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Summary record of the 949th meeting

Topic:
Representation of States in their relations with international organizations

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71. Mr. AMADO said he did not think that, in today's tortured world, States had time to call professors together to draw up models by which they might perhaps be guided. What States wanted was that the problems should really be tackled, and the Commission must tackle them in accordance with the General Assembly's recommendations. It must clear the ground; it must ascertain what rules were in force. Certainly, there were difficulties, but difficulties were inherent in everything that had life.

72. Mr. YASSEEN said he was most interested in the proposal by Mr. Bartoš that the Special Rapporteur should be asked to reconsider article 4 in the light of the other articles and make new proposals later. The scope of the reservation was a matter of great concern to him. A single reservation relating to the internal law of organizations was not enough. Other cases of conflict must be considered, including conflicts with headquarters agreements. The Special Rapporteur might study the possibility of including in a single article all reservations to the application of the rules laid down in the draft articles.

73. Mr. EL-ERIAN (Special Rapporteur) said he had thought it necessary for the Commission to clarify its position, first, on the basic principle underlying article 4 and, secondly, on whether it wished to add a rule concerning the relationship between the draft articles and the rules of the specialized agencies. He would reflect on the matter and try to introduce a new article 4 at the appropriate time.

74. Mr. BARTOŠ maintained his proposal that the Special Rapporteur should be asked to make a fresh study of article 4, since the objections raised by different members of the Commission showed that the present text might not meet the practical requirements. At that stage in the submission of the draft the Commission had not enough information to continue the discussion usefully or to take a final decision.

75. Mr. USHAKOV said that the idea advanced by the Special Rapporteur should be taken into consideration. The article could be referred to the Drafting Committee, and at the same time the Special Rapporteur could be asked to study the other aspects of the question, in particular the relationship between the future convention and existing agreements.

76. Mr. EL-ERIAN (Special Rapporteur) said that Mr. Ushakov's proposal was a useful and practical one.

77. Mr. AMADO stressed that the Commission worked for States. Governments would give their opinions, which were of great importance. It was only when those opinions were known that the Commission would be able to proceed to the second stage of its work.

78. The CHAIRMAN said there appeared to be general agreement that article 4 should be referred to the Drafting Committee and discussed in a plenary meeting at a later stage in the Commission's work.

*It was so agreed.*⁶

The meeting rose at 1 p.m.

949th MEETING

Friday, 7 June 1968, at 10.10 a.m.

Chairman: Mr. José Maria RUDA

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Ramangas-Oavina, Mr. Reuter, Mr. Rosenne, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Relations between States and inter-governmental organizations

(A/CN.4/195 and Add.1; A/CN.4/203 and Add.1-2; A/CN.4/L.118 and Add.1-2)

[Item 2 of the agenda]
(continued)

ARTICLE 5

1.

Article 5

Establishment of Permanent Missions

Member States may establish permanent missions at the seat of the organization for the performance of the functions defined in article 6 of the present articles.

2. The CHAIRMAN invited the Special Rapporteur to introduce article 5.

3. Mr. EL-ERIAN (Special Rapporteur) said he had devoted Part III of his second report (A/CN.4/195) to the evolution of the institution of permanent missions to international organizations. General Assembly resolution 257 A (III), of 3 December 1948, continued to be the basis for the development of that institution and had already served as a prototype for the practice of other international organizations. He had summarized the debate on that resolution in paragraphs 58-61 of his second report, which dealt with the legal status of permanent missions, the character of the institution of permanent missions, the use of the term "credentials" and the competence of the Credentials Committee.

4. In Chapter II, Part II of his third report (A/CN.4/203), he had summarized the practice with respect to permanent missions to the League of Nations, the United Nations, the United Nations Office at Geneva, the specialized agencies and the four principal regional organizations: the Organization of American States, the Council of Europe, the League of Arab States and the Organization of African Unity.

5. The primary purpose of article 5 was to state the general principle that the institution of permanent missions was of a non-obligatory character. When that question had been discussed at the third session of the General Assembly, some representatives had expressed doubts about the advisability of including the last paragraph of the preamble of resolution 257 A (III) and had pointed out that a number of Member States might be deterred from maintaining permanent missions at the seat of the Organization by "special budgetary or administrative expenses".

⁶ For resumption of discussion, see 972nd meeting, paras. 40-89, and 974th meeting, paras. 2-33.

6. As explained in paragraph 3 of the commentary on article 5 (A/CN.4/203), the legal basis of permanent missions was to be found in the constituent instruments of the international organizations concerned, as supplemented by the conventions on the privileges and immunities of the organizations and the related headquarters agreements, together with the practice that had accumulated since the development of the institution of permanent missions.

7. Article 5 stated that permanent missions might be established "at the seat of the organization". That provision followed from the character of the permanent mission as representative to the organization itself or to its Secretariat, which provided the necessary liaison between the sending State and the organization. International organizations usually had one principal seat, but the United Nations, in addition to its Headquarters in New York, maintained the United Nations Office at Geneva.

8. Article 5 was related to corresponding articles of the Vienna Convention on Diplomatic Relations¹ and the draft articles on special missions.² Article 2 of the Vienna Convention provided that "The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent", while article 2 of the draft articles on special missions provided that "A State may, for the performance of a specific task, send a special mission to another State with the consent of the latter". In discussing those articles, the Commission had adopted a pragmatic approach and had not passed judgment on any questions of doctrine. In drafting article 5, he had therefore disregarded doctrinal points and concentrated on the optional character of permanent missions.

9. The CHAIRMAN, speaking as a member of the Commission, said that article 5 should obviously be included in the draft, since it reflected present practice as opposed to the practice at the time of the League of Nations. It was also appropriate, in his opinion, to emphasize the non-obligatory character of permanent missions. But the article gave the impression that permanent missions could be accredited only to the seat of the organization, whereas in practice States sometimes established permanent missions at places other than the seat.

10. He proposed that the words "for the performance of the functions defined in article 6 of the present articles" should be deleted, since the text would thereby gain in clarity and lose nothing in legal force.

11. Mr. ROSENNE said he had serious doubts about article 5. If it meant that member States were entitled to be represented in an organization when necessary, and to have access to the seat of the organization, that was a correct statement of law; but if it meant that member States had an absolute right in all circumstances to establish a permanent mission, he questioned whether that was an accurate statement *de lege lata*, much less an acceptable statement *de lege ferenda*. After all, it was only proper that the host State should have some say in

the matter, at least with respect to the privileges, immunities and facilities involved.

12. He was rather puzzled by the statement in the commentary on article 5 that "... the Special Rapporteur wishes to state that he is of the opinion that what is needed is not the establishing of the legal basis of the institution of permanent missions to international organizations, but rather the enunciation of the different rules for its regulation". While agreeing that such an enunciation was necessary, he was not sure that article 5 really dealt with the cardinal or principal features of the institution of permanent missions. That point was directly connected with the Commission's discussion of the safeguard provision in draft article 4.

13. While agreeing that the institution of permanent representation should be of a non-obligatory character, as stated in paragraph 1 of the commentary, he wondered whether article 5 would not make it obligatory for the host State to accept permanent missions in all circumstances and provide them with the necessary privileges, immunities and facilities. There was no real analogy with the corresponding provisions of the Vienna Convention on Diplomatic Relations and the draft articles on special missions, since those instruments dealt with traditional bipartite diplomatic relations. Article 5 should therefore be expressed in some different form in order to take due account of the different legal situation. That might be done by including a provision to the effect that when member States established permanent missions the relevant provisions of the present articles would apply.

14. Mr. CASTRÉN said that article 5 was necessary and on the whole he thought it was well drafted. The Special Rapporteur's commentary was clear and complete.

15. The article provided, in accordance with practice, that the establishment of a permanent mission was a faculty of the member States of the organization. In general, permanent missions were established at the seat of the organization, but there were exceptions which were dealt with in article 18 of the draft (A/CN.4/203/Add. 2). He therefore proposed that in article 5 the words "at the seat of the organization" should be replaced by "to the organization".

16. There were good reasons for recognizing that, unlike the case of special missions and permanent diplomatic missions, the assent of the organization was not necessary.

17. Mr. YASSEEN said that if the draft did not provide for the possibility of establishing permanent missions to international organizations it would lose much of its value. It was true that the institution of permanent missions raised a series of problems relating to the seat of the permanent mission and the privileges and immunities to be accorded to its members, but those problems should not affect the basic idea that member States could accredit someone permanently to an international organization to participate in performing its functions. The obligation of good faith prohibited the host State from opposing the presence of representatives of member States to the organization.

18. Mr. USHAKOV thought that the idea of article 5 was correct, but its drafting raised problems which gave

¹ See United Nations, *Treaty Series*, vol. 500, p. 96.

² See *Official Records of the General Assembly, Twenty-second Session, Supplement No. 9*, p. 40.

cause for reflection. In the first place, it was said that "Member States may establish permanent missions". That was intended to express the idea that the establishment of permanent missions was optional. But the words could also be interpreted as making reception of the permanent mission an obligation for the host State. There was, however, no more obligation to receive a permanent mission than to establish one. To avoid that double interpretation, he suggested saying: "States establish permanent missions ...".

19. Secondly, it would be better to speak of "permanent representation" than "permanent missions", because the word "representation" was more in keeping with the spirit of the draft. Thirdly, he supported the proposal to substitute the words "to the organization" for the words "at the seat of the organization".

20. Lastly, article 5 referred to "the functions defined in article 6", but those functions might not be precisely defined in article 6. It would therefore be better to replace the word "defined" by "provided for" or some other appropriate expression.

21. Mr. BARTOŠ said he thought the words "Member States may establish permanent missions" meant that a member State was not obliged to establish a permanent mission and that the organization was not obliged to accept it. It would be better to say that member States had the right, or were entitled, to establish permanent missions.

22. As to the expression "at the seat of the organization", he agreed with the Special Rapporteur; several agreements relating to international organizations granted States the right to have permanent missions at the seat of the organization, but not anywhere they chose in the host State. Examples were the agreement between the United Nations and the United States of America,³ and the Lateran agreement. In the latter case, the Vatican was required to accommodate in buildings under its jurisdiction the ambassadors of States at war with Italy, and Italy could not oppose the sending of ambassadors to the Vatican by such States. That was a guarantee for both the sending State and the receiving State, or the host State of the organization concerned. Hence, the formula "at the seat of the organization" should perhaps be made more specific by saying "at the place of the seat", which would be more in accordance with practice. Even the place of the seat of the organization raised a problem of interpretation. If it were applied literally in regard to a town, the permanent mission might be required to be established *intra muros*. Perhaps the use of the less precise wording "at the seat" would avoid that difficulty. But what was to be done if a permanent mission was sent to two or more organizations having their seats at different places?

23. He agreed with Mr. Ushakov about the phrase "the functions defined in article 6", for article 6 stated that the functions of a permanent mission consisted *inter alia* in those enumerated; it might perhaps be desirable that the words "*inter alia*" should be included, but if they were, article 5 should not refer to "the functions defined", but to "the functions mentioned" in article 6.

24. Mr. AGO said that although at first sight article 5 appeared innocuous and simple, it nevertheless gave rise to difficulties. So far as the use of the verb "may" was concerned, he wondered whether a State might decide to send a permanent mission to an international organization without its consent. There could be organizations whose structure was such that it did not require permanent missions. The article did not deal with the consent of the host State, because it was thought that that could be taken for granted. He was not sure, however, whether that was true in every case and for all international organizations.

25. The question also arose whether an international organization was required to accept any representative whatsoever. And was the host State itself required to agree to the presence of any person whatsoever in its territory? Those questions should not be disregarded, even though it might finally be decided that no objection could be made to the sending of a permanent representative.

26. The state of war had been referred to and the Vatican, which was a good example, had been cited; but the Vatican had territory of its own on which there were buildings. On the other hand, how could an international organization house permanent missions?

27. He would revert to the question of functions later, but he wished to point out that although, in principle, a representative to a State performed all the usual functions, each permanent mission to an international organization was an individual case. A permanent representative might not be his government's representative to all the organs of a organization. It was therefore necessary to be judicious in the use of language, so as not to prejudge the structure States wished to give to their representation.

28. Mr. REUTER emphasized that the question raised by Mr. Rosenne was the basic one. It was necessary to decide whether article 5 established a legal rule or whether it was merely of an introductory character. If it was introductory, it only meant that when there were permanent missions they were governed by the provisions that followed. If it established a rule, it was necessary to say what that rule was and to whom it applied.

29. It had been said that article 5 was intended to show that a State was never obliged to establish a permanent mission; that statement was not correct, for everything depended on the constitution of the organization. The constituent instrument of the organization might make it obligatory to establish permanent missions or, on the contrary, it might prohibit their establishment. If the Commission intended to take a position on that point, it must say so. It must also say whether it intended to bind host States.

30. Non-member States could also establish permanent missions, for example, when they wished to collaborate with an organization of which they were not members for reasons of general policy.

31. Mr. USTOR said he had the same difficulties as some of the other members. First, the Commission had not yet decided whether the draft articles would cover only the United Nations family and other organizations of world-wide scope, or whether they would also cover regional or restricted organizations. If the draft articles

³ General Assembly resolution 169 (II).

were to cover only members of the United Nations family, article 5 was correctly worded; but if other organizations were also to be included, the rule stated in article 5 would need amendment.

32. In some cases, such as the Rome Institute for the Unification of Private Law, member States were represented in the organization's assembly by their regular diplomatic representatives to the host State. There was no rule which could compel a host State outside the United Nations family to receive a permanent mission in its territory. In some cases, of course, the problem could be solved by the safeguard provision in article 4, but in other cases there was no rule at all. The Organisation internationale de métrologie légale, for example, had no rules concerning permanent missions, and it was open to question whether the French Government would permit the establishment of a permanent mission to it. Consequently, if the Commission wished to cover organizations outside the United Nations family, it should include some safeguard clause in article 5 to the effect that States were entitled to establish permanent missions at the seat of the organization, provided that the necessary consent of the organization and of the host State could be obtained.

33. Mr. RAMANGASOAVINA said that the opening words of article 5, "Member States may establish permanent missions", stated a principle and even a rule of law, namely, that each member State had the right to establish a permanent mission to the organization, and that the exercise of that right was optional; for a member State might confine itself to sending missions periodically to the main meetings of the organization. But the word "may" also showed that acceptance was optional for the organization; moreover, that word regulated the position of the host State. Thus the formula was satisfactory.

34. With regard to the expression "at the seat of the organization", he agreed that the establishment of permanent missions should not be restricted in that way, for an international organization might not have only one seat: it might also have branches or agencies. The formula "to the organization" was much more flexible.

35. The words "the functions defined in article 6" were perhaps rather strong, since article 6 did not define the functions very precisely. Nevertheless, the words that could be used to replace the word "defined", for example, "provided for" or "enumerated", had the same disadvantage. It might be considered that article 6 provided a flexible definition in the form of a non-exhaustive enumeration. Perhaps the word "below" should be added after the words "in article 6". On the whole he thought article 5 would be satisfactory with a few minor changes.

36. Mr. BARTOŠ, referring to a question raised by Mr. Ago, said that the right of the United States of America to give or refuse its *agrément* to a particular person sent to the United States by a State as a permanent representative to the United Nations had been discussed during more than two sessions by the Sixth Committee and the Special Political Committee. It had been concluded that if that right was granted, the United States would be able to influence the policy of States represented in the United Nations. The free choice by States of their representatives to international organizations was the expres-

sion of their sovereignty. That question should be regarded as settled. If the Commission were to raise it at that stage, it would, at the least, be a retreat from a principle that had been established for the United Nations.

37. There had been disagreements between the State Department and the United Nations on the subject and he thought that the death of Mr. Feller, of the Department of Legal Affairs, had not been unconnected with a conflict of that kind, in which the then Secretary-General of the United Nations had wished to give way to the demands of the United States. It was a question that could be settled in headquarters agreements, which might include certain restrictions. Mr. Ago and Mr. Reuter had been right to draw attention to the existence of a problem that could not be ignored. But it was possible to revert to the distinction between general rules and the particular rules which might derive from the statute of the organization or from any other instruments imposing certain restrictions.

38. Commenting on Mr. Ustor's remarks, he said there were many organizations in which member States were not represented by permanent missions. That had long been the case of the Universal Postal Union at Berne. If the Commission were to draft a text according to which the establishment of permanent missions depended neither on the organization's statute nor on its legal position in the host State, it would be changing positive law as at present applied all over the world.

39. It was true, as Mr. Reuter had pointed out, that a non-member State might be very anxious to establish a permanent mission to an international organization. But in accordance with current terminology, the Special Rapporteur had dealt with that question in Part IV of the draft, relating to permanent observers of non-members.⁴

40. Several members of the Commission had pointed out that an international organization might have several seats. It was not in fact certain that article 5, as it stood, covered permanent missions to the United Nations Office at Geneva, for example. It might also be asked whether all States could establish permanent missions at every seat. That was apparently one of the reasons why the name of the European Office of the United Nations had been changed to "United Nations Office at Geneva". He did not know whether the African and Asian States in whose territories other United Nations offices had been set up accepted the establishment of permanent missions by all Member States.

41. The Commission should study the article with the utmost care to ensure that it did not make any change detrimental to existing practice and international law.

42. Mr. EUSTATHIADES said he thought that Mr. Rosenne and Mr. Reuter had stated in more precise terms the preliminary question to which he had himself referred: whether the article was merely introductory or was intended to state rules and settle issues. The debate had shown that it would be better to avoid stating rules. In fact, article 5 was not absolutely indispensable: the idea contained in it was covered by article 6. But if article 5 were deleted, article 6 would appear unduly abrupt; a transition had to be made. The members of the Commission

⁴ A/CN.4/203/Add.5.

seemed to be agreed on the difficulties that might arise. It therefore remained to find a satisfactory formula which avoided settling difficult questions.

43. He suggested the wording: "Permanent missions to an organization may be established, in particular at the seat of the organization". That text would have the advantage of omitting the words "for the performance of the functions defined in article 6 of the present articles", as suggested by the Chairman. It also avoided the question whether member States had the right to appoint a permanent mission; on that point, Mr. Ago and Mr. Bartoš had rightly argued that both the host State and the organization might have something to say. Lastly, the wording he proposed took account of draft articles 18 and 19 (A/CN.4/203/Add.2), under which a permanent mission might, in certain circumstances, have its seat or offices in localities other than those in which the seat of the organization was established.

44. Mr. YASSEEN said that if the organization itself did not accept a permanent mission, the problem was settled by article 4: the reservation relating to the particular rules of the organization meant that member States did not have the right to establish permanent missions if that was not provided for, or at least clearly tolerated, by the organization's statutes.

45. The question whether article 5 laid down a legal rule had just been answered by Mr. Ramangasoavina: the article provided for an option. An option, however, could never be exercised without any restriction or condition. A State which freely accepted the establishment of an organization in its territory must assume its responsibilities and accept all the consequences following from its decision. It must allow the organization to perform its functions. If the statutes of the organization provided for the establishment of permanent missions, the host State was aware of the fact and was therefore presumed to have given its consent.

46. The question of the *agrément*, which had been raised by Mr. Ago, was very delicate. But the Commission could be exacting in that matter. The obligations of the host State were sometimes very onerous; it might have to tolerate the presence in its territory, as a representative to an organization to which it was host, of a person whom it would not tolerate otherwise. The question had arisen, in particular, at United Nations Headquarters in New York, and the answer had generally been that the host State must accept the consequences of its position; for if it did not do so, it would be obstructing the performance of the organization's functions. Hence the difficulties raised by the article should not be exaggerated.

47. Mr. AGO said that in his previous statement he had merely wished to state the problems without suggesting any solutions. He agreed, of course, that a State which was host to an international organization must accept the consequences. But the Commission should clearly state its conclusions on the problems that arose.

48. With regard to the position of the host State, there were two problems: the acceptance of permanent missions and the acceptance of persons appointed as members and, particularly, as heads of those missions. If the Com-

mission considered that, having accepted the establishment of an organization in its territory, the host State was *ipso facto* obliged to agree, if necessary, to the establishment of permanent missions by States members of the organization and by other States, it must say so clearly; similarly, if the Commission accepted the principle that the host State was obliged to accept any person whatsoever, it must state that principle, for those questions might give rise to serious difficulties in practice. States ratifying the future convention must know what they were undertaking by agreeing to the establishment of an international organization in their territory.

49. The sending State, however, had to deal not only with the host State in that matter, but also with the organization itself, and it was not certain that the relationship of the sending State with the organization was regulated by article 4, the content of which, moreover, was not yet finally decided. At that stage of the discussion, it seemed that article 4 should refer to existing agreements between the organization and the host State and possibly to the internal rules of the organization. But the most frequent case was that in which neither the agreement in question nor the organization's internal rules made any express provision for the institution of permanent missions. The missions were only set up later as a result of practical experience. Should the organization be automatically regarded as having agreed in advance that member States might establish permanent missions to it? That question might be answered positively or negatively, but an answer must be given.

50. The problem of persons also arose for the organization. Could it never raise any objection to the appointment of a particular person as the representative of a State? It might be useful if organizations could draw attention to the difficulties which the appointment of a particular person would create.

51. In his view, the organization, rather than the host State, should have the last word. As international organizations became stronger and more important, it became difficult to disregard the question of their consent, in the face of the sending State's sovereignty, to the establishment of permanent missions and the appointment of their members, especially the head of mission.

52. Mr. ROSENNE said that the debate had perhaps ranged too far afield. Article 5 dealt only with the question of the establishment of a permanent mission within the meaning given to that term in article 1, sub-paragraph (b), the provisions of which he found broadly acceptable. Questions relating to the acceptability of the head of the mission and the members of his staff did not arise in connexion with article 5.

53. Article 5 raised only one major question of principle: the question whether a State, by agreeing to act as host to an international organization, also agreed to the establishment of permanent missions in its territory by all members of the organization wishing to establish them. He had some doubts as to whether it necessarily followed that the host State was obliged to accept a permanent mission. The question was quite different from that of the right of access to meetings of the organization and all

that such access implied. It was true that some of the difficulties might be reduced by the provisions ultimately incorporated in article 4.

54. Mr. AGO said that in a capital which already accommodated several groups of permanent missions—such as Rome, where the permanent diplomatic missions to the Italian Republic, the permanent diplomatic missions to the Holy See and any permanent missions to FAO were established—the obligation to receive further missions might create material difficulties if States suddenly expressed the desire to establish missions to another organization. That was another aspect of the problem which increased his doubts about an unlimited obligation of the host State.

55. Mr. YASSEEN said that in his opinion acceptance of an international organization did not *ipso facto* entail the obligation to accept permanent missions. But if the host State had accepted an organization and that organization's statutes provided for the establishment of permanent missions, then the host State had at the same time accepted the establishment of such missions. If, as often happened, the statutes of the organization did not provide for permanent missions, but member States subsequently wished to establish such missions, the first question that arose was whether the organization consented. Next, the host State should be able to express its views, and, if it objected, that would raise an issue between it and the organization the settlement of which would depend on the agreement between them.

56. Mr. AMADO said that in the case of a large organization such as the United Nations, the host State could not raise any objection to the establishment of a permanent mission, for that would mean preventing a sovereign State from participating in the organization. The problem was different for smaller organizations.

57. He did not think an organization itself could object to the establishment of a permanent mission: States possessed that right *erga omnes* under international law.

58. The best solution would be to draft the article in a very neutral form, avoiding the word "may" and deleting the reference to a definition or enumeration of the functions of the permanent mission.

59. He thought the Commission should take a decision on the problems rather than ask the Special Rapporteur to reconsider them; for the Special Rapporteur had already given them all the consideration he could, and it was now up to the Commission to help him.

60. Mr. BARTOŠ thought that Mr. Yasseen had clearly brought out the idea of good faith. A State which, being aware that the statutes of an international organization provided for the establishment of permanent missions, had agreed to be host to that organization, had thereby assumed the obligation at least to tolerate such missions. If the missions had not been provided for initially and States established them some time later, the situation was more complicated. Mr. Yasseen had recognized that in that case the host State was entitled to raise objections, and he (Mr. Bartoš) accepted that view.

61. In practice there were many difficulties, even if a headquarters agreement had been concluded between the

international organization and the host State. It might therefore be asked whether there was any international norm concerning the establishment of permanent missions and the legal position of members of such missions. Could it be considered that mere tolerance or tacit acceptance established a legal régime? The Commission was not obliged to solve those problems, but it should at least show that it had been aware of their existence when drafting the articles.

62. Mr. ALBÓNICO said that article 5, which was modest in scope and simple in wording, should not cause any difficulties. The Special Rapporteur had drafted the article to deal with the position of the accrediting State; he had not intended to deal with questions relating to host agreements and *agrément*s. The article was not intended to solve the problems that might arise in relations between the accrediting State and the host State.

63. Thus understood, article 5 was a useful article which filled a gap in the Conventions on privileges and immunities. It stated the right to establish permanent missions, without prejudice to the other provisions on those missions which would be included in the draft in the light of the practice relating to that new institution.

64. Mr. CASTRÉN said that, like several other members, he believed that if the statutes of the organization provided for permanent missions, or if the nature of the organization implied that such missions could be established, the host State was not entitled to oppose their establishment. Above all, the host State had no right to discriminate between States in that respect, since such an attitude would be contrary to the principle of equality of States and to the common interests of the organization.

65. Mr. AGO said that in the great majority of cases, the statutes of the organization provided for the representation of States to the organs of the organization, but not for the institution of permanent missions. Such missions were established later because they were found useful. Hence too much reliance should not be placed on the idea that permanent missions were provided for by the statutes and that the host State was aware of that fact.

66. Mr. USHAKOV observed that the Commission was discussing entirely general questions, which would arise again in connexion with nearly all the articles relating to permanent missions. As he saw it, the essential point was that if the draft articles related only to so-called universal organizations, the Commission could and should lay down a legal rule that all existing and future host States were under an obligation to accept the establishment of permanent missions, if such establishment resulted from a decision of the organization or was permitted by it. If the draft articles were to cover all international organizations, the problem would be different; that was one more reason for confining the draft to organizations of a universal character.

The meeting rose at 12.55 p.m.