

Document:-
A/CN.4/SR.1063

Summary record of the 1063rd 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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80. Mr. USHAKOV said he saw no reason for deleting the words. It was always open to a sending State to notify the fact that it no longer considered a certain person as its representative and that it was terminating his functions; but the situation dealt with in article 57 *bis* was different, and in any case there was a reference to it in other conventions.

81. Mr. CASTRÉN reminded the Commission that during its consideration of article 18, it had decided after much discussion to adopt the term "chargé d'affaires *ad interim*".²¹ It was used by the United Nations Secretariat, as stated in paragraph (3) of the commentary to article 18.

82. Mr. EUSTATHIADES said that in his view it was not certain that the appointment of an observer *ad interim* was an obligation. It might therefore be preferable to say that an observer *ad interim* "could" act as head of the mission if the post was vacant. In some cases the observer mission's functions might have been temporarily suspended by the sending State itself; consequently, the appointment of an observer *ad interim* should not be an obligation.

83. The CHAIRMAN said that the Secretariat would ascertain what the practice was at United Nations Headquarters.

84. Mr. EL-ERIAN (Special Rapporteur) said that in practice a permanent observer mission usually had several members. It was therefore logical that if the head of the mission was absent, one of the other members should take his place, and it was important for the secretary-general to know to whom he should address himself in case of emergency.

85. The position was different in small technical international organizations in which the permanent observer mission might well consist of only one person. That case should be borne in mind.

86. Mr. YASSEEN said that the appointment of a chargé d'affaires *ad interim* was not an obligation, but a faculty. There was no rule of international law that a permanent mission must be continuous. It would be better to find some neutral wording to the effect that the sending State might appoint a chargé d'affaires *ad interim* and that the appointment was notified either by the permanent observer or by the sending State.

87. The CHAIRMAN suggested that the Commission should refer article 57 *bis* back to the Drafting Committee for reconsideration in the light of the discussion, with particular reference to Mr. Bartoš's suggestion that the words "in case he is unable to do so" should be deleted and to Mr. Yasseen's suggestion that the contents of the first sentence should be expressed as a faculty rather than as an obligation.

*It was so agreed.*²²

The meeting rose at 1.5 p.m.

1063rd MEETING

Thursday, 4 June 1970, at 10.5 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.

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]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

1. The CHAIRMAN invited the Commission to consider the texts of articles 58 and 59 proposed by the Drafting Committee.

ARTICLE 58 (Offices of permanent observer missions)¹

2. Mr. KEARNEY (Chairman of the Drafting Committee), said that the Drafting Committee proposed the following text for article 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.

3. The text was based on article 20,² the corresponding article in Part II. At the second reading, the Commission should consider whether the word "localities" should be replaced by "locality" in the English text.

Article 58 was adopted.

ARTICLE 59 (Use of [flag and] emblem)³

4. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 59:

¹ For previous discussion of articles 58 and 59, see 1050th meeting, paras. 58-63.

² See *Yearbook of the International Law Commission, 1968*, vol. II, p. 212.

³ See footnote 1.

²¹ See *Yearbook of the International Law Commission, 1968*, vol. I, 968th meeting, paras. 63-82, 969th meeting, paras. 1-53, and 985th meeting, paras. 47-54.

²² For resumption of the discussion, see 1065th meeting, para. 12.

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.

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.

5. The text differed from that of the corresponding article in Part II, article 21,⁴ in two ways. In the first place, the words "flag and" had been placed between square brackets both in the title and in the text of paragraph 1. The purpose was to draw the attention of governments to those words so as to elicit their views on whether the display of the flag on the premises of a permanent observer mission should be permitted. In view of the different functions of a permanent observer mission, some reduction in the visible signs of its presence might be considered.

6. For the same reason, the Drafting Committee had decided not to include the provision in the second sentence in paragraph 1 of article 21 reading: "The permanent representative shall have the same right as regards his residence and means of transport". So far as it had been possible to ascertain, there appeared to be no established custom regarding the display of the flag either on the residences or on the vehicles of permanent observers in New York.

7. Mr. USHAKOV said that if the words "flag and" in the title and in paragraph 1 were left in square brackets, the consequence would be that a permanent observer mission would only be entitled to display the emblem of the sending State on its premises. Paragraph 2 would then be pointless, since it had been drafted specially with the use of the flag in mind. The Commission should either delete the square brackets, keep paragraph 2 and explain in the commentary that it awaited comments from governments on the use of the flag, or it should make no change in the title and in paragraph 1 but delete paragraph 2.

8. Mr. BARTOŠ said that he knew from personal experience that it was often essential that the premises of a permanent observer mission should be distinguished by the flag of the sending State, especially when the mission was functioning in a disturbed area or in contested territory, or when it was a neutral mission working in a region where there was acute political tension between States.

9. Moreover, the article made no reference to the right to use the flag on motor vehicles, although for the same reasons that right should be granted. On several occasions when observer missions had complained of attacks upon their vehicles, the host State had made use of the excuse that the authorities concerned had been unaware of their identity and had not therefore been able to provide them with the requisite protection.

10. It should also be noted that while paragraph 1 conferred a right on a permanent observer mission, para-

graph 2 gave the host State a means of taking away the use of that right in practice by appropriate regulation. In some countries the flags of foreign countries could only be flown on the day of their national holiday, in other words once a year. Some limitation should therefore be placed upon regulations made by the host State.

11. Consequently it would be better to delete the square brackets in the title and in paragraph 1, or at any rate to state in the commentary that some members of the Commission had asked for their deletion. The commentary should mention that some members of the Commission had considered that it would be useful to allow the use of the flag and emblem on the official vehicles of a permanent observer mission. It should also emphasize that the regulations of the host State should be reasonable and should not be so strict as to annul the right accorded in paragraph 1.

12. Mr. CASTRÉN said that the fact that the word "flag" appeared in the title and in paragraph 1, even though it was in square brackets, was sufficient reason for retaining paragraph 2; but it should be explained in the commentary that the Commission was awaiting the comments of governments before coming to a decision on the point.

13. Mr. NAGENDRA SINGH suggested that article 59 should be retained as it stood with the words "flag and" in square brackets so as to draw attention to the need for government comments on the inclusion or deletion of those words.

14. He also urged the retention of paragraph 2, which reproduced the corresponding provision in article 21.

15. Mr. ALBÓNICO said that he too was in favour of retaining the square brackets.

16. Mr. KEARNEY (Chairman of the Drafting Committee) said that although the discussion in the Commission regarding paragraph 2 had been mainly about the use of the flag, the provisions of that paragraph also had a practical purpose where the use of the emblem was concerned. In New York City, for example, there were a variety of regulations regarding the display of emblems; for instance, emblems were required to be safely affixed so that they would not blow off in a high wind and injure passers-by. If a permanent observer mission put up its emblem, it must obviously comply with regulations of that kind.

17. Sir Humphrey WALDOCK said he supported the Chairman of the Drafting Committee on the point of fact. In the United Kingdom, there were elaborate laws on the control of the display of signs and emblems in public places, for aesthetic or other reasons. There was therefore clear scope for the application of paragraph 2 to emblems, and he could see no reason why that paragraph should be dropped.

18. The CHAIRMAN, speaking as a member of the Commission, said that in Nigeria, too, there were a number of regulations on the subject.

19. Mr. USHAKOV said that he would not press for a vote on his proposal, but would ask the Commission to consider a new wording for paragraph 2 on second

⁴ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 212.

reading if the reference to the flag was to be deleted from the title and paragraph 1.

20. Mr. ROSENNE said that the case for retaining paragraph 2 appeared unassailable.

21. He thought that the commentary should be expanded. It should not merely state that article 59 was based on article 21; it should justify the formulation adopted by giving a summary of the points brought out in the discussion.

22. At the second reading, the Commission should consider replacing the words "regulations and usages of the host State" at the end of paragraph 2 by the words "regulations and usage in the host State".

Article 59 was adopted.

The meeting rose at 10.30 a.m.

1064th MEETING

Friday, 5 June 1970, at 9.45 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: 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. Thiam, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldoock, Mr. Yasseen.

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[Item 2 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

1. The CHAIRMAN invited the Commission to consider the Drafting Committee's texts for articles 60, 60-A to 60-J, 61 and 61-A.

ARTICLE 60 (General facilities)¹

2. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 60:

Article 60

General facilities

The host State shall accord to the permanent observer mission the facilities required for the performance of its functions.

¹ For previous discussion, see 1051st meeting, paras. 1-44, and 1052nd meeting, paras. 1-27.

The Organization shall assist the permanent observer mission in obtaining those facilities and shall accord to the mission such facilities as lie within its own competence.

3. He said it might be helpful if he first described the method of work adopted by the Drafting Committee in dealing with the entire set of articles 60, 60-A to 60-J, 61 and 61-A. There had been a sharp division of opinion in the Committee, just as there had been in the Commission itself, on whether there should be a very short article which would deal with the problem simply by referring to section 2 of Part II on the facilities, privileges and immunities of permanent missions, or whether there should be a complete set of articles in the facilities, privileges and immunities of permanent observer missions. The Committee had adopted a solution which fell between those two extremes: it was presenting a series of articles in which it had attempted to divide the articles in section 2 into groups for purposes of reference. First, it had tried to separate into groups the persons who were entitled to privileges and immunities, and, secondly, it had tried to arrange the articles themselves by subject, so that governments and other interested bodies would know what the subject-matter was without constant cross-reference. The Committee had reviewed each individual facility, immunity and obligation on the basis of a draft submitted to it by the Special Rapporteur and it had concluded that, since there was substantial identity between so many articles, it was possible to use the reference method.

4. Article 60 differed slightly from article 22² in that it referred to "facilities" rather than to "full facilities"; the Drafting Committee had wished to make it clear that "full facilities" might include some aspects of assistance which permanent observer missions did not need.

5. Mr. USHAKOV said that, although he approved of article 60, he could not accept the system of references used in the draft articles as a whole. The Drafting Committee, which had had before it the full text, submitted to it by the Special Rapporteur, of the corresponding articles on the permanent missions of member States adapted to meet the case of permanent observer missions, had been able to establish from clearly and precisely worded articles that the facilities, privileges and immunities were the same in both cases. It had decided to draft the articles on permanent observer missions simply by inserting references to the articles on permanent missions. He disapproved of that method for practical, logical and legal reasons.

6. From the practical point of view, all that the Commission would achieve would be a saving of words and paper; the number of articles would remain the same, since reference had to be made to all the corresponding articles on permanent missions of member States. Again, it had only been after long and patient work that the Drafting Committee and the Commission had reached the conclusion that permanent observer missions should be granted the same facilities, privileges and immunities

² For the texts of articles 22 to 50, see *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10*, pp. 4-18.