical international organizations were not diplomatic staff. However, his text had been criticized, and some members of the Commission had argued that the role of experts and advisers should be given greater emphasis.

45. Mr. USHAKOV said he saw no essential difference between diplomatic missions and permanent missions for the purposes of sub-paragraph (h). There were academicians, professors and technicians to whom diplomatic privileges and immunities could be granted only by treating them as diplomats in virtue of the functions they performed. It would be preferable to use the wording of the Vienna Convention, namely "having diplomatic rank".

46. Mr. USTOR suggested that the difficulty could be overcome by adding at the end of the sentence the words "or diplomatic status".

47. Mr. EUSTATHIADES said that the expression "*qui ont un rang diplomatique*" in the French text was incorrect and should be amended to read "*qui ont rang diplomatique*".

48. Since the purpose of sub-paragraph (h) was to define the expression "members of the diplomatic staff", it was necessary to prescribe that persons in that category should have diplomatic rank.

49. Sub-paragraph (h) dealt with the case of experts and advisers holding diplomatic rank, and sub-paragraph (i) with that of members of the administrative and technical staff. But article 1 made no provision for the case of experts and advisers who did not hold diplomatic rank. Moreover articles 27 to 30, which dealt with freedom of communication, inviolability and immunity from jurisdiction, applied only to permanent representatives and members of the diplomatic staff of the permanent mission and therefore did not regulate the situation of advisers and experts lacking diplomatic rank. If persons in that category were to receive certain privileges and immunities, there should be a paragraph saying so.

50. Mr. NAGENDRA SINGH questioned whether experts and advisers could hold diplomatic rank.

51. Mr. USHAKOV said that any expert or adviser on the permanent mission who did not hold diplomatic rank might be treated as a member of the administrative and technical staff and thus enjoy privileges and immunities almost equal to those of a member of the diplomatic staff, as provided by the Vienna Convention on Diplomatic Relations. His situation would differ from that of a

holder of diplomatic rank only in matters such as precedence, where privileges and immunities were not involved.

52. Mr. CASTRÉN (Chairman of the Drafting Committee) said he saw no need to define new categories of persons belonging to the permanent mission. If a State attached experts and advisers to its permanent mission, it could either decide to regard them as members of the administrative and technical staff or give them wider privileges and immunities and include them in the category of diplomatic staff.

53. Speaking as a member of the Commission, he said he was in favour of leaving sub-paragraph (h) as it stood, subject to the change in the French text proposed by Mr. Eustathiades.

54. Mr. KEARNEY said he supported the change suggested by Mr. Rosenne. By the time the Commission came to consider article 1 on second reading, it would have before it the results of the deliberations in the Sixth Committee of the General Assembly on the corresponding draft article on special missions.

55. Mr. BARTOŠ said that it was for the sending State to indicate whether persons belonging to its permanent mission were or were not members of the diplomatic staff. Some States considered that advisers and experts of the permanent mission were members of the administrative and technical staff, while other States regarded them as members of the diplomatic staff.

56. In reply to a question by Mr. USHAKOV, the CHAIRMAN explained that, in the draft articles on special missions, the French equivalent of the words "who have diplomatic status" was "*qui ont la qualité de diplomate*".

57. Mr. EUSTATHIADES said that he would accept Mr. Rosenne's amendment for the time being and would revert to the problem when the Commission took up article 28 and the following articles.

58. He asked for a separate vote on sub-paragraph (h). He would vote on the basis of the English text, since he did not consider that the term "*qualité*" corresponded to "status".

*Mr. Rosenne's amendment was adopted.*

*Sub-paragraph (i) and (j)*

There were no comments.

*Sub-paragraph (k)*

59. In reply to a question put by Mr. KEARNEY, the CHAIRMAN said that the English text of article 15, paragraph 1 (c), which the Commission had adopted in French at the previous meeting, read as follows:

"(c) the arrival and final departure of persons employed on the private staff of members of the permanent mission and the fact that they are leaving that employment;"

60. Mr. KEARNEY observed that, in view of the adoption of that text, article 1, sub-paragraph (k), could be left as it stood.

AMENDMENT TO ARTICLE 15 (Notifications)<sup>11</sup>

61. Mr. KEARNEY proposed that, for consistency with paragraph 1 (c), the words "or as private staff" in para-

<sup>11</sup> See 985th meeting, para. 44.

graph 1 (d) of article 15 should be amended to read "or persons employed on the private staff"; moreover, that change would bring the English text of paragraph 1 (d) into line with the French, which read "*ou de personnes au service privé*".

*It was so agreed.*

ARTICLE 1 (Use of terms) (*resumed*)

Sub-paragraph (I)

62. Mr. ROSENNE proposed that the words "are established" should be amended to read "may be established"; that wording would be more in keeping with the relevant substantive provisions.

63. Mr. KEARNEY supported that proposal.

64. Mr. USHAKOV opposed the proposal. The expression "host State" meant a State in whose territory permanent missions were already established.

65. Mr. BARTOŠ said he wondered what would be the situation of a State which had entered into negotiations with other States concerning the establishment of permanent missions.

66. Mr. EUSTATHIADES proposed that the word "*bien*" should be deleted from the French text.

*It was so agreed.*

67. Mr. EUSTATHIADES proposed that the words "at which permanent missions are established" should be deleted as redundant.

68. Mr. CASTRÉN (Chairman of the Drafting Committee) said that he considered that the words in question added precision to the text.

69. Mr. USHAKOV opposed the deletion of those words. The United Nations had offices at which permanent missions were not established.

70. Mr. EL-ERIAN (Special Rapporteur) said that, if the definition of the term "host State" had been intended for application to a headquarters agreement, it would have been possible to adopt the shorter wording proposed by Mr. Eustathiades. The purpose of sub-paragraph (I), however, was to specify how the term was to be construed in the draft articles on representations of States to international organizations and for that purpose the phrase in question was necessary.

71. Mr. YASSEEN said that the definitions given in article 1 were not of a general nature but were given specifically "For the purposes of the present articles". Hence the draft did not cover the case of a State which was host to a conference or to an office at which permanent missions were not established.

72. Mr. EUSTATHIADES said he withdrew his proposal. However, in order to cover the case where a State took the initiative of accrediting a permanent mission to an office or an organization at which permanent missions had not hitherto been established, the words "at which permanent missions are established", should be replaced by "at which permanent missions may be established", as proposed by Mr. Rosenne. The international organization would decide, by tacit or express agreement with the host State, whether permanent missions could be established.

73. Mr. ROSENNE said that the point raised by Mr. Ushakov would not be disposed of by the retention of the words "are established". It would still not be clear who was to decide whether permanent missions should be established.

74. Mr. YASSEEN thought that the State in whose territory the organization had its seat or an office could be regarded as a host State for the purposes of the present articles in virtue of the possibility that permanent missions might be established, even if no such missions had yet been established at that organization or office.

75. Mr. EL-ERIAN (Special Rapporteur) said that the application of the draft articles presupposed the existence of permanent missions. Sub-paragraph (I) therefore laid down two requirements: first, that the seat of the organization, or an office of the organization, should exist in the territory of the State concerned; second, that there should be permanent missions. He urged the Commission to leave the sub-paragraph unchanged; the difficult substantive problem of the right to establish permanent missions was dealt with in article 5.

76. Mr. USHAKOV said that, although the United Nations maintained offices in various parts of the world, permanent missions had been established only at the Geneva Office. If the words "are established" were replaced by "may be established", all the States in whose territory such offices were situated could be regarded as host States within the meaning of the draft articles. In reality, however, those States could become host States only if the United Nations decided that it was necessary that permanent missions should be established and if the States themselves consented to the establishment of such missions.

77. Mr. BARTOŠ pointed out that, under article 5, member States might establish permanent missions to the organization for the performance of the functions defined in the articles. However, the application of article 5 was subject, under article 4, to the relevant rules of the organization concerned; therefore, if those rules did not preclude the establishment of permanent missions, States had the right to establish them.

78. In his view, the host State had a certain competence in the matter even during the period preceding the establishment of permanent missions.

79. Mr. USHAKOV said that his view still was that a State could only be regarded as a host State from the time when permanent missions had actually been established in its territory.

80. Mr. CASTAÑEDA said he supported the Special Rapporteur and Mr. Ushakov. The position, both in fact and in law, was very simple. For the rule of law to apply, a certain situation must have arisen, namely the actual establishment of a permanent mission. Before such a mission was established, it was possible to speak only of a "potential host State". In his opinion, sub-paragraph (I) was well drafted.

81. Mr. ROSENNE said it was his understanding that a State was a "host State" not only when permanent missions actually existed but also when it was legally possible for such missions to be established. Nevertheless, he could

accept the text of sub-paragraph (I) as it stood for the time being; he would revert to the question when the Commission had the whole text of the draft articles before it.

82. Mr. BARTOŠ said that he knew of no term other than “host State” with which to describe a State in whose territory provision had been made for the establishment of a permanent mission.

83. Mr. USTOR said that, for those who favoured the text of sub-paragraph (I) as it stood, the host State was host to the permanent mission, whereas those who wished to replace the word “are” by the words “may be” put the emphasis on the State as host to the organization.

84. Mr. YASSEEN observed that the definitions given in article 1 were intended to facilitate application of the provisions of the future convention. If a State entered into negotiations with another State with a view to establishing a permanent mission, that other State could claim, in virtue of sub-paragraph (I) as it now stood, that it was not a host State and was not bound to apply the articles of the convention. A State unquestionably incurred certain obligations once a permanent mission had been established.

85. Mr. USHAKOV said that it was necessary to consider two separate cases. In the one case, the host State had given its consent and the mission had been established. In the other case, the State had not given its consent and another State approached it to ask whether it was possible, for example, to obtain premises. The two situations were not comparable.

86. Mr. KEARNEY said that neither side had convinced the other; the choice of wording for sub-paragraph (I) could be settled only by a vote.

*Sub-paragraph (m)*

*There were no comments.*

*Sub-paragraph (b) was adopted by 12 votes to none, with 4 abstentions.*

*Sub-paragraph (e) was adopted by 15 votes to none, with 1 abstention.*

*Sub-paragraph (h), as amended was, adopted by 13 votes to none, with 3 abstentions.*

*Mr. Rosenne's proposal to amend sub-paragraph (I) was rejected by 8 votes to 7, with 1 abstention.*

87. The CHAIRMAN invited the Commission to vote on article 1 as a whole, as amended. In sub-paragraph (d), the concluding words “that organization” had been replaced by “the Organization”; in sub-paragraph (I), two commas should be inserted, one after the word “seat” and one after the word “office”, and the word “bien” should be deleted from the French text.

*Article 1 as a whole, as amended, was adopted by 15 votes to none, with 1 abstention.*

*Adoption of draft articles 1 to 20 as a whole*

88. Mr. ROSENNE suggested that, before taking a decision on articles 1 to 20 as a whole, the Commission should consider whether or not to follow the procedure adopted in 1964, when it had submitted articles 1 to 16 of the first draft on special missions “to the General

Assembly and to the Governments of Member States for information”.<sup>12</sup>

89. After a brief discussion, in which Mr. BARTOŠ, Mr. CASTAÑEDA, Mr. ROSENNE, Mr. TABIBI and Sir Humphrey WALDOCK took part, Mr. EL-ERIAN (Special Rapporteur) explained that articles 1 to 20 were not simply a part of the draft text but a self-contained set of articles dealing with all the general aspects of the topic.

90. The CHAIRMAN suggested that the Commission might adopt draft articles 1 to 20 as a whole, and decide at a later meeting on the wording of the relevant paragraphs of its report.

*Draft articles 1 to 20 as a whole were adopted unanimously.*

91. The CHAIRMAN congratulated the Special Rapporteur on behalf of the Commission on the adoption of the set of articles.

92. Mr. EL-ERIAN (Special Rapporteur) thanked the Chairman for his kind words and the members for their co-operation.

The meeting rose at 1.30 p.m.

<sup>12</sup> See *Yearbook of the International Law Commission, 1964*, vol. II, p. 210, para. 35.

## 987th MEETING

*Thursday, 1 August 1968, at 9.30 a.m.*

*Chairman: Mr. José María RUDA*

*Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.*

### Draft report of the Commission on the work of its twentieth session

(A/CN.4/L.132 - L.135 and Addenda)

1. The CHAIRMAN invited the Commission to consider the draft report on the work of its twentieth session.

2. Mr. TABIBI (Rapporteur), introducing the draft report, said that the topic of relations between States and international organizations was dealt with in chapter II; the Commission would be called upon to take a decision on the question of the circulation of that chapter to Governments. Chapter III dealt with the succession of States and Governments. In accordance with the Commission's decision to divide that topic into two sub-items, part II of chapter III dealt separately in section A with succession in respect of matters other than treaties and in section B with succession in respect of treaties. Section A of Chapter IV (Other decisions and conclusions of the