

Document:-
A/CN.4/SR.1049

Summary record of the 1049th meeting

Topic:
Representation of States in their relations with international organizations

Extract from the Yearbook of the International Law Commission:-
1970, vol. I

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1049th MEETING

Thursday, 14 May 1970, at 10.10 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, 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 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]

(continued)

ARTICLE 52 (Functions of permanent observer missions) (continued)

1. The CHAIRMAN invited the Commission to continue consideration of article 52 (A/CN.4/227).
2. Mr. USTOR said he could accept the underlying idea of article 52 which, as he understood it, was that the functions of a permanent observer mission were essentially the same as those of a permanent mission.
3. With regard to the function of representation, difficulties had also arisen in connexion with permanent missions when the Commission had discussed article 7 (formerly article 6).¹ It had been pointed out at that time that some States made their permanent missions responsible for all functions, while others only entrusted their missions with routine duties and appointed special representatives to the organs of the organization; those representatives were sometimes permanent. The problem had been solved by adopting the language used in subparagraph (a) of article 7,² on the understanding that it would be read together with article 13.
4. Article 13 provided that a member State could specify, in the credentials submitted, that its permanent representative would represent it in one or more organs of the organization. In addition, a presumption was established in paragraph 2 that the permanent representative could represent the member State in the organs for which there were no special requirements regarding representation. Where such requirements existed, special credentials had to be produced. The function of representation specified in article 7 (a) was automatic in those organs for which there were no special requirements.
5. In the case of permanent observer missions, perhaps the largest body of practice concerned the observer mis-

sion of the Federal Republic of Germany at United Nations Headquarters. His impression was that that mission had very nearly the same representative functions vis-à-vis the Secretariat as a permanent mission. The same applied to the observer mission of the Holy See at Geneva.

6. The head of a permanent observer mission carried on negotiations, made representations and, on occasion, contacted the highest officials of the Secretariat. When carrying out those duties, he represented the sending State in precisely the same way as a permanent representative.

7. Representation in the organs of an organization was subject to the rules of the organization, just as it was in the case of permanent representatives. The rights and faculties of observers were also governed by the requirements laid down in those rules. It was difficult to see any difference between permanent observer missions and permanent missions in that respect. When it came to representation on solemn occasions, the heads of permanent observer missions were placed on the same footing as the heads of permanent missions.

8. It seemed to him that the only differences were really drafting matters. For example, the word "necessary" might not be needed before the word "liaison" in article 52. As to carrying on negotiations, they could take place either with the organization or with another State "in the organization". He felt sure that some language could be found to make it clear that the functions of permanent observer missions did not differ materially from those of permanent missions.

9. The CHAIRMAN, speaking as a member of the Commission, said that there appeared to be a wide measure of agreement that, in paragraph 1, the adjective "principal", before "function", and the word "necessary", before "liaison", should be omitted. There was also general agreement on the desirability of merging the two paragraphs of the article.

10. With regard to the question of representation, he agreed that the representative character of a permanent observer mission was slightly different from that of a permanent mission. The duties of a permanent observer were more limited than those of a permanent representative: he was not called upon to act generally as a representative unless there was a special agreement to that effect between the sending State and the organization.

11. Members should consider whether the term "liaison" sufficiently expressed the main purpose of an observer mission.

12. When the Commission had discussed article 1, on the use of terms, it had been agreed that some kind of mutuality of consent should exist between the sending State and the organization. The Drafting Committee should be asked to find some form of words that would introduce that notion into the definition of a "permanent observer mission", for that would dispose of much of the controversy which had arisen about the representative character of permanent observer missions.

13. Consideration should also be given to defining the

¹ See *Yearbook of the International Law Commission, 1968*, vol. I, pp. 42-50 and 214-216.

² *Op. cit.*, 1968, vol. II, p. 200.

term "sending State" so as to make a distinction between permanent observer missions and permanent missions.

14. The Drafting Committee should take account of all the views expressed and consider recasting article 52 in a single paragraph, which would not unduly stress the representative element and would indicate that the basic function of a permanent observer mission was to watch over the interests of the sending State relating to the organization.

15. Mr. CASTAÑEDA said he was afraid he could not agree with some members of the Commission on the extent and nature of the functions of permanent observers. Moreover, the other members of the Commission were not in agreement as to which of the functions listed in article 7 was the most important in the case of permanent observer missions. Nevertheless, article 52 should state, not the principal function of those missions in the sense of the most important one, but the function which by its nature was their special sphere of competence. In his opinion, that function was observing and ascertaining activities and developments in the organization, so that was the one that could be stressed.

16. With regard to the other functions of permanent observer missions, it would be wrong to assimilate them to the functions of the permanent missions of member States; for although the function of representation was performed by means of similar formal and manifest acts, its content and character differed radically in the two cases. In the sense used in article 7, the representation of a member State in an organization meant chiefly representation in the organs of that organization; and since the activities of the organization were nearly all conducted through its organs, if the permanent observer was not accredited to them, there would be very little left of his representative function and it need not be mentioned in an article. The same applied to the functions of negotiation and co-operation, which only concerned related questions. As the Special Rapporteur had stressed, the function which indicated the real character of permanent observer missions was that of providing the necessary liaison, and it was that function which should be stressed, together with the function of observing and ascertaining activities and developments in the organization.

17. Mr. ROSENNE said he would like to have some information on the position with regard to the credentials of the representative of a non-member State to an organ of the United Nations for which special credentials were required. Had any particular form of credentials been required when Jordan had participated without the right to vote in certain Security Council discussions before 1956, when Jordan had not then been a member of the United Nations? To obtain a reply to that question, it might be necessary to consult United Nations Headquarters.

18. Mr. AGO said he did not entirely agree with Mr. Castañeda on the representative character of permanent observer missions. Either a mission had a representative character or it did not, but it could not have that character to a greater or lesser degree. An observer

mission sent to an organization by a non-member State necessarily had a representative character. Moreover, it could not be said that the essential element of the representative character of the permanent mission of a member State was that it represented the sending State, not in the organization, but in its organs. The head of a permanent mission sent by a Member State did not himself automatically represent the sending State in organs of the organization. The best proof of that was that, when considering the draft articles relating to permanent missions, the Commission had deemed it necessary to provide in a separate article—article 13—for accreditation to organs of the organization, and even to establish a presumption of such accreditation in cases where there was no formal accreditation. Thus there was a difference between representation in the organization as such, which involved a bilateral relationship between two subjects of international law, and representation in organs of the organization, which involved multilateral relationships between States. He saw no objection to omitting to state that the permanent observer mission of a non-member State represented that State in the organization, since that was self-evident, but then the reference to that function of the permanent missions of member States would have to be deleted from article 7, so as to avoid misunderstandings.

19. Mr. YASSEEN said he did not share Mr. Castañeda's opinion either. Representation was the essential function of a permanent observer mission. A permanent observer must necessarily represent the State by which he was sent; otherwise, on whose behalf was he acting as an observer? It was only the scope, not the nature of the representation that was different in the two cases. Furthermore, representation as such should not be confused with accreditation, that was to say, the credentials for representation, which did not create the representation, but were evidence of it.

20. Mr. BARTOŠ observed that the practice of presumed representation existed, particularly in the Security Council, where representatives were generally required to submit proof of their powers in advance, but where in certain emergencies persons having the status of representatives or observers accredited to the Organization had sometimes been authorized to take part in the debates, subject to subsequent confirmation of their credentials. The Special Rapporteur should therefore be asked to reflect on that question and submit appropriate wording to the Drafting Committee.

21. Mr. TSURUOKA said that if it were stated that observers represented the sending State in the organization and that their functions were similar in scope to those of permanent representatives, the only difference between observers and permanent representatives would be that permanent representatives were sent by member States and observers by non-member States. But that was not the case. It should therefore be decided whether the Commission intended the draft articles to confer a specific status on permanent observers or whether it wished to leave that question to be settled by the organization.

22. Some members had objected to the term "perma-

ment observers” and proposed the use of the term “permanent mission of observers”, on the ground that any given observer was not permanently on the spot and only the mission was permanent. As in the case of “permanent representatives” and “permanent missions” of member States, however, the word “permanent” should be understood as the opposite of “special”, so it was not anomalous to refer to permanent observers.

23. Mr. CASTAÑEDA, replying to the objections raised by Mr. Ago and Mr. Yasseen, said he quite understood that an observer represented the State which sent him and that there was a theoretical difference between general representation in the organization and representation in its organs. But that was a theoretical concept. Article 52 was not concerned with the question of recognizing or not recognizing the representative character of permanent observer missions, which was settled by article 0, but with stressing some of their functions in order to distinguish them from the permanent missions of member States, and with ascertaining which of the functions listed in article 7 were normal, regular and permanent functions of an observer mission. In his view, representation was not such a function, since, despite the representative character conferred on the observer by his official status, it amounted to very little, because the observer was not accredited to the organs of the organization. Accordingly, as in reality the content of the function was less than that of the representation function exercised by the permanent missions of member States, there was no justification for giving it prominence.

24. Mr. KEARNEY maintained that it was not enough to say that an observer was a representative of the sending State; the problem was to determine what functions he performed in that capacity. Consideration should be given to the inclusion of an article stating what an observer was entitled to do in so far as the organization was concerned—such functions as attending meetings, both public and private, and speaking at those meetings. It would then be possible to decide what privileges and immunities should be granted to permanent observers, since clearly the privileges and immunities they needed depended upon the functions they performed.

25. Mr. ALBÓNICO pointed out that the question of the representative character of permanent observer missions had already been dealt with in article 0 (Use of terms) (A/CN.4/227), which described a “permanent observer mission” as “a mission of representative and permanent character”. No one denied that a permanent observer represented the sending State.

26. The real problem arose in connexion with the functions performed by the observer. One of his main functions was that of ascertaining activities and developments in the organization and reporting thereon to the government of the sending State; there was no element of representation in the performance of that function. But the function of maintaining liaison with the organization and carrying on negotiations did contain such an element. It was important to clarify that issue because the question of the privileges and immunities of observers was closely

connected with the representative character of the functions they performed. The representative element in the permanent observer’s functions should be neither exaggerated nor minimized; it should be borne in mind that the essential functions of the observer were observation and liaison.

27. Mr. USTOR said it was quite true that if a permanent observer did not represent the sending State in the organs of the organization he would have little to do, but the same was true of a permanent representative. The legal situation of the two was exactly the same; the only difference was in the extent of the activities performed.

28. Sir Humphrey WALDOCK said that the main purpose of article 52 was to define the minimum functions attached to the notion of a permanent observer mission. There would be a danger of confusion if an attempt were made to deal with all the possible situations that could arise.

29. Some of the difficulty was caused by the fact that the draft articles had been couched in terms which seemed to suggest that the appointment of a permanent observer mission was wholly unilateral. In fact, there was an element of mutual consent, in that the observer appointed by the sending State was accepted by the organization. That being so, the legitimate purpose of article 52 was to say what minimum functions would be attributed to a permanent observer mission once it had been accepted by the organization. It was a problem that could be solved either by means of a synthetic formula or by adapting the provisions of article 7, without attempting to solve all possible problems.

30. Mr. MOVCHAN (Secretary to the Commission) said he wished to make some preliminary remarks on the question raised regarding credentials. That question was dealt with in General Assembly resolution 257 A (III) of 3 December 1948. Under that resolution, the mere fact of the establishment of a permanent mission or the appointment of a permanent representative did not dispose of the problem of representation in the various organs of the United Nations. Operative paragraph 4 recommended that “Member States desiring their permanent representatives to represent them on one or more of the organs of the United Nations should specify the organs in the credentials transmitted to the Secretary-General”. The setting up of a permanent mission at United Nations Headquarters served, as stated in the standard form of credentials, “to maintain necessary contact with the Secretariat of the Organization”.

31. The practice in the United Nations was that many permanent representatives produced credentials which authorized them to represent the Member States concerned in all organs of the Organization. In some cases, however, the credentials specified the particular organs in which the representations were authorized to appear. A problem had arisen in connexion with the 1969 session of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. One of the States members of that Committee had been represented by a permanent representa-

tive whose credentials specified the organs in which he was entitled to appear; special credentials had therefore been requested for that representative to enable him to participate in the work of the Special Committee.

32. With regard to the Security Council, it was only the Head of Government or the Minister for Foreign Affairs of each member of the Council who was entitled to sit in it without submitting credentials. According to rule 14 of the Provisional Rules of Procedure of the Security Council "Any Member of the United Nations not a member of the Security Council and any State not a Member of the United Nations, if invited to participate in a meeting or meetings of the Security Council, shall submit credentials for the representative appointed by it for this purpose." If any doubt arose with regard to the credentials of a representative of a non-member State, the practice was to allow him to continue to attend the proceedings until the Security Council decided the matter.

33. Mr. ROSENNE pointed out that resolution 257 A (III) related to permanent missions of Member States, whereas the present discussion related to permanent observers of non-member States. It was to be noted that Part III of the draft did not contain any provision corresponding to article 13 in Part II.

34. Mr. EL-ERIAN (Special Rapporteur) summing up the discussion, said that article 52 had given rise to two main difficulties: one was the concept of a "principal" function of a permanent observer mission and the other related to the representative function of the permanent observer.

35. At the twentieth session, when the Commission had discussed the development of the institution of permanent missions, he had pointed out that there had been no permanent representatives at the first two sessions of the General Assembly in 1946 and 1947.³ Subsequently, with the increasing number of meetings, the institution of permanent missions had emerged; that development had occurred on a purely practical basis. It was therefore in the light of the development of the practice with regard to permanent observer missions that the problems raised by article 52 should be considered.

36. The use of the adjective "principal" in paragraph 1 had given rise to criticism on the ground that it was not possible to distinguish between the principal function and lesser functions. It had also been argued that no such distinction had been made in the case of permanent representatives and that, consequently, it should not be made in the case of permanent observers either. There was, however, an essential difference between permanent representatives and permanent observers: the function of a permanent representative was to represent, while the function of a permanent observer was to observe.

37. In the light of those remarks, he believed that it was not inappropriate to speak of a "principal" function, that was to say the function of maintaining liaison with the organization. It was simply a statement of the fact

that a permanent observer's basic function was to observe the activities of the organization.

38. The function of observation included maintaining the necessary liaison between the sending State and the organization, and ascertaining activities and developments in the organization and reporting thereon to the government of the sending State. The purpose was to establish an association between the sending State and the organization. Beyond that, any other function that might be exercised by a permanent observer mission was purely incidental.

39. The starting point should be that the functions of a permanent observer mission could not be assimilated to those of a permanent mission. As far as legal status was concerned, a permanent observer mission had the official capacity to represent the sending State. But since the State in question was not a member of the organization, the permanent observer mission would not have to represent it in the organs of the organization.

40. The Drafting Committee should accordingly be asked to draw a careful distinction between the representative character of a permanent observer mission and the function of representation in the organs of the organization. In that connexion, he drew attention to the residuary rule in article 13, paragraph 2, the purpose of which, as stated in paragraph (4) of the commentary to that article, was "to develop the practice in favour of granting to the permanent representative general competence to represent his country in the different organs of the organizations to which he is accredited".⁴ In the example given by the Secretary, the permanent representative who had wished to sit in the Special Committee had been accredited to certain specific organs of the United Nations. In a case of that kind, in which a specific provision was made by the State concerned, the presumption established in article 13, paragraph 2, would not apply.

41. He had not included any article on credentials in Part III, because permanent observers did not normally submit credentials. Of course, a permanent observer needed some evidence that he was the official representative of his State, but no credentials were required of him unless he was called upon to appear in an organ of the organization, in which case special accreditation was necessary.

42. In the discussion at the previous meeting the Commission had come close to agreement on the substance of article 52, and the only question which remained to be decided was whether the formulation should be in general terms or should contain a non-exhaustive enumeration on the lines of article 7.

43. Several members had emphasized that the functions set out in sub-paragraphs (b) and (d) of article 7 had particular relevance to permanent observer missions. With regard to the function mentioned in sub-paragraph (c), a permanent observer would be called upon to carry on negotiations "with" rather than "in" the organization. As to sub-paragraph (e), it was impossible to draw an

³ See *Yearbook of the International Law Commission, 1968*, vol. I, p. 41, para. 10.

⁴ *Op. cit.*, 1968, vol. II, p. 205.

analogy with permanent representatives, because a permanent observer represented a non-member State, in other words a State which had not signed the constituent instrument of the organization and had therefore not committed itself to the "realization of the purposes and principles" of the organization. That statement did not, of course, detract from the provisions of Article 2 (6) of the Charter, which laid down certain minimum obligations the performance of which could be demanded of non-member States of the United Nations as members of the international community.

44. He was quite willing to drop the adjective "necessary" before "liaison". As to the criticism of the verb "to ensure" in paragraph 1, he pointed out that there was a nuance. In the case of a member State, it was appropriate to refer to its permanent mission as "keeping" the necessary liaison with the organization, because a member State already had a relationship with the organization by virtue of its membership. In the case of a non-member State, no such relationship existed and the function of the permanent observer mission was to "ensure" such a liaison. Nevertheless, if some members felt that the verb "to ensure" was unduly strong, he would be prepared to replace it by "to keep".

45. The use of the term "sending State" should not give rise to any difficulty, as it had not been defined in article 1; since it was not defined in terms of membership of the organization, it could equally well be applied to a non-member State sending a permanent observer mission as to a member State sending a permanent mission.

46. He did not favour the expression "representing the interests of the sending State", which was normally used in the case of severance of relations.

47. He was surprised at the objection made to the words "*mutatis mutandis*", which had been used in the Commission's drafts in the past. That expression was a necessary tool of drafting. In the present instance it had been used to indicate that the list of functions in article 7 would need some adaptation.

48. He still thought it possible to merge the two paragraphs of article 52 in the form of a synthetic general statement of the rule. He did not favour an enumeration of functions, because the omission of some of those set out in article 7 might lead to difficulties of interpretation. Nevertheless, he was prepared to submit two texts to the Drafting Committee, the one synthetic and the other containing an enumeration.

49. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to refer article 52 to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*⁵

⁵ For resumption of the discussion, see 1061st meeting, para. 76.

ASSIGNMENT TO TWO OR MORE INTERNATIONAL ORGANIZATIONS OR TO FUNCTIONS UNRELATED TO PERMANENT MISSIONS

50. Mr. EL-ERIAN (Special Rapporteur), referring to paragraph 1 of his "Note on assignment to two or more international organizations or to functions unrelated to permanent missions" (A/CN.4/227), said that information subsequently received from the specialized agencies showed that permanent observers had been sent by the Republic of San Marino to the ILO and on some occasions to UNESCO. Apart from the cases of San Marino and the Holy See, such observers had been sent only to United Nations Headquarters in New York and to the United Nations Office at Geneva. Nevertheless, as other cases might arise in the future he had submitted the provision in paragraph 2, which was modelled on article 8. In paragraph 3 he had submitted a provision modelled on article 9, to cover the situation in which a sending State might assign to one of the members of its permanent observer mission functions unrelated to permanent missions.

51. Mr. AGO said that the Special Rapporteur's idea was worth taking up. He would be grateful to him, however, if he would verify the position of permanent observer missions at Geneva, since he was not at all sure that observers accredited to the Geneva Office of the United Nations were not also accredited to the specialized agencies having their headquarters at Geneva. It was also necessary to avoid the ambiguity arising from the fact that the term "permanent observers" covered a number of quite different situations. There was always a danger of confusing permanent observer missions to the organization with observers in organs of an international organization. Hence it was essential to determine exactly what the position was in each case.

52. Mr. ROSENNE said that at the present stage the Commission should simply draw attention to the problems referred to in the Special Rapporteur's note; on second reading, it might consider to what extent his ideas could be combined with articles 8 and 9.

53. He suggested that in both of the texts proposed by the Special Rapporteur the word "accredit" should be replaced by the word "appoint", which was used in article 57, or by the word "assign".

54. Paragraph 4 of the second text, in paragraph 3 of the note, did not quite correspond to what was laid down in paragraph 1. The latter text differed from the corresponding paragraph of article 9—which referred only to the accreditation of a permanent representative as head of a diplomatic mission—in that it referred also to the appointment of a permanent observer as a permanent representative. Since paragraph 4 did not cover the latter case, the Drafting Committee should consider the possibility of transferring everything relating to permanent representatives to the article corresponding to article 8, and of leaving the article corresponding to article 9 substantially identical with that article.

55. Mr. CASTRÉN said he was in favour of including a provision on the lines of article 8 in the draft articles

on permanent observers. He agreed with Mr. Rosenne, however, that it would be better to use the word "appoint" or "assign", rather than "accredit", in paragraph 1 of the first provision submitted by the Special Rapporteur; the word "appoint" was also used in article 53. As to the provision modelled on article 9, he rather doubted whether, from the point of view of drafting, there was any justification for reproducing the text of that article; there was no reason why permanent observers should not be entrusted with other tasks, since the same principles held good for both permanent missions of member States and permanent observer missions. Article 9 could therefore be applied to permanent observer missions by analogy.

56. Mr. BARTOŠ said that, in principle, he approved of the texts submitted by the Special Rapporteur. Reverting to Mr. Ago's question, he said that the mission of the Holy See at Geneva acted both as a permanent mission and an observer mission, since the Holy See was a member of some specialized agencies, such as ITU, UPU and WHO, and even of a quasi-specialized agency of the United Nations concerned with refugees. The status of that mission was all the less clear because, on the list of missions at Geneva, it only appeared as a mission from a non-member State, whereas the mission itself considered that it represented the Holy See in all the international organizations at Geneva. He therefore requested the Special Rapporteur to ask the mission of the Holy See what its precise status was, for if the text prepared by the Commission was to be authoritative, it was necessary to make sure that it contained no errors.

57. Mr. NAGENDRA SINGH said that the possibility that a permanent observer might serve in a dual capacity was a very real one in modern international life; the Special Rapporteur had been right to attempt to regulate it. He was not entirely happy, however, about the idea of drafting parallel articles on permanent observer missions and permanent missions; it would perhaps be better if the texts proposed by the Special Rapporteur could be incorporated in article 9. He proposed that the matter should be referred to the Drafting Committee.

58. Mr. CASTAÑEDA said he agreed with the Special Rapporteur. He would suggest, however, that the Drafting Committee might try to follow the course suggested by Mr. Castrén and Mr. Nagendra Singh and incorporate the two provisions in a single one which would refer to articles 8 and 9 of the draft.

59. Mr. USHAKOV said he was in favour of the Special Rapporteur's suggestion that an article modelled on article 8 should be included in the draft, but he wished to raise certain questions which he thought were very important. He had no doubt at all that a permanent observer appointed to one international organization could be appointed as permanent observer to another international organization, but if that permanent observer was appointed a member of a permanent mission, the question arose what his privileges and immunities would be. If the Commission decided that permanent observer missions should enjoy the same privileges and

immunities as permanent missions of member States there would be no difficulty; but if it did not, a problem would arise. He would therefore prefer the words "*missions permanentes*", in the French text of the new provision, to be replaced by the words "*missions permanentes d'observateurs*".*

60. Paragraph 2 of the new provision proposed by the Special Rapporteur dealt with a case similar to that covered by articles 8 and 9; moreover, the position of members of the staff of permanent missions was already governed by certain conventions in force.

61. A permanent observer or a member of the staff of a permanent observer mission could be appointed a member of a special mission of the sending State—a case already provided for in the Convention on Special Missions.⁴ He wished to make a point he had already made in connexion with article 8, namely, that it was rather discourteous to state in paragraph 2 of that article that a member of the staff of a permanent mission, who might be the permanent representative himself, could be assigned to another permanent mission as a member of that mission, since the staff of a permanent mission included members of its service staff. It would be better to say that the person concerned could be assigned to another permanent mission as a member of its diplomatic staff.

62. Mr. BEDJAOUI said he was grateful to the Special Rapporteur for drawing the Commission's attention to the problems it was discussing. He thought the draft articles on permanent observers should contain a provision modelled on articles 8 and 9, but he agreed with Mr. Castañeda that it would not be sufficient merely to reproduce articles 8 and 9. Perhaps the Drafting Committee could find a very brief formula reproducing the substance of those two articles.

63. Mr. Ushakov had raised a very interesting theoretical question, but he doubted whether it was useful at the present stage in the work to go into such details, which any case were fairly easily settled in practice. It was evident that if a person had more than one function, the international organization should give him the benefit of the most favourable treatment, though the problem might become more complicated if he was appointed to international organizations whose headquarters were in different States. But, after all, those were relatively unimportant problems.

64. Mr. BARTOŠ said he would like to revert to the question whether a permanent observer could be a member of a special mission. He himself had no doubt that that was permissible under the Convention on Special Missions, since one of the main characteristics of a special mission was that it was temporary.

65. Mr. USTOR said he agreed that something should be said in the draft articles about the possibility of

* This proposal corrects an error in the French text of document A/CN.4/227, which has been rectified in the printed version appearing in volume II of this Yearbook.

⁴ See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 99 *et seq.*, Annex to resolution No. 2530 (XXIV).

multiple assignments. It would be remembered that paragraph (5) of the commentary to article 8 referred to article 6 of the Vienna Convention on Diplomatic Relations, which provided that "Two or more States may accredit the same person as head of mission to another State..."⁷ The Commission had decided not to include an article on that matter in the draft articles on permanent missions, but since the problem posed by permanent observer missions was rather similar, he thought the Special Rapporteur should at least include a reference to it in his commentary. Article 6 of the Vienna Convention had presumably been designed to meet the needs of developing States with insufficient means to maintain permanent missions; the same reasons might well make it necessary to make similar provision for joint permanent observer missions.

66. The CHAIRMAN, summing up the discussion, said that members were in general agreement that the Special Rapporteur had been right in submitting the draft provisions in paragraphs 2 and 3 of his note to the Commission. It also seemed to be generally agreed that the idea expressed in those provisions should be included in a short article which would not repeat the language of articles 8 and 9 and would make no reference to accreditation. At the present stage, it was unnecessary to consider the question of facilities, privileges and immunities, which could be dealt with in connexion with article 60. He suggested, therefore, that the Special Rapporteur's note should be referred to the Drafting Committee.

*It was so agreed.*⁸

67. Mr. EL-ERIAN (Special Rapporteur) said he would take steps to ascertain the present situation of permanent missions and permanent observer missions at Geneva and to bring his comments up to date. He thanked Mr. Ustor for his suggestion concerning article 6 of the Vienna Convention on Diplomatic Relations.

The meeting rose at 1 p.m.

⁷ United Nations, *Treaty Series*, vol. 500, p. 100, article 6.

⁸ For resumption of the discussion, see 1062nd meeting, para. 4.

1050th MEETING

Friday, 15 May 1970, at 10.10 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Bedjaoui, 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)

ARTICLES 53 and 54

1. The CHAIRMAN invited the Commission to consider articles 53 and 54 in the Special Rapporteur's fifth report (A/CN.4/227).

2.

Article 53

Appointment of the members of the permanent observer mission

Subject to the provisions of articles 54 and 56, the sending State may freely appoint the members of the permanent observer mission.

Article 54

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.

3. Mr. EL-ERIAN (Special Rapporteur), introducing articles 53 and 54, explained that their provisions were derived from those of articles 10 and 11 on permanent missions,¹ which were themselves based on the corresponding provisions of the Vienna Convention on Diplomatic Relations² and the Convention on Special Missions.³ Those provisions were now standard texts and he did not think they would give rise to any difficulty.

4. In paragraph (3) of the commentary to the two articles, he had mentioned the fact that his original idea had been not to submit a general provision on the nationality of members of permanent missions, but to leave the matter to be dealt with in terms of the immunities conceded to them. The Commission, however, had preferred a different approach and article 11 had been adopted. He had included article 54 on the assumption that the Commission would adopt the same approach with regard to permanent observer missions.

5. Mr. KEARNEY said he had no objection to the principle, followed in article 53, that the host State was not entitled to require *agrément* for the appointment of members of permanent observer missions. The article raised, however, in rather acute form a question already discussed by the Commission in connexion with articles 51 and 52, namely, the question how a permanent observer mission was established. Unless there was an

¹ See *Yearbook of the International Law Commission, 1968*, vol. II, pp. 202-203.

² United Nations, *Treaty Series*, vol. 500, p. 100, articles 7 and 8.

³ See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 100, articles 8 and 10.