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Summary record of the 1082nd meeting

Topic:
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Extract from the Yearbook of the International Law Commission:-
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opportunity to raise the matter in the Assembly. He accordingly proposed that the opening words "Recommends that the General Assembly should appeal . . ." in paragraph (a) be replaced by the words "Suggests that the General Assembly might wish to adopt a resolution appealing . . .".

67. He also proposed the introduction of two pre-ambular paragraphs. The first would recall that, under Article 13, paragraph 1a of the United Nations Charter, the General Assembly was called upon to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification and that the Statute of the International Law Commission had been adopted in pursuance of that charge of the General Assembly under Article 13, paragraph 1a of the Charter. The second would recall that a whole series of codification conferences had been convened and that, on the basis of the Commission's work, a number of conventions had been adopted.

68. Mr. USTOR said that the purpose of paragraph (a) was to try to ensure that the codification conventions were accepted on as wide a basis as possible. That purpose could be achieved in two different ways: either by urging those States which could become parties thereto to ratify or accede to the various codification conventions; or by the General Assembly adopting a resolution in line with the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties adopted by the Conference as part of its Final Act,¹⁸ calling upon the General Assembly to invite as many governments as possible to participate in the codification conventions.

69. Mr. ROSENNE said that the Commission should confine itself to drawing attention to its own work and should not get involved in other items on the agenda of the General Assembly.

70. That being said, he would urge that the words "the codified international law", which were used in the draft of paragraph (a), be subjected to careful scrutiny. Codified international law comprised more than just the codification conventions adopted as a result of the Commission's work.

71. Mr. USHAKOV said he supported Mr. Ustor's proposal, which was in conformity with the principle of universality.

72. Mr. YASSEEN said that the wording "*Recommends* that the General Assembly should appeal . . ." was too strong, coming from the Commission, which was a subsidiary organ of the Assembly. He suggested that it be replaced by the wording: "*Recommends* that the General Assembly appeal . . .".

73. Mr. TABIBI said that the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties was not the only declaration adopted by the Vienna Conference. It had also adopted a Declaration on

the Prohibition of Military, Political or Economic Coercion in the Conclusion of Treaties.¹⁹ He therefore suggested that a suitable reference to that Declaration be included in the Commission's resolution as well.

74. Mr. KEARNEY said it seemed to him that some of the suggestions now being made were leading the Commission away from its functions as a group of independent experts and taking it into the political sphere.

75. The CHAIRMAN said he noted that there was general support for the introduction of the two pre-ambular paragraphs suggested by Mr. Rosenne and for the change in the opening words suggested by Mr. Yasseen. Perhaps the Commission would wish to adopt the draft resolution with only those changes and leave controversial issues aside.

76. Mr. USTOR said that the Declaration on Universal Participation had been adopted unanimously by the Vienna Conference. There were a number of treaties codifying general international law and it was desired that those treaties should be adopted as widely as possible. Even if they were to be ratified or acceded to by all the States that were eligible to sign them, however, they would not become general, because they were not open to signature by all States.

77. He suggested that further discussion should be postponed and, at a future meeting, he would submit a proposal in writing on the lines he had indicated.²⁰

It was so agreed.

78. Mr. ALCÍVAR said he wished to have it placed on record that he was opposed to paragraph (a).

The meeting rose at 1 p.m.

¹⁹ *Ibid.*

²⁰ For the resumption of the discussion, see 1083rd meeting, para. 63.

1082nd MEETING

Friday, 3 July 1970, at 10.10 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Kearney, Mr. Nagendra Singh, Mr. Rosenne, Mr. Sette Câmara, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

¹⁸ *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference, document A/CONF.39/26 (United Nations publication, Sales No.: E.70.V.5).*

Organization of future work

(A/CN.4/L.154)

[Item 8 of the agenda]

(resumed from the 1078th meeting)

1. The CHAIRMAN said that, at a private meeting two days previously, the Commission had considered the financial implications of three proposals before it.

2. The first proposal would recommend to the General Assembly that the Commission should hold a fourteen-week session in 1971. The financial implications of that proposal were set out in document A/CN.4/L.154. During the private meeting, further explanations had been given to the Commission by the Deputy Chief of the Budget Division of the United Nations Office at Geneva.

3. The second proposal would recommend that the publication entitled "The Work of the International Law Commission",¹ issued in 1967 by the Office of Public Information, should be brought up to date as soon as possible in connexion with the celebration of the twenty-fifth anniversary of the United Nations. The Secretariat had explained orally that it was believed that the only item which could not be absorbed in the regular budget was the cost of printing in the three languages in which the original publication had been issued, namely, English, French and Spanish; the total of that item had been provisionally estimated at \$18,400. Some members had pointed out that, since the publication was first issued, Russian had become one of the working languages of the General Assembly, and had expressed the wish that this new edition of the publication should accordingly be issued in Russian also.

4. The third proposal would ask the Secretary-General to prepare a new edition of the "Summary of the practice of the Secretary-General as depositary of multilateral agreements", of 7 August 1959.² The Secretariat had informed the Commission orally that, if the new edition were issued as a Commission document in the A/CN.4/... series, it would seem at present that the cost of translation could be absorbed in the regular budget. However, in view of the highly technical nature of the subject-matter, the Legal Counsel was of opinion that it would be necessary to engage a consultant possessing the required experience to prepare the study. The fee to be paid to the consultant had been provisionally estimated at \$15,000. Some members had expressed the view that the study could be prepared by the staff of the Office of Legal Affairs and that no consultant was required. Others had considered, however, that the choice of the person or persons to whom the task of preparing the study should be entrusted could only be made by the Legal Counsel acting on behalf of the Secretary-General.

5. Mr. USHAKOV said it should be noted that, at the same private session, the Commission had also discussed the organization of work for the next session.

6. The CHAIRMAN said that the International Law Association had expressed the wish that a member of the Commission should attend the forthcoming Congress of the Association, to be held at The Hague in August next. Sir Humphrey Waldock had tentatively agreed to attend.

Draft report of the Commission on the work of its twenty-second session

(A/CN.4/L.156-160 and Addenda)

(resumed from the previous meeting)

Chapter II

RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS

A. Introduction (Paragraphs 1-15)

7. The CHAIRMAN invited the Commission to consider the part of chapter II of its draft report contained in document A/CN.4/L.157.

8. Mr. BARTOŠ (Rapporteur) said that, to avoid repetition, he would speak only after hearing the comments of members of the Commission on each paragraph, and then only to call attention to points not already mentioned by them.

Paragraph 1

Paragraph 1 was approved.

Paragraph 2

9. Mr. ROSENNE suggested that a further sentence be added at the end of the paragraph to read: "The same year, the General Assembly, at its twenty-fourth session, adopted resolution 2501 (XXIV) which, *inter alia*, recommended that the Commission should 'continue its work on relations between States and international organizations, with a view to completing in 1971 its draft articles on representatives of States to international organizations'".

It was so agreed.

Paragraph 2, as amended, was approved.

Paragraph 3

10. Mr. KEARNEY suggested that the last sentence, with its reference to the Special Rapporteur's working paper (A/CN.4/L.151), be deleted, since the Commission had not taken any action on the subject-matter of the paper.

11. Mr. USTOR said that in its draft articles the Commission had dealt with permanent missions, permanent observer missions and delegations to meetings of organs and to conferences convened by international organizations. Some mention was needed in the report of the fact that the Commission had not dealt with the fourth category, namely, temporary observer delegations and delegations to conferences not convened by international organizations.

¹ United Nations publication, Sales No.: 67.V.4.

² ST/LEG/7.

12. The CHAIRMAN suggested that the last sentence be retained subject to the replacement of the concluding phrase "intended to be taken into account at the Commission's second reading of the draft as a whole" by the phrase "but the Commission did not consider that it should take up the matter at this time".

It was so agreed.

Paragraph 3, as amended, was approved.

Paragraph 4

Paragraph 4 was approved.

Paragraph 5

13. Mr. KEARNEY pointed out that the title of section 2 of part IV "Facilities, privileges, immunities and obligations" was provisional; when the commentaries to the articles in the section were completed, it might be necessary to alter the title, particularly the word "obligations".

14. The CHAIRMAN said that, if there were no further comment, he would take it that the Commission agreed to approve paragraph 5, subject to Mr. Kearney's observation.

Paragraph 5 was approved.

Title of section 2 of the Introduction

15. Mr. KEARNEY proposed that, in the title of section 2 of the Introduction, the word "Presentation" be replaced by the word "Arrangement".

It was so agreed.

Paragraph 6

16. Mr. ROSENNE suggested that, in the second sentence, the opening words "Having the character of permanent missions and not that of *ad hoc* diplomacy" be replaced by the words "Having the character of permanent missions rather than of special missions".

17. Mr. BARTOŠ (Rapporteur) said that the Commission had already decided not to use the term "*ad hoc* diplomacy", in order to take account of protests from certain diplomatic circles which opposed the establishment of an analogy between diplomacy and special missions. He agreed, therefore, that the words "*ad hoc* diplomacy" should be replaced by the words "special missions".

18. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to approve paragraph 6 as amended by Mr. Rosenne.

Paragraph 6, as amended, was approved.

Paragraph 7

19. Mr. KEARNEY proposed that, in the first sentence, the word "draft" before the word "articles" and the words "question of the" before the word "method" be deleted.

20. He also suggested that the penultimate sentence, reading "Other members, also for the purposes of the

first reading, favoured a more elaborate, self-contained set of articles", be deleted.

21. The concluding words of the last sentence "the positions taken by members on the question" should be replaced by the words "the two positions outlined above".

It was so agreed.

Paragraph 7, as amended, was approved.

Paragraph 8

22. Mr. KEARNEY proposed that the words "for parts III and IV, the Drafting Committee established a complete set of draft articles" in the first sentence be replaced by the words "for part III the Commission developed a set of draft articles"; that the words "and thereby thoroughly examined" be replaced by the words "and a set of draft articles for part IV based mainly on the pertinent provisions of the Convention on Special Missions and part II of the present draft articles. In doing so, it carefully examined"; and that the concluding words "each group of persons that might be entitled to them" be replaced by the words "both permanent missions and delegations to organs of international organizations or to conferences convened by an international organization".

23. In the second sentence, he proposed that the opening words "The Drafting Committee and subsequently the Commission in its review were" be replaced by the words "In its review, the Commission was"; that the words "whether any" be replaced by the word "what"; that the words "between permanent missions on the one hand and permanent observer missions" be replaced by the words "between special missions, permanent missions, permanent observer missions"; and that the concluding words "on the other" be deleted.

24. In the third sentence, he proposed that the opening words "They satisfied themselves" be replaced by the words "It satisfied itself"; that the words "should not be drawn in view of the few and unsubstantial differences found" be replaced by the words "need not be drawn"; and that the word "generally" before the word "necessary" be deleted.

25. In the last sentence, he proposed that the opening words "The Commission, therefore, decided to adopt a mixed method whereby, first, it elaborated" be replaced by the words "Consequently, in parts III and IV, there are both specific articles"; that the word "given" be replaced by the words "to take into account"; and that the concluding words "second, used the technique of legislating by reference when, as was generally the case, there were no substantial differences" be replaced by the words "articles which employ the technique of legislating by reference".

26. Mr. BARTOŠ (Rapporteur) said he recognized that, in principle, there were sound reasons for Mr. Kearney's amendment but, although the report was on the work of the Commission, he thought that the part played by the Drafting Committee should be acknowledged by

mentioning specifically that the Commission had based its work on that of the Drafting Committee.

27. Mr. CASTRÉN said he approved the text proposed by Mr. Kearney. He could not accept Mr. Bartoš' view, because it had never been the Commission's practice to mention the work of the Drafting Committee in its report.

28. Mr. BARTOŠ (Rapporteur) said that the Commission was master of its own procedure and of its report; if it preferred not to mention the Drafting Committee, however, he would abide by the Commission's wishes.

29. Mr. ROSENNE said he noted that, in the text read out by Mr. Kearney, the word "thoroughly" before the word "examined", in the first sentence, had been replaced by the word "carefully". Personally, he was in favour of dropping the adverb altogether; it should be assumed that all work done by the Commission was done carefully.

30. He would also suggest that, in the text read out by Mr. Kearney, the words "legislating by reference", at the end of the paragraph, be replaced by the words "drafting by reference".

31. The CHAIRMAN suggested that the Commission approve Mr. Kearney's revised text for paragraph 8, as amended by Mr. Rosenne.

Paragraph 8, as amended, was approved.

Paragraph 9

32. Mr. KEARNEY proposed that, in the first sentence, the words "that the first two groups, dealing with permanent missions" be replaced by the words "that two groups of articles, dealing with general principles and with permanent missions", and that the second sentence be reworded to read: "The Commission intends, during the second reading of the whole draft, to determine whether it would be possible to reduce the number of articles by combining provisions which are susceptible of uniform treatment".

It was so agreed.

Paragraph 9, as amended, was approved.

Paragraph 10

33. Mr. ROSENNE said that, as he recollected, the Commission had agreed that the provisions of article 50 should apply to the present group of articles as well. He therefore proposed the insertion at the end of the paragraph of an additional sentence reading: "The Commission intends article 50 to apply also to the articles on permanent observer missions and on delegations to organs and to conferences, and during the second reading will decide on a suitable place for article 50".

It was so agreed.

Paragraph 10, as amended, was approved.

Paragraph 11

34. Mr. KEARNEY proposed that, in the second sentence, the opening words "In view of the delicate and

complex nature of those questions and having in mind the decision taken at its twenty-first session on the subject" be replaced by the words "In view of the decision taken at the twenty-first session".

It was so agreed.

Paragraph 11, as amended, was approved.

Paragraph 12

35. Mr. KEARNEY suggested that, in the first sentence, the reference to "the modern rules of international law concerning permanent observer missions" be dropped. What the Commission's research had revealed was that there were very few rules on the subject.

36. Mr. ROSENNE suggested that, in the phrase "the modern rules of international law", the words "rules of" be deleted.

37. Mr. AGO said that he thought it would be better to say simply: "the rules concerning permanent observer missions...". Furthermore, since the matter did not warrant speaking of "progressive development as well as codification", the last sentence should be deleted.

38. Sir Humphrey WALDOCK said he could not agree. It was the task of the Commission to clarify points of uncertainty and to fill in the gaps in the law. The formula employed in the report described exactly what the Commission usually did and what was happening in the present case.

39. Mr. BARTOŠ (Rapporteur) said he had noted in the course of the discussion in the Commission that several members had spoken of the progressive development and of the general development of international law but not of the stability of its rules. Some had even said that permanent observer missions were a new institution for which the traditional rules could not be taken as a starting-point.

40. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to approve paragraph 12 with the change suggested by Mr. Rosenne.

It was so agreed.

Paragraph 12, as amended, was approved.

Paragraph 13

41. Mr. KEARNEY suggested that a sentence be added at the end of the paragraph reading: "It also appeared appropriate to request the views of those States which have permanent observer missions at United Nations Headquarters in New York or at Geneva".

42. Mr. USHAKOV said that that wording would not cover all the cases. There were other States which had applied to have permanent observer missions.

43. Mr. BARTOŠ (Rapporteur) said that, as a general rule, it was proper to use the expression "Member States", but in the case in point, it would be better to say "to Governments of Member States and of other States directly concerned", in view of the fact that many

non-member States also had permanent observer missions. He therefore agreed with Mr. Ushakov.

44. Mr. CASTRÉN said that the expression "other States directly concerned" was not sufficiently precise; it would be clearer to say "other States having permanent observer missions".

45. Mr. TESLENKO (Deputy Secretary to the Commission) said he must remind the Commission of the position taken by the Secretary-General with regard to formulas such as "all States" or "all States directly concerned". It would be very difficult to apply paragraph 13 if one of those formulas were used.

46. Mr. USTOR said that paragraph 13 was similar to paragraph 16 of the Commission's 1969 report.³ He therefore saw no reason why it should not be approved as it stood.

Paragraph 13 was approved.

Paragraph 14

47. Mr. BARTOŠ (Rapporteur), speaking as a member of the Commission, said that the date of 1 January 1971 fixed for the submission of observations from Governments was too early. The Commission's session would not begin before the end of April and both the Secretariat and Governments would be busy with the General Assembly during the last quarter of the present year. It would be better, therefore, to fix the time limit at 1 February.

48. Mr. TESLENKO (Deputy Secretary to the Commission) said he was afraid that, if the date fixed for the submission of observations from Governments were put back, the Special Rapporteur's report would not be ready in time for the next session. The Special Rapporteur should be given time to prepare a consolidated report, with a complete table of the draft articles, and the Secretariat should be given time to edit and translate the report. To save time, the Secretariat was proposing to communicate the report to Governments as soon as it was ready, which would be towards mid-August, direct from Geneva, as a document of the Commission, without waiting for it to be issued as a document of the General Assembly.

49. Mr. ROSENNE said he welcomed the statement by the Deputy Secretary of the Commission. Personally he did not think that transmitting the draft articles to the Geneva missions would expedite matters; a question of that sort would normally be dealt with by the permanent delegations in New York. It should also be remembered that in August, the diplomatic services were in the midst of their preparations for the forthcoming General Assembly.

50. He suggested that the words "not later than 1 January 1971" should be replaced by the words "not later than 15 January 1971".

It was so agreed.

Paragraph 14, as amended, was approved.

³ See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10, p. 3.*

Paragraph 15

Paragraph 15 was approved.

B. Draft articles on representatives of States to international organizations

Title of part B of chapter II

51. Mr. USHAKOV said he noted that part B of chapter II was entitled "Draft articles on representatives of States to international organizations", a title which no longer corresponded to the contents of the articles.

52. Mr. ROSENNE said that the title in question was the title of the whole draft. If the articles were arranged so as to constitute a single draft and not several sets of draft articles, that title would remain.

53. The CHAIRMAN said that, if there were no further comments, he would consider that the Commission agreed to retain that title for the time being.

PART III. Permanent observer missions to international organizations

Section 1. Permanent observer missions in general

GENERAL COMMENTS

Paragraph (1)

54. Mr. ROSENNE suggested that the Secretariat should recast paragraph (1) so as to give a complete list of the countries which maintained permanent observer missions. In paragraph (3) of the general comments to section 2 (Facilities, privileges and immunities of permanent observer missions) another list was given.

55. Mr. SETTE CÂMARA said that the permanent observer mission of the Holy See should be mentioned together with the others and not in a separate sentence; it was no longer correct to say that the Holy See had "recently established" a permanent observer mission at New York and Geneva.

56. Mr. TESLENKO (Deputy Secretary to the Commission) said that the Secretariat would include in paragraph (1) a complete list in alphabetical order of the permanent observer missions at United Nations Headquarters and at Geneva.

57. Mr. BARTOŠ (Rapporteur) said he supported Mr. Rosenne's suggestion that the paragraph should include a complete list of the States which, at the present time, had observer missions, using a formula which would guard against the possibility of omissions.

58. Mr. ROSENNE suggested that the passage to be prepared by the Secretariat should replace the first two and the last two sentences of paragraph (1). The third sentence, reading "Observer missions were also established by States such as Austria, Finland, Italy and Japan before they became Members of the United Nations" should be retained, because much of the practice to which reference was made in the report was connected with those countries.

59. The CHAIRMAN suggested that the Commission approve paragraph (1), with the changes indicated by the Deputy-Secretary and by Mr. Rosenne.

Paragraph (1), as amended, was approved.

Paragraph (2)

60. Mr. CASTRÉN proposed that, in the second sentence of the French version, the words "*a parlé des*" be replaced by the words "*s'est référé aux*", and that the words "provide a legal basis for" be replaced by the words "determine the legal status of".

61. Mr. ROSENNE suggested that, in the second sentence, the concluding words "but no action was taken by the Assembly to provide a legal basis for permanent observer missions" be replaced by the words "but the resolutions adopted by the General Assembly were silent on permanent observer missions".

62. Mr. ALCÍVAR suggested as an alternative wording: "but no resolution made any mention of permanent observer missions".

63. The CHAIRMAN suggested that the Commission approve paragraph (2) with the change proposed by Mr. Alcívar.

Paragraph (2), as amended, was approved.

Paragraphs (3) to (5)

Paragraphs (3) to (5) were approved.

Paragraph (6)

64. Mr. AGO suggested that in the first sentence the words "as regards privileges" should be replaced by the words "as regards their privileges".

It was so agreed.

Paragraph (6), as amended, was approved.

Paragraph (7)

65. Mr. CASTRÉN asked that, in the French version of the penultimate sentence, the words "*tels que*" be replaced by the words "*à savoir*".

66. Mr. ROSENNE proposed that paragraph (7) be dropped altogether. The Commission had always been careful not to involve itself in the interpretation of the Charter. In any case, the contents of the paragraph were completely irrelevant.

67. Mr. KEARNEY said he supported that proposal.

68. Mr. YASSEEN said he was in favour of retaining paragraph (7). No one denied that the Charter of the United Nations was based on the principle of universality, and a proper understanding of that principle was essential for the subsequent draft articles.

69. Mr. AGO said he agreed with Mr. Yasseen. The paragraph should end after the second sentence, where the word "well-known" should be added before the word "reasons".

70. Mr. BARTOŠ (Rapporteur) said that paragraph (7) had been included because it was the only place in the

report where there was any mention of the situation of States that were not members of the United Nations but were members of specialized agencies. The Secretariat could perhaps prepare a new draft of the paragraph, but it would be a mistake to delete it.

71. The CHAIRMAN said he would put the proposal for the deletion of paragraph (7) to the vote.

The proposal was rejected by 6 votes to 5.

72. Mr. AGO suggested that the reference to Western Samoa be deleted and that it should be specified that Switzerland was a member of specialized agencies. He proposed, therefore, that the third sentence of paragraph (7) should read as follows:

"Some States, like Switzerland, have chosen not to become members of the United Nations, although they became members of several specialized agencies".

73. Mr. TSURUOKA said that wording such as "succeeded in" and "was blocked" was inappropriate in the Commission's report. He suggested that the last sentence be recast to read: "Some of the constituent parts of those 'divided countries' became members of specialized agencies, others did not".

74. The CHAIRMAN suggested that the Commission approve paragraph (7) subject to, first, the deletion, from the third sentence, of the words "and Western Samoa", secondly, the addition, at the end of the same sentence, of the words "although they became members of several specialized agencies", and thirdly, the replacement in the last sentence of the words "succeeded in gaining admission to specialized agencies while the admission of others was blocked" by the words "became members of specialized agencies, others did not".

It was so agreed.

Paragraph (7), as amended, was approved.

Paragraph (8)

75. Mr. ROSENNE said that, in his opinion, the entire paragraph should be deleted. If, however, the Commission took the view that the idea it contained was worth mentioning, it should limit that paragraph to the two quotations from the Secretary-General and then add the following three sentences: "The matter is under consideration by the Security Council following the initiative of the Permanent Representative of the United States in his letter of 18 August 1969 to the President of the Security Council (S/9397). An interim report (S/9836) of the Committee of Experts established by the Security Council after a discussion at its 1505th and 1506th meetings has recently been submitted. No recommendations have yet been made by the Committee of Experts".

It was so agreed.

Paragraph (8), as amended, was approved.

COMMENTARY TO ARTICLE 0 (Use of terms)

76. Mr. ROSENNE said that he was still very confused as to the relationship between the present articles and the previous ones. It had always been his understanding

that the present articles were additional to articles 1 to 50 and that therefore the definitions in article 1 should apply to them, except where that would obviously be inappropriate.

77. The same confusion already existed in connexion with the definition of "Organization" in article 1.

78. Mr. KEARNEY (Chairman of the Drafting Committee) said that he had suggested including at the end of paragraph (1) a sentence reading: "The Commission will, in the course of its review of the entire draft in 1971, consider the extent to which an amalgamation of the definitions is possible".

79. Mr. ROSENNE asked what would be the situation with regard to those definitions which were not repeated, such as the definition of "Organization", which was necessary for the understanding of some of the articles.

80. Mr. KEARNEY (Chairman of the Drafting Committee) said that it was the intention to view the present series of articles as additional articles, although that intention was somewhat obscured by the fact in some cases the Drafting Committee had included precisely the same definition as was found in article 1. Mr. Rosenne's problem would appear to be that if that approach were adopted at the present stage, the definition of "Organization" ought also to be included.

81. Mr. ROSENNE said that the question was one of substance and went much farther than that. The Commission had already been confronted with the problem of articles 3, 4, 5 and 50 and their application to the present articles. Were the present articles part of a single set of draft articles or not? If they were, it should be stated that those definitions in article 1 which were not repeated in article 0 also applied to the present articles.

82. Mr. USHAKOV said that paragraph (1) of the commentary stated that the terms defined in article 1 related only to permanent missions. Moreover, article 0 opened with the phrase: "For the purpose of the present part". Something, therefore, might have to be added.

83. The CHAIRMAN, speaking as a member of the Commission, said he was inclined to agree with Mr. Rosenne that the present text was rather confusing.

84. Mr. BARTOŠ (Rapporteur), speaking as a member of the Commission, said he did not share the opinion of Mr. Rosenne and the Chairman on sub-paragraphs (a), (b), (c) and (d), since those four sub-paragraphs concerned permanent observer missions, which were not dealt with in article 1. Perhaps the substance of the article should appear in the report, not as a draft article, but in a note to article 51, where it would be explained that the Commission had prepared those definitions to supplement article 1, on terminology, and that they would serve as a working basis for the second reading.

85. Mr. USHAKOV said he wished to raise a point of procedure: it was his impression that the Commission had to vote on each article and not merely on the commentaries.

86. Mr. KEARNEY said he agreed that that was the Commission's normal procedure; but the problem raised by Mr. Rosenne was whether, unless some changes were made in the form of presentation, it might not be necessary to add a definition of "international organization" to articles 0 and 00.

87. Mr. USHAKOV proposed that the Commission vote on each article.

88. Mr. ROSENNE said that Mr. Ushakov was correct in thinking that all the articles had to be voted on at some stage. He would suggest, however, that the Commission follow the precedent established at the first reading of the draft articles on the law of treaties in 1962, whereby no vote had been taken unless it had been particularly requested for a particular article.

It was so agreed.

89. Mr. ROSENNE suggested that the discussion on the commentary to article 0 should be deferred until the Commission had taken up article 00, the commentary to which was quite different.

It was so agreed.

ARTICLE 51 (Establishment of permanent observer missions)

90. Mr. TESLENKO (Deputy Secretary to the Commission) said that, in the text of the article, the word "establish" had been misplaced and should appear after the word "may" in the first line.

91. Mr. BARTOŠ (Rapporteur) said that some members of the Commission had expressed the view that there had to be an agreement between the organization and the State for the rule in article 51 to be applicable, and wished that point to be mentioned in the commentary. The Drafting Committee had not shared that view. He therefore wondered whether those members wished to make a formal proposal on the subject. Personally, he considered such a proviso unnecessary, since the article contained the qualification "in accordance with the rules or practice of the Organization".

92. Mr. USHAKOV said he would ask for a separate vote on the phrase "in accordance with the rules or practice of the Organization", both in article 51 and in the commentary, since the phrase did not appear in the corresponding article on permanent missions—article 6—and the point was covered by article 3. He would reserve his position as far as the second reading was concerned. He was not in favour of the qualification unless it was also applied to permanent missions. At the present stage he would therefore vote against it.

93. Mr. CASTRÉN said that the point had given rise to long discussions first in the Commission, then in the Drafting Committee and then again in the Commission. The text of article 51 represented a compromise. Permanent missions and permanent observer missions could not be placed on the same footing, as they were very different. It was therefore natural that there should be a difference between article 51 and article 6.

94. With regard to the reference to the rules or practice of the organization, it should be noted that article 3 spoke only of the relevant rules of the organization; it was only in the commentary to article 3 that it was stated that the phrase also covered the practice of the organization. He was therefore in favour of retaining that phrase.

95. Mr. USTOR said that he supported Mr. Ushakov's view. Although the Commission had accepted article 51 on first reading, it was apparent after due reflection that the phrase in question was redundant, since article 3 gave precedence to the rules of the organization, while the commentary interpreted the words "the relevant rules of the Organization" as including the practice.

96. The CHAIRMAN put Mr. Ushakov's proposal to delete the words "in accordance with the rules or practice of the Organization" to the vote.

The proposal was rejected by 11 votes to 2, with 1 abstention.

COMMENTARY TO ARTICLE 51 (Establishment of permanent observer missions)

Paragraph (1)

97. Mr. CASTRÉN said that at the beginning of the paragraph there was a reference to "non-member States", whereas at the end of the paragraph the words used were "short of full membership". He suggested that the word "full" be deleted in order to remove the inconsistency.

98. Mr. BARTOŠ (Rapporteur) said that the reason for the choice of wording was that the Holy See, for example, was a member of the Executive Committee of the High Commissioner's Programme for Refugees without being a Member of the United Nations. The phrase "short of full membership" covered such situations precisely.

99. Mr. ROSENNE said that he would have thought that the words "short of full membership" could have safely been omitted. If the Commission wished to add something in their place, he would suggest the words "and their participation in its work".

100. Mr. KEARNEY suggested that the words "short of full membership" be replaced by the words "when such establishment is permitted by the rules or practice of the Organization".

It was so agreed.

Paragraph (1) as amended, was approved.

Paragraph (2)

101. Mr. KEARNEY suggested that the whole of the final part of paragraph (2), beginning with the words "A common interest", be deleted.

It was so agreed.

Paragraph (2), as amended, was approved.

Paragraph (3)

102. Mr. ROSENNE said that the word "Organization" should be written with an initial capital letter throughout the paragraph.

103. Mr. CASTRÉN said he must point out that the opinion mentioned in the first sentence of the paragraph had been expressed by only three members of the Commission. He therefore suggested that the word "several" be replaced by the word "certain".

104. Mr. USHAKOV said he supported that suggestion, as it was in conformity with the Commission's usual practice.

It was so agreed.

Paragraph (3), as amended, was approved.

COMMENTARY TO ARTICLE 52 (Functions of a permanent observer mission)

105. Mr. BARTOŠ (Rapporteur) said that article 52 had given rise to a long discussion in the Commission and members had asked that the commentary should explain the method used in describing the functions of a permanent observer mission, and also the basis of the privileges and immunities it had been granted. Those explanations were at present contained in section 2 of the introduction to chapter II, in the paragraphs dealing with the arrangement of the draft articles. It had not therefore been considered necessary to reproduce them in the commentary to article 52.

Paragraph (1)

106. Mr. ROSENNE said that the passage cited in paragraph (1) only repeated what had already been stated in paragraph (3) of the general comments at the beginning of section 1. He suggested that it be deleted.

107. The CHAIRMAN suggested that, since the passages cited did not seem to be exactly the same, the paragraph be retained as it stood.

It was so agreed.

Paragraph (1) was approved.

Paragraph (2)

108. Mr. CASTRÉN, referring to the second sentence, said that the final words of the article in the French version should read "à l'Organisation" and not "auprès de l'Organisation". The English version was correct and the French version should be amended accordingly.

It was so agreed.

109. Mr. CASTRÉN proposed the deletion of the passage beginning with the words "The most recent case" and ending with the words "in the same manner as the Members of the United Nations". The passage contained two examples and, with regard to the first example, his impression was that the representative of Switzerland had been required to produce special powers.

110. With regard to the second example, he doubted whether it was a case of representation, since it concerned

the participation in the election of members of the International Court of Justice by States which, although not Members of the United Nations, were parties to the Statute of the Court.

111. Mr. BARTOŠ (Rapporteur), speaking as a member of the Commission, said that the presence of the representative of Switzerland during the Sixth Committee's consideration of the draft convention on Special Missions was the result of an arrangement made with the Secretary-General at the request of the representative of Switzerland. The Chairman of the Sixth Committee had merely welcomed the representative of Switzerland; the Committee had not had to consider under what conditions he was acting as representative. The first example might therefore be retained.

112. Participation in the election of judges of the International Court of Justice, however, was a right possessed by every State which, even though not a Member of the United Nations, was a party to the Statute of the Court. He therefore supported the proposal for the deletion of the second example.

113. Mr. ROSENNE said that he agreed with Mr. Castrén that both examples should be deleted.

114. Mr. ALCÍVAR said that, in the interest of clarity, he would like to draw the Commission's attention to the fact that Switzerland had participated in the meetings of the Sixth Committee in both 1968 and 1969. On the first occasion, the Committee had agreed that the Swiss observer might participate without the right to vote; on the second occasion he had merely been invited to attend on the same conditions as in the previous year.

115. Mr. YASSEEN said that paragraph (2) contained a reference to the possibility of an organ of an international organization playing the role of a conference of plenipotentiaries. The fact that the organ fulfilled the role of a conference meant that it was not a conference in the proper sense of the term. The French version therefore should not go on to say that non-member States were invited to participate "*à cette conférence*"; it should say "*à cet organe*". In view of the difficulties they raised, both examples should be deleted.

116. Mr. KEARNEY said that the whole passage should be deleted, since it was dependent on the last sentence.

117. Mr. USHAKOV said that, if the two examples were to be deleted, it would be necessary to delete the entire passage beginning with the words "In particular, the function of negotiation" and ending with the words, "in the same manner as the Members of the United Nations".

118. The CHAIRMAN said that the proposal was to delete the whole of the rest of the paragraph, beginning with the words "In particular".

119. Mr. AGO proposed that, in addition, the second and third sentences beginning with the words "They do not, in particular", and ending with the words, "rather they represent it 'at' the Organization", be deleted. The

distinction they were intended to draw was difficult to express and raised translation problems.

120. Mr. CASTRÉN said that, in view of the change in the closing words of article 52, the information conveyed in the two sentences which Mr. Ago wished to have deleted was necessary in order to explain why the wording differed from that of paragraph (a) of article 7. It was in that way that the Special Rapporteur had tried to bring out that, in the case of a permanent observer mission, representation was limited.

121. After a brief discussion, in which Mr. USHAKOV, Mr. KEARNEY, Mr. ROSENNE, the CHAIRMAN and Mr. CASTRÉN took part, Mr. KEARNEY proposed that the passage beginning with the words "In particular" and ending with the words "the Organization" be amended to read: "In particular, the function of negotiation can be exercised by permanent observers when an agreement with the international organization is under consideration. As such negotiation is not a regularly recurrent part of a permanent observer mission's activity, the Commission added in the text of article 52 the expression 'when required' after the words 'negotiation with the Organization'". The earlier part of the paragraph would remain unchanged.

It was so agreed.

Paragraph (2), as amended, was approved.

The commentary to article 52, as amended, was approved.

The meeting rose at 1.5 p.m.

1083rd MEETING

Monday, 6 July 1970, at 3.10 p.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Ago, Mr. Alcívar, Mr. Castañeda, Mr. Castrén, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.
