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Summary record of the 1118th meeting

Topic:
Representation of States in their relations with international organizations

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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.

stated that "The expression relevant rules of the Organization... is broad enough to include all relevant rules whatever their source: constituent instruments, resolutions of the organization concerned or the practice prevailing in that organization."³ Nevertheless, as the commentary did not have the same force as the text of the articles, it might be well to specify in the definitions that rules included practice, as was the case in article 52.

9. Mr. ROSENNE said he would welcome a report by the Drafting Committee on the suggestion that there should be a closer examination of the term "rules" and on the possibility of including a definition of that term in article 1.

10. He found the proviso "if the rules of the Organization so admit" rather too strong, at least in the English version. The use of the words "so admit" would make the clause liable to several interpretations. The intention appeared to be to refer rather to the organization's permission. He would, however, be glad to hear the views of the other English-speaking members on that point.

11. Mr. BARTOŠ said that the point raised by Mr. Rosenne was very important and should be dealt with in the text of the article. Some resolutions of the General Assembly were regarded as constitutional in character: the question of special missions, for instance, had been settled by two resolutions of that kind.⁴ But there were also rules of procedure of the Security Council, which laid down certain rules on the representation of governments through delegations to the Council. Mr. Rosenne had therefore been right to raise the question whether the expression "rules of the Organization" was intended to mean constitutional rules, quasi-constitutional rules or mere practice, which could be changed as the organization wished, without reference to any superior body. It would also be advisable to ascertain whether practice, once established, was binding on the organization.

12. Mr. EUSTATHIADES said it was understandable that the new text proposed by the Drafting Committee should have elicited the question put by Mr. Rosenne, but the explanations given by Mr. Ushakov and Mr. Ago dispelled all doubts. The Commission still had to decide, however, whether the word "practice" should be restored to the text or whether an explanation in the commentary would suffice. He himself would prefer to have the reference to practice put back in the text, though it was not a matter of great importance, since the commentary would explain that the rules of the organization included its practice. In any event, the new text clearly stipulated that the establishment of a non-permanent observer mission by a non-member State was an automatically enforceable right. But that left unsettled the question of the competence of the organization's secretariat to enquire whether the "non-member" was a State or not, and no organ other than the secretariat was mentioned

as being empowered to oppose the establishment of a permanent observer mission.

13. Mr. KEARNEY said it was important that the draft should be consistent. In article 3, the expression "relevant rules of the Organization" had been used; that expression had been taken from article 5 of the Vienna Convention on the Law of Treaties.⁵

14. One of the Drafting Committee's reasons for referring, in article 52, only to the "rules" of the organization, rather than to its "rules or practice", was the need for consistency. If the Commission reverted to the formulation of article 52 adopted at the first reading,⁶ it would give the impression that it intended to establish some distinction between articles 3 and 52; moreover, a statement in the definitions article that rules invariably included practice might not be accurate. The relationship between such a definition and the wording of the Convention on the Law of Treaties also had to be borne in mind, since complicated questions of interpretation might arise.

15. Sir Humphrey WALDOCK said he fully agreed with Mr. Kearney. In the Drafting Committee he had advocated the omission of a reference to the practice, as distinct from the rules, of the organization, partly in order not to raise problems of interpretation of the analogous formula in the Vienna Convention on the Law of Treaties.

16. During its work on the law of treaties, the Commission had considered whether it should include some definition of the rules of an organization; but it had reached the conclusion that that was not desirable, as the question seemed to belong rather to the law of international organizations.

17. The Commission was now making its first major attempt to codify the law of international organizations, and in that context there was perhaps less objection to the inclusion of such a definition. But it should not be thought that the drafting of the definition would be an easy task. What was important was that it should be made clear in the commentary that the term "rules" covered not only the constituent instruments of the organization concerned, but also such of its practice as constituted established customs binding on members so long as they were not altered by the organization.

18. Mr. REUTER said it was not for the Commission to determine what were the rules of the organization; that was a matter for each organization to decide for itself. In some organizations the rules would be the statutory written rules alone, in others they would be the statutory written rules and certain rules derived from duly adopted resolutions of certain organs—which could change—and in yet others they would be not only the constitutional rules and the written rules drawn up by the organization itself, but also customary rules. There was no law of international organizations from which an exact defini-

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

⁴ See General Assembly resolutions 2530 (XXIV) and 2531 (XXIV).

⁵ *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference*, p. 290 (United Nations publication, Sales No.: E.70.V.5).

⁶ See 1102nd meeting, para. 23.

tion of the expression “rules of the Organization” could be derived. If the Commission attempted such a definition it would be advancing a claim—never before asserted and against which he himself strongly protested—to establish a general law of international organizations which would decide, for all the organization concerned, what were the legal sources of the law of the organization; and that was quite impossible. He was content with the expression “rules of the Organization”, precisely because it was a reference which granted a certain autonomy to each organization. In any event, he did not see by what legal instrument the Commission could produce a system of law which would be supra-constitutional and would have to be respected by all the organizations to which the draft articles applied. He therefore dissociated himself very definitely from all that had been said to the contrary. It was only with that express reservation that he could provisionally approve article 52.

19. Mr. YASSEEN said he agreed with Mr. Reuter that the expression “rules of the Organization” was a reference to the constitution of each international organization, the sources of those rules varying from one organization to another. Thus a resolution of the General Assembly, which could not be the source of a legal rule, could, even though without binding force, be regarded as a rule of the Organization. If the expression “rules of the Organization” were given a flexible interpretation, it would be possible to avoid mentioning practice, which might be a source of misunderstanding.

20. Mr. CASTRÉN said that he too found the new text of article 52 acceptable and considered that “rules” also covered customary rules. It would be advisable, however, to make that clear in the commentary.

21. The CHAIRMAN said that if there were no objection he would take it that the Commission provisionally approved article 52 as proposed by the Drafting Committee, noting the comments which were to be reflected in the commentary.

It was so agreed.⁷

ARTICLE 6⁸

22. The CHAIRMAN invited the Commission to consider article 6, with the amendments proposed by the Drafting Committee to bring it into line with article 52.

23. Mr. AGO (Chairman of the Drafting Committee) said that the amended text proposed by the Drafting Committee read:

Article 6

Establishment of permanent missions

1. Member States may, if the rules of the Organization so admit, establish permanent missions for the performance of the functions mentioned in article 7.

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

⁷ For resumption of the discussion see 1132nd meeting, para. 62.

⁸ For previous text and discussion see 1110th meeting, para. 18 *et seq.*

24. Mr. USHAKOV said that the reasons adduced in favour of the new text of article 52 applied equally to article 6, and the two articles should be made uniform.

25. Mr. YASSEEN said he was in favour of amending article 6 in the same way as article 52, as that would establish a symmetry between the establishment of permanent missions and the establishment of permanent observer missions.

26. Mr. ROSENNE said he found it difficult to accept the idea of symmetry between two things that were dissimilar. He reserved his position regarding the words which the Drafting Committee wished to insert in article 6.

27. Mr. CASTRÉN said he thought the amendments proposed by the Drafting Committee improved the text of article 6.

28. Mr. ALCÍVAR said he accepted the inclusion of the words proposed by the Drafting Committee, which provided a better explanation of the sources of the legal rules applicable in an international organization. Those sources included the practice of the organization. Some organizations, such as the International Bank for Reconstruction and Development, had no permanent missions. Where such missions existed, they had originated in the practice of the organization.

29. The CHAIRMAN said that if there were no objection he would take it that the Commission provisionally approved article 6 as proposed by the Drafting Committee.

It was so agreed.⁹

ARTICLE 54

30. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had redrafted article 54 on the model of the text provisionally approved for article 8.¹⁰

The proposed text read:

Article 54

Multiple accreditations, appointments or assignments

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

2. The sending State may accredit a member of the diplomatic staff of a permanent observer mission to an international organization as permanent observer to other international organizations or assign a member of the staff of a permanent observer mission as a member of the staff of another permanent observer mission or of any of its permanent missions.

31. Speaking on behalf of the Working Group which had been set up to harmonize the different parts of the draft,¹¹ he suggested that the word “appointments” in

⁹ For resumption of the discussion see 1132nd meeting, para. 62.

¹⁰ See 1111th meeting, paras. 6 and 15.

¹¹ See 1106th meeting, para. 85.

the title of article 54 should be deleted, so that the title would read: "Multiple accreditations or assignments". In the body of the article, only the verbs "accredit" and "assign" were used.

32. Mr. EUSTATHIADES pointed out that article 54 only provided for a faculty of the sending State, without stating that the faculty was subject to the rules or practice of the organization. That should be explained in the commentary, since some organizations might not accept multiple accreditations or assignments.

33. Mr. AGO (Chairman of the Drafting Committee) said that in substance, what Mr. Eustathiades had said was correct; but all the draft articles were without prejudice to the rules of the organization, should they differ from the provisions of the draft itself. That principle might be weakened if it were mentioned in one particular case and not in another. Article 54 had to be interpreted in the way suggested by Mr. Eustathiades, whether the point was mentioned in the commentary or not.

34. Mr. USTOR said that the Commission should approve article 54 on the understanding that it might ultimately be combined with article 8.

35. Sir Humphrey WALDOCK said that the title in English, as agreed upon in the Working Group, should be "Multiple accreditations and appointments".

36. Mr. ROSENNE said it seemed curious that the word "assignments" should be deleted in the title, while the verb "assign" was used in both paragraphs of the text.

37. Sir Humphrey WALDOCK pointed out that the title for article 8 proposed by the Special Rapporteur was "Accreditation to two or more international organizations or appointment to two or more permanent missions" (A/CN.4/241/Add.2). For the sake of consistency, therefore, the word "appointment" should also be used in article 54.

38. Mr. ROSENNE suggested that, in order to avoid confusion, the Commission should refrain from dealing with the titles of articles at that stage and concentrate on the texts.

39. Mr. BARTOŠ observed that the word "*affectations*" in the French text did not correspond to the English word "appointments", which was the equivalent of the French word "*nominations*". A person could be assigned only if he was already in the service of the State, but he could be appointed whether he was in the service of the State or not.

40. Mr. CASTRÉN pointed out that the persons referred to in article 55 who might be given multiple accreditations or assignments were, in principle, already in the service of the State.

41. Mr. NAGENDRA SINGH asked whether it was generally agreed that the word "appointments" should be used in both article 8 and article 54.

42. The CHAIRMAN proposed that the Commission should provisionally approve article 54 as proposed by

the Drafting Committee, on the understanding that the text could be reviewed later in the light of the final wording of article 8 and the general articles.

*It was so agreed.*¹³

ARTICLE 55

43. Mr. AGO (Chairman of the Drafting Committee) said that in article 55 the Drafting Committee had made only a minor drafting change in the Spanish text. The text proposed read:

Article 55

Appointment of the members of the permanent observer mission

Subject to the provisions of articles 56 and 60, the sending State may freely appoint the members of the permanent observer mission.

44. The CHAIRMAN said that if there were no comments he would take it that the Commission provisionally approved article 55 as proposed by the Drafting Committee.

*It was so agreed.*¹³

ARTICLE 56

45. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made no changes in article 56, the text of which read:

Article 56

Nationality of the members of the permanent observer mission

The permanent observer and the members of the diplomatic staff of the permanent observer mission should in principle be of the nationality of the sending State. They may not be appointed from among persons having the nationality of the host State, except with the consent of that State which may be withdrawn at any time.

46. The CHAIRMAN said that if there were no comments he would take it that the Commission provisionally approved article 56 as proposed by the Drafting Committee.

*It was so agreed.*¹⁴

ARTICLE 57¹⁵

47. Mr. AGO (Chairman of the Drafting Committee) said that the Committee had made the two paragraphs of article 57 into two separate articles, provisionally numbered 57 and 57 *bis* (A/CN.4/L.168/Add.2). In the article now numbered 57, no changes of importance had been made. The proposed text read:

¹³ For resumption of the discussion see 1132nd meeting, para. 75.

¹³ For resumption of the discussion see 1132nd meeting, para. 82.

¹⁴ For resumption of the discussion see 1135th meeting, para. 37.

¹⁵ For previous text and discussion see 1103rd meeting, para. 67 *et seq.*

*Article 57**Credentials of the permanent observer*

The credentials of the permanent observer shall be issued either by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or by another competent authority of the sending State if that is allowed by the practice followed in the Organization, and shall be transmitted to the competent organ of the Organization.

48. Mr. USHAKOV suggested that the phrase "if that is allowed by the practice followed in the Organization" should be placed immediately before the words "by another competent authority". In its present position, that phrase seemed to relate not only to cases in which another authority was competent, but to all the cases mentioned in article 57. However, that change could be made later.

49. Mr. ALCÍVAR said that Mr. Ushakov's amendment did not apply to the Spanish text, which was already drafted as he suggested.

50. Mr. ROSENNE said that, in the light of the discussion about the meaning to be attributed to the word "rules" in article 52, the Commission should, at the final stage of its work on the draft, give particular attention to the words "the practice followed in the Organization".

51. Mr. EUSTATHIADES thought that the absence of a comma after the words "sending State" made it clear that the words which followed did not relate to all the cases mentioned. Mr. Ushakov's proposal might make for greater clarity, however, and there was no reason to defer consideration of it.

52. With regard to Mr. Rosenne's comment, it seemed that when the article had first been drafted, the word "practice" had been intended to have a wider meaning than "rules". Practice was generally more flexible and could be adapted to each specific case. In view of the discussion on article 52, however, those terms certainly ought to be clarified and used consistently.

53. Mr. ROSENNE said there was already general agreement in the Commission that "rules" included "practice", and that that point should be brought out in the commentary and perhaps also in the definitions article.

54. Mr. SETTE CÂMARA said that he agreed with the Drafting Committee's decision to refer only to the "practice" followed in the organization in article 57, because the organization was not an authority empowered to issue credentials and that was not a matter which came within the scope of its internal rules.

55. Mr. REUTER said he fully agreed with Mr. Rosenne. In the written observations of the secretariats of certain international organizations, particularly the International Labour Office, a distinction had been made between *de jure* and *de facto* practice. Consequently, when the final text of the draft was revised, the Commission should make it clear whether, for the purposes of the application of the articles, "practice" came within the meaning of the "rules of the Organization" or whether it had a wider meaning.

56. Mr. AGO said he too thought that, when the text of article 3 and of the definitions had been finally settled, the Commission should review the whole draft in order to avoid any contradiction between different acceptations of the words "practice" and "rules".

57. Mr. NAGENDRA SINGH said he thought the Commission could approve article 57 as proposed by the Drafting Committee, provided that some satisfactory solution could be found for the problem of the word "practice". One way out of the difficulty would be to replace the phrase "if that is allowed by the practice followed in the Organization" by "if that is allowed by the Organization".

58. The CHAIRMAN suggested that the Commission should provisionally approve article 57 as proposed by the Drafting Committee, on the understanding that the wording could be reviewed later.

*It was so agreed.*¹⁶

The meeting rose at 1.10 p.m.

¹⁶ For resumption of the discussion see 1132nd meeting, para. 84.

1119th MEETING

Wednesday, 16 June 1971, at 10.15 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Bar-toš, Mr. Castañeda, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, 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 7; A/CN.4/241 and Add.1 to 6; A/CN.4/L.162/Rev.1; A/CN.4/L.166; 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)

1. The CHAIRMAN invited the Commission to continue consideration of the draft articles proposed by the Drafting Committee (A/CN.4/L.168/Add.2), starting with article 57 *bis*.