

Document:-  
**A/CN.4/SR.1064**

**Summary record of the 1064th meeting**

Topic:  
**<multiple topics>**

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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.*

### 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 Drafting Committee's texts for articles 60, 60-A to 60-J, 61 and 61-A.

#### ARTICLE 60 (General facilities)<sup>1</sup>

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.

<sup>1</sup> 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 22<sup>2</sup> 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

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

as the permanent missions of member States, but it did not follow that States would come to the same conclusion without seeing the full text. Moreover, the Commission was assuming that States would not amend articles referring to other articles already adopted, but it was impossible to be sure that that would be the case. States decided the rules of international law: the Commission proposed, States disposed. The use of references would therefore make it very difficult, if not impossible, to amend the articles. Furthermore, there were no grounds for assuming that States would consider, as the Commission seemed to think they would, that the four parts of the draft constituted a whole and must result in a single convention. If they decided otherwise, what would become of the articles which consisted only of references? It was therefore obvious that use of the method would be a hindrance to States when they came to examine and approve the draft articles.

7. Moreover, it was illogical to reproduce in full some ten articles that were identical with the corresponding articles for permanent missions of member States and merely to give references in the case of other articles.

8. Lastly, the method raised serious difficulties from the legal point of view. In article 60-A, for example, the reference to articles 23 and 24 gave the term "permanent observer missions" a broader meaning than was given in the definition in article 0. In his opinion, therefore, the method of simply giving references to other articles was confusing, even though it was agreed in principle that the privileges, immunities and facilities were the same in both cases. He would revert to the subject at the second reading.

9. Mr. NAGENDRA SINGH said that there had been complete agreement in the Drafting Committee on one question of substance, namely, that permanent observer missions should have the same privileges and immunities as permanent missions. In view of that agreement, he would have thought that the Special Rapporteur's original draft article 60 would have satisfied everybody, since it expressed forcefully and effectively in three lines what was now being submitted in a series of articles. However, he considered himself bound by the decision of the Drafting Committee to adopt the compromise formula it had evolved. He wished to pay a tribute to the Special Rapporteur for the very competent work done by him in preparing his fifth report.

10. Mr. RUDA said that article 60 should include the expression "full facilities" used in article 22; the functions of permanent observer missions might not be exactly the same as those of permanent missions, but in his view both categories of missions should have full facilities.

11. He, too, would have preferred the Special Rapporteur's original text for article 60. He reserved his position on articles 60, 60-A to 60-J, 61 and 61-A until the second reading.

12. Mr. CASTRÉN said that, as a member of the Drafting Committee, he accepted the text in a spirit of compromise, but he agreed with Mr. Nagendra Singh and Mr. Ruda that the Commission could equally well

adopt the text originally proposed by the Special Rapporteur; it should, however, add a reference to members of the families of observer missions. Article 60 would then begin by saying "The permanent observer mission and its members and the members of their families" and end with the words "... to the permanent mission and its members and to the members of their families."

13. Mr. ROSENNE said he was prepared to accept the Drafting Committee's compromise text, but he hoped that it would be suitably redrafted on second reading.

14. Sir Humphrey WALDOCK said that, as the Chairman of the Drafting Committee had pointed out, the present text was a provisional one; its purpose was to show governments that the Commission had given the problem careful consideration and had concluded that the facilities, privileges and immunities granted to permanent missions should be applicable in the same manner to permanent observer missions. He hoped that eventually the text could be shortened, but he considered it undesirable to use the very short and sweeping formula originally proposed by the Special Rapporteur. He did not have any strong feelings about the insertion of the word "full" before "facilities", since the word was qualified in any case by the reference to functions.

15. Mr. REUTER said that, in general, he accepted the wording proposed for articles 60, 60-A to 60-J, 61 and 61-A, which he regarded as a provisional compromise aimed at eliciting reactions rather than as a final solution. It must be clearly understood, however, that the expression "in the case of permanent observer missions" could be read in two ways. In one, where it replaced the expression "*mutatis mutandis*", it was taken in a general sense and meant that the provisions laid down for the permanent missions of States members in general applied in a similar way to observer missions in general. The other meaning was more specific, and seemed to establish a distinction between missions proper, their members and the sending State. The meaning to be attached to the expression became clear from the general context of each article. For the time being, he was satisfied with that solution, since the meaning of the provisions was clear, but it was, of course, a defect in the drafting which the Drafting Committee had not been able to eliminate entirely.

16. Mr. USTOR said that the Commission and the Drafting Committee had been in unanimous agreement that permanent observer missions should be given the same facilities, privileges and immunities, with a few exceptions, as permanent missions. The problem had been how to express the identity between them. Perhaps the best solution would have been to repeat all the articles on permanent missions, but the majority of the members of the Drafting Committee had taken the view that such an enumeration of the rules would not be regarded as satisfactory by the General Assembly. Some members of the Committee had been inclined to adopt the Special Rapporteur's original text for article 60, since it was certainly the most concise, but that text presented certain difficulties, especially in connexion with the inclusion of article 29, which referred not only to

the mission and its members but also to couriers and diplomatic bags. The Drafting Committee had therefore adopted the articles now before the Commission on the understanding that they were only provisional and designed to convey to governments the idea that the Commission was in favour of granting the same facilities, privileges and immunities to permanent observer missions as to permanent missions.

17. The CHAIRMAN said it seemed to be generally agreed that the Commission was submitting the present series of articles on a provisional basis only and that they were intended to show governments that the Commission had given careful consideration to all the relevant articles. It was also clear that the Commission considered that a shorter formulation, similar to the Special Rapporteur's original text, should be prepared in due course.

18. Mr. USHAKOV said his understanding was that only the drafting was provisional and that the Commission was definitely adopting the substance.

19. The CHAIRMAN suggested that the Commission should adopt article 60, subject to the comments made by members.

*Article 60 was adopted.*

#### ARTICLE 60-A (Accommodation and assistance)

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

##### *Article 60-A*

##### *Accommodation and assistance*

The provisions of articles 23 and 24 shall apply also in the case of permanent observer missions.

*Article 60-A was adopted.*

#### ARTICLE 60-B (Privileges and immunities of the permanent observer mission)

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

##### *Article 60-B*

##### *Privileges and immunities of the permanent observer mission*

The provisions of articles 25, 26, 27, 29 and 38, paragraph 1 (a) shall apply also in the case of permanent observer missions.

*Article 60-B was adopted.*

#### ARTICLE 60-C (Freedom of movement)

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

##### *[Article 60-C*

##### *Freedom of movement*

The provisions of article 28 shall apply also in the case of members of the permanent observer mission and members of their families forming part of their respective households.]

23. The Commission should decide whether that article should be submitted within square brackets, the purpose of which was to show that some members considered that freedom of movement might be different in the case of permanent observer missions from what it was in the case of permanent missions.

24. The CHAIRMAN suggested that the square brackets should be removed and that the Special Rapporteur should be asked to make an appropriate reference in the commentary.

*It was so agreed.*

*Article 60-C was adopted with that amendment.*

#### ARTICLE 60-D (Personal privileges and immunities)

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

##### *Article 60-D*

##### *Personal privileges and immunities*

1. The provisions of articles 30, 31, 32, 35, 36, 37 and 38, paragraphs 1 (b) and 2 shall apply also in the case of the permanent observer and the members of the diplomatic staff of the permanent observer mission.

2. The provisions of article 40, paragraph 1 shall apply also in the case of members of the family of the permanent observer forming part of his household and the members of the family of a member of the diplomatic staff of the permanent observer mission forming part of his household.

3. The provisions of article 40, paragraph 2 shall apply also in the case of members of the administrative and technical staff of the permanent observer mission, together with members of their families forming part of their respective households.

4. The provisions of article 40, paragraph 3 shall apply also in the case of members of the service staff of the permanent observer mission.

5. The provisions of article 40, paragraph 4 shall apply also in the case of the private staff of members of the permanent observer mission.

26. Mr. USHAKOV said that, although he fully supported article 60-D, he wished to reserve his position on the reference to article 40, paragraph 1. At the previous session, the Commission had overlooked a mistake in that paragraph: it referred to articles 30 to 38, but two of those articles did not relate to personal privileges and immunities, namely article 33, on waiver of immunity, which was a matter for the sending State, and article 34, on settlement of civil claims. They should not therefore have been mentioned.

27. Mr. ROSENNE said it was his understanding that the Commission's acceptance of the present articles was without prejudice to any reservations which had been expressed concerning the corresponding articles adopted in 1968 and 1969.

*Article 60-D was adopted.*

#### ARTICLE 60-E (Nationals of the host State and persons permanently resident in the host State)

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

*Article 60-E**Nationals of the host State and persons permanently resident in the host State*

The provisions of article 41 shall apply also in the case of members of the permanent observer mission and persons on the private staff who are nationals of or permanently resident in the host State.

*Article 60-E was adopted.*

**ARTICLE 60-F (Waiver of immunity and settlement of civil claims)**

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

*Article 60-F**Waiver of immunity and settlement of civil claims*

The provisions of articles 33 and 34 shall apply also in the case of persons enjoying immunity under article 60-D.

*Article 60-F was adopted.*

**ARTICLE 60-G (Exemption from laws concerning acquisition of nationality)**

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

*Article 60-G**Exemption from laws concerning acquisition of nationality*

The provisions of article 39 shall apply also in the case of members of the permanent observer mission not being nationals of the host State and members of their families forming part of their household.

*Article 60-G was adopted.*

**ARTICLE 60-H (Duration of privileges and immunities)**

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

*Article 60-H**Duration of privileges and immunities*

The provisions of article 42 shall apply also in the case of every person entitled to privileges and immunities under the present Section.

*Article 60-H was adopted.*

**ARTICLE 60-I (Transit through the territory of a third State)**

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

*Article 60-I**Transit through the territory of a third State*

The provisions of article 43 shall apply also in the case of the members of the permanent observer mission and members of their families, and the couriers, official correspondence, other

official communications and bags of the permanent observer mission.

*Article 60-I was adopted.*

**ARTICLE 60-J (Non-discrimination)**

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

*Article 60-J**Non-discrimination*

In the application of the provisions of the present Part, no discrimination shall be made as between States.

35. Mr. ROSENNE said he found article 60-J acceptable up to a point, but it should be made clear in the commentary that there was a difference between it and article 44.

36. Mr. EUSTATHIADES said that the omission of the words "*qui ont des missions permanentes d'observation*" from the French text changed the sense of the article, whose meaning was that, once a permanent observer mission had been established, it would not be subject to any discrimination. A certain amount of discrimination did occur, however, in connexion with the establishment of permanent observer missions. He would like an explanation from the Drafting Committee on that point.

37. Sir Humphrey WALDOCK said that the words deleted had been designed to make it clear that the rule of non-discrimination applied only as between States having permanent observer missions. Objection had been taken to them in the Drafting Committee, however, on the ground that they might possibly lead to misunderstanding as to discrimination in regard to the right to establish observer missions and the article had therefore been limited to the provisions of the present part, which dealt with such missions.

38. Mr. BARTOŠ said he agreed with Mr. Eustathia-des that if the phrase in question was deleted, it would no longer be clear to what the non-discrimination applied. Perhaps the point mentioned by Sir Humphrey Waldo-ck could be met by adding the words "as regards permanent observer missions" after the words "between States".

39. Mr. RAMANGASOAVINA said that he, too, was of that opinion. He proposed that the words "relating to permanent observer missions" should be added after the words "the present Part".

40. Mr. EUSTATHIADES said it certainly would be preferable either to specify which part was being referred to or to maintain the phrase in question, but he would not press the matter, in view of the explanations given by Sir Humphrey Waldo-ck.

*Article 60-J was adopted.*

ARTICLE 61 (Conduct of the permanent observer mission and its members)<sup>3</sup>

41. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 61:

*Article 61*

*Conduct of the permanent observer mission and its members*

The provisions of articles 45 and 46 shall apply also in the case of permanent observer missions.

*Article 61 was adopted.*

ARTICLE 61-A (End of functions)

42. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 61-A:

*Article 61-A*

*End of functions*

The provisions of articles 47, 48 and 49 shall apply also in the case of permanent observer missions.

*Article 61-A was adopted.*

43. Mr. USHAKOV proposed that, in view of the importance of the commentaries for a proper understanding of the text, the Commission should request the Special Rapporteur to prepare commentaries to all the articles adopted, including those which merely referred to preceding articles.

44. Sir Humphrey WALDOCK said he strongly supported that proposal; it was desirable in each case to indicate that the Commission had considered the matter and was of the opinion that the provision in question applied to permanent observer missions.

45. Mr. USTOR said that there should be a general introduction to the commentary in which it would be explained that the articles were provisional and that the Commission wished to give the same facilities, privileges and immunities to permanent observer missions as to permanent missions.

46. Mr. THIAM asked whether he was correct in assuming that the Commission was adopting the substance of the articles but that the Drafting Committee was to submit a shorter and more concise formulation.

47. The CHAIRMAN said that the Special Rapporteur would include in his commentary the general introduction requested by Mr. Ustor and explain that the draft articles represented a compromise text which the Commission hoped to shorten and improve later.

48. Mr. EL-ERIAN (Special Rapporteur) said that he would endeavour to comply with the requests made by Sir Humphrey Waldock, Mr. Ushakov and Mr. Ustor. He would include two sections in Part III: a general section and a section on facilities, privileges and immunities, preceded by a general commentary. All the views

expressed by members would be reflected in the commentaries on particular articles.

49. Mr. THIAM said he proposed to revert to the substance of the draft on second reading. In his view the articles could have been shorter.

50. Sir Humphrey WALDOCK said that it should be made quite clear that the Commission was adopting the draft articles provisionally and that it had been agreed on first examination that facilities, privileges and immunities should be substantially the same for both kinds of missions.

51. He wished to express his appreciation of the distinguished work done by the Special Rapporteur on a very difficult subject.

52. Mr. BARTOŠ said he agreed with Mr. Ushakov that there should be a commentary to each article. He did not, however, think that the Commission should inform governments in advance that it intended to condense the draft articles on second reading. It could ask governments for their opinion on that point by mentioning that the draft submitted to them was a provisional one, but it was hard to see what would be the purpose of the comments of governments if that were not so.

53. Mr. RAMANGASOAVINA said he approved the way in which the Special Rapporteur proposed to prepare the draft commentaries. He would like to take the opportunity of congratulating the Special Rapporteur: to have got through such an immense amount of work was a very considerable achievement.

54. Mr. USHAKOV said that only the drafting of the articles was provisional; all the members of the Commission were in agreement that the facilities, privileges and immunities to be accorded to permanent observer missions should be the same as those accorded to the permanent missions of member States. The decision on the substance was therefore final.

55. Mr. KEARNEY said that he wished to make it clear that there had not been unanimity in the Commission on the principle that facilities, privileges and immunities should be the same for both permanent and permanent observer missions. He had himself drawn attention to a number of articles where in his view a distinction should be made between them.

56. Speaking as Chairman of the Drafting Committee, he thanked the Special Rapporteur for the very valuable help he had given to that Committee.

57. Mr. REUTER said he agreed with Sir Humphrey Waldock's comments on the need to place permanent observer missions once and for all on the same footing as the permanent missions of member States.

58. He associated himself with the congratulations which had already been addressed to the Special Rapporteur, and wished to assure him of his personal sympathy for having had to work under such difficult conditions.

59. Mr. USTOR said that he too wished to pay a tribute to the Special Rapporteur for his valuable work.

60. Mr. USHAKOV said that he wished to address his sincere congratulations to the Special Rapporteur.

<sup>3</sup> For previous discussion, see 1051st meeting, paras. 1-44, and 1052nd meeting, paras. 1-27.

61. Mr. ALCÍVAR said that, as he had joined the Commission so recently, he wished to make a general reservation concerning the draft articles, particularly article 25, paragraph 1, and article 60-C, until the second reading. He also wished to make a reservation about the use of the term “*Estado huésped*” in the Spanish text as a translation of “host State”. Like other members, he wished to congratulate the Special Rapporteur on his outstanding work.

62. The CHAIRMAN said that he, too, wished to associate himself with those who had paid tributes to the Special Rapporteur.

63. Mr. EL-ERIAN, Special Rapporteur, said that he would give careful consideration to the points made by Mr. Bartoš, Sir Humphrey Waldoock and Mr. Kearney and that he would reflect them in his commentary.

TEMPORARY OBSERVER DELEGATIONS AND CONFERENCES  
NOT CONVENED BY INTERNATIONAL ORGANIZATIONS  
(A/CN.4/L.151)

64. Mr. EL-ERIAN (Special Rapporteur) drew attention to his working paper (A/CN.4/L.151) on temporary observer delegations and on conferences not convened by international organizations. Reference had been made to those two subjects during the discussion and he had therefore thought it appropriate to prepare a note on them.

65. He did not invite comment at that stage. At the second reading, the Commission might wish to try to make its draft as complete as possible and to cover all aspects of diplomatic law concerning relations between States and international organizations.

66. Mr. YASSEEN thanked the Special Rapporteur for the document he had submitted to the Commission. He greatly admired the work of synthesis which the Special Rapporteur had successfully carried out on an intricate subject in which precedents were few and far between. The Special Rapporteur's work was all the more meritorious in that nobody else would have been able to discharge with such success the task entrusted to him by the Commission in the peculiarly difficult circumstances in which he had to carry it out.

67. Mr. EL-ERIAN (Special Rapporteur) said he wished to thank members of the Commission for their kind words of appreciation of his work.

**Co-operation with other bodies**

[Item 6 of the agenda]

STATEMENT BY THE OBSERVER FOR THE INTER-AMERICAN  
JURIDICAL COMMITTEE

68. The CHAIRMAN invited the observer for the Inter-American Juridical Committee to address the Commission.

69. Mr. CAICEDO CASTILLA (Observer for the Inter-American Juridical Committee) said he wished first to associate himself with the tributes which had been paid by the Commission to that great Latin American statesman, writer, thinker, diplomatist and jurist, the late Gilberto Amado.

70. A most important development in inter-American law during the past year was the entry into force, as a result of its ratification by two-thirds of the signatories, of the Protocol of Amendment to the Charter of the Organization of American States,<sup>4</sup> which had been adopted in 1967 by the Inter-American Conference at Buenos Aires.<sup>5</sup> One of its results had been to simplify the legal machinery of the organization, since of the two previous legal organs—the Inter-American Council of Jurists and the Inter-American Juridical Committee—only the Committee was retained under the revised charter. There was no need for him to give any further details of the various amendments resulting from the Buenos Aires Protocol; he would refer members to his statement on the subject at the twentieth session.<sup>6</sup>

71. It was a mistake to say, as some commentators had done, that the Organization of American States (OAS) would henceforth deal only with economic and financial matters rather than with political and legal questions. Certain legal rules, such as those relating to non-intervention, continued to be part of the very basis of the inter-American system. Also, many draft conventions were under consideration by the OAS, such as the draft convention on human rights prepared at the end of 1969 by a specialized inter-American Conference held at San José, Costa Rica. Moreover, even economic questions could not be settled satisfactorily without an adequate legal substructure; that applied particularly to economic integration, with its bearing on such branches of the law as private international law.

72. With regard to the work of the Inter-American Juridical Committee in 1969, he must mention first the extensive report it had submitted to the first General Assembly of the OAS on the Committee's past achievements and future work.<sup>7</sup>

73. The Committee had also adopted two decisions: one on government-owned international companies and the other on violations of international “standstill” (*status quo*) commitments.

74. With regard to government-owned international companies, a number of conclusions had been adopted which included the requirement that such companies should be formed by means of treaties. The treaties should incorporate the statutes of the company and specify the municipal law, or the common principles of law, that would govern the company's activities. The companies should enjoy extraterritorial legal personality

<sup>4</sup> United Nations, *Treaty Series*, vol. 119, p. 48.

<sup>5</sup> For the text of this protocol, see *International Legal Materials*, vol. vi, No. 2 (March, 1967), pp. 310-354.

<sup>6</sup> See *Yearbook of the International Law Commission, 1968*, vol. I, pp. 82-83, 957th meeting, paras. 2-15.

<sup>7</sup> See document CIJ-99 in *OAS Official Documents, OEA/Ser.I/VI.1, 1970*, pp. 57 *et seq.*

and be entitled to certain immunities and privileges such as tax exemptions and special import and export régimes. Provision should also be made either in the treaty or in the statutes for the submission of all disputes to some means of judicial settlement.

75. The Committee also urged those States which had no legislative provisions on the subject to enact legislation to require government approval of mergers of private companies for the purpose of establishing a privately owned international company carrying on business on an international scale.

76. The Committee's decision on the subject of violations of international "standstill" commitments was of particular interest. The question arose in connexion with article XXXVII (Commitments) of the General Agreement on Tariffs and Trade (GATT), which had been added to that Agreement a few years previously by way of an amending protocol, the relevant portion of which read:

"1. The developed contracting parties shall to the fullest extent possible—that is, except when compelling reasons, which may include legal reasons, make it impossible—give effect to the following provisions: . . . (b) refrain from introducing, or increasing the incidence of, customs duties or non-tariff import barriers on products currently or potentially of particular export interest to less developed contracting parties."<sup>8</sup>

77. The main clause of that provision was clear but it had been rendered ineffective by introducing an escape clause, the proviso "to the fullest extent possible—that is, except when compelling reasons . . . make it impossible". Moreover, the first session of the United Nations Conference on Trade and Development, in its recommendation A.II.1, part II, paragraph 2 (Standstill), stated that "No new tariff or non-tariff barriers should be created (or existing barriers increased) by developed countries against imports of primary products of particular interest to developing countries."<sup>9</sup>

78. The Inter-American Committee of the Alliance for Progress had accordingly requested the Inter-American Juridical Committee to consider the best means of obtaining legal compliance with the "standstill" commitments in question. The Committee had now completed its study on the matter and had concluded, first, that it was both necessary and desirable to prepare a new legal formulation of the standstill system; secondly, that the definition of international standstill commitments contained in article XXXVII of GATT was acceptable; thirdly, that the escape clause should be deleted because in practice the expressions "to the fullest extent possible", "compelling reasons" and "legal reasons" made it possible for developed countries to evade compliance with the basic commitment and to act as they pleased; fourthly, that recommendation A.II.1 of the first session of the United Nations Conference on Trade and Development should be embodied in a protocol in order

to give it binding force; and fifthly, that where a developed State proposed to change its duties on products covered by a standstill commitment, notification of its intention should be given to the other contracting parties, especially those interested in the products concerned.

79. The fifth conclusion was an original proposal which would make a real contribution towards the attainment of the desired result. In November 1969, the Latin American countries had embodied it in a proposal submitted by them to the Inter-American Economic and Social Council.

80. At its forthcoming session, to be held from 16 June to 15 September 1970, the Committee would deal with a number of important topics including draft conventions on cheques and bills of exchange negotiated internationally; the inter-American peace system—the American Treaty on Pacific Settlement or "Pact of Bogotá" of 1948<sup>10</sup> had only been ratified by 14 States and an effort would now be made to secure unanimity; the legal status of foreign guerilla fighters in the territory of member States; the treatment of foreign investments, a difficult topic because there was a division of opinion among the members of the Committee and that had prevented agreement being reached in 1969; the revision and modernization of various inter-American conventions, some of which had become obsolete due to changing conditions, such as those on patents and civil aviation.

81. The Convention on Treaties, signed at Havana on 20 February 1928,<sup>11</sup> had become obsolete because of regional support for the 1969 Vienna Convention on the Law of Treaties,<sup>12</sup> which was not only a complete instrument, but had been supported by no less than sixteen Latin American States. Other conventions had only been ratified by a few American States and therefore stood in need of revision. In all, the Committee would have to review the position in respect of no less than sixty-four instruments.

82. The Committee hoped that its 1970 session would be attended by an observer from the International Law Commission, as it had been in 1968 when Mr. Ruda had been welcomed by the Committee.

83. The need for continued co-operation between world-wide and regional bodies engaged in the same tasks had never been more urgent. Co-operation between the Commission and the Committee would contribute to the consolidation of the rule of law throughout the world.

84. Mr. RUDA, after thanking the Committee's observer for his valuable statement, said the fact that, following the amendment of the OAS Charter, the Committee now constituted the only inter-American juridical body would no doubt make it possible to obtain more speedy results.

<sup>8</sup> United Nations, *Treaty Series*, vol. 572, pp. 324 and 326.

<sup>9</sup> *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No.: 64.II.B.11), p. 29.

<sup>10</sup> United Nations, *Treaty Series*, vol. 30, p. 84.

<sup>11</sup> See *The International Conferences of American States 1889-1928* (New York, Carnegie Endowment for International Peace, 1931), p. 416.

<sup>12</sup> *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).

85. The observer had rightly stressed that the Inter-American Juridical Committee dealt with up-to-date topics rather than with traditional subjects of international law. The questions of government-owned international companies and of the violation of standstill commitments in GATT were new and important topics.
86. He extended his good wishes to the Committee in its work of reviewing the inter-American conventions.
87. Mr. NAGENDRA SINGH said that the activities of the Inter-American Juridical Committee were parallel to those of the Asian-African Legal Consultative Committee; those regional bodies must be encouraged by the Commission, which should extend to them any assistance they might require.
88. In wishing every success to the Committee, he noted with interest the new conception of international companies, which was particularly valuable to developing countries.
89. Mr. KEARNEY said that the Commission should welcome the assistance of the Inter-American Juridical Committee. If, for example, that Committee managed to find a solution to the legal problems of foreign investments, its conclusions would be of great interest to the Commission's Special Rapporteur on State responsibility.
90. He noted with interest the Committee's intention to review existing inter-American conventions and urged close co-operation with the other United Nations bodies concerned. For instance, the Committee was dealing with the question of cheques, bills of exchange and negotiable instruments generally and the United Nations Commission on International Trade Law (UNCITRAL) had recently taken up the study of a similar subject. It was highly desirable that, for the same subject, uniform world-wide solutions should be based on regional experience.
91. Mr. ROSENNE, after thanking Mr. Caicedo Castilla for his report, said it was a matter of major importance for the proper discharge of the Commission's responsibilities that it should have authoritative and complete information on the work done by those inter-governmental organizations with which it had established formal relationships. Co-operation was important for the conduct of the whole operation of codification and progressive development of international law, of which the Commission did not have a monopoly although it did have a special position because of its responsibilities of a universal character. The Commission must draw on the experience of the various regions, especially those which had established formal association with the Commission and exchanged observers with it.
92. He shared Mr. Kearney's view that the regional intergovernmental organizations could assist the International Law Commission in the discharge of its responsibilities.
93. Although the Commission was primarily concerned with public international law, he welcomed the information given on the Inter-American Committee's work on private international law and on such subjects as international companies, which contained elements of both public and private law.
94. It was particularly important that the Commission should be represented at regional meetings; he expressed the hope that it would formally entrust its Chairman with the responsibility of representing it at the next meeting of the Inter-American Juridical Committee, and that he would be able to attend.
95. Lastly, he hoped that the experience gained by the Committee in reviewing the sixty-four inter-American Conventions would be of benefit to the Commission.
96. Mr. SETTE CÂMARA said he must thank the observer for the Inter-American Juridical Committee most sincerely for his tribute to the late Gilberto Amado.
97. It was particularly satisfactory for him as a citizen of Brazil, the host country to the Committee, to hear such a comprehensive report of its activities. The Committee was the oldest established intergovernmental body concerned with the study of legal norms and over the years it had built up an impressive record of achievement.
98. Mr. ALBÓNICO, speaking also on behalf of Mr. Castañeda, expressed his appreciation of Mr. Caicedo Castilla's interesting report. He noted that the new structure of the OAS would make its operation more flexible and more effective.
99. If he might make a concrete suggestion to the Inter-American Committee, it would be that it issue a recommendation urging those American States which had not yet ratified the codification conventions concluded as a result of the work of the International Law Commission to do so within the very near future.
100. Mr. USHAKOV thanked the observer for the Inter-American Juridical Committee for his report and congratulated him both on the Committee's work and on his personal contribution to it as rapporteur on a very important subject. The excellent results achieved by the Committee were of great interest not only to the Latin American countries but also to the International Law Commission.
101. He felt sure he was expressing the feelings of all members of the Commission in saying that he hoped that the close and fruitful relationships which had been established between the Committee and the Commission would continue, to their mutual benefit, since they also contributed to the progress of international public law.
102. Mr. BARTOŠ said that he too wished to congratulate Mr. Caicedo Castilla on his report, which contained a great deal of interesting information. Every year, the members of the Commission had the satisfaction of hearing the reports of the observers of the regional Committees, which they subsequently re-read and used to advantage in their work.
103. He was pleased to see that the Committees were taking account of the Commission's reports in their work for the unification of law. It was through the co-operation of those committees which sent observers to the Commission that the latter's work came close to achieving universality. That co-operation should continue to the widest possible extent.

104. Mr. ALCÍVAR, thanking the Inter-American Juridical Committee's observer for his valuable report, said the work of that regional body was of great importance to the maintenance of international peace and security in its region. The American system of pacific settlement of disputes needed to be brought into line with the world-wide system. Many of the now well-established principles of international law had had their origin in Latin America but, in the particular matter of modes of pacific settlement, the American system now lagged behind the world system.

105. With regard to the question of foreign investments, on which there had been a division of opinion in the Committee, he expressed the hope that it would be possible to harmonize the essential idea of the right of peoples to dispose of their national resources and their need to obtain the foreign investments they needed.

106. Lastly, it was important that the Committee should co-ordinate its work with that which the International Law Commission was carrying out on a world basis.

107. Mr. RAMANGASOAVINA thanked the observer for the Inter-American Juridical Committee for his very interesting report. At the 1046th meeting, when the Commission had paid a tribute to the memory of Mr. Amado, members had stressed the valuable contributions by Brazil and by Latin America as a whole to civilization in general and to law in particular. Mr. Caicedo Castilla's report on the Committee's work was further evidence of that. Latin American jurists had made a notable contribution, if not to the unification of law, at any rate to the unification of legal concepts in a world which was divided, if only by distance. The Inter-American Juridical Committee was blazing a trail for the other continents to follow.

108. Mr. THIAM said that he had been interested to note the similarity of the problems encountered by the Latin American countries and the African countries. The African countries were convinced of the need to co-operate with the Latin American countries in the field of international law for four main reasons. First, the newly independent countries, and more particularly those of Africa, needed the general principles of law as a guide to ensure that in their actions they did not diverge from the principles of universal civilization. Secondly, they had to ensure that the solutions they found to their own problems did not conflict with the general principles of law, and that unfortunately was not always the case. Thirdly, relationships between the African States, like those between the Latin American States, had to be so organized as to encourage a closer integration at all levels. And fourthly, relationships with the industrialized countries had to be established in the spirit defined by the Group of 77 at the New Delhi Conference. The similarity of the questions of immediate concern to both groups of countries showed how fruitful co-operation between Africa and Latin America could be.

109. Mr. EUSTATHIADES, speaking also on behalf of Mr. Castrén, said he wished to associate himself with the congratulations and thanks expressed to the observer for the Inter-American Juridical Committee, whose very

interesting report provided further evidence of the valuable work on codification carried out by the Committee in addition to its other meritorious activities extending over so many years.

110. The CHAIRMAN said the Commission and all its members were grateful to the observer for the Inter-American Juridical Committee for his very interesting report, which had enabled the Commission to follow the recent work of that Committee.

111. As the author of a comparative study of the Organization of American States and the Organization of African Unity he had noted with particular interest the revision of the structure of the OAS. He had also been much impressed by the extent of the work of codification undertaken by the Committee, and its prospective review of sixty-four inter-American conventions.

112. The work of the Inter-American Committee, particularly on such subjects as international companies and investment disputes, was of more than purely continental importance. Latin America could take pride in its many eminent jurists, whose ability he had had an opportunity to appreciate at the Vienna Conference on the Law of Treaties, where the Latin American delegations had played a very prominent part. The Commission would always welcome the cross-fertilization of ideas resulting from the co-operation between the two bodies.

The meeting rose at 1.10 p.m.

### 1065th MEETING

Monday, 8 June 1970, at 3.10 p.m.

Chairman: Mr. Taslim O. ELIAS

*Present:* Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Castrén, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, 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]

(resumed from previous meeting)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE  
(resumed from previous meeting)

ARTICLE 0 (Use of terms) (resumed from the 1061st meeting)<sup>1</sup>

1. The CHAIRMAN said that the Commission had already adopted sub-paragraphs (a) and (b) of article 0

<sup>1</sup> For previous discussion, see 1043rd meeting, paras. 32-46, 1044th meeting, paras. 1-23, and 1061st meeting, paras. 57-68.