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Summary record of the 1100th meeting

Topic:
Representation of States in their relations with international organizations

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as host to an international organization must also accept the consequences and was not entitled to exclude from its territory the representatives of States represented in the organization—whether as members, observers or with any other status—with which it did not maintain diplomatic relations, which it did not recognize or with which it was involved in armed conflict.

69. The Commission could therefore be grateful to the Special Rapporteur for having drafted the three articles now before it. Their number might perhaps be reduced to two or, on the contrary, their scope might be widened to cover cases of armed conflict or other cases such as that of a country which, though not admitted to membership of an organization, was called upon to be represented in it provisionally. The essential point was that there should be rules of international law governing relations between the host State and States members of the organization of States which had dealings with it. The Drafting Committee would decide how far the Commission could go, but in general the three articles proposed by the Special Rapporteur already provided a solid basis for drafting the necessary rules.

70. However, it was not only a matter of regulating relations between the host State and the States represented in the organization, but also relations between the latter States and States which were in the same situation with regard to them as the host State, and would, for example, have to authorize transit through their territory.

71. Since a general rule was being drafted for the first time and it ought to be complete, the obligations of States benefiting from the rules governing exceptional situations, for example, those involving propaganda or unfriendly acts, should also be laid down.

72. Lastly, apart from the host State, rules should be drafted governing the conduct of States which, being in one of the exceptional situations provided for with respect to each other, met within the organization. For as anyone could see, in the United Nations General Assembly, for example, animosity often broke out between enemy States in international discussions. In such cases, the question arose whether it was for the host State, the Chairman of the body concerned or the other participating States to restore harmony.

73. His conception of the subject under study might perhaps be too broad, but he had wished to show that that subject was not so limited as the three articles proposed by the Special Rapporteur suggested. The Special Rapporteur had preferred to go no farther; the Drafting Committee would decide whether it was advisable to do so. But for the time being the texts proposed were acceptable.

The meeting rose at 1 p.m.

1100th MEETING

Friday, 14 May 1971, at 10.10 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Ramangasoavina, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, 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 6; A/CN.4/241 and Add.1 to 3; A/CN.4/L.162/Rev.1; A/CN.4/L.166)

[Item 1 of the agenda]

(continued)

QUESTION OF THE POSSIBLE EFFECTS OF EXCEPTIONAL SITUATIONS: ARTICLES 49 *bis*, 77 *bis* and 116 *bis* *(continued)*

1. The CHAIRMAN invited the Commission to continue consideration of the question of the possible effects of exceptional situations on the representation of States in international organizations and the Special Rapporteur's proposed articles 49 *bis*, 77 *bis* and 116 *bis* (A/CN.4/L.166).

2. Mr. KEARNEY said that, in response to the remarks of some members, he wished to explain his reasons for referring to State responsibility in the amendment he had submitted to article 49 *bis* at the previous meeting, which read: "Failure by members of a permanent mission in the foregoing circumstances to comply with regulations adopted by the host State to safeguard the mission and its members shall relieve the host State of any responsibility for the consequences of such failure". In that context, by "State responsibility" he meant State responsibility as defined by the Special Rapporteur for that topic in draft articles 1, 2 and 3 of his third report,[1] and in that context it was not possible to avoid referring to State responsibility. The draft articles now being considered contained many provisions which imposed obligations upon States. Failure to fulfil those obligations was bound to give rise to State responsibility.

3. At the same time, it was clear that some leeway was necessary to allow exceptional situations to be taken into account. For example, under article 21,[2] the permanent representative was entitled to use the flag of the sending

[1] See A/CN.4/246, paras. 48, 75 and 85.

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

State on the means of transport of the permanent mission. In the event of tension between the host State and the sending State and the severence of diplomatic and consular relations between them, the authorities of the host State might suggest to the permanent representative that it was desirable not to display the flag of the sending State. The permanent representative might then reply that under article 21 he had a right to display that flag. Under the provisions of article 30,[3] on personal inviolability, it was the duty of the host State to take "all appropriate steps" to prevent any attack on the person, freedom or dignity of the permanent representative. The question would then arise whether, in the circumstances created by the permanent representative's disregard of the suggestion made to him, it was the duty of the host State to supply an escort of police cars to protect the vehicle of the permanent mission from hostile demonstrations.

4. That example showed the need to make it clear in the present draft that there was room for some tolerance in the matter. If the permanent representative, or the member of the permanent mission concerned, did not take the reasonable steps requested of him, the host State was not obliged to take extraordinary measures and to go to extreme lengths in carrying out its duty of protection. He did not believe that the problem was covered by article 60 of the 1969 Vienna Convention on the Law of Treaties.[4] Refusal by the permanent representative to take the steps in question did not constitute "a material breach" as defined in paragraph 3 of article 60. There was therefore no question of invoking paragraph 1 of article 60 and the host State remained under an obligation to take the "appropriate steps" provided for in the last sentence of article 30 of the present draft.

5. The problem was to determine what constituted "appropriate" steps. The purpose of his proposal was to clarify the duties of the host State, but he was only concerned with the substance of the matter; he did not insist on the actual wording he had proposed.

6. Mr. SETTE CÂMARA said he agreed with the Special Rapporteur's conclusion that the draft should not deal with the problem of armed conflict.

7. In view of the criticisms of the length of the draft made in the Sixth Committee, he supported the proposal to merge the three new draft articles.

8. With regard to the important problem of recognition and non-recognition, he shared the view that the reservation on the subject should apply to the whole text of the draft and should not be confined to the exceptional situations contemplated in the three new draft articles.

9. The Drafting Committee should be asked to consider Mr. Kearney's amendment to article 49 *bis* with a view to finding a way to meet the concern it reflected. The matter was connected with the general problem of the conduct of permanent missions and delegations, and was not confined to exceptional situations. The problem connected with the display of the flag on means of transport could arise in any circumstances.

10. In considering that problem, the Drafting Committee should take into account the provisions of article 60 of the 1969 Vienna Convention on the Law of Treaties. It should bear in mind, however, that, as Mr. Kearney had pointed out, the breach in that case was committed by the sending State, not by the host State.

11. Mr. YASSEEN said that the subject the Commission was considering was one with respect to which the rules governing multilateral diplomatic relations differed essentially from those governing bilateral diplomatic relations. Although the draft articles would not be complete unless they dealt with the effects of armed conflict on the representation of States in international organizations, he must admit that the Special Rapporteur had been right to leave that matter aside, both because it was so complex that it would need more time for consideration than the Commission would be able to give it, and because the Commission had always declined to take up a matter connected with the law of war, which would take it far beyond the subject under study. He agreed with Mr. Ago, however, that the Commission should explain its position in the commentary, in order to prevent application of the articles on the basis of false analogies or wrong interpretations.

12. Before it took any decision on the wording of the articles proposed by the Special Rapporteur, on the question whether they were to be merged, and on their position in the draft, the Commission should wait until it had a general conspectus of the draft as a whole.

13. He could not support Mr. Kearney's amendment, which was not justified from the technical point of view. For although no one denied that the host State was entitled to adopt regulations to protect the mission and its members, the host State could not determine, at its own discretion, the sanction for non-compliance with those regulations and claim that such non-compliance relieved it of all responsibility. The sanction depended on international law itself, not on the regulations in question.

14. Mr. ROSENNE said he welcomed Mr. Kearney's explanation as well as the intimation that he did not insist on the language of his proposal, but merely wished to ensure that the problem was adequately dealt with. A case of some relevance in that connexion was the Tellini case, which had been mentioned by the Special Rapporteur during the discussion on article 49.[5]

15. It was essential that the Commission should deal with the problem raised by Mr. Kearney, unless it felt certain that the matter was covered by existing international law. Personally, he was not at all convinced that the provisions of article 60 of the 1969 Vienna Convention on the Law of Treaties covered the whole subject, or indeed that they constituted the only provisions of

[3] Op. cit., *1969*, vol. II, p. 211.

[4] See *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference*, p. 297 (United Nations publication, Sales No.: E.70.V.5).

[5] See 1098th meeting, para. 99.

that Convention applicable in the matter; article 61, on supervening impossibility of performance, article 62, on fundamental change of circumstances, and perhaps article 73, on cases of State succession, State responsibility and outbreak of hostilities, might also be relevant. In particular, articles 61 and 62 incorporated the concept of suspension of the treaty.

16. The Drafting Committee should carefully examine the words "under the present articles" at the end of the first sentence of articles 49 *bis*, 77 *bis* and 116 *bis*. That wording might be too narrow and the Drafting Committee should consider the possibility of replacing it by a broader description of the obligations of States. The obligations of both the host State and the sending State were not necessarily limited to those set forth in the present draft articles. There could well be other sources of duties for those two States and the balance of their respective obligations could be altered by the operation of other rules of international law.

17. As the discussion proceeded, he was becoming increasingly uneasy about the problem of recognition, because it was a problem that the Commission had not studied at all. On State responsibility, the Commission had before it the report and draft articles submitted by the Special Rapporteur on that topic,[6] but on recognition it had nothing, and it should hesitate to lay down any substantive rule.

18. He would be in favour of including in the Commission's report on its present session an intimation to the General Assembly that the Commission was aware of the problem of recognition but had not been able to reach any conclusion on it, since it had not studied the subject.

19. Mr. USTOR said that the problem with which Mr. Kearney's amendment attempted to deal was a general problem rather than one closely connected with articles 49 *bis*, 77 *bis* and 116 *bis*. It might arise in connexion with the exercise of any of the rights which States could derive from the present draft articles. A problem such as that connected with the display of the flag, in the case mentioned by Mr. Kearney, could be settled by applying the general rules of international law rather than any particular rules on the lines proposed by Mr. Kearney.

20. The general rule to be applied in considering the rights set forth in the present draft articles was that all rights must be exercised in good faith, with due regard for the interests of others and in a spirit of co-operation and mutual understanding. If it were desired to refer to that rule, it would be appropriate to do so in a preamble, but not in the draft articles.

21. Mr. USHAKOV said he wished to make a few remarks on the amendment proposed by Mr. Kearney, in the light of the explanation he had given of its purpose.

22. He did not agree with Mr. Ago's view that the point raised by Mr. Kearney came under the law of treaties, in particular under article 60 of the Vienna Convention on the Law of Treaties.[7] What was in issue was a breach by the sending State, not of rules of international law, but of regulations adopted by the host State under its internal law.

23. That was the point which made Mr. Kearney's proposal unacceptable. To provide that the host State could, unilaterally and of its own volition, cease to consider itself bound by certain provisions of the draft articles and impose its own rules on the sending State amounted to providing precisely the reverse of what was stated in article 49 *bis*, which stipulated that exceptional situations did not affect the obligations of either the host State or the sending State under the articles.

24. Not only was such a derogation not justified, but the way in which it was expressed gave the host State practically a free hand. Yet it was, on the contrary, in exceptional situations that the host State must take all necessary steps to guarantee the sending State the enjoyment of all the rights to which it was entitled under the articles. To give the host State the right to take, when necessary, whatever steps it considered appropriate would jeopardize the whole convention. It would be a different matter if the host State, by negotiation, suggested or recommended to the permanent mission safety measures which the mission remained free to accept or reject.

25. He was all in favour of safeguarding the legitimate interests of the host State, provided it was done in a reasonable way, having due regard to good will and good faith. The Commission should not go beyond what was proposed in article 49 *bis*, which the Drafting Committee should examine very carefully with a view to producing a generally acceptable article.

26. Mr. EUSTATHIADES said he thought it was becoming more and more necessary for the Commission to take a position on the question of armed conflict, at least in a very detailed commentary. It could not draft an article, since that would mean examining the effects of the situation for a permanent mission from the time it was established until its functions came to an end. A rule of that sort would be far too detailed, for it would have to cover not only a conflict between the host State and the sending State, but also wider conflicts involving several States members of the organization, since the existence of a state of war between some of the members of an international organization set up by a collective treaty was no bar to the treaty's continued existence, though it might affect the treaty's application. But since the subject had been dealt with in other conventions, the Commission should explain its silence.

27. Some members thought Mr. Kearney's proposal raised a general question that went beyond the exceptional situations dealt with in article 49 *bis*. But even supposing that was so, the idea underlying the proposal could still be retained in a convention of the kind which the Commission was drafting. For no one denied that the host State must, in general, take the measures necessary to enable it to fulfil its obligations to the sending State, and its duty to do so appeared even more imperative in the exceptional situations covered by article 49 *bis*,

[6] A/CN.4/246 and Add.1 and 2.

[7] See previous meeting, para. 60.

which might logically be held to call for stronger safeguards.

28. Mr. Kearney had therefore taken article 49 *bis* as the occasion for making a clear statement of the host State's obligation in that regard; but there was nothing to prevent the Commission from establishing, first, the host State's general obligation to take measures to ensure the protection of the permanent mission and, secondly, the sending State's obligation to comply with them in its own interest, particularly in the exceptional circumstances covered by article 49 *bis*.

29. He had tried to show that it should be possible to reach agreement on a principle which, though general, was nevertheless particularly pertinent to article 49 *bis*.

30. Mr. AGO said that, after hearing Mr. Kearney's explanations, he thought his proposal would be unacceptable if, as Mr. Ushakov believed, it amounted to providing that in certain exceptional situations the host State could consider itself relieved of some of its obligations under the convention and adopt regulations which infringed the privileges and immunities of the sending State. That would, of course, deprive the convention in general, and article 49 *bis* in particular, of all meaning.

31. Mr. Kearney's intention, however, seemed to be rather to enable the host State to propose to the sending State certain procedures for applying the rules of the convention, which would be settled by agreement in the interests of the permanent mission. If that was so, the Drafting Committee ought to be able to find a form of words which would meet both Mr. Kearney's legitimate concern and the Commission's desire not to impair the basic provisions of article 49 *bis*.

32. Mr. EL-ERIAN (Special Rapporteur) said that the constructive and comprehensive discussion on his working paper had been in the best traditions of the Commission; it had covered many theoretical questions as well as such matters as the relationship of the provisions of his proposed new articles with the general principles of international law and the Vienna Convention on the Law of Treaties.

33. The comments made during the discussion could be divided into three groups. The first related to the basic features of the three proposed new articles and to what they should or should not contain. The second related to the material to be included in the commentary, which in the present instance had a particularly important function. The third related to drafting questions and the relationship of articles 77 *bis* and 116 *bis* with article 49 *bis*.

34. There had been general agreement that no attempt should be made to deal with the possible effect of armed conflict on the representation of States in international organizations. It had also been generally agreed that the commentary should reflect the importance which the Commission attached to that question. The commentary would stress that the Commission had thoroughly examined the question, but had decided not to include any provision on it in the draft articles, and would then give the reasons for that decision. Those reasons were connected with the variety of situations involved and with the Commission's policy, as shown in its earlier drafts, especially its 1956 draft articles on the law of the sea.[8]

35. The question of civil war had been mentioned; he construed that concept as being covered by "armed conflict".

36. There had been general approval of his proposals for references in the draft articles to the question of recognition and non-recognition, though some misgivings had been expressed because recognition appeared on the Commission's list of topics for codification.[9] He believed that the position on that question differed from that relating to armed conflict, in particular because the law on recognition and non-recognition had developed considerably in the past twenty years.

37. The Drafting Committee would consider Mr. Ushakov's suggestion that reference be made to rights as well as to obligations. He himself had placed the emphasis on obligations because most of the provisions of the draft dealt with the obligations of States but, of course, every obligation had a right as its counterpart.

38. He agreed with the suggestion that the provisions of each of the new draft articles should be divided into three separate paragraphs.

39. He did not consider it necessary to incorporate in article 49 *bis* the amendment proposed by Mr. Kearney, because the matter was already covered by general international law. Moreover, under article 45, paragraph 1, the permanent representative and the members of the permanent mission were required to respect the laws and regulations of the host State; any failure to co-operate in measures of protection taken in their own interest would give rise to the application of the right of estoppel or of the doctrine of *faute commune*.

40. The Drafting Committee should consider the other proposal made by Mr. Kearney, to amend the second sentence of article 49 *bis* by inserting the words "nor any action taken pursuant to the provisions of these articles"[10]—a proposal on which there had not been much comment during the discussion.

41. The Drafting Committee should also consider the suggestion by Mr. Ushakov that some adjustment should be made to the text of article 116 *bis* to take into account certain differences between delegations to organs and conferences on the one hand and permanent missions on the other.

42. The question whether the three new articles should be merged, or whether perhaps only articles 49 *bis* and 77 *bis* should be merged, would be examined when the Commission had completed its work on the draft as a whole; for the time being, the three new draft articles would be treated as separate provisions.

[8] See *Yearbook of the International Law Commission, 1956*, vol. II, pp. 256 *et seq.*

[9] Op. cit., *1949*, vol. II, p. 281.

[10] See previous meeting, para. 19.

43. The CHAIRMAN suggested that articles 49 *bis*, 77 *bis* and 116 *bis* be referred to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.[11]

ARTICLE 50

44. The CHAIRMAN invited the Special Rapporteur to introduce article 50.

45.

Article 50

Consultations between the sending State, the host State and the organization

If any question arises between a sending State and the host State concerning the application of the present articles, consultations between the host State, the sending State and the Organization shall be held upon the request of either State or the Organization itself.

46. Mr. EL-ERIAN (Special Rapporteur) said that a number of observations had been made on article 50 in the Sixth Committee, some of which were reflected in the comments of governments (A/CN.4/241/Add.3). He had not considered the elaborate machinery for consultation proposed by the Government of Switzerland as appropriate for the purpose and had concluded that article 50 should be retained in its original form.

47. Mr. TAMMES said he had been particularly struck by the comment of the International Labour Office (A/CN.4/239, section D.2), which was known for its sensitiveness to legal questions. It expressed the fear that an obligation would be imposed on the organization to "provide for the diplomatic protection" of the sending State and to "play the role of a conciliator, perhaps even arbitrator," on "problems not directly related to its own interests." The ILO doubted whether "questions relating rather to diplomatic usage and the comity of nations" could "usefully be made the subject of intervention by the organization."

48. The distinction between problems concerning which the organization could play a conciliatory role and problems which lay outside its purview seemed to have been in the mind of the Special Rapporteur when he had drafted the original text of article 50 in 1969. Paragraph 1 of that article, then article 49, had read: "Consultations shall be held between the sending State, the host State and the Organization on any question arising out of the application of the present articles. Such consultations shall in particular be held as regards the application of articles 10, 16, 43, 44, 45 and 46." Paragraph 2 had then stated that "The preceding paragraph is without prejudice to provisions concerning settlement of disputes contained in the present articles or other international agreements in force between States or between States and international organizations or to any relevant rules of the Organization."

[11] For resumption of the discussion see 1119th meeting, para. 25.

49. However, what had been carefully thought out in an atmosphere of intellectual serenity had undergone many changes since 1969. In his opinion, the opening phrase of article 50 tended to detract from the original idea that the consultations were primarily designed for protection of the proper functioning of the organization. It gave the impression of applying to all kinds of disputes between the sending State and the host State, and made no distinction between the direct and indirect interests of the organization. He hoped that the Drafting Committee would consider whether it was possible to restore the original balance of the article.

50. Mr. USHAKOV said he did not wish to revert to the substance of article 50, but to express his opinion on some of the comments by governments and the secretariats of international organizations.

51. He agreed with the reason put forward by the Special Rapporteur for not adopting the suggestion that the article should begin with the words "If any question arises among a sending State, the host State and the Organization. . . ." (A/CN.4/241/Add.3). The organization was interested in the proper functioning of permanent missions and was obliged to assist them, in accordance with article 22. But if any question arose between the organization and one of its member States, that was of no concern to the host State and the question should not be settled by tripartite consultations.

52. In practice, the proposal to institute tripartite consultation machinery would lead to the establishment of as many conciliation commissions as there were members of the organization, since each commission would include one representative of a sending State. Moreover, such a provision had no place in a draft convention, since no plenipotentiary conference could impose on organizations the obligation to set up such commissions.

53. With regard to the comments in the Sixth Committee that article 50 "might prejudice the reply to the question which organ of the organization would be responsible for ensuring respect for the privileges and immunities granted," and that "the secretariat of the organization concerned might find itself invested with authority that could not rightly be acquired except in virtue of the organization's constitutional instruments," the Special Rapporteur had replied that what had to be taken into account was not only the organization's constitutional instrument, but also its other relevant rules, and that in the absence of any relevant provision the consultation would have to be entrusted to the secretariat. The Legal Counsel of the United Nations had expressed the same view. He (Mr. Ushakov), however, did not share that view. No rule could be imposed on an organization as to the organ empowered to represent it for the purposes of article 50. The question had to be settled in accordance with the constitutional instruments or relevant rules of the organization. The Commission should therefore refrain from taking a position on the matter.

54. In its commentary to article 50, the Commission had stated that it had "reserved the possibility of including at the end of the draft articles a provision concerning

the settlement of disputes which might arise from the application of the articles".[12] The settlement of disputes was an entirely separate question, however, and much more complex than that of relations between States and international organizations; it was even more complicated where international organizations were involved. In view of the short time available to the Commission, it would be preferable to leave that question to the General Assembly or to the plenipotentiary conference that might be convened.

55. Mr. EL-ERIAN (Special Rapporteur) said he agreed with Mr. Ushakov that the Commission should not attempt to deal with the question of the settlement of disputes. In principle, it should state the substantive rules of law and leave it to the conference that would finalize the draft articles to provide the appropriate machinery for conciliation. As he had stated in paragraph 16 of his observations on article 50 (A/CN.4/241/Add.3), if the Commission decided that the draft should include provisions on the settlement of disputes, he would prepare a text for its consideration, though personally he was not in favour of including such provisions.

56. On the question of the organ competent to conduct consultations on behalf of the organization, he thought that that should be left to the organization itself to determine under its own rules. If no relevant rule existed, he assumed that the secretariat, as a continuing body, would be the most appropriate organ.

57. Mr. KEARNEY said he thought the draft articles should provide some machinery for the settlement of disputes; article 50, however, was sadly inadequate for that purpose. It was not only exceptional situations that might give rise to disputes; the whole series of draft articles raised a number of problems that would call for settlement.

58. For example, article 3 stated that "The application of the present articles is without prejudice to any relevant rules of the Organization"; but what were the "relevant" rules and who would decide that question? Article 10 stated that "the sending State may freely appoint the members of the permanent mission"; but if it appointed a person who had previously been convicted of a serious criminal offence, would that be an abuse of its right of appointment and who would decide that question? Article 16 stated that "The size of the permanent mission shall not exceed what is reasonable and normal"; but at what point could it be said to exceed what was "reasonable and normal"? Article 26 provided that the permanent mission should be "exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission... other than such as represent payment for specific services rendered"; could the permanent mission be charged for such specific services as fire or police protection? Article 27 stated that "The archives and documents of the permanent mission shall be inviolable at any time and wherever they may be"; did that mean that if those documents were accidently lost and subsequently found by the authorities of the host State, the latter would be prevented from examining them to establish their identity? Similar questions could be asked about many other articles and they would be of as much concern to the sending State as to the host State.

59. He agreed with Mr. Ushakov that if the host State was guilty of unreasonable behaviour it would be difficult for the sending State to protect itself because, in the absence of any machinery for conciliation, the question would be decided in the courts of the host State. Of course, if the host State did adopt an unreasonable attitude there were certain possibilities open to sending States, such as moving the headquarters of the organization. On the whole, however, he did not believe that host States had acted unreasonably in the past, although at times they might appear to sending States to be rather narrow-minded in certain particulars.

60. It had been said that, because of the shortage of time and because the settlement of disputes constituted a separate issue in international law, the Commission should not attempt to deal with that matter in the present articles. The difficulty was that some existing agreements did contain provisions concerning the settlement of disputes, so that if the Commission's draft omitted any such provisions it might not be considered satisfactory. For example, section 30 of the Convention on the Privileges and Immunities of the United Nations provided that: "All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court."[13] Similar provisions were to be found in section 21 of the Headquarters Agreement between the United Nations and the United States of America.[14]

61. As far as he was aware, no recourse had ever been had to those provisions, a fact which in itself showed the effectiveness of having suitable machinery available for the settlement of disputes. Differences of opinion had existed at certain times, but the problems had always been solved without resorting to arbitration or to the International Court of Justice, whereas in the absence of those provisions one side or the other might have been more intransigent.

62. Nevertheless, the Headquarters Agreement was defective in one respect, namely, that it failed to take account of the interests of the sending State directly concerned by providing for its participation in the arbitral procedures contemplated. It should also be borne in mind that any decision taken, in accordance with any dispute settlement machinery, with regard to one sending State would be of interest to all sending States.

[12] See *Yearbook of the International Law Commission, 1969*, vol. II, p. 222, para. (5).

[13] United Nations, *Treaty Series*, vol. 1, p. 30.

[14] Op. cit., vol. 11, p. 30.

63. He had no specific suggestions to make concerning the Commission's approach to that problem. The Swiss proposal (A/CN.4/239, section C.II) was defective inasmuch as it failed to take the interests of all sending States into consideration. Such existing instruments as the Vienna conventions on diplomatic and consular relations and the Convention on Special Missions concerned bilateral diplomacy and could not be relied on as precedents in multi-lateral relations. The Commission should make a serious effort to find some reasonable addition to article 50 with respect to the settlement of disputes that were not resolved by consultations.

64. Mr. AGO said that, without going into the substance of the matter, he wished to ask the Special Rapporteur three questions concerning the text of article 50.

65. Some of the comments, in particular those of the International Labour Office (A/CN.4/239, section D.2) showed that international organizations were not much inclined to participate in tripartite consultations. They were not always interested in the disputes which might arise between the host State and a sending State and did not always wish to take a position on them. Was article 50 to be regarded as imposing an obligation on the organizations to participate in the consultations?

66. So far, tripartite consultations had been contemplated. In the case of a dispute in a city which was host to several international organizations, which of them would take part in the consultations? There could not be consultations involving several organizations. That point should be clarified, at least in the commentary to the article.

67. So far as the settlement of disputes was concerned, certain States were bound by treaty to submit their disputes to conciliation or abitration commissions; would those commissions be competent to deal with disputes between those States in their respective capacities as host State and sending State to an international organization? If so, should it not be expressly stated that the competence of those commissions was not affected by the provision of article 50?

68. Mr. EL-ERIAN (Special Rapporteur) replying to Mr. Ago's first question, said he had not envisaged any rigid machinery that would impose an obligation on the organization, but rather a flexible arrangement to deal with practical, everyday problems. What had to be asserted was the principle of consultation as a remedy for grievances between the sending State and the host State. The United Nations, for example, had the Informal Joint Committee on Host Country Relations, which met regularly.

69. In reply to the second question, he suggested that if a permanent mission was accredited to a number of international organizations, it might be advisable to have some sort of inter-agency committee to regulate their mutual problems.

70. As to the third question, the organization's role in the settlement of disputes would ultimately depend on the recommendations adopted by the conference. What he had in mind, however, was action to be taken by the organization to prevent everyday problems from developing into disputes. In any case, the organization should have some clearly defined role to play, since a situation might arise in which no diplomatic relations existed between the sending State and the host State. Article 50 would, of course, be without prejudice to any of the conciliation commissions established by the Swiss Government to which Mr. Ago had referred.

The meeting rose at 1.5 p.m.

1101st MEETING

Monday, 17 May 1971, at 3.5 p.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Ramangasoavina, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 6; A/CN.4/241 and Add.1 to 3; A/CN.4/L.162/Rev.1)

[Item 1 of the agenda]

(continued)

ARTICLE 50 (Consultations between the sending State, the host State and the Organization) *(continued)*

1. The CHAIRMAN invited the Commission to continue consideration of article 50.

2. Mr. YASSEEN said that article 50 was very useful and should be retained, but it should be made clear exactly what its purpose was, because the observations submitted by governments and secretariats of international organizations had gone too far.

3. The essential purpose of the article was to provide a very broad and very flexible procedure for examining the difficulties which might arise in the application of the future convention. The Commission had not intended to establish an organ, institution, court or conciliation commission, but simply to say that, when the host State and the sending State were unable to reach agreement on a disputed issue, the organization could be invited to take part in tripartite consultations with a view to finding a solution.

4. It would be wrong, however, to extend the scope of the article—as one government had proposed—to cover