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Summary record of the 1089th meeting

Topic:
Representation of States in their relations with international organizations

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60. For the time being, he proposed that the Commission should concentrate on the first twenty-one articles, concerning which he would submit a working paper in the near future.

61. Mr. USHAKOV said he must emphasize that the draft articles did not contain provisions on exceptional situations. He was opposed to deferring consideration of those situations as the Special Rapporteur suggested. Even if it did not finally prove necessary to draft special articles, the Commission should take a position on the question without delay. It was most unlikely that the Special Rapporteur would be able to draft a single article covering all the situations involved. The notion of armed conflict was very complex, since it might apply to three parties: the sending State, the host State and the organization. The question of exceptional situations called for an urgent decision by the Commission.

62. So far as the immediate future was concerned, he supported Mr. Ago's suggestion that the Commission begin by considering article 6 and the following articles.

63. The CHAIRMAN said that the Commission could hope to receive one or more articles on exceptional situations within a few days. Meanwhile, it could take up the draft again, article by article, starting with article 6.

The meeting rose at 1.5 p.m.

1089th MEETING

Thursday, 29 April 1971, at 10.15 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Thiam, Mr. Ushakov, Mr. Ustor, Mr. Yasseen

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 3; A/CN.4/241 and Add.1 and 2; A/CN.4/L.162/Rev.1)

[Item 1 of the agenda]

(continued)

1. The CHAIRMAN invited the Commission to continue consideration of the Special Rapporteur's sixth report (A/CN.4/241 and addenda).

GENERAL COMMENTS

2. Mr. REUTER said that before the Commission began to consider the draft article by article, he would like to make a few general comments.

3. Mr. El-Erian's report had been prepared under difficult conditions and the Commission should not re-open the question of his methods of work merely because it had not yet received a complete report.

4. Generally speaking, he shared the Special Rapporteur's view regarding the orientation of the draft articles; at the stage of second reading the Commission could not depart from the line that it had followed so far.

5. The observations of States always deserved consideration, even if only to satisfy public opinion. Some States had questioned whether the draft achieved a perfect balance between the rights and duties of host States. There was no denying, for example, that the civil effects of immunities were closely linked with certain questions of insurance. He hoped, therefore, that the Commission would disarm all the criticisms made by States.

6. The reactions of international organizations were even more important than those of States, for while the replies of States were sometimes prompted by rather selfish considerations, those of international organizations should be more disinterested. The observations of the organizations reflected a concern to "defend themselves" against the draft articles; they emphasized the precise legal effects of the convention which the draft articles were intended to form. Several old-established organizations stressed not only their *de jure* practice, but also their *de facto* practice, and seemed to wish to reserve for themselves an area of creative autonomy. That problem was linked with another item of the agenda: the question of treaties concluded by international organizations. It was essential that due account be taken of the observations of the international organizations.

7. Mr. EL-ERIAN (Special Rapporteur) said that at the previous meeting the point had been made that it was important to co-ordinate the Commission's work on relations between States and international organizations with Article 105 of the United Nations Charter. Paragraphs 2 and 3 of that Article were particularly relevant to the Commission's work. Paragraph 3 stated that "The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose". It was in accordance with Article 105 that the General Assembly had in 1946 drawn up the Convention on the Privileges and Immunities of the United Nations,¹ and in 1948 adopted resolution 257 (III) concerning permanent missions to the United Nations. It was clear, therefore, that the Commission's present task came within the strict application of Article 105.

8. The question of the importance of the comments of international organizations had been raised. He had

¹ United Nations, *Treaty Series*, vol. 1, p. 16.

always taken the view that the Commission should work hand in hand with the international organizations, and questionnaires on the present draft articles had been sent to them. All, without exception, had replied, and he had attempted to digest and analyse their replies in his sixth report. He hoped that when the General Assembly came to decide the fate of the draft articles it would see that the international organizations were consulted at the final stage. It was true that there was a wide variety of such organizations, but, as Mr. Reuter had observed, in view of the importance of their practice some attempt should be made to arrive at a synthesis of their views.

9. Mr. ROSENNE said that, as the Special Rapporteur had pointed out, the General Assembly had taken action more than once on the basis of Article 105, paragraph 3, of the Charter, by making recommendations and proposing conventions. His (Mr. Rosenne's) difficulty with that paragraph was that the General Assembly had never given any indication whether it wished the Commission to examine what had been done in the past and to propose further draft recommendations for the General Assembly to adopt. In particular, the General Assembly had never suggested that the Commission should undertake a substantial revision of the 1946 Convention on the Privileges and Immunities of the United Nations.

10. He hoped, therefore, that the Commission might reach agreement on an appropriate paragraph for inclusion in its report, which would show that it was aware of the constitutional problems raised by Article 105.

PART II. *Permanent missions to international organizations*

ARTICLE 6

11. The CHAIRMAN invited the Special Rapporteur to introduce article 6, on the establishment of permanent missions.

12.

Article 6

Establishment of permanent missions

Member States may establish permanent missions to the Organization for the performance of the functions set forth in article 7 of the present articles.

13. Mr. EL-ERIAN (Special Rapporteur) said that the comments of governments and the secretariats of international organizations were summed up in paragraphs 107-111 of his sixth report (A/CN.4/241/Add.1). His own observations and proposals were contained in paragraphs 112-116.

14. Mr. CASTRÉN said the Special Rapporteur had done well to prepare the first part of his report in so short a time. He had duly taken account of all the observations on his articles and had successfully rebutted all the unfounded criticism. But although few changes had been made to Part I of the draft articles, the criticisms expressed by certain States of Parts III and IV could be expected to cause real difficulties.

15. The Special Rapporteur had been right in refusing

to change article 6. The proliferation of permanent missions feared by the Swiss Government would not present a danger since the establishment of permanent missions benefited both the international organizations and their member States. Besides, in view of the expense involved, it was unlikely that States would establish permanent missions unless they were necessary.

16. Mr. YASSEEN said that article 6 should not be changed; he shared the Ecuadorian Government's view that articles 2, 4 and 5 made the necessary reservations to the provisions of article 6. The comment by the International Atomic Energy Agency seemed to relate, not to permanent missions as such, but to their composition. That question of detail could be dealt with in another article. There was no reason to fear a proliferation of permanent missions; at present, there were not enough of them.

17. Mr. ROSENNE said that, on the assumption that articles 3, 4 and 5 remained in a satisfactory form, article 6 could be retained, subject to review by the Drafting Committee and to the linguistic observations of the Secretariat. In general, he could accept the reasoning and conclusions of the Special Rapporteur.

18. At first glance, the suggestion made by the Netherlands Government seemed an attractive one, but he feared it might lead to undue rigidity and excessive formalism. He would prefer to leave the article in its present flexible form in order to allow for special situations, such as when an existing diplomatic or consular mission was appointed as a permanent mission to an international organization in the same city.

19. Mr. RUDA said he had been struck by Mr. Reuter's observation on the positions taken by international organizations vis-à-vis the draft articles. The rights granted to those organizations in the draft articles would not present any major legal problems, but such articles as 22 and 33, which imposed obligations, might considerably complicate the Commission's task, as had been pointed out by the ILO (A/CN.4/241, para. 13). Moreover, as Mr. Reuter had suggested, the question how far States could impose obligations on international organizations would seem to come under the heading of treaties between States and such organizations.

20. With regard to article 6, he agreed with the Special Rapporteur that articles 3, 4 and 5, especially article 3, should remove the doubts expressed by the Governments of Ecuador, the Netherlands and Belgium about the obligation of organizations to accept permanent missions from States.

21. He had noted particularly the suggestion of the Swiss Government (A/CN.4/241/Add.1, para. 110) that a second paragraph should be added to provide for the possibility of establishing a single permanent mission to several organizations. Switzerland was an important host country and its views should be given proper weight. As the Special Rapporteur had pointed out, if article 6 was read in conjunction with article 8, the rights of member States to establish a single permanent mission to several organizations would seem to be implied; in his

own opinion, however, there could be no harm in adopting the Swiss suggestion and adding the suggested new paragraph.

22. Mr. USTOR said he understood the views expressed by Mr. Ushakov at the previous meeting,² but hoped he would agree with the general view that the Commission should adopt a constructive approach to its task and do its utmost to present the General Assembly with a complete set of draft articles. With regard to the form of the draft, experience had shown that a draft convention was the form best suited for the codification and progressive development of international law.

23. He also appreciated the point made by Mr. Reuter in connexion with the observations of the ILO. The principle *pacta tertiis nec nocent nec prosunt* was a valid rule of international law, but only if the *tertius* was a State; if it was an international organization, the rule was doubtful. It was certainly doubtful in the extreme case where all the members of an organization were also parties to a convention.

24. In his opinion, the question of co-ordinating Article 105 of the Charter with the draft articles was really dealt with in article 4, on the relationship between the present articles and other existing international agreements. The only question was what the General Assembly might have to say about the relationship between previous agreements and the Commission's draft.

25. He agreed with the Special Rapporteur that the Commission should not, at present, consider the possible consolidation of articles, but leave that to the Drafting Committee. If some common denominator or term could be found for both permanent missions and observer missions, they could probably be dealt with in the same series of articles.

26. Mr. AGO said that there was a close relationship, where permanent missions were concerned, between the provisions concerning member States and those concerning non-member States. After examining each of those sets of provisions separately, the Commission might find some way of combining them. In the case of article 6, the Commission might, for example, stipulate in the first paragraph that member States could establish permanent missions and in the second paragraph that under certain conditions non-member States could establish permanent observer missions.

27. He welcomed the use of the term "permanent mission" in the report, but regretted that the Special Rapporteur had not preferred the term "head of the permanent representative".

28. The observation by the Ecuadorian Government seemed pertinent, but he thought the clause suggested by the Netherlands Government was too restrictive (A/CN.4/241/Add.1, paras. 107-108). To refer only to the "relevant rules of the organization" might give the impression that there were always rules indicating whether permanent missions could be established or not,

whereas in some cases it was merely a question of practice.

29. As the Belgian Government had observed, article 6, as drafted, subjected the host State to an automatic process which involved a danger that permanent missions might proliferate. It was doubtful whether such automaticity should be encouraged; the great diversity of international organizations would justify a more flexible provision. Article 6 might stipulate, for example, that a member State could establish a permanent mission to an organization if it was the practice of that organization to accept such missions.

30. The Swiss Government's comment regarding the establishment of a single permanent mission to several organizations should be considered in the context of article 8, which dealt with that question. Article 6 was concerned with the establishment of a permanent mission to a single organization.

31. Mr. EUSTATHIADES said that the observations of governments evoked some reflections which did not come to mind at first. The Commission had not wished to ignore the rules of organizations, or their practice either. In that connexion, he thought article 3 was the only one which came into consideration. Nevertheless, as the Swiss Government had pointed out, sometimes there were no relevant rules, but only practice. When article 3 came to be re-examined, the reservation regarding practice could be inserted in the text of the article instead of only in the commentary. But even if the Commission later decided to mention practice in article 3, one particular case would not be covered: that of new organizations which had neither rules nor practice. In doubtful cases, like that of new organizations, every State should be able to establish a permanent mission; and article 6 contained just that idea, which, though it might perhaps be *de lege ferenda*, nevertheless marked a trend in favour of allowing States to establish permanent representation.

32. Mr. USHAKOV said he was in favour of keeping article 6 as it stood. In paragraph (5) of its commentary to article 3, the Commission had specified that "The expression 'relevant rules of the organization' used in article 3 is broad enough to include all relevant rules whatever their source: constituent instruments, resolutions of the organization concerned or the practice prevailing in that organization".³ That showed that in the Commission's view the practice of the organization had to be taken into consideration.

33. The fear that permanent missions might proliferate probably derived from the idea that a State could compel an organization to accept its permanent mission. That fear was groundless, for an organization could always react against such a danger, for example, by adopting a resolution. The Commission should explain clearly that international organizations need not fear a proliferation of permanent missions.

34. He did not believe that a single permanent mission

² Paras. 26-29.

³ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 198.

could be accredited to several international organizations. In practice, it sometimes happened that a mission was accredited successively to several organizations, but the Commission should not concern itself with that question.

35. Mr. THIAM said he found it difficult to understand how there could be any fear of a proliferation of permanent missions. States had the right, not the obligation, to establish permanent missions. If they did so, it was because there was a need for them and they were prepared to bear the expense. The establishment of numerous permanent missions could only facilitate mutual understanding between States and international organizations. The question whether an organization was required to accept a permanent mission was less a matter of law than a matter of choice. Most organizations were dependent on States for their funds, and they could only benefit by the establishment of new permanent missions. Apart from certain regional organizations which tended to regard themselves as separate entities, international organizations generally pursued aims which directly benefited their member States. That convergence of interests was an additional reason for encouraging the establishment of permanent missions. He was not in favour of changing or adding to the text of article 6.

36. Mr. SETTE CÂMARA agreed that there were no grounds for fearing a proliferation of permanent missions. Concern could of course be felt at the proliferation of international organizations, but once an organization was established, the governments of its member States needed to appoint representatives and to establish permanent missions. The provisions of article 6 were subject to those of article 3, as had been pointed out by the Government of Ecuador. For those reasons, he fully supported the Special Rapporteur's proposal that no change be made in the text of article 6.

37. Mr. AGO said that Mr. Eustathiades and Mr. Ushakov had rightly pointed out that there was a problem of practice. It was true that, in its commentary to article 3, the Commission had specified the possible sources of relevant rules and indicated that there could be rules established by practice. But there were practices which were not rules and they must also be taken into account.

38. He interpreted article 6 in the same way as Mr. Ushakov, that was to say assuming that the right of every member State to establish a permanent mission to the Organization was subject to the Organization's consent, but he recognized that it could be understood differently. It should therefore be laid down as a principle, in the commentary, that any member State could establish a permanent mission to the Organization, provided that it had ascertained that the Organization had no objection to receiving such missions.

39. Mr. REUTER said he agreed with Mr. Ago that the term "practice" should be used with caution. Certainly the International Court of Justice, which had often used the term in its advisory opinions, gave it a different meaning from the term "rule", and when international organizations had used the term "practice" in

the observations they had submitted before the Vienna Conference on the Law of Treaties, they had clearly attached a broader meaning to it than that of an international rule. It was therefore a general problem which went beyond the scope of the draft articles, and the best course for the time being would be to accept that "practice" had a broader meaning than "rule" and to take that into account.

40. Mr. EL-ERIAN (Special Rapporteur), summing up the discussion, said that there appeared to be general support for his conclusions. In particular, it appeared to be agreed that no saving clause should be added to article 6, the general saving clauses in articles 3 to 5 being sufficient.

41. The case of a single permanent mission being accredited to several organizations, mentioned by the Government of Switzerland, should be considered as belonging to article 8 and not to article 6. He agreed with Mr. Ushakov that, although physically there was one mission, legally there were a number of missions accredited to as many organizations. Article 6 had been drafted after very thorough consideration, both in the Commission and in the Drafting Committee, so it would not be advisable to try to redraft it.

42. With regard to the fears expressed by some governments that the terms of article 6 might be construed as implying a right of a sending State to establish a permanent mission, he proposed to include in the commentary an explanation showing that those fears were unfounded.

43. He suggested that article 6 be referred to the Drafting Committee.

44. Mr. ROSENNE said he wished to place on record that he reserved his position completely regarding the opinion that a single permanent mission accredited to several organizations constituted, legally, a number of permanent missions; that opinion was highly debatable, but it was hardly necessary for the Commission to reach any conclusion on it.

45. He also entered a formal reservation regarding a possible addition to the commentary to meet the concern of some governments that article 6 might be regarded as creating a right for a State member of an organization to establish a permanent mission: it might not be necessary to go quite as far as the Special Rapporteur had indicated.

46. Mr. ALCÍVAR said that the comments by the Government of Ecuador should not be construed as indicating a wish to amend article 6; the Government of Ecuador accepted the text as it stood, but stressed that it was "to be interpreted subject to the general reservations laid down in articles 3, 4 and 5" (A/CN.4/221, section B.5).

47. As to the possibility, mentioned by the Government of Switzerland, of a single permanent mission being accredited by a State to several organizations, it should be pointed out that States had no obligation to adopt such a measure: they had the option to do so if it met their needs. Some States which had permanent missions

accredited to the United Nations Office at Geneva nevertheless appointed special representatives for the meetings of certain organs, such as the Committee on Disarmament. It was a matter for the discretion of the State concerned and could not be the subject of regulation. There was no reason to fear a proliferation of permanent missions, since no State would willingly bear the cost of establishing an unnecessary mission.

48. The rule *pacta tertiis nec nocent nec prosunt*, to which Mr. Ustor had rightly drawn attention, would have to be borne in mind throughout the consideration of the draft.

49. He supported the Special Rapporteur's proposal that the text of article 6 should remain unchanged.

50. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to refer article 6 to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*⁴

ARTICLE 7

51. The CHAIRMAN invited the Commission to consider article 7, for which the Special Rapporteur did not propose any change.

52.

Article 7

Functions of a permanent mission

The functions of a permanent mission consist *inter alia* in:

- (a) representing the sending State in the Organization;
- (b) keeping the necessary liaison between the sending State and the Organization;
- (c) carrying on negotiations with or in the Organization;
- (d) ascertaining activities and developments in the Organization, and reporting thereon to the Government of the sending State;
- (e) promoting co-operation for the realization of the purposes and principles of the Organization.

53. Mr. EL-ERIAN (Special Rapporteur) said that both in the comments of delegations in the Sixth Committee and in the written observations of governments, certain doubts had been expressed regarding the need to include sub-paragraph (b), on the permanent mission's liaison function. He could not, however, agree to the suggestion that it be deleted, because permanent missions had in fact originated in 1947 as offices for maintaining liaison with the United Nations while the General Assembly was not in session.

54. He had not accepted the drafting suggestions for the rearrangement of the sub-paragraphs, in particular the suggestion that sub-paragraph (e) should be inserted immediately after sub-paragraph (a); he had pointed out that the list of functions in article 7 followed a certain

logical order which did not imply a grading in order of importance (A/CN.4/241/Add.2, para. 128).

55. The International Labour Organisation had objected that article 7 could give the impression that only the permanent mission was competent to have dealings with the ILO, and had drawn attention to its own practice (A/CN.4/241/Add.2, para. 122). He had not, however, considered it necessary to make any change in article 7 to deal with that special situation. Articles 3 to 5 safeguarded the special rules and agreements of international organizations. He did not believe that the terms of article 7 could give the impression that the permanent mission constituted the only channel of communication between the sending State and the Organization. An appropriate reference could be made to the subject in the commentary, and that should satisfy the ILO.

56. Drafting suggestions similar to those made by the United Nations Secretariat (A/CN.4/L.162/Rev.1) had already been considered by the Drafting Committee; he suggested that the Secretariat suggestions be referred to the Drafting Committee for consideration on second reading of the article.

57. Mr. REUTER said that the Special Rapporteur's explanations were, on the whole, convincing. He saw no reason, however, why the Commission should not try to find more flexible wording for sub-paragraphs (a) and (b), which might satisfy the International Labour Organisation and probably other specialized agencies that were in the same position, such as the World Health Organization and the Universal Postal Union. For example, if sub-paragraph (a) read "providing a representation of the sending State" and sub-paragraph (b) "maintaining a liaison between the sending State and the Organization", that would imply that there were other possible forms of representation and liaison. Perhaps Ministries of Foreign Affairs would prefer the present wording, but although control over the so-called technical ministries by the Ministry of Foreign Affairs was a problem that arose in internal constitutional law, it must be recognized that for the practical functioning of international relations it was essential for international organizations to be able to deal with the appropriate technical ministries.

58. He also thought that articles 6 and 7 should perhaps be brought into harmony. According to article 6, the possibility of establishing permanent missions was limited by the performance of certain functions, while in article 7, which enumerated those functions, the words "*inter alia*" had been cautiously included, which implied that there might be others.

59. Mr. USHAKOV said that the problem raised by the International Labour Organisation was not a real problem. The fact that diplomatic missions had the function of negotiating with the host State did not mean that the ministries concerned had no authority to negotiate. The same applied in the case of permanent missions to Organizations. Their functions did not impair the authority of competent government organs.

60. Mr. CASTAÑEDA said that the Drafting Committee should consider very carefully the concordance, in the

⁴ For resumption of the discussion see 1110th meeting, para. 18.

three languages, of the terms "*inter alia*", "*notamment*" and "*principalmente*" in the introductory phrase of the article, and of the term "in", "*auprès de*" and "*en*" in sub-paragraph (a).

61. Mr. AGO said he agreed with Mr. Reuter. It was no accident that some organizations had seen fit to draw the Commission's attention to certain problems of representation: there were not only problems which arose in the sending State concerning the respective competence of different government departments, there were also problems which arose in the Organization. The wording adopted by the Commission must not give the impression that the permanent mission had all the functions of representing the State to the Organization and that it alone was authorized to deal with the Organization. That tendency was becoming all too prevalent, and the Commission must be careful not to embarrass the organizations by appearing to encourage it.

62. Mr. USTOR said he supported the Special Rapporteur's conclusions on article 7, but suggested that the Drafting Committee consider inserting the words "between States" in sub-paragraphs (e) after the word "co-operation", and possibly introducing a reference to friendly relations between States. References to friendly relations were contained in article 3, paragraph 1 (e) of the Vienna Convention on Diplomatic Relations⁵ and in article 5, sub-paragraph (b) of the Vienna Convention on Consular Relations;⁶ the preambles to those Conventions and to the 1969 Convention on Special Missions⁷ also referred to the development of friendly relations and co-operation between States.

63. Mr. ALCÍVAR said that the wording of sub-paragraph (a) raised a question of substance, not merely of drafting. A permanent mission represented the sending State in two ways. In the first place, it represented the sending State in its relations with the Organization, an idea which was expressed in Spanish by the words "*ante la Organización*"; possibly the words "*auprès de l'Organisation*", used in the French version of sub-paragraph (a), had the same meaning. In the second place, the permanent mission represented the sending State within the Organization. That idea was expressed in the Spanish version of sub-paragraph (a) by the words "*en la Organización*". He could not, of course, say conclusively whether the wording used in the English version of sub-paragraph (a), "in the Organization", covered both those meanings. He had observed, however, that the expression "permanent mission to the United Nations" was also currently used.

64. Mr. EUSTATHIADES, referring to the observations of the ILO, which raised an aspect of a more general question, said that the Commission could make it clear in the commentary, first, that article 7 did not enumerate all of the functions that might be performed by a permanent mission, but only the most important

and, secondly, that those functions did not exclude parallel functions exercised by other organs.

65. Mr. CASTRÉN said he agreed with the Special Rapporteur that the text of the article should not be changed. On the other hand, it would be well to insert the classifications suggested by Mr. Eustathiades in the commentary.

66. Mr. EL-ERIAN (Special Rapporteur) said he welcomed Mr. Ustor's suggestion concerning sub-paragraph (e). The Commission had decided in 1968 to adopt the present text, which referred only to the permanent mission's function of promoting co-operation for the realization of the purposes and principles of the Organization. He himself was in favour of including a reference to the promotion of co-operation and friendly relations between States, but he had accepted the present wording because it mentioned the realization of the purposes and principles of the Organization. All universal organizations were intended to promote friendly relations and co-operation between States.

67. With regard to the suggestions made by Mr. Reuter and Mr. Ago on the delicate question of the special procedures in certain technical organizations, he thought it would be difficult to cover the point in the text of article 7. In any case, the provisions of that article did not in any way prejudice the use of channels of communication other than the permanent mission. The position was the same in bilateral diplomatic relations; the fact that a sending State was already represented by a permanent diplomatic mission did not prevent it from sending a special ambassador for a particular purpose.

68. He suggested that the drafting points raised might be left to the Drafting Committee, but pointed out that it had already considered the wording of the various provisions of article 7 at the previous session.

69. Mr. RUDA suggested that the Drafting Committee should consider the suggestion that sub-paragraph (b) be deleted; as pointed out by the United States Government in its comments (A/CN.4/221/Add.1, section B.10), that sub-paragraph was not necessary, since it was already covered by the provisions of sub-paragraphs (a) and (c). In fact it was also covered by sub-paragraph (d). It was significant that the Vienna Convention on Diplomatic Relations did not contain any reference to the liaison function. Paragraph (3) of the Commission's commentary to article 7,⁸ which explained the inclusion of sub-paragraph (b), made it perfectly clear that its provisions duplicated those of the other sub-paragraphs, in particular sub-paragraph (d). The quotation from a book contained in that paragraph of the commentary was particularly revealing in that respect.

70. Mr. ROSENNE said that, when the Commission had adopted article 7 at its twentieth session, the Drafting Committee had pondered very carefully over the use, in the English version of sub-paragraph (a), of the words "in the Organization" rather than "at the Organization"

⁵ United Nations, *Treaty Series*, vol. 500, p. 98.

⁶ *Op. cit.*, vol. 596, p. 268.

⁷ See Annex to General Assembly resolution 2530 (XXIV).

⁸ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 200.

or “to the Organization”,⁹ which raised questions relating to accreditation and other matters dealt with elsewhere in the draft.

71. For those reasons, he would urge that no change be made in the text of article 7, which had been carefully drawn up in 1968.

72. Mr. KEARNEY said he agreed with Mr. Ruda that sub-paragraph (b) was not necessary.

73. Mr. EL-ERIAN (Special Rapporteur) said that, although from a strictly logical point of view sub-paragraph (b) might be subsumed under the other sub-paragraphs of article 7, he thought the function it specified deserved special mention because of the historical origin of the institution of permanent missions.

74. The expression “in the Organization”, which was used in sub-paragraph (a), had been examined very carefully by the Drafting Committee and should therefore be retained.

75. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to refer article 7 to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*¹⁰

The meeting rose at 1 p.m.

⁹ Op. cit., 1968, vol. I, p. 214, para. 78 *et seq.*

¹⁰ For resumption of the discussion see 1110th meeting, para. 33.

1090th MEETING

Friday, 30 April 1971, at 10.10 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 3; A/CN.4/241 and Add.1 and 2; A/CN.4/L.162/Rev.1)

[Item 1 of the agenda]

(continued)

ARTICLES 8 and 9

1. The CHAIRMAN invited the Special Rapporteur to introduce articles 8 and 9.

2.

Article 8

Accreditation to two or more international organizations or assignment to two or more permanent missions

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

2. The sending State may accredit a member of the staff of a permanent mission as permanent representative to other international organizations or assign him as a member of another of its permanent missions.

Article 9

Accreditation, assignment or appointment of a member of a permanent mission to other functions

1. The permanent representative of a State may be accredited as head of a diplomatic mission or assigned as a member of a diplomatic or special mission of that State to the host State or to another State.

2. A member of the staff of a permanent mission of a State may be accredited as head of a diplomatic mission or assigned as a member of a diplomatic or special mission of that State to the host State or to another State.

3. A member of a permanent mission of a State may be appointed as a member of a consular post of that State in the host State or in another State.

4. The accreditation, assignment or appointment referred to in paragraphs 1, 2 and 3 of this article shall be governed by the rules of international law concerning diplomatic and consular relations.

3. Mr. EL-ERIAN (Special Rapporteur) said that a number of comments, mostly of a drafting character, had been made by governments on article 8, and on articles 8 and 9 taken together. He had therefore thought it advisable to deal with the two articles simultaneously.

4. In the Sixth Committee, there had been some criticism of the use of the term “accreditation” in the titles of articles 8 and 9 and of the term “accredit” in the body of article 8. He proposed to deal with those criticisms, and with the suggestion that those terms be replaced by such words as “appointment” and “appoint”, when the Commission considered articles 12 and 13, dealing with the credentials of the permanent representative and accreditation to organs of the Organization.

5. One government had suggested the deletion of article 8, pointing out that it referred to a case that was not analogous to that dealt with in the corresponding provisions of the Vienna Convention on Diplomatic Relations and the Convention on Special Missions (A/CN.4/221, section B.6). He recognized the validity of that comment, but thought that the Commission should make the draft as complete as possible, following the example of its draft on the law of treaties. It was useful to deal with the situations envisaged in the article, even if they did not involve legal obligations.

6. The United Nations Secretariat had made elaborate drafting suggestions which he had reproduced in full in his sixth report (A/CN.4/241/Add.2 para. 136). His own proposal was to insert the words “or special” after