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Summary record of the 1110th meeting

Topic:
Representation of States in their relations with international organizations

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1110th MEETING

Tuesday, 1 June 1971, at 3.5 p.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldoock, 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 6; A/CN.4/L.162/Rev.1; A/CN.4/L.168 and Add.1)

[Item one of the agenda]

(continued)

ARTICLE 114

1. The CHAIRMAN invited the Commission to consider article 114, on the end of the functions of a member of a delegation. He drew attention to the drafting amendment recommended by the Special Rapporteur (A/CN.4/241/Add.6) which consisted in replacing the words "on notification to this effect", in sub-paragraph (a), by the words "on notification of their termination".

2.

Article 114

End of the functions of a member of a delegation

The functions of a member of a delegation to an organ or to a conference shall come to an end, *inter alia*:

(a) on notification to this effect by the sending State to the Organization or the conference;

(b) upon the conclusion of the meeting of the organ or the conference.

3. Mr. BARTOŠ requested that the Drafting Committee should consider whether the article as drafted would not prevent a member of a delegation from ending his functions by resignation, as he should have the right to do.

4. The CHAIRMAN suggested that article 114 should be referred to the Drafting Committee for consideration in the light of the Special Rapporteur's report (A/CN.4/241/Add.6) and the question just raised by Mr. Bartoš.

*It was so agreed.*¹

ARTICLE 115

5. The CHAIRMAN invited the Commission to consider article 115, on facilities for departure, to which the Special Rapporteur had proposed no change.

6.

Article 115

Facilities for departure

The provisions of article 48 shall also apply in the case of a delegation to an organ or to a conference.

7. Sir Humphrey WALDOCK observed that article 115 would appear in a slightly different form on its return from the Drafting Committee, since it referred back to article 48 which had already undergone some minor changes (A/CN.4/L.168).

8. Mr. ROSENNE said he took it that the Drafting Committee would consider the Special Rapporteur's recommendations as a whole, including his proposed new article Z (A/CN.4/241/Add.6).

9. The CHAIRMAN suggested that article 115 should be referred to the Drafting Committee for consideration in the light of the Special Rapporteur's report and of the comments made.

*It was so agreed.*²

ARTICLE 116

10. The CHAIRMAN invited the Commission to consider article 116, on the protection of premises and archives.

11.

Article 116

Protection of premises and archives

1. When the meeting of an organ or a conference comes to an end, the host State must respect and protect the premises of a delegation so long as they are assigned to it, as well as the property and archives of the delegation. The sending State must take all appropriate measures to terminate this special duty of the host State within a reasonable time.

2. The host State, if requested by the sending State, shall grant the latter facilities for removing the property and the archives of the delegation from the territory of the host State.

12. The CHAIRMAN drew attention to the amendments recommended by the Special Rapporteur (A/CN.4/241/Add.6), which consisted in the replacement of the word "must" by the word "shall" in both sentences of paragraph 1, and the addition to that paragraph of a final sentence reading:

"[In the discharge of its obligations under the present paragraph,] the sending State may entrust the custody of the premises, property and archives of the delegation to a third State."

13. Mr. ALBÓNICO suggested that the Drafting Committee should take into account the United States Government's observations (A/CN.4/240/Add.4, section B.11), which reflected the general practice in regard to delegations to organs and conferences.

14. Mr. EUSTATHIADES said that the phrase in square brackets in the Special Rapporteur's proposal should be deleted; as had been observed when the Commission had considered the corresponding article on

¹ For resumption of the discussion see 1127th meeting, para. 22.

² For resumption of the discussion see 1127th meeting, para. 18.

permanent missions,³ it only introduced an element of confusion.

15. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission was prepared to refer article 116 to the Drafting Committee for consideration in the light of the observations of governments and the Special Rapporteur's report (A/CN.4/241/Add.6).

*It was so agreed.*⁴

16. The CHAIRMAN said that the Commission had concluded its consideration of the draft articles submitted by the Special Rapporteur with the exception of the general provisions. He suggested that it should next consider the draft articles proposed by the Drafting Committee. In the absence of Mr. Ago, the Chairman of the Drafting Committee, he invited Mr. Ushakov to introduce those articles.

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE
PART II. *Permanent missions to international organizations*

17. USHAKOV, speaking on behalf of the Drafting Committee, drew attention to document (A/CN.4/L.168), containing the texts adopted by the Drafting Committee for articles 6 to 27, 27 *bis*, 28 to 33, 35 to 44 and 46 to 49. The Drafting Committee had adopted those texts only provisionally, subject to any changes which might prove necessary when it examined the draft as a whole.

ARTICLE 6

18. Turning to article 6, he said that the Drafting Committee considered it important for the host State to be informed without delay of the establishment of a permanent mission, since it might have steps to take in the interests of the sending State and of the organization, even before it had received the notifications mentioned in article 17. The Committee had therefore added a second paragraph to the article, which now read:

Article 6

Establishment of permanent missions

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

2. The Organization shall notify to the host State the establishment of a permanent mission.

19. Mr. EUSTATHIADES noted with satisfaction that the Drafting Committee had adopted the idea he had put forward during the consideration of article 17 on notifications,⁵ namely, that the host State should be informed in good time of the appointment of the member of a permanent mission and *a fortiori* of the establishment of such a mission. He proposed that the words "without delay" should be inserted in paragraph 2 after

the words "host State"; that would give the host State time to state its opinion. The most appropriate place for those words was perhaps in article 17, but if they were to appear there, they should also appear in article 6.

20. Mr. BARTOŠ observed that the Commission could take only provisional decisions on the articles submitted to it by the Drafting Committee, since it might have to make further changes when it examined the general provisions.

21. The question arose whether the notification provided for in paragraph 2 was to be made before or after the permanent mission was established. If it was to be made before, that amounted to saying that the establishment of the permanent mission was subject to the condition of notification, which was an impossible condition because a person could not be appointed to a mission which did not yet exist. If it was to be made afterwards, it was simply a matter of reporting an already accomplished fact which had to be notified as quickly as possible. His own opinion was that the notification had to be made after the mission was established. But since ideas on the time to be allowed for notification might differ from one State to another, it might perhaps be better, subject to the approval of all the members of the Drafting Committee, to specify, if only in the commentary, that the notification and the establishment of the mission should be simultaneous.

22. Mr. ROSENNE thanked Mr. Ushakov for his presentation of article 6 and noted that the articles proposed by the Drafting Committee would be dealt with by the Commission on a provisional basis, pending completion of the revised introductory and general articles.

23. It was to be hoped that the new paragraph 2 of article 6 would be applied and interpreted with reasonable flexibility and that notification would not be regarded as a prerequisite for the establishment of a permanent mission. He doubted whether it would be necessary to introduce even a vague reference to time into that paragraph; that factor could best be dealt with in the commentary. The question might be one of real practical importance, since a State which did not maintain a permanent mission at the seat of an international organization might decide to designate one of its neighbouring diplomatic or consular missions as its permanent mission to that organization. In such a case, the attribution of the quality of a permanent mission to the diplomatic or consular mission could not be made dependent on notification of the host State, which was in any case already protected by the existing law concerning the activities of such missions.

24. Sir Humphrey WALDOCK suggested that the English text of paragraph 1 would be closer to the French if the words "provided for" were replaced by the word "mentioned".

25. Mr. KEARNEY said that the Drafting Committee had decided to add a similar new paragraph 2 to article 52, on the establishment of permanent observer missions. The part played by that paragraph would be different in the context of article 52; in the case of

³ See 1098th meeting, para. 87 *et seq.*

⁴ For resumption of the discussion see 1127th meeting, para. 35.

⁵ See 1092nd meeting, para. 51 *et seq.*

article 6, the host State would know the membership of the organization, whereas in the case of article 52 the potential number of permanent observer missions was indefinite.

26. Mr. USHAKOV, speaking on behalf of the Drafting Committee, thanked Sir Humphrey Waldox for indicating a drafting change which should be made in paragraph 1 of the English text. The replacement of the word "indiquées" by "visées" in the French text was justified, because article 7 did not, strictly speaking, set forth the functions performed by a permanent mission, but only listed some of them.

27. As to Mr. Bartoš' comment concerning notification, the Drafting Committee's idea was that the notification should be made beforehand, but it could hardly be said that the organization should notify the intention of a sending State to establish a permanent mission. The question of the time of notification could be clarified in the commentary.

28. The insertion of the words "without delay" in paragraph 2, as proposed by Mr. Eustathiades, would give the impression that the notification was subsequent to the establishment of the permanent mission, which was contrary to the Drafting Committee's intention.

29. Mr. ROSENNE said that, in view of what Mr. Ushakov had just said, he hoped that the commentary on the new paragraph 2 would not be worded in unduly categorical terms. For the reason given by Mr. Kearney, he did not see any analogy between the establishment of permanent missions by member States and the establishment of permanent observer missions by non-member States.

30. Mr. ALBÓNICO said that if the words "provided for" in paragraph 1 were replaced by the word "mentioned", as proposed by Sir Humphrey Waldox, a parallel change should be made in the Spanish text.

31. With regard to the proposed new paragraph 2, he thought that the notification by the organization to the host State should be made after the permanent mission had been established, and that that should be made clear.

32. After a procedural discussion in which Mr. ROSENNE, Mr. USHAKOV, Sir Humphrey WALDOCK, Mr. BARTOŠ, and Mr. ELIAS took part, the CHAIRMAN suggested that the Commission should provisionally approve the text of article 6 adopted by the Drafting Committee, subject to amendment of the English text as proposed by Sir Humphrey Waldox.

It was so agreed.⁶

ARTICLE 7

33. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the Drafting Committee proposed the following text for article 7:

Article 7

Functions of a permanent mission

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

- (a) ensuring representation of the sending State to the Organization;
- (b) maintaining the necessary liaison between the sending State and the Organization;
- (c) negotiating with or in the Organization;
- (d) ascertaining activities 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.

34. In sub-paragraph (a) the Drafting Committee had replaced the words "Representing the sending State in" by the words "ensuring representation of the sending State to". In sub-paragraph (b) the word "Keeping" in the English text had been replaced by the word "maintaining". In sub-paragraph (c) the words "Carrying on negotiations" had been replaced by the word "negotiating". In sub-paragraph (d) the Drafting Committee had deleted the words "and developments" as redundant. As the Commission would see, the changes made were purely drafting amendments.

35. Mr. ALBÓNICO proposed that the words "ensuring representation of" in sub-paragraph (a) should be replaced by the word "representing". He further proposed that, in the Spanish text of sub-paragraph (c), the words "*del marco*" should be deleted. He was not sure who were to be the participants in the co-operation referred to in sub-paragraph (e).

36. Mr. ROSENNE questioned the replacement of the original words "in the Organization" in sub-paragraph (a) by the words "to the Organization". The English text of that sub-paragraph would have to be given close consideration after the adoption of the relevant definition and the corresponding articles on permanent observer missions.

37. Mr. EUSTATHIADES said that the previous text of sub-paragraph (a) had been more elegant and more accurate. When the Commission had examined article 7, all the members had stressed the importance of the function of representation, so he did not see why it should not retain the words "representing the sending State in the Organization".

38. Mr. CASTAÑEDA said he shared the views of Mr. Albónico and Mr. Eustathiades concerning sub-paragraph (a). It could be said that the presence of the permanent mission would "ensure representation of the sending State", but surely its function would be simply that of "representing the sending State".

39. Sir Humphrey WALDOCK inquired what the Drafting Committee had had in mind proposing that change.

40. Mr. USHAKOV, speaking on behalf of the Drafting Committee, explained that the purpose of the change had been to make it clear that the organization could deal directly with ministerial departments and other organs of the sending State. The permanent mission

⁶ For resumption of the discussion see 1118th meeting, para. 22.

would ensure representation in cases where the sending State had no other means of being represented to or in the organization. The shade of meaning was a delicate one, however, and perhaps it would be enough to say "representing".

41. The question which English preposition—"in", "at" or "to"—should be used, both in article 7, sub-paragraph (a) and in article 53, the corresponding provision for permanent observer missions, was a matter for the English-speaking members of the Commission to decide. In French, the words "*auprès de*" should be used.

42. Sir Humphrey WALDOCK said that in article 7, sub-paragraph (a), he could accept either "to" or "in". Article 53, on the functions of a permanent observer mission, used the preposition "at", but the difference between the two articles was that the permanent mission took an active part in the work of the organization while the permanent observer mission did not.

43. Mr. KEARNEY suggested that the problem might be solved by adding the words "and participating in its activities" at the end of sub-paragraph (a). The words "ascertaining activities in the Organization", in sub-paragraph (d), could then be deleted. As to the remainder of that sub-paragraph, he was not sure that it was essential to mention the function of "reporting".

44. Mr. ROSENNE urged members of the Commission to go cautiously. Participation in the activities of an organization, such as the proceedings of the General Assembly at United Nations Headquarters, was carried on through delegations. Members of delegations might be members of a permanent mission, but the latter had an element of permanent or residual representation not possessed by the ordinary delegation. That distinction should be maintained in the present draft.

45. Mr. CASTAÑEDA said that he could accept Mr. Kearney's suggestion, which would make sub-paragraph (a) clearer and more complete.

46. Mr. YASSEEN said it would be wrong to delete sub-paragraph (d), since ascertaining activities in the organization was one of the functions of a permanent mission. Making provision for that function placed the secretariat under an obligation to co-operate with the mission in that respect. On the other hand it was unnecessary to say that the permanent mission reported thereon to the government of the sending State; that was solely a matter of relations between the mission and the State it represented.

47. In sub-paragraph (a), it would be more correct to say that the permanent mission ensured "the" representation of the sending State; that was its main function. It would be more open to question to say that the mission as such participated in the activities of the organization. The head of the mission himself only participated in those activities if he had special powers; in most cases his function was rather to inform his government of the meetings to be held and to notify the organization of the names of the delegates who would be attending them.

48. The CHAIRMAN, speaking as a member of the Commission, drew attention to article 13, paragraph 2, as adopted by the Drafting Committee (A/CN.4/L.168); the Commission should be careful to avoid any contradiction between article 7 and article 13.

49. Mr. ELIAS said he thought the Commission might be attaching too much importance to the subject of participation introduced by Mr. Kearney. However, it could draw useful conclusions from what Mr. Rosenne and Mr. Yasseen had said on that subject.

50. Mr. USHAKOV, speaking on behalf of the Drafting Committee, observed that the Commission was going into questions of substance concerning the functions of the permanent mission, instead of examining the changes proposed by the Drafting Committee. The change proposed for sub-paragraph (a) reflected the situation of the permanent mission more accurately, but it was purely a drafting amendment. The Drafting Committee had made no change in the list of the permanent mission's functions.

51. Speaking as a member of the Commission, he said that a distinction should be made between the functions of the permanent mission as such, and the powers and competence of the permanent representative. The permanent representative could represent the sending State without special powers in accordance with article 13; but in that case it was he, not the permanent mission, who provided the representation. Article 7, as drafted by the Commission in 1968⁷ and as now proposed by the Drafting Committee, was correct. The wording could still be changed, but not the substance.

52. He therefore proposed that the article should be referred to the Drafting Committee again.

53. Sir Humphrey WALDOCK observed that the present wording of article 7 was close enough to what ought to be said. He doubted whether anything could be gained by referring the article back to the Drafting Committee. He could accept Mr. Yasseen's proposal that the word "the" would be inserted before the word "representation" in sub-paragraph (a).

54. Mr. ELIAS said that he too could accept Mr. Yasseen's proposal.

55. Mr. SETTE CÂMARA supported Mr. Yasseen's proposal and Mr. Albónico's proposal that the words "ensuring representation" should be replaced by the word "representing".

56. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said he was prepared to accept Mr. Yasseen's proposal.

57. Mr. TESLENKO (Deputy Secretary to the Commission) said that the Special Rapporteur would have to justify, in his commentary any drafting changes that might be made. It was relatively easy to explain why the words "ensuring representation of the sending State" had been preferred to "representing the sending State"; but

⁷ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 200.

it would be more difficult to justify the change proposed by Mr. Yasseen. It might therefore be better to revert to the text proposed by the Special Rapporteur.

58. Sir Humphrey WALDOCK said that, as he saw it, the point of using the word “ensuring” was to allow for the possibility that, when a delegation was present, the function of representation might take a somewhat different form.

59. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that the Chairman of the Drafting Committee had proposed two alternative texts for the beginning of sub-paragraph (a): “ensuring representation” and “ensuring the representation”. The Drafting Committee had adopted for the first alternative, but in view of the objections raised in the Commission, he could accept the second.

60. Mr. BARTOŠ said that, in practice, a permanent mission generally confined itself to ensuring representation of the sending State. It was responsible for notifying who was to represent the sending State, not for deciding, on behalf of that State, who would represent it. Often, it provided liaison between the organization and the sending State: it asked the government of the sending State who would be authorized to represent it, and communicated its reply to the organization. If the sending State did not expressly appoint a representative, the mission itself was entitled to represent it. In the light of current practice, therefore, he was not in favour of the expression “ensuring the representation of the sending State”.

61. Mr. EUSTATHIADES said that the functions listed in article 7 were not performed exclusively by the permanent mission itself. However, he would not oppose the use of the expression “ensuring the representation of the sending State”, if the Commission preferred it to the expression “representing the sending State”.

62. After a procedural discussion in which Mr. ALBÓNICO, Mr. CASTAÑEDA, the CHAIRMAN, Mr. USHAKOV, Mr. ROSENNE, Mr. YASSEEN and Mr. ELIAS took part, the CHAIRMAN said that, if there were no objections, he would take it that the Commission provisionally approved article 7 as proposed by the Drafting Committee and amended by Mr. Yasseen.

It was so agreed.⁸

The meeting rose at 5.30 p.m.

⁸ For resumption of the discussion see 1132nd meeting, para. 67.

1111th MEETING

Wednesday, 2 June 1971, at 10.10 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, 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 6; A/CN.4/L.162/Rev.1; A/CN.4/L.168 and Add.1)

[Item 1 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

1. The CHAIRMAN invited the Commission to continue consideration of the draft articles proposed by the Drafting Committee (A/CN.4/L.168 and Add.1).

ARTICLE 8

2. Mr. USHAKOV, speaking on behalf of the Drafting Committee, said that article 8, paragraph 1, as adopted by the Commission in 1968¹ had provided *in fine* that the sending State might assign a permanent representative “as a member” of another of its permanent missions. That expression included administrative and technical staff and service staff. The Drafting Committee had taken the view that, to avoid offending anyone, the scope of the provision should be confined to the assignment of a permanent representative to the diplomatic staff of another mission. It had therefore inserted the words “of the diplomatic staff” after the words “as a member”.

3. For similar reasons the Drafting Committee had inserted the word “diplomatic” before the word “staff” in the first part of paragraph 2. In view of that addition it had revised the second part of the paragraph to make it clear that it applied to members of the staff of the permanent mission.

4. In addition, the Drafting Committee had noted that the words “other international organizations” in paragraph 2 had no antecedent. It had therefore inserted the expression “international organizations” in the first phrase of the paragraph.

5. The Committee had made a consequential amendment to the title of the article.

¹ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 201.