

Document:-
A/CN.4/SR.1131

Summary record of the 1131st meeting

Topic:
Representation of States in their relations with international organizations

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

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“in which States are members” modified both sub-paragraph (i) and sub-paragraph (ii). The present formulation perhaps erred on the side of caution by including two sub-paragraphs, since it might be said that everything was covered by sub-paragraph (i), but in order to remove all possible doubt, he thought that sub-paragraph (ii) should be retained.

75. As to Mr. Rosenne's suggestion that the Working Group should reflect further on sub-paragraph (4) in the light of the appearance of new types of organ, he did not think that sufficient background material was available for such a study; in any case, it would be practically impossible for the Working Group to consider the matter at the present session.

76. Mr. ALCÍVAR said that the phrase “in which States are members” was confusing in the Spanish version and that in English it seemed to refer to sub-paragraph (ii). He suggested that those words should be replaced by the words “which are composed of States”.

77. Mr. ELIAS said he wondered whether the Commission's difficulty with paragraph 1 (4) was not due to its division into sub-paragraphs. He suggested that it might be better to return to the substance of the 1968 formulation, which read: “An ‘organ of an international organization’ means a principal or subsidiary organ, and any commission, committee or sub-group of any of those bodies”.⁵

78. Mr. EL-ERIAN (Special Rapporteur) said that the Commission had decided in 1968 to concentrate on representatives of States⁶ and not to deal with persons who served in their personal capacity, such as technical experts and members of conciliation commissions. Mr. Ago had referred to mixed bodies, such as existed in the ILO, but the whole question was primarily one of methodology and the field of application of the draft articles had already been decided at the Commission's twentieth session.

79. Mr. AGO said he thought that the division of paragraph 1 (4) into two parts made it perfectly clear that the words “in which States are members” applied to both the sets of bodies mentioned. He was therefore unable to support Mr. Elias's suggestion.

80. There could be no question of considering the case cited by Mr. Rosenne of representatives of States to organs which did not consist of States. There would be no objection, however, to stating in the commentary that nothing prevented the same rules from being applied to such representatives in practice.

81. Mr. ELIAS suggested that the difficulty might be removed by deleting the numerals (i) and (ii) and inserting the words “in which States are members” after the words “any principal or subsidiary organ of an international organization”.

82. Mr. AGO, replying to Mr. El-Erian, said that the Governing Body of the ILO was usually composed of

representatives of States, but that it had created a subsidiary organ called the “Freedom of Association Committee”, which was composed of individuals who served in their personal capacity. It was necessary, therefore, to make it clear that paragraph 1 (4) applied to both categories of organ.

83. Mr. YASSEEN said that since everyone was agreed on the substance, the only difficulty was the drafting. That was a real problem, though, because a mere error of typographical presentation would prevent the words “in which States are members” from applying to the paragraph as a whole.

84. Mr. USHAKOV suggested that the Languages Division be asked for an opinion on the matter.

85. The CHAIRMAN said that as there appeared to be general agreement on the substance of paragraph 1 (4), he suggested that the Commission adopt it subject to the opinion of the Languages Division.

It was so agreed.

The meeting rose at 1.10 p.m.

1131st MEETING

Wednesday, 7 July 1971, at 10.10 a.m.

Chairman: Mr Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Ruda, 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 to 3; 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.174 and Add.1 and 2)

[Item 1 of the agenda]

(continued)

CONSOLIDATED DRAFT ARTICLES PROPOSED
BY THE WORKING GROUP

(continued)

ARTICLE 1 (Use of terms) *(continued)*

Paragraph 1 (4)

1. The CHAIRMAN invited the Commission to continue consideration of the consolidated draft articles in

⁵ See *Yearbook of the International Law Commission, 1968*, vol. II, p. 196.

⁶ *Ibid.*, p. 195, paras. 24-25.

the Working Group's second report (A/CN.4/L.174/Add.2). The Secretariat would now inform the Commission of the reply given by the Languages Division to the question put to it at the Commission's request concerning paragraph 1 (4) of article 1.¹

2. Mr. TESLENKO (Deputy Secretary) said the Commission would recall that at the previous meeting some members had questioned whether the text of paragraph 1 (4) made it clear that the concluding words "in which States are members", related to both sub-paragraphs (i) and (ii). The Languages Division had pointed out that in the English, French and Spanish versions, the concluding words were set starting vertically below the figure (4) at the beginning of paragraph 1 (4), whereas sub-paragraphs (i) and (ii) were indented. In its opinion that typographical layout showed that the concluding words referred to both sub-paragraphs, and not only to sub-paragraph (ii).

Paragraph 1 (5)

3. Mr. USTOR said that it should be made clear in the commentary that "conference" meant any kind of conference and not necessarily one of a universal character.

4. Mr. SETTE CÂMARA said he questioned whether the words "other than a meeting of an organ" were really necessary, since there was obviously a difference between a conference held under the auspices of an international organization and a conference convened by an organ.

5. Mr. EUSTATHIADES proposed that the words "other than a meeting of an organ" be deleted, since they were redundant.

6. Mr. KEARNEY said that Mr. Sette Câmara and Mr. Eustathiades had made a very sensible point. Unfortunately, however, practice in the matter was not always sensible and some meetings convened by organs were referred to as "conferences".

7. Mr. EUSTATHIADES said that he saw the force of Mr. Kearney's argument; it would be as well, however, to mention that point in the commentary.

8. Mr. ROSENNE said he supported Mr. Eustathiades's proposal.

9. The CHAIRMAN said that if there were no objection he would take it that the Commission agreed to delete the words "other than a meeting of an organ".

It was so agreed.

Paragraph 1 (5), thus amended, was adopted.

Paragraph 1 (6)

10. Mr. USHAKOV said that in the French version the words "*de l'Etat*" could relate only to the word "*représentatif*" and not to the word "*permanent*".

11. Mr. EUSTATHIADES suggested that the French version be brought into line with the English by amend-

ing it to read "*une mission ayant un caractère permanent, et représentant l'Etat*".

12. Mr. ROSENNE suggested that the final clause be amended to read "sent to the Organization by a member State".

13. Mr. TESLENKO (Deputy Secretary to the Commission) said that the phrase "*ayant un caractère représentatif de l'Etat*" had been used in the Convention on Special Missions,² after long discussion in the Sixth Committee's Drafting Committee.

14. Mr. REUTER said that in that case it would be better to leave the wording as it was.

15. Mr. USHAKOV suggested that it be left to the Languages Division to correct the slight defect which he had pointed out.

Paragraph 1 (6) was adopted on that understanding.

Paragraph 1 (7)

16. Mr. USHAKOV said that the same defect appeared in paragraph 1 (7) as in the previous sub-paragraph, and might be corrected in the same way.

Paragraph 1 (7) was adopted on that understanding.

Paragraph 1 (8)

17. Mr. CASTRÉN said he noted that, wherever the draft articles were intended to refer only to permanent missions or only to permanent observer missions, that was specified. Consequently, when the word "mission" was used without any qualification, it always referred to both permanent missions and the permanent observer missions. Perhaps paragraph 1 (8) should reflect that distinction.

18. Mr. EUSTATHIADES asked whether the word "the" before the word "permanent" should not be replaced by the word "a" in both places.

19. Mr. TESLENKO (Deputy Secretary to the Commission) said that the definite article was used throughout the draft.

20. Mr. EUSTATHIADES said that the indefinite article was nevertheless used in sub-paragraphs (6) and (7) of paragraph 1, which had already been adopted.

21. Mr. TESLENKO (Deputy Secretary to the Commission) said that the use of the indefinite article was justified in those two sub-paragraphs because they defined which of the various missions were to be classed as permanent. Sub-paragraph (8), on the other hand, referred to the mission as defined in the previous two sub-paragraphs.

22. Mr. KEARNEY said that the Working Group had made a special effort to use the definite article "the" in all the substantive articles which referred to permanent missions and to permanent observer missions. He hoped, therefore, that the Commission would agree to retain the definite article for the time being.

¹ See previous meeting, paras. 74-85.

² See General Assembly resolution 2530 (XXIV), Annex, article 1.

23. He also hoped that the Commission would retain the words "as the case may be", which helped to make the text slightly clearer.

24. The CHAIRMAN said that if there were no objection he would take it that the Commission agreed to adopt paragraph 1 (8).

Paragraph 1 (8) was adopted.

Paragraph 1 (9)

25. Mr. KEARNEY said that Mr. Rosenne, in his initial comments on paragraph 1 (9), had asked whether the Working Group had taken into consideration the rather lengthy discussion which had taken place in the Commission about the different kinds of representative who might be present in the organ and their sphere of action.³ The Working Group had considered that matter at length and had concluded that in view of the many different kinds of delegations to organs the definition should be as broad and comprehensive as possible.

26. Mr. ROSENNE said he was satisfied with Mr. Kearney's explanation with respect to paragraph 1 (9), but he had grave doubts as to how it would apply to paragraph 1 (13) in its present form.

27. The text adopted at the previous session had used the words "the delegation designated by a State",⁴ rather than the words "the delegation sent by a State", which appeared in the present text. It might be better to replace the word "sent" by either "designated", "appointed" or "nominated".

28. Mr. KEARNEY said that at the previous session, the Drafting Committee had used the word "designated" rather than the word "sent" because, in view of the presence of the permanent mission in the host State, it could be assumed that the members of the delegation would also be present there. At the present session, the Working Group had decided, in the case of the consolidated articles, to keep to the word "sent", since the delegation could still be said to be "sent" by its State regardless of whether it was sent all the way from that State or merely for the short distance between its mission in the host State and the meeting-place of the organ.

29. Mr. REUTER said that the formulation of the sub-paragraph, and in particular the use of the preposition "in", did not bear out Mr. Kearney's explanation.

30. Mr. USHAKOV said that sub-paragraphs (9) and (10) of paragraph 1 had been drafted by the Working Group in the light of the new article 41, which read: "A State may send a delegation to an organ or to a conference in accordance with the rules and decisions of the Organization".

31. Mr. EL-ERIAN, replying to Mr. Reuter, said that since the word "organ" had been defined in sub-para-

graph (4), sub-paragraph (9) should be interpreted in the light of that definition.

32. Mr. USTOR said that "sent" was the word used in the Convention on Special Missions.

33. Mr. REUTER said that he expressly reserved his position with regard to the use of the preposition "in", because very serious practical consequences were involved.

34. Mr. AGO proposed that the word "in" should be replaced by "at", the word used in sub-paragraph (10).

35. Mr. CASTRÉN said he supported that proposal. It was always as well to use the same construction in the definition as in the expression being defined.*

36. Mr. KEARNEY said that if the Commission was to take up the question of the International Court of Justice and the status of counsel appearing before it on behalf of States, he did not think that a mere change of prepositions would be sufficient. If the basic thesis were accepted that a group of attorneys and agents of a State could constitute a delegation, there could be no doubt that the language used in sub-paragraphs (9) and (19) would encompass the activities of such a delegation. In other words, it would appear necessary to make a policy decision as to whether such groups were to be included or not; if they were to be included, it would be necessary to work out some suitable language.

37. Mr. EL-ERIAN said he supported the view expressed by Mr. Kearney.

38. Mr. AGO said that the International Court of Justice was a bad example to choose, for since it was not composed of States it was not covered by the provisions of the draft articles, though of course that did not affect the possibility that the principles contained in the draft might be applied to the Court in practice.

39. Mr. ELIAS said he agreed with Mr. Ago on the case of the International Court of Justice.

40. He proposed that the words "in the organ" in sub-paragraph (9) be either retained, or replaced by the words "in or at the organ", in order to bring sub-paragraph (9) into line with sub-paragraph (10).

41. He also proposed that sub-paragraph (11) should be moved up to precede sub-paragraphs (9) and (10).

42. Mr. ROSENNE said that he too agreed with Mr. Ago on the case of the International Court of Justice.

43. He wished, however, to draw the Commission's attention to another type of organ. Early in 1949 he had participated in a complex delegation which his country had sent to an organ of the United Nations consisting of only one member, namely Mr. Ralph Bunche, who had officiated as Acting Mediator by virtue of a number of resolutions adopted by the General Assembly and the Security Council. His delegation had functioned as such on the island of Rhodes and *inter alia* had been autho-

* See 1123rd meeting, paras. 30-61.

⁴ See *Yearbook of the International Law Commission, 1970*, vol. II, document A/8010/Rev.1, chapter II, section B, article 78.

* In the French version the word "à" would be used in both cases.

ized by the Greek Government to use its own means of communication. Not a single State which had been represented by delegations on that occasion could be said to have been a member of the "organ" in question.

44. The Commission should therefore decide whether it wished to exclude that type of organ from the purview of the draft articles; after all, such organs might be very important for the maintenance of international peace and could not lightly be brushed aside. The retention of the words "in the organ" would definitely exclude that type of organ and delegation, and he was not sure that the situation would be changed by using the words "at the organ".

45. Mr. EL-ERIAN said that he reserved his position concerning the propriety and relevance of the reference to the Rhodes talks of 1949 and the interpretation given to that example by Mr. Rosenne.

46. Mr. KEARNEY said that Mr. Ago's proposal was acceptable to him.

47. With regard to Mr. Elias's proposal that the order of the sub-paragraphs should be changed, there was a certain degree of logic in placing the most commonly used expression first, but that would involve rearranging the order of all the definitions and he did not think the amount of work entailed would be justified.

48. Mr. USHAKOV said that in Russian it would be impossible to use the same preposition for the organ in sub-paragraph (9) as was used for the conference in sub-paragraph (10).

49. The CHAIRMAN suggested that the Commission replace the preposition "in" by "at".

It was so agreed.

*Paragraph 1 (9), thus amended, was adopted.**

Paragraph 1 (10)

*Paragraph 1 (10) was adopted.**

Paragraph 1 (11)

Paragraph 1 (11) was adopted.

Paragraph 1 (12)

50. Mr. ROSENNE said he thought that paragraph 1 (12) could be more closely aligned with the definition adopted in 1968, which read: "The 'host State' is the State in whose territory the Organization has its seat, or an office, at which permanent missions are established".

51. Mr. USHAKOV pointed out that article 5, on the establishment of missions, provided that "Member States may, if the rules of the Organization so admit, establish permanent missions for the performance of the functions mentioned in article 6".

52. Mr. ROSENNE said he did not think that the meaning of "host State" should be sought in article 5.

53. Mr. USHAKOV said that article 41 also provided that a State might "send a delegation to an organ or to a conference in accordance with the rules and decisions of the Organization".

54. Mr. AGO said that, even if the present wording of the definition was ambiguous, it was impossible to revert to the wording adopted in 1968, because the definition now related to the whole draft and not only to permanent missions.

55. Mr. KEARNEY said that he could understand Mr. Rosenne's problem, but he wondered how a State could be a host if it did not have any guests.

56. Mr. ROSENNE said that a State could be a host prior to the arrival of its guests, as was shown in article 18, on the office of the mission, which read: "The sending State may not, without the prior consent of the host State, establish an office of the mission in a locality within the host State other than that in which the seat or an office of the Organization is established". The invitation extended by the host State was implicit in the words "other than that in which the seat or an office of the Organization is established".

57. He suggested, however, that the Commission defer any decision on the point until later.

58. Mr. AGO said that the word "office" really meant a seat of the organization, admittedly a secondary one, but still a seat. The solution might be to use the adjectives "principal" and "secondary".

59. Mr. USHAKOV said that it was for the organization alone to decide whether permanent missions should be sent to an office. The text should not be amended in a way which would restrict the organization's powers in that respect.

60. Mr. ELIAS proposed that the Commission retain paragraph 1 (12) for the time being and explain in the commentary what was meant by the word "office".

It was so agreed.

Paragraph 1 (12) was adopted.

Paragraph 1 (13)

61. Mr. ROSENNE said that paragraph 1 (13) raised some questions concerning the broad meaning of the term "office", which could have a different meaning there from its meaning in paragraph 1 (12). The definition of a sending State might either be shortened or else dispensed with altogether, since it did not seem to be a term of art requiring definition in the article under discussion, but was a well understood term of diplomatic law.

62. The CHAIRMAN suggested that the Commission adopt paragraph 1 (13) as it stood.

Paragraph 1 (13) was adopted.

* In the light of the proposals made by the Working Group in its Fourth Report, the Commission later amended sub-paragraphs 1 (9) and 1 (10). See the 1139th meeting, paras. 1 *et seq.*

Paragraph 1 (14)

63. Mr. ROSENNE suggested that it might be sufficient to say: “‘permanent representative’ means the person appointed by the sending State to be head of the permanent mission”.

64. Mr. KEARNEY said that that would be a sensible amendment, but he would suggest the wording “... the person designated by the sending State as the head of the permanent mission”.

65. Mr. USHAKOV said that he was opposed to any change, because the present wording corresponded to that used in article 1 of the Convention on Special Missions.

66. Mr. ELIAS pointed out that article 1 (a) of the Vienna Convention on Diplomatic Relations read: “the ‘head of the mission’ is the person charged by the sending State with the duty of acting in that capacity”.

67. Mr. EL-ERIAN said that there was no danger of confusion, since the permanent representative was a person charged with the duty of acting in a continuous capacity.

68. The CHAIRMAN suggested that the Commission adopt paragraph 1 (14).

Paragraph 1 (14) was adopted.

Paragraph 1 (15)

69. Mr. ROSENNE said he was not convinced by alleged analogies with the Convention on Special Missions and the Vienna Convention on Diplomatic Relations; he would therefore have to make the same reservation with respect to both sub-paragraph (14) and sub-paragraph (15) of paragraph 1.

70. Mr. RUDA said that he agreed with the view expressed by Mr. Rosenne; sub-paragraphs (14) and (15) involved two entirely different concepts.

71. Mr. USHAKOV said he thought that any change would nullify the efforts the Working Group had made to combine the rules on permanent missions with those on permanent observer missions.

72. Mr. EL-ERIAN, replying to Mr. Ruda, said he did not think that sub-paragraphs (14) and (15) involved a person acting in two different capacities.

73. Mr. RUDA said that there might be temporary heads of mission who were neither permanent representatives nor permanent observers.

74. Mr. EUSTATHIADES said that under the terms of article 16, a *chargé d'affaires ad interim* could act as head of mission. If it were accepted that such a situation could arise not only at the order of the government, but also at the order of the head of mission, the wording of sub-paragraphs (14) and (15) did not seem suitable.

75. Mr. BARTOŠ said that even if a head of mission was competent to appoint a *chargé d'affaires ad interim*, the appointment was made also on behalf of the sending State. He therefore unreservedly approved of the text proposed by the Working Group.

76. Mr. USHAKOV said that articles 1 and 19 of the Vienna Convention on Diplomatic Relations⁵ provided a precedent for the wording proposed.

77. Mr. AGO said that, whereas sub-paragraphs (14) and (15) referred to the person who acted permanently as head of mission, that, by definition, was not the situation with regard to the *chargé d'affaires* referred to in article 16.

78. Mr. ROSENNE said that the Vienna Convention on Diplomatic Relations defined the head of mission and not the permanent representative or permanent observer. He could not believe that a slight reformulation of paragraph 1 (15) would undo the work of the Working Group; on the contrary, it would improve it.

79. Mr. KEARNEY said that the sub-paragraph might contain a slight ambiguity, but that was of no real consequence. He was inclined, therefore, to accept the present text.

80. Mr. USHAKOV said that in the present case there was no hierarchy similar to that reflected in the Vienna Convention on Diplomatic Relations. That was why the only terms used to designate heads of mission were “permanent representative” and “permanent observer”.

81. Mr. ELIAS proposed that the Commission adopt paragraph 1 (15) on the understanding that a suitable explanation would be included in the commentary.

Paragraph 1 (15) was adopted on that understanding.

Paragraph 1 (16)

82. Mr. RUDA said that article 16 specified that a *chargé d'affaires ad interim* acted as head of mission if the post of head of mission was vacant or if the head of mission was unable to perform his functions. Clearly, therefore, there could exist a “head of mission” who was neither a permanent representative nor a permanent observer.

83. The commentary to article 1 should therefore make it clear that the provisions of paragraph 1 (16), and also those of paragraphs 1 (14) and 1 (15), were subject to those of article 16.

84. Mr. EUSTATHIADES supported that suggestion.

85. Mr. ROSENNE said he agreed that some reference should be made in the commentary to the acting head of mission. He noticed that the provisions of article 10, on the credentials of the head of mission, and article 11, on accreditation to organs of the Organization, apparently referred only to an accredited head of mission, whereas those of article 12, on full powers in the conclusion of a treaty with the Organization, referred also to an acting head of mission.

Paragraph 1 (16) was adopted.

Paragraph 1 (17)

Paragraph 1 (17) was adopted.

⁵ United Nations, *Treaty Series*, vol. 500, pp. 96 and 106.

Paragraph 1 (18)

86. Mr. ROSENNE said that he found the provisions of paragraph 1 (18) quite satisfactory, especially when read in conjunction with those of article 47.

Paragraph 1 (18) was adopted.

Paragraph 1 (19)

87. Mr. ROSENNE said he noted the use in paragraph 1 (19) of the word "participate". That term was used in a special sense in the draft articles with reference to conferences, but was not used in the same sense in paragraph 1 (19) with reference to organs. The commentary should clarify that point.

Paragraph 1 (19) was adopted.

Paragraph 1 (20)

Paragraph 1 (20) was adopted.

Paragraphs 1 (21) to 1 (25)

88. Mr. EL-ERIAN (Special Rapporteur) said that the provisions of paragraphs 1 (21) to 1 (25) had been taken from the Vienna Convention on Diplomatic Relations and should be dealt with together.

Paragraphs 1 (21) to 1 (25) were adopted.

Paragraph 1 (26)

Paragraph 1 (26) was adopted.

Paragraph 1 (27)

89. Mr. KEARNEY said that the text of paragraph 1 (27), and to a lesser degree than that of paragraph 1 (26), could be construed as implying any "building or parts of buildings and the land ancillary thereto" used by the delegation or mission, as the case might be. In fact, in an office building or in a hotel there were many common areas, such as corridors, which were also used by other occupiers. The commentary should explain the position in that respect.

Paragraph 1 (27) was adopted.

Paragraph 2

90. Mr. YASSEEN said that the wording of paragraph 2 was based on article 2, paragraph 2 of the Vienna Convention on the Law of Treaties,^{*} which was a saving clause for internal law, and in his opinion it was inappropriate. It would suffice to say that "The provisions of paragraph 1 relate only to the terms used in the present articles".

91. Mr. EUSTATHIADES said he took the same view. The Vienna Conventions on diplomatic relations and consular relations and the Convention on Special Missions did not contain any such clause; its presence in the Vienna Convention on the Law of Treaties was

justified by the need to emphasize the difference between the terms used in that Convention and those employed in the internal law of various countries. But the purpose of article 1 of the present draft was, precisely, to define the terms whose meaning might diverge from, or even conflict with, existing definitions. Paragraph 2 was therefore out of place in article 1.

92. Mr. CASTRÉN said he agreed with Mr. Eustathiades. Paragraph 2 should be deleted. If it was retained, it should at least be amended as suggested by Mr. YASSEEN.

93. Mr. USHAKOV said he disagreed. The paragraph was useful because certain terms, such as "organ", as used in the United Nations Charter and the constituent instruments of other international organizations, had a different meaning from that given to them in the draft articles.

94. Mr. RUDA said that Mr. Yasseen's point was logically correct. The opening words of paragraph 1, "For the purposes of the present articles", made it clear that the meanings given to the different terms in the various sub-paragraphs were intended exclusively for the purposes of the future convention.

95. In the Vienna Convention on the Law of Treaties, the provisions of article 2, paragraph 2, were necessary because such terms as "ratification" and "approval" could have a different meaning in the constitutional law of a country from that stated in the article. The position was not the same with regard to article 1, paragraph 2 of the present draft, which did not refer to the internal law of States.

96. Although paragraph 2 was unnecessary, he could agree to its retention if other members of the Commission attached importance to it. The main problem, however, was the use of certain terms, not so much in the United Nations Charter as in a number of agreements concluded by States with international organizations.

97. Mr. TESLENKO (Deputy Secretary to the Commission) said that the Charter had been singled out for special mention because under the terms of that instrument the United Nations Secretariat and the International Court of Justice were organs, which they were not according to the definition given in article 1 of the draft.

98. Mr. ROSENNE said that paragraph 2 was absolutely indispensable, but its wording should be aligned more closely with that of article 2, paragraph 2, of the Vienna Convention on the Law of Treaties. A suitable reference should be introduced to the internal law of States. The paragraph should state that the provisions of paragraph 1 regarding the use of terms were without prejudice to the use of those terms or to the meanings which might be given to them in the Charter of the United Nations, in other international instruments, in the practice of organizations or in the internal law of any State.

99. The reference to internal law was necessary because a number of countries had their own laws dealing with the method of appointment of representatives to international organizations. In those national laws, the term

^{*} See *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference*, p. 289 (United Nations publication, Sales No.: E.70.V.5).

“representative” was often used in a different sense from that given to it in the present draft articles.

100. Mr. EL-ERIAN (Special Rapporteur) said that paragraph 2, which had not appeared in his sixth report, but had been added by the Working Group, was a necessary provision. It was true that there was a general saving clause in article 3, on the relationship between the present articles and the relevant rules of international organizations or conferences, but that article was intended to apply to the substantive provisions of the draft. A separate saving clause was needed in article 1.

101. The provisions of paragraph 2 would make the draft more acceptable to States by reassuring them that article 1 did not prejudice in any way the terminology used in the Charter or in other international agreements.

102. With regard to the point raised by Mr. Ruda, he thought the provisions of paragraph 2 should be formulated in a comprehensive manner, so as to cover all agreements concluded by States with international organizations.

103. Mr. YASSEEN said the discussion had clearly shown that paragraph 2 was unnecessary; above all, the article should not mention the Charter, which could only be amended by a special procedure. The scope of the draft articles could not be wider than the subject-matter of the draft itself. If the Commission wished to draw attention to that fact, it should do so directly, in precise and succinct terms, without mentioning the Charter.

104. Mr. USHAKOV said it was not a question of treaty law, which governed the relationship between treaties, but only of the terms employed. Paragraph 2 was designed to render the draft articles acceptable to the Secretary-General of the United Nations and the Directors-General of the other international organizations.

105. Mr. AGO said that any definition, or any explanation of the use of terms, was bound to contain an arbitrary element and in the case of the draft articles it had been carried very far. That was why it was essential to specify that the use of terms in the draft articles did not extend beyond the framework of the draft itself.

106. Thus paragraph 2 was useful, but the concluding words “of universal character” could be deleted, since the sole purpose of the paragraph was to limit the application of the terms employed.

107. He found nothing unacceptable in Mr. Rosenne’s proposal, if the Commission was prepared to approve it.

108. Mr. KEARNEY said that paragraph 2 was really a particular application of the provisions of article 4. Hence it was not absolutely necessary, but it would be preferable to retain it, because of the important point made by Mr. Rosenne regarding the inclusion of a reference to the internal law of States. In the United States of America, there existed municipal legislation called the International Organizations Act and he understood that Switzerland also had legislation on the subject of international organizations. If paragraph 2 were not retained, those States might have to make a reservation precisely on the lines of its provisions.

109. For those reasons, he suggested that paragraph 2 be retained and that its wording be aligned with that of the Vienna Convention on the Law of Treaties, to include a reference to the internal law of States.

110. Mr. EUSTATHIADES said he thought that paragraph 2 should be deleted. But if it was retained, a reservation concerning the use of the terms in internal law should be added and, as Mr. Yasseen had proposed, the reference to the Charter should be deleted.

111. It should also be made clear that the words “other international agreements in force” referred to existing agreements, so as to avoid implying that agreements concluded in the future could use a different terminology. If the Commission thought that certain usages would prevail over the definitions given in the draft articles, it should amend the text accordingly, though he himself believed that, on the contrary, the definitions adopted by the Commission were a prelude to standardization of the terminology of future international instruments.

112. Mr. REUTER said he thought that article 1 should contain a provision such as that in paragraph 2, but that the present wording should be amended to make it broader and simpler. There should be no mention of certain agreements to the exclusion of others, since the paragraph applied to all of them.

113. Mr. EL-ERIAN (Special Rapporteur) said he supported Mr. Reuter’s suggestion that the provisions of paragraph 2 should be made comprehensive, but simpler.

114. The inclusion of a reference to the internal law of States was not absolutely necessary. Municipal law derived the terminology in question from the relevant international agreements. The International Organizations Act of the United States, for example, had been enacted in implementation of the United Nations Headquarters Agreement. The reference in paragraph 2 to the terminology used in international agreements should therefore suffice, since it would cover the terminology derived from those instruments by municipal law.

115. Mr. KEARNEY said that the International Organizations Act of the United States covered matters beyond the terms of the United Nations Headquarters Agreement. It applied to organizations other than the United Nations, such as the International Bank and the International Monetary Fund. Moreover, some of the provisions of the Act amplified those of the Headquarters Agreement. It was therefore desirable to avoid impinging on that type of legislation.

116. Mr. USHAKOV said it was unnecessary to mention internal law, since every State was free to use whatever terminology it chose. On the other hand the saving clause was necessary for international instruments which used different terms.

117. Mr. AGO proposed that paragraph 2 be simplified and broadened by amending it to read: “The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms in other international instruments” That would cover

the United Nations Charter, the constituent instruments of other organizations and any other form of agreement between States or between States and international organizations.

118. Mr. REUTER said he strongly supported that proposal, which would also cover regulations, that was to say instruments which were not agreements, but which used the terms defined in paragraph 1.

119. Mr. YASSEEN said that if the paragraph read: "The provisions of paragraph 1 relate only to the terms used in the present articles", everything else would be excluded. That formula was even more general than a reference to "international instruments", which might give rise to difficulties of interpretation.

120. It might perhaps be advisable to mention internal law in order to avoid any misunderstanding that might result from the controversy over the relationship between internal law and international law.

121. Mr. ELIAS said that paragraph 2, as it now stood, could safely be omitted, since it said no more than the opening words of paragraph 1: "For the purposes of the present articles".

122. The paragraph could be retained, however, if a new idea was brought into it. As far as the wording was concerned, he favoured the suggestion that the concluding portion be replaced by a reference to "other international instruments", but then the term "instruments" should be defined, at least in the commentary, so as to avoid confusion. Care should also be taken to see that the paragraph, as reworded, did not merely repeat the provisions of article 4.

123. Mr. SETTE CÂMARA said he was inclined to support the view that the opening words of paragraph 1 were sufficient to achieve the intended purpose of paragraph 2. But if members wished to retain paragraph 2, the wording proposed by Mr. Ago would be an improvement, subject to the insertion of the words "in force" after the words "other international instruments", so as to limit the scope of the provision to international agreements already in force.

124. Mr. KEARNEY said that the inclusion of a reference to the internal law of any State would be particularly useful for a country like the United States of America where, under the provisions of the Constitution, a treaty, on being ratified, became part of the law of the land, and its provisions prevailed over pre-existing legislative provisions. For unless paragraph 2 were included in the draft; the provisions of the draft articles would thus prevail, in the United States, over those of the International Organizations Act.

125. The CHAIRMAN said it was clear that the majority of the Commission were in favour of retaining the idea which paragraph 2 sought to express, but thought that the paragraph should be worded more simply and in more general terms. It should also include a reference to internal law, since some members desired such a reference and none were expressly opposed to it.

126. He therefore suggested that paragraph 2 of article 1 be referred back to the Working Group for redrafting in the light of those considerations.

It was so agreed.⁷

The meeting rose at 1 p.m.

⁷ For resumption of the discussion see next meeting, para. 1.

1132nd MEETING

Thursday, 8 July 1971, at 10.15 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, 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 to 3; 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.174 and Add.1 and 2; A/CN.4/L.177)

[Item 1 of the agenda]

(continued)

CONSOLIDATED DRAFT ARTICLES PROPOSED BY THE WORKING GROUP

(continued)

ARTICLE 1 (Use of Terms) (continued)

Paragraph 2

1. The CHAIRMAN invited the Commission to consider the new text proposed by the Working Group for paragraph 2,¹ which read:

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or the internal law of any State.

2. Mr. CASTRÉN said he accepted the general view that paragraph 2 should be retained, and could agree

¹ For previous text see 1130th meeting, para. 13.