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Summary record of the 1103rd meeting

Topic:
Representation of States in their relations with international organizations

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56. The Drafting Committee should consider carefully the amendment proposed by Mr. Tammes, which was more precise than the phrase it was to replace, and unlike that phrase, did not refer to the procedure for establishing permanent observer missions.

57. Mr. Ushakov had suggested that there might perhaps be no need to include the phrase "in accordance with the rules or practice of the Organization", since article 3 already provided that the application of the articles was "without prejudice to any relevant rules of the Organization". The Commission had not yet considered article 3 at second reading, however, and it had already been proposed that what was said in the commentary about the relevant rules of the organization should be transferred to the text of the article and that the organization's practice should also be mentioned there.

58. He did not think it necessary to refer to non-discrimination in article 52, as Mr. Ushakov and Mr. Ustor had requested, since the point was already covered by article 75.

59. Mr. ROSENNE said that on the whole he agreed with the Special Rapporteur's comments on article 52 (A/CN.4/241/Add.4), subject to its re-examination by the Drafting Committee.

60. He suggested, however, that the Drafting Committee consider carefully the interrelationship between article 7 (a), article 51 (a) and article 53. Article 7 (a) stated that the functions of a permanent mission consisted *inter alia* in representing the sending State "in" the organization. Article 51 (a) used the words "to an international organization", while article 53 referred to the permanent observer mission as representing the sending State "at" the organization. The exact distinction between those different prepositions should be made clear.

61. Mr. ALCÍVAR said he was concerned about the possibility of violation of the principle of universality. The functions of permanent observer missions were wider in scope than those of permanent missions and there should be greater freedom for non-members to establish them. As Mr. Bartoš had said, the principle of universality might be subject to limitations: it might be limited by subjective considerations or by the imposition of a mechanical majority vote. He therefore proposed that the phrase "in accordance with the rules or practice of the Organization" be deleted and that appropriate wording be inserted to make it clear that there must be no discrimination against non-member States.

62. Mr. EUSTATHIADES said he was in favour of retaining the words "in accordance with the rules or practice of the Organization", which were the result of a compromise, but it remained to be seen whether the text with that wording did not imply that it referred to the procedure for establishing, not the right to establish, a permanent observer mission. Mr. Tammes had tried to remove that ambiguity by the amendment he had proposed. He himself endorsed Mr. Castrén's remarks on the subject. The Drafting Committee might perhaps be

able to find a formula which covered both the right to establish a permanent observer mission and the procedure for establishing it.

63. There was another point to be noted. If the rules or practice of an organization were not opposed to the establishment of permanent missions, any State which requested permission would be able to establish one. But if the rules of an organization did not authorize the establishment of permanent observer missions and there was no precedent in its practice, how was the bar to be lifted? That point should be clarified, at least in the commentary.

64. Sir Humphrey WALDOCK said that at first he had viewed article 52 from the same angle as Mr. Yasseen, but Mr. Eustathiades had convinced him that there were other problems, connected with other articles, which would have to be taken into consideration. He would therefore wait until the Drafting Committee had produced a text before commenting on the article.

65. The CHAIRMAN suggested that article 52 be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*¹³

The meeting rose at 1 p.m.

¹³ For resumption of the discussion see 1116th meeting, para. 8.

1103rd MEETING

Wednesday, 19 May 1971, at 10.5 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Ramangasoavina, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 6; A/CN.4/241 and Add.1 to 4; A/CN.4/L.162/Rev.1; A/CN.4/L.166)

[Item 1 of the agenda]

(continued)

ARTICLE 53

1. The CHAIRMAN invited the Commission to consider article 53 in the light of the Special Rapporteur's sixth report (A/CN.4/241/Add.4).

2.

*Article 53**Functions of a permanent observer mission*

The functions of a permanent observer mission consist *inter alia* in maintaining liaison and promoting co-operation between the sending State and the Organization, ascertaining activities and developments in the Organization and reporting thereon to the Government of the sending State, negotiating with the Organization when required and representing the sending State at the Organization.

3. Mr. RAMANGASOAVINA said that article 53 was the key article of Part III of the draft. Before considering that article and the succeeding articles, the Commission should decide whether it would be preferable to merge them with the corresponding articles on permanent missions or to retain them as separate articles.

4. No one denied that it was necessary for an international organization of a universal character to encourage the participation of all States, whether they were members or not, but as there were differences between the functions of a permanent mission and those of an observer mission, the question arose whether it was possible simply to place the two types of representation on the same footing. The Sixth Committee and the General Assembly had been in favour of doing so.

5. Once that principle was accepted, repetitions were inevitable, since all the articles referring to situations in which there was no difference in function more or less reproduced the corresponding articles on permanent missions or referred back to them. That applied, in particular, to article 53, which was the counterpart of article 7,¹ on the functions of a permanent mission. The only difference between those two articles was the order in which the functions were set out; the function of representation was mentioned in article 53 nevertheless, and once it was recognized that a permanent observer mission represented the sending State, it had all the attributes of a normal permanent mission.

6. It was clearly understood that the draft did not refer to observers representing non-member States who attended meetings of organs of the organization without voting rights, but were authorized to take part in the discussions. The Commission had thus gone quite a long way in placing permanent observer missions on the same footing as permanent missions, as recommended by the Sixth Committee.

7. But the question then arose whether it was really necessary to draft all those articles and whether it would not have been better to limit them to a few provisions dealing only with those points on which there was a difference between permanent observer missions and permanent missions, thus avoiding unnecessary repetition.

8. Mr. KEARNEY said that if Mr. Ramangasoavina was correct in thinking there was a general consensus that permanent observer missions should be treated in substantially the same way as permanent missions, he

could agree that the relevant articles should be amalgamated, but he was not sure that such a consensus did, in fact, exist. The Special Rapporteur's summary of the debate in the Sixth Committee appeared to show considerable differences of opinion, and most governments which had submitted comments had indicated doubts as to whether a permanent observer mission's functions should include "negotiating with the Organization when required and representing the sending State at the Organization". (A/CN.4/241/Add.4).

9. As had been previously pointed out, the representation provided by a permanent observer mission seemed to be of quite a different character from that provided by a permanent mission. If the Commission was to pay more than lip service to the functional theory, it would be difficult to conclude that a permanent observer mission should enjoy the same privileges and immunities as a permanent mission because of its representative character. There were all sorts of government officials, trade missions and scientific study groups who could be said to represent their governments but were not granted diplomatic privileges and immunities. It would seem strange, therefore, that permanent observer missions, which represented their governments in no greater degree, and probably to a much lesser degree inasmuch as their activities were passive rather than active, should be given a more substantial status on the basis of the representational theory.

10. The original confusion had probably been caused by the use of the word "representation", which had different meanings when applied to permanent missions and to permanent observer missions. In the latter case it really meant representation for purposes of observation. He therefore proposed that the word "representing" in article 53 be either deleted or clarified.

11. Mr. ELIAS said that the debate had not encouraged him to accept Mr. Castrén's view that the whole issue of permanent missions had already been settled. He himself had certainly not had that impression when he had represented the Commission before the Sixth Committee in 1970. He feared that if the Commission, in spite of the known objections of a number of governments, still wished to assimilate permanent observer missions to permanent missions, it would make little progress, since the same fundamental issue arose in connexion with almost every article.

12. He agreed with the view that the Commission should make more use of cross-references in its drafting. On the other hand, if it decided that permanent observer missions should be entitled to all privileges and immunities, cross-references would not be necessary; once the basic issue had been settled, all the privileges and immunities could be summarized in one article.

13. The session was already well advanced and the Commission was not yet half-way through the Special Rapporteur's draft. He hoped that it would give serious consideration to some more effective way of organizing its work.

14. Mr. USHAKOV said he saw no reason why the Commission should again engage in a general discussion

¹ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 200.

of the principle of permanent observer missions. It had already discussed that question at length at its previous session and had reached a decision both on that question and on the form which the relevant draft articles should take. The Commission had unanimously recognized that, although there were differences between the purposes and functions of diplomatic missions, permanent missions to organizations, special missions of the same State and observer missions, they all had the same representative character, because they all represented the sending State. It followed that they could be placed on the same footing so far as privileges and immunities were concerned.

15. That principle having been agreed, the Special Rapporteur had proposed, at the previous session, only a few provisions referring to the corresponding articles on permanent missions, and it was he (Mr. Ushakov) who had requested that as many articles should be prepared as were necessary to bring out the differences in purpose and function between the two types of mission.² The Commission had already decided to proceed in that way, the articles were before it, and it should now examine the practical aspects of those articles instead of wasting time questioning the principle again.

16. Sir Humphrey WALDOCK said he agreed with much that had been said by Mr. Kearney and Mr. Ushakov. To his mind, the question of the representative character of the mission did not really arise, since the notion of representation was inherent in all missions.

17. He did not think it possible, however, to separate the concept of representation from that of function. Once it was admitted that the concept of function had an important role to play in determining privileges and immunities in diplomatic law, it was necessary to take into account the particular function of the permanent observer mission.

18. He agreed with Mr. Ushakov, however, that it would be better to go through the draft article by article before considering whether it could be shortened.

19. Mr. AGO said it was unthinkable that a mission, sent by a State, should not represent that State. That would be a contradiction in terms. On the other hand, there were differences between the purposes of the representation. The principle was clear and Mr. Ushakov had been quite right to urge the Commission not to waste time discussing it.

20. At the previous session he himself had been the first to suggest that the number of articles on permanent observer missions might be reduced and that the Commission should endeavour, wherever possible, not to amalgamate those articles with the corresponding provisions on permanent missions, but to make cross-references to those provisions whenever the rules were the same.

21. Articles would be drafted expressly whenever it was advisable to make a distinction between a permanent

mission and a permanent observer mission, so as not to create the impression that the two types of mission could be assimilated to each other in all respects. They did not in fact have the same functions vis-à-vis the organization, since a State which had not signed the constituent instrument of the organization did not have the same position, or the same obligations and rights vis-à-vis the organization as a member State. Consequently, great caution was indicated when defining the position of observer missions and their functions in relation to the organization. For example, it should be made quite clear in article 53 that the permanent observer mission represented the State "to" (*auprès de*) the organization, and that, in the French version, its function was not "*s'informer dans l'Organisation des activités*", but "*s'informer des activités qui ont lieu dans l'Organisation*."

22. Mr. ROSENNE said that much of his difficulty with article 53 arose from the last few words, taken in the context of the draft articles as a whole. Much seemed to depend on slight differences in the prepositions used in the English version, which presented problems when translated into French. The Drafting Committee had made changes in article 7, where the same problems had arisen, and it might be able to find some more appropriate formulation for article 53.

23. The Commission itself should first look at all the articles and then give the Drafting Committee a directive to reproduce the substance of them in as few articles as possible, as Mr. Ago had suggested. That procedure should not, however, involve any fusion of the articles, since that might lead to misconceptions concerning the functions themselves. The main difficulty was that things were never so clear-cut as they looked on paper; permanent observer missions might not be quite so much outside the activities of the organization as might appear on the surface.

24. Mr. USTOR said it should not be forgotten that permanent observer missions were also diplomatic missions in the sense that they established relations between two subjects of international law, the sending State and the organization; in that respect they differed from the trade missions and scientific study groups referred to by Mr. Kearney, which did not have any diplomatic character.

25. Article 53 should be based on two elements, the representative character of the permanent observer mission and functional necessity. The Commission should first consider the representative character of the observer mission and then decide whether its different functions warranted any treatment different from that given to permanent missions. He himself would be reluctant to be more severe to permanent observer missions merely because they represented States that were not members of the organization.

26. In paragraph 14 of his observations on the article (A/CN.4/241/Add.4), the Special Rapporteur had expressed the view that the drafting suggestion by the Government of Switzerland, mentioned in paragraph 7, concerned observer delegations, a matter which the Commission, at its twenty-second session, had considered that

² Op. cit., 1970, vol. I, p. 114.

it should not take up "at this time".³ He wondered whether the words "at this time" referred specifically to the Commission's last session, or whether they meant that the Commission had considered that it should not take up that subject in the present draft. There would be a certain lack of symmetry in the draft articles if they failed to include provisions concerning observer delegations. He suggested that the Special Rapporteur be asked to prepare a working paper on temporary observers.

27. Mr. USHAKOV said he agreed with Mr. Ustor. The Special Rapporteur should be asked to draft articles on observer delegations to organs and conferences.

28. Mr. EUSTATHIADES said that Mr. Elias' suggestion was very useful. Contrary to what some appeared to think, it was not a question of whether the Commission should or should not consider article by article the part of the draft relating to permanent observer missions, but of deciding in advance whether to repeat the provisions which were the same as those of the corresponding articles on permanent missions or simply to refer to those articles.

29. The Commission should not assimilate the two types of mission too closely to each other. There must be clear agreement as to their functions. As Mr. Kearney had said, the functions of an observer mission were passive; it rarely had to negotiate with the organization or represent the sending State in an organ, and the functions of maintaining liaison between the sending State and the organization and ascertaining activities in the organization and reporting thereon to its government were performed discreetly, so to speak. That was a far cry from the extensive activities of a permanent representative and it was questionable whether the same privileges and immunities were justified. The Commission would be well advised to bear that in mind when considering the articles on permanent observer missions.

30. Mr. ALBÓNICO said he was surprised that there should be any doubt about the representative character of a permanent observer mission, since article 51, subparagraph (a), which had already been accepted by the Commission, stated that a permanent observer mission was "a mission of representative and permanent character sent to an international organization by a State not member of that organization".

31. Article 53 did not list all the functions of a permanent observer mission, but did refer explicitly to that of "representing the sending State at the Organization". Without prejudice to any improvements that might be made by the Drafting Committee, he could not conceive of a permanent observer mission which would not have a representative character.

32. The CHAIRMAN, speaking as a member of the Commission, said he thought the Commission must decide how far observer missions could be assimilated to permanent missions by considering the provisions on permanent observer missions article by article.

33. Speaking as Chairman, he noted that the majority of the Commission considered that it should continue to examine the draft article by article, and that all agreed that the work must be speeded up. If there were no objection, he would take it that the Commission wished to continue its examination of the draft article by article.

It was so agreed.

34. Mr. CASTRÉN said he approved of the substance of article 53.

35. With regard to the drafting, the subtle difference between the prepositions "at", "to" and "in" had already been discussed at length, but since the Swiss Government had stated in its observations (A/CN.4/240, section C) that it invariably used the words "*auprès de*", those words should be used in the French version of article 53, despite the explanation given by the Commission in paragraph (2) of its commentary⁴ to justify the use of the word "à".

36. Article 53 would be more explicit if it were set out in the same way as article 7, its counterpart for permanent missions, listing each function of the mission in a separate sub-paragraph.

37. Mr. AGO said he had no objection to the substance of article 53, but he thought the drafting should be drastically changed.

38. First, the functions of a permanent observer mission should be listed in order of importance, which they were not in the present text. Secondly, if they were grouped together, it should be possible to obtain a satisfactory text in three phrases. The function of representation, which was really only the basis of the others, would come first and the liaison between the sending State and the organization would be mentioned in the same phrase; it would be well to say, as had been proposed for article 7, "providing representation of the sending State to the Organization" and "maintaining liaison with it". Then would come the essential function of obtaining information and communicating it to the sending State, and finally, preceded by the words "when required", co-operation with the organization and the function of negotiating with it.

39. He agreed with Mr. Ustor that the draft would not be complete without articles on observer delegations to organs and conferences.

40. Mr. RAMANGASOAVINA said he entirely agreed with Mr. Ago. There was no reason why the wording of article 53 should not be modelled on that of article 7.

41. Mr. KEARNEY referring to the possible rearrangement of article 53, said that to the best of his recollection, the reason why the clauses concerning negotiation and representation had been paced last had been to bring out the distinction between those functions of permanent observer missions and the functions of permanent missions. The negotiating and representative functions of a permanent observer mission were extremely limited; the difference between them and those of a permanent mis-

³ Op. cit., 1970, vol. II, document A/8010/Rev.1, para. 14.

⁴ *Ibid.*, chapter II, section B.

sion had been further emphasized by the somewhat tenuous device of using different prepositions before the words "the Organization".

42. He noted that Mr. Ago now wished the representative function of the permanent observer mission to appear first in article 53; did that mean that he considered it the most important function?

43. Mr. USHAKOV said that the previous year he had spoken in favour of an article drafted on the lines of article 7.⁵ The similarity in form would have brought out better the differences between the functions of a permanent mission and those of a permanent observer mission. In its present form article 53 was not divided into sub-paragraphs like article 7, but consisted of a single sentence.

44. One of the differences between the two articles which should be brought out clearly was that between the phrases "representing the sending State in the Organization", used in article 7, and "representing the sending State at the Organization", used in article 53. The preposition "in" had been rendered by the words "*auprès de*" in French and the preposition "at" by "à", which did not convey the same idea as "at". The English words had their equivalents in Russian, but it was almost impossible to render them exactly in French or Spanish, so that it might be necessary to recast the wording of article 53. Another difference between article 53 and article 7 was that the phrase "carrying on negotiations with or in the Organization" had been replaced by "negotiating with the Organization when required".

45. The CHAIRMAN said that if there were no further comments he would take it that the Commission agreed to refer article 53 to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*⁶

ARTICLE 54

46. The CHAIRMAN invited the Commission to consider article 54 on multiple accreditation.

47.

Article 54

Accreditation to two or more international organizations or assignment to two or more permanent observer mission.

1. The sending State may accredit the same person as permanent observer to two or more international organizations or assign a permanent observer as a member of another of its permanent observer missions.

2. The sending State may accredit a member of the staff of a permanent observer mission to an international organization as permanent observer to other international organizations or assign him as a member of another of its permanent observer missions.

⁵ See *Yearbook of the International Law Commission, 1970*, vol. I, p. 28.

⁶ For resumption of the discussion see 1116th meeting, para. 58.

48. Mr. USHAKOV said he wished to make a comment which related only to drafting. The Drafting Committee had been requested to amend the wording of article 8,⁷ the provision in Part II of the draft corresponding to article 54. The text of article 54 should therefore be amended consequentially.

49. Mr. ROSENNE said that in principle Mr. Ushakov's comment was of general application. The Drafting Committee should automatically take into account, in considering every article of Part III, any remarks made during the earlier discussions on the corresponding article in Part II.

50. There was no necessity for members to repeat all their earlier remarks. Discussion should however be opened on each individual article of Part III in turn, in order to allow members to add anything they wished to their remarks during the previous discussion.

51. Mr. USTOR said that the problems of the possible fusion of articles and of drafting by reference would arise in connexion with many of the articles in Part III. For example, article 9, on accreditation, assignment, or appointment of a member of a permanent mission to other functions, might be framed so as to cover both permanent missions and permanent observer missions.

52. Sir Humphrey WALDOCK said that the question of drafting some articles common to the various parts of the draft could be left for the Drafting Committee to deal with at a later stage.

53. The CHAIRMAN suggested that article 54 be referred to the Drafting Committee for consideration in the light of the discussion; the Drafting Committee would have full freedom to revise the article and, in particular, would take into account the new wording it had itself adopted for article 8, the corresponding provision in Part II.

*It was so agreed.*⁸

ARTICLE 55

54. The CHAIRMAN invited the Commission to consider article 55, on the appointment of the members of the permanent observer mission.

55.

Article 55

Appointment of the members of the permanent observer mission

Subject to the provisions of articles 56 and 60, the sending State may freely appoint the members of the permanent observer mission.

56. Mr. USTOR said that article 55 corresponded to article 10 in Part II. Before article 55, it was necessary to introduce an article on the accreditation, assignment or appointment of a member of a permanent observer mission to other functions, corresponding to article 9 in Part II. Alternatively, the Drafting Committee could

⁷ See 1090th meeting.

⁸ For resumption of the discussion see 1118th meeting, para. 30.

consider the possibility of making the provisions of article 9 more general so as to cover both permanent missions and permanent observer missions.

57. Mr. EUSTATHIADES observed that some governments and some members of the Commission believed that article 55 raised the same problem as article 10. When article 10 had been discussed, he and Mr. Nagenra Singh had both suggested that the Drafting Committee should insert in it an express reference to article 50.⁹ In its observations on article 55 the Government of Switzerland had stated that "The host State should be empowered to formulate objections to the presence of a given individual in its territory as a member of an observer mission" (A/CN.4/240, section C). Since the analogy between article 10 and article 55 was complete, the Drafting Committee should consider whether article 50 ought not to be referred to in article 55 as well.

58. Mr. CASTRÉN, referring to Mr. Ustor's suggestion that the Drafting Committee should be left to decide whether a provision corresponding to article 9 should be inserted, reminded the Commission that it had decided at the previous session that that was unnecessary.¹⁰ But perhaps the Drafting Committee might nonetheless consider the matter and state its views. With regard to the wording, it should of course take into consideration the changes made in the corresponding article.

59. Mr. ROSENNE said he agreed that it was necessary to include in Part III a provision on the lines of article 9. The Drafting Committee might consider the suggestion he had made during the Commission's discussion on article 52 *bis* at the twenty-second session.¹¹

60. Mr. KEARNEY said he agreed with Mr. Eustathiades that article 55 raised the same problem as article 10, namely, that of the abuse of the right of free selection. It was necessary to deal with that problem in conjunction with the provisions on consultations and with any clause on the settlement of disputes which the Commission might adopt.

61. The CHAIRMAN suggested that article 55 be referred to the Drafting Committee for consideration in the light of the discussion; the Drafting Committee would also consider the idea of introducing into Part III an article corresponding to article 9.

*It was so agreed.*¹²

ARTICLE 56

62. The CHAIRMAN invited the Commission to consider article 56, on the nationality of the members of the permanent observer mission.

⁹ See 1090th meeting, paras. 73 and 90.

¹⁰ See *Yearbook of the International Law Commission, 1970*, vol. I, pp. 37-39.

¹¹ *Ibid.*, p. 106, para. 6.

¹² For resumption of the discussion see 1118th meeting, para. 43.

63.

Article 56

Nationality of the members of the permanent observer mission

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

64. Mr. USHAKOV said that, from the point of view of drafting, it was unnecessary to repeat the words "permanent observer mission" in many of the titles of the articles in Part III; they should be replaced by the word "mission". The same should be done in many of the titles in Part II.

65. Mr. ROSENNE said that Mr. Ushakov's suggestion should only be considered when the Commission had the whole draft before it.

66. The CHAIRMAN suggested that article 56 be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*¹³

ARTICLE 57

67. The CHAIRMAN invited the Commission to consider article 57, on the credentials of the permanent observer. The only change suggested by the Special Rapporteur was that the words "non-member State" in paragraph 2 should be replaced by "sending State" (A/CN.4/241/Add.4).

68.

Article 57

Credentials of the permanent observer

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

2. A non-member State may specify in the credentials submitted in accordance with paragraph 1 of this article that its permanent observer shall represent it as an observer in one or more organs of the Organization when such representation is permitted.

69. Mr. KEARNEY said that the language of paragraph 1 should be amended so as to draw a distinction between the permanent observer and the permanent representative. The statement that the credentials "shall be issued either by the Head of State or by the Head of Government or by the Minister for Foreign Affairs" was more suitable for an ambassador. He suggested that it be replaced by wording to the effect that the credentials must be issued by the Government of the sending State.

70. Mr. YASSEEN said he was in favour of retaining the article as it stood, but pointed out that, in the cor-

¹³ For resumption of the discussion see 1118th meeting, para. 45.

responding article on permanent missions, the Drafting Committee had been asked to replace the words "or by another competent minister" by the words "or by another competent authority".¹⁴

71. Mr. USHAKOV said that he was not in favour of that change, as it was contrary to the general opinion of the Drafting Committee.

72. The term "A non-member State", in paragraph 2, might simply be replaced by "The sending State". The word "permitted", which concluded that paragraph, was inelegant; "admitted" might be better.

73. Mr. BARTOŠ said that he agreed with Mr. Yasseen, and could not accept Mr. Ushakov's view, even though he had invoked the authority of the Drafting Committee. In trying to improve the drafting of article 57 the Committee had used an unfortunate expression. The credentials of a permanent observer might derive not from a ministerial instrument, but from an instrument issued by some other organ, particularly a collegiate body.

74. The CHAIRMAN suggested that article 57 be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*¹⁵

ARTICLE 58

75. The CHAIRMAN invited the Commission to consider article 58, on full powers to represent the State in the conclusion of treaties. The Special Rapporteur had suggested that the title of the article be amended to read "Representation of States in the conclusion of treaties with international organizations" (A/CN.4/241/Add.4).

76.

Article 58

Full powers to represent the State in the conclusion of treaties

1. A permanent observer in virtue of his functions and without having to produce full powers is considered as representing his State for the purpose of adopting the text of a treaty between that State and the international organization to which he is accredited.

2. A permanent observer is not considered in virtue of his functions as representing his State for the purpose of signing a treaty (whether in full or *ad referendum*) between that State and the international organization to which he is accredited unless it appears from the circumstances that the intention of the Parties was to dispense with full powers.

77. Mr. ROSENNE said that when the Commission had discussed the corresponding article 14 in Part II,¹⁶ it had reached certain conclusions; he assumed that the Drafting Committee would take those conclusions into account in considering article 58. The article was one of those which could be merged into a single provision for

the whole draft without prejudice to the standing of the various types of mission.

78. Mr. USHAKOV said he doubted whether the word "accredited", at the end of paragraph 1, which was taken from the corresponding provision of article 14, applied to a permanent observer in the same way as to the permanent representative of a member State. The Drafting Committee should study that problem.

79. Mr. AGO said that that point certainly deserved further consideration. Personally, he even went so far as to doubt the need for article 58. Was it really necessary to specify that a permanent observer did not have to produce full powers to adopt the text of a treaty? The size and importance of observer missions varied a great deal. If a State only sent a single observer, it might not wish him to be able to go so far as to adopt the text of a treaty without having to produce full powers.

80. Mr. YASSEEN said he agreed with Mr. Ago. He had hesitated to propose the deletion of the article only because such proposals were not usually made at second reading. But he thought article 58 went too far in permitting an observer to adopt the text of a treaty without producing full powers.

81. Mr. BARTOŠ said that he too supported Mr. Ago's view. In the case dealt with in article 58, the head of a permanent observer mission was acting like any other person whose country was not a member of the organization. He might be an *ad hoc* representative who must produce full powers and could not adopt any and every text of a treaty.

82. Mr. USHAKOV said he was in favour of retaining article 58, which derived logically from the preceding article. Article 57 specified the various sources of the powers of a permanent observer, who was authorized not only to negotiate with the organization, but also to adopt the text of a treaty. True, a permanent observer was seldom called upon in practice both to negotiate and to adopt the text of a treaty, but it had happened.

83. Mr. BARTOŠ said that the credentials mentioned in article 57 had no direct bearing on the situation dealt with in article 58, since full powers to represent a State in the conclusion of treaties might be given to a person other than the head of an observer mission. A career diplomat was very often specially appointed for the purpose.

84. Mr. CASTRÉN said that he would hesitate to discard article 58; no government or organization had suggested its deletion. As Mr. Ushakov had said, the article was not likely to be much applied in practice, but it could be useful in certain cases. In any event, its deletion would have to be explained in the commentary.

85. Mr. RAMANGASOAVINA said he agreed with Mr. Ushakov and Mr. Castrén. As the Commission had expressly stated that a permanent observer mission was entitled to negotiate with an organization and to represent the sending State at it, the inclusion of a provision such as article 58 was only logical.

86. Mr. AGO said that when the credentials of a permanent observer were issued by the Head of State or the

¹⁴ See 1091st meeting, para. 15.

¹⁵ For resumption of the discussion see 1118th meeting, para. 47.

¹⁶ See 1091st meeting, para. 56 *et seq.*

Minister for Foreign Affairs, it could generally be assumed that he had full powers to conclude treaties. It would be unwise, however, to regard that as an automatic presumption. There could be no harm in deleting article 58, because an observer could always produce his full powers, if he had them.

87. Mr. ELIAS said that article 58 had an organic link with article 57. Consequently, unless the Commission changed its approach to article 57, he would not recommend the deletion of article 58. He urged that the Drafting Committee should retain the substance of article 58, but try to shorten the text.

88. Sir Humphrey WALDOCK said that the deletion of article 58 would not be satisfactory unless the similar provision for permanent missions was also deleted. In the light of the present structure of the draft, it would be strange if the provisions of article 58 were not included.

89. So far as the law of treaties was concerned, the provision on full powers to represent the State in the conclusion of treaties was as necessary for permanent observer missions as it was for permanent missions; its absence would leave a gap in Part III.

90. As to the substance of the provision, it could be argued that the rule in paragraph 1 should be reserved and that the presumption should be that the permanent observer had to produce full powers in order to represent his State for the purpose of adopting the text of a treaty between that State and the international organization. His own preference, was for the rule stated in the present text.

91. Mr. USTOR said he agreed with the previous speaker.

92. The CHAIRMAN suggested that article 58 be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*¹⁷

The meeting rose at 1 p.m.

¹⁷ For resumption of the discussion see 1119th meeting, para. 5.

1104th MEETING

Friday, 21 May 1971, at 10.5 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Baroš, Mr. Castrén, Mr. Elias, Mr. Ramangasoavina, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 6; A/CN.4/241 and Add.1 to 4; A/CN.4/L.162/Rev.1; A/CN.4/L.166)

[Item 1 of the agenda]

(continued)

ARTICLE 59

1. The CHAIRMAN invited the Commission to consider article 59, on the composition of the permanent observer mission, to which the Special Rapporteur had proposed no change.

2.

Article 59

Composition of the permanent observer mission

1. In addition to the permanent observer, a permanent observer mission may include members of the diplomatic staff, the administrative and technical staff and the service staff.

2. When members of a permanent diplomatic mission, a consular post or a permanent mission, in the host State, are included in a permanent observer mission, their privileges and immunities as members of their respective missions or consular post shall not be affected.

3. Mr. ROSENNE said that the provisions of paragraph 2 were out of place in article 59. He suggested that the Drafting Committee should consider making them general provisions applicable to the whole draft; they might perhaps be amalgamated with the provisions of article 9, paragraph 4.¹

4. Mr. SETTE CÂMARA said that the suggestion made by one government that article 59 should include a provision to the effect that the "deputy or associate permanent observer" should enjoy the status of permanent observer when the latter was absent (A/CN.4/240, section B.2) was not consistent with the spirit of the draft or with the relevant provisions of article 51, on the use of terms. The question of substitution was dealt with in article 62, on the *chargé d'affaires*, and there was no reason to deal with it in article 59.

5. Paragraph 2 corresponded to article 9, paragraph 2, of the 1969 Convention on Special Missions,² except that it lacked the concluding words "in addition to the privileges and immunities accorded by the present Convention". Hence diplomatic or consular officers included in a permanent observer mission would have the same privileges and immunities as they had had before joining that mission; that had prompted one government to express itself "satisfied as to the recognition of the differences in privileges and immunities enjoyed by different types of delegates" (*ibid.*).

6. He did not suggest that observers should be placed on the same footing as permanent representatives, but

¹ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 202.

² General Assembly resolution 2530 (XXIV), Annex.