

Document:-
A/CN.4/SR.1050

Summary record of the 1050th meeting

Topic:
Representation of States in their relations with international organizations

Extract from the Yearbook of the International Law Commission:-
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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.

orderly procedure and reasonable requirements were laid down regarding what constituted an observer mission of a non-member State, article 53 would place a very heavy burden on the host State.

6. It had to be remembered that, once a permanent observer mission was established, the host State would have to issue special visas for the long-term residence of the permanent observer and his staff; thus the host State had to take a decision about the presence of the members of such a mission and it should be given some guidelines. The host State was entitled to require an assurance that a person could not establish a permanent observer mission on the basis of a mere claim to represent a non-member State.

7. Mr. TSURUOKA said that the expression "diplomatic staff" in article 54 immediately brought to mind persons belonging to the diplomatic staff of permanent missions of member States and, consequently, the privileges and immunities they enjoyed. It would be better not to use that expression before it had been decided what status was to be accorded to members of permanent observer missions.

8. Mr. USHAKOV said he approved of the text of articles 53 and 54. As to the position of the host State, no matter whether permanent missions of member States or permanent observer missions of non-member States were concerned, it must bear all the consequences of the presence of the international organization in its territory, and must therefore grant the requisite visas to the members of permanent observer missions. In any event, that was a problem to be settled by the tripartite consultations provided for in article 50.⁴

9. Sir Humphrey WALDOCK said he would have no difficulty over articles 53 and 54 provided that the question of the consent of the organization was settled. He had the same doubts as Mr. Kearney and thought it was only if the organization's consent to the establishment of a permanent observer mission was given, in one form or another, that the host State could reasonably be called upon to grant visas and privileges and immunities.

10. Mr. EL-ERIAN (Special Rapporteur) said it was not necessary to relate articles 53 and 54 to article 51, which dealt with conditions for the establishment of a permanent observer mission. It was assumed in articles 53 and 54 that such a mission had already been established. There was no need to make the discussion of those articles, or the subsequent ones, more complicated by raising once again the doubts and difficulties which had beset the Commission in regard to article 51. It should also be remembered that all the provisions of the draft would be governed by article 50, on consultations between the sending State, the host State and the organization.

11. Mr. YASSEEN said that if the question of the right to establish permanent observer missions could be left aside for the time being, it should be possible to

adopt article 53, for the sending State's freedom of choice must be safeguarded.

12. Mr. AGO said that in principle he approved articles 53 and 54, but he thought the present text presupposed that the problem of the establishment of permanent observer missions was to be dealt with explicitly; for if it was treated implicitly, as he had himself suggested, it would be necessary to consider the consequences for those two articles.

13. The CHAIRMAN said that, if there were no objection, he would consider that the Commission agreed to refer articles 53 and 54 to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*⁵

THE QUESTION OF CREDENTIALS IN RELATION TO PERMANENT OBSERVERS

14. Mr. EL-ERIAN (Special Rapporteur) said that he had included in his report (A/CN.4/227) a note explaining why he had not drafted an article on the question of credentials in relation to permanent observers. In United Nations practice, permanent observers did not submit credentials, but simply sent a letter to the Secretary-General informing him of their appointment. The standard form of letter was reproduced in paragraph 2 of his note; it would be seen that it differed from the credentials submitted by permanent representatives.

15. It should be remembered that the fact that permanent observers did not submit credentials did not in any way detract from their representative character. A permanent representative's credentials mentioned the organs of the organization in which he was entitled to represent the sending State. The situation of a permanent observer was different and it would be better not to turn the existing practice into something more formal. The whole subject was, of course, governed by the provisions of articles 3 and 4,⁶ under which the organization could insist on credentials if it wished.

16. Mr. TAMMES said it seemed rather inconsistent to require credentials from permanent representatives but to adopt a very informal attitude towards permanent observers. The fact that the credentials of a permanent representative could specify the organs to which he would be assigned did not really justify making a difference in the case of permanent observers. In practice, little use was made of the possibility of limiting the assignment of permanent representatives to specific organs.

17. Under the Special Rapporteur's proposal, a mere letter informing the organization of the appointment of a permanent observer would set in motion the whole system of privileges, immunities and facilities. In the circumstances, it would be better to lay down a more formal requirement for the commencement of the observer's functions.

⁵ For resumption of the discussion, see 1062nd meeting, para. 11.

⁶ See *Yearbook of the International Law Commission, 1968*, vol. II, pp. 197-198.

⁴ *Op. cit.*, Supplement No. 10, p. 18.

18. Mr. ROSENNE said he agreed with the Special Rapporteur's approach. The requirement of notification laid down in article 57 would be adequate for the purposes of a permanent observer mission. He thought the Special Rapporteur's note, with the possible exception of paragraphs 3 and 4, should be included in the Commission's report to explain the absence of an article on credentials.

19. With regard to Mr. Tammes's point about privileges and immunities, he did not think credentials were an important factor. Article 42 (Duration of privileges and immunities) placed the emphasis on notification, not on credentials.

20. Mr. USHAKOV said that if it was accepted that a permanent observer mission had a representative character and that, consequently, its head, the permanent observer, represented the sending State in the organization, it was hard to see how the organization could be informed that the observer did in fact represent the non-member sending State, or who could authorize the observer to represent the sending State in the organization. Those points must be cleared up. An article similar to article 12 would therefore have to be drafted for permanent observer missions, perhaps omitting the reference to credentials; the term "appoint" or "assign" should be used instead of "accredit".

21. A provision corresponding to article 13 should also be included in the draft articles on permanent observers, so that they would not be required to produce credentials in order to attend meetings of organs of international organizations. Furthermore, when it was desired to empower permanent observers to negotiate, it would be necessary to give them full powers; hence an article dealing with the same subject as article 14 should be included in the draft articles on permanent observers; it would provide that a permanent observer, unlike a permanent representative, was not regarded as a representative of his State for the purpose of adopting a treaty.

22. Mr. CASTRÉN said he was inclined to agree with the Special Rapporteur's view, which was based on the practice of international organizations. If the Commission did not wish to give permanent observers undue importance, it should confine itself to the notification provided for in article 57. The essential point was that the question of the establishment of permanent observer missions should be governed by the relevant rules of the international organization, including the practice, or by the express consent of the organization concerned. He did not think it necessary to include an article similar to article 13, as suggested by Mr. Ushakov, for as he had just said, the consent of the organization would suffice. He would not, however, object to the inclusion of such an article, or to the inclusion of an article dealing with the same subject as article 14, if greater precision was desired.

23. Mr. YASSEEN said that the essential question was that of evidence: it was inconceivable that a person should be able to perform functions on behalf of a State in an international organization without being

required to produce evidence of his authority to do so. In that connexion the difference in importance between permanent observers and permanent representatives did not justify the omission of any reference to the credentials of permanent observers; it only justified a difference in the degree of formality. Consequently, the question of credentials should be regulated in the draft articles on permanent observers, but a simplified procedure should be established.

24. Mr. KEARNEY pointed out that in other respects regarding observers the Commission had departed from existing practice and had introduced greater formality than was at present required. He therefore agreed with Mr. Yasseen that it was desirable to introduce a more formal element into the procedure for accrediting permanent observers.

25. On the other hand, he did not favour the introduction into Part III of a provision on the lines of article 13. It would be very unusual for an observer to appear before an organ of an organization and the matter could safely be left to the rules of the organization itself.

26. The position with regard to a provision corresponding to article 14 was similar. The circumstances, although a little less unusual than those contemplated in article 13, would still be exceptional, and there was therefore no need for a special article on that point relating to permanent observer missions.

27. Mr. RAMANGASOAVINA said that the difference of opinion on the question whether permanent observers must present credentials, or whether a notification would suffice, derived from the difference of opinion on article 51. If it was decided that a permanent observer mission could be established without the consent of the international organization concerned, credentials would be essential; but if the consent of the international organization was required, that would serve as a standing authorization to the sending State, which would then not need a special authorization to appoint the members of the mission.

28. In the light of those considerations, he was in favour of a compromise solution such as that suggested by Mr. Yasseen: the permanent observer would be the bearer of a letter of notification which he would present to the secretary-general of the organization, who would give him a letter taking note of his appointment.

29. Sir Humphrey WALDOCK said that his position was very close to that of Mr. Yasseen. The Commission's draft articles would have the effect of raising the legal status of permanent observer missions. It was understandable that there should have been informality in the past, because those missions were not held to have an official status vis-à-vis the organization.

30. The United Nations practice mentioned in the Special Rapporteur's report showed that credentials of some kind were in fact required for permanent observers. The letter reproduced in paragraph 2 of the note in fact constituted credentials in simplified form. Some document emanating from the responsible authorities of the Sending State was clearly essential; the Secretary-General could not be expected to act on anything else. Consequently, he

thought that a provision requiring at least credentials in simplified form should be included in the draft.

31. On the other hand, he did not consider that there was any need for an article in Part III on the lines of article 13, because the position of a permanent observer was different from that of a permanent representative where meetings of organs of the organization were concerned.

32. With regard to negotiations and the conclusion of treaties, he drew attention to paragraph 2 of article 7 (Full powers) of the Vienna Convention on the Law of Treaties,⁷ which established a presumption of full powers in the case of Heads of State, Heads of Government and Ministers for Foreign Affairs "for the purpose of performing all acts relating to the conclusion of a treaty" and in the case of heads of diplomatic missions "for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited". That paragraph established the same presumption in the case of representatives accredited by States to an international conference or "to an international organization or one of its organs", but only for the purpose of "adopting the text of a treaty in that conference, organization or organ". The expression "representatives accredited by States" meant that the provision in the Vienna Convention was not limited to permanent representatives; it was wide enough to cover permanent observers, but only if they were accredited to the organ concerned for the purposes indicated. The Commission should therefore take care not to make the provisions on the need for accreditation of permanent observers any looser than those governing permanent representatives, as far as the conclusion of treaties was concerned.

33. The CHAIRMAN, speaking as a member of the Commission, said that his first reaction had been to accept the Special Rapporteur's conclusion in paragraph 5 of his note, but he now had some doubts. If no credentials were required and the matter were left to be settled by a mere letter of appointment, the implication would seem to be that the permanent observer would have to carry on his person, for purposes of identification, a copy of the notification of his appointment made in accordance with article 57.

34. He was inclined to think that a provision on the lines of article 12 was not necessary for permanent observers, provided that the whole question of the relationship of such observers to the organization was seen in the context of some kind of mutual agreement between the sending State and the organization. A permanent observer certainly should not have the right to be present in an organization without its consent. He thought the whole matter should be referred to the Drafting Committee.

35. Mr. USHAKOV said that article 57, on notifications, had the same role as article 17 of the draft: both

in the case of a permanent observer and in that of a permanent representative, a State could send the notifications referred to in those articles to the international organization; but there was a great difference between those notifications and the authorization given by the competent organ of the sending State to a permanent observer to act in that capacity. A permanent observer must therefore be given credentials, even though in simplified form.

36. Mr. BEDJAOUI said he agreed with the Special Rapporteur that there was no need for a special article on the credentials of permanent observers. A notification in the simplest form was sufficient for an observer, for example, official communication of the document appointing him. The difference of opinion in the Commission was only apparent, since what some members considered to be simply a notification was regarded by Sir Humphrey Waldock as express credentials. The real point at issue in the whole discussion had been the mode of establishing permanent observer missions. It might be well, therefore, before taking a final position on the question of credentials, to await the reformulation of article 51, on the establishment of permanent observer missions. He appreciated the argument that the Commission's aim should be to raise the status of observers, but in that connexion it was also dealing with another idea: that of the functions of permanent observer missions. The essential point was that a permanent observer should ascertain and report what was happening in the organization, and it could almost be said that that was a function which anyone could perform without needing credentials. Hence a simple notification would be enough. Cases in which a permanent observer engaged in negotiations for a treaty would be settled by the Convention on the Law of Treaties or by an article dealing with the same subject-matter as article 14 of the draft.

37. Mr. NAGENDRA SINGH said that clearly the permanent observer must, for purposes of identification, carry some document issued by a responsible authority in the sending State. A copy of the notification would not be sufficient, since anyone could carry such a copy on him. He therefore suggested that the Drafting Committee should look into the question and consider the need for evidence, which could take the form of a letter constituting credentials.

38. Mr. USTOR said that the permanent observer, like the permanent representative, represented the sending State and must therefore be able to produce evidence of his authority to act in that capacity. Consequently, he thought that Part III should include a provision on the lines of article 12, subject to the overriding character of the rules of the organization itself, if those rules prescribed less formality in the case of observer missions.

39. He was also in favour of including in Part III a provision on the lines of article 13. The mere existence of a permanent observer mission did not in itself entitle a person to make statements on behalf of that mission in an organ of the organization.

40. As to the suggestion that a provision on the lines of article 14 should be included, it was really a matter for

⁷ *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference, document A/CONF.39/27* (United Nations publication, Sales No.: E.70.V.5).

the law of treaties. Clearly, the Commission did not intend to give permanent observers the same powers as permanent representatives, and it was desirable to say so explicitly.

41. Mr. AGO observed that the Commission was discussing the matter in the abstract, since it had not come to a decision on preliminary questions such as that of article 0 and that of the functions of permanent observer missions. If those functions were of limited extent, then clearly the heads of permanent observer missions would not need credentials; but if, on the contrary, the Commission granted them the capacity to negotiate, they would have to be given full powers. It was a question that would need to be settled in the case of permanent observer missions, just as it had had to be settled in the case of permanent missions.

42. Mr. EL-ERIAN (Special Rapporteur) said he had made it clear in his note that a permanent observer must be empowered to act by a letter of authorization from the Head of State or the Minister for Foreign Affairs of the sending State. It was entirely out of the question that such a letter of authority should be signed by the permanent observer himself.

43. Some provision would have to be added to article 57 to specify that the notification must be signed by the Head of State or the Minister for Foreign Affairs. Another way would be to include a separate provision on the letter of authorization.

44. He agreed with Mr. Ago that the question of including in Part III provisions on the lines of articles 13 and 14 should be considered after the articles on functions had been settled.

45. The CHAIRMAN said that, if there were no objections, he would assume that the Commission agreed to refer the question of credentials in relation to permanent observers to the Drafting Committee, for consideration in the light of the discussion.

*It was so agreed.**

ARTICLES 55, 56 and 57

46.

Article 55

Composition of the permanent observer mission

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.

Article 56

Size of the permanent observer mission

The size of the permanent observer mission shall not exceed what is reasonable and normal, having regard to the functions of the Organization, the needs of permanent observer missions and the circumstances and conditions in the host State.

Article 57

Notifications

1. The sending State shall notify the Organization of:

(a) The appointment of the members of the permanent observer mission, their position, title and order of precedence, their arrival and final departure or the termination of their functions with the permanent observer mission;

(b) The arrival and final departure of a person belonging to the family of a member of the permanent observer mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the permanent observer mission;

(c) The arrival and final departure of persons employed on the private staff of members of the permanent observer mission and the fact that they are leaving that employment;

(d) The engagement and discharge of persons resident in the host State as members of the permanent observer mission or persons employed on the private staff entitled to privileges and immunities.

2. Whenever possible, prior notification of arrival and final departure shall also be given.

3. The Organization shall transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

4. The sending State may also transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

47. Mr. EL-ERIAN (Special Rapporteur) said that articles 55, 56 and 57 were modelled on the corresponding articles on permanent missions.⁹ Since the requirements of permanent missions might vary, article 16 referred to "the needs of the particular mission", but in article 56 he had considered it sufficient to refer to "the needs of permanent observer missions".

48. Mr. USHAKOV said he approved of the wording of articles 55 and 56 proposed by the Special Rapporteur, except that he did not think the reference in article 56 to "the functions of the Organization" was justified, since those functions did not have the same influence on the staff requirements of permanent observer missions as they did on the staff requirements of permanent missions of member States. He therefore proposed that the words "the functions of the Organization" should be deleted.

49. Mr. EL-ERIAN (Special Rapporteur) said he agreed with Mr. Ushakov that there was no need to refer to "the functions of the Organization" in article 56, since they were implicit in the words "the needs of permanent observer missions".

50. Mr. CASTRÉN said that he had no objections to the Special Rapporteur's text of articles 55, 56 and 57. With regard to Mr. Ushakov's proposal which the Special Rapporteur had just accepted, he observed that if the function mentioned in article 7 (e)—"promoting co-operation for the realization of the purposes and principles of the Organization"—was not deleted from the list of recognized functions of permanent observer missions, as he himself had proposed,¹⁰ the reference to the functions of the organization would have to be retained in article 56.

* For resumption of the discussion, see 1062nd meeting, para. 15.

⁹ See *Yearbook of the International Law Commission, 1968*, vol. II, pp. 207-209, articles 15, 16 and 17.

¹⁰ See 1048th meeting, paras. 6 and 7.

51. Mr. AGO said that he approved of articles 55, 56 and 57 in principle, but it seemed to him to be going too far simply to assimilate heads of permanent observer missions to heads of permanent missions of member States. He would like the Drafting Committee to see whether the wording of those articles could not be more closely adapted to the position of permanent observer missions.

52. Mr. ROSENNE said he was prepared to accept articles 55, 56 and 57 as they stood, subject to their being reviewed by the Drafting Committee. He would hesitate to make any changes which departed from the original articles adopted in 1968, though the phrase "having regard to the functions of the Organization, the needs of permanent observer missions and the circumstances and conditions in the host State" in article 56, and the corresponding phrase in article 16, should be given careful consideration on second reading. It was his impression that there were a number of articles in the present report which were in effect mere repetitions of rules which already appeared elsewhere; on second reading, it should be possible to rearrange the draft articles as a whole in such a way as to avoid those repetitions.

53. Mr. YASSEEN said he was not convinced that the subjective criterion adopted for the needs of any mission ought to be discarded in favour of an abstract criterion peculiar to the needs of permanent observer missions; such missions were not all alike, for the number of matters they were concerned with differed and their needs differed accordingly. The Drafting Committee should consider that point carefully.

54. Mr. NAGENDRA SINGH said he agreed with previous speakers that, *prima facie*, the functions of the organization referred to in article 56 did not seem to be of paramount importance. However, he would hesitate to say that the nature of the organization had no influence at all on the size of the permanent observer mission and for that reason he would prefer to keep the criteria as they stood.

55. The CHAIRMAN said that the Commission appeared to be unwilling, at the present stage, to take any definitive decision about the wording of the three articles, in particular article 56. He suggested, therefore, that articles 55, 56 and 57 should be referred to the Drafting Committee, on the understanding that it might be necessary to recast them, on second reading, to avoid unnecessary repetitions.

*It was so agreed.*¹¹

56. Mr. USHAKOV pointed out that, since article 57, paragraph 1 (a) contained a reference to order of precedence, article 19 (Precedence) should be mentioned in the commentary as a corresponding article, as well as article 17. If article 19 were deleted from the part of the draft concerning permanent missions, the reference to order of precedence should also be deleted from article 57.

57. The part of the draft dealing with permanent observer missions should contain a provision similar to article 18, on the appointment of a *chargé d'affaires ad interim*, to provide for cases in which the post of permanent observer was vacant or the permanent observer was unable to perform his functions. The Drafting Committee should consider that possibility.

ARTICLES 58 and 59

58.

Article 58

Offices of permanent observer missions

1. The sending State may not, without the prior consent of the host State, establish offices of the permanent observer mission in localities other than that in which the seat or an office of the Organization is established.

2. The sending State may not establish offices of the permanent observer mission in the territory of a State other than the host State, except with the prior consent of such a State.

Article 59

Use of flag and emblem

1. The permanent observer mission shall have the right to use the flag and emblem of the sending State on its premises. The permanent observer shall have the same right as regards his residence and means of transport.

2. In the exercise of the right accorded by this article, regard shall be had to the laws, regulations and usages of the host State.

59. Mr. EL-ERIAN (Special Rapporteur) pointed out that articles 58 and 59 were modelled on the corresponding articles on permanent missions.¹² The question of the use of the flag and emblem (article 59) had given rise to some difficulty, but he had decided to include the article because a permanent observer mission did have a representative character and represented a sovereign State.

60. Mr. KEARNEY said he had no objection to article 58. Article 59, however, raised the question whether permanent observer missions were to be equated in all respects with permanent missions and thus, in effect, with diplomatic missions. It was necessary to consider carefully whether the mere fact that an individual or group of individuals represented a State placed them on the same level as a diplomatic mission. He did not think that was true, either in fact or in practice, since there were many types of mission, including military and trade missions, which clearly represented a State, but were not given the status of full diplomatic missions. By way of compromise, however, he would be prepared to agree that a permanent observer mission should have the right to use the emblem, but not the flag, of the sending State.

61. Mr. USHAKOV said he approved of the wording of article 58, but had some reservations about article 59. He did not think a permanent observer should be granted the right to use the flag and emblem of the

¹¹ For resumption of the discussion, see 1062nd meeting, para. 42.

¹² See *Yearbook of the International Law Commission, 1968*, vol. II, p. 212, articles 20 and 21.

sending State on his residence and means of transport. He therefore proposed that the second sentence of paragraph 1 should be deleted, in order to show the difference between permanent representatives of member States and permanent observers of non-member States.

62. Mr. EL-ERIAN (Special Rapporteur) said that the objections made by Mr. Kearney and Mr. Ushakov raised the question whether the Commission should approach article 59 from the formal or the functional point of view. From the formal point of view, Mr. Kearney was right, since even permanent missions did not have a diplomatic character, inasmuch as they were not sent by one State to another; but from the functional point of view, there was a case for retaining article 59 as it stood.

63. The CHAIRMAN suggested that articles 58 and 59 should be referred to the Drafting Committee, together with the two proposals concerning article 59, paragraph 1.

*It was so agreed.*¹³

The meeting rose at 12.50 p.m.

¹³ For resumption of the discussion, see 1063rd meeting.

1051st MEETING

Tuesday, 19 May 1970, at 3.5 p.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Bedjaoui, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, 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)

ARTICLES 60 and 61

1. The CHAIRMAN invited the Commission to consider articles 60 and 61 in the Special Rapporteur's fifth report (A/CN.4/227).

2.

Article 60

Facilities, privileges and immunities

The permanent observer mission and its members shall enjoy the same facilities, privileges and immunities as are accorded to the permanent mission and its members in accordance with articles 22 to 44.

Article 61

Conduct of the permanent observer mission and its members and end of functions

The rules relating to the conduct of permanent missions and their members and to the end of functions as laid down in articles 45 to 49 shall apply *mutatis mutandis* to permanent observer missions and their members.

3. Mr. EL-ERIAN (Special Rapporteur), introducing articles 60 and 61, said he had drafted those articles on the assumption that the legal status of members of permanent observer missions was the same as that of members of permanent missions. He drew particular attention to the case of *Pappas v. Francini*, discussed in paragraph (4) of the commentary, in which the Supreme Court of the State of New York had interpreted the International Organizations Immunities Act as applying to permanent observers.

4. Mr. AGO said that the Commission should beware of the danger of simply equating the status of heads of permanent observer missions of non-member States with that of heads of permanent missions of member States. Article 60 was one of the most important in the part of the draft under consideration, as it gave the Commission an opportunity to consider whether it wished to indicate a difference in status and whether recognition of the representative character of a permanent observer mission led *ipso facto* to the conclusion drawn in article 60. It was a question to which some thought should be given; it had already arisen during the consideration of previous articles, in particular when the Commission had been determining the respective functions of a permanent mission and a permanent observer mission. If the Commission adopted an article as liberal as the article 60 on facilities, privileges and immunities submitted by the Special Rapporteur, it might destroy the effect of the cautious position it had taken in regard to the preceding articles. He therefore urged the Commission to reflect on the scope of article 60 itself and on the relationship between it and the preceding articles.

5. Mr. USHAKOV said that the suggestion in the Special Rapporteur's report was that the Commission should draft the articles on permanent observer missions on the basis of the corresponding articles on permanent missions of member States. He supported that suggestion. It was self-evident that articles 22 to 49 could not be applied to permanent observers without change. For instance, a permanent observer mission could not be temporarily recalled, as article 47¹ provided for a permanent mission, and there might perhaps be no justification for granting permanent observer missions the right

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