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Summary record of the 1083rd meeting

Topic:
Other topics

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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.

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

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

Chapter II

RELATIONS BETWEEN STATES AND INTERNATIONAL
ORGANIZATIONS
(continued)

**PART III. Permanent observer missions to international
organizations**

*Section 1. Permanent observer missions in general (con-
tinued)*

1. The CHAIRMAN invited the Commission to continue consideration of the part of chapter II of its draft report contained in document A/CN.4/L.157 and Add.1.

ARTICLE 52 bis. (Accreditation to two or more international organizations or assignment to two or more permanent observer missions)

2. Mr. CASTRÉN said that there were a number of words missing from the French version of the article. In paragraph 1, the words "d'observation" should be inserted after the words "une autre de ses missions permanentes", while in paragraph 2 the words "en qualité de membre de cette mission" should be inserted after the words "une autre de ses missions permanentes d'observation".

It was so agreed.

COMMENTARY TO ARTICLE 52 bis

3. Mr. CASTRÉN said that the commentary was too brief. It referred only to the title of article 8, the wording of which did not cover the four cases dealt with in article 8. He therefore suggested that it be redrafted to read: "Article 52 bis is based on article 8 relating to the accreditation of the same person or of a member of the staff of a permanent mission to two or more international organizations, or to the assignment of a permanent representative or of a member of the staff of a permanent mission to two or more permanent missions".

4. Mr. ROSENNE said that he had been asked by the General Rapporteur, Mr. Bartoš, to draw attention to the need to add to the commentary a footnote referring to the Special Rapporteur's note on assignment to two or more international organizations or to functions unrelated to permanent missions. He suggested that the drafting of the footnote be left to the Secretariat.

5. The CHAIRMAN suggested that the Commission approve the commentary to article 52 bis with the changes proposed by Mr. Castrén and on the understanding that the Secretariat would prepare a footnote as suggested by Mr. Rosenne.

It was so agreed.

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

COMMENTARY TO ARTICLE 53 (Appointment of the members of the permanent observer mission) and to ARTICLE 54 (Nationality of the members of the permanent observer mission)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were approved.

Paragraph (3)

6. Mr. KEARNEY proposed the deletion of the second, third, fourth, fifth, sixth and seventh sentences as well as the opening six words of the eighth sentence. The first sentence would then be linked up with the remainder of the eighth sentence and the paragraph would begin: "Article 54 is based on article 11 which states that the permanent representative and the members of the diplomatic staff. . .". The purpose of that deletion was to eliminate a lengthy reference to considerations which were referred to by the Special Rapporteur in his original report but were not necessary in the Commission's report.

It was so agreed.

Paragraph (4)

Paragraph (4) was approved.

The commentary to articles 53 and 54, as amended, was approved.

COMMENTARY TO ARTICLE 54 bis (Credentials of the permanent observer)

Paragraph (1)

7. Mr. USTOR suggested that a footnote should be added giving the document number of the study by the Secretariat.

It was so agreed.

Paragraph (1), as amended, was approved.

Paragraphs (2) and (3)

8. Mr. ROSENNE said that, as he saw it, the Commission's report was hardly the proper place to reproduce the form of the credentials of permanent observers and permanent representatives. He therefore proposed the deletion from paragraph (2) of the concluding passage beginning with the words "Such letters are usually based on the following model" and the whole of paragraph (3).

It was so agreed.

Paragraph (2), as amended, was approved: paragraph (3) was deleted.

Paragraph (4)

9. Mr. KEARNEY proposed the deletion from the second sentence of the words "since the Commission had included representation and negotiation among the func-

tions of permanent observers". That was not the only reason for the provision.

It was so agreed.

Paragraph (4), as amended, was approved.

Paragraph (5)

10. Mr. TSURUOKA proposed that, in the French version, the first sentence be amended by replacing the words "*produire des pouvoirs essentiellement sous la même forme que les pouvoirs des représentants permanents*" by the words "*produire des pouvoirs sous une forme essentiellement similaire à celle des pouvoirs des représentants permanents*".

It was so agreed.

11. Mr. ROSENNE said that the meaning of the last sentence was not altogether clear.

12. Mr. TESLENKO (Deputy Secretary to the Commission) said that the Special Rapporteur had had in mind the case in which a very simple letter was addressed to the Secretary-General by the State establishing a permanent observer mission.

13. Mr. SETTE CÂMARA suggested that the sentence be deleted. The word "substantially", which was used in the first sentence, allowed sufficient flexibility.

14. Mr. ROSENNE said he supported that suggestion. The whole purpose of article 54 *bis* was to assimilate the position of permanent observers to that of permanent representatives; the same form of credentials should therefore be required and the reference to "credentials in simplified form" was not appropriate.

15. The CHAIRMAN suggested that the Commission approve paragraph (5) subject to the deletion of the last sentence and to the alterations to the French version proposed by Mr. Tsuruoka.

It was so agreed.

Paragraph (5), as amended, was approved.

Paragraph (6)

Paragraph (6) was approved.

The commentary to article 54 bis, as amended, was approved.

COMMENTARY TO ARTICLE 54 *ter* (Full powers to represent the State in the conclusion of treaties)

16. Mr. ROSENNE said that he had been asked by Mr. Bartoš to suggest that, in the second sentence, the words "it was thought desirable" be replaced by the words "the majority of the Commission thought it desirable".

It was so agreed.

The commentary to article 54 ter, as amended, was approved.

COMMENTARY TO ARTICLE 55 (Composition of the permanent observer mission), ARTICLE 56 (Size of the permanent observer mission) and ARTICLE 57 (Notifications)

The commentary to articles 55, 56 and 57 was approved.

COMMENTARY TO ARTICLE 57 *bis* (Chargé d'affaires *ad interim*)

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

17. Mr. KEARNEY proposed the deletion of the concluding words of the first sentence "with two exceptions" and their replacement by an additional sentence reading: "There are two differences". In the second sentence, he proposed that the concluding words "states a faculty and not an obligation" be replaced by the words "provides a faculty rather than imposes an obligation".

It was so agreed.

Paragraph (2), as amended, was approved.

Paragraph (3)

Paragraph (3) was approved.

The commentary to article 57 bis, as amended, was approved.

COMMENTARY TO ARTICLE 58 (Offices of permanent observer missions)

The commentary to article 58 was approved.

COMMENTARY TO ARTICLE 59 (Use of [flag and] emblem)

Paragraph (1)

18. Mr. KEARNEY proposed the deletion from the last sentence of the words "particularly in New York". It had become apparent that there was no established custom anywhere regarding the display of the flag on the residence or the vehicle of a permanent observer.

It was so agreed.

Paragraph (1), as amended, was approved.

Paragraph (2)

Paragraph (2) was approved.

New paragraph

19. Mr. ROSENNE said that Mr. Bartoš had asked him to propose the insertion of an additional paragraph reading "Some members suggested that the Commission should consider during its second reading whether the expression 'regulations and usages of the host State' should be replaced by 'regulations and usages in the host State'".

20. The CHAIRMAN said that, if there were no objection, he would consider that the Commission approved

the insertion of that additional paragraph as paragraph (3).

It was so agreed.

The commentary to article 59, as amended, was approved.

Section 2 (Facilities, privileges and immunities of permanent observer missions)

GENERAL COMMENTS

Paragraphs (1), (2) and (3)

Paragraphs (1), (2) and (3) were approved.

Paragraph (4)

21. Mr. KEARNEY proposed that in the first sentence the words "to full diplomatic immunity was rejected since the Department of State of the United States of America had not recognized the defendant as an official with diplomatic status" be replaced by the words "to immunity from giving evidence was rejected. The Court referred to the fact that the Department of State of the United States of America had not recognized the defendant as possessing immunity under any applicable statute or treaty"; that in the second sentence the opening words "The Court also referred" be replaced by the words "The Court referred"; and that in the last sentence the phrase "The Court remarked that" be inserted before the words "the benefits" and that the concluding passage, "this phrase has been interpreted as applying to permanent observers", be deleted.

It was so agreed.

Paragraph (4), as amended, was approved.

Paragraph (5)

22. Mr. CASTRÉN said that the analogy with members of consular posts suggested by Mr. Kearney, and referred to in the last sentence of the paragraph, had not been supported by any other member.

23. Mr. KEARNEY suggested that the last sentence be deleted.

It was so agreed.

24. Mr. ROSENNE suggested that, in the first sentence, the words "were not identical to permanent missions—they do not participate to the same extent in the activities of the organization, they do not have the obligations which permanent missions have towards the organization and, generally, their functions differ—they should not be equated for the purposes . . ." be replaced by the words "do not participate directly in the activities of the Organization, they do not have the relationship which permanent missions have with the Organization. As their functions differ, they should not be equated with permanent missions for the purposes . . ."

It was so agreed.

Paragraph (5), as amended, was approved.

Paragraph (6)

25. Mr. ROSENNE suggested that, in the first sentence, the words "they have a similar status, since" be replaced by the words "the nature of their functions requires them to have a similar status".

26. Mr. KEARNEY suggested that it would be simpler to delete the words "they have a similar status, since".

It was agreed to delete those words.

Paragraph (6), as amended, was approved.

Paragraph (7)

27. Mr. ROSENNE suggested that, in the first sentence, the words "legislating by reference" be replaced by the words "drafting by reference" and that at the end of the paragraph the words "part I" should be replaced by the words "part II".

It was so agreed.

Paragraph (7), as amended, was approved.

The "General comments" on section 2, as amended, were approved.

COMMENTARY TO ARTICLE 60 (General facilities)

28. Mr. KEARNEY proposed that, in the second sentence, the words "to receive" be replaced by the words "to be given" and that the concluding words, "especially from the Organization", be deleted. He also proposed that the last sentence be deleted.

It was so agreed.

The commentary to article 60, as amended, was approved.

COMMENTARY TO ARTICLE 60-A (Accommodation and assistance)

The commentary to article 60-A was approved.

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

The commentary to article 60-B was approved.

COMMENTARY TO ARTICLE 60-D (Personal privileges and immunities)

The commentary to article 60-D was approved.

COMMENTARY TO ARTICLE 60-J (Non-discrimination)

The commentary to article 60-J was approved.

COMMENTARY TO ARTICLE 61 (Conduct of the permanent observer mission and its members)

The commentary to article 61 was approved.

COMMENTARY TO ARTICLE 61-A (End of functions)

The commentary to article 61-A was approved.

PART IV. *Delegations of States to organs and to conferences* (A/CN.4/L.157/Add.1)

Section I. Delegations in general

29. Mr. CASTRÉN said he was surprised to find that article 00, unlike other parts of the draft, was not preceded by general comments, although the Special Rapporteur had drafted several pages of general comments in his report (A/CN.4/227/Add.1). He therefore proposed that at least some of the Special Rapporteur's general comments be reproduced in the Commission's report, with any necessary amendments.

30. Mr. KEARNEY said that a general commentary of considerable length had been sent by the Special Rapporteur in connexion with the section on privileges and immunities. The Drafting Committee had decided that, with a few drafting changes, that commentary would serve adequately as a general commentary to Part IV. A proposal in that sense would be made at a forthcoming meeting.

COMMENTARY TO ARTICLE 00 (Use of terms)

Paragraph (1)

31. Mr. ROSENNE suggested that paragraph (1) be moved to the commentary to article 0, the necessary drafting changes being made by the Chairman of the Drafting Committee.

It was so agreed.

Paragraphs (2), (3), (4), (5) and (6)

Paragraphs (2), (3), (4), (5) and (6) were approved.

The commentary to article 00, as amended, was approved.

COMMENTARY TO ARTICLE 61-B (Derogation from the present part)

32. Mr. ROSENNE said that article 61-B was not in fact based on article 5. It had a different purpose; it could perhaps be described as an extension of article 5. He therefore proposed that the words "is based on" in the first sentence be replaced by the words "is supplementary to", and that, in the third sentence, the words "of course" be deleted.

It was so agreed.

The commentary to article 61-B, as amended, was approved.

TEXT OF ARTICLE 61-C (Conference rules of procedure)¹

33. Mr. ROSENNE said that the Commission still had to adopt the final text of article 61-C. At the 1073rd meeting, article 61-C had only been adopted provisionally, pending insertion of the numbers of the specific articles in the blank space in the first line. The Drafting Committee now suggested inserting numbers 62, 63, 64 *ter* and 66.

34. He would, however, like to ask the Chairman of the Drafting Committee whether it would not be appropriate to include articles 65 and 67 *bis* in that list.

35. Mr. CASTRÉN asked the Chairman of the Drafting Committee why articles 62 *bis* and 67 had not been mentioned.

36. He was in favour of including article 67 *bis*, but did not consider it necessary to mention article 65.

37. Mr. KEARNEY (Chairman of the Drafting Committee), replying to Mr. Rosenne, said he agreed that article 67 *bis* should be added to the list. As for article 65, the wording of the article itself was sufficiently flexible for its inclusion to be unnecessary; the formulation "if that is allowed in relation to the conference in question" was even broader than the reference in article 61-C to the rules of procedure.

38. Replying to Mr. Castrén, he said it would not be appropriate to include a reference to article 62 *bis* because it would appear surprising to suggest that the rules of procedure might authorize a delegation to be larger than what was reasonable or normal. Nor should article 67, which dealt with notifications, fall under article 61-C, since notifications were essential with regard to privileges and immunities and any rule enabling notifications to be avoided might run counter to arrangements made with a host State.

39. The CHAIRMAN invited the Commission to adopt the final text of article 61-C, which read:

Conference rules of procedure

The provisions contained in articles 62, 63, 64 *ter*, 66 and 67 *bis* shall apply to the extent that the rules of procedure of a conference do not provide otherwise.

Article 61-C was adopted.

COMMENTARY TO ARTICLE 61-C (Conference rules of procedure)

The commentary to article 61-C was approved.

COMMENTARY TO ARTICLE 62 (Composition of the delegation)

The commentary to article 62 was approved.

COMMENTARY TO ARTICLE 62 *bis* (Size of the delegation)

The commentary to article 62 bis was approved.

COMMENTARY TO ARTICLE 63 (Principle of single representation)

40. Mr. ROSENNE said that article 63 expressed a residuary rule. He therefore proposed that the commentary should describe the rule as a residuary one.

41. He also proposed that the Secretariat should include in the commentary a reference to the little-known data which had been collected by the Special Rapporteur and the information which had been brought to light by the discussion.

It was so agreed.

The commentary to article 63, as amended, was approved.

¹ See 1073rd meeting, paras. 1-29 and 102-104.

COMMENTARY TO ARTICLE 64 (Appointment of the members of the delegation)

42. Mr. KEARNEY (Chairman of the Drafting Committee) said that in the second sentence the phrase "requirement of agreement" was a mistake for "requirement of an *agrément*", and should be corrected accordingly.

The commentary to article 64, as corrected, was approved.

COMMENTARY TO ARTICLE 64 *bis* (Nationality of the members of the delegation)

The commentary to article 64 bis was approved.

COMMENTARY TO ARTICLE 64 *ter* (Acting head of the delegation)

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

43. Mr. CASTRÉN proposed that the phrase "which is based on article 19, paragraph 2, of the Vienna Convention on Diplomatic Relations" be inserted after the opening words "Paragraph 2" in the first line.

It was so agreed.

The commentary to article 64 ter, as amended, was approved.

COMMENTARY TO ARTICLE 65 (Credentials of representatives)

The commentary to article 65 was approved.

COMMENTARY TO ARTICLE 66 (Full powers to represent the State in the conclusion of treaties)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were approved.

New paragraph

44. Mr. ROSENNE proposed the insertion of an additional paragraph dealing with the question of the signature of the Final Act, on which the Secretariat had made a statement.

45. Mr. NAGENDRA SINGH said he supported that proposal.

46. The CHAIRMAN suggested that the Secretariat should be asked to draft the additional paragraph.

It was so agreed.

The commentary to article 66, as amended, was approved.

COMMENTARY TO ARTICLE 67 (Notifications)

The commentary to article 67 was approved.

COMMENTARY TO ARTICLE 67 *bis* (Precedence)

Paragraph (1)

47. Mr. ROSENNE proposed that the first sentence, reading "Article 67 *bis* is akin to article 19 relating to

precedence among permanent representatives" be replaced by the sentence "Unlike article 19, which relates to precedence among permanent representatives, article 67 *bis* relates only to precedence among delegations".

It was so agreed.

Paragraph (1), as amended, was approved.

Paragraph (2)

Paragraph (2) was approved.

The commentary to article 67 bis, as amended, was approved.

Chapter III

SUCCESSION OF STATES AND GOVERNMENTS

(A/CN.4/L.158 and Add.1)

48. The CHAIRMAN invited the Commission to consider the part of chapter III of its draft report contained in document A/CN.4/L.158.

49. Mr. USHAKOV said that the title should read "Succession of States" and not "Succession of States and Governments".

50. The CHAIRMAN said that the Secretariat would make the necessary change.

A. Introduction (paragraphs 1-9)

Paragraphs 1, 2 and 3

Paragraphs 1, 2 and 3 were approved.

Paragraphs 4 and 5

51. Mr. CASTRÉN said that it was unnecessary to repeat the symbols of the Special Rapporteur's reports as they were already given in paragraph 3. He suggested that they be deleted.

It was so agreed.

Paragraphs 4 and 5, as amended, were approved.

Paragraph 6

Paragraph 6 was approved.

Paragraph 7

52. Mr. CASTRÉN suggested that the symbol of the Special Rapporteur's report be deleted, as it was already mentioned in paragraph 6.

It was so agreed.

Paragraph 7, as amended, was approved.

Paragraph 8

53. Mr. CASTRÉN said he thought that the last two sentences were not an accurate record of what had actually taken place. He accordingly proposed that the fourth sentence be amended to read: "The Commission considered together, on a preliminary basis, certain draft

articles in the second and third reports . . .”, and that in the last sentence, the words “and the absence of the Special Rapporteur” be inserted after the words “Owing to the lack of time”.

54. Mr. USTOR said that it would be better to divide paragraph 8 into two separate paragraphs, one referring to Sir Humphrey Waldock’s report and the other to Mr. Bedjaoui’s.

55. The CHAIRMAN said that the third and the last sentence, as amended by Mr. Castrén, would be combined to form a separate paragraph.

56. Mr. REUTER thought it was not customary for the Commission to refer in its report to the absence of members. It would be better to say: “Owing to the lack of time and other circumstances . . .”.

57. Mr. NAGENDRA SINGH said that he supported Mr. Reuter’s view.

58. Mr. AGO said that the Commission did not have to make excuses. It would be sufficient to say: “Unfortunately, the Commission was unable . . .”.

59. Mr. ROSENNE said that he could accept Mr. Ago’s formula.

60. He suggested that the words “concerning the subject” in the third sentence should be replaced by the words “concerning certain aspects of the subject”.

It was so agreed.

61. Mr. AGO formally proposed that the reports of Sir Humphrey Waldock and Mr. Bedjaoui should be dealt with in two separate paragraphs.

It was so agreed.

Paragraph 8, as amended, was approved.

Paragraph 9

62. Mr. AGO suggested that the words “and Governments” in the second line be deleted.

It was so agreed.

Paragraph 9, as amended, was approved.

Chapter V

OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

63. The CHAIRMAN invited the Commission to consider the following text which had been proposed for section C, paragraph 4, of chapter V: ²

“C. CELEBRATION OF THE TWENTY-FIFTH ANNIVERSARY OF THE UNITED NATIONS

“4. By letter dated 23 March 1970 (A/CN.4/231) addressed to the Chairman of the International Law Commission, the Secretary-General brought to its attention the text of General Assembly resolution 2499 (XXIV) of 31 October 1969, on the celebration of the twenty-fifth anniversary of the United Nations, and

in particular, operative paragraphs 17 and 18 of part A of the said resolution. Wishing to associate itself with this celebration, the Commission adopted at its . . . meeting the following resolution:

“The International Law Commission,

“Recalling that under Article 13, paragraph 1 a, of the Charter of the United Nations the General Assembly shall 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 has been adopted in pursuance of that task of the General Assembly,

“Recalling further that a series of codification conferences has been convened by the General Assembly and that, on the basis of the Commission’s drafts, a number of codification conventions has been adopted by those conferences,

“Convinced that conventions dealing with the codification and progressive development of international law should be open to universal participation as has been stated in the ‘Declaration on Universal Participation in the Vienna Convention on the Law of Treaties’ adopted by the United Nations Conference on the Law of Treaties,

“Recommends that the General Assembly appeal to States to expedite the process of ratification of or accession to the Vienna Convention on the Law of Treaties of 1969 and other codification conventions (adopted on the basis of draft articles prepared by the International Law Commission)—such as the four Conventions on the law of the sea adopted at Geneva in 1958, the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963, and the Convention on Special Missions of 1969—in order to shorten the final stage of the codification of international law and place international law upon the widest and most secure foundations.”

64. Mr. KEARNEY, referring to the third preambular paragraph, said that at the Vienna Conference a number of States had made statements to the effect that they did not consider that the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties³ represented any commitment for them to vote one way or the other in the General Assembly. In the circumstances, he did not think that the Commission could adopt such a paragraph without seeming to take sides on what was an open political issue.

65. Sir Humphrey WALDOCK said that, first, he did not see any logical connexion between the third preambular paragraph and the operative paragraph, and secondly, in his opinion, the Commission might be thought to be exceeding its terms of reference in addressing a recommendation to the General Assembly when the matter had already been covered by the resolution adopted by the Vienna Conference, which was itself addressed to the General Assembly.

66. Mr. USTOR said that he would have to differ from Mr. Kearney and Sir Humphrey Waldock. It was his impression that there had been unanimous agreement at the Vienna Conference concerning the principle of universality as applied to conventions dealing with the codi-

² See also 1081st meeting, paras. 60-78.

³ United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference, document A/CONF.39/26.

fication and progressive development of international law. Surely the best way to enforce the rule of general international law was to permit all States to participate in such conventions.

67. The only problem that might arise was in connexion with States which were recognized by certain States but not by others. He personally could see no harm in adopting the present text of the third preambular and operative paragraphs, although, as Sir Humphrey Waldock had pointed out, there might not be a strict logical connexion between them.

68. Mr. YASSEEN said that the Commission should be guided by logic and technical considerations, not by political prejudice. Its mandate was to encourage codification of a universal character. The Commission's work should serve the whole of mankind. The Commission was called upon to formulate rules of international law which, by definition, should be applicable to the international community as a whole. If there were political considerations which limited the scope of its work, that was not the concern of the Commission but of other organs. The third preambular paragraph should therefore be retained.

69. Mr. TABIBI said that he was inclined to support the views of Mr. Ustor and Mr. Yasseen, since fundamentally the principle of universality was supported by the Charter.

70. He considered, however, that the words "adopted on the basis of draft articles prepared by the International Law Commission" in the operative paragraph were too strong; after all, there were other important conventions in which the Commission had not had a hand. Even at the Conferences on the law of the sea, many decisions had been taken which had not been based on the Commission's draft articles. The Commission should not give the impression that it was claiming a monopoly in the preparation of draft articles for international instruments.

71. Mr. CASTRÉN proposed as a compromise formula for the third preambular paragraph, the wording: "*Recalling also the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties, adopted by the United Nations Conference on the Law of Treaties.*" The Commission would then confine itself to a simple statement.

72. Mr. AGO said that no substantive change need be made in the third preambular paragraph, but the draft resolution must be logically coherent, which in its present form it was not.

73. What the Commission wished to do was to draw attention to the fact that the many codification conventions resulting from its work should attract the largest possible number of accessions. It should therefore begin by recommending that those States which could do so should ratify or accede to those conventions as soon as possible.

74. The second point was to permit other States which had not yet been able to ratify or accede to the conventions to do so. It would therefore be appropriate to remind the General Assembly of the recommendation

adopted at Vienna, but that point was not brought out in the present wording of the draft resolution.

75. He agreed with Mr. Tabibi that, since the Commission's work was already mentioned in the second preambular paragraph, it need not be mentioned again in the operative part.

76. Mr. REUTER said that the whole resolution should be made more flexible, logical and modest. First, the International Law Commission was not the only body which drafted conventions dealing with codification and, secondly, some of the conventions whose ratification by as many States as possible was recommended in the operative part were not wholly suited to present circumstances.

77. It would therefore be better to refer only to the Commission's codification work as a whole and to couch the third preambular paragraph in more moderate terms, stating that the principle of universal participation had little meaning unless it led to effective participation.

78. Mr. CASTAÑEDA said that he fully supported the principle of universality, but he agreed with Sir Humphrey Waldock that there was no logical connexion between the third preambular and the operative paragraphs. He suggested that a clause be added to the operative paragraph, expressing the hope that the greatest possible number of States would become parties to codification conventions, as stated in the Vienna Declaration. States which had signed such conventions should be urged to ratify them as soon as possible.

79. Mr. USHAKOV said the situation could be summed up in a few words. Either the Commission took a stand as a body of independent experts acting in their personal capacity, and adopted the draft resolution without change, strong in its belief that international law was universally applicable, or it did not adopt the resolution because its members were servants of their Governments.

80. He himself was in favour of adopting the draft resolution, but thought that the word "*Recommends*" at the beginning of the operative part was too strong and should be replaced by the words "*Expresses the hope*".

81. Mr. NAGENDRA SINGH said that he fully agreed with Mr. Ustor, Mr. Yasseen and Mr. Tabibi concerning the principle of universality, since it was in the spirit of the age to obtain as many accessions to and ratifications of the conventions drafted by the Commission as possible.

82. The third paragraph should, however, be in conformity with the operative paragraph; it could be shortened considerably and amended to read as follows: "*Convinced that conventions dealing with the codification and progressive development of international law should have a universal applicability*".

83. Mr. ALCÍVAR said that he had always defended the principle of universality and therefore had no objection to the third preambular paragraph as it stood, although he was prepared to abide by the decision of the majority if it chose a milder form of words.

84. On the other hand, he had strong objections to the operative paragraph, in addition to those mentioned by

Mr. Ushakov and Mr. Reuter, since as an Ecuadorian he was unable to accept the four Conventions on the law of the sea, which did not meet the realities of the present time. If a vote were taken on the reference to those Conventions, therefore, he would have to abstain.

85. Mr. ROSENNE said he did not think that the principle of the universality of international law was in issue in the present case; the only real issue was the participation of States in certain conventions, and he would have thought that the Commission ought to have expressed its opinion on that matter before submitting draft articles to conferences.

86. With respect to the third preambular paragraph, he could accept the compromise formula proposed by Mr. Castrén.

87. Valid criticisms had been directed at the operative paragraph, but he thought that it would be a pity to exclude the references to all those conventions. He suggested that the words "such as" in that paragraph should be replaced by the word "including".

88. Mr. SETTE CÂMARA said that he had no difficulty in accepting the substance of the draft resolution, although he agreed with Mr. Ushakov concerning the language of the operative paragraph. The verb "*Recommends*" had a specific meaning in the United Nations and he did not think that the Commission could make recommendations to the General Assembly; perhaps it could be replaced by "*Requests*".

89. He agreed with Mr. Reuter that the operative paragraph should not include specific references to conventions, since that might give the impression that the Commission was the only body which prepared draft articles for conventions.

90. He had some doubts about the final phrase in the operative paragraph, since ratification had nothing to do with the final stage of the codification of international law. He proposed, therefore, that that phrase be replaced by the wording "in order to shorten the entry into force of treaties which were the result of codification".

91. Mr. TSURUOKA said that the Commission wished to see the largest possible number of States ratify or accede to the codification conventions in order to give its work practical meaning. The third preambular paragraph might therefore be redrafted in clearer, simpler and less controversial form, to read: "*Recalling also* that conventions dealing with the codification and progressive development of international law should have a wider participation than hitherto". That was a statement which no one disputed and which could appropriately be followed by the recommendation that the largest possible number of States should ratify or accede to the conventions.

92. Mr. THIAM proposed that either the draft resolution should be adopted without change, since it already represented a compromise and the principles enunciated in the preamble were not taken up in the operative part, or a small working group should be set up to draft a compromise text acceptable to everyone.

93. After a brief discussion, the CHAIRMAN suggested that the Commission appoint a small drafting committee to work out a new text for the third preambular paragraph and the operative paragraph of the draft resolution in the light of the various suggestions made during the debate. He further suggested that the committee be composed of Mr. Kearney, Mr. Ago, Mr. Castrén, Mr. Reuter, Mr. Ustor and Mr. Yasseen.

It was so agreed.

The meeting rose at 6.20 p.m.

1084th MEETING

Wednesday, 8 July 1970, at 10.15 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, 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, Mr. Yasseen.

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

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

(continued)

Chapter II

RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS *(resumed from the previous meeting)*

PART IV. *Delegations of States to organs and to conferences* (continued)

1. The CHAIRMAN invited the Commission to consider the part of chapter II of the draft report contained in document A/CN.4/L.157/Add.2.

2. Mr. USHAKOV noted that the title of section 2 was "Facilities, privileges, immunities and obligations", whereas the title of section 2 of the draft articles on permanent missions was "Facilities, privileges and immunities". He proposed that the word "obligations" should be deleted.

It was so agreed.

3. Mr. AGO said he thought that the titles should not be changed at that stage. It should be understood, however, that the Commission intended to revise the title "Relations between States and international organizations" on second reading at the next session, as it was too broad in scope.