Document:-
A/CN.4/SR.1101

Summary record of the 1101st meeting

Topic:
Programme of work

Extract from the Yearbook of the International Law Commission:-
1971, vol. I

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

questions which might arise between the host State and the organization, since it was difficult to see how a sending State could intervene in a matter which concerned only the organization and the host State. The main purpose of article 50 was to smooth out difficulties between the host State and a sending State, and the participation of the organization in the consultations would make them more effective.

5. Some international organizations had questioned even the principle of intervention by the organization. He could not agree with them, since the effective application of a convention providing for the granting of privileges, immunities and facilities to representatives of States to enable them to perform their functions in the organization also concerned the organization itself, which could not, in that connexion, be regarded as a third party in the proper sense of the term; its intervention could only be helpful.

6. Understood in that way, article 50 was in harmony with certain methods which already existed or could be established in the future. Since 1966 there had been in New York a Joint Committee on Host Country Relations; an informal body set up with the agreement of the Secretary-General by various groups of countries represented in the United Nations, it consisted of fifteen representatives of sending States, a representative of the host State and a representative of the Secretary-General. Its task was to examine difficulties relating to the status of permanent missions to the United Nations. It had already settled its procedure, and its work was examined by the Fifth Committee of the General Assembly. Such an arrangement came within the scope of article 50, which might later lead to other arrangements of the same kind, depending on circumstances and requirements. The permanent missions to the international organizations at Geneva were at present trying to set up a similar committee of twenty-seven members, with a representative of the host State and a representative of the Secretary-General, to examine difficulties arising between the permanent missions and the host State. Thus there could be no doubt about the value of article 50, which might encourage action with a view to the satisfactory application of the Convention.

7. Mr. RAMANGASOAVINA said that article 50 was useful. Whenever the Commission had thought about the difficulties of application to which the first forty-nine articles might give rise, it had always agreed that article 50 would provide means of reaching an understanding. But the article certainly raised a number of questions.

8. First, what was its exact scope? The Special Rapporteur said that it provided a flexible procedure for settling day-to-day problems, which depended on the goodwill of the parties and on the organization. The organ responsible for the tripartite consultations would have to solve problems concerning the application of the convention, and, consequently, problems of interpretation; so its task would not be easy.

9. Secondly, how were the consultations to be conducted? Would the three parties have to meet or would the consultations be conducted in writing—in other words, through the diplomatic channel? In the latter case, would they be conducted through the normal diplomatic channel, that was to say through the diplomatic mission of the sending State in the host State if there was one or, if there was not, through the Ministry of Foreign Affairs? Or would they be conducted in parallel and, if the host State was not recognized by the sending State, or *vice versa*, through the organization? In principle, it would be for the head of the permanent mission to take action, but it would inevitably be necessary to resort to the diplomatic channel if he himself was the person involved.

10. Another question was what rule would be applicable and what would be the competence of the *ad hoc* organ responsible for the consultations. It was not enough to provide for a flexible procedure, for if it was a question of recalling the head of a permanent mission or waiving immunities, for example, it would be necessary to know what rule was applicable. Moreover, since there was no question of arbitration or jurisdiction, the result of the consultations could only be an opinion without binding force for the parties. There again, it was necessary to decide what value should attach to the agreement resulting from the consultations. If the agreement was binding and was executed by the parties, would it have the authority of *res judicata* and would it establish a precedent? If, on the other hand, it was just an agreement based on good faith, it could only have the value of a mere diplomatic arrangement. Moreover, the settlement of differences on matters such as waiver of immunities or protection of the legitimate interests of a national of the host State involved legal elements which did not come into play in a diplomatic *démarche*.

11. Lastly, provision should be made for other means of settlement in the event of the consultations reaching a stalemate.

12. All the questions he had raised would have to be answered. Article 50 was a convenient, but provisional instrument, and its machinery would have to be improved later. Perhaps it would be possible to follow the course adopted with the Vienna Conventions on diplomatic and consular relations, and add to the draft articles a protocol on the compulsory settlement of disputes.

13. Mr. SETTE CÂMARA said he noted that article 50 had been placed provisionally at the end of section 4 of Part II, pending a decision on its final position.[1]

14. The article provided a simple and useful device for opening consultations between the sending State, the host State and the organization if a question should arise concerning the application of the articles. Such a provision was necessary because of the absence of any rules such as those in bilateral diplomacy concerning *agrément* and declaration as *persona non grata*.

15. If the Commission decided to include special provisions on the settlement of disputes, however, he had doubts about the role of the organization. First, who

[1] See *Yearbook of the International Law Commission, 1969*, vol. II, p. 221, footnote 44.

would represent the organization in the settlement of disputes? The secretariat would seem to be the most appropriate body, because of its continuity of function, though he questioned whether it would be entitled to appear as a negotiating party on an equal footing with States. The extraordinary powers of the secretariat in that case would seem to emanate from article 3, concerning the relationship between the present articles and the relevant rules of international organizations.[2]

16. The Government of Switzerland considered such an arrangement unsatisfactory and had proposed an elaborate system consisting of a conciliation commission composed of three members, whose decisions would be taken by majority vote (A/CN.4/239, section C.II). He found that proposal unrealistic, since he did not see how the organization could be permitted to vote on the same footing as States.

17. The International Labour Office (ILO) had expressed the opinion that "it would be very difficult for an organization to play the role of conciliator, perhaps even arbitrator, in connexion with problems not directly related to its own interests, such as respect for exemption from customs duties or the extent and content of immunity from jurisdiction" (*ibid.*, section D.2). The Special Rapporteur had been unable to agree with that contention and had cited the obligations imposed on the organization by article 24 to assist the sending State, its permanent mission and the members of the mission "in securing the enjoyment of the privileges and immunities provided for by the present articles" (A/CN.4/241/Add.3, para. 11 under article 50).

18. He did not oppose the retention of article 50, though he did not think it contributed much towards solving problems which would normally be solved by common sense in the light of everyday practice. If the Commission decided that some stronger text was needed, it would have to resort to specific provisions like those of the Optional Protocols to the Vienna Convention on diplomatic and consular relations and the Conventions on the Law of the Sea.[3]

19. Mr. CASTRÉN said he agreed with the Special Rapporteur and other members of the Commission that article 50 was useful and that the Commission should not let itself be influenced by the negative attitude of the ILO.

20. The text of the article, which had been drafted after long discussions, could be retained as it stood. It was not necessary to specify what organ of the organization would take part in the consultations: that would depend on the relevant rules of the organization concerned. And at the beginning of the article it was better to mention only questions which might arise between a sending State and the host State, and not to refer to the organization as well, in order to prevent misinterpretation. For if the organization was a party to the dispute, it was self-evident that the consultations would be held, in the first place between the parties concerned and if no agreement was reached, the matter would be settled by the competent organ of the organization in accordance with its rules.

21. For the settlement of disputes between a sending State and the host State, however, special machinery should be provided. He agreed with other members of the Commission that the provisions of article 50 did not go far enough. The conciliation machinery proposed by the Swiss Government might usefully supplement the conciliation procedure, though it needed further study.

22. Unlike the Special Rapporteur, he could see no harm in the organization's playing, not a decisive role, as the Special Rapporteur put it, but a preponderant role in most cases of conciliation. The organization, in any event, represented the impartial element and had to safeguard the general interest. Nor could he see why a conciliation procedure should involve the prestige of the members of the organization or the host State. The conciliation commission would only be able to make recommendations, which would not be binding on the parties.

23. Moreover, acceptance of the Swiss proposal would not preclude the possibility of embodying in the draft articles a general provision on the settlement of disputes arising from the application or interpretation of all the articles, for example, by recourse to arbitration, which was already provided for in some conventions concerning organizations of a universal character. He did not think that, as had been suggested, the question should be left in abeyance until the plenipotentiary conference which would eventually consider the draft articles. The Commission should make a proposal, or several proposals, forthwith.

24. Mr. ROSENNE said he had the same general attitude of reserve towards article 50 as he had adopted with respect to its predecessor, article 49, in 1969. He saw no reason to assume that the organization would always be a party in the difficulties contemplated in article 50, and the Commission would do well to heed the words of caution spoken by the ILO. On the other hand, he did not think the Commission need concern itself with the question of how or by whom the organization would be represented, since each organization would decide the most appropriate procedure to follow in the circumstances of each case.

25. The problem confronting the Commission was twofold: first, there was the need for machinery to ensure the smooth application of the articles and, secondly, there was the need for machinery to settle disputes once they had arisen. The Convention on the Privileges and Immunities of the United Nations[4] and the Headquarters Agreement[5] dealt with the latter problem, but practice had shown the necessity of including provisions dealing with both.

26. Article 50 was satisfactory as far as it went, but it dealt only with the first aspect of the matter and was

[2] Op. cit., *1968*, vol. II, p. 197.

[3] United Nations, *Treaty Series*, vol. 500, p. 242, vol. 596, p. 488 and vol. 450, p. 170.

[4] Op. cit., vol. 1, p. 30.

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

totally inadequate as a solution of the problem as a whole. The present situation was reminiscent of that which had confronted the international community at the end of the first session of the Vienna Conference on the Law of Treaties with respect to draft article 62.[6] That article, too, had been found satisfactory up to a point, but had proved inadequate as a solution of the problem as a whole.

27. Ever since 1949, the Commission had regularly considered whether it was necessary to include provisions concerning the settlement of disputes as an integral part of its drafts. In 1953 it had included such provisions in its draft conventions on the elimination and reduction of future statelessness,[7] and in 1956 it has included them in its draft articles on the conservation of the living resources of the high seas and on the continental shelf.[8] Similar provisions had been included, in 1958, in its draft articles on diplomatic intercourse and immunities.[9]

28. The "Survey of international law" prepared by the Secretary-General contained a section on dispute settlement provisions in drafts prepared by the Commission, which included the following passage: "The conclusion may be advanced from the above chronology that the Commission has not in general been concerned, when elaborating texts setting out substantive rules and principles, with determining the method of implementation of those rules and principles, or with the procedure to be followed for resolving differences arising from the interpretation and application of the substantive provisions—with one exception. That exception arises when the procedure is seen as inextricably entwined with, or as logically arising from, the substantive rules and principles, or, in the Commission's words, 'as an integral part' of the codified law."[10] That was the problem which faced the Commission today. He could only conclude that what was needed was something like paragraph 2 of the Special Rapporteur's original article 49[11] or the amendment proposed by Mr. Tammes in 1969, which had read: "If such consultations fail to achieve a result satisfactory to the parties concerned, the matter shall be submitted to an impartial procedure which shall be established within the Organization."[12]

29. It was necessary to provide for the situation that would arise if the first phase of the negotiations ended in a deadlock, which might happen, for example, if the sending State proved unwilling to recall a member of its permanent mission, as it could be required to do under article 45. The Drafting Committee's suggestion, at the 1027th meeting, of a reference to articles 3, 4 and 5 was not a sufficient answer. He did not think that that was a matter which the Commission could leave entirely to the future diplomatic conference. He therefore proposed that the Drafting Committee be asked to complete article 50 and to produce a text which might be based on the annex to the Vienna Convention on the Law of Treaties.

30. Mr. ELIAS said that opinion in the Commission seemed to be divided between those who considered article 50 unnecessary because it dealt with something which was already obvious, and those who thought that it was not strong enough. The Government of Switzerland had proposed the establishment of a conciliation commission composed of one representative of the organization, one representative of the sending State and one representative of the host State. Some speakers, however, had said that such an arrangement was bound to lead to difficulties because it gave undue importance to the role of the organization.

31. The Special Rapporteur wished to keep article 50 unchanged, although in paragraph 16 of his observations on it (A/CN.4/241/Add.3) he had considered the possibility that the Commission might ask him to prepare an article on the settlement of disputes. He suggested that the Commission invite the Special Rapporteur to prepare such a text for its consideration. In the meantime, the Commission should keep article 50 in abeyance and proceed to consider articles 51 to 116. After it had considered the whole draft, including the articles relating to permanent observer missions and to delegations to organs and conferences, it would be in a better position to decide on some appropriate machinery for the settlement of disputes.

32. Mr. USHAKOV said that at its twenty-first session the Commission had decided to make the scope of article 50 general, so that it should also apply to the parts of the draft relating to permanent observer missions and to delegations to organs or conferences. Hence it was not quite correct to consider the article purely from the standpoint of permanent missions to international organizations. For while the principle embodied in it was applicable to permanent observer missions and to delegations to organs, it was not applicable to delegations to conferences—even conferences convened by an international organization or under its auspices—since once it had been convened, a conference was a sovereign body. Moreover, since article 50 was to be applicable to the whole of the draft, the Commission might perhaps be better advised to wait until it had examined the whole draft before considering that article.

33. Those considerations apart, article 50 as such raised a whole range of questions which it would be difficult for the Commission to settle or even to consider without the participation of the organization concerned—for example, the appointment of the organization's representative in the consultations and the procedure to be followed in the consultations, both in cases where the sending State had diplomatic representation in the host State and in cases where it had not—all of them questions which went beyond the scope of the draft articles and

[6] *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference*, p. 81 (United Nations publication, Sales No.: E.70.V.5).

[7] See *Yearbook of the International Law Commission, 1953*, vol. II, p. 227, article 10.

[8] Op. cit., *1956*, vol. II, p. 263, articles 57 to 59, and p. 264, article 73.

[9] Op. cit., *1958*, vol. II, p. 105, article 45.

[10] A/CN.4/245, para. 144.

[11] See *Yearbook of the International Law Commission, 1969*, vol. II, p. 20.

[12] Op. cit., *1969*, vol. I, p. 195, para. 7.

even beyond the competence of the plenipotentiary conference.

34. On the other hand, article 50 also raised questions which could and should be settled by the Commission, if only in the commentary. It had been asked whether it should not be provided that article 50 prevailed over any procedure which might already exist between the host State and the sending State, such as that of a conciliation commission. But that question did not arise, because, as the article provided, consultations were held only upon the request of the host State, the sending State or the organization itself, and if States preferred to resort to some other procedure they would not request that consultations be held.

35. It had also been asked which organization would be represented at the consultations if a permanent mission was accredited to several organizations. The answer might be that the question would probably be settled in practice by the agreements on simultaneous representation concluded between organizations having their headquarters in the same city, but the Commission ought at least to show that it had considered the question.

36. Another question which should be considered was who would represent the sending States in the tripartite consultations when a dispute concerned all the States members of an organization. That was perhaps the most important of the situations that could arise, and the Commission should consider it, no less than the other questions he had raised, if only to give the Drafting Committee a basis for discussion.

37. At the previous meeting, Mr. Kearney had asked who would decide questions of the interpretation and application of the articles. That was a general question which applied to all international instruments, not merely those prepared by the Commission. In international law there was not, as there was in internal law, any tribunal responsible for regulating relations between subjects of law. It was States themselves which decided, by agreement, on the interpretation and application of international rules. To provide for a special tribunal vested with powers of final decision would be tantamount to setting up a world government or a world supreme court.

38. Mr. CASTAÑEDA said that there was no justification for the doubts expressed by the ILO (A/CN.4/239, section D.2). In particular, it was quite inappropriate to refer to article 50 as imposing on organizations "the obligation to provide for the diplomatic protection, as it were, of the sending State". It was equally inaccurate to speak of the organization as playing "the role of conciliator, perhaps even arbitrator", in connexion with problems involving the sending State and the host State. Those problems were of direct concern to the organization and it was therefore appropriate that it should play a part in overcoming the difficulties involved.

39. As to the machinery for the settlement of disputes, the conciliation commission proposed by the Swiss Government was really an arbitral tribunal, since it would have the power to take decisions by a majority vote. Moreover, since the two members of the commission who represented the sending State and the host State were bound to differ, the Secretary-General of the organization would find himself in the invidious position of acting as umpire. His position would be particularly unfortunate if the host State and the sending State were great Powers, in the relations between which the Secretary-General was called upon to perform delicate functions connected with the maintenance of world peace and security.

40. It should be recognized that the type of dispute under consideration was not suitable for settlement by adjudication or compulsory arbitration. It was true that the Commission had included provisions for the compulsory settlement of disputes in many of its drafts, but the conferences of plenipotentiaries had usually decided not to include them in the codification conventions. They had usually made compulsory jurisdiction or arbitration the subject of a separate optional protocol. Only in two exceptional cases had such provisions been included in a codification convention itself, and those exceptions could be easily explained.

41. The first exception was the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, articles 9 to 11 of which made provision for the compulsory settlement of disputes by a special commission.[13] The First United Nations Conference on the Law of the Sea had adopted that system because in that particular Convention it had created, for the benefit of the coastal State, a unilateral right which did not previously exist in international law. No similar provision had been included in the other three Conventions on the Law of the Sea, the compulsory settlement of disputes being provided for in an Optional Protocol.[14]

42. The other exception was article 66 of the 1969 Vienna Convention on the Law of Treaties and the annex to that Convention.[15] Article 66 provided for the jurisdiction of the International Court of Justice in disputes concerning the application or the interpretation of article 53 or 64 of the Convention, in other words, the provisions on *jus cogens*. It further laid down that the conciliation procedure specified in the annex to the Convention was applicable to disputes concerning the application or the interpretation of any of the other articles in Part V of the Convention, dealing with invalidity, termination and suspension of the operation of treaties.

43. The present case was totally different from those two exceptional situations. The question of the settlement of disputes was not in any way bound up with the substantive rules on permanent missions. Those rules had been applied for twenty-five years without any need for a procedure for the compulsory settlement of disputes. In fact, the realistic and practical system of consultations proposed by the Special Rapporteur in article 50 constituted no more than the codification of the flexible

[13] United Nations, *Treaty Series*, vol. 559, p. 292.

[14] Op. cit., vol. 450, p. 170.

[15] *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference*, pp. 298 and 301 (United Nations publication, Sales No.: E.70.V.5).

system which had been used in practice to overcome difficulties in the application of the substantive rules applicable to permanent missions.

44. Mr. ALCÍVAR said he could not agree with the suggestion by the ILO that the differences which might arise between the host State and the sending State regarding the privileges and immunities of permanent missions touched "solely on the relations between two States" and had "nothing to do with the organizations". In fact, there were no direct relations between the host State and the sending State; relations between them existed only through the organization.

45. It was the duty of the organization to maintain the privileges and immunities of permanent representatives of permanent missions. For that purpose, consultations on the lines indicated in article 50 were constantly taking place. The informal committee mentioned by Mr. Yasseen had had to deal with a great many cases, particularly cases connected with the City of New York. Of course, the question arose what would happen if the consultations ended in a deadlock. In that connexion, he did not favour the Swiss proposal for what was in effect an arbitral tribunal, because it impinged on matters connected with the application of Chapter VI of the United Nations Charter. The Swiss Government even went so far as to mention the International Court of Justice. It was worth noting that the international community had not received proposals for compulsory adjudication favourably and had, in particular, rejected an attempt to include a provision on the compulsory jurisdiction of the International Court of Justice in the 1969 Convention on Special Missions.

46. He had some doubts about the provisions of article 50, which were of a general character. In particular, the question of conferences would have to be considered very carefully; a conference could sometimes be regarded as an organ of the organization which had convened it, but it was sometimes a separate entity or organization.

47. Another question arising out of article 50 which required careful consideration was that raised by Mr. Ago concerning the case in which the host State and the sending State had an arbitration treaty in force between them.[16] The two States could, of course, agree to apply that treaty to a dispute arising between them in their capacities of host State and sending State; but he was not at all sure whether one of them could invoke the arbitration treaty against the other in respect of such a dispute.

48. Mr. CASTRÉN said that in his view the Swiss Government's proposal was definitely to establish a conciliation procedure, not an arbitration procedure. That was clear both from the use of the word "conciliation" and from the text of paragraph 5, which read: "The Commission shall take its decisions by majority vote; it may make recommendations to the parties" (A/CN.4/239, section C.II). The Commission could at most make recommendations based on decisions. But the substance of those decisions could not have binding force for the parties.

49. Sir Humphrey WALDOCK said that article 50 was intended only as a modest contribution to the resolution of certain difficulties, not as a procedure for the settlement of international disputes. It recognized that procedures of consultation were followed in many organizations as a means of ironing out differences between a sending State and the host State. It established as a principle that if, in the case of such a difference, the good offices of the secretariat or any other appropriate organ were invoked, that act could not be complained of and still less treated as an unfriendly act.

50. Of course, where a difficulty resulted from serious differences between States, the consultations provided for in article 50 might prove inconclusive. In that event, the resources of diplomacy were infinite. There was, for example, the possibility of good offices by other States, or of raising the question in the organization. He himself favoured third party settlement, which did not, however, necessarily mean judicial settlement.

51. In any case, he fully subscribed to the view expressed by Mr. Ago that article 50 did not exclude other forms of settlement by which the two States concerned might otherwise be bound. It would be most unfortunate if any other interpretation were to be placed on the provisions of the article. Its purpose was merely to state that, in principle, it was desirable that difficulties of the kind envisaged should be settled within the organization by means of consultations. It should also be remembered that some of the points in dispute might be potentially of interest to all States members of the organization. Even so, means of settlement which existed for the disputing States other than that provided in article 50 should not be ruled out, as the settlement of international disputes was something always to be promoted.

52. The precise formulation of article 50 and the precise scope of its operation were matters which should be examined more closely towards the end of the work on the whole draft. Perhaps the Drafting Committee would not wish to settle the text of article 50 until it had examined all the draft articles. In particular, the question of conferences would have to be carefully considered; in some cases, the secretariat of a conference was that of the organization which had convened it, but in others the conference had a secretariat of its own.

53. The case of a problem arising between a sending State and the host State to a number of organizations would also have to be examined. No formula had so far been suggested to deal with that case, which could involve several organizations in a single dispute.

54. On the whole, the provisions of article 50 seemed appropriate for dealing with the problems under consideration, without prejudice to the possibility of including in the draft further provisions to deal with those problems in the event of a deadlock in the consultation. In any event, the role of the secretariat under article 50 would only be helping in the negotiations, giving explanations and making suggestions. In its observations, the

[16] See previous meeting, para. 67.

ILO appeared to underestimate the prudence of the secretariats of international organizations.

55. Mr. KEARNEY said that, in considering the question of the settlement of disputes, the Commission was not working in a vacuum. The Headquarters Agreement of the United Nations provided for arbitration of disputes and reference to the International Court of Justice,[17] while the 1946 Convention on the Privileges and Immunities of the United Nations provided for the jurisdiction of the International Court of Justice.[18] Since some existing conventions already contained provisions on arbitration and adjudication, the Commission would have to take a position on the question.

56. A final decision on article 50 should be postponed until the Commission had completed its work on the remainder of the draft articles, but he would suggest that the Commission invite the Special Rapporteur to prepare a clause on the settlement of disputes so as to have before it a concrete proposal on which it could work.

57. The CHAIRMAN suggested that the Commission should turn to item 7 of its agenda and resume consideration of article 50 at the next meeting.

It was so agreed.

Review of the Commission's long-term programme of work

(A/CN.4/245)

[Item 7 of the agenda]

58. The CHAIRMAN invited the Secretary to the Commission to make a statement on the Secretariat Working Paper entitled "Survey of international law" (A/CN.4/245), the original English version of which had just been distributed.

59. Mr. MOVCHAN (Secretary to the Commission) said that, since reference had been made earlier in the meeting to the Secretary-General's "Survey of international law", he wished to explain that it was a working paper prepared by the Codification Division in response to a request made by the Commission at its previous session in connexion with its expressed intention of "bringing up to date in 1971 its long-term programme of work".[19] That intention had been approved by the General Assembly in operative paragraph 3 of its resolution 2634 (XXV) of 12 November 1970.

60. It was worth noting that the present Survey was only the second of its kind in the history of the Commission and indeed of the United Nations. The first had been prepared in 1948 and was entitled "Survey of International Law in relation to the work of Codification of the International Law Commission".[20] There were, however, significant points of difference between the two surveys. In the first place—and without going into other features already explained in detail in the preface and introduction to the present Survey—it should be noted that the 1948 Survey had been written before the Commission had begun its work, in order to facilitate the commencement of that work. The Survey now submitted, after twenty-two years of the Commission's activities and experience, reflected the Commission's work and, more generally, the progress made since 1948, mainly within the framework of the United Nations, with the progressive development of international law and its codification, and the considerable changes which had occurred in the international community during the intervening period.

61. During that period, States had increasingly come to recognize the need to encourage the progressive development of international law and its codification, and had acknowledged more and more widely the importance of the work of the Commission and of the General Assembly in that field. Many factors were involved. First and foremost, States had understood the basic connexion between the maintenance of international peace and security and the development of international law. Then, the interdependence of States had increased in recent years. Scientific and economic progress had also played their part. Finally, a great number of new States had gained independence and the membership of the United Nations had more than doubled since the signature of the Charter at San Francisco in 1945.

62. All those factors had complicated the work of the Commission, as the United Nations body mainly concerned with the codification of international law as a whole. Similarly, the task of the Secretariat in preparing the present Survey had been more difficult than in 1948; one reason was that many other United Nations bodies were now concerned with the development of specific branches of international law.

63. Another important difference between the two surveys was that, in the preparation of the 1948 Survey, the Secretariat had had the assistance of an outside expert, Professor, later Sir Hersch, Lauterpacht. The present Survey, however, had been prepared exclusively by the Codification Division, whose members had done their best to provide a useful working instrument, bearing in mind the importance of the Commission's task and its practical purpose.

64. Lastly, he wished to assure the members of the Commission that the French, Russian and Spanish versions of the Survey were already in process of preparation, though because of the pressure of work on the translation services they would not be ready until the end, or at the earliest the middle, of June.

65. The Legal Counsel was very much interested in attending the Commission's debate on the review of its long-term programme of work, but would not be able to come to Geneva until the first half of July. The last month of the present session might thus perhaps be the most appropriate time for consideration of that item by the Commission.

[17] United Nations, *Treaty Series*, vol. 11, p. 30, section 21.

[18] Op. cit., vol. 1, p. 30, section 30.

[19] See *Yearbook of the International Law Commission, 1970*, vol. II, document A/8010/Rev.1, para. 87.

[20] Reissued in 1949 as document A/CN.4/1/Rev.1 (United Nations publication, Sales No.: 48.V.I(1)).

66. Mr. ROSENNE, after thanking the Secretary for his introductory statement, said that the review of the long-term programme of work was one of the most important tasks now facing the Commission, since it involved the planning of the Commission's work for the next twenty-five years. He was therefore very much concerned that only the English version of the Survey should be available at present and that the French, Russian and Spanish versions should not be expected to be distributed until only a few days before the arrival of the Legal Counsel in Geneva. Perhaps the Chairman could bring his influence to bear on the appropriate authorities to ensure that the other language versions of the Survey should reach members in good time before the Commission took up item 7 of its agenda.

The meeting rose at 6 p.m.

1102nd MEETING

Tuesday, 18 May 1971, at 10.5 a.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 4; A/CN.4/L.162/Rev.1; A/CN.4/L.166)

[Item 1 of the agenda]

(resumed from the previous meeting)

ARTICLE 50 (Consultations between the sending State, the host State and the Organization) *(resumed from the previous meeting)*

1. The CHAIRMAN invited the Commission to resume consideration of article 50, on consultations between the sending State, the host State and the Organization.

2. Mr. AGO said he noted that members were generally agreed that article 50 should be placed later in the draft, and that the wording should be reviewed when all the articles had been considered.

3. The machinery proposed was very modest; it was not even conciliation machinery, since only consultations were provided for. Although the article represented a step forward in comparison with the 1961 Vienna Convention on Diplomatic Relations, which contained no such provision, it should not be forgotten that in case of difficulties in the application of the rules governing bilateral diplomatic relations, consultations between the sending State and the receiving State took place without any need for special provisions on the subject. On the other hand, an express provision was needed in the present case to bring the organization itself to join the sending State and the host State in consultations concerning a difficulty between those two States.

4. The machinery proposed could raise a number of delicate problems, if only in regard to its relationship with the procedures already existing between the host State and the sending State for the settlement of their disputes. It seemed to be generally accepted that existing procedures should take precedence over the provisions of article 50, but it should be made clear that a State could not frustrate the special procedure established for its relations with another State by recourse to article 50. Although it might be thought that that was self-evident, it should be mentioned in the commentary to the article.

5. Some difficulties might arise in the operation of the machinery where there were several international organizations in the same city. As Mr. Yasseen had suggested, the organizations might agree to set up a kind of joint committee,[1] which would not only enable them to select their representatives, but would also prevent the adoption of different positions.

6. As Mr. Ushakov had pointed out, it was rare for a dispute to arise between the host State and one sending State. The host State might become involved in a dispute with several, or all the sending States; or again, when a difference arose between the host State and one sending State, another sending State might become interested in the settlement of the dispute and wish to intervene in the procedure. There might be some kind of body for co-operation between permanent missions, which could inform the host State of the point of view of all the sending States and which would be the counterpart, as it were, to the diplomatic corps in bilateral diplomacy.

7. Difficulties might also arise in the absence of diplomatic relations between the host State and the sending State. That exceptional situation should not, of course, prevent consultations, but it was not certain that they would always be possible in practice.

8. Other questions relating to the operation of the proposed machinery might arise during the consideration of subsequent articles, so the Drafting Committee should leave article 50 aside for the time being.

9. Mr. USTOR said that, like other members, he approved of the substantive rules in article 50, which codified existing practice. The Drafting Committee might try to formulate wording to deal with the cases mentioned by Mr. Ago, but it might reach the conclusion that it was not possible to cover all situations and therefore leave the text as it stood. It should be remembered that

[1] See previous meeting, para. 6.