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Summary record of the 1061st meeting

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paragraph (7) of the commentary. He also agreed with Cahier, quoted by the Special Rapporteur in paragraph 4 of his commentary, that the present trend should be towards uniformity in the status of *ad hoc* diplomacy, delegates to conferences and representatives of States to meetings of organs of international organizations.

51. Sir Humphrey WALDOCK said he was afraid that if the Commission adopted alternative A, the reaction of most governments would be that it had taken the line of least resistance and had not considered the problem in sufficient depth. He was no happier about alternative B, which, although it listed a number of exemptions, omitted others and concluded with a sweeping final clause, in sub-paragraph (i), which was open to almost any interpretation.

52. There appeared at present to be two contradictory trends with regard to privileges and immunities. The Special Rapporteur had emphasized the trend towards granting representatives to organs and conferences full diplomatic status, but it was also possible to observe a trend towards greater restriction of privileges and immunities. To his mind the question was one that could only be resolved by a careful study of existing practice; in particular, the Commission might obtain valuable guidance from a study of the practice in Switzerland, which must have had as much experience of the questions now before the Commission as any other State, if not more.

The meeting rose at 6 p.m.

1061st MEETING

Tuesday, 2 June 1970, at 9.40 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Welcome to Mr. Alcívar

1. The CHAIRMAN welcomed Mr. Alcívar, who had been elected a member of the Commission to fill one of the casual vacancies caused by the election of two former members as Judges of the International Court of Justice.

2. Mr. ALCÍVAR expressed his gratitude to the members for electing him.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/227 and Add.1 and 2)

[Item 2 of the agenda]

(resumed from the previous meeting)

ARTICLE 66 (Full powers to represent the State in the conclusion of treaties) (resumed from the 1059th meeting)

3. Mr. TESLENKO (Deputy Secretary to the Commission) said that, during the discussion of article 66, the Secretariat had been asked whether credentials to participate in a United Nations conference had always been considered sufficient to empower a representative to sign the Final Act of the conference.

4. At the time, he had answered that to his knowledge such credentials had usually been considered sufficient for the signature of Final Acts, but that he was referring the question to the Legal Counsel, since a definite answer could only be given after studying the records of all United Nations conferences.¹

5. He had now received a cable from the Legal Counsel stating that in United Nations practice credentials to participate in a conference had always been considered sufficient for the signature of the Final Act, because the Final Acts of United Nations conferences had not embodied substantive obligations. Those Final Acts had always been of a purely formal character and the text of the instrument adopted at the conference had frequently been annexed to them. Even in the case of the Final Act of the 1964 United Nations Conference on Trade and Development, which contained various recommendations and principles, special credentials had not been required for signature. The Legal Counsel added that, in any event, article 66 reproduced *mutatis mutandis* the relevant portion of article 7 of the 1969 Vienna Convention on the Law of Treaties,² and he presumed that the United Nations would make its practice conform to that text.

6. He (Mr. Teslenko) wished to add that in some cases the treaty or convention adopted at a conference was not annexed to the Final Act, but was actually incorporated in it. That had been the case with the 1969 Vienna Convention on the Law of Treaties.

7. Mr. ROSENNE thanked the Deputy Secretary and the Legal Counsel for their enlightening replies to the questions raised by Mr. Bartoš and himself during the discussion of article 66. He suggested that, regardless of the decision which would be taken on article 66, the Commission should find some way of including the substance of those replies in the commentary.³

¹ See 1058th meeting, paras. 28 and 30.

² *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).

³ For resumption of the discussion, see 1077th meeting, para. 24.

ARTICLE 69 (Facilities, privileges and immunities) (*re-summed from the previous meeting*) and

ARTICLE 70 (Conduct of delegations to organs of international organizations and to conferences convened by international organizations and end of functions)*

8. The CHAIRMAN invited the Commission to resume consideration of article 69 in the Special Rapporteur's fifth report (A/CN.4/227/Add.2).

9. Mr. Kearney said it had been asked during the discussion whether there were any differences between delegates to conferences and representatives to organs of organizations. Personally, he could see little or no difference between them: both represented the sending State in an international forum. Treaties or other kinds of agreement were produced both at sessions of organs and at conferences convened by international organizations, and the purpose of both was to reach agreed solutions of international problems. Accordingly, the work they did provided no real justification for dividing the two types of representative into groups entitled to different kinds of protection, privileges and immunities. If it was considered that a representative to an organ of an international organization needed to be protected from the civil and criminal jurisdiction of the host State, it was hard to see why a delegate to a conference should not need the same protection. He was not entering into the question whether the persons concerned should enjoy all diplomatic privileges and immunities; he merely wished to stress that, whatever the privileges granted, there should be no distinction between the two categories.

10. The position with regard to a possible distinction between permanent representatives to organs and temporary representatives was similar. So far as privileges and immunities were concerned, it made no difference whether the same individual or different individuals attended the various meetings of the same organ at stated intervals. The protection and privileges needed would be the same and there was no logical reason for making any distinction. Consequently, all the representatives concerned should be treated in the same way.

11. As to the choice between alternative A and alternative B for article 69, in the final analysis there seemed to be comparatively little difference between them, especially as the Special Rapporteur intended to expand alternative A by giving more details.

12. It had been asked how much latitude was allowed by the expression "as appropriate" in alternative A and by the provisions of sub-paragraph (i) in alternative B. That was a matter connected with the problem of the settlement of differences between the sending State, the host State and the organization over the provisions on privileges and immunities. The provisions of article 50 on consultations were too weak to be relied on for the settlement of any serious difference. The draft should therefore include a provision on the lines of article VIII, section 30 of the Convention on the Privileges and

Immunities of the United Nations,⁴ under which all differences arising out of the interpretation or application of that Convention were to be settled by reference to the International Court of Justice unless another mode of settlement was agreed upon. Section 30 continued with the words: "If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion. . . . The opinion given by the Court shall be accepted as decisive by the parties." For the purposes of the present draft, that provision should be amended so as to refer to any difference between an organization authorized to request an advisory opinion from the Court, or an international organization for which arrangements could be made to request such an opinion, and one of its members.

13. The provision in question had been in existence since its adoption by the General Assembly in 1946 and had not given rise to any difficulties. It had contributed to the smooth operation of the Convention. There was, of course, a reluctance in certain quarters to accept mandatory reference to the International Court of Justice, but in the present instance a substantial precedent existed, and it should be followed. In the absence of such machinery, it would be almost impossible to settle the extremely difficult legal problems that could arise if, for example, a representative or delegate should fail to comply with provisions such as those of article 45, paragraph 1, of the draft⁵ and one of the parties involved in the dispute were to invoke the provisions of article 60 of the Convention on the Law of Treaties, on the termination or suspension of the operation of a treaty as a consequence of its breach.

14. The fact that the present draft dealt with the rights and interests of three parties—the sending State, the host State and the organization—made it extremely desirable to include a provision on the lines of section 30 of the 1946 Convention on the Privileges and Immunities of the United Nations. Such a provision would do something to allay the concern which had been expressed in connexion with both alternative A and alternative B.

15. With regard to the extent of the privileges and immunities that should be enjoyed by representatives, he thought they should be limited to a reasonable extent. But it must be borne in mind that the Commission was proposing, for observers, virtually the full extent of diplomatic privileges and immunities. From the viewpoint of consistency it was difficult to see how representatives to organs and conferences, who were plenipotentiaries, could be treated less favourably than observers. The temporary nature of the delegation was not an adequate distinction, because the Convention on Special Missions gave members of those temporary missions full diplomatic privileges and immunities.

16. One possible reason for limitation was the fact that certain privileges might not be of any substantial practical use. For example, certain fiscal exemptions would

* The text of this article was not discussed; see paras. 44-45 below.

⁴ United Nations, *Treaty Series*, vol. 1, p. 30.

⁵ See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10*, p. 16.

hardly be justified for representatives attending a conference of three or four weeks' duration. It would be placing a considerable burden upon the host State to ask it to adapt its taxation structure so as to grant exemption from, say, sales tax to such temporary representatives. The problem was particularly complex in a federal system in which sales tax was levied by the states of a federal union.

17. Another dubious area would be the obligation of the host State to provide office space—an obligation which seemed hardly relevant in the case of delegations to a short conference. Possibly, a distinction should be made between a representative to an organ, who could usually rely on his permanent mission, and a representative to a conference held elsewhere than at the seat of an organ of the organization convening it.

18. He was therefore in agreement with those members who had urged that the various privileges and immunities at present extended to other representatives should be examined in order to see which of them were appropriate for the kind of representative to which Part IV of the draft referred.

19. Mr. RAMANGASOAVINA said that the Special Rapporteur had submitted the same idea in two different forms. Under the general formulation in alternative A, the persons concerned enjoyed all the privileges and immunities necessary for the performance of their functions, though the expression "as appropriate" was too vague. Alternative B, on the other hand, set out the specific privileges and immunities to be accorded in the case in point, subject to a general reservation, but the Special Rapporteur's selection still reflected the idea that the privileges and immunities concerned were those necessary for the performance of functions. A comparison of alternative B with the list of facilities, privileges and immunities in Part II, section 2, showed, if he was not mistaken, that only seven of the twenty-one items in that section were embodied in alternative B. Obviously, the provisions relating to such matters as the accommodation of the permanent mission (article 23), the settlement of civil claims (article 34), exemption from social security legislation (article 35) and exemption from dues and taxes (article 36) did not normally apply to the persons covered by article 69.

20. The Drafting Committee might, of course, go into further detail by drawing up a comparative table showing the respective situations of permanent representatives, observers, special missions and permanent missions to international organizations. In any event, subparagraph (i) of alternative B constituted a saving clause covering the cases not provided for in the other subparagraphs. If any difficulties arose, the procedure laid down in article 50 ought to make it possible to find a solution.

21. Furthermore, the privileges and immunities accorded to officials and experts under the Convention on the Privileges and Immunities of the United Nations were practically the same as those in alternative B. He was therefore in favour of that alternative, though the Drafting Committee would have to be asked to complete it by

selecting from among the possible privileges and immunities all those that were necessary to enable the persons concerned to perform their functions.

22. Mr. USHAKOV said he was sorry that the discussion resulting from the submission of the two alternatives for the privileges and immunities accorded to members of delegations to conferences and to organs continued to be so general. It seemed necessary, in any case, as it had been before, to deal separately with separate situations and, consequently, to have a separate set of articles on each of them. It was only when it had received the comments of governments that the Commission would be able to decide, on second reading, whether the articles should be combined or whether there should be cross-references.

23. The discussion on article 69 had also shown that there should be separate articles, first on the privileges and immunities of delegations as such, and secondly on the privileges and immunities of the various classes of persons who were members of delegations, namely, delegates, diplomatic staff, technical and administrative staff, service staff and members of families. To draft those articles was the task of the Special Rapporteur and he was willing to undertake it. The Commission should then discuss the articles. But as there was not much time left, he proposed that the Drafting Committee should prepare a more or less definitive text for such articles as the Special Rapporteur might prepare, it being understood that there would be separate articles for delegations to conferences and delegations to organs. The Commission would take a decision on the Drafting Committee's text. Otherwise it might fail to complete consideration of the draft during the session, though that was its main task.

24. The CHAIRMAN, speaking as a member of the Commission, said it was generally agreed that representatives to organs of organizations and to conferences convened by international organizations should be accorded some kind of privileges and immunities. The main difficulty was the nature of those privileges and immunities.

25. Mr. Ushakov had suggested that the representatives concerned should be placed on the same footing as members of special missions and had stressed the particular relevance of articles 13, 14 and 17 of the Convention on Special Missions. Other members had accepted the Special Rapporteur's idea, which was that those representatives should be granted the privileges accorded to permanent missions. Whatever the approach adopted, the Commission must give specific directives to the Drafting Committee.

26. There had been general support for the idea of using the 1946 and 1947 Conventions on the privileges and immunities of the United Nations and the specialized agencies as a basis for the privileges and immunities of the representatives in question. Attention had also been drawn to the recent tendency to increase rather than restrict the privileges and immunities of representatives. His view was that they should be given the same privileges and immunities as those accorded in the United Nations to permanent missions.

27. With regard to alternative A, it had been suggested that a list of exceptions should be drawn up; such an approach would be consistent with paragraph (7) of the commentary. As to alternative B, Mr. Yasseen had made the useful suggestion that privileges and immunities should be listed in greater detail.

28. He did not favour the suggestion that separate sets of articles should be drafted for each category of representatives. The best approach was to adopt the formula in alternative B, but to instruct the Special Rapporteur and the Drafting Committee to expand the list it contained. Repetition of the same provision in sub-paragraphs (a) and (h) should be avoided and sub-paragraph (i) should be dropped altogether. The privileges and immunities accorded to the representatives concerned should not be less than those accorded to permanent representatives.

29. Mr. EUSTATHIADES said that the Commission should not take its decision on the basis of a theory. It was true that the theory of representation was convenient for justifying the utmost extension of the privileges and immunities of those who really possessed a permanent representative character, namely, the members of permanent diplomatic missions. But the theory of representation was based on a rather outmoded idea of the courtesy and respect due to a sovereign. In the present instance it would lead to unduly liberal provisions, when the Commission ought to keep to the privileges and immunities necessary for the performance of functions.

30. Both the alternatives were based on the idea of function. As it stood, alternative A showed more clearly than alternative B that functional necessities were the same for delegates to organs and conferences as for permanent delegations to international organizations. The main objection to alternative A was that the phrase "as appropriate" left matters to the discretion of the countries concerned. Alternative B was therefore preferable, provided that it was completed, and suggestions for its completion had been made by Mr. Castrén, Mr. Nagendra Singh and Mr. Ramangasoavina. Sub-paragraph (i) could not be retained, and it was precisely that sub-paragraph which would have to be replaced by additional particulars.

31. A third solution would be to combine the two alternatives, taking account of the fact that the persons concerned belonged to two different categories. First, there were delegates to organs which were more or less permanent; secondly, there were the delegates to conferences, to whom delegates to sessions of organs could be assimilated. On that basis, article 69 could be drafted to read:

"Facilities, privileges and immunities shall be accorded to delegations to organs of international organizations and to delegations to conferences convened by international organizations to the extent necessary for the performance of their functions.

"Delegations to organs of international organizations shall enjoy, *inter alia* . . .

"Delegations to sessions of organs of international organizations and delegations to conferences convened

by international organizations shall enjoy, *inter alia* . . .".

32. Delegations to organs of international organizations could be more or less assimilated to permanent missions. Delegations to sessions of organs and to conferences, on the other hand, must be treated more like special missions, because of their temporary character.

33. The Commission must not make everyone an ambassador and grant excessive privileges and immunities. There were limits to what governments could do. It would also be well to study the example of Switzerland.

34. Mr. EL-ERIAN (Special Rapporteur) said that the main difficulty with article 69 was that it had been presented in the form of two alternatives. As various members had pointed out, his intention in submitting the article in that form had been to indicate a method of approach rather than a particular concept. He had himself stated in paragraph (7) of the commentary that additional provisions would be needed, whether in the form of a reference to the privileges and immunities of special missions or permanent missions or of a detailed list.

35. Sir Humphrey Waldock had emphasized the need for a closer study of actual practice with regard to privileges and immunities. Perhaps the most important embodiment of that practice was to be found in the general Convention on the Privileges and Immunities of the United Nations, which had served as a prototype for a number of regional conventions, such as those of the League of Arab States and the Organization of African Unity. The general Convention, however, had been adopted so soon after the signing of the United Nations Charter that it inevitably contained a number of inconsistencies and ambiguities concerning the exact scope of the privileges and immunities accorded. Later, the trend had been towards granting complete diplomatic privileges and immunities, subject only to adjustments for temporary missions. Examples of that trend were to be found in the agreement between the United Nations and the French Government concerning the convening of the sixth session of the General Assembly in Paris in 1951, and in the Agreement between the United Nations and the Government of Thailand relating to the Headquarters of the Economic Commission for Asia and the Far East, signed at Geneva on 26 May 1954. Article VI of the latter instrument provided that "Representatives of governments participating in the work of the ECAFE, or in any conferences which may be convened by the United Nations . . . shall be entitled in the territory of Thailand while exercising their functions . . . to the same privileges and immunities as . . . members of diplomatic missions of comparable rank".⁶ He would prepare a working paper giving a more comprehensive review of existing practice.

36. He agreed with Mr. Ago that in the case of missions to conferences which were not of a temporary character, such as the Geneva Disarmament Conference, and in the

⁶ United Nations, *Treaty Series*, vol. 260, pp. 44 and 46.

case of the Governing Body of the ILO and the Executive Board of UNESCO, it was also appropriate to grant exemptions of a fiscal character which presupposed a long sojourn.

37. Many members had pointed out that the phrase "as appropriate" in alternative A seemed to give arbitrary power to the host State, but that had not been his intention. What he had intended was that, in principle, the rules governing permanent missions should apply, subject only to the adjustments rendered necessary by the temporary character of the mission.

38. It had been suggested that representatives should be given the privileges and immunities necessary for the performance of their functions, but that raised the question of the functional theory as opposed to the representational theory. It was significant that, whereas Article 7 of the Covenant of the League of Nations had referred to diplomatic privileges and immunities, those responsible for drafting the United Nations Charter had referred, in Article 105 (2), to "such privileges and immunities as are necessary for the independent exercise of their functions", because they had not been sure that the term "diplomatic" would be appropriate.

39. The Commission should bear in mind that in article 69 it was stating a residuary rule which was without prejudice to any treaty rules, and that it was trying to introduce an element of uniformity based on both the representational and the functional theories. The system should be broadly the same as that governing diplomatic privileges and immunities, but the analogy was rather with special missions in bilateral diplomacy.

40. As to the drafting, there was now more or less general agreement that alternative B should be taken as a basis for an exhaustive list of specific privileges and immunities, and that could be supplemented by other articles concerning waiver of immunity and the like.

41. A majority of the Commission seemed to favour the extension of privileges and immunities rather than the restrictive approach adopted in 1946, when the views of governments had not been requested and when, for reasons of urgency, it had not been possible to resort to the painstaking procedure followed by the Commission.

42. Mr. YASSEEN said that he would like to make it clear, in order to avoid any misunderstanding, that in considering the scope of the facilities, privileges and immunities to be accorded to certain classes of person, he had been guided, in principle, by the functional theory; by that he did not mean matters connected with the exercise of the function, but the function as a whole. What he had in mind was the theory which justified granting the facilities, privileges and immunities necessary for the proper performance of the functions. In the present instance he had regarded the representative character of an agent as being part of his function. It was within those limits that he understood the functional theory, not within the narrow limits of the actual exercise of the function.

43. Mr. USHAKOV pointed out that he had said that the Convention on Special Missions could be taken as a model only in the case of delegates to conferences, but

not in the case of delegates to organs, since the Commission had not yet defined the latter terms. For the time being, the draft articles were applicable only to delegates to certain organs, and it seemed practically impossible to draft articles covering representation to all organs.

44. The CHAIRMAN suggested that the Commission should regard article 70 as raising problems similar to those raised by article 69 and refer both articles to the Drafting Committee on the same basis.

45. Mr. BARTOŠ said he had understood that the Commission would not transfer its responsibility for deciding matters of substance to the Drafting Committee, which had no power of decision. The choice between the two alternatives proposed for article 69 was not merely a matter of drafting and the Commission should therefore tell the Drafting Committee which alternative it was to take as a basis.

46. The CHAIRMAN said that the majority of the members of the Commission were in favour of alternative B and wished the Drafting Committee to examine and improve it.

47. Mr. USHAKOV said that the Commission usually referred articles to the Drafting Committee without taking a decision on the substance, leaving the Committee free to revise the text in the light of all the comments made. There was no reason to follow a different procedure for article 69.

48. The CHAIRMAN said he thought Mr. Bartoš was right. The Commission should inform the Drafting Committee which of the two alternatives it preferred.

49. Mr. USHAKOV said he could not see on what basis the Commission could decide to choose between the two alternatives, since in many of the cases no choice was possible. It would be better to refer article 69 as a whole to the Drafting Committee and leave the Committee completely free to revise the text.

50. The CHAIRMAN suggested that the Commission, while reserving full freedom of action, should refer articles 69 and 70 to the Drafting Committee, with the request that it produce a text on the general lines of alternative B.

51. Mr. AGO said he had no objection to the Chairman's suggestion where article 69 was concerned, but he thought that procedure would be rather hasty in the case of article 70, since it had not yet been discussed at all and was closer to alternative A than to alternative B.

52. The CHAIRMAN said that private consultations with members had given him the impression that the course he suggested would be acceptable; however, he was willing for article 70 to be discussed if Mr. Ago considered it necessary.

53. Mr. AGO said he was prepared to accept the Chairman's suggestion, provided that it was clearly understood that the Drafting Committee was authorized to apply the same criteria to article 70 as to article 69.

54. The CHAIRMAN said that articles 69 and 70

would be referred to the Drafting Committee on that understanding.

It was so agreed.⁷

55. Mr. ROSENNE said he hoped that the Drafting Committee would specify the duties of the host State in greater detail.

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

PART III. *Permanent observer missions to international organizations* (resumed from the 1052nd meeting)

ARTICLE 0 (Use of terms)⁸ and

ARTICLE 51 (Establishment of permanent observer missions)⁹

56. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce that Committee's texts for articles 0 and 51.

57. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following texts:

Article 0 Use of terms

For the purposes of the present articles:

(a) A "permanent observer mission" is a mission of representative and permanent character sent to an international organization by a State not member of that organization;

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

Article 51 Establishment of permanent observer missions

Non-member States may establish in accordance with the rules or practice of the Organization permanent observer missions for the performance of the functions set forth in article 52.

58. The Special Rapporteur had submitted a revised version of article 0 which included, in addition to sub-paragraphs (a) and (b), a number of definitions. In view of that fact, he suggested that consideration of article 0 should be deferred until the entire series of definitions was available.

59. In the case of article 51, the main focus of the discussion had been on the problem of mutuality of consent and on the need to establish that the setting up of a permanent observer mission to an international organization was properly authorized. It had been suggested that there should be a specific reference to the need for an agreement between the organization and the sending State; alternatively, some term such as "arrange-

ments" might be used. The Drafting Committee had considered the various possibilities and had concluded that the necessary requirement should be expressed by the phrase "in accordance with the rules or practice of the Organization". That formulation differed from the one used in article 3,¹⁰ but the Drafting Committee believed that it covered the situation when the organization, by a specific agreement with the sending State, authorized the establishment of the permanent observer mission, since that authorization would then, in effect, be a part of the organization's practice.

60. Mr. ROSENNE said that, in view of the close link between article 0, sub-paragraph (a), and article 51, he wondered whether it was really right to postpone consideration of that sub-paragraph. It would be difficult to discuss the other articles if their terms of reference, so to speak, had not been settled.

61. Mr. KEARNEY (Chairman of the Drafting Committee) said he had no objection to dealing with the two articles together. Since sub-paragraphs (a) and (b) of article 0 depended on article 51, it might be better to discuss the latter article first.

62. Mr. BARTOŠ said he agreed with Mr. Rosenne; it would be more logical for the Commission to adopt article 0 provisionally, since otherwise it would not be able to adopt the subsequent articles. Personally, he approved of the article.

63. The CHAIRMAN suggested that members of the Commission should say whether they approved of article 0, sub-paragraphs (a) and (b).

64. Mr. ROSENNE observed that "article 0" was normally used by the Commission to designate an article which preceded an article 1; in the present case, however, it was really an addition to article 1. It would be simpler if the present article 0 became article 1/Add.1; the article 0 in Part IV would then become article 1/Add.2.

65. The final clause in sub-paragraph (a) should be amended to read: ". . . by a State not a member of that Organization" with a capital "O".

66. With regard to sub-paragraph (b), he had some misgivings about introducing the idea of "acting as the head of the permanent observer mission", because of the risk of confusion with the expression "acting permanent observer". He suggested that the text be amended to read: "The 'permanent observer' is the person appointed by the sending State as the person in charge of the permanent observer mission".

67. Mr. USHAKOV pointed out that the Commission did not usually approve articles on the use of terms until it had completed consideration of the whole draft. Hence it could only approve article 0 provisionally and would have to revert to it later. In any case, the article was not complete, as the Special Rapporteur and the Drafting Committee intended to add all the terms necessary for understanding the part of the draft to which it related.

⁷ For resumption of the discussion, see 1077th meeting, para. 50.

⁸ For previous discussion, see 1043rd meeting, paras. 32-46, and 1044th meeting, paras. 1-23.

⁹ For previous discussion, see 1044th meeting, paras. 24-51, and 1045th and 1047th meetings.

¹⁰ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 197.

68. The CHAIRMAN suggested that the Commission should approve article 0 on a provisional basis.

*It was so agreed.*¹¹

69. Mr. ROSENNE said that, in the English text of article 51, the word “establish” ought to be placed immediately before the words “permanent observer missions”. He was not convinced that the words “in accordance with the rules or practice of the Organization” could be interpreted in the way suggested by the Chairman of the Drafting Committee. It would be desirable to have some firmer wording which would not merely echo article 3.

70. Mr. USHAKOV said he agreed with Mr. Rosenne. The phrase “in accordance with the rules or practice of the Organization” was unnecessary, but as it was a compromise, he would not ask for its deletion.

71. Mr. USTOR said he preferred the original text of article 51 submitted by the Special Rapporteur. He was prepared to accept the new text, however, on the understanding that “the rules or practice of the Organization” must be in conformity with the principle of the sovereign equality of States, as well as with the principle of universality, which was of paramount importance where international organizations of a world-wide character were concerned.

72. Mr. BARTOŠ said he was in favour of article 51 as it stood. He could accept the drafting amendment to the English text proposed by Mr. Rosenne, but not the deletion of the phrase “in accordance with the rules or practice of the Organization”, which involved a question of substance and had nothing to do with the universality of the organization or the sovereignty of States. It must be clearly understood that no State could force a permanent observer mission on an international organization and its member States.

73. Mr. CASTRÉN said he was not entirely satisfied with the text of article 51, but was prepared to accept it as a compromise. The reference to the rules of the organization duplicated article 3, but article 51 was clearer than that article because it mentioned practice explicitly, whereas practice was only referred to in the commentary to article 3. He too considered that, as Mr. Kearney had implied when introducing article 51, no State was entitled to demand acceptance as an observer in the absence of any relevant rules or practice of the organization, and he hoped that that interpretation would be mentioned in the commentary.

74. Mr. KEARNEY (Chairman of the Drafting Committee) said he was prepared to accept Mr. Rosenne's suggestion concerning the drafting of article 51.

75. The CHAIRMAN said that two members of the Commission had reservations concerning article 51, but would not press them. He suggested that the Commission should adopt article 51, as amended by Mr. Rosenne.

*Article 51, as amended, was adopted.*¹²

ARTICLE 52 (Functions of a permanent observer mission)¹³

76. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 52:

Article 52

Functions of a permanent observer mission

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

77. The article contained a number of changes from the Special Rapporteur's original text, which were designed to meet various points raised during the discussion. The main issue had been whether the article should contain an enumeration of the most important functions of a permanent observer mission or merely mention one principal function and then refer to the functions listed in article 7. The Drafting Committee had decided on a mixed approach; it had listed certain functions in descending order of importance, but had abandoned the attempt to say that one function was more important than another. It had also dropped the expression “*mutatis mutandis*”. It had added the words “when required” to show that engaging in negotiations was not one of the principal functions of permanent observer missions. Lastly, it had listed the function of representing the sending State “at the Organization”, rather than “to the Organization”, since the representation of such missions was generally not to any organ, but took place within the context of the organization itself.

78. The CHAIRMAN, speaking as a member of the Commission, suggested that the words “when required” should be placed after the words “with the Organization”.

79. Mr. EUSTATHIADES proposed that the French text be improved by replacing the phrase “*s'informer dans l'Organisation des activités et de l'évolution des événements*” by “*s'informer des activités et de l'évolution des événements au sein de l'Organisation*”.

80. Mr. TESLENKO (Deputy Secretary to the Commission) pointed out that the phrase criticized by Mr. Eustathiades reproduced article 7, paragraph (d) word for word; if the Commission decided to change it, it would have to explain why the French text of article 52 did not reproduce the wording of article 7, whereas the English text was the same in both articles.

81. Mr. USHAKOV said that the English text of article 52 was a translation of the French text, which the Drafting Committee had taken as a basis. Perhaps the words “when required” should be replaced by “if required”.

¹¹ For resumption of the discussion, see 1065th meeting.

¹² For further discussion see 1082nd meeting, paras. 91-96.

¹³ For previous discussion, see 1048th and 1049th meetings.

82. Mr. EL-ERIAN (Special Rapporteur) said that the words "when required" reflected the difference between the representation of member States and that of non-member States.

83. Mr. ROSENNE said that if article 14 was retained, the introduction of the concept of negotiation in article 52 would require the introduction of a corresponding provision regarding permanent observers.

84. After a brief discussion, in which Sir Humphrey WALDOCK, the CHAIRMAN, Mr. ALCÍVAR and Mr. KEARNEY took part, it was decided to place the words "when required" after the word "Organization".

Article 52, as amended, was adopted.

The meeting rose at 1.5 p.m.

1062nd MEETING

Wednesday, 3 June 1970, at 10.25 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tammes, Mr. Thiam, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Welcome to Mr. Thiam

1. The CHAIRMAN welcomed Mr. Thiam, who had been elected a member of the Commission to fill one of the vacancies caused by the election of two former members as Judges of the International Court of Justice.

2. Mr. THIAM expressed his gratitude to the members for electing him.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/227 and Add.1 and 2)

[Item 2 of the agenda]

(resumed from the previous meeting)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (continued)

3. The CHAIRMAN invited the Commission to consider the Drafting Committee's texts for articles 52 bis to 57 bis.

ARTICLE 52 bis (Accreditation [appointment] to two or more international organizations or assignment to two or more permanent observer missions)¹

4. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 52 bis:

Article 52 bis

Accreditation [appointment] to two or more international organizations or assignment to two or more permanent observer missions

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

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

5. In his note on assignment to two or more international organizations or to functions unrelated to permanent missions (A/CN.4/227) the Special Rapporteur had referred to two situations. The first was when the same person was accredited as a permanent observer to two or more international organizations, and the second, referred to in paragraph 3 of the note, was when a State accredited the same mission as a permanent mission to an international organization of which that State was a member and as a permanent observer mission to another international organization of which it was not a member. In article 52 bis, the Drafting Committee had considered only the first situation, since the second had seemed to it rather unlikely. The only question to be decided by the Commission, therefore, was whether to use the word "accredit" or the word "appoint".

6. Mr. ROSENNE said that he was not entirely happy about the way in which the matters mentioned in the Special Rapporteur's note had been disposed of. The question of diplomatic appointments could be disregarded for the time being and included in article 9² in due course, but the second situation, far from being unusual, was a very common one in Geneva. He suggested, therefore, that paragraph 1 should read: "The sending State may accredit [or appoint] the same person as permanent representative or permanent observer to two or more international organizations or to another international organization or assign a permanent observer as a member of one of its permanent missions or of another of its permanent observer missions".

7. He preferred the word "appoint" to the word "accredit", although he would not press the point.

8. Mr. USHAKOV said that he would prefer the word "accredit", which was consistent with the term used in article 8.³ It should be stated in the commentary that the

¹ For previous discussion, see 1049th meeting, paras. 50-67.

² See *Yearbook of the International Law Commission, 1968*, vol. II, p. 202.

³ *Ibid.*, p. 201.