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RELATIONS BETWEEN STATES AND INTERNATIONAL
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Temporary observer delegations and conferences not convened
by international organizations: working paper submitted by
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1. Member States of international organizations request quite often to participate as observers in the work of an organ of which they are not members: as observers they may make statements but do not participate in the voting. Non-member States also request sometimes to be admitted in an observer capacity to a meeting of an organ of an international organization or to a conference convened by such an organization to which they have not been invited or which they prefer to attend only in an observer capacity.
2. The Study of the Secretariat^{1/} does not include detailed information on temporary observers. According to the information provided to the Special Rapporteur by the Legal Advisers of some specialized agencies, the practice relating to the privileges and immunities of temporary observers is fragmentary and varied. One specialized agency indicated in its reply that temporary

^{1/} Yearbook of the International Law Commission, 1967, vol. II (document A/CN.4/L.118 and Add.1 and 2).

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observers are invited to observe in accordance with the relevant rules of procedure, but are normally sent from a diplomatic mission accredited to the host State; diplomatic privileges and immunities are granted, to the Secretariat's knowledge, only to the extent that such persons are members of the diplomatic corps and otherwise entitled to privileges and immunities in the host State. Another specialized agency stated in its reply that the Headquarters Agreement is silent on the question of privileges and immunities of temporary observers of non-member States. The host State grants such representatives visas as a matter of courtesy and without the intervention of the Organization. Under the Rules of Procedure of the Assembly of the World Health Organization, when a State applies for admission to membership of the Organization, under article 6 of the Constitution of the World Health Organization, it may, in accordance with Rule 46 of the Rules of Procedure of the World Health Assembly, appoint an observer, who may attend any open meeting of the Health Assembly or of its main committees and who may, upon the invitation of the President and with the consent of the Health Assembly or committee, make a statement on the subject under discussion. As a matter of practice, these observers have been treated in the same manner as other representatives. The Conference of the Food and Agriculture Organization has adopted certain principles relating to the granting of observer status to representatives of non-member nations. Appendix C to the Report of the Ninth Session of the FAO Conference reads as follows:

"1. Observers from nations admitted to meetings of the Organization may be permitted:

- "1. to make only formal statements in Conference and Council plenaries and in Commissions of the Whole, subject to the approval of the General Committee of the Conference, or of the Council;
- "2. to participate in the discussions of the session commission and committees of the Conference and Council and in the discussions of technical meetings, subject to the approval of the chairman of the particular meeting and without the right to vote;
- "3. to receive the documents other than those of a restricted nature for and the report of the particular meeting;
- "4. to submit written statements on particular items of the agenda . . ."

The Rules of Procedure of the General Conference of the International Atomic Energy Agency contain a provision relating to temporary observers on behalf of non-Member States (Rule 30). Article XI, Section 27 (a) (viii) of the Headquarters Agreement

between the Agency and Austria^{2/} stipulates that with respect to representatives of States which are not Members of the IAEA who are sent as observers, in accordance with rules adopted by the IAEA, to meetings convened by the IAEA, the Host Government shall take all necessary measures to facilitate their entry into and sojourn in Austrian territory, place no impediment in the way of their departure from Austrian territory, ensure that no impediment is placed in the way of their transit to or from the headquarters seat, and shall afford them all necessary protection in transit. As for the International Labour Organisation, observers on behalf of non-member States may, following an invitation issued by the Governing Body of the ILO, be designated temporarily to the International Labour Conference or to Regional Conferences (see Article 2, paragraph 3(e) of the Standing Orders of the Conference and Article 10, paragraph 7, of the Rules concerning the Powers, Functions and Procedure of Regional Conferences).

3. It is to be noted that while the Convention on the Privileges and Immunities of the United Nations of 1946^{3/} speaks of "representatives of Members to the principal and subsidiary organs of the United Nations, and to Conferences convened by the United Nations" (Article IV, Section 11), some particular agreements concluded later on between the United Nations and Host States of some United Nations Commissions use the term "representatives of governments participating in the work of or in any conferences which may be convened by" (Examples: Article V, Section 10 (a) of the Agreement between the United Nations and Ethiopia regarding the Headquarters of the United Nations Commission for Africa, signed at Addis Ababa on 18 June 1958^{4/}; Article VI, Section 15 of the Agreement between the United Nations and the Government of Thailand relating to the Headquarters of the Economic Commission for Asia and the Far East in Thailand, signed at Geneva, on 26 May 1954^{5/}).

^{2/} United Nations, Treaty Series, vol. 339, p.111.

^{3/} Ibid., vol. 1, p.15.

^{4/} Ibid., vol. 317, p. 101.

^{5/} Ibid., vol. 260, p. 35.

4. There is little disagreement on the treatment of the question of the privileges and immunities of delegations to conferences convened by international organizations within the framework of the present topic. Article IV, section 11 of the Convention on the Privileges and Immunities of the United Nations stipulates that delegates to "conferences convened by the United Nations" shall enjoy the same privileges and immunities that the Convention accords to representatives of Members to the principal and subsidiary organs of the United Nations. As rightly pointed out by the first Special Rapporteur on special missions (Sandström), a conference convened by the United Nations is, in a way, a prolongation of the United Nations Organization and it can be argued that such a conference ought to be regulated in the same way as the meeting of an organ of the United Nations.^{6/}

The second Special Rapporteur on special missions (Bartos) stated in his first report:

In view of the wide-spread and, today, almost universally adopted practice whereby the status of such delegations and delegates (to conferences convened by international organizations) is determined in advance either by the rules of the organization convening the conference or congress or by the letter of convocation, and whereby, in such cases, a legal relationship is created between the delegations and delegates to such meetings, on the one hand, and, simultaneously, the convening organization and the participating States on the other hand, the Special Rapporteur considers that the status of such delegations and delegates could be regulated under the legal rules governing the relations between States and international organizations, even though these delegations are essentially identical with those taking part in conferences and congresses held outside international organizations.^{7/}

However, with regard to conferences not convened by international organizations, the question caused some divergencies of opinion. The second Special Rapporteur on special missions raised the question in his first report,^{8/} and expressed the view that the status of delegations and delegates to conferences convened by one or more States outside the framework of international organizations was similar in all respects to the status of special missions, and should be regulated by the rules on special missions.

6/ Yearbook of the International Law Commission, 1960, vol.II, p.111 (document A/CN.4/129, para. 41).

7/ Yearbook of the International Law Commission, 1964, vol.II, p.73 (document A/CN.4/166, para. 21).

8/ Ibid., p.210 (document A/5809, para. 33).

is one of multilateral diplomacy which relates to representatives of a State not accredited to the host State but representing their State at a conference which takes place in the territory of the host State. Considerations of a practical character tend, moreover, to favour joint treatment of the legal positions of delegations to conferences convened by international organizations or by States. With the increasing number of international organizations, both universal and regional, and the development of the organizational facilities they provide for the convening of conferences, the practice of holding conferences under the auspices of international organizations has become rather the regular pattern of conferences today. To give a separate and prior treatment to the less frequent conferences convened by States outside international organizations may result in a quaint arrangement of having different rules governing the two types of conferences and to have the group which is, or may become, the more important surrounded with less protection than the other. Lastly, it should be noted that in substance international conferences, whether convened by international organizations or by one or more States, are conferences of States. The distinction between the two types of conferences is purely formal, the criterion being who convenes the conference."

6. In order to make more complete its draft articles on diplomatic law in relation to representatives of States to international organizations and conferences, the Commission may deem it useful to include in these draft articles provisions which would regulate the situation of conferences not convened by international organizations and of temporary observer delegations. Since, as regards temporary observer delegations, it is mainly the question of privileges and immunities which requires regulation within the context of these draft articles, this could be effected through the insertion of an additional provision in the articles on privileges and immunities of delegations to organs of international organizations and to conferences. The purpose of that addition would be to make these articles applicable to the delegation of a State which is not a member of an organ of an international organization but attends its meetings as an observer, or to the delegation of a State which participates in a conference as an observer and not as a full participant. As regards conferences not convened by

Following a brief discussion of this question at its sixteenth session (1964), the Commission took the following position, as reflected in a paragraph quoted in its report on that session:

At that session (1960) the Commission had also decided not to deal with the privileges and immunities of delegates to congresses and conferences as part of the study of special missions, because the topic of diplomatic conferences was connected with that of relations between States and inter-governmental organizations. At the present session (1963), the question was raised again, with particular reference to conferences convened by States. Most of the members expressed the opinion, however, that for the time being the terms of reference of the Special Rapporteur should not cover the question of delegates to congresses and conferences.

The question was again raised by the second Special Rapporteur on special missions in his second and third reports submitted in 1965 and 1966 respectively. He referred to the fact that the International Law Commission did not take a definitive position on this question, and decided not to take a final decision until it had received the recommendations of the Special Rapporteur on the topic of special missions and of the Special Rapporteur on the relations between States and inter-governmental organizations. He proceeded, thereafter, to reiterate his view that the status of delegations and delegates to conferences and congresses convened by one or more States outside international organizations was similar in all respects to the status of special missions and should be regulated by the rules on special missions. In support of his view, he stated that it should be noted that delegates attending international conferences and congresses were the most common examples of ad hoc diplomats.

5. In his second report the Special Rapporteur stated that he "has given further consideration to and has reflected on the tentative views which he expressed on this question to the Commission when it discussed his first report in 1963 and 1964. It is his considered opinion that the question of the status of delegations to conferences not convened by international organizations should not be treated as a branch of the topic of special missions. The reasons for this are both doctrinal and practical. From the doctrinal point of view, the legal position involved in the status of delegations to international conferences is different from that involved in the status of special missions. In the latter the legal position is one of bilateral diplomacy which relates to special envoys accredited to the receiving State. In the former the legal position

international organizations, the application of the draft articles on representatives of States to international organizations and conferences could be extended to them either by referring to conferences in general in the draft articles and not only to conferences convened by international organizations or by adding at the end of the articles relating to conferences convened by international organizations a provision making them applicable to conferences not convened by international organizations.