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Summary record of the 1043rd meeting

Topic:
Representation of States in their relations with international organizations

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until the end of the session, so he hoped that the Drafting Committee would be appointed early.

The meeting rose at 5.10 p.m.

1043rd MEETING

Tuesday, 5 May 1970, at 10.10 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/227)

[Item 2 of the agenda]

1. The CHAIRMAN invited the Special Rapporteur to introduce his fifth report.
2. Mr. EL-ERIAN (Special Rapporteur) said that his fifth report, contained in document A/CN.4/227, and the addenda to follow, had been prepared in accordance with the Commission's declared intention at its previous session "to consider at its twenty-second session draft articles on permanent observers for non-member States and on delegations to sessions of organs of international organizations and to conferences convened by such organizations".¹
3. At its twentieth session, the Commission had adopted twenty-one articles forming Part I (General Provisions) and section 1 (Permanent missions in general) of Part II (Permanent missions to international organizations). At its twenty-first session, the Commission had adopted a further twenty-nine articles forming section 2 (Facilities, privileges and immunities) of Part II, thus completing its first reading of all the articles on permanent missions.
4. The twenty-one articles adopted at the twentieth session had already been submitted to the governments of States Members of the United Nations and comments had so far been received from ten governments (A/CN.4/221 and Add.1).
5. At its last session, the Commission had decided that the draft articles should also be submitted to the specialized agencies and to the Swiss Government. Since the specialized agencies had submitted a good deal of material for the preparation of the draft articles, it was only

logical to seek their views. The Swiss Government's comments would also be useful and were necessary, since that Government was host to the Geneva Office of the United Nations and to a large number of specialized agencies. The earlier articles had also been submitted to the specialized agencies and to the Swiss Government, but only belatedly, so that the comments so far received on them came only from States Members of the United Nations.

6. He would clearly be unable to complete his work on the first fifty articles until comments has been received from governments and from the specialized agencies. In respect of the articles to be considered at the present session, it would probably be necessary to depart from the practice of giving governments two years in which to submit their comments, otherwise the Commission would not be able to adopt those articles on second reading by the end of 1971.

7. Introducing Chapter II of his fifth report (A/CN.4/227), dealing with Part III (Permanent observers of non-member States to international organizations), he said he had prefaced the draft articles on permanent observers with an introduction containing a summary of the Commission's discussions at its twenty-first session. The decision to include a section on permanent observers had been reached without much difficulty, but opinion had been divided on whether articles on delegations to conferences should also be included. At the 993rd meeting the Commission had decided to authorize him as Special Rapporteur "to draft a chapter on the legal status of delegations of States to international conferences convened by international organizations, on the understanding that the Commission would take no decision of substance on the matter until it had examined that chapter".²

8. The introduction also gave a summary of the discussion in the Sixth Committee, at the twenty-fourth session of the General Assembly, on relations between States and international organizations. The views expressed there had been very similar to those expressed in the Commission; a number of representatives had had reservations about including articles on delegations to conferences.

9. He had also included a summary (paras. 9 to 13) of the discussion in the Sixth Committee, at the same session, on the draft convention on special missions. During that discussion, there had been an important development: the United Kingdom delegation had proposed that an article on conferences should be included in the draft convention. The Expert Consultant, Mr. Bartoš, had favoured that course, but had pointed out that, if it was decided to include rules relating to international conferences in the draft convention on representatives of States to international organizations, it should be made clear that the article proposed by the United Kingdom, if adopted, must be considered as provisional and applicable only until such time as that draft convention was adopted.

¹ See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10*, para. 17.

² See *Yearbook of the International Law Commission, 1969*, vol. I, p. 13, para. 26.

10. At first, he had been opposed to the United Kingdom proposal on theoretical grounds: conferences represented the *ad hoc* aspect of multilateral diplomacy and a provision on that subject would be out of place in a convention dealing with special missions, which was concerned with the *ad hoc* aspect of bilateral diplomacy. On reflection, however, he had come round to the view that there were practical arguments in favour of including a provision on conferences in the draft convention on special missions, pending the adoption of a convention on representatives of States to international organizations.

11. The United Kingdom delegation had withdrawn its proposal, on condition that the Sixth Committee's report would include a statement recognizing that the question of the legal status, privileges and immunities of members of delegations to international conferences "constituted a gap in the law relating to national representation which remained to be filled", and noting "that the International Law Commission had discussed, and would discuss again at its next session, the general question of further work on the status, privileges and immunities of delegations to international conferences".³

12. Clearly, the General Assembly now expected the International Law Commission to take up the matter of delegations to conferences.

13. The draft articles in his report included an article 0 (Use of terms) defining the terms "permanent observer mission" and "permanent observer"; it formed a necessary complement to the article 1 adopted at the twentieth session, which dealt only with permanent missions.

14. Articles 51 to 61 constituted Part III of his draft and contained provisions on permanent observers. He had added notes on assignment to two or more international organizations or to functions unrelated to permanent missions, and on the question of credentials in relation to permanent observers.

15. In a section entitled "General comments" he had traced the growth of the institution of permanent observers. That institution was a new one, on which very little material existed. It was significant that in the Secretariat study on the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities⁴ only one-and-a-half pages out of about 170 dealt with the question of permanent observers.

16. It had been pointed out by the Legal Counsel that permanent observers were "not entitled to diplomatic privileges" under existing agreements and that "whatever facilities they may be given in the United States are merely gestures of courtesy by the United States authorities".⁵

17. The purpose of the draft articles in his fifth report was to provide a legal definition of the institution of

permanent observers, so that there would be a legal basis for the privileges, immunities and facilities extended to the members of permanent observer missions.

18. The institution of observers should also be of some help in dealing with the difficulties of very small States, which might not wish to become members of the United Nations. It would be recalled that those difficulties had been discussed in the Security Council, which had appointed a committee of experts on the subject.

19. The CHAIRMAN said that members might wish to comment on some of the general problems raised by the Special Rapporteur. He drew attention to paragraph 93 of the Commission's report on its twenty-first session⁶.

20. Mr. EL-ERIAN (Special Rapporteur) said that that paragraph dealt with priorities and did not in any way conflict with paragraph 17 of the same report. The Commission had completed its first reading of the fifty articles on permanent missions. At the present session it could adopt the articles on permanent observers (Part III) and on delegations to conferences (Part IV). The second reading of Parts III and IV raised a problem, however, because of the need to obtain comments from governments.

21. The CHAIRMAN said that the Commission would have to consider whether it should abide by the practice of allowing governments two years in which to submit their comments.

22. Mr. ROSENNE said it would be premature for the Commission to discuss that question, because the answer would to some extent depend on the progress made at the present session. Moreover, the answer did not depend on the Commission alone; it also depended on the calendar and the work of the Secretariat. For example, the Commission's twentieth session had ended on 2 August 1968, but its draft had not been submitted to governments until 14 October 1968, in the middle of the General Assembly. Hence it had been only in January 1969 that governments had begun to consider the draft.

23. Mr. TSURUOKA said he agreed with the Special Rapporteur that to ensure the unity of the whole draft of articles, it was essential to have the same membership of the Commission and the same Special Rapporteur to work on Parts III and IV and prepare the final text.

24. Mr. USHAKOV said he had no doubt that the Commission would easily be able to complete the first reading of Parts III and IV of the draft of articles at the present session. Whether it would be able, before the expiry of its term of office, to receive the comments of governments on Parts III and IV and then revise the final draft as a whole, was therefore a question of the organization of future work. The Commission could settle that question at the end of the present session, and could request the General Assembly for authority either to prolong its twenty-third session, though it might have

³ See *Official Records of the General Assembly, twenty-fourth Session, Annexes*, agenda item 87, document A/7799, para. 178.

⁴ See *Yearbook of the International Law Commission, 1967*, vol. II, p. 154.

⁵ *Ibid.*, p. 190, para. 169.

⁶ *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10.*

to delay the opening date to leave governments time to submit their comments, or to hold an additional session.

25. Mr. MOVCHAN (Secretary to the Commission) said that in resolution 2501 (XXIV)⁷ the General Assembly had taken note with approval of the programme of future work set out by the Commission in its report on its twenty-first session⁸ and, in operative paragraph 4 (a), had recommended that the Commission should “continue its work on relations between States and international organizations, with a view to completing in 1971 its draft articles on representatives of States to international organizations”.

26. With regard to the submission of the drafts to governments, he pointed out that the Commission’s twentieth session had ended much later than usual; the present session was due to end on 10 July 1970 and he hoped that any draft articles adopted would reach governments by the end of August. The Secretariat would not fail to draw the attention of Member States to any decision of the Commission on the question of finalizing its work on the topic.

27. The Secretariat had taken all the necessary steps to prepare material in anticipation of a possible decision to extend the 1971 session or to hold a special session in order to enable the Commission to complete its work on the topic with the present membership.

28. Mr. AGO said that there was both a question of substance and a question of organization. With regard to substance, the different parts of the draft belonged together and he did not think they could be submitted to governments piecemeal in order to save time. As to organization, it would be better to complete the examination of the draft on first reading without delay, and then decide what was to be done about the rest of the work.

29. Mr. NAGENDRA SINGH said that some way should be sought of expediting the process of adopting the draft articles. In the present instance, the Commission must consider abandoning its practice of giving governments two years for their comments. There seemed to be no important argument against giving governments only one year, or even six months, in which to make their observations, since the text would ultimately be submitted to a conference of government representatives. In addition, the Secretariat should be asked to do its utmost to expedite its side of the procedure, which was essential.

30. Sir Humphrey WALDOCK pointed out that, under article 16 (h) of its Statute, the Commission was only bound to allow governments “a reasonable time” in which to submit their comments. It had been the practice of the Commission—and it was a good practice—to allow governments a fairly long period for their comments; but it would not be the first time that the process had been accelerated.

31. The Commission should do its best to complete its work on the topic with its present membership, in order to be able to deal in the near future with subjects such as State responsibility, on which the General Assembly was pressing it to make progress.

32. The CHAIRMAN said that those matters would be discussed later in the session. He invited the Commission to consider the Special Rapporteur’s fifth report on relations between States and international organizations (A/CN.4/227) article by article, beginning with article 0.

PART III: PERMANENT OBSERVERS OF NON-MEMBER STATES TO INTERNATIONAL ORGANIZATIONS

Article 0

Use of terms

For the purpose of the present articles:

(a) A “permanent observer mission” is a mission of representative and permanent character sent by a State non-member of an international organization to the Organization.

(b) The “permanent observer” is the person charged by the sending State with the duty of acting as the head of a permanent observer mission.

33. Mr. ROSENNE suggested that it might perhaps be premature to discuss article 0 in detail, and that the Commission should follow its usual practice by leaving it to the Drafting Committee to propose definitions for the terms it thought required defining. The article seemed to him rather over-simplified: the definition in sub-paragraph (a), for example, was modelled too closely on sub-paragraph (d) of article 1.⁹ The Drafting Committee should give it careful consideration.

34. Mr. CASTRÉN observed that the Special Rapporteur had had a particularly difficult task, since there were no written rules on the topic he was dealing with and the practice was little developed. The Special Rapporteur had had to take a position on three main questions of principle. Should States which were not members of an international organization be granted the right freely to establish permanent observer missions to that organization? What should be the functions of such missions? And should such missions and their members be granted facilities, privileges and immunities similar to those enjoyed by the permanent missions of member States.

35. With regard to article 0, on the use of terms, he shared Mr. Rosenne’s view that the expressions defined were perhaps rather over-simplified. In sub-paragraph (a) of the article it would be preferable to refer to the official character of the permanent observer mission, rather than to its representative character; for in his opinion the main function of that type of mission was to keep its government informed of the activities of the international organization and to do liaison work, so that one could not really speak of representation. Moreover, in view of the special nature of the functions of a permanent

⁷ Op. cit., *Supplement No. 30*, p. 97.

⁸ Op. cit., *Supplement No. 10*, paras. 92 and 93.

⁹ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 196.

observer mission, he would prefer sub-paragraph (a) to refer to those functions; wording similar to that of article 7¹⁰ could be used for the reference.

36. Mr. KEARNEY said that, like Mr. Castrén, he had doubts about the representative character of a permanent observer mission. Article 2 stated that: "The present articles apply to representatives of States to international organizations of universal character". Since the status of an observer seemed to be of a different kind, he suggested that the Drafting Committee should consider replacing the word "representative" in article 0, sub-paragraph (a), by some other word.

37. Mr. REUTER said it was difficult to say much about article 0, since the question was either one for the Drafting Committee or one on which the Commission could not pronounce until it had considered the subsequent articles. Apart from that, he shared the views of Mr. Castrén and Mr. Kearney. He nevertheless wished to draw attention to a drafting difficulty which was particularly noticeable in the French text of article 0: sub-paragraph (a) of that text referred to a mission of "*observateurs permanents*" in the plural, but it was obvious that if there were several permanent observers, the "permanent observer" could not be defined in sub-paragraph (b) as the head of the mission, for that would mean that every mission of that kind had several heads. The expression must therefore be changed in the French text.

38. Mr. AGO said he must warn the Commission of the danger of considering the draft too quickly; for that reason he only wished to make some very general remarks at that stage. First of all, he thought that the Commission might perhaps be attaching too much importance to permanent observer missions, to the detriment of the balance of the draft articles as a whole; it was not easy to express a definite opinion on the question, particularly since it was becoming apparent that the term "permanent observer mission", like the term "special mission", covered a number of quite different things. For example, the "micro-States", which were not large enough and did not have the means to participate as members in the life of international organizations, nevertheless had to make themselves heard in those bodies. Then there were other States which were not members of international organizations because of their special situations, for instance the divided States. Lastly, there were some very important States, such as the one which was host to the Geneva Office of the United Nations, which, because of their special situation, did not consider that they could participate in certain international organizations. He therefore agreed with the Special Rapporteur that the status of permanent observer missions should be clarified.

39. As to the representative character of those missions, he also shared the view of the Special Rapporteur, who had referred to their bilateral function: it was their function to represent the State which had sent them vis-

à-vis the international organization—a function which should not be confused with that of the representatives of States within international organizations and their organs; the latter function, unlike the former, belonged to multilateral diplomacy. He was glad that the term "mission" had been used in sub-paragraph (a), for that helped to unify a terminology which had hitherto lacked clarity. Nevertheless, he agreed with Mr. Reuter's views on sub-paragraph (b) and considered that, in order to avoid all confusion, it would be advisable to refer to the "head of the mission"; for the terminology must be unified, even if it did not correspond to State practice, which in any case was not uniform. Lastly, he suggested that the term "permanent observer mission" should be replaced by the more appropriate term "permanent mission of observers".

40. Mr. BARTOŠ said he was not sure that permanent observer missions could always be said to have a representative character; there had been cases in which member States had reduced their permanent missions to the status of observer missions, without withdrawing from an international organization. Hence he could not accept the wording proposed by the Special Rapporteur without some explanations. He shared Mr. Castrén's views on sub-paragraph (b); moreover, permanent observer missions sometimes included several officials with specific functions. Mr. Kearney's suggestion should therefore be adopted.

41. Mr. USTOR said that before drafting the final text of article 0, it would be necessary to consider it in conjunction with article 1 and to define the notion of representatives of States to international organizations. Article 1, as at present drafted, referred only to permanent representatives, but in his view it would be desirable to use some such language as: "Representatives of States to international organizations include the following: (1) permanent representatives, and (2) permanent observers". In his opinion, permanent observers necessarily had a representative character, since they were called upon to receive and answer communications from the international organization and to make statements on behalf of their governments. Provision should also be made in article 1, under the same heading, for the additional categories of (3) temporary representatives and (4) temporary observers to organs of international organizations and to international conferences. If article 1 was prepared along those lines, it would be easier to determine, on re-reading the draft articles as a whole, which rules applied to all categories of representatives.

42. Mr. NAGENDRA SINGH said that since it was an undeniable fact that permanent observers existed, it would be impossible for the Commission not to include some reference to them in the draft articles. It was equally undeniable that permanent observers possessed a representative character, and were not mere liaison officers. He agreed with Mr. Ustor, therefore, that some stress should be laid on their representative character, although he also agreed with Mr. Kearney that the Drafting Committee might find some more appropriate term than "representative". It was essential to distinguish

¹⁰ See *Yearbook of the International Law Commission, 1968*, vol. II.

the permanent missions of Member States from the observer missions of non-members; the Drafting Committee should bring out that distinction.

43. Mr. USHAKOV said he shared the Special Rapporteur's views on the importance that should be attached to the institution of permanent observer missions, for two main reasons. In the first place, the institution was developing and would develop further in future. Of course, the articles applied only to international organizations of a universal character, but, as was made clear in article 2, there was nothing to prevent them from applying to other international organizations which made wider use of the institution than did the organizations of a universal character. Secondly, there were no written rules on the matter, and that fact enhanced the importance of the series of articles on permanent observer missions, which seemed to be useful and necessary.

44. With regard to article 0, he drew the Commission's attention to paragraph 14 of its report on the work of its twenty-first session.¹¹ In his opinion, there was a close connexion between the definition of the term "permanent observer" and that of the term "permanent representative"; the terminology would obviously have to be standardized, taking into account the definition which would appear in article 1 of the draft. Like Mr. Ustor, he thought that a unified terminology should be adopted for the whole set of draft articles. With regard to the use of the term "*mission d'observateurs permanents*", some confusion had been created by the fact that the adjective "permanent" qualified, not the mission, but the observers themselves. In his opinion, it was the mission that should be described as permanent, and it might therefore be better to refer to "permanent missions of observers" or "permanent missions of observation" in article 0. The question was of considerable importance, for the articles on the legal status of permanent observers depended on the terminology used. He also endorsed the remarks made by Mr. Reuter and Mr. Rosenne on the drafting of article 0. The representative character of permanent observer missions could not be questioned, for that character was conferred on them by the very fact that they were sent by States.

45. Mr. RAMANGASOAVINA said that the Special Rapporteur had been confronted by the particularly difficult task of defining the legal status of representation which, by definition, was unofficial. A perusal of article 0 showed that the ambiguity of certain terms was due precisely to that difficulty. Thus, in sub-paragraph (a) of the article, confusion was caused by the use of the words "representative . . . character", which had a very specific meaning; he thought that that confusion could be avoided by referring only to the "permanent character" of the mission, without mentioning its official character, which was implicit in the mere fact that it had been sent by a State. He agreed with Mr. Reuter's remarks on sub-paragraph (b), but thought it became comprehensible if read in conjunction with article 55 of the draft. It seemed to him, therefore, that there was some justifi-

cation for the wording proposed by the Special Rapporteur.

46. Mr. ALBÓNICO said he agreed with Mr. Rosenne that it was too soon for the Commission to discuss article 0 in detail. He was inclined to think that a permanent observer had a certain representative character, but the question of his powers and functions vis-à-vis the international organization was a different matter. Article 52, paragraph 1, stated that "The principal function of a permanent observer mission is to ensure the necessary liaison between the sending State and the Organization", while paragraph 2 stated that such missions might also perform "other functions of permanent missions as set forth in article 7". In his opinion, only the functions referred to in sub-paragraphs (b) and (d) of article 7 were functions of permanent observer missions. Similarly, with regard to the facilities, privileges and immunities of permanent observer missions referred to in article 60, he did not consider it possible to grant such missions the same rights as permanent missions.

The meeting rose at 12.55 p.m.

1044th MEETING

Wednesday, 6 May 1970, at 10.15 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Albónico, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldoock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/227)

[Item 2 of the agenda]

(continued)

Article 0 (Use of terms) (continued)

1. The CHAIRMAN invited the Commission to continue consideration of article 0 in the Special Rapporteur's fifth report (A/CN.4/227).

2. Sir Humphrey WALDOOCK said he agreed with Mr. Ushakov that the fact that permanent observer missions did not fulfil all the functions of a permanent mission did not mean that they were not representative in character. The difference was that the representative character of permanent observer missions as presented by the Special Rapporteur was unilateral, since they were invested with representative character only by the sending State, whereas that of permanent missions was

¹¹ Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10.