UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/8753 and Add. 1, 2, 3
14 August 1972
ENGLISH
ORIGINAL: ENGLISH/FRENCH
RUSSIAN

Twenty-seventh session
Item 87 of the provisional agenda*

REPRESENTATION OF STATES IN THEIR RELATIONS WITH INTERNATIONAL ORGANIZATIONS

Comments and observations on the draft articles on the representation of States in their relations with international organizations, and on the procedure to be adopted for the elaboration and conclusion of a convention on the subject

Report of the Secretary-General

CONTENTS

* A/8760.

CONTENTS (continued)

/...

I. INTRODUCTION

1. In the report on the work of its twenty-third session (see Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), chapter II) the International Law Commission submitted to the General Assembly in 1971 a final set of draft articles entitled "Draft articles on the representation of States in their relations with international organizations". After considering the report, the General Assembly adopted, at its 1999th plenary meeting on 3 December 1971, resolution 2780 (XXVI). Operative paragraphs 2 to 6 of section II of the resolution read as follows:

> "The General Assembly,
>
> "...
>
> "2. Invites Member States and Switzerland as a host State to submit, not later than 1 June 1972, their written comments and observations on the draft articles on representation of States in their relations with international organizations, and on the procedure to be adopted for the elaboration and conclusion of a convention on the subject;
>
> "3. Invites also the Secretary-General and the executive heads of the specialized agencies and the International Atomic Energy Agency to submit within the same period their written comments and observations on the said draft articles;
>
> "4. Requests the Secretary-General to circulate, before the twenty-seventh session of the General Assembly, the comments and observations submitted in accordance with paragraphs 2 and 3 above;
>
> "5. Expresses its desire that an international convention be elaborated and concluded expeditiously on the basis of the draft articles adopted by the International Law Commission and in the light of the comments and observations submitted in accordance with paragraphs 2 and 3 above;
>
> "6. Decides to include in the provisional agenda of its twenty-seventh session an item entitled 'Representation of States in their relations with international organizations';"

2. By letters dated 13 January 1972, the Secretary-General brought operative paragraph 2 of section II of resolution 2780 (XXVI) to the attention of Member States and Switzerland, and operative paragraph 3 of section II of resolution 2780 (XXVI) to the attention of the specialized agencies and the International Atomic Energy Agency.

3. The comments and observations received by the Secretary-General from Member States, Switzerland and the specialized agencies by 1 August 1972 are reproduced below. Any comments and observations received after that date will be circulated as addenda to the present document.

4. Observations of Member States, Switzerland and the secretariats of the United Nations, the specialized agencies and the International Atomic Energy Agency on the provisional draft articles on representatives of States to international organizations, adopted by the International Law Commission at its twentieth, twenty-first and twenty-second sessions are reproduced in annex I to the Commission's report on the work of its twenty-third session (ibid., Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), p. 80). Annex II to that report (ibid., Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), p. 153), reproduces a note by the Secretary-General which provides comparative tables of the numbering of those provisional draft articles and of the final draft articles on the representation of States in their relations with international organizations adopted by the Commission.

II. COMMENTS AND OBSERVATIONS OF STATES ON THE DRAFT ARTICLES ON THE REPRESENTATION OF STATES IN THEIR RELATIONS WITH INTERNATIONAL ORGANIZATIONS AND ON THE PROCEDURE TO BE ADOPTED FOR THE ELABORATION AND CONCLUSION OF A CONVENTION ON THE SUBJECT

A. Comments and observations of Member States

AUSTRIA

/Original: English/

17 July 1972

1. The condensation of the new text as compared to the provisional draft 1/ represents an improvement. With regard to the fact that the rules of part III largely correspond to those of part II a further condensation, however, is recommended. From a systematic point of view the inclusion of the rules concerning observer delegations in an annex is not considered necessary. The legal position of the annex to the treaty should be clarified in case the annex is not integrated into the treaty.

2. In dealing with the problems in question it seems indispensable to adopt and maintain a strictly functional approach: the sole purpose of the privileges is to secure the execution of the functions of missions. Any extension contrary to this basic principle of the privileges in a material (scope and kind) as well as personal way (number of privileged persons) does not seem justified and runs counter to the interests of existing and potential host countries of international organizations.

3. The question of conditions for entry into force seems to be of considerable importance. In any case, the membership or participation of the host country of a potential organization or conference seems to be imperative for the applicability of the convention. In this context it is advisable to also examine the possibility of a membership of international organizations.

1/ The texts of the articles of the "provisional draft", together with the commentaries, have been published as follows:

Articles 1-21: Official Records of the General Assembly, Twenty-third Session, Supplement No. 9 (A/7209/Rev.1), pp. 4 et seq. (Yearbook of the International Law Commission, 1968, vol. II, pp. 196 et seq.);

Articles 22-50: Ibid., Twenty-fourth Session, Supplement No. 10 (A/7610/Rev.1) pp. 3 et seq. (ibid., 1969, vol. II, pp. 207 et seq.);

Articles 51-116: Ibid., Twenty-fifth Session, Supplement No. 10 (A/8010/Rev.1), pp. 5 et seq. (ibid., 1970, vol. II, pp. 276 et seq.).

4. The determination of the competent national authority for the issuance of credentials (articles 10 and 44) must remain subject to national law. The rules should be formulated in such a way that credentials are to be considered valid if they are issued by the national organs enumerated in article 44. The inclusion "if the rules of the Organization so admit" in article 10 might also lead to the misinterpretation that the competence of the national authority in the issuance of credentials is subject to the rules of the respective international organization.

5. From the systematic point of view the assumption of full powers in the conclusion of a treaty by the head of mission (article 12) does not belong in this convention and should thus be omitted.

6. As to notifications according to article 47 it would be appropriate - in the interest of a prompt transmission of information to the host country - to provide for simultaneous notifications to the host country and to the organization or conference, respectively.

7. The designation of an acting head of delegation (article 48) should, without restriction, be a prerogative of the competent organ of the sending State. The designation of an acting head of delegation by the head of delegation should only be acceptable on a de facto basis, whereas in any other case such a designation would represent a considerable delegation of the competences enjoyed by the head of delegation, which should be avoided as far as possible in the interest of the clarity of the legal system.

8. For the protection of the host country the convention should provide for possibilities to declare a member of delegation as persona non grata. Such a possibility seems imperative as a counterweight to the very extensive privileges and immunities of all these persons. (In this context article 75 seems too weak.)

9. The protection of premises of delegations required according to article 54 and of the private accommodations and property of members of delegations (article 60 - inviolability) might confront the host country with numerous practical difficulties at large conferences.

10. The scope of immunities from jurisdiction to be granted according to article 61 seems to go far beyond the extent required for the execution of a delegation's functions. This holds true even more so of other persons as enumerated in article 67.

11. The procedure provided for the settlement of disputes (articles 81 and 82) is complicated and lengthy. Since it is also to be applied in the case of a dispute in connexion with a conference, it seems to lack efficacy for the purpose envisaged.

BELGIUM

/Original: French/
6 July 1972

I. General observations

Over-all assessment

The draft articles show a very distinct tendency to assimilate permanent missions with diplomatic missions, on the one hand, and delegations to conferences with special missions, on the other hand. This is reflected in the virtually automatic extension of earlier conventions having a different purpose.

This assimilation does not appear to be justified. The functional criteria and realities of existing practice have been subordinated to a mechanical transposition.

This observation applies especially to delegations to organs and conferences. In particular, there is reason to fear that extensive privileges and immunities accorded by analogy with the Convention on Special Missions might give rise to abuses.

Furthermore, the scope of the draft articles is at present very vague. A number of important points must be spelled out in greater detail.

Lastly, differences in situations must be taken into account. This applies equally to the difference between organizations of political importance and those which are purely technical in nature.

B. Method

The general method which the International Law Commission has followed in preparing the draft articles, particularly with respect to the level of the privileges and immunities guaranteed by the articles, gives rise to certain doubts.

In the case of permanent missions, this method has consisted in reproducing in substance in these articles the same privileges and immunities provided for in the Vienna Convention on Diplomatic Relations of 1961. Insufficient allowance has been made for the difference between the functions performed by diplomatic missions, on the one hand, and by permanent missions to international organizations, on the other hand. In particular, it should be noted in the latter case that relations between the host State, the sending State and the organization are based on a tripartite arrangement.

Furthermore, the differences between various international organizations, including those of universal character, might justify disparities in the level of privileges and immunities to be granted, a view which is in fact borne out by current practice. In this context, too, it would have been preferable to apply a functional criterion rather than consider from the same standpoint international organizations which differ substantially.

C. Scope of the draft articles

The level of the privileges and immunities embodied in these draft articles represents an unjustifiable extension of existing texts to missions to international organizations and delegations to organs and conferences. The negative public and parliamentary reaction which can be expected to this expansion of privileges and immunities is a factor which cannot be ignored.

D. Organizations referred to in the draft articles

The draft articles do not indicate precisely enough which organizations will be parties to the future convention. Differences between international organizations, and even between organizations of universal character, have not been taken into consideration.

Solutions must be found which take into account the functional requirements peculiar to each organization by virtue of its purposes and interests. Accordingly, it is of the utmost importance to know which organizations would be covered by the draft articles and, in particular, whether highly technical organizations will be dealt with on the same basis as major political organizations.

The scope of the draft articles should be defined more precisely, for example, by restricting it to "major" organizations of universal character or organizations of universal character "which have political functions".

E. Conferences referred to in the draft articles

The draft articles apply solely to conferences of States convened by or under the auspices of an international organization. This has the effect of formalizing an artificial distinction, which is all the more unjustifiable since international organizations have themselves emerged from conferences of States of an independent nature.

This matter should be dealt with in another context, namely, the status of international conferences as such, irrespective of whether they are convened by international organizations or by one or several States.

The method followed in this connexion by the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies does not seem convincing when one considers the development and the multitude of international diplomatic conferences which have been held in recent years.

F. Protection of the host State

Generally speaking, the host State is not protected. It should be noted in particular that there is no provision corresponding to those in the Vienna Convention on Diplomatic Relations under which the host State can refuse its agrément or declare a member of a mission persona non grata. It would seem indispensable to insert a provision to this effect.

For example, article 9 contains no provisions designed to protect the host State. The only restrictions on the freedom of the sending State to appoint the members of its mission relate to the size of the mission and the nationality of its members. Similarly, although article 75 imposes an obligation on the sending State in certain cases of abuse, it does not confer any right on the host State.

At the very least, the right of consultation should exist, together with a clause requiring the departure of the person concerned if the matter cannot be resolved. A balance must be achieved between the interests of the host State, of the sending State and of the organization.

In certain cases, it might be necessary to take action before a solution has been found through the conciliation procedure established in article 82, which seems to be excessively lengthy.

It can be also questioned whether the definition of "host State" contained in article 1, paragraph 1 (12), should include a State in whose territory the organization has an office. Such an interpretation would seem to be acceptable if the office in question is very large, but not if the definition covers small offices, such as information offices.

G. Delegations

The virtually automatic application to delegations of the rules envisaged for missions would, in practice, create highly complex situations in international life which it would be impossible to regulate.

The treatment of delegations, which is dealt with in part III and in the annex to the draft articles, should more closely approximate to that envisaged for special missions.

It should also be borne in mind that, although they do not state so expressly, the draft articles appear to consider delegations to be non-permanent representatives abroad. The appropriate conclusions must therefore be drawn with respect to privileges and immunities.

Lastly, one wonders why different treatment is envisaged for delegations and observer delegations, whereas the present draft has rightly sought to avoid as far as possible any differences between missions and observer missions.

H. Settlement of disputes

The conciliation procedure established in articles 81 and 82 is too complex and too lengthy. It would, inter alia, be possible to provide for disputes to be settled by a tripartite commission in which the host State, the sending State and the organization would be represented; to establish a time-limit - two months, for example - within which the commission must formulate its conclusions; or to stipulate that the absence of a representative would not prevent the commission from meeting.

The effectiveness of the procedure established by the draft articles is open to question in the case of conferences, in view of the length of the procedure compared with the brevity of conferences.

II. Consideration article by article

PART I. INTRODUCTION

Article 1

(1) The text of paragraph 1 (4) does not seem to reflect reality, since within international organizations there are some institutions which, although undoubtedly organs, do not have States, as such, as members.

Furthermore, this provision places on an equal footing two institutions of an entirely different character: on the one hand, an organ of an international organization which, by virtue of that very fact, is of a permanent nature and, on the other hand, a commission which by nature is not in session during the entire year.

Lastly, the accuracy of the language is also open to question. One might wonder, for example, in what category the European Office at Geneva should be placed.

(2) With respect to paragraph 1 (5), reference should be had to the observations made under I.E above.

(3) It should be specified in subparagraphs (9), (10) and (11) that a delegation is always of a temporary nature.

(4) Paragraph 1 (12) should be supplemented as follows:

"(a) the Organization has its seat or a permanent office, or...".

PART II. MISSIONS TO INTERNATIONAL ORGANIZATIONS

Article 9

It appears that the interests of the host State have been deliberately ignored in the appointment of the members of a mission.

The organization should at least be required to communicate the names of the members of the mission to the authorities of the host State, and the latter should be entitled to express an opinion on the matter.

Article 10

With regard to the French text, the term "pouvoirs" seems totally inappropriate. The usual expression "lettres de créance" should be used instead.

Article 11

Paragraph 2 of this article is unnecessary if there are no special requirements as regards representation.

Article 12

The latter part of paragraph 2 covers treaties in simplified form.

Since the production of full powers for the purpose of signing a treaty in simplified form is a matter which depends on the will of the parties, the scope of the text should be extended to read as follows:

"... unless the intention of the parties was to dispense with full powers".

Article 14

There seems to be a contradiction between paragraphs (3) and (4) of the commentary on this article.

If the text of this article is open to interpretation, it is important to show a preference for the desired interpretation, along the lines of paragraph 3 of the commentary or along those of paragraph 4, and, if necessary, the text of the article itself should be made more explicit in this regard.

Article 16

The name of the chargé d'affaires ad interim should be notified not only to the organization, but also to the authorities of the host State.

Article 20

The distinction drawn in subparagraphs (a) and (b) of paragraph 1 of this article does not reflect any real difference.

The criterion for the two types of missions is actually identical in so far as the performance of their functions is concerned, and it would be very difficult, if not impossible, to differentiate between the facilities which should be accorded to ensure that that objective is achieved.

Article 22

If it is felt that an article along these lines should be retained, it will also be necessary to include an article stating that the organization should be invited, where necessary, to assist the host State in preventing abuses of the privileges and immunities provided for by the present articles.

Article 26

The freedom of movement guaranteed in this article should be qualified in the same manner as in the corresponding article (article 27) of the Convention on Special Missions. The members of a mission are in fact accredited to the organization and not to the host State, in contrast to diplomatic missions, which are accredited to the host State.

Article 31

Provision should also be made for administrative proceedings in paragraph 5, as has been done in paragraph 4 of the article.

Furthermore, it is important to avoid any contradiction between paragraph 5 and the exceptions provided for in article 30, paragraph 1.

The present version of paragraph 5 should therefore begin as follows:

> "Subject to the provisions of article 30, paragraph 1, the sending State shall use its best endeavours to bring about a just settlement of the case if it does not waive...."

Article 33

It might be desirable to clarify subparagraph (a) of this article slightly in order to avoid the difficulties which have arisen in several countries with respect to the applicability to diplomatic agents of the value-added tax.

PART III. DELEGATIONS TO ORGANS AND TO CONFERENCES

The following observations apply to the whole of part III:

(1) The facilities, privileges and immunities provided for therein are patently excessive.

(2) No guarantees are provided to protect the interests of the host State.

(3) It must not be forgotten that this part deals with a temporary situation. That being the case, it might well be asked whether it is reasonable to include in the draft articles provisions such as those contained in articles 43, 45, 46, 52, 54, 55, 57, 60, 61, 64 and 67.

PART IV. GENERAL PROVISIONS

Article 75

This article does not protect the interests of the host State at all, nor does it place any obligation on the head of the organization.

Article 76

It is difficult to agree that the members of a delegation which is temporary in nature should be able to bring with them all the members of their family and that the latter should be able to enjoy all the privileges and immunities set out in the draft articles by virtue of the fact that they are accompanying the head of household.

Articles 81 and 82

The procedure envisaged in these provisions is inadequate, overly complicated and too slow.

It would be desirable to provide for a much shorter and more effective procedure, particularly with respect to delegations.

ANNEX. OBSERVER DELEGATIONS TO ORGANS AND CONFERENCES

The observations concerning part IV of the draft articles also apply to the annex.

BRAZIL

/Original: English/

19 May 1972

The Brazilian Government expresses its appreciation for the work of the International Law Commission in drawing up, in final form, the draft articles on the representation of States in their relations with international organizations. It has studied the draft articles with interest and, in compliance with paragraph 2, part II, of the operative part of resolution 2780 (XXVI), wishes at this stage to make the following comments:

General comments

In compliance with resolution 2634 (XXV), which, inter alia, recommended that the International Law Commission should "continue its work on relations between States and international organizations, taking into account the views expressed at the twenty-third, twenty-fourth and twenty-fifth sessions of the General Assembly, and the comments which may be submitted by Governments with the object of presenting in 1971 a final draft on the topic", a major effort was deployed in the Commission, during its twenty-third session. The result of this effort was the draft included in its general report which was presented in final form, with the exception of the annex (Observer delegations to organs and to conferences). The latter is presented as a preliminary proposal subject to future study and comment by States. As the Commission dealt extensively with all aspects pertaining to the relationship between States and international organizations, the work would not be complete without a special chapter on observer delegations to organs and to conferences. The Brazilian Government cannot but praise the work of the Commission, acknowledging the considerable effort required to study in depth the six reports presented by the Special Rapporteur, Ambassador Abdullah El-Erian, so as to be able to redraft and redistribute some 120 articles, including those originally prepared and the new formulae presented during its twenty-third session.

With this voluminous piece of work the International Law Commission completes the cycle of the draft conventions on diplomatic law, which began with the work leading to the Vienna Convention on Diplomatic Relations, of 1961, 2/ followed by the Convention on Consular Relations, of 1963, 3/ and the Convention on Special Missions, of 1969. 4/

2/ United Nations, Treaty Series, vol. 500, p. 95.

3/ Ibid., vol. 596, p. 261.

4/ Annex to General Assembly resolution 2530 (XXIV) of 8 December 1969, Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30 (A/7630), pp. 99-105.

It would be only fair to emphasize the harmonious and correct structure in which the final draft is cast, as the result of the important work of redrafting, and redistribution of the articles appearing in the former draft. The amalgamation of part II (Permanent missions) and part III (Permanent observer missions) of the original draft was extremely able, forming a new set of articles, concise and elegantly disposed, consolidated in the new part II of the final draft. Part III (Delegations to organs and to conferences) was also trimmed and simplified, so as to avoid, as much as possible, the confusing technique of resorting to quotations and references.

As was previously noted, besides the articles presented in final form, which underwent the statutory course of original drafting and submission to Government observations, both written and oral (during the debates in the Sixth Committee of the General Assembly), the International Law Commission deemed it appropriate to attach to the document an annex containing the articles on observer delegations to organs and to conferences, consisting of 24 articles designated by the letters of the alphabet from "A" to "X". The Brazilian Government welcomes the decision of the Commission to complete its final draft with such provisions, and hopes that the preliminary draft on observer delegations to organs and to conferences will merit wide support.

The Brazilian Government appreciates the fact that the relevant questions of the draft on State representatives to international organizations were generally solved according to liberal criteria, which favour, as much as possible the interests of sending States, so as to preserve the indispensable independence of said representatives from the host State. If the draft receives general approval, and becomes an international Convention, it will certainly assure the sending States of better facilities, immunities and privileges than those in force up to now. This will help improve the position of international organizations and facilitate the development of relations between States and those organizations. The status of the State representatives to international organizations will be consolidated on terms of fair parity with that of diplomatic agents.

Introduction (Articles 1 to 4)

Article 1 embodies a series of definitions of terms, cast in a very elaborated and extremely detailed form, so as to avoid doubts and difficulties in interpretation. The reservation contained in paragraph 2, according to which the definitions of article 1 are without prejudice to the use of the same terms in other international instruments or the internal law of States is necessary.

Article 2 deals with the scope of the convention. The Brazilian Government finds it appropriate that the application of the future convention should be confined to international organizations of universal character, in view of the heavy responsibilities imposed on the host States.

Articles 3 and 4 assure the respect of the future convention for the relevant rules of international organizations or conferences, specially drafted, and which are not derogated by the present articles, as well as for other international agreements already in force, or to be concluded in the future. States are free to choose different ways and means of regulating their relationship regarding representation in their relations with international organizations if they so decide.

These provisions are intended not to preclude in any way any further development of the law in this area.

Missions to International Organizations (Articles 5 to 41)

In the former draft, articles concerning permanent missions and permanent observer missions were separated in different parts. The consolidated draft, in its final form, presents the two parts amalgamated in one set of articles, so as to avoid the repetition of certain provisions and the confusing technique of legislation by reference. The Brazilian Government agrees with such a solution.

Article 9 embodies the principle of freedom of accreditation or appointment of members of permanent missions. With the exception of the extreme hypotheses of article 14 (size of the mission) and article 72 (appointment of nationals of the host State), there could be no other objection to the choice of members of permanent missions. Any exception to such a principle, in the eyes of the Brazilian Government would be a dangerous departure from the general practice of States. So the suggestion previously made by one Government, that the host State could have the right to refuse its consent to the appointment of members of permanet missions in the case of previous conviction for serious criminal offences and in the case of previous declaration as persona non grata, should be brushed aside, as it indeed was by the International Law Commission. The legal basis for the non-requirement of the consent of the host State is that the representatives appointed to permanent missions are not accredited to the host State. As their relationship with the host State is confined to the bare essentials of every-day living, they do not enter into negotiations or official contacts with the host State, beyond those indispensable for carrying out their functions. The suggestion of another Government in the sense that the host State should be allowed to refuse to grant all or some of the immunities to a member of a permanent mission in special cases should be rejected. The host State should never be given the right to an arbitrary curtailment of privileges and immunities.

All that being taken into account, the Brazilian Government supports the text of article 9 as it stands.

Article 10 deals with a subject which pertains more to the national law of States than to international law, namely, the definition of those authorities enjoying the power to issue the credentials of the permanent representative. This sort of provision is altogether necessary, because it could not be left entirely to the States themselves to choose those who are empowered to sign letters of

credentials. The general rule aims at avoiding disparity in practice, and at preserving the formal character of representativeness. The admission of credentials signed by authorities other than the Ministers of Foreign Affairs, is in accordance with the practice of States. In fact, just to cite some examples, the World Health Organization and UNESCO traditionally deal with Governments through their Ministers of Health and Education respectively. The Brazilian Government appreciates the degree of flexibility given to the text and the fact that the Commission avoided going too far, since it kept the power to issue credentials in the hands of authorities of the highest rank in order to assure the character of representativeness of the mission.

Article 13, as it stipulates that, in addition to the head of mission, the mission may include diplomatic, administrative, technical and service staffs, enlarges the field of application of facilities, immunities and privileges to be granted to members of the mission, according to their category. It is a formula that deserves the praise of the Brazilian Government, since it preserves the independent character of missions, better than the system in force till now.

The Brazilian Government believes that article 14 as it stands serves no practical purpose. Indeed the use of vague and elastic concepts such as "reasonable" and "normal" as a qualification for the size of a mission does not establish any objective criterion to judge the number of members a mission should have. Moreover it puts a serious limitation on the basic principle of freedom of choice and should be expunged from a draft remarkable for its liberal approach as far as the interests of the sending States are concerned.

Article 21, that is to say article 23 of the former draft, 5/ was sharply criticized by the international organizations that have so far presented comments to the work of the International Law Commission. UNESCO, for one, criticized the article, affirming that a "specialized agency is not a real estate broker". 6/ But the Brazilian Government sees no grounds whatsoever for that kind of criticism. As the draft stands, the host State and the organization are required to "assist in obtaining" and not to "provide" premises and accommodations for the missions. Article 21 embodies principles of *domitas gentium* incumbent upon both the host State and international organizations, which involve facilities and assistance to solve practical problems and do not entail any obligation to accommodate missions by their own means.

Article 23 establishes the traditional principle of the inviolability of the premises of a mission. The only exception to such a principle is the "case of fire or other disaster that seriously endangers public safety, and only in the event that it has not been possible to obtain the express consent of the head of the mission". 7/

5/ Ibid., Twenty-fourth Session, Supplement No. 10 (A/7610/Rev.1), pp. 4-5 (Yearbook of the International Law Commission, 1969, vol. II, p. 208).

6/ Ibid., Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), p. 140.

7/ Ibid., p. 24.

The Brazilian Government supports the text as it stands and believes that the exception of force majeure should be maintained.

Article 24 covers the very important field of tax exemption. It is based on article 23 of the Vienna Convention on Diplomatic Relations, with only minor changes.

The Brazilian Government welcomes the interpretation contained in the commentary to the article in the sense that the text also covers "indirect taxes" and shares in housing corporations in respect to mission premises.

Article 30, following the general lines of article 31 of the Vienna Convention on Diplomatic Relations, concerns itself with the question of immunity from jurisdiction. According to traditional practice, immunity from criminal jurisdiction is complete and unrestricted. Immunity from civil and administrative jurisdiction is subject to some restrictions, all of which are based on the current practice of States. The exception of subparagraph 1 (d), concerning "an action for damages arising from an accident caused by a vehicle used by the person in question outside of the exercise of the functions of the mission, where those damages are not recoverable from insurance" 8/ represents a realistic and useful innovation, corresponding to an ever-growing need of present-day life. The Brazilian Government appreciates the fact that the exception was placed within very restricted limits, since the immunity rule shall be derogated only when the vehicle is used outside the exercise of functions, and when the damages are not recoverable from insurance. In such cases of obvious negligence the exception is undoubtedly legitimate.

Article 31 (Waiver of immunity) is drafted according to the traditional practice that the act of waiving immunity must be an explicit one. Waiver of immunity is a serious act of sovereignty. In a very well known case, Lord Phillimore affirmed that waiver "is a privilege that ambassadors cannot use unless under direction of their sovereigns". 9/ Waivers given without Governments' consent have been invalidated by courts. 10/ The only instance of implicit waiver is the commencement of proceedings by the diplomat himself. The sending State is the only one to decide on the opportunity and necessity of waiver in each case, according to the circumstances.

Paragraph 5, which stipulates that "If the sending State does not waive the immunity of any of the persons mentioned in paragraph 1 in respect of a civil action, it shall use its best endeavours to bring about a just settlement of the case", 11/ represents a remarkable advance over previous formulations, such as

---

8/ Ibid., p. 27.

9/ Engelke v. Musman, /1928/ A.C. 433.

10/ Re Suarez /1918/ 1 Ch. 176.

11/ Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), p. 28.

article 34 of the original draft, 12/ which were cast in much more radical terms. The new phraseology corresponds to the needs or the present practice of States and cannot but be welcomed by sending States.

Delegations to Organs and Conferences (Articles 42 to 71)

The set of articles contained in this part of the draft follows the general structure of the whole document, providing harmonious solutions to every question according to particular needs. It deals with a very important field of present international life and the Brazilian Government is in general agreement with the texts proposed.

Part IV - General Provisions

Article 72 is drafted so as to preserve, as much as possible, the principle of freedom of appointment. It has accordingly rejected the proposal of one Government that "persons with permanent residence in the host State should be considered on the same footing as nationals of the host State". Taking into account the argument that the highly technical character of some international organizations makes it desirable not to restrict unduly the freedom of selection of members of missions and delegations, the draft accepted the solution according to which the general rule will be the prohibition of appointment of persons having the nationality of the host State. The exception will depend on the express consent of the host State, which may withdraw it at any time. The Brazilian Government favours the present wording of the article, which corresponds to the general practice of States and reflects rules of domestic law which, for obvious reasons, restrict the employment of nationals by foreign Governments.

Article 75, inspired in the provisions of article 41, paragraphs 1 and 3 of the Vienna Convention on Diplomatic Relations, and article 47 of the Convention on Special Missions, embodies a very important rule. Such a rule was essential in order to cope with the absence of the persona non grata procedure in relations between States and international organizations, requiring some expedient whereby the host State could defend itself from representatives to international organizations who could commit grave offences against its laws and regulations, or interfere in the internal affairs of that State. In such cases the sending State will have the alternative of either waiving immunity or recalling the person involved in such acts. The Brazilian Government has no objection to the context of article 75, as presented.

12/ Ibid., Twenty-fourth Session, Supplement No. 10 (A/7610/Rev.1), p. 10 (Yearbook of the International Law Commission, 1969, vol. II, p. 213).

Article 79 embodies a relevant clarification as far as international practice is concerned. The rights and obligations of the host State and sending States have no bearing upon the problem of recognition of States and Governments. Contacts deriving from the relationship between States and international organizations shall be facilitated by the host State although not recognizing any of the States involved. The reservation contained in paragraph 2 is also useful, since it avoids any interpretation of the contacts referred to as entailing acts conducive to implicit recognition.

The draft includes as its final articles provisions establishing a machinery of consultation and conciliation for the solution of disputes arising out of the application or interpretation of the future convention (articles 81 and 82). The formulationx suggested was inspired by article 66 of the 1969 Vienna Convention on the Law of Treaties, and the annex thereto, and other international agreements which provide special machinery for the solution of future disputes.

The Brazilian Government considers the procedure set forth in articles 81 and 82 of the draft as adequate for the establishment of a consultation and conciliation machinery as efficient and flexible as possible, and notes with satisfaction that paragraph 7 of article 82 leaves the door open for other appropriate procedures for the settlement of disputes, such as, for instance, recourse to the International Court of Justice, if States so desire.

Procedure to be adopted for the elaboration of the future convention

In reply to the last question of paragraph 2, part II of the operative part of resolution 2780 (XXVI), the Brazilian Government wishes to state that it considers the convening of an international conference of plenipotentiaries as the proper procedure to be adopted for the elaboration and conclusion of a convention on the subject of representation of States in their relations with international organizations. Indeed, it would be a mistake to adopt the other course of action open to us, namely, the elaboration of the convention by the Sixth Committee itself. This procedure was adopted for the conclusion of the Convention on Special Missions in 1969. But the extension of the draft prepared by the International Law Commission on the representation of States in their relations with international organizations excludes any such solution. The working time allowed the Sixth Committee during a regular session of the General Assembly would hardly suffice for the completion of such an extensive work, even if it were possible for the Committee to devote itself to a single item of its normally crowded agenda.

CANADA

/Original: English/
11 July 1972

General Remarks

The Canadian Government accepts that the draft convention must of necessity consist both of progressive development of international law and the codification of existing principles. However, the Canadian Government considers that the scope of privileges and immunities should be based on the actual functional needs of a delegation in performing its duties at the international organization and that they should thus be restricted to those which are essential to the execution of their functions. It is the long-standing position of the Canadian Government, as expressed most recently in a statement in the Sixth Committee (A/C.6/SR.1264) on the report of the International Law Commission, 20 October 1971, that the international community should work to contain rather than expand the categories of persons enjoying privileges and immunities, and to limit the extent of privileges and immunities accorded to these persons when needed.

It is noted that the draft convention has been modelled in large part on the Vienna Conventions on Diplomatic and Consular Relations. Diplomatic or consular relations differ in many respects from relations between States and international organizations with the result that many articles of this draft convention are too far-reaching. Thus the draft convention may be setting up certain standards which are not only unnecessary, but which might make countries reluctant to become party to the convention. Host States in particular would have to take into account the implications created if privileges and immunities were to receive an unwarranted extension.

In the Canadian view, the protection given by the convention to the host States is inadequate. The host State incurs great responsibility vis-à-vis the organization and vis-à-vis members of permanent mission, permanent observer mission and delegations, but nowhere does the convention provide for the refusal or expulsion of a member or delegate if need be.

No distinctions are made between the different types of international organizations which would be covered by the convention, distinctions which entail differences in privilegs and immunities for the different organizations.

Most States now hosting international organizations, such as Canada which hosts ICAO, likely have headquarters agreements with the international organizations located on their territory. The privileges and immunities granted in these agreements would provide a useful guide of the privileges and immunities that the present host States are willing to extend in a general convention similarly, the comments of present host States should be given prime consideration as their ratification of the convention will ensure its success. In that respect, Canada notes that comments already submitted to the International Law Commission

with respect to the provisional draft articles by individual States 13/ appear to have had a minimal influence on the evolution of the draft articles.

As for the procedure to be adopted for the elaboration and conclusion of a convention on the subject, the Canadian Government reiterates its preference for a conference of plenipotentiaries to conclude a convention based on the draft articles, as such a conference would allow for a careful and uninterrupted consideration of the draft articles by national experts. Canada would also like to repeat its reservation that undue haste in dealing with the draft could be detrimental as this draft, together with the Vienna Conventions on Diplomatic and Consular Relations and the Convention on Special Missions, will represent a complete body of codification of contemporary international law in this area.

Specific Remarks

Article 1

Canada suggests that the international organizations referred to in article 1 be more clearly and precisely defined as various types of organizations require different privileges and immunities.

Articles 2, 3 and 4

Canada considers the contents of articles 2 to 4 acceptable. For reasons of clarity, however, it is suggested that the terms "the present articles" used in those articles be replaced with the words "This Convention".

Article 6

Canada agrees with the comments of the International Law Commission that the enumeration of functions made by the article is not intended to be exhaustive; on the other hand, Canada does not consider that the order in which the functions are enumerated should be interpreted as a reflection of their relative importance.

Article 9

Canada agrees with the principle expressed in article 9 of the freedom of choice by the sending State. However, Canada would like to add a second paragraph similar to article 9 of the Vienna Convention on Diplomatic Relations providing the possibility for the host State to refuse entry to a member of a mission or to request a member of a mission to leave its territory.

13/ Ibid., Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), pp. 80-136.

Article 11

Article 11 is generally acceptable to Canada; more specifically, paragraph 3 of article 11 reflects the previous comments made by Canada on the role of observers. 14/

Article 12

Canada agrees with the presumption that is established in favour of the head of mission that he has full powers in the adoption of a treaty with the organization.

On the other hand, Canada approves of Japan's suggestion 15/ that article 12 be deleted since it would be dealt with in the future work of the International Law Commission.

Article 14

The size of the mission is a prime concern of the host State as the host State will incur responsibilities vis-à-vis the members of the mission and accord them privileges and immunities. Consequently, Canada believes that the host State should have a say on the size of a mission and suggests that provisions be made in the convention to this effect.

Article 15

Canada suggests that no person should be entitled to privileges and immunities until his or her name and status have been duly notified to the host State by the sending State. Suggestions and wishes of international organizations on the mode of notification should be taken into account in the final preparation of the article.

Article 16

Canada would prefer the use of the words "Acting Head of Mission" rather than "Chargé d'Affaires ad Interim" for the replacement of a head of mission to avoid any confusion with the terminology of diplomatic missions.

Article 18

Canada agrees with the principle that a sending State has a right to open an office in the locality of the organization. However, prior consent by the host

---

14/ Ibid., pp. 87-88.

15/ Ibid., p. 102.

State should be made a condition in view of the incidence of various municipal regulations and other restrictions on the establishment of a foreign mission. Further, the term "locality" should be defined.

Article 19

Canada generally approves of article 19, but would not object if the permanent observer had the right to use the flag and emblem of his State as regards his residence and means of transport.

Article 20

Canada considers as illusory the distinction made between "all facilities" and "the facilities required" as set out by paragraph 1 of article 20.

Article 22

For reasons of clarity, Canada suggests replacing the words "by the present articles" with the words "by this convention".

Article 23

In the view of the Canadian Government, the wording of paragraph 1 can be taken as indicating that the premises can be entered in the case where the head of mission's consent is requested and refused, and where it was impossible to contact the head of mission. This ambiguity in paragraph 1 should be removed.

Article 24

Canada is of the view that the exemptions provided by article 24 might be more extensive than required.

Article 26

Canada does not feel that the privileges enumerated in the present article are necessary or justified for the functions of the members of a mission, a fortiori for members of their families forming part of their respective household.

Article 28

Canada would like to repeat its suggestion 16/ that it would consider useful the addition of a paragraph reading: "This principle does not exclude in respect of these persons measures of self-defence or, in exceptional circumstances, measures to prevent them from committing serious crimes or offences."

16/ Ibid., pp. 86 and 88.

Article 30

Canada generally approves of article 30 and especially approves of the inclusion of subparagraph (d), paragraph 1.

Article 31

Article 31 should include the fact that a sending State not only has the right, but is under a duty to waive the immunity of its head of mission or members of the diplomatic staff of a mission or of persons enjoying immunity under article 36 where in the opinion of the sending State the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded, that is to say, it can be waived without prejudice to the good functioning of the mission.

Article 33

Canada would like to repeat the comments it made with regard to article 36 of the provisional draft. 17/

Article 36

Canada would recommend that paragraph 1 of article 36 read: "... if they are not nationals of or permanently resident in the host State..."; Canada would prefer to see in paragraphs 3 and 4 reference to persons not nationals of or permanently resident in the host State even though there is a provision to that effect in article 37; such an inclusion can only help to make precise the extent of the privileges and immunities accorded to other persons in article 36.

Article 38

Canada suggests that provisions be made that no one will be entitled to privileges and immunities unless and until his name and status have been duly notified to the Ministry for Foreign Affairs as a person entitled to privileges and immunities.

Article 43

Canada refers to its comments on article 14 (size of the mission), supra which apply mutatis mutandis for this article.

17/ Ibid., p. 86.

Article 46

Canada's comments with regard to the size of a mission (article 14) supra, apply mutatis mutandis for the size of a delegation.

Article 47

Canada's comments with regard to article 15, supra, apply mutatis mutandis to article 47.

Article 50

Canada agrees with this article; however, it finds it desirable that the rules of international law referred to in the article should be made more explicit.

Article 53

Canada's comments with respect to article 22, supra, apply mutatis mutandis to article 53.

Article 54

Article 54 should be redrafted, in less mandatory terms, taking into consideration the fact that delegations are often lodged in commercial properties, i.e. hotel rooms.

Article 55

In Canada's view, the administrative complexity of giving effect to the exemption would outweight the advantages of the exemptions.

Article 57

Keeping in mind the usually short duration of a delegation's stay in a host State and that freedom of movement inside the host State is not as essential to the performance of a delegation's function as it might be for a diplomatic or consular mission, Canada's comments on article 26, supra, apply mutatis mutandis to article 57.

Article 59

Canada generally agrees with the content of the article although it raises a problem of identification of the persons entitled to inviolability. It is suggested that the host State provide the entitled person with appropriate identification of his status.

Article 60

While Canada finds the purposes of the article laudable, it doubts whether they could in fact be realized.

Article 61

The Canadian's preference continues to be for alternative (B) of draft article 100. 18/

Article 62

Canada's comments with regard to article 31, supra, apply mutatis mutandis to article 62.

Articles 63 and 64

Bearing in mind the short duration of the delegation's stay in a host State and the administrative problems that the application of exemption would entail, Canada does not consider that the provisions of article 63 are realistic or feasible.

Article 67

Canada's comments with regard to article 36, supra, apply mutatis mutandis to article 67; furthermore, Canada does not think that such privileges and immunities are necessary for the proper functiong of a delegation.

Article 69

Canada's comments on article 38, supra, apply mutatis mutandis to article 69.

Article 75

Canada would suggest the addition of a provision providing the host State with a mechanism comparable to the persona non grata procedure with respect to the persons enjoying such privileges and immunities.

18/ Ibid., Twenty-fifth Session, Supplement No. 10 (A/8010/Rev.1), p. 25 (Yearbook of the International Law Commission, 1970, vol. II, pp. 294-295).

CZECHOSLOVAKIA

/Original: English/

12 June 1972

The Ministry for Foreign Affairs of the Czechoslovak Socialist Republic wishes to express its appreciation to the International Law Commission for its work on the elaboration of comprehensive draft articles on the representation of States in their relations with international organizations. The submitted draft articles constitute another, very significant and necessary contribution in the field of the codification of the so-called diplomatic law where the Commission has already done deserving work by preparing conventions at present already signed or concluded.

The number of international organizations has been on constant rise. Consequently, it is very desirable to regulate in international law mutual relations of member States with such organizations. It is no less desirable, and even indispensable, to regulate relations with international organizations of such States which are not their members and to give such States opportunity to follow the activities of such organizations and to participate in them in some way.

As to the wording of the draft articles in substance it does not distinguish by right between the status of permanent missions of States and the status of permanent observer missions and the questions of privileges and immunities are solved in a majority of questions identically for the two kinds of missions.

In this connexion it is noted that it would be correct to link, as in the case of permanent missions and permanent observer missions, provisions relating to delegations of member States and delegations of observer non-member States at sessions of organs of international organizations and at international conferences.

As to individual provisions of the draft articles the comments are the following:

From draft article 3 it might be deduced that the draft articles are only of subsidiary nature in relation to the respective rules of an international organization or rules of procedure of a conference. In view of the fact that the problems regulated by the draft articles are of such importance, these draft articles should have priority over rules of individual international organizations or conferences.

Under article 5, paragraph 2, the establishment of a permanent observer mission is possible only in the case when the rules of the respective organization permit it. With reference to the principles of sovereignty, equality and universality the Czechoslovak authorities suggest to anchor in article 5, paragraph 2, the principle that in all cases when member States may establish their permanent mission to an international organization, non-member States may establish their permanent observer missions.

Already during the consideration of the draft articles by the United Nations General Assembly in 1970 and 1971 the Czechoslovak Government expressed the view that a permanent observer should enjoy in principle privileges and immunities identical with a permanent representative of a member State, including the right to flag and State emblem since the former is also a representative of a State representing that particular State in the respective organization. The difference resides only in his relation to the respective organization, not in his status as a representative of a State.

Draft article 19, paragraph 2, gives a permanent observer mission the explicit right to use the flag and State emblem on its building; however, it does not give it the right to use them on means of transportation and the residence of the permanent observer, while a permanent representative enjoys this right. The respective Czechoslovak authorities believe that as far as privileges and immunities are concerned the document as a whole should be based on a consistently applied principle of equal status of representatives of States irrespective of the fact whether they are members of some international organization or not. Differences in their status are warranted only in such cases when they emanate directly from the character of the activities and tasks of a permanent mission on one hand, and a permanent observer mission on the other hand.

As to the provisions of article 20 referring to the obligation of the host State to enable permanent missions and permanent observer missions to carry out their functions, the Czechoslovak authorities cannot agree to the great difference specified in the obligations of the host State towards permanent missions on one hand, and permanent observer missions on the other hand in consequence of provisions contained under (a) and (b). As it has been already mentioned, in both cases it is representatives of States who are involved. The difference resides only in their functions and the host State should be obliged in both cases to create every opportunity for the carrying out of these functions.

The provisions contained in article 23, paragraph 1, envisage some exceptions to the principle of inviolability of the mission's premises. The wording proposed represents a deviation from the Vienna Convention on Diplomatic Relations. The Czechoslovak authorities believe that the inviolability of premises of missions should be respected without any exception. Inviolability should be provided to the same extent, i.e. without exceptions, also to the residence of a permanent representative and a member of the diplomatic staff of the mission (article 29).

The status of delegations sent to sessions of organs of international organizations or to conferences, whether delegations of member States of the respective organization or delegations of observers, should be as close as possible to the status of permanent missions. Consequently, the comments relating to provisions of part II of the draft articles concern analogously also provisions of part III and the existing annex.

The competent Czechoslovak authorities will continue to study the draft articles and reserve themselves the right to take them up during further consideration of the problem. At the same time, they are of the opinion that the draft articles submitted by the International Law Commission constitute a good basis for further deliberations. Such deliberations should be conducted, in the opinion of the Czechoslovak Government in the Sixth Committee of the United Nations General Assembly and should result in the adoption of a respective convention by the General Assembly and its opening for signature by all States without any exception.

DENMARK

/Original: English/
6 June 1972

The Danish Government holds the opinion that the provisions on rights and immunities of the draft convention are too widely based on current rules concerning bilateral diplomatic relations which, however, are justified by a number of specific considerations, i.e., ceremonial considerations.

The basic criteria for defining the level of diplomatic rights and immunities in rules covering multilateral diplomatic relations must be to ensure that representatives and delegates are allowed freely to perform their functions. The draft articles on the representation of States in their relations with international organizations as adopted by the International Law Commission at its twenty-third session contain rules on diplomatic rights and immunities which go beyond what the application of this criteria would necessitate. The Danish Government recommends that these considerations be taken into account when further preparation of the draft articles are undertaken in order that the provisions of the draft convention will be in accordance with the generally accepted view of the present world concerning allocation of special privileges to a particular group or groups of persons. The convention should also, in its final form, be in accordance with the criteria of legal relevance which have been applied in conventions of a recent date such as the international conventions containing rules on diplomatic privileges and immunities for the United Nations and its specialized agencies. 19/ Also should be taken into consideration the usual procedure followed in this respect by international organizations.

It should be added that in the opinion of the Danish Government further deliberations on the draft convention should, for financial reasons, take place in the Sixth Committee of the General Assembly.

19/ Convention on the Privileges and Immunities of the United Nations, United Nations, Treaty Series, vol. 1, p. 15; Convention on the Privileges and Immunities of the Specialized Agencies, ibid., vol. 33, p. 261.

IRAQ

/Original: English/

15 May 1972

The authorities of the Government of the Republic of Iraq have studied the draft articles and found that these articles have as their main source the Vienna Convention on Diplomatic Relations, which Iraq ratified in the Law No. 20 (1962). However, two observations are called for:

(1) With respect to articles 10, 44 and D, it is suggested that the following provisions should be added: "if such is permitted by the applicable legislation of the sending States". It is felt that this addition is necessary in view of the different internal practices of various States and the fact that such practices fall within the internal sovereignty of States.

(2) Although paragraph (d) of articles 30 and 61 would seem to have provided a new principle not covered by the Vienna Convention on Diplomatic Relations, it is felt that it is possible to provide for it, if it is found to be necessary.

KUWAIT

/Original: English/

29 February 1972

The Permanent Representative of the State of Kuwait to the United Nations has the honour to state that the draft articles on the representation of States in their relations with international organizations were examined by the competent authorities in the State of Kuwait who found them on the whole compatible with their views on this subject.

LEBANON

/Original: French/

3 April 1972

The Lebanese Government wishes to make the following observations:

(1) It would be desirable to entrust the elaboration of the convention to a conference of plenipotentiaries, rather than rely on the Sixth Committee.

(2) The draft articles should be in the form of a convention rather than a code as suggested by some States, for the simple reason that all the similar and complementary instruments already available are conventions:

Convention on the Privileges and Immunities of the United Nations,

Convention on the Privileges and Immunities of the Specialized Agencies,

Convention on Diplomatic Relations,

Conventions on Consular Relations,

Convention on Special Missions.

(3) With regard to the draft articles themselves, as a whole they reflect international practice and would appear to give rise to no major objections.

(4) The members of permanent missions to international organizations must be granted a status identical to that of diplomatic agents. In no case however should the convention go further than the 1961 Vienna Convention on Diplomatic Relations.

(5) The part concerning observer missions contains tedious repetitions which could be avoided by reference to the preceding corresponding articles.

(6) The definition of an international organization of universal character (article 1, paragraph 1 (2)) should not incite States to set up "fictitious" permanent missions to organizations which do not require the presence of such missions.

(7) Article 5 should include a paragraph providing that States may establish a single permanent mission, or a single permanent observer mission, to several organizations in the same way as a diplomatic agent may be accredited to several countries.

(8) It would be desirable, as proposed by the secretariats of the United Nations and the specialized agencies in their observations, for an article to be inserted into the convention, ensuring to members of permanent missions and their families entry into and sojourn in the territory of the host State. However the host State must retain the right to refuse entry to a member who has previously been guilty of an abuse of the privilege of residence.

(9) International organizations should perhaps be allowed to be parties to the future convention, as suggested by the International Labour Organisation. In addition, those organizations should be duly represented at the codification conference and should be able to participate in it effectively.

MADAGASCAR

/Original: French/
19 January 1972

Articles 1 and 2

The Malagasy Government agrees that the draft articles should apply only to "organizations of universal character" which should, however, be determined on the basis of criteria concerning the world-wide scale of their activities and the genuine need for such status for the performance of the representatives' functions.

Article 5

The Malagasy Government feels that the character of their functions does not justify the granting to observer missions of the same privileges and immunities as are granted to permanent missions. The advantages granted to observer missions must be limited to those privileges and immunities necessary to the performance of their functions.

Articles 8 and 11

Multiple accreditation meets the need for economy of the developing countries. The Malagasy Government approves articles 8 and 11 which establish the possibility of multiple accreditations.

Articles 23 and 24

The Malagasy Government feels that it would be more efficient and more in accordance with the objective to be attained if the text followed more closely the language of article 22 of the Vienna Convention.

Articles 36 and 67

In the view of the Malagasy Government and contrary to the provisions of these articles, the privileges and immunities should not be identical for other persons.

Article 53

In the opinion of the Malagasy Government, the host State and the organization both have responsibilities which must be determined in the headquarters agreement.

The other articles mentioned below are approved by the Malagasy Government:

Article 75: relating to the duty of persons enjoying privileges and immunities not to interfere in the internal affairs of the host State.

Article 79: relating to the principle that the rights and obligations of the host State and of the sending State shall be affected neither by the non-recognition by one of those States of the other State nor by the non-existence or the severance of diplomatic or consular relations between them.

Article 81: concerning consultations in the event of a dispute between the parties concerned, namely the sending State, the host State and the organization.

/Original: French/

27 March 1972

With respect to the procedure to be adopted for the elaboration and the conclusion of an international convention based on the draft articles prepared by the International Law Commission, the Malagasy Government is in favour of sending the said draft articles to the Sixth Committee of the United Nations which would be requested to draw up a final draft for submission to the Assembly.

MONGOLIA

/Original: English/

26 June 1972

The Government of the Mongolian People's Republic have examined the draft articles on the representation of States in their relations with international organizations. While expressing their appreciation of the work done by the International Law Commission to elaborate the said draft articles and endorsing the document as a whole, the Government wishes to submit the following brief remarks on certain of its provisions:

1. The Government of the Mongolian People's Republic wish to point out that they attach great importance to the principle of inviolability of the premises of missions or delegations. In this connexion they express their disagreement with the first paragraphs of articles 23 and 54 of the draft, which assume that in case of fire or other natural calamities, the agents of the host State may enter the said premises without the express consent of the heads of missions or delegations.

In such cases the Government of the Mongolian People's Republic consider it expedient to invoke article 22 of the Vienna Convention on Diplomatic Relations since it has already become a generally accepted standard of international law.

2. The Government of the Mongolian People's Republic likewise cannot agree to the procedure of consideration of disputes as provided for in article 82 of the draft which in its present form is too complicated and difficult to be put into practice.

The Government of the Mongolian People's Republic reserve their right to express themselves on the draft articles on the representation of States in their relations with international organizations in the course of their further consideration.

NETHERLANDS

/Original: English/

2 June 1972

The Netherlands Government has little to add to its three detailed commentaries in 1969, 1970 and 1971 on the three series of draft-articles by the International Law Commission, on the relations between States and international organizations. 20/

As has been pointed out in these commentaries, the Netherlands Government sees certain positive aspects in the draft articles, but has also certain objections.

With regard to the procedure to be followed in adopting the text of the convention, it seems appropriate that a diplomatic conference be convened. Owing to the fact that in the convention specific obligations will be laid on the universal organizations, it seems necessary not only that these organizations be adequately represented at the conference, but also that a procedure be created under which the convention is made applicable to each separate organization by a decision of the organization in question, in the same way as provided for in article X of the Convention on the Privileges and Immunities of the Specialized Agencies.

POLAND

/Original: French/

11 May 1972

The Government of the Polish People's Republic expressed its position on the draft articles on the representation of States in their relations with

---

20/ Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), pp. 104-111.

international organizations in 1971, in its reply to the circular letter from the Secretary-General. 21/ This position was maintained in the statement by the representative of Poland at the 1256th meeting of the Sixth Committee during the twenty-sixth session of the General Assembly (A/C.6/SR.1256).

Having studied the final version of the draft articles prepared by the International Law Commission at its twenty-third session, the Government of the Polish People's Republic takes this opportunity to renew its expressions of gratitude to the Commission for having carried out this useful task.

In the modern world international organizations represent an important forum for international co-operation in various fields. In addition, conferences of great importance are convened under the auspices of international organizations. States are thus obliged to send their representatives on an ad hoc basis to participate in meetings of individual bodies or in conferences convened by international organizations. Objective needs are also at the origin of the general practice of establishing permanent missions of States to the United Nations or to other international organizations. Thus, the establishment of appropriate rules to regulate the whole question of the representation of States in their relations with international organizations is today a matter of great practical importance. It is also an urgent question, for it is a matter of elaborating as rapidly as possible and of putting into effect unified rules guaranteeing representatives of States appropriate conditions for the performance of their functions related to the activities of international organizations. That would also enable the international organizations to fulfil their tasks and to achieve their goals more effectively.

The draft articles on the representation of States in their relations with international organizations prepared by the International Law Commission are a solid basis for the codification of this branch of international law in the form of an international convention, as provided in General Assembly resolution 2780 (XXVI) of 3 December 1971.

In accordance with the opinion of the International Law Commission, the scope of the draft articles should extend only to matters relating to the representation of States in their relations with international organizations whose membership and responsibilities are on a world-wide scale, that is to say, organizations of universal character. That is a proper solution.

It would be difficult, perhaps even totally impossible, to deal in the same instrument with problems connected with relations with other organizations, that is to say, with organizations of regional character, for the simple reason that such organizations are not of a similar nature.

It should also be noted that the role which international organizations of universal character currently play in international relations is such that, in

---

21/ Ibid, p. 112.

principle, the majority of, or even all, States in the world have an interest in the activities of such organizations. For this reason, there is every justification for regulating the question of the representation of States in their relations with international organizations by a universal international convention, open to all States.

The limitation of the scope of the draft articles to relations with international organizations of universal character does not mean that those articles may not be applied to other organizations and, in particular, to certain regional organizations. That will depend on the requirements and the character of such organizations. For this reason, the decision regarding the possible application of the draft articles to other organizations should be left to the discretion of the States and organizations concerned.

It follows from the solution proposed by the International Law Commission in draft article 4 that the latter is not intended to supplant existing arrangements which regulate the relations between States and international organizations; nor does it preclude the possibility of the conclusion in the future of arrangements which might depart from the draft articles.

That solution reflects a legitimate concern not to call in question or weaken existing arrangements and, on the other hand, not to preclude the possibility of new solutions which might be more progressive and better adapted to current or future needs.

It should, however, be stressed that the draft articles prepared by the International Law Commission should, after their final adoption, become a general model for the uniform regulation of the question of the representation of States in their relations with international organizations of universal character.

The draft articles represent, in a certain sense, a development of Article 105 of the United Nations Charter and of provisions of the constitutions of other organizations, while at the same time they take into account the practice which has accumulated during the long period of activity of international organizations.

The question of the representation of States in their relations with international organizations differs in several respects from that of diplomatic and special missions exchanged in bilateral relations between States. Appropriate allowance has been made for this distinction in the draft articles. One should not, however, overlook the fact that the delegations of States to international organizations and to international conferences have a representative function, that is to say, they represent the State as such.

Consequently, in its draft articles, the International Law Commission rightly decided to adopt as the basis for the definition of the legal status and the privileges and immunities of representatives of States certain provisions of the 1961 Vienna Convention on Diplomatic Relations. In some

respects the Commission has departed from the Vienna Convention, a fact which merits a thorough re-examination from the point of view of the objective and purpose of the draft articles. This applies in particular to draft article 23, which regulates the question of the inviolability of the premises of permanent missions of States to international organizations.

The principle of non-discrimination, set forth in draft article 80, will be of particular importance for the practical application of the principles and rules formulated in the draft articles. It is the failure to observe this principle and the violation of this principle which are at the origin of various difficulties and which have led to a situation in which not all States which wish to do so have the opportunity to engage in co-operation, in an appropriate manner, with international organizations.

The Government of the Polish People's Republic wishes to emphasize yet again that it regards as unjustified and inadmissible the practice of allowing only certain States to establish permanent observer missions to the United Nations, while certain other States, which are both able and willing to co-operate with the United Nations (for example, the German Democratic Republic), are deprived of this opportunity.

The codification of law on the representation of States in their relations with international organizations creates an opportunity to eliminate this inad inadmissible practice once and for all. For there is no doubt that the rules and practices of international organizations must not give rise to any discrimination in the treatment of any State.

With regard to the body to which the task of preparing the final text of the draft convention should be entrusted, the Government of the Polish People's Republic feels that the most appropriate solution would be to entrust this task to the Sixth Committee; the convention would subsequently be adopted by the General Assembly. In the current situation this solution would be the most appropriate and the least costly.

SWEDEN

/Original: English/

2 June 1972

The Swedish Government in previous comments pointed out that, in view of the diversity of the purposes and functions of international organizations, specific agreements in all likelihood would continue to be needed on the matters dealt with in the draft articles. Accordingly, the Swedish Government suggested that it would seem more appropriate to give the articles the form of a model code to be used as a basis for such agreements, than to include them in a general convention. The International Law Commission, however, did not agree and proposed that a convention should be prepared. In its resolution 2780 (XXVI) of 3 December 1971 the General Assembly followed the Commission's proposal and expressed its desire that an international convention should be elaborated and concluded expeditiously on the basis of the draft articles. In view thereof, the Swedish Government will not at present insist, but wishes to draw attention to certain problems connected with the conclusion of a convention.

A question which immediately arises is: who are going to be parties to the convention, only States or also organizations? The Commission seems to have left the question open. There are no final clauses among the draft articles, neither is there an answer in the commentaries. This is not surprising. The question of treaties concluded between States and international organizations or between two or more international organizations was not solved by the Vienna Conference on the Law of Treaties. At the request of the Conference, the matter was referred by the General Assembly to the International Law Commission and is now under study by the Commission. 22/ Until this study is completed and the problems involved have been clarified, it would be difficult to take a considered position with respect to the alternatives mentioned above. Under these circumstances it seems highly desirable, if not to say indispensable, to await the results of the Commission's consideration of this item and, preferably, also of the subject "the law relating to international organizations" which figures on the Commission's long-term programme. The particular subject of representation of States in their relations with international organizations could without great disadvantage continue for a while to be regulated by specific agreements. The proposed general convention would anyhow have only a subsidiary character and, in fact, the draft articles presuppose the existence and future conclusion of such agreements.

As far as the organizations to be covered by a future convention on the subject under review are concerned, the Swedish Government feels that the definition contained in the draft convention. viz. "international organization of universal character... whose membership and responsibilities are on a world-wide scale" 23/

22/ General Assembly resolution 2501 (XXIV) of 12 November 1969.

23/ Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), p. 8.

lacks in precision and will cause difficulties for a State party to the convention in its interpreting and application in a specific case. It will therefore be necessary either to elaborate on this definition, for instance by giving examples of organizations to come within the scope of the convention, or to drop the definition altogether and substitute for it an enumeration of the international organizations falling under the convention. However, if, as suggested above, the elaboration of a final text of the convention is timed to take place at a diplomatic conference which simultaneously deals with the two other subjects just mentioned, it will be much easier to arrive at a clear definition which is apt to remove all doubts as to the scope of the convention.

With respect to the substance of the draft articles, the Swedish Government wishes to refer to the observations of a general character made by the Swedish representative in the Sixth Committee of the twenty-sixth session of the General Assembly on 11 October 1971 (A/C.6/SR.1256). These observations may be summarized as follows. The Swedish Government is of the view that the categories of persons enjoying a privileged treatment in foreign countries should be restricted rather than increased and that the extent of these privileges and immunities should be limited to what is required by the functions of the organizations and individuals concerned. The provisions of the draft go in most instances far beyond the present state of international law in the field under discussion, a fact which will substantially jeopardize the viability of a future convention based upon the present draft articles. It seems in addition highly undesirable to create a situation by which facilities accorded to delegations and members thereof attending meetings of the most varied nature are to be far greater than the facilities now granted to delegates participating in the work of the organs of the United Nations and of its specialized agencies by virtue of the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies. In regard to particular articles it would be premature to discuss at present in detail their content. As stated in the Sixth Committee the Swedish Government is in favour of having the future convention prepared by an international conference of plenipotentiaries rather than within the framework of the Sixth Committee and, as mentioned earlier, in conjunction with related matters. When that stage is reached, the Government will submit such concrete proposals as it considers appropriate.

It has been argued, against convening an international conference for the conclusion of a convention on the matter, that the conference schedule for the next few years is heavy and that the conference would unduly burden the already precarious financial situation of the United Nations. The argument has some force and should be considered when a decision is taken on the date of the conference. It reinforces the recommendation submitted above not to schedule the final preparation of the convention in the near future.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

/Original: Russian/

31 May 1972

As is known, the draft articles on the representation of States in their relations with international organizations prepared by the United Nations international Law Commission were favourably received by the majority of States at the twenty-sixth session of the General Assembly. In concurring with this general opinion, the Ukrainian SSR considers that the draft provisions reflect current practice and may serve as a basis for the elaboration of a convention, thereby contributing to the further codification and progressive development of standards of international law which will ensure appropriate conditions for the normal activity of missions to inernational organizations and of their staff as well as of delegations to organs and conferences of such organizations.

To achieve these aims it will be necessary for the future convention to establish rules under which missions to international organizations and their staff are granted privileges and immunities as extensive as those accorded to diplomatic missions and their staff. In this connexion the provisions of article 23, paragraph 1, and article 54, paragraph 1, which seek to regulate the question of access to the premises of a mission in case of fire or other disaster, should be modelled on the corresponding article of the 1961 Vienna Convention on Diplomatic Relations (article 22).

With regard to the procedure to be adopted for the elaboration and conclusion of a convention on representation of States in their relations with international organizations, the work can, in the opinion of the Ukrainian SSR, be carried out by the Sixth Committee of the United Nations General Assembly, which has sufficient experience in the matter.

UNION OF SOVIET SOCIALIST REPUBLICS

/Original: Russian/

31 May 1972

The draft articles on the representation of States in their relations with international organizations generally reflect established practice in this field and may serve as a basis for the elaboration of a draft international convention on the subject.

None the less, some of the draft provisions give rise to serious doubts. This is particularly true of article 23, paragraph 1, and article 54, paragraph 1, which state that the consent of the head of mission to the entry into a mission's premises of the agents of the host State "may be assumed" in case of fire or other disaster. No limitations whatsoever can be placed on the inviolability of the

premises of missions and delegations, since such provisions may be used to the detriment of the normal performance of the functions of missions and delegations and of the fruitful activity of international organizations of a universal nature, and may also cause complications in relations between States. The wording of the above-mentioned paragraphs should be brought into strict conformity with article 22 of the 1961 Vienna Convention on Diplomatic Relations.

Detailed, article-by-article comments will be made by the USSR representative during subsequent discussions on the draft convention.

With regard to the procedure for the elaboration and conclusion of the said convention, the most appropriate solution would be to discuss and reach agreement on a draft text in the Sixth Committee of the General Assembly at its twenty-seventh session. The text agreed upon in the Sixth Committee could be submitted for the approval of the General Assembly, which could in its turn recommend that the convention be opened for signature. The convening of a special international conference to deal with all the above matters would under any circumstances require a great deal of time and considerable financial expenditure.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

/Original: English/

6 June 1972

(a) Procedure to be adopted for the elaboration and conclusion of a convention

1. The Government of the United Kingdom share the view expressed by a large number of other delegations during discussions in the General Assembly that the draft articles on the representation of States in their relations with international organizations should be considered at a plenipotentiary conference convened for the purpose. The draft is long and complex; its various parts are closely interrelated; it must be examined having constantly in mind a number of other important related agreements. In order that the draft may be considered with the care which it deserves, such a conference would provide the best forum for discussion; and, in particular, consideration at a conference would be preferable to discussion during meetings of the General Assembly of the United Nations, when this topic cannot receive the undivided attention of delegations. There are a number of important questions likely to be on the future agenda of the Sixth Committee which the United Kingdom Government would be reluctant to see delayed or deferred in order to find time to deal with these lengthy draft articles. A conference will be more conducive to a thorough consideration of the important legal and technical issues involved in the draft articles. The chances of achieving a satisfactory convention which would be widely accepted by Member States seem likely to be greater if the draft articles are considered at a conference.

2. The United Kingdom Government hope therefore that the General Assembly will now decide to convene a conference to consider these articles at an appropriate date, having regard, among other factors, to the programme of other conferences envisaged by the United Nations.

3. While expressing this preference, however, which they believe to accord with the view widely held among the membership of the United Nations, the United Kingdom Government wish to make it clear that they will naturally consider fully the arguments and preferences expressed by other Members, when this question is discussed in the next session of the General Assembly.

(b) General

4. The detailed observations which the United Kingdom Government have already submitted, by letters dated 27 November 1970 and 19 March 1971, 24/ concerning these draft articles continue, in general, to represent their views. This applies

24/ Ibid., pp. 122-125.

in particular to the general reservations which the United Kingdom Government have expressed concerning the method adopted by the International Law Commission. The United Kingdom Government regret that the Commission has felt unable to take into account many of the points raised in their previous observations.

5. In the following observations, no attempt has been made to repeat all the detailed points made earlier. Instead, the United Kingdom Government have rather sought to indicate their views on the broader issues involved.

Scope of the draft articles

6. The United Kingdom Government agree with the provisions of article 2 (1) limiting the application of the articles to organizations of universal character. They also agree with the provisions of article 4 relating to safeguarding existing and future agreements whose provisions differ from the articles.

Protection of host State

7. The present draft does not sufficiently safeguard the interests of the host State. It is necessary to give due consideration to the host State's position since, if the future convention is to be widely accepted, it will have to be acceptable to potential host States.

8. In particular, it is essential that the host State should retain the right to take precautionary measures necessary in the interests of its security. Despite the assurances in the commentary to article 75, this article does not provide adequate safeguards. Articles 9, 14 and 75 should be modified to ensure that the host State may, after consultation with the sending State and organization concerned, require the departure of a person whose presence in its territory is contrary to its security interests.

9. Similarly, the host State should have the right, after consultation with the sending State and organization concerned, to limit the size of missions. In this connexion, the Headquarters Agreement between the United States and the United Nations, 25/ quoted in the commentary to article 14, provides a useful precedent.

10. Articles 22 and 51 impose an obligation on the organization or conference to assist the sending State, but say nothing about assisting the host State. The organization or conference should also be obliged to assist the host State to prevent the abuse of privileges and immunities.

25/ United Nations, Treaty Series, vol. 11, p. 11.

Consultations and conciliation

11. The United Kingdom Government consider articles 81 and 82 on consultations and conciliation to be central to the whole draft. In order to provide an even more effective means of settling disputes, it should be considered whether the conciliation procedure can be simplified and made to operate more rapidly.

Acquisition of nationality

12. The United Kingdom Government remain of the opinion that it would be preferable for article 73 (Acquisition of Nationality) to be included in a separate protocol, since its implementation might cause difficulty in a very limited number of cases under the nationality laws of certain States.

(c) Part II

13. Provided that due account is taken of the above observations and of their earlier observations, the United Kingdom Government are prepared to give careful consideration to the view that, for the purposes of these draft articles, permanent missions and permanent observer missions to major international organizations of universal character should be accorded the privileges and immunities enjoyed by diplomatic missions as set out in part II.

14. The United Kingdom Government agree fully with the principle set out in article 5 which makes the establishment of a permanent mission by a member or non-member State dependent upon the rules of the organization. It is, however, important that the host State be notified in advance of the institution of a mission, and so the words "if possible" in paragraph 3 should be deleted.

(d) Part III and annex

15. The United Kingdom Government cannot accept the analogy between delegations to organs and conferences on the one hand and special missions on the other. The position of the host State is quite different in the case of organs and conferences from its position in the case of special missions, which are of an essentially bilateral nature, and which can only be sent "by one State to another State with the consent of the latter". 26/ The large numbers of persons who may be involved in delegations to organs and conferences, when viewed with their essentially temporary nature, render it quite impracticable for them to be granted privileges and immunities on the scale of special missions. For instance, members of delegations will in many cases be accommodated in hotel rooms where it would be impossible to accord the inviolability provided in article 54. Similarly,

---

26/ See article 1 (a) of the Convention on Special Missions, Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30 (A/7630), p. 99.

article 61 grants extensive immunities to delegates whereas it would be quite sufficient to limit these to immunity in respect of official acts.

16. The United Kingdom Government will accordingly wish to see substantial modifications to this part of the draft before it is acceptable. These will include restricting the classes of entitled persons to the actual representatives of Governments of States by excluding administrative and technical staff, service staff, private staff and families; and limiting the scale of privileges and immunities to that provided under article V of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations.

17. It would seem appropriate for the articles in the annex (Observer delegations to organs and conferences) to be consolidated with part III of the draft, provided that the privileges and immunities accorded under part III are strictly limited in the manner indicated in paragraph 16 above.

UNITED STATES OF AMERICA

/Original: English/
12 July 1972

Regarding the procedure for the elaboration and conclusion of a convention on the representation of States in their relations with international organizations, the International Law Commission recommended, in paragraph 57 of its last Report, that the General Assembly convene an international conference of plenipotentiaries to study its draft articles and to conclude a convention. 27/ The United States supports this recommendation and believes that it would be appropriate for the General Assembly to convene such a conference. Such a conference might be scheduled for 1974 and might consider, as well as the draft articles on the representation of States, the draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons, provided that the Commission has by then completed its consideration of this latter topic. Considering the financial situation of the United Nations, the conference should be held at United Nations Headquarters unless arrangements are made to ensure that no additional expense would incur to the United Nations as a result of holding the conference at another site.

With respect to the substance of the revised draft articles, in general, the United States considers that the articles have been improved by combination of related articles on second reading. The addition of article 82 on conciliation is a desirable step. The United States would very much prefer a stronger provision, having as its last step a mandatory dispute settlement procedure. Questions of the interpretation and application of a treaty are precisely the sorts of questions which should be submitted to the International Court of Justice for decision. This is, after all, the pattern of the Convention on the Privileges and Immunities of the United Nations.

The protection of host countries against abuse of privileges and immunities is vitally important. Paragraph 2 of article 75 provides that in cases of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from justice, the sending State is under an obligation, unless it waives the immunity of the person concerned, to recall him, terminate his functions with the mission or delegation, or arrange his departure, as appropriate. The entire burden therefore is on the sending State to take action. Should a dispute arise as to whether a person was guilty of a grave and manifest violation of the criminal law, the only recourse for the host State is found in articles 81 and 82, dealing with consultations and conciliation. These procedures would not necessarily operate quickly enough to ensure the protection of the host State. It is accordingly essential that a provision be included allowing the host State to require the departure of a person guilty of abuse of his privileges of residence.

27/ Ibid., Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), p. 8.

Such a provision should of course contain its own internal safeguards and any application of such a provision would, of course, be subject to the provisions of articles 81 and 82 if a dispute about its application arose. A provision along the lines of section 13(b) of the 1947 Headquarters Agreement between the United States and the United Nations, which provides for appropriate consultations and procedures before any person is required to leave the country, would suffice. There is a similar provision in section 25 of the Convention on the Privileges and Immunities of the Specialized Agencies. These provisions concern not merely "grave and manifest violation of the criminal law", 28/ but the wider standard of "abuse of privileges of residence". 29/ Paragraph 1 of article 75 appropriately states a duty of persons enjoying privileges and immunities to respect the laws and regulations of the host State and not to interfere in its internal affairs, but these grounds are not carried over into paragraph 2 of the article. Moreover, there is a broad and ambiguous exception provided in the last sentence of paragraph 2. If privileges and immunities as broad as those provided for in the draft articles were to be accorded, a means would have to be provided by which the host State could protect itself against a serious abuse of the privilege of residence, whether or not it constitutes a grave and manifest violation of criminal law. In such cases, provided that there are clear procedural safeguards as in section 13(b) of the Headquarters Agreement, the host State must retain the ability to require that a person who has seriously abused his privilege of residence leave the country (this is of course the case with regard to diplomats who are accredited to States and who may be declared persona non grata.)

The United States also has reservations about the large extension of privileges and immunities to both the administrative and technical staff of the mission and to members of their families, as is done in paragraph 2 of article 36. Full diplomatic privileges and immunities should be extended by the articles only to the categories of persons defined in section 16 of the Convention on the Privileges and Immunities of the United Nations. It would be excessive to accord the same privileges and immunities to those persons that would be covered under paragraph 2 of article 36. This is not necessary for the effective functioning of the mission. If immunities are to be granted, they should only be in respect of acts performed in the course of official duties.

Turning to the provision concerning freedom of movement, article 26 of the draft articles, this article ensures freedom of movement and travel to all members of the missions and of their families in the territory of the host State, subject to laws and regulations concerning zones into which entry is prohibited for reasons of security. The United States would much prefer the language of article 57, which ensures such freedom as is necessary for the performance of the tasks of the person involved. Under section 11 of the Headquarters Agreement between the United States and the United Nations, the United States already guarantees free transit to the Headquarters District of the United Nations. We thus accept the principle that

---

28/ Ibid., p. 50.

29/ United Nations, Treaty Series, vol. 33, p. 278.

free transit should be assured to those travelling to the Headquarters District of an international organization. In addition, the United States considers it appropriate that freedom of movement be assured within the territory of a country to representatives of members of an international organization when their official functions require such additional travel. The United States is in principle in favour of the broadest possible freedom of movement within its territory. But we all know that freedom of movement has been abused in the past and in a number of cases used for purposes of espionage. A host State should not be asked to accept a provision in a convention that leaves it without any real protection of abuse of the right to travel freely throughout its territory. The present provision does not adequately protect the host State.

There is somewhat a similar problem with respect to articles 9 and 42 on appointment of members of a mission or delegation and article 76 on entry into the territory of the host State. There have been cases where an espionage agent operating out of an embassy has been expelled from the host State as persona non grata. This expulsion has then been followed by reassignment of the spy in the same State from which he had been expelled but as a member of the permanent mission to an international organization. No host State should be expected to tolerate this sort of action or to accept persons as members of the permanent mission who have in any other way previously violated the criminal law of the host State or abused the privilege of residence. We are in no way opposed to the principle that States must be free to select the members of a permanent mission or a delegation, but this freedom, like all other freedoms, cannot be absolute. It must be exercised with due regard to other established rights and one of these is the very reasonable right of a host State to protect itself against free entry of individuals who for example, are known to be espionage agents.

There are other more minor aspects of the draft articles that cause us some misgivings, and we might give two examples of these. For example, we believe that the provisions concerning inviolability of the premises of a delegation (article 54), is unduly broad in its coverage of hotel rooms. We are not persuaded by paragraph 4 of the commentary. We think that it would seem unreasonable to make such rooms inviolable because the normal functioning of a hotel necessitates that personnel enter the room and one cannot expect that a hotel will permit its routine to be disrupted because a delegation member is there. Nor do we think it appropriate that members of delegations be exempted from sales taxes, as provided in article 64, and we are similarly not persuaded by paragraph 2 of the commentary. To exempt members of a delegation from sales taxes and other taxes of this nature is impractical because, in our view, the relatively brief period of time most delegations spend in the host country and the small amounts involved do not warrant the significant administrative burden that would be required to arrange the refund of such taxes.

Finally, we think the provisions concerning waiver of privileges and immunities, articles 31 and 62 are regressions from the provisions in the previous draft. Article 34 of the previous draft contained an express obligation upon the

sending State to waive immunity. 30/ As explained in paragraph 4 of the commentary to article 31 of the current draft, express statement of this obligation was dropped and consolidated into paragraph 5 of article 31 which merely provides that if the sending State does not waive, it shall use its best endeavours to bring about a just settlement of the civil claim involved. We do not think this provision suffices. We think it important to state the duty to waive immunity in appropriate cases. This duty is, for example, clearly stated in section 14 of the Convention on the Privileges and Immunities of the United Nations, which provides that a Member "is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded". 31/ A departure from this widely accepted position is not warranted.

Regarding the annex to the draft articles concerning observer delegations to organs and to conferences, the United States is not convinced that these articles are necessary, but in any case, we wish to make it clear that many of the above comments apply with equal force to the articles in the annex.

30/ Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10 (A/7610/Rev.1), p. 10 (Yearbook of the International Law Commission, 1969, vol. II, p. 213.

31/ United Nations, Treaty Series, vol. 1, p. 22.

YUGOSLAVIA

/Original: English/

30 June 1972

The Government of the Socialist Federal Republic of Yugoslavia expresses its satisfaction at having the International Law Commission successfully conclude the formulation of the draft articles on the representation of States in their relations with international organizations. The work of the Commission constitutes a useful contribution to the codification of contemporary diplomatic and consular law while at the same time reflecting an increasingly significant role of multilateral diplomacy in relations among States.

The Government of the Socialist Federal Republic of Yugoslavia has not only followed the efforts of the International Law Commission in the area of relations among States and international organizations, but has submitted its preliminary observations, which are contained in Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), pp. 128-130.

In reference to the Secretary-General's letter dated 13 January 1972, the Government of the Socialist Federal Republic of Yugoslavia will submit its substantive views at the time of the detailed consideration of the draft convention.

Regarding the elaboration and conclusion of a convention, the Government of the Socialist Federal Republic of Yugoslavia is of the opinion that a concurrence on this question should be reached on the basis of a broad consensus of Member States during the twenty-seventh session of the General Assembly of the United Nations.

B. Comments and observations of Switzerland

/Original: French/

3 July 1972

Introduction

The Swiss Government has read with great interest the draft articles on the representation of States in their relations with international organizations, adopted in a new version by the International Law Commission at its 1971 session. In its view, this new text has achieved considerable improvements over the earlier drafts. In particular, the Swiss Government has noted with satisfaction that the provisions relating to permanent missions and permanent observer missions have been merged into one, so that identical rules will normally apply to both kinds of mission and differences are introduced only where they are considered essential on certain points. The draft thus proposes an approach which the Swiss Government wanted and which it advocated in its earlier observations communicated to the Secretary-General of the United Nations by noted dated 22 January 1971. 32/

On the other hand, the Swiss Government notes that on some points the draft articles give too limited protection to the interests of the host State.

While expressing its satisfaction upon examining the draft articles as a whole and its keen appreciation of the service rendered by the International Law Commission, the Swiss Government would like to take the opportunity that has been presented to it of expressing once again its observations on some individual points. These observations appear below, with the proviso that the comments are not exhaustive and that the Swiss Government may wish to submit whatever proposals for amendment it considers appropriate when the time comes for negotiating a convention on this subject.

Article 6

One important task of the permanent mission is omitted from the list given in this article, namely, helping to ensure the participation of the sending State in the activities of the Organization.

Article 10

It would appear better in French to use the words "lettres de créance" instead of "pouvoirs". This term would be closer to the term "credentials" used in the English text.

32/ See Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10 (A/8410/Rev.1), p. 133 et seq.

Article 15

It is, of course, in the interest of the sending State to notify the host State direct of the facts listed in this article, since the privileges and immunities granted by the host State cannot in any event begin until it has been notified. However, the draft article has not gone so far as to make it obligatory for the sending State to transmit notifications to the host State; in other words, it has left it to the sending State to judge for itself what action is in its interest. Nevertheless, it is worth considering whether it would not be desirable to create a clear situation at the headquarters of the Organization and in relations between the host State and the sending State by making it obligatory for the sending State to transmit a direct notification.

Article 19

In the view of the Swiss Government, there is no justification for the discrimination between permanent missions and permanent observer missions with regard to the right to display the national flag on the car of the head of mission. It would refer in this connexion to the considerations which it advanced concerning the representative nature of the observer mission in its observations of 22 January 1971 on article 53 of the earlier draft.

Article 31

This is one of the articles in which, in the view of the Swiss Government, the protection accorded to the host State is inadequate. The Swiss Government considers it essential to specify that the sending State is obliged to waive immunity in certain cases. At the very least, it would like a return to the solution provided by article 34 of the earlier draft, which itself was not entirely satisfactory to it. For further information on the views of the Swiss Government, see its comments on articles 33 and 34 of the earlier draft among the observations communicated to the Secretary-General of the United Nations by note dated 22 June 1970. 33/

Article 75

In the view of the Swiss Government, the last sentence of paragraph 2 should contain a reference to the normal activity of missions or to functions as defined in articles 6 and 7.

Articles 81 and 82

These two provisions concerning consultations between the sending State, the host State and the Organization and concerning conciliation are considered by the Swiss Government to be of prime importance to the equilibrium of the draft.

33/ Ibid., p. 130 et seq.

Inasmuch as a rather restrictive approach to the protection of the interests of the host State has been adopted on several points, notably the size of the mission (article 14), waiver of immunity (article 31) and requests for recall (article 75), consultations and conciliation introduce a necessary corrective. However, in view of the narrow limits that are placed on protection of the interests of the host State in the substantive provisions of the draft, the system could not be entirely satisfactory unless the conciliation procedure were strengthened. The Swiss Government sees four possibilities for improvement, the first two of which are simply a repetition of ones made in its observations of 22 June 1970 34/ on article 50 of the earlier draft:

1. The tripartite commission would be appointed in advance, so that it would be able to function immediately.

2. It will take a decision even if not all the members are present.

3. A time-limit should be set for the commission to reach a decision, say, one or two months after a dispute is referred to it.

4. In certain cases, a dispute could be referred to the commission immediately, bypassing the consultations provided for in article 81. For instance, in case of a request for recall in accordance with article 75, the host State would be entitled to initiate the procedure immediately if no action has been taken on its request within the time-limit which it specified.

Annexed draft articles on observer delegations to organs and to conferences

The Swiss Government has no objection to the inclusion of this subject-matter in the convention if a majority of States are in favour of it.

Future work

The General Assembly of the United Nations will have to decide at the next session whether the task of negotiating a convention on the matters covered by the draft articles should be entrusted to the Sixth Committee or to an ad hoc diplomatic conference. In the view of the Swiss Government, a comparison between these two approaches definitely favours ad hoc conferences, at which States are usually represented by larger delegations, with the result that the quality of the work is better. In addition, the delegates are able to concentrate on the subject-matter referred to them, whereas the Sixth Committee has to deal with a variety of subjects within a limited period. The Swiss Government therefore strongly hopes that the negotiation of a convention on the representation of States in their relations with international organizations will once again be entrusted to an ad hoc conference.

34/ Ibid., p. 133.

III. COMMENTS AND OBSERVATIONS OF THE UNITED NATIONS, THE SPECIALIZED AGENCIES AND THE IAEA ON THE DRAFT ARTICLES ON THE REPRESENTATION OF STATES IN THEIR RELATIONS WITH INTERNATIONAL ORGANIZATIONS

Comments and observations of the specialized agencies

INTERNATIONAL LABOUR ORGANISATION

/Original: French/

20 April 1972

PART I. INTRODUCTION

Article 1, paragraph 1 (4)

To a large extent, the definition of an "organ" given in this paragraph seems to meet the ILO's needs, even though, as the commentary explains, the definition excludes bodies of experts. However, while certain bodies of experts are in fact composed of persons serving in a personal capacity (paragraph (5) of the commentary), other bodies of experts include among their members persons nominated by States, although it cannot be said that those persons represent those States in a literal sense. This second type of body of experts should probably be considered as an "organ" within the meaning of the draft articles. However, in that case - and this problem is a general one, as will be seen later - it would appear difficult to allow that, within the same organ, delegates nominated by States should benefit from the convention while delegates nominated by employers or workers, and indeed by the Governing Body itself, should not benefit from it.

Article 1, paragraph 1 (12)

On this point, it is worth recalling the comments made previously on the corresponding article (article 51) of the previous draft. 35/ The expression "office" is still not very clear and could cover all the regional offices of international organizations. It would appear, however, that the intention is to refer only to offices such as the United Nations Office at Geneva.

Article 4

In this regard, it is worth recalling the comments made previously on articles 4 and 5 of the previous draft. 36/ At that time the commentary

---

35/ Ibid., pp. 138-139.

36/ Ibid., p. 138.

referred to doubts created by the expression "other international agreements", in view of the fact that, very often, the provisions applicable to delegations, whether permanent or not, derive from an exchange of letters, or even from unilateral decisions.

PART II. MISSIONS TO INTERNATIONAL ORGANIZATIONS

Article 6

On this point, the comments made previously on article 7 of the previous draft still stand. 37/ At the ILO, under article 11 of the Constitution, relations with member States are for the most part handled through the "government departments of any of the Members which deal with questions of industry and employment", which communicate with the Director-General, when necessary, through the representative of their Government on the Governing Body. In addition, the provision under which permanent missions negotiate with or in the organization is not applicable to the ILO, at least as far as the adoption of conventions and recommendations by the International Labour Conference is concerned.

Article 14

On this point, it is worth recalling the comments made previously on article 16 of the previous draft. 38/ The determination of what represents a reasonable and normal size for a mission is a very delicate operation. It would seem desirable for organizations not to be obliged, by virtue of article 81, to take a position on a problem which has very little to do with them.

Article 15

For this article, too, it is appropriate to recall the comments made on article 17 of the previous draft. 39/ The ILO limits itself to taking note of notifications regarding accreditation in cases where such notifications are sent to it directly. Normally, however, the notifications are deposited at the United Nations Office (for accreditation to the United Nations and the other organizations, including the ILO; the ILO is informed of them by the United Nations Office). The new article 15 would oblige missions to submit identical lists to all the organizations based in Geneva, which would considerably complicate a procedure in which the ILO, at least vis-à-vis the host State, would simply be acting as a transmitting body. It would seem more logical to provide simply that, when several organizations have offices at the same location, the notification regarding accreditation, in so far as it is known, should be made to only one of those organizations, which would be responsible for informing the host State and the other organizations.

37/ Ibid., p. 138.

38/ Ibid., p. 138.

39/ Ibid., p. 138.

Articles 20 and 22

The assistance that the organization should give to missions and their members to secure the facilities, privileges and immunities provided for in the agreements does not seem to be clearly defined, inasmuch as the granting of facilities, privileges and immunities is not the responsibility of the organization itself.

PART III. DELEGATIONS TO ORGANS AND TO CONFERENCES

With regard to delegations to organs and to conferences, it should be pointed out that, while such organs as the International Labour Conference and regional conferences are composed of delegates nominated by States, other ILO organs, and especially the Governing Body, include members who are not nominated by States. This is precisely the situation referred to in paragraph 1 of annex I (International Labour Organisation) of the Convention on the Privileges and Immunities of the Specialized Agencies. While the governmental members of such organs are nominated by States, the non-governmental members are nominated sometimes by the workers' group or the employers' group of another organ of the Organization (for example, in the case of the election of non-governmental members of the Governing Body by the Conference's electoral colleges), and sometimes by another organ of the Organization as a whole (for example, in the case of the nomination of a tripartite delegation from the Governing Body to a regional conference). In such cases, the representatives of the employers and those of the workers cannot be considered as delegates of a State within the meaning of the draft articles and they would thus be excluded from the terms of the draft articles, unless other provisions concerning them, which are covered by the reservation in article 4 (general convention on privileges and immunities, headquarters agreements, etc.) were applied; however, in that case those provisions would have to bind the parties simultaneously to the new convention. While the ILO understands the reasons for the exclusion of persons not representing States from the present draft convention, it could nevertheless create great difficulties for the smooth functioning of the ILO's tripartite organs if only one section of its members enjoyed the benefits of the convention, and especially the freedom of entry into and sojourn in the country in which an organ or a conference is meeting. This situation perhaps requires an amendment to the draft articles, in one form or another, so that the advantages of the draft articles should be accorded not on the basis of the manner in which delegates are appointed, but on the basis of the fact that those delegates together constitute a single organ. In that way, the representatives of the three groups would be treated in the same way, without necessarily raising the problems referred to by the International Law Commission in paragraph 54 of its report in connexion with observer missions.

Articles 45 and 48

These two articles refer to the concept of a head of delegation. This concept is not applicable to the ILO since governmental, employers' or workers' delegates are considered to be fully equal and independent of one another. It is perhaps sufficient to note in this connexion that, in accordance with article 3 of the draft articles, the ILO's particular rules prevail over the draft convention.

Article 47

In this connexion, it is worth recalling the comments made previously on article 89 of the previous draft. 40/ Practice shows that it is in fact impossible to know the dates of arrival and departure of the persons referred to in article 47. It is certainly possible to include in the draft articles an obligation to that effect, but it might give rise to serious practical difficulties, particularly in the matter of determining to what extent the convention could be invoked in cases where it has not been possible to provide such notification.

DRAFT ARTICLES RELATING TO OBSERVER DELEGATIONS TO ORGANS AND TO CONFERENCES

This text refers to observer delegations from States to organs and to conferences. It should be pointed out that, at the ILO, observer delegations may be nominated by non-metropolitan territories which are invited to be represented (decisions of the ILO Governing Body taken at its 123rd and 124th sessions (November 1953 and March 1954)). At the present stage of the draft articles, those observers would not be covered by them unless it was clearly established that they should enjoy the same status as representatives of the States responsible for the international relations of the territories in question.

* * *

The problem which might arise if the convention is ratified by sending States but not by the host State does not so far seem to have been solved in a completely satisfactory way. It is certainly true that, at least in principle, this question is governed by the general law of treaties, as stressed by the Commission in paragraph (4) of its commentary on article 4 of the draft articles, although the Convention on the Law of Treaties has not yet entered into force. However, if the host State is bound by general conventions on privileges and immunities (or by one such convention) or by a headquarters agreement those instruments should, at all events, be applicable for the smooth functioning of the organization, even if the sending State is not a party to them, and it would seem useful to recognize that situation explicitly.

If, on the contrary, the host State is a party to the new convention while the sending State has not acceded to it, could the sending State nevertheless itself, if necessary, invoke that instrument in relations with the authorities of the host country, or would the steps have to be taken in such a case by the organization concerned, again on the basis of what is necessary for its smooth functioning? This point once again highlights the problem of the status of international organizations with respect to the new convention, which has already been raised. 41/

40/ Ibid., p. 139.

41/ Ibid., p. 137.

In fact, there are grounds for wondering whether negotiations with a view to the possible adoption of an international convention on relations between States and international organizations should not be continued, at this stage at least, between States on whose territory one or several international organizations have their headquarters, on the one hand, and other States, on the other hand, in order to enable both sides to define their respective positions and to attempt to reach points of agreement; failing that, the convention might give rise to serious difficulties in its application, or might even remain a dead letter in some countries which are principally concerned.

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

/By a letter dated 25 July 1972, the Food and Agriculture Organization of the United Nations indicated it had no further comments to make concerning the draft articles apart from those made in a letter of 5 January 1971 concerning the provisional draft articles, reproduced in Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), p. 139./

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

/Original: French/
28 June 1972

Preliminary remarks

1. In recommending that the General Assembly should convene an international conference of plenipotentiaries to study the draft articles on the representation of States in their relations with international organizations, the International Law Commission expressed the hope that appropriate arrangements would be made by the General Assembly for associating the United Nations, the specialized agencies and IAEA in the stage of the adoption of the convention envisaged. 42/

The Director-General would welcome any measures that the General Assembly might take in accordance with the wish expressed by the Commission, although it is wondered whether the diplomatic conference itself should not be invited to look into a more fundamental problem, namely, how the organizations referred to in the draft articles might be not only associated in the stage of the drafting and adoption of the articles by the diplomatic conference, but also placed in a position where each organization could accept the provisions of the proposed convention as far as it was itself concerned. In that connexion it would seem that the procedure followed for the acceptance by the agencies concerned of the Convention on the Privileges and Immunities of the Specialized Agencies might serve as a precedent which would facilitate the search for a solution.

42/ Ibid., p. 8.

General remarks

2. The question arises - even on reading article 1 - whether it was wise to include the provisions relating to permanent observers in the draft articles relating to permanent representatives, contrary to what had been envisaged in the provisional draft. The articles are thereby made more complex and it is questionable whether the solution is a happy one in so far as it would tend to place permanent observers on an equal footing with permanent representatives. Indeed, this raises the question whether such assimilation and unification are justified in every case.

Article 1

3. This article contains the term "international organization of universal character", followed by a definition which is further supplemented and explained in the commentary, which states that "the question whether an international organization is of universal character depends not only on the actual character of its membership but also on the potential scope of its membership and responsibilities" (commentary, paragraph (4)). This view seems very reasonable, but in order to express the potential scope of membership and responsibilities it would seem more appropriate to use a term like "international organization of universal vocation", which one finds in the literature on the subject (particularly in Charles Rousseau, Droit international public, 1953, pages 180 et seq.) and which seems to be a far better rendering of the idea of a membership which seeks to be or which should be universal, that is to say, that while one of the aims is to achieve universal membership, it does not necessarily have to be achieved at a given moment.

Article 9

4. This article states a rule subject to other provisions, including the provisions of article 72 about which comments will be made later (see paragraph 23 below). Consequently, the comments on article 72 will also apply to article 9.

Article 11

5. One passage in the Commentary (the end of paragraph (5)) may be misleading with regard to the Executive Board of UNESCO. The Executive Board does not, in fact, consist of States but of (physical) persons, elected by the General Conference from among the delegates to that Conference appointed by Member States. It is true that each of these persons represents the Government of the State of which he is a national (Constitution, article V, A.1), but nothing in the applicable texts stipulates that such persons must be given special credentials and, in practice, the members of the Executive Board of UNESCO are not required to produce such credentials.

Article 12

6. Paragraph 1 of this article refers to "adopting the text of a treaty". Since the article applies only to "treaties between States and the Organization" (Commentary, paragraph (1)), it does not seem appropriate to mention "adopting the text of a treaty between that State and the Organization". Whereas a multilateral treaty is "adopted" by an international conference by means of a vote, in the case of a treaty concluded between two subjects of international law it does not seem that one can consider that the two Contracting Parties have "adopted" the treaty which they have negotiated and on whose text they have agreed. Indeed, it does not seem possible to consider that agreement between the two Contracting Parties should result in their "adopting" the text of a treaty. (See the comments submitted by UNESCO on the provisional draft articles.) 43/

Article 15

7. In paragraph 1 (a), the meaning of the term "position" is not clear. That term, which does not appear in article 10 of the Convention on Diplomatic Relations, should be replaced by a more specific term.

Article 20

8. With regard to paragraph 2, the question arose whether a clause providing that the organization should assist the permanent mission in obtaining all facilities for the performance of its function and accord it such facilities as lay within its own competence would not be out of place in the proposed convention; it is understood that that question and also the question whether the international organizations would become parties to the instrument were raised in the International Law Commission. 44/

These remarks echo those made in paragraph 1 above. It should be pointed out that the obligation of the international organizations has been broadened still further in the final draft articles, for the international organizations are no longer called upon to assist only the permanent mission but also "the permanent observer mission", in obtaining those facilities. 45/

Article 21

9. Paragraph 2 spells out the obligation of the organization, where necessary, to assist "the mission" - a term which may be interpreted in two ways according to the definition given in article 1 of the draft articles - in obtaining suitable

---

43/ Ibid., p. 140.

44/ Ibid., Twenty-fourth Session, Supplement No. 10 (A/7610/Rev.1), commentary on article 22 of the provisional draft articles, p. 4.

45/ Ibid., Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), p. 140, para. 7, and pp. 141-142, para. 4.

accommodation for its members. Such an obligation may be questionable and difficult to implement. However, that may be, it seems unrealistic to consider that this assistance from the Organization "would be very useful, among other reasons, because the organization itself would have a vast experience of the real estate market and the conditions governing it" (paragraph (3) of the commentary on article 23 of the provisional draft articles - now article 21). A specialized agency is not a real estate agency and it does not seem reasonable to presume that it has such experience. Although it is true that, as the commentary states, the article is modelled on article 21 of the Convention on Diplomatic Relations, the Vienna Convention lays down obligations only for the host State. The organization to which the permanent or permanent observer mission will be accredited - here again, the scope of the obligation to be assumed by the specialized agencies has been extended - is in a very different situation, both de jure and de facto, from the State to which a diplomatic official is accredited. The comments in paragraphs 1 and 8 above should also be referred to. 46/

Article 24

10. The text in the provisional draft (article 26) seems preferable. In fact, it is more usual to provide that "the sending State, the permanment representative... shall be exempt from all... dues and taxes in respect of the premises of the permanent mission...", rather than that "the premises of the mission... shall be exempt from all... dues and taxes...". In this article it might be useful to adopt the same solution which was adopted in the case of article 55 of the draft articles.

Article 30

11. Subparagraph (d) - which had merely been placed in brackets in article 32 of the provisional draft - has now, instead of being deleted, been placed on the same level as the other provisions. Such a provision would constitute a grave and broad exception to immunity from civil jurisdiction and might give rise to other exceptions that would not be desirable. Moreover, there is no such provision in the Convention on Diplomatic Relations (article 31). With regard to the problem of judicial action arising out of a third-party insurance policy, in most States the victim of an automobile accident has a direct claim against the insurer - and this claim can be enforced even if the policy-holder having immunity from jurisdiction, cannot be sued. Furthermore, the addition of the words "where those damages are not recoverable from insurance" might in many cases create an uncertainty which it would be hard to dispel and which would seem likely to be disadvantageous for those concerned. This stretching of the classical rules of diplomatic law, together with a reservation that would complicate and delay the implementation of the new rule, is regrettable. 47/

46/ Ibid., p. 140, para. 8, and p. 142, para. 5.

47/ Ibid., p. 140, para. 9, and p. 142, para. 6.

Article 31

12. In paragraph 3 there seems to be every justification for providing that the person concerned shall be precluded "from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim". However, it seems that the provision should apply to appeals as well as counter-claims, as is generally provided by the makers of diplomatic law; for it is impossible to see how a person enjoying a privileged status in whose favour a judgement has been rendered could be allowed to block his opponent's appeal by relying on his immunity from jurisdiction. Moreover, it would be better to speak of "withdrawing" ("levée") rather than "waiving" ("renonciation") the immunity from jurisdiction, because to speak of "withdrawing the immunity" ("levée de l'immunité") shows immediately that it is not for the beneficiaries themselves to deprive themselves of the immunity but that such a decision must be taken by the authority to which they are responsible. In that connexion it will be noted that in the French text of the Convention on the Privileges and Immunities of the United Nations (section 14) and of the Convention on the Privileges and Immunities of the Specialized Agencies (section 16) the word used, with respect to representatives of Member States, is "levée" and not "renonciation". 48/

Article 37

13. Persons who are permanently resident in the host State are placed on the same footing as nationals of that State, which means that they are deprived of the essentials of diplomatic status. This is regrettable since it will enable States, inter alia, to refuse, or even to withdraw, privileges and immunities which have hitherto been recognized and granted. Moreover, there is no uniform interpretation of the concept of permanent residence (length of stay prior to taking up the post, conditions of stay, activity carried on, etc.); States might consider that a previous stay of one year, for example, could confer the status of permanent resident, within the meaning and for the purposes of the application of these provisions. 49/

Article 41

14. Paragraph 1 has been expanded in the manner previously suggested by UNESCO, 50/ by the addition of the sentence: "It may entrust custody of the premises, property and archives of the mission to a third State acceptable to the host State", thereby giving the force of a provision of the convention to part of the idea expressed in paragraph (2) of the commentary to article 49 of the provisional draft articles 51/ (article 41 in the final draft) ("The sending State is free to

---

48/ Ibid., p. 140, para. 10, and p. 142, para. 7.

49/ Ibid., p. 141, para. 13, and p. 142, para. 8.

50/ Ibid., p. 141, para. 15.

51/ Ibid., Twenty-fourth Session, Supplement No. 10 (A/7610/Rev.1), p. 17.

discharge that obligation in various ways, for instance, by removing its property and archives from the territory of the host State or by entrusting them to its diplomatic mission or to the diplomatic mission of another State").

Article 43

15. The observations on article 9 (see paragraphs 4 above and 23 below) apply to this article, too.

Article 46

16. Paragraph (3) of the commentary sets out an opinion held by the Commission, the importance of which should be emphasized. In it the Commission quite rightly refers to articles 3 and 4 of the draft. However, it is open to question whether, in view of the sometimes very complete rules of law adopted by the specialized agencies with respect to "delegations to organs or conferences", this third part of the draft (articles 42 to 71) or at least a good number of its provisions, serve any purpose. With regard to UNESCO, mention should be made of the relevant provisions of the UNESCO Constitution, the rules of procedure of the General Conference, the rules of procedure of the Executive Board and the regulations for the general classification of the various categories of meetings convened by UNESCO.

Article 47

17. Reference should be made to the comments made in connexion with article 15, concerning the word "position" (paragraph 7 above).

With regard to paragraph (4) of the commentary, UNESCO wishes to voice the same opinion as the international organization which declared that implementation of that provision might give rise to insurmountable difficulties.

Articles 51 and 52

18. The observations and criticisms made in connexion with articles 20 and 21 (paragraphs 8 and 9 above) apply to these articles, too. Reference should also be made to the comments in paragraph 1 above.

Article 55

19. The text ("the sending State and the members of the delegation... shall be exempt from all... dues and taxes in respect of the premises...") is in line with what we wished to see maintained or reinserted in article 24 (paragraph 10 above).

Article 61

20. The observations, criticisms and regrets expressed in connexion with article 30 (d) (paragraph 11 above) also apply to this article.

Article 62

21. The observations made in connexion with article 31 (paragraph 12 above) also apply to this article.

Article 68

22. The observations, criticisms and regrets made in connexion with article 37 concerning the assimilation of persons who are permanently resident in the host State to nationals of that State (paragraph 13 above) also apply to this article.

Article 72

23. The provision that "the head of mission and members of the diplomatic staff of the mission, the head of delegation, other delegates and members of the diplomatic staff of the delegation... may not be appointed from among persons having the nationality of the host State, except with the consent of State which may be withdrawn at any time", seems much too restrictive. Nationality should not be of any concern in the choice of such persons and the host State should not be given a right of veto in the matter, a right which might be exercised at any time. The only restriction with regard to nationals of the host State that seems to be justified is that concerning privileges and immunities, and it is understood that the host State should not be obliged to grant such persons all the privileges and immunities; those restrictions are explicitly laid down in articles 36 and 37, and it would be advisable to leave it at that. It should be added that article 72 has a very broad scope since it applies to permanent missions, permanent observer missions and delegations to organs and conferences. 52/

Annex - Observer delegations to organs and conferences

24. The comments made above on the corresponding provisions should be applied, mutatis mutandis, to the articles contained in the annex. This set of articles also calls for the following special comments.

25. In article N, paragraph 3, the term "means of transport" does not seem adequate. Normally one speaks of cars or motor vehicles. However that may be, it is hard to see how one could carry out the search, requisition, attachment or execution of a "means of transport".

26. In article O, the immunity from civil and administrative jurisdiction is limited to acts performed by the observer delegate in the exercise of his official functions. Thus, with regard to this immunity from jurisdiction, there seems to be a fundamental distinction between an observer delegate and a permanent observer (article 30). Such a difference is all the more difficult to understand because,

52/ Ibid., Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), p. 140, para. 1, and p. 141, para. 2.

in the case of a permanent representative (article 30) and a delegate to an organ or conference (article 61), no such distinction is made with respect to this immunity from jurisdiction.

27. The restriction contained in article O must also be viewed in the light of article P, which is similar to articles 31 and 62, even though the waiver could only apply to immunity from jurisdiction in respect of acts performed in the exercise of official functions. In other words, the application of article P could only result in permitting proceedings against an observer delegate in respect of acts performed on behalf of, and attributable to his Government. The question arises whether that really was the Commission's intention or whether it was not an oversight that led to article P being set out in that form, that is to say in the form of articles 31 and 62, when the subject of the article - immunity from civil and administrative jurisdiction - is not the same.

INTERNATIONAL CIVIL AVIATION ORGANIZATION

/Original: English/

28 April 1972

The draft articles have been examined. The Secretary-General of the International Civil Aviation Organization is in general agreement with their contents, and finds them satisfactory.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

/Original: English/

2 March 1972

A. Introductory note

1. The International Bank for Reconstruction and Development (World Bank) has reviewed with interest, on its own account and on behalf of the organizations affiliated with it (International Finance Corporation (IFC), International Development Association (IDA), International Centre for Settlement of Investment Disputes (ICSID)), the draft articles on the representation of States in their relations with international organizations adopted by the International Law Commission and circulated for comment in accordance with General Assembly resolution 2780 (XXVI). Many of the comments the World Bank has to make have already been made in its observations communicated by letter dated 14 January 1971. 53/ Many of the points made therein still remain valid since the draft has on these points remained unchanged. There are, however, one or two additional points made below. In order to facilitate the study of the problem a complete account of relevant comments is given below.

53/ Ibid., pp. 145-146.

2. The Bank recognizes that the instrument that is thus being formulated is likely to be merely the first in a series that will give general definition and structure to the still relatively fluid law of international organizations. 54/ Indeed, for the reasons indicated below, the most important of the following comments are addressed not to the substance of the draft articles but to the procedure by which they are to become part of international law (paragraphs 5 and 6 below).

3. The World Bank recognizes that an instrument on the subjects dealt with in the draft articles will have at most a minor direct effect on either the Bank itself or on its affiliates. This is due primarily to the particular structure and in part to the activities and methods of operations of these organizations. 55/ As a consequence of this special structure and other features, neither member nor non-member States have established any permanent missions to the organizations of the World Bank Group, nor is it likely that they will do so. Members and a few non-member States send delegations to the Annual Meetings of the Boards of Governors of the World Bank, IFC and IDA (and of the Administrative Council of ICSID), but these sessions are relatively brief (traditionally some five days) so that many of the questions dealt with in part III of the draft articles are unlikely to arise. With the exception of several groups of legal experts convened to assist in the formulation of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States /hereinafter referred to as the SID Convention/, 56/ the members of the World Bank Group have established no

---

54/ The International Law Commission has already started the consideration of treaties concluded between States and international organizations or between two or more international organizations, and has identified the topic of the succession of States in respect of membership in international organizations.

55/ The special nature of the representative organs of the World Bank, IFC and IDA was described in replies made by the Bank to questionnaires distributed by the United Nations Secretariat at the beginning of the International Law Commission study of this subject, which are summarized in an annex to part I of the study prepared by the United Nations Secretariat on the practice of the United Nations, its specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities (A/CN.4/L.118 and Add.1 and 2, reproduced in the Yearbook of the International Law Commission, 1967, vol. II, pp. 204-206, hereinafter referred to as the "Study by the Secretariat"). Though the Bank's replies did not refer to ICSID, and its structure differs substantially from that of the financial organizations in the World Bank Group, most of the following remarks also apply to ICSID.

56/ United Nations, Treaty Series, vol. 575, p. 159. The groups referred to are the four regional Consultative Meetings of Legal Experts and the Legal Committee on Settlement of Investment Disputes (see ICSID, History of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States - Analysis of Documents Concerning the Origin and the Formulation of the Convention (Washington, 1970), vol. I, pp. 6 et seq.)).

C. Observations Relating to Particular Provisions

7. Because of the considerable variations in the legal instruments relating to and the practices of international organizations (even if only the specialized agencies are considered), the World Bank attributes considerable importance to the maintenance of draft article 3 of the draft, with an interpretation at least as broad as indicated in paragraph (5) of the related commentary.

8. Similarly, the World Bank attributes considerable importance to the maintenance of draft article 4, since it is highly desirable that arrangements already made among States or between States and organizations should be allowed to subsist because they may be especially suited to the requirements of particular organizations, and that States should be permitted in future to make such arrangements with each other and with organizations. It is of course recognized that international agreements formulated subsequent to the promulgation of the instrument here under consideration are likely to be, and indeed should be, influenced by it.

9. The proposed rule in draft articles 9, 43 and 72 that a State should in principle be represented by its nationals appears to enter an area that might best be omitted from the proposed instrument. Whether a State, particularly one newly independent with perhaps still unsettled rules of nationality and probably a severe shortage of trained officials, is able to place sufficient trust in a non-national and whether it finds among its own nationals one it considers suitable to represent it and who can be spared from other, perhaps more urgent, assignments would seem to be a question that each State should be allowed to resolve for itself, without any qualifications such as that implied in the preference contained in draft article 72. The Commission's obvious embarrassment with the proposed subject appears from the term "in principle" - one most unusual in an instrument of this type and in practice incapable of interpretation and enforcement. On the other hand where a national of the host State is appointed as an official or representative of another State, it is understandable that this should be with the consent of the host State, implied or otherwise.

10. Draft article 40 dealing with the "End of the functions of the head of mission or of a member of the diplomatic staff" does not incorporate a provision permitting the host State in any way to indicate that the official concerned is persona non grata and thus bring his functions to an end. Although the position of such head of mission or diplomat is not quite the same as that of a diplomatic agent under the Vienna Convention on Diplomatic Relations, article 43 of which would be an analogy, it is submitted that it is in the interest of the security of the host State that it should have some say in terminating the functions of such a person in the extreme case. It is suggested therefore that in the event that the host State finds such a person persona non grata, the sending State should at least be under an obligation to enter into consultations with the host State in order to bring about a solution to the situation, even if it would be undesirable to give the host State the power of unilateral termination. The same comment applies to draft article 70 and draft article X of the annex on "Observer delegations to organs and to conferences". Logically, it may be argued that the

host State should have the same facility of consultation in the event that a person is persona non grata at the time of appointment (draft articles 9 and 43 and draft article C of the annex).

11. Commentary (2) to draft article 31 quotes section 14 of the Convention on the Privileges and Immunities of the United Nations, including the provision that "a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded". 63/ Though commentary (3) indicates that this commendable provision also appears in a number of other instruments, it is regrettable that it only appears in weakened form in draft article 31, paragraph 5 (and therefore also article 62, paragraph 5 and draft article P of the annex)

12. Since part III of the draft is restricted to "Delegations to organs and to conferences" and draft article 1, paragraph 9 makes it clear that a "delegation to an organ" is to participate on behalf of the State "in the proceedings of the organ", no provision of the proposed instrument appears to cover delegations sent by States to negotiate with the organization itself. In the practice of the financial institutions of the World Bank Group (and probably of certain other international organizations) delegations of this type considerably outnumber those to which part III is addressed, but international law is most deficient with respect to the former for they are referred to neither in the Articles of Agreement of any of the World Bank Group of organizations, nor in the Specialized Agencies' Convention or in other similar agreements. This would thus seem to be a significant lacuna in the existing international legal structure, to which some attention may be given.

INTERNATIONAL FINANCE CORPORATION

/See paragraph 1 of the comments and observations submitted by the International Bank for Reconstruction and Development, reproduced above./

INTERNATIONAL DEVELOPMENT ASSOCIATION

/See paragraph 1 of the comments and observations submitted by the International Bank for Reconstruction and Development, reproduced above./

UNIVERSAL POSTAL UNION

/Original: French/

31 May 1972

The consultations which were held in connexion with the work undertaken by the International Law Commission provided an opportunity for us to describe the

63/ United Nations, Treaty Series, vol. 1, p. 22.

special position of the Universal Postal Union - based on almost a century of administrative and practical experience - with respect to relations between States members of UPU and its organs in the special sphere of competence established by the Constituent Instrument of the Union. 64/

Without wishing to reiterate all the comments made at that time, we would like to stress the following points.

Under the constitutional and organizational provisions of the Universal Postal Union, which were designed to meet very precise needs and which have been justified by many years of practical experience, UPU is required to maintain direct relations with the Postal Administrations of member countries and to admit only postal officials of the Ministries or Administrations concerned as representatives in the two main small organs /the Executive Council and the Consultative Council for Postal Studies/. The members of diplomatic missions or permanent missions may, of course, accompany the representatives in various capacities, but if they are alone they are admitted only as observers.

It seems, however, that the final draft text of the fundamental articles (articles 3, 4, and, more especially, 5 and 42) reinforces the right of each organization to work out its own rules on the matter in accordance with its constitutional rules and its functional needs and within the framework of its sphere of operation.

It is in this sense that we share the opinion expressed both by the International Law Commission in its report 65/ and by some members of the Sixth Committee 66/ that the specialized agencies should be associated in the elaboration of a future convention on the topic and that arrangements should be made for those organizations, which are subject to international law, to participate in the future convention:

(a) We share the view expressed in the report of the Sixth Committee 67/ that international organizations, which as entities are distinguished from their membership, should be given a recognized status at a conference where an important aspect of their affairs will be dealt with.

(b) Moreover, we consider that the specialized agencies should have the status of parties to this convention since they have legal status in both national and international law and because they are directly affected by the convention.

64/ See Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), pp. 147 and 148.

65/ Ibid., p. 8, paragraph 58.

66/ Ibid., Twenty-sixth Session, Annexes, agenda item 88, document A/8537, paragraphs 113 and 122.

67/ Ibid., paragraph 113, in fine.

Nevertheless, while certain legal considerations may present obstacles to the conclusion of the convention, the solution mentioned in paragraph 122 of the report of the Sixth Committee (a reference to article X of the Convention on the Privileges and Immunities of the Specialized Agencies of 1947) seems to us acceptable. This manner of association, which has been well tested with respect to the privileges and immunities of the specialized agencies, would provide sufficient flexibility for the inclusion of the specialized agencies in the future convention.

WORLD HEALTH ORGANIZATION

/Original: English/

7 April 1972

On the detail of the substance of the draft articles, the World Health Organization does not have any comments or observations in addition to those which were communicated to you in my letters dated 18 August 1970 and 8 January 1971 respectively. 68/

There remains, however, one point of general substance which is not entirely clear in so far as the World Health Organization is concerned.

Article 2, paragraph 1, of the draft articles states that the articles apply to the representation of States in their relations with international organizations of universal character. The view has further been expressed in the Sixth Committee of the General Assembly at its twenty-sixth session that it was not clear whether the draft articles were supposed to apply to the various regional offices of specialized agencies. 69/

As you know, WHO's regional arrangements in the region of the Americas are, under the provisions of article 54 of the Constitution, 70/ implemented through an agreement concluded on 24 May 1949 between the World Health Organization and the Pan American Sanitary Organization /later, Pan American Health Organization/. 71/ Under article 2 of this Agreement, the Pan American Health Conference, through the Directing Council of the Pan American Health Organization (PAHO) and the Pan American Sanitary Bureau, shall serve respectively as the Regional Committee and the Regional Office of the World Health Organization for the Western Hemisphere, within the provisions of the Constitution of the World Health Organization.

68/ Ibid., Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), pp. 142-145.

69/ Ibid., Twenty-sixth Session, Annexes, agenda item 88, document A/8537, para. 52.

70/ United Nations, Treaty Series, vol. 14, p. 185 and ibid., vol. 377, p. 380.

71/ Ibid., vol. 32, p. 387.

The Pan American Health Organization, in turn, is considered to be an inter-American specialized organization under the provisions of the Charter of the Organization of American States. 72/

On the assumption that a treaty incorporating the draft articles would be applicable to WHO's regional organizations, these constituting an integral part of the Organization under article 45 of its Constitution, it is not entirely clear whether, in WHO's relations with PAHO, States parties to the proposed convention could claim that permanent missions or permanent observer missions established with the inter-American system could claim the benefit of the application of the convention, although possibly this might be regulated by the application of subparagraph (a) of paragraph 4 of article 2 of the draft articles.

In so far as the procedure for the elaboration and conclusion of a convention is concerned, the fact that the draft articles place direct obligations on the organizations covered by article 2, subject to the relevant rules of the organization concerned, including the constituent instrument, implies that the governing bodies of those organizations should have an opportunity to consider the convention. In the case of WHO, the World Health Assembly would be the competent body to consider the convention, since it is the Assembly which has the authority to deal with questions of interpretation and application of the Constitution (article 75).

For this reason, the World Health Organization would favour, for a convention on the representation of States in their relations with international organizations, a procedure analogous with that followed for the Convention on the Privileges and Immunities of the Specialized Agencies. 73/

72/ Ibid., vol. 119, p. 3.

73/ See Official Records of the General Assembly, Twenty-sixth Session, Annexes, agenda item 88, document A/8537, para. 122; and comments of the International Bank for Reconstruction and Development on this subject, ibid., Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), pp. 145-146.

INTERNATIONAL ATOMIC ENERGY AGENCY

/Original: English/
14 June 1972

Article 5

1. Article 5 provides for the right of a State to establish a mission. It also provides for an obligation of the organization to notify the host State of such an establishment. However, it does not provide for an obligation of the sending State to notify the organization of such an establishment. This appears to be an unfair burden on the organization, and a gap in the logical order of events. It cannot be argued that article 15 may fill that gap, because that article concerns notification to the organization of the members of the mission, and not the establishment of the mission. It may be found useful to add between paragraphs 2 and 3 of article 5 a new paragraph parallel to paragraph 1 of article 15 reading as follows:

> "The sending State shall notify the organization of the institution of a mission, if possible prior to its establishment."

As may be seen the Agency does not go so far as suggesting a prior consent by the organization as envisaged in some of the views summarized in paragraph 61 of the Sixth Committee's 1971 report on the matter (A/8537).

Article 10

2. The third sentence of paragraph (4) of the commentary on article 10 gives the Agency as an example for the practice of reporting on the credentials of permanent representatives to the appropriate organ. This, however, is not the practice in the Agency. The fact is, as indicated in paragraph 6 (a) of the Agency's observations on the provisional draft articles, 74/ that the Director General reports to the Board of Governors only on the credentials of Governors and not on those of Resident Representatives.

Article 15

3. In the opinion of the Agency, the provision in paragraph 4 of article 15 by which the sending State "may" notify the host State of appointments and arrivals of members of the mission would appear to be superfluous and perhaps even undesirable. Since the permanent mission is established to maintain relations between the sending State and the international organization, it should be

---

74/ Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1), Annex I, p. 153.

sufficient for the sending State to send any and all notifications to the organization. There is no similar provision in article 5 regarding the notification of the establishment of missions either. In any case, the passive provision of "may" cannot add much to the text and if any further procedure is needed on account of local conditions and practices, it could be left for practical arrangement between the sending State and the host State. Accordingly, paragraph 4 of article 15 and the corresponding provisions of article 47 and article F in the annex could be left out.

General observation

4. The Agency welcomes the opinions expressed in favour of associating the international organizations in the preparation and maybe in the adoption of the Convention because it will prescribe some rights and obligations for organizations (See A/8537, paras. 113 and 122).
