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Summary record of the 1117th meeting

Topic:
Representation of States in their relations with international organizations

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other hand, the introduction of the definite article "the" before the word "representation" made some difference to the meaning of the text. In its present form, he thought that article 53, sub-paragraph (a), did not adequately reflect the elements which, taken together, distinguished a permanent observer mission from a permanent mission.

76. As he recollected it, Mr. Yasseen's proposal that the article "the" should be inserted before the word "representation" in article 7, sub-paragraph (a), had originally related to the French text. The Chairman had summarized the discussion in both English and French, and had referred to the insertion of the definite article "the" in the English text; article 7 had then been provisionally approved with that change.¹⁴ As a matter of language, the use of the definite article "the" in the English text of both article 7 and article 53 needed further scrutiny; it affected the structure of the sentence differently from the use of the article "la" in French.

77. Sir Humphrey WALDOCK agreed that in English it was better to say "Ensuring representation" than "Ensuring the representation", but he did not feel that there was any real difference in meaning. The changes which had been made in article 53 were simply the result of changes approved for article 7.

78. Mr. EUSTATHIADES observed that the difference between the expressions "maintaining the necessary liaison" and "maintaining liaison", used in articles 7 and 53 respectively, was certainly justified. The use of the expression "ensuring the representation" in both articles should not give rise to any difficulty because the commentaries could explain that the representation of a State by its mission did not preclude representation by other means.

The meeting rose at 1.5 p.m.

¹⁴ See 1110th meeting, paras. 47 and 62.

1117th MEETING

Monday, 14 June 1971, at 3.5 p.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Bar-toš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. Eustathiadés, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldox, 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 to 3; A/CN.4/L.169; A/CN.4/L.170 and Add.1; A/CN.4/L.171; A/CN.4/L.172)

[Item 1 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

ARTICLE 53 (Functions of a permanent observer mission) (continued)

1. The CHAIRMAN invited the Commission to continue consideration of article 53 as proposed by the Drafting Committee.

2. Mr. AGO (Chairman of the Drafting Committee) said that the Drafting Committee now proposed that sub-paragraph (a) of article 53 should be worded differently from sub-paragraph (a) of article 7 (A/CN.4/L.168), so as to reflect the difference between the functions of permanent missions and those of permanent observer missions, as several members of the Commission had suggested. The new text read:

"(a) ensuring, in relations with the Organization, the representation of the sending State and maintaining liaison with the Organization;"

The Drafting Committee left it to the English-speaking members to decide whether the definite article should be used before the word "representation" in the English text.

3. Mr. YASSEEN said he accepted the new wording, which removed the doubt about the scope of representation of a sending State by a permanent observer mission.

4. Mr. NAGENDRA SINGH said he agreed with Mr. Yasseen; the revised text was a distinct improvement.

5. Sir Humphrey WALDOCK said that if the French-speaking members of the Commission wished to use the words "*la représentation*", he could accept the inclusion of the word "the" before the word "representation" in the English version. But if the wording in French was to be "*une représentation*", then the English word "representation" should not be preceded by any article.

6. Mr. ALBÓNICO said that the text proposed by the Drafting Committee for sub-paragraph (a) was a marked improvement from the point of view of drafting. He still thought, however, that from the point of view of substance, there was a fundamental distinction between the institution of permanent missions, as described in article 7, and that of permanent observer missions, and that that distinction had not been brought out with sufficient clarity.

7. Mr. EUSTATHIADES said that the definite article should be retained in the French version, because it showed the difference between a permanent mission, which might not provide the only representation of the

sending State, and a permanent observer mission, which did provide the only representation.

8. Mr. ALCÍVAR said that in the Spanish text the definite article “*la*” was absolutely necessary.

9. Mr. REUTER said he approved of the text as it stood. If the Commission wished to make the distinction between permanent missions and permanent observer missions still clearer, it should amend sub-paragraph (c). To place those missions on an equal footing with respect to co-operation with the organization was possible, but questionable. In the case of permanent missions, such co-operation was the necessary, general and obvious consequence of participating in the work of the organization, whereas in the case of permanent observer missions it was neither so necessary nor so general and, above all, it was intermittent. It might therefore be better to find some other wording for sub-paragraph (c).

10. Sir Humphrey WALDOCK said that one of the functions of a permanent mission, as stated in article 7, sub-paragraph (e), was “promoting co-operation for the realization of the purposes and principles of the Organization”. There was a real difference, however, between that function, as performed by the permanent mission of a member of the organization, and the function of “promoting co-operation with the Organization” referred to in article 53, sub-paragraph (c).

11. Mr. USHAKOV said he agreed with Mr. Eustathiades. The Commission must decide whether it wished to bring out a difference between permanent missions and permanent observer missions and to amend articles 7 and 53 accordingly.

12. Mr. KEARNEY said he was not sure that the distinction between the use of the definite and the indefinite article was as clear in English as it was in French. In view of the explanations which had been given, however, he thought that it would be desirable to follow the French text fairly closely and to say “the representation”.

13. The CHAIRMAN asked Mr. Albónico whether he had any specific proposals to put forward that would lessen the apparent resemblance between article 7 and article 53.

14. Mr. ALBÓNICO said that he had no actual proposal to make; but he thought the distinction between a permanent mission and a permanent observer mission, as it applied to article 53, sub-paragraph (a), should be emphasized in the commentary.

15. Mr. USTOR noted that article 53 referred to “maintaining liaison”, while article 7 used the words “maintaining the necessary liaison”. The Commission should consider the distinction between those two provisions when deciding on the final draft.

16. Mr. SETTE CÂMARA said he had no objection to the Drafting Committee’s text, but he agreed with Mr. Albónico that the commentary should stress the difference between the functions of a permanent mission and those of a permanent observer mission.

17. The CHAIRMAN, speaking as a member of the Commission, drew attention to the distinction which

should be made between permanent representatives in New York and permanent representatives at Geneva. In New York, permanent representatives sat in all organs of which their country was a member, and the permanent mission did not have to notify the organization. Moreover, the heads of permanent missions were usually diplomats of high rank. The situation was different at Geneva. But since the draft dealt with relations between States and international organizations, and since the United Nations was the most important international organization, the text of the articles should not give the impression that the Commission was unaware of the real situation prevailing in New York.

18. Mr. AGO (Chairman of the Drafting Committee), referring to the remark made by Mr. Eustathiades, said he did not think it was correct to say that a permanent observer mission carried out all forms of representation to the organization; there were also observers, or observer delegations, which were not part of the mission. It would therefore be preferable to use the definite article in both the English and the French texts of articles 7 and 53.

19. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission was prepared to approve article 53 in the form proposed by the Drafting Committee.

*It was so agreed.*¹

ARTICLE 34 (Settlement of civil claims)²

20. Mr. AGO (Chairman of the Drafting Committee) reminded the Commission that the Drafting Committee had proposed that article 34, which imposed on the sending State the obligation to waive immunity whenever that could be done without impeding the performance of the functions of the permanent mission, should be deleted. The Committee had further suggested that those responsible for establishing the final text of the articles might adopt a resolution similar to General Assembly resolution 2531 (XXIV), on the settlement of civil claims.³ But since those proposals had deeply divided the Commission, most members being in favour of establishing an obligation and the Commission as a whole regretting the need to discard certain ideas embodied in the text of the article, the Drafting Committee now proposed a compromise solution consisting in the replacement of article 34 by a new paragraph 5 to be added to article 33, on waiver of immunity. The new provision did not establish an obligation to waive immunity, but it did impose on the sending State the duty to use its best endeavours to bring about a just settlement of the case if it was unwilling to waive immunity.

21. The text proposed for the new paragraph read:

“5. If the sending State does not waive the immunity of any of the persons mentioned in paragraph 1 in

¹ For resumption of the discussion see 1132nd meeting, para. 68.

² For previous discussions see 1095th meeting, para. 14; 1096th meeting, para. 1; 1113th meeting, para. 71.

³ See 1113th meeting, para. 71.

respect of a civil action, it shall use its best endeavours to bring about a just settlement of the case.”

22. Mr. YASSEEN said he was against the new solution proposed by the Drafting Committee. He was in favour of the method adopted by the Vienna Conference on Diplomatic Intercourse and Immunities⁴ and chosen by the General Assembly for the Convention on Special Missions. A resolution would be a perfectly adequate means of expressing the idea that the sending State had a duty to make special efforts to settle claims.

23. Mr. USHAKOV said that, in his opinion, the compromise proposed by the Drafting Committee was acceptable, since the text stated an already existing rule of customary law, that States must do their utmost to bring about a just settlement of all disputes, whatever their nature. The Commission might therefore adopt the proposal; by so doing it might succeed in proposing to States a solution more acceptable than that chosen in the case of the Convention on Diplomatic Relations and the Conventions on Special Missions.

24. Mr. REUTER said he endorsed Mr. Ushakov's comments and supported the solution proposed by the Drafting Committee. He would, however, like to point out to Mr. Ago, who was Special Rapporteur on State responsibility, that by replacing article 34 by a new paragraph 5 added to article 33, the Drafting Committee was replacing an obligation relating to a result by an obligation relating to conduct.

25. Mr. CASTAÑEDA said he was not satisfied with the substance of article 34, the wording of which was far too categorical. He was prepared to accept the Drafting Committee's proposal because it corresponded more closely to the actual practice of international organizations.

26. Mr. SETTE CÂMARA said he was glad that the Drafting Committee had abandoned the formula used in article 34, which imposed upon States a general and *a priori* obligation to waive immunity. He agreed with Mr. Ushakov and Mr. Castañeda that the new paragraph 5 of article 33 was a very skilful compromise.

27. Mr. ALBÓNICO said that he too supported the Drafting Committee's proposal. States were naturally jealous about the immunities of their representatives and in the new formula there was a satisfactory balance between the rights of the host State, the sending State and the individuals concerned.

28. Mr. ROSENNE said that in the light of the full history of resolution II on consideration of civil claims adopted by the United Nations Conference on Diplomatic Intercourse and Immunities,⁵ he would regret the disappearance of article 34, which stated the law on the matter as he understood it. He did not think that article had such far-reaching implications as some speakers had suggested. However, he was prepared to accept the Drafting Committee's proposal as a compromise which

would give more consideration to the position of injured persons than had originally been envisaged at the Vienna Conference.

29. Mr. CASTRÉN said that, like several other members of the Commission, he thought the solution proposed by the Drafting Committee was an acceptable compromise. It was something more than a resolution, but less than the text of article 34, which would probably not have been accepted by a plenipotentiary conference. To require that the Sending State should use its best endeavours to bring about a settlement if it was unwilling to waive immunity was a reasonable and fair solution.

30. The CHAIRMAN said that if there was no objection he would take it that, although opinions were divided, the Commission was prepared to approve the replacement of article 34 by the new paragraph 5 of article 33 proposed by the Drafting Committee.

*It was so agreed.*⁶

ARTICLE 25 (Inviolability of the premises)

31. Mr. AGO (Chairman of the Drafting Committee) said that the Commission's reception of the Drafting Committee's first proposals for article 25⁷ had discouraged it from attempting to produce a new text. The Committee therefore proposed that the Commission should revert to the wording it had adopted in 1969.⁸ That text was far from perfect, but it was likely to be approved by a conference of plenipotentiaries and it had the advantage of having been approved not only by the Commission, but also, in another context, by a large majority in the General Assembly.

32. Mr. ALCÍVAR said he wished to state for the record that he was entirely opposed to the last sentence of paragraph 1 of article 25.

33. Mr. ALBÓNICO said he was prepared to accept article 25, subject to the deletion, in the last sentence of paragraph 1, of the words “and only in the event that it has not been possible to obtain the express consent of the permanent representative”.

34. Mr. KEARNEY said that, although he was not satisfied with the article, he was prepared to accept it provisionally, subject to the deletion proposed by Mr. Albónico.

35. Mr. CASTAÑEDA said he fully supported the deletion proposed by Mr. Albónico. The hypothesis posited in the final clause of the last sentence of paragraph 1 was both improbable and illogical.

36. Mr. USHAKOV observed that opinion was still deeply divided on the Drafting Committee's proposal. However, there was no reason why the Commission should not provisionally adopt a compromise text which had already been endorsed by the General Assembly

⁴ United Nations, *Treaty Series*, vol. 500, pp. 218-220.

⁵ *Ibid.*

⁶ For resumption of the discussion see 1133rd meeting, para. 26.

⁷ See 1112th meeting, para. 42 *et seq.*

⁸ See 1093rd meeting, para. 47.

in the Convention on Special Missions.⁹ When the time came to adopt article 25 finally, members of the Commission would still be able to propose amendments to the text.

37. Mr. CASTRÉN said he supported the solution proposed by the Drafting Committee, although he thought that the Committee's first text was preferable, because it was more precise. He acknowledged that it was wiser to keep to a text which had already been accepted in an earlier convention.

38. Mr. REUTER said he would accept any text which might be proposed, since it was impossible to violate any rule of international law written or unwritten, when saving human lives.

39. Mr. NAGENDRA SINGH said he agreed with Mr. Ushakov that the Commission should provisionally approve article 25 as it stood.

40. The CHAIRMAN proposed that the Commission should provisionally approve article 25 on the understanding that members would be able to propose amendments when the time came to take a final decision on the article.

*It was so agreed.*¹⁰

ARTICLE 32 (Immunity from jurisdiction)

41. Mr. AGO (Chairman of the Drafting Committee) said that the only change the Drafting Committee had made in its previous text of article 32¹¹ was in paragraph 1 (d). In view of the possibility that, under the laws in force in certain countries, an insurance company might—as some members of the Commission feared—be able to invoke the immunity from jurisdiction of a person causing an accident as a ground for refusing to compensate the victim, the Committee had replaced the words “and only if those damages are not covered by insurance” by the words “where those damages are not recoverable from insurance”, so that paragraph 1 (d) read:

“(d) an action for damages arising out of an accident caused by a vehicle used by the person in question outside the exercise of the functions of the permanent mission where those damages are not recoverable from insurance.”

42. Mr. ALBÓNICO pointed out that the provisions of paragraph 1 (d) stated an exception to the basic principle of immunity from jurisdiction laid down in article 32. The concluding words, “where those damages are not recoverable from insurance”, were intended to provide for an exception to that exception, and would preclude an action against a member of the mission if the damages could be recovered from insurance.

43. As he saw it, the intention both of the Commission and of the Drafting Committee had been to lay down

a condition for the admissibility of an action against the person concerned. If an insurance policy in force covered the damage, no action would lie.

44. He proposed that, in the Spanish text, the concluding proviso, which at present read “*siempre que esos daños no sean recobrables mediante seguro*” should be amended to read “*y siempre que esos daños no hayan sido reparados previamente mediante seguro*” (“and where those damages have not been previously compensated by insurance”). It would thus be made clear that if the insurance company concerned raised any difficulty, the injured party could bring an action for damages against the member of the permanent mission concerned.

45. Mr. ALCÍVAR said he agreed with the previous speaker. In Spanish, the conjunction “y” was absolutely necessary. The rest of Mr. Albónico's amendment also improved the Spanish text and he would be prepared to accept it, although in the Drafting Committee he had accepted the Spanish version now before the Commission (A/CN.4/L.170/Add.1) because it was an exact translation of the English.

46. Mr. USHAKOV said that the text of paragraph 1 (d) was a compromise which the Drafting Committee had reached on second reading, in the light of the comments made in the Commission. Although the present wording was an improvement on the corresponding provision of the Convention on Special Missions, he reserved his position. The Commission had decided to add to article 33 a new paragraph 5 concerning the efforts to be made by the sending State to bring about the settlement of claims, as a result of which paragraph 1 (d) of article 32 might later be deleted.

47. Mr. KEARNEY said he would have no objection to replacing the English text of the concluding words of paragraph 1 (d) by the words: “and where those damages have not been previously recovered from insurance”. That wording corresponded to the amendment proposed in Spanish by Mr. Albónico and expressed what was intended more precisely. The idea which the Drafting Committee had wished to convey was that, if an insurance existed, the injured party must first attempt to obtain payment of damages from the insurance company; if he did not obtain it, he could then bring an action against the member of the permanent mission concerned.

48. Mr. AGO said he thought the word “*recouvré*” was perfectly satisfactory in the French version.

49. Mr. ALBÓNICO said that the main point of his proposal was the inclusion of the adverb “previously”. If the injured party was unable to obtain payment from the insurance company, the door would be open for action in court.

50. Sir Humphrey WALDOCK said that the idea behind the concluding proviso of paragraph 1 (d) was not an easy one to express. The corresponding provision, article 31, paragraph 2 (d), of the Convention on Special Missions was not qualified by any reference to insurance. The Commission had taken the view that a provision

⁹ See General Assembly resolution 2530 (XXIV), Annex, article 25.

¹⁰ For resumption of the discussion see 1132nd meeting, para. 136.

¹¹ See 1113th meeting, para. 37.

on those lines would be too strict and that the right of action should not arise if the damages arising out of an accident caused by a vehicle could be recovered from insurance. It was for that reason that the Drafting Committee had accepted the concluding proviso of paragraph 1 (d): "where those damages are not recoverable from insurance". The effect of that proviso would be the same if the word "where" was replaced by the word "if".

51. Mr. ALCÍVAR said that, in the Spanish text, the word "*recuperados*" would be better than "*recobrables*". The word "*previamente*", though not essential, would make the meaning of the Spanish text clearer.

52. Mr. USHAKOV said there was no need to add the word "*auparavant*" in the French text, since the conjunction "*si*" conveyed an idea of anteriority.

53. Mr. ALBÓNICO said that, in Spanish, the word "*siempre*", like the word "*si*" in French, indicated a condition. That condition, however, could be interpreted in two ways. It could be interpreted as relating to admissibility, in which case no action would lie if an insurance policy covered the damage. But it could also be interpreted as a requirement that the injured party should institute proceedings against the insurance company and exhaust all existing remedies before action could be taken against the member of the mission concerned.

54. Mr. YASSEEN said he approved of the French text, but thought the other versions were not exactly in line with it. In particular, the words "recoverable" and "damages" did not seem to correspond to the terms "*recouvré*" and "*dédommagement*".

55. Sir Humphrey WALDOCK said that in the Drafting Committee he himself had at first suggested the formula "if those damages cannot be recovered from insurance". But wording on those lines would give rise precisely to the difficulties mentioned by Mr. Albónico. If an insurance policy existed, the injured party would start negotiations with the insurance company concerned. The company might then object that its policy holder was not entirely to blame for the accident and that the other driver involved was partly at fault. The question would then arise whether an action against the member of the mission concerned would be possible in such a case. He was not at all certain of the answer to be given to that question on the basis of the French text.

56. Mr. REUTER said that the word "recoverable" was perhaps satisfactory in the English text, but in French not everything which was "*recouvrable*" was "*recouvré*".

57. Mr. USHAKOV proposed that it should be explained in the commentary how paragraph 1 (d) was to be interpreted. In the Drafting Committee's view, the provision meant that if the insurance company refused to pay the damages, the person responsible for the accident should take proceedings against it, and that it was only if those proceedings failed that a civil action could be brought against him.

58. Mr. ROSENNE said that, after listening to the discussion, he was not at all certain that the English text of the concluding proviso was clear.

59. Mr. KEARNEY asked whether it would be acceptable in French to introduce the adverb "previously", so as to make the sequence of operations clearer.

60. Mr. REUTER said he agreed with Mr. Ushakov that the wording proposed by the Drafting Committee was clear enough. Paragraph 1 (d) contained a prior condition that all the legal remedies against the insurance company must first have been exhausted. It would be impossible to deal in the commentary with every imaginable hypothesis relating to those remedies in a particular system of law. If the courts declared that proceedings could not be taken against the insurance company under the national law, damages could not be recovered from insurance. If the courts did agree to hear the case, they might not order the insurance company to pay the total damages, but might find that the plaintiff had a share of the responsibility. Such a ruling would indicate that an action taken direct against the person causing the accident had no greater chance of success.

61. Mr. ROSENNE said he was opposed to introducing the adverb "previously", which might well make paragraph 1 (d) self-contradictory. In many legal systems, if financial reparation was made, no action for damages would lie.

62. Mr. AGO said that it would be inadvisable to insert the word "*auparavant*" in the French text. The last clause of paragraph 1 (d) contained a legal as well as a time element. An action could be brought direct against the person causing the damage only if he was not insured, or if he was insured but the claim against the insurance company had failed, for legal or other reasons. The provision seemed reasonably clear.

63. Sir Humphrey WALDOCK said that the question was not a purely linguistic one. As far as English legal drafting was concerned, the formula "are not recoverable" was the appropriate one to use. If that formula were to be replaced by the words "cannot be recovered", the concluding proviso might be interpreted as amounting to a requirement of exhaustion of remedies as a precondition for the action envisaged in the main clause of paragraph 1 (d).

64. Mr. USHAKOV observed that the French and English texts seemed to be generally acceptable. He suggested that the Spanish-speaking members of the Commission should bring the Spanish text into line with the others.

65. Mr. EUSTATHIADES said he was still in favour of making paragraph 1 (d) refer expressly to vessels and aircraft. Article 32 was based on the corresponding provisions of the Vienna Convention on Diplomatic Relations and the Convention on Special Missions, neither of which referred to vessels or aircraft; but article 43 of the Vienna Convention on Consular Relations¹² did cover cases in which an accident was caused by a vessel

¹² United Nations, *Treaty Series*, vol. 596, p. 298.

or an aircraft. Although such cases might seem to be rare at present, they should either be mentioned in the article itself or be referred to in the commentary.

66. Mr. USHAKOV said his impression was that article 43 of the Vienna Convention on Consular Relations referred to vessels and aircraft of the sending State. Article 32 of the present draft, on the other hand, referred to vehicles owned by the permanent representative or a member of the diplomatic staff of the permanent mission in his personal capacity. Very few States at present allowed the persons mentioned in article 32 to use vessels or aircraft for private purposes, so that the cases covered by Mr. Eustathiades's proposal would be quite exceptional.

67. The CHAIRMAN said that, if there were no objection, he would take it that the Commission provisionally approved the English and French texts of article 32 as proposed, on the understanding that the Drafting Committee would improve the Spanish text of paragraph 1 (d), Mr. Eustathiades's remarks would be taken into consideration in drafting the commentary to article 32.

*It was so agreed.*¹³

The meeting rose at 6 p.m.

¹³ For resumption of the discussion see 1133rd meeting, para. 20.

1118th MEETING

Tuesday, 15 June 1971, at 11.55 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, 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 7; A/CN.4/241 and Add.1 to 6; A/CN.4/L.162/Rev.1; A/CN.4/L.168 and Add.1 to 3; A/CN.4/L.169; A/CN.4/L.170 and Add.1; A/CN.4/L.171; A/CN.4/L.172)

[Item 1 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

ARTICLE 52

1. The CHAIRMAN invited the Commission to consider article 52, which had been referred back to the Drafting Committee.¹

2. Mr. AGO (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 52:

Article 52

Establishment of permanent observer missions

1. Non-member States may, if the rules of the Organization so admit, establish permanent observer missions for the performance of the functions mentioned in article 53.

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

3. The Committee recommended that the Commission should use a similar wording *mutatis mutandis*, in article 6, on the establishment of permanent missions.

4. Mr. ALBÓNICO said he welcomed the Drafting Committee's new wording of article 52, paragraph 1, and article 6, paragraph 1, which met the wish of several members that the consent of the organization should be required for the establishment of a permanent observer mission or a permanent mission.

5. Mr. NAGENDRA SINGH also supported the Drafting Committee's new text of articles 52 and 6.

6. Mr. ROSENNE said he did not know of any international organization which had rules on the establishment of either permanent observer missions or permanent missions. In most cases it was a matter of practice and of decisions taken independently of the constitution and rules of the organization.

7. Mr. USHAKOV said that in drafting the new article 52 the Drafting Committee had been guided by Mr. Tammes's proposal² and assumed that the words "rules of the Organization" could also include rules established by practice. The application of the provisions of paragraph 1 would therefore depend on the interpretation given to those rules by each organization. Since practice had no binding force, the Drafting Committee had preferred not to mention it.

8. Mr. AGO (Chairman of the Drafting Committee) said that Mr. Rosenne had raised a very pertinent question. Mr. Rosenne thought it would be impossible to establish a mission of any kind if the expression "rules of the Organization" had to be taken as meaning only written rules, since no organization had written rules on the establishment of missions. He himself would be inclined to think that, on the contrary, if the establishment of missions was not expressly prohibited, that meant that it was always permitted. Nevertheless, the problem did exist, and the Drafting Committee had intended the rules of the organization to include its practice. Paragraph (5) of the commentary to article 3

¹ See 1116th meeting, paras. 8-55.

² *Ibid.*, para. 29.