

International Organizations: A Critical Appraisal Of The Representation Of Members Of Organs

Paschal Oguno

Ph.D, Anambra State University,
Now Chukwuemeka Odumegwu Ojukwu University,
Igbariam Campus, Anambra State Nigeria

Abstract: The representation of members of organs of international organizations are as important as the organization itself. Apart from the controversial nature of membership of international institutions which instead of human beings are constituted of sovereign states, dependent territories, group of states and other international organizations as full members; and other members as Associate, Affiliate, Partial members and Observers, there calls for a critical appraisal of how these members are represented in international organization and their various organs in order to effectively achieve the aims and objectives of the particular organ in question vis-à-vis the organization in general. This academic discourse will critically evaluate the various modes of representation of members of international organization, its organs and the incidences of such representation vis-à-vis delegations and proxies. In this inquiry, the United Nations, the African Union and the various charters will provide a useful guide to the understanding of this all-important topic. Whenever the need arises or as may be expedient, reference shall also be made to other well-established organizations for a useful guide. This is because the need for international peace, co-operation and respect for the rights of man has necessitated international government pigeon-holed into various international organizations the World over. Whether these organizations are democratic and have due regard to the principles of separation of powers and their organs. This writer, in this sojourn, also enquires whether present structures of International organizations and their organs make for effective, efficient and democratic representation of various interest or otherwise, and see clearly what the representation ought to be. An attempt is made also to appraise representation of members as a means of composing or achieving the composition of the various organs of international organizations.

Keywords: Representation of Members, International Organization, Tripartism, Proxy

I. INTRODUCTION

International organizations are non-governmental institutions established by treaties. They are treaty creating organizations governed by international law and possessing its own legal personality. Apart from treaties, other instruments can also create international organizations such as conventions and conferences. International organizations are also better described or defined as forms of co-operation:

- ✓ founded on an international agreement;
- ✓ having at least one organ with a will of its own; and
- ✓ established under international law.

Representation of members of international organizations or its organs entails the human person(s) who may appear physically for and on behalf of or as representing the members of the international organizations. The people from the various members who will represent the members and act in their capacity as such members in the organization itself or in its organs are the subject of this paper. It should be clearly understood that international organizations are not *strictu sensu* legal persons in the sense that they do not belong to the humankind and cannot perform the function or activities of the humankind; but by virtue of their creation or establishment by treaty or registration they acquire legal personality. This can be likened to the situation or scenario that plays out after the

registration of companies or corporation as described and exemplified in the classical case of Salomon V. Salomon Ltd. In the doctrine of lifting the veil of incorporation, for instance, the actual human persons who perform what act that are generally attributed to the incorporated company are exposed. This is because the human persons are the hands, the eyes, the legs, the mouth etc of the incorporation. The same thing applies to international organization. The real people who carry out the objectives of the organization or its organs are composed one way or the other.

For instance, the Security Council as an organ of the United Nations is composed of five permanent members represented by individual humankind who represent each of the states/countries that make up the permanent members of the Security Council.

These participants include: Full members, Associate members, Affiliate members and Observers. In the category of full members are: members states, dependent territory, group of states and order international organizations. In the category of Associate members include – those colonies or non-autonomous territories permitted to participate in the activities of the organizations without granting them the rights of independent states. In this case after the dependent territories have become independent, they usually continue as associate members until their admission to full membership.

The incidence of associate membership is that they do not have the right or powers whatsoever to vote or hold office in the principal organs of the organization in question. The associate members are usually granted by the organizations. among the bodies granted associate membership of international organization include: Liberation movements, governments in exile, private legal entities and non-member states.

In the category of partial members are the states or organizations that are members of certain organs of some international organizations but are not members of the organization itself. For example, in 1954, 1955 and 1956, several European states, which had not (or not yet) been admitted to the UN, became members of the Economic Commission for Europe (ECE); Switzerland became a member of the ECE in 1971, South Vietnam and the Korean Republic Tonga, Western Samoa and Nauru were admitted to the Economic Commission for Asia and the Far East (ECAFE), while they were not United Nations members. Again, in July 1977, the PLO became a member of the Economic Commission for Western Asia, Switzerland, Liechtenstein and San Marino became parties to the Statute of the ICJ (one of the six principal organs of the UN) while they were not members of the UN. France was a member of NATO but withdrew from NATO's military cooperation.

Partial membership is also found in regional organizations. The constitution of the OECD permits the organizations to invite non-member governments or organizations to participate in its activities. Australia participated in the OECD's Development Assistance Committee before becoming a member of the organization in 1971.

Affiliate members are also another category of participants that merit discussion here. Affiliate members are intergovernmental and non-government international bodies

with concerned specialized interest in the areas of interest, objectives, goals or activities of the organizations.

The Constitution of the World Tourism Organization permits the representation of affiliate members in the Committee of Affiliate Members, which may designate three observers to the general congress of the organization, and on the board. For example, as at December 2010, more than 400 affiliate members participated in the WTO (including Air Force, Club Mediterranean, The Arab Tourism Organization, Ecotourism Kenya and the International Youth Hostel Federation.

Finally, in the category of observers, most international organizations grant some form of observer status to non-member states, other public international organizations, private organizations or individuals. Observer status is a privilege granted by some organizations to non-members to give them an ability to participate in the organizations' activities. Observer status is often granted by international organizations to non-member states/parties and other international organizations that have an interest in the organization's activities. Observers generally have a limited ability to participate in the organization; they also lack the ability to vote or propose resolutions. They are zombies. Therefore, all participants to international organizations participating without the rights to vote or referred to as observers in reports and other official records of meetings.

Observer status is often related to sessions of specific organs of international organizations. Other organizations confer this status on a more general basis.

There exist five (5) categories of observers which include: Non-member states and entities, National liberation movements, public international organization, private organizations, and private individuals and companies. The hallmark of this paper is the discussion, a critical appreciation or appraisal of the ways or manners of representation of these members or participants in the organs of the organization or the organization itself.

II. REPRESENTATION BY DELEGATION

It should be noted very significantly that neither the member states nor their governments can be physically present in the sessions or meetings act or appear by delegation. In other words, the member states or their governments are usually represented by delegation. Member states of international organization can only operate through natural persons. The same thing applies to the organs of international organizations. therefore, a delegation is a group of men or women (natural persons) through which international organizations or their respective organs carry out their respective duties objects or activities.

III. DENOMINATION OF DELEGATION

As there are different international organizations so are there different denominations of the members of delegations. But in almost all of the organizations, members of delegations sometimes consist of – one delegate with alternates, advisors

and experts; in other cases, there is a “head of delegation” accompanied by delegates, alternates, advisors and experts. Whatever the designation, it is always the head of the delegation who is empowered by the delegating authority to represent the member state. The head of the delegation may delegate his powers to other members of his delegation.

The different denominations of other members are a useful indication of the hierarchy of the delegation, enabling other delegations to know with whom they should negotiate.

IV. CRITICISM

The principle that the head of a delegation may delegate the powers to other members of his delegation offends all known legal principles especially of that stating that a delegate cannot delegate his powers. This is captured in the *legal: delegatus non potest delegare*.

In constitutional administrative law, the principle: *delegata potestas non potest delegari* states that “no delegated powers can be further delegated”. By its singular form: *delegates non potest delegare*, “one to whom power is delegated cannot himself further delegate that power”.

The rationale behind this legal rule or maxim is captured in the doctrine of agency, i.e., agent-principal relationship. By this principle, the principal empowers the agent to do certain acts or expressed acts on the behalf of the principal. It will defeat the principle of agency if the agent should delegate his powers to a 3rd party to act on his own behalf. The legal implication is that the principal is not bound by the outcome of the said 3rd party’s contractual relationship which was sub-delegated to him by the supposed agent or delegate of the named principal.

In the sphere of international organizations, the delegations are duly informed or empowered to do certain acts or things on behalf of the member states. A situation may arise where the agent of the delegate undertake a different course of action not authorized by the member state. In that situation, the bindingness of such course undertaken by the agent of the head of the delegation comes to issue. It may be that the member state is compelled against its wish to carry out whatever obligation spelt out by the session or conference or the state may denounce the acts of the delegation in totality. Whichever of the above mentioned course the member state takes is either not in the best interest of the organization, on one part or the member state, on the other part.

V. INSTRUCTIONS OF THE DELEGATIONS

The delegation or its members do not act in their personal capacity: they represent the member states of the international organizations. In fact, they are delegated by the member states to act on their behalfs with specific instruction as to what to do or not to do.

By instruction is meant: a statement that describes how to do something, an order or command, the action or process of teaching: the act of instructing someone. It should be noted

also that the instruction of delegates may be very detailed or sometimes very broad.

With respect to very detailed or very board instructions, the nature of the instructions should mainly depend on the stage of the decision-making process. So for preparatory discussion, detailed instructions are not needed. Governments will find a later opportunity to intervene if their delegates propose to accept solutions that they do not support.

Actions of delegates outside the limits of an instruction are always possible. It requires the prior approval of the government concerned. Sometimes instructions expressly provide for consultation in order to anticipate future developments, or as a result of certain reluctance on the part of a government to make easy concession. Though further briefing during session is only sought in exceptional cases.

The issues have been left unaddressed as to what happens, where delegations take or vote for actions for which they had not received instructions and the said action becomes inimical to the interest of the member state which they represent, or by way of further delegation of the delegates power, an action is taken without instruction and which affects negatively the state member on whose behalf the delegation acted.

I suppose that such further delegation of power is illegal and therefore any acts or things done by reason of such further delegation which negatively affects the interest of the sending states is illegal, ultra vires and voidable. The same thing applies where the delegation exceeds its bound, due to pressure and against the interest of the sending state. But the sending state is still bound by such acts or things done by its delegation in the condition of dearth of instruction or uncautionable further delegation of power by the head of the delegation notwithstanding that the acts or things done by delegations (or its head) is illegal, ultra vires or voidable.

VI. SIZE OF DELEGATION

This subhead addresses the number of persons who may make up a delegation. To determine the size or number of delegation, it is pertinent to understand that this depends on each organization but in normal circumstances, members freely decide what the number or size of delegations they may send to a meeting.

According to the 1975 Vienna Convention, the only requirement is that “the size of the delegation shall not exceed what is reasonable and normal, having regard, as the case may be to the functions of the organ or the object of the conference, as well as the needs of the particular delegation and the circumstances and conditions in the host state”.

THIS WRITER’S OPINION

There appears to be no uniformity as to the size or number of delegations, and as to whether a particular delegation should function or be sent to all the organizations which a state is a member or whether there can be variations. It is common knowledge that a particular member state of an organization can also be a member of other organizations. In this case, it is unclear and I suppose a *lacuna*; whether a particular delegation should function or sent to the entire

international organizations to which a state member is unclear. Again, from the delineation of the size or number of delegation given or as provided for in the 1975 Vienna Convention (supra), the phrase, "shall not exceed what is reasonable and normal" was not defined. It is not also stated or defined whose duty it is to, or the parameter for determining what is reasonable and normal.

Can it be said that the reasonableness or normality of the size of the delegation is subjective, determinable by the member state that intends to send a delegation or is the subjective test of that of the organization itself? Is the reasonableness of the size of the delegation to be ascertained using the objective test? All these three (3) issues are not addressed, and I think it is fatal. Anybody can challenge the test of reasonableness here because it has no standing pivot. The test of reasonableness should be stated with utmost certainty to leave no one in doubt as to its implication. Many a scholar is left to grope in the dark lane of discovery to find the missing link of the test of reasonableness and this is bad for the law.

Further issues with the definition of the 1975 Vienna Convention are the clauses "having regard... to the function of the organ or the object of the conference", "the needs of the particular delegations and the circumstances and condition in the host state".

It is my humble view that the above clauses should not be taken together as one but taken separately and alternatively. With respect to the first clause "having regard to the functions of the organ or the object of the conference" it will normally be constructed as meaning the same thing or presenting the same scenario. By this, the size and the personnel to be sent to the conference or the sessions will not be difficult to determine especially because the determining factor may be the function of the organ or the object of the conference. But it is not so with the later clause "the needs of the particular delegations and the circumstances and conditions in the host state". This is because the above clause is lumped up. It is made to appear as one and the same thing when it should be constructed disjunctively. The needs of the particular delegations cannot be interpreted *ejudem generis* the circumstances and conditions of the host state.

For instance, the needs of a particular delegation would normally exist irrespective of the circumstances and conditions of the host state which may be that of war, Tsunami, Hurricane or state of emergency. Now, the implication is that the delegation of medical personnel with the background instruction of the needs of medical aids of the member state which they represent for instance will in all ramifications be antithetical or juxtaposed to the circumstances and conditions of the host state.

Good draftsmanship of the above Article 46 of the 1975 Vienna Convention on the Representation of States in their Relation with International organization of a Universal Character should read as follows:

The size of the delegation shall not exceed six (6) persons drawn from the relevant field by relevant authorities and having regard to:

- ✓ The function of the organ; or
- ✓ The object of the conference; or
- ✓ The needs of the particular delegation, and

- ✓ Giving responsible consideration to the circumstances and conditions in the host state.

It is this writer's submission that if no figure is given at all as to the size and number of delegation, what is reasonable and normal will appear vague (as it has been seen above) and will lead various member states to sending variations of numbers or sizes of delegation. This is because what is reasonable to state "A" may be inadequate or unreasonable to state "B".

With respect to the United Nations, for instance, delegations of United Nation members to the General Assembly "shall consist of not more than five (5) representatives and five (5) alternate representatives and so many advisers, technical advisers, experts and personnel of similar status as may be required by the delegation.

Within the European Union, the council shall consist of one representative of each member state at ministerial level. These representatives may be accompanied by officials who assist them.

VII. COMPOSITION OF DELEGATION

Having fully considered the size of delegation, the next is to look into who qualifies for membership of delegations. It should also be noted that the composition of delegation is dependent on whether the delegation is government delegates, delegates representing specific interest, delegation from national parliaments, foreign delegation and multinational delegations.

VIII. GOVERNMENT DELEGATES

One of the greatest incidences of the composition of delegation is the freedom of action. By freedom of action is meant the power of delegations to act one way or the other during sessions or meetings of organs of an organization. Once a delegation has been briefed by a member state, the delegation is at liberty to take whatever action it deems necessary or expedient to carry into effect the interest of the member state. But what is unclear is what happens in a situation where the action so taken by the delegation appears to be against the interest of the state, in the long run? Earlier, I have tried to address this issue especially by stating that like an agent-principal relationship, the actions of an agent will bind the disclosed principal whether the action is good or bad.

Government delegations are made up of civil servants and diplomats. They are chosen on the basis of the agenda of the meeting concerned. Because of the agenda of the meeting which is usually communicated to member state prior to the selecting or choosing of delegations, the delegations are adequately instructed on the actions to take in the meeting. But a case may arise when an item of utmost urgency, not within the contemplation of the organization at the time of the communication of the agenda, arises requiring the delegation to immediately vote one way or the other, should the delegation refuse to take any actions whatsoever, or take actions not instructed by the member state which eventually becomes inimical to the interest of the state.

However, whatever the agenda of the meeting or the session, civil servants and diplomats are expected to be familiar with such agenda because they deal with the same subject at the national level or have more specialized knowledge of the agenda respectively.

Ministers may be delegated but some constitutions of organizations may provide that members do not delegate ministers but other specific representatives. In several organizations, the general congress cannot be composed of representatives other than ministers.

For example, the council of the European Union “shall consist of a representative of each member state at ministerial level, who may commit the government of the member state in question and cast vote”. The European Council is composed of “the heads of state or government of each member states together with its president and the president of the commission”.

Several other regional organizations also require their members to appoint members of government in their delegations to the organization’s main organ.

For example, the council of the European Union “shall consist of a representative of each member state at ministerial level, who may commit the government of the member state in question and cast vote”. The European Council is composed of “the heads of state or government of each member states together with its president and the president of the commission”.

Several other regional organizations also require their members to appoint members of government in their delegations to the organization’s main organ. For example, in the Africa Union General Assembly, the supreme organ is composed of “heads of states and government or duly accredited representatives.

The supreme organ is reserved for the supreme representatives. If the constitution of the organ does not contain specific requirements for the composition of delegations, it is for the members to decide how their delegations are composed.

IX. DELEGATES REPRESENTING SPECIFIC INTEREST

The general rule with respect to delegations is that delegations represent the governments of the members. But the International Labor Organization (ILO) offers the most important exception to the rule that delegations represent the governments of the members.

Each member to the International Labor Organization sends four (4) delegates to the general congress of ILO, and the remaining 2 respectively represent the employers and the workforce (employee association) of the members.

This is the principle of “tripartism” which implies that three persons or interests are represented in the ILO by member states. These interests are: Government, Employers and Workers (Employees). The two (2) later interests represent industrial organizations. Members have undertaken to nominate the non-government delegates in agreement with industrial organizations- if such organization exists- that are more representative of employers or workers in their countries. These two (2) delegates are not allowed to receive

instructions from their government and are not responsible to it. They vote according to their own opinion, or on the basis of suggestion received from the organization from which they are chosen. Their voting capacity is limited one way only: a non-government delegate from a member is not entitled to vote if that member has failed to nominate the other non-government delegates. This restriction is necessary to keep the equilibrium between worker-delegates and employer-delegates.

WRITER’S OPINION

It will amount to disenfranchisement of the non-government delegate without any fault on his part on the non-election of the other non-government delegate. Again, it will amount to unnecessary wastage of resources and man-hour to have been in attendance at a session or meeting without voting-which is an equivocal participation in decision-making.

X. THE PROBLEM OF TRIPARTISM

The principle of tripartism, notwithstanding its all-encompassing nature with regard to all sectors of the representation of the member states and all interest emanating thereof, was not without its own peculiar problem.

Between 1934 to 1954, the principle of tripartism caused a lot of difficulties when socialist states entered the International Labor Organization. In particular, the employer-delegates from the other members raised objections to having communists in their midst. They considered that delegates of communist workers and certainly those of communist employers, were actually delegates of government. Admitting them as delegates of workers or employers would disturb the balance between the three groups. In 1956, the ILO published a report on the influence or control of each government on the national organizations of workers and employers. The report shows that there are great differences between member states. Whereas, there was no weakening of the independence of employers and workers organizations in the leading industrial countries, there were more organizations in developing countries. In socialist countries, there were no “independent” employers in the “capitalist” sense of the word. “Nevertheless, if one finds three persons in charge of industrial undertakings whose functions correspond in part of the function of the employing class in the majority of the member states, it is reasonable to expect that these persons would have a contribution to make to the work and the discussions of the ILO”. In this way, the ILO’s aim to be a universal organization prevailed over tripartism. On the basis of this report, it was concluded that there was no reason to amend the provisions of the ILO constitution on the composition of the delegations of the member states. But the problem was not solved. The conflict between the US and the ILO, which finally led to the withdrawal of the US from 1977 until 1980, has partly due to alleged erosion of tripartism.

XI. DELEGATES FROM NATIONAL PARLIAMENTS

The practice of keeping parliaments involved in the work of an organization helps to safeguard the policy of the government in that organization against later disapproval by the parliament. It is against this back drop that some state members of international organizations appoint members of their parliament to their most important delegations, for example in the delegations of the United Nation General Assembly, Henry G. Schermers said that this practice enhances the parliamentarians understanding of the problems involved and of the atmosphere of the negotiations which increased by implication.

For a practical example, the United States included some of the most influential senators in its delegation to the 1945 San Francisco conference, during which the United Nations was established. This was to nip in the bud a repetition of the 1920 disaster when senators blocked the US ratification of the covenant of the League of Nations, in the information of which the US, and in particular President Wilson, had taken such active part. Since, the US has often included parliamentarians in its delegation to the UN General Assembly. A number of other UN members do the same.

Making national parliamentarians' part of a government delegation is generally not healthy. This is because it derogates the principle of separation of power. Parliamentarians cannot fully participate in national delegation on an independent basis. The delegation is responsible to a cabinet minister and should follow a consistent policy. It means that all delegates including parliamentarians are subject to instruction, from the executive arm of government. A parliamentarian who is unwilling to accept an instruction should not accept an invitation to participate in a national delegation. To avoid this, parliamentarians are appointed as observers in delegations. They thus retain independence from policy-making.

XII. FOREIGN DELEGATION

States usually appoint their own nationals as their delegates, and in principle the diplomatic members of a delegation should be of the nationality of the sending state. On several occasions, states have appointed nationals of other states to their delegations or even as their single delegates. For example, in 1966 the Dutch professor Cohen represented Belgium on the UN Scientific Committee on the Effects of Atomic Radiation. In the 1970s, Belgium was represented by Professor F.H Sobels, another Dutchman, it should be noted that without the approval of the host state, diplomatic members of a delegation may not be appointed from among persons having the nationality of that state but even if they grant such approval, host states often refuse or restrict privileges and immunities to delegates of their own nationality. Sometimes privileges and immunities are also denied to nationals of a third state. The UN secretariat has rightly objected to this practice (followed in the US). The use of nationals of a third state may be of interest to the state that sends them and to the organization, but is of no concern to the host state. Foreign delegation may speak on behalf of the

delegation, it may be questioned whether they are entitled to make official statements on behalf of the government of the state of which they are a national.

XIII. MULTINATIONAL DELEGATION

The actual word should be "multi-national" to bring to the fore that what is spoken of involves two or more nations. By this, two or more nations can send jointly a delegation to conferences, sessions or meetings.

According to Article 42(2) of the 1975 Vienna Convention, two or more states may send one delegation to an organ or to a conference, unless the rules of the organization in question prohibit them from doing so. Normally, a delegation of more than one state will be composed of delegates from each of the participating states. A combined delegation would be particularly useful for small states in meetings of minor importance and in meetings requiring expertise.

When acting by proxy is not permitted, the delegation could be formally accredited by one of the participating states, and simply act on behalf of the other(s). In that case, one vote would have to be allotted to the combined delegation. This would not be unreasonable, since the interest of the individual state(s) concerned is apparently not extensive. When a delegation has been formally accepted as representing two or more states, it should be entitled to cast two or more votes. Otherwise, such acceptance serves no purpose. Sometimes, states share a particular interest in the work of an organization. Such an interest might justify the sending of a common delegation. Denmark, Finland, Norway and Sweden agreed to appoint a joint negotiating delegation to the Kennedy Round trade negotiations, within the framework of the GATT. Within the Caribbean Development Bank, five of its members (UK overseas territories Anguilla, British Virgin Islands, Montserrat, Turks and Caicos Islands) together sent the delegate (governor) to the general congress of the organization.

XIV. OBLIGATION TO SEND A DELEGATION

The acceptance of membership of an organization or of its organs entails some moral obligations to participate in its meeting. The provisions of the constitutions of most organizations on the quorum required, however, imply that absence is not illegal, nor can it be said to amount to an offence whatsoever. At one time or the other, members for want of sufficient interest or the lack of it, or for their considered incompetence of the organ (the session or meeting) to discuss effectively the matter (s) in the agenda of the meeting, do not participate in the sessions or meetings. It is only a systematic policy of refusal to participate may be frowned at by the organization. This is because such a policy will not amount to the loss of interest in the objects of the organization, but may be contrary to a general obligation of membership (and may be a ground for the termination of such membership by expulsion).

XV. CREDENTIALS OF DELEGATES (DELEGATIONS)

The credentials simply put are the proofs that a delegate(s) is/are representing their states. The “credentials” is a letter in which the government of the member state lists the names of the members of the delegation. Where the organization requires delegations to be composed of particular persons (such as directors of metrological services or experts in the field of health), the function, title or special competences of the delegate concerned must be stated clearly in the credentials.

XVI. PERSONS WHO MAY ISSUE CREDENTIALS

Depending on the rules of the organization, credentials must be issued by the Head of State, Head of Government, the Minister of Foreign Affairs or another competent authority of the sending state.

An ambassador to the organization or to the state where the organization is seated will usually have delegated powers.

Ministers other than the Minister of Foreign Affairs often sign credentials for technical organizations. When a Head of state or Government, or a Minister of Foreign Affairs represents his country, no credentials are required. The credentials of delegates representing a national parliament in an international parliamentary organ should be issued by the President of the Parliament rather than by the Ministry of Foreign Affairs.

XVII. THE “CREDENTIALS” COMMITTEE

A special commission of each session of the main organ of all international organization (the “credentials committee”) verifies the credentials. On the basis of their committee’s report, the organ itself will decide whether or not to accept the delegation.

A delegate whose credentials are rejected may no longer participate in the session of an organ, as a matter of strict rule; otherwise the delegate may participate with full powers in all activities.

This rule is necessary to avoid confusion, as otherwise the delegations of certain states might be in difficulty at the beginning of each meeting. It would be possible to eliminate their votes in the first decisions (for example, elections of the president and of the credentials committee) simply by disputing their credentials. The above rule is made on the assumption that the credentials should be discussed and approval at the beginning of each session. However, in practice a decision on the credentials is often left to the very end of the session. This enables the credentials committee to decide on those credentials that are not only received during the session, but also to delay difficult decision until they are no longer important.

Therefore, a delegation whose credentials are disputed can fully participate in a session regardless of the outcome of the examination of its credentials. For instance, in the 15th session of the Congress of the UPU (1964), delegations of panama and Haiti participated with full powers, except for the

last two (2) days when the congress had appointed the report of the credentials committee which considered that their credentials were insufficient. They then could no longer vote. Again, in 1990, 1991 and 1992, the UN General Assembly did not take a decision on the report of the credentials committee, in order to avoid difficult political discussions concerning the credentials of Israel.

However, a delay in the decision making concerning credentials is not without consequences. The ITU general congress met in Montreux in 1965 to draft a new International Telecommunication Convention. On 12th November, the convention was signed. Mr. Dickenson signed on behalf of Rhodesia, a member of the ITU since 1925. After the end of the session, a letter was received the UK in which the British government stated that, after the ill proclamation of independence on 11th November 1965, the mandate of the Rhodesian delegation had become void. Mr. Dickenson, therefore, had no power to sign on behalf of Rhodesian on 12th November. The ITU board, after consulting the members of the organization, instructed the Secretary-General of the organization on 2nd June 1966 “to delete the signatures of the former Rhodesian delegation appended to the copy of the International Telecommunication Convention (Montreux 1965)” as well as those appended to several other texts adopted at the same session of the general congress.

From the foregoing, most problems arise not out of the authenticity of the credentials, but from the corruptness of those who issued the credentials. When there are two governments claiming to be the only lawful governments of a member, the credentials committee and subsequently the organ itself, must make a choice which goes far beyond the verification of credentials: it concerns the recognition of a government. Other issues with the credentials committee are outside the scope of this paper and are not worth delving in.

XVIII. REPRESENTATION BY PROXY

A proxy is a person who is given the power or authority to do something (such as to vote) for someone else; it is the power or authority that is given to allow a person to act for someone else.

Proxy representation allows or permits an otherwise absent member(s) to be represented at sessions or meetings by present members.

A number of International organizations expressly permit their members to act by proxy for more than one other member(s); and sometimes for two (2) members each. In other organizations, a member may act by proxy for only some of the other members, not for all. It is also noteworthy to clearly state that some other organizations forbid representation by proxy.

Article 42(2) 1975 Vienna Convention on the representation of states provides for representation by proxy. But notwithstanding the provisions of the above convention, the rules or constitutions of each organization usually define, describe or specify the mode of representation by proxy, and whether there can be proxy representation or not.

Arguments have been preferred in favor of representations by proxy. Proxy representation permits an

otherwise absent member(s) to be represented at meetings, and by reducing the number of delegation, facilities efficient procedure at meeting. It is particularly useful for groups of members with a common interest, for example, and customs unions in customs conference.

On the other hand, there are several arguments against representation by proxy. It could be inconsistent with the purpose of meeting, mutual discussion and persuasion. It could also cause confusion, since other delegations may not know on behalf of which state a delegate speaks. It might also lead to multiple voting and concentration of power.

Until 1975, it was the consistent position of the UN Secretariat and of the UN organs concerned, that representation of more than one government or state by a single representation was not permissible unless clearly envisaged in the rules of procedure of the particular body.

Customary International Law also seemed to prohibit proxy representation of one member by another, unless it was expressly permitted. Nevertheless, the 1975 Vienna Convention on the Representation of State in their Relations with International Organizations that two or more states may send the same delegation to an organ or to a conference in accordance with the rules of the organization.

Objections, however, abound against a member acting by proxy for a non-member or for an international organization. Although, some of the objections would be similar, a member would not (or would only to a lesser extent) affect its negotiating position by representing an entity which had no voting rights. The UN Secretariat considers it permissible, in exceptional cases, for one individual to be accredited to a technical UN organ by:

- ✓ One state and one observer organization, or
- ✓ One member state and one observer state, or
- ✓ Two observer states

These exception should not, however, be extended to representation of more than two (2) entities by a single person, and should be embodied in a rule of procedure or in an express discussion of the organization.

XIX. RECOMMENDATION

Without adequate representation in both the organs of an international organization or the organization, the organization or its specialized organs can hardly achieve any or all of the set goals, objectives or purposes. This is because the organ or the organization can hardly achieve any or all of the set goals, objectives or purposes. This is because the organ or the organization can hardly, in such a situation, take a valid or efficient decision on any course of action. It is on the basis of this that- all that needs to be done should be effectively done to facilitate representation of all members. Laws, policies of member state or host made to hamper effective participation and representative of all members or anyone of them should be abrogated and jettisoned, particularly strict rules of privileges and immunities.

Member states should also be allowed to appoint or nominate any person(s) of their choice to the delegations for sessions or meeting of international or the General Assembly or congress thereof whether such a nominee is a national of

the sending states or otherwise. This is in line with the freedom of choice of a nominee or delegation of a member state. A situation where, without the approval of the host state, diplomatic members of delegation may not be appointed by the member state is an aberration and seriously impugns state sovereignty. At times also, particularly with the United States of America, individual delegates have been denied entry to U.S.A to attend one session or conference of an organ of an international organization or the other. It is antithetical to the canvassed international co-operation, that is, the major subject of the creation of most international organizations. The privileges and immunities supposedly accorded delegates are in words and not in practice at all. In this regard, therefore, a member state or other members of international organization should have the competence or choice of nominating a national or foreigner to their delegation especially because of their interest, or to have the best of representation. This should be of no concern whatsoever to the host states.

Most international convention treaties or constitutions are not given the best of draftsmanship, either because of lack or poorly trained legal personnel to do the job or because the ones available are ill or half baked, heir nationalities notwithstanding. A law as all-embracing as the 1975 Vienna Convention of the Representation of State in Organizations of a Universal Character should have imperative words (wordings) in the spirits and intendment of their legislation. The same thing applies to the ILC Conventions to mention just a few.

This writer also recommends uniform delegations and modes of operation for all organs of international as well international organizations themselves in other to meet the international best practices.

XX. CONCLUSION

Representation is to organs of international organizations what appearance in court is to litigants who must be present in occurring to prove their claims or defenses. Without representation, the aim of membership and the objective of the establishment of an organization are defeated.

The reality of interdependence compels states to renounce some of their plenitude of powers. International organizations have been created to carry out a number of functions that can no longer be discharged effectively by states alone. But the states remain sovereign, having a plenitude of powers which one some have been attributed to international organizations. The competences of international organizations (and thus their organs) are related to the specific functions for which these organizations have been established. Organs employ their powers to realize this function in a rapidly changing world. Rules on decision working (partly) determine the extent to which states can control this process.

REFERENCES

- [1] Mullan, D. J. "Essentials of Canadian Law: Administrative Law (Toronto) Irwish Law P. 368
- [2] J. N Hyde "United States participation in the United

- Nations, 10th International Organization (1956) @ 25.
- [3] Rule 25 of the Rules of Procedure of the UN General Assembly
- [4] Report to the ILO Committee on Freedom of Employers & Workers' Organizations (the McNair Committee" V-Y Ghabali, "The Int'l Labour Organization (1989 Pg. 125-141).
- [5] www.un.int/protocol, December 2009
- [6] Henry G. Schermers et al, International Institutions Law' 5th Edition (Martinus Nejhoff Publishers) at Page 197.
- [7] www.un.int/protocol, December 2009
- [8] Doc. 7178 (1994) Parliamentary Assembly of the Council of Europe.
- [9] UN Doc. A/CN. 4/L. 118, paras 82-86.
- [10] The agreement for such a joint delegation has been reproduced in 36 NORTIR (1966), page 128-129.
- [11] J. Syz, International Development Bank (1974), at 30, information from www.caribank.org.
- [12] Henry G. Schermer, op.cit. p. 200
- [13] Rule 29, Un General Assembly; Rule 111(5), FAO General Rules of Organization; Rule 23, WHO Rules of Procedure, etc.
- [14] ITU Administrative Council res. 599-cited in Henry G. Schermers, et al (supra) page 202.
- [15] Schermers, H. G. and Blokker. N. M. International Institutional Law 5th Ed. Pg. 289-290 – (Martinus NijHoff Publishers)

IJIRAS