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Summary record of the 950th meeting

Topic:
Representation of States in their relations with international organizations

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950th MEETING*Monday, 10 June 1968, at 3 p.m.**Chairman:* Mr. Erik CASTRÉN

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tammes, 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 (Establishment of permanent missions)
(continued)¹**

1. The CHAIRMAN invited the Special Rapporteur to sum up the discussion on article 5.
 2. Mr. EL-ERIAN (Special Rapporteur) said that two points which formed the subject-matter of other articles had been raised in connexion with the wording of article 5, namely, the seat of the organization and the composition of the permanent mission.
 3. On the first point, it was necessary to distinguish between the seat of a permanent mission and its field of activity. A permanent mission was sometimes accommodated elsewhere than at the place of the seat of the organization to which it was accredited; but its activities were carried on at the place where the Secretariat of the organization worked. In paragraph 3 of the commentary on articles 18 and 19 (A/CN.4/203/Add.2) he had mentioned the note circulated by the Swiss Federal Authorities stating that they had no objection in principle to one mission representing the State concerned both at Berne and at the Geneva Office of the United Nations, but that they would only recognize such a mission as an embassy if its premises were situated at Berne. In paragraph 4 of the same commentary he had mentioned the case of some permanent missions accredited to the IAEA which were not in Austria, but in other European countries.
 4. He suggested that the Commission should not concern itself at that stage with the seat of the permanent mission and the seat of the organization; those questions should be considered separately in connexion with other articles of the draft.
 5. The second question, that of the composition of the permanent mission, was dealt with in article 13. Article 39 (Duration of privileges and immunities) was also relevant. Some difficulties had, however, been mentioned by members in connexion with approval by the host State.
 6. The position of the host State was a peculiar one and bore little resemblance to that of a receiving State in
- bilateral diplomacy. As shown by the problems which had arisen in connexion with the size of permanent missions to FAO, a permanent mission to an organization, unlike a diplomatic mission, was not accredited to the host State; nor was it, strictly speaking, accredited to the international organization concerned.
7. As pointed out in paragraph 5 of the commentary on article 14 (A/CN.4/203/Add.2), a remedy for any grievances the host State or the organization might have against the permanent mission or one of its members could not be sought in the prerogatives recognized as belonging to the receiving State in bilateral diplomacy; those prerogatives derived from the fact that diplomatic envoys were accredited to the receiving State and from the latter's inherent right to refuse to maintain relations with the sending State.
 8. The Commission had the choice of making article 5 either an introductory article or a dispositive rule. If it took the first course, the usefulness of the article would be comparatively limited; if it took the second, it would be faced with some difficulties, but the provisions of the article would help to solve a number of practical problems.
 9. His own view was that article 5 should be a regulatory article, not merely an introductory provision; it should consolidate the development of permanent missions, which during the past twenty years had become a recognized feature of relations between States and international organizations. The purpose of article 5 should be pragmatic; it should be directed towards solving practical problems rather than settling doctrinal disputes. In drafting its provisions, it was necessary to build on existing practice, in particular that of the United Nations.
 10. In the early days of the United Nations, States had maintained permanent representatives to the Security Council only. Soon a number of permanent delegations had been established and, when the practice had increased, the General Assembly had studied the whole matter and had adopted resolution 257 A (III).
 11. The Organization of African Unity had decided, for the time being, to have no permanent missions; the usual tasks of such missions were performed by the diplomatic missions of the member States at Addis Ababa or at the nearest capital outside Ethiopia.
 12. It was not necessary to deal in article 5 with doctrinal issues, such as whether a member State had a right to establish a permanent mission. If the question arose in practice, it would be dealt with in the competent organs of the organizations concerned.
 13. Referring to the specific points which had been raised regarding the wording of article 5, he explained that he had used the expression "permanent mission" because it was now part of established usage. In the early days of United Nations Headquarters, the term "permanent delegation" had been used, but "permanent mission" had prevailed both at Headquarters and at the Geneva Office.
 14. As to the possibility of an organization having more than one seat, the case of the United Nations, with its Headquarters in New York and its Office at Geneva, was an exception; normally, an organization had only one seat. A regional office, or the office of a subsidiary organ of an organization, did not constitute a seat and,

¹ See previous meeting, para. 1.

except for the Economic Commission for Africa at Addis Ababa, he knew of no case of permanent missions being maintained by States at a regional office. The wording of article 5 should reflect the general practice, leaving special cases to be covered by the provisions of article 4 on the particular rules of international organizations.

15. With regard to the question of permanent observers, he explained that the articles on permanent missions dealt only with the missions of the member States of an organization; the question of permanent observers was dealt with in Part IV (Permanent observers of non-members to international organizations).²

16. Summing up his position, he stressed that the provisions of article 5 should state two rules. The first was that permanent missions were recognized by international law. In the case of the United Nations, the legal status of permanent missions derived from Articles 104 and 105 of the Charter. The second rule was that the institution was optional, although in practice member States usually appointed permanent missions. For administrative or budgetary reasons, however, a few might not wish to do so, and it should therefore be made clear that there was no obligation.

17. It had been asked during the discussion whether there was any obligation for the organization or the host State in the matter. He thought that article 5 should avoid dealing with those mainly doctrinal issues. The Commission should follow the example of the draft on diplomatic intercourse and immunities, in discussing which it had been decided, in 1957, not to take a position on the question whether there existed a perfect or an imperfect right of legation.³ As a result of that decision the draft, and ultimately the 1961 Vienna Convention on Diplomatic Relations, had not included any provision on the question whether there was a right or an obligation to establish diplomatic missions.

18. Summing up the views of the Commission, he said he understood the members to be in favour of retaining article 5, subject to some drafting changes. Two or three members appeared to prefer an article of an introductory character, but the majority were in favour of stating some legal rules.

19. When he had first drafted article 5, he had included the proviso "in accordance with the practice prevailing in the organization concerned" or some such wording. But when he had decided to include in article 4 a general reservation regarding the particular rules of the organization, he had dropped that proviso and similar reservations in other articles of the draft as being unnecessary.

20. A number of drafting suggestions had been made, which would be considered by the Drafting Committee. Some of them concerned the expression "seat of the Organization"; in particular, it had been suggested that the article should refer to "permanent missions to the organization", thus omitting any mention of the "seat". It had also been suggested that the reference to "functions" should be deleted. His intention in including it had been to stress that a permanent mission could be established

only if there were functions to be performed; a State which had no real need for a permanent mission could not insist on establishing one.

21. In conclusion, he suggested that article 5 be referred to the Drafting Committee for formulation as a regulatory article in the light of the discussion.

22. Mr. AMADO said that States undoubtedly had the right to establish permanent missions to international organizations. But a rule expressly stating that right would cause difficulties. It would be better to consider the right as an established fact and to draft the article in a very neutral form. It might begin with the words "States establishing permanent missions to the organization...".

23. The CHAIRMAN* said that that suggestion could be examined by the Drafting Committee.

24. Speaking as a member of the Commission, he said that only the United Nations could be considered as having two seats, one in New York and the other at Geneva. He asked the Special Rapporteur whether he regarded the United Nations Office at Geneva as a "seat" or merely an "office".

25. Mr. EL-ERIAN (Special Rapporteur) replied that the question was a difficult one to answer. A case could be made for the proposition that the United Nations had two offices, one in New York and the other at Geneva. States not only accredited representatives for United Nations meetings held at Geneva; they also maintained permanent missions accredited to the Director-General of the United Nations Office at Geneva, who represented the Secretary-General.

26. The CHAIRMAN said he understood the Special Rapporteur to have suggested that the Drafting Committee should consider the proposal to refer to permanent missions "to the organization" rather than "at the seat of the organization". If there were no objection, he would assume that the Commission agreed to refer article 5 to the Drafting Committee.

*It was so agreed.*⁴

ARTICLE 6

27.

Article 6

Functions of a permanent mission

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

- (a) keeping the necessary liaison between the sending State and the organization;
- (b) representing the sending State in the organization;
- (c) negotiating with the organization;
- (d) ascertaining activities and developments in the organization, and reporting thereon to the Government of the sending State;
- (e) promoting co-operation within the organization and assisting in the realization of the purposes and principles of the organization.

28. The CHAIRMAN invited the Special Rapporteur to introduce article 6.

29. Mr. EL-ERIAN (Special Rapporteur) said that article 6 was modelled on the corresponding provision of

² A/CN.4/203/Add.5.

³ See *Yearbook of the International Law Commission, 1957*, vol. I, pp. 9-12.

* Mr. Castrén.

⁴ For resumption of discussion, see 980th meeting, paras. 53-73.

the 1961 Vienna Convention on Diplomatic Relations.⁵ The purpose of the article was to state the main functions of a permanent mission. Paragraphs 2 to 6 of the commentary (A/CN.4/203) explained the reasons for the various provisions which had been included. He drew special attention to sub-paragraph (e), which reflected the hope that the presence of permanent missions would confirm the purpose stated in Article 1, paragraph 4, of the Charter: "To be a centre for harmonizing the actions of nations". The functions set out in sub-paragraph (e) were very important and followed from a paragraph of the Charter that was all too often forgotten.

30. Mr. AGO said that article 6 raised an extremely delicate question. It would be illusory to seek analogies between the subject with which it dealt and that of diplomatic or consular relations. Very often, the representative of a State to an organization was not the head of the permanent mission, but a representative specially designated for a conference or for a session of an organ. The two functions were sometimes combined in the same person, but they nevertheless remained different. Normally, the permanent mission only performed liaison functions; when the State was required to pronounce on an important issue, it did so through a special representative.

31. It was therefore important that article 6 should be worded very carefully, otherwise it would give rise to conflicts of competence between the permanent mission of a State and its representative to conferences or organs. He doubted whether the list of functions of a permanent mission could include all those specified in the draft. In particular, although the function referred to in sub-paragraph (b), "representing the sending State in the organization", was indeed one that could be entrusted to the permanent mission by the sending State, it would be dangerous to make that a general rule.

32. Mr. EUSTATHIADES said he did not really see the need for the words "and developments" in sub-paragraph (d). In sub-paragraph (e), it was obviously a question of co-operation between the sending State and the organization, but it would be better to say so clearly.

33. While sharing the concern expressed by Mr. Ago, he thought the problem he had raised was solved in Part III of the draft,⁶ which dealt with delegations to organs and conferences and provided solutions for the problems that arose when the head of the permanent mission was not the head of the delegation. It might be advisable to add a proviso such as "without prejudice to the provisions of Part III".

34. He had some doubts about sub-paragraph (c), "negotiating with the organization". The permanent mission could certainly be responsible for negotiating with the organization, but that was an exceptional case and it could be covered by the words "*inter alia*" at the beginning of the article.

35. Mr. BARTOŠ said that in solving the problem of the relationship between the competence of permanent missions and that of *ad hoc* representatives of member States, a matter to which he had drawn the Commission's

attention,⁷ it was necessary to refer, first, to the rules of procedure of the organ concerned. Generally speaking, the United Nations did not recognize permanent missions as being entitled to represent their State in the Organization. The rules of procedure of all the major organs, that was to say those dealing with important matters, required the presence of representatives furnished with full powers in due form issued by the competent authority; as a temporary measure, representatives could produce a certificate from the head of the permanent mission attesting that full powers given by the competent organ of the sending State existed, but that certificate was only valid if the full powers were subsequently produced.

36. Moreover, in nearly all organizations, contrary to the rule which the Commission had included in its draft articles on the law of treaties, the head of the permanent mission did not even have competence to perform certain solemn acts, such as the signature and deposit of instruments of ratification, accession or acceptance, unless he was provided with full powers expressly for that purpose.

37. It was therefore incorrect to say that permanent missions represented the State in an international organization; they were more liaison agents than representatives of member States. He had witnessed many conflicts between the secretariats of international organizations and permanent missions regarding the latter's competence, as well as conflicts of powers between *ad hoc* delegations and permanent missions. The Office of Legal Affairs of the United Nations had frequently stressed that permanent missions were not regarded as being invested with general powers. The permanent missions, for their part, had sought such powers, and their claims had found expression in various texts, including General Assembly resolution 257 A (III).

38. In practice, conferences and sessions of different organs were so numerous and lasted so long that many States were temporarily represented at the beginning and the end by a member of their permanent mission, who was replaced during the conference or session by the *ad hoc* representative. Moreover, the functions of permanent missions varied considerably according to the sending State. At Geneva, for example, many permanent missions were appointed to perform extremely wide functions, not only in the United Nations Office and the international organizations at Geneva, but also in other organizations with their headquarters in Switzerland or in neighbouring countries. Conversely, some States strictly limited the competence of their permanent missions and appointed *ad hoc* representatives for all conferences and sessions of organs.

39. Consequently, permanent missions clearly had a representative function, though he believed, like Mr. Ago, that it would be unwise to include in a draft convention such an affirmative rule as the one proposed, which might misrepresent the realities of the situation. A more carefully differentiated and less general formula must be found. In particular, it should be specified that the function of "representing the sending State" was, in principle, subject to limitations. In the Vienna Convention on Diplomatic

⁵ See United Nations, *Treaty Series*, vol. 500, p. 96.

⁶ A/CN.4/203/Add.5.

⁷ See 944th meeting, para. 59.

Relations, the notion of representation was not unrestricted.

40. The term "negotiating" was debatable. Negotiations by permanent missions were no doubt a routine matter in fields such as technical assistance, but for signature of the instruments resulting from such negotiations, special full powers were usually required.

41. To the reservation expressed at the beginning of the article by the words "*inter alia*", it was necessary to add another, such as "subject to any restrictions imposed by the sending State or the organization to which the permanent mission is sent".

42. Lastly, in order to allow for collective diplomacy, it might be advisable also to provide for the function of maintaining relations with the permanent missions of other States to the same organization, for such relations were continually developing and becoming more important. It might, however, be considered that that function was covered by the words "*inter alia*", and he would accept the opinion of the Commission as a whole.

43. Mr. ROSENNE said he understood article 6 as a somewhat generalized statement of the functions of a permanent mission, to be read in the context of the other articles of the draft—especially article 4, which covered many of the points that had been raised.

44. In his opinion, the main general function of a permanent mission was its representative function, set out in sub-paragraph (b), the wording of which, with minor drafting changes, could be made to cover the provisions of sub-paragraphs (a) and (c). That function should, moreover, be set out first. From his own experience, he could say that negotiation with the Secretariat was by no means an uncommon activity; both in New York and at Geneva, it was practically a daily function of permanent missions to the United Nations.

45. He could not agree with the categorical statement in paragraph 5 of the commentary which ruled out altogether the possibility of a permanent mission performing the function of diplomatic protection. There were cases, albeit rare ones, in which quasi-diplomatic protection could only be performed by a permanent mission: for instance, a case involving the international responsibility of an international organization towards a national of the sending State. In a case of that type, the claim would have to be negotiated by the permanent mission.

46. He suggested that the words "in the organization" in sub-paragraph (b) were perhaps too narrow. It might be better to refer to representation "at the organization". The second paragraph of the preamble to General Assembly resolution 257 A (III) referred to the maintenance of liaison by the permanent mission with the Secretariat. He welcomed the inclusion of sub-paragraph (e) and thought that it should follow immediately on the statement of the function of representation at the commencement of the article. He assumed that it included the maintenance of relations with other permanent missions and delegations for whatever lawful purposes the State concerned might desire.

47. Subject to those rather general observations, he found article 6 satisfactory.

48. Mr. AGO urged that the Commission should go to the root of the matter. In his opinion, it was not really the function of a permanent mission to represent "the sending State in the organization". As Mr. Rosenne had just pointed out, its essential function was to represent the State at the organization's secretariat. Only in exceptional cases did it represent the State in other organs of the organization itself. Permanent missions were a relatively new institution, whereas international organizations had existed for a long time; but the word "permanent" itself could not remove the ambiguity. For example, a country might have a permanent representative to the Governing Body of the ILO, and he was generally not the same person as its permanent representative at Geneva, who performed only liaison functions between sessions. The very idea of permanent missions and their importance derived from the large-scale development of secretariats, which had made liaison necessary. It was on those lines that it might perhaps be possible to find a solution to the problems raised by article 6, although many difficulties arose from the differences between the solutions adopted in practice.

49. Mr. ALBÓNICO said he was not entirely clear about article 6, but the discussion had seemed to bring out a distinction between three types of function, or relations between States and international organizations.

50. First, there were relations between member States and the organization itself, its administrative organs and various bodies, or, as Mr. Ago had said, its secretariat. That type of relations appeared to be covered by sub-paragraphs (a) and (e). Secondly, there were relations between member States and the organization as represented in various bodies or conferences, such as the United Nations Special Committee on colonialism, the Group of 31 and various other *ad hoc* committees. The function of conducting those relations was not always performed by the permanent mission; it was sometimes performed by a special representative of ambassador's rank, who was sent by his government to conferences to perform political duties. Thirdly, there were purely administrative functions, such as the compilation of documents, which were performed by a permanent mission at the request of some body, for example, the International Law Commission. Such purely administrative functions as those referred to in sub-paragraph (d) were quite clear to him, but he had some doubts about sub-paragraphs (b) and (c) in so far as they referred to relations very frequently conducted by representatives of States to such an organization as the United Nations, who held ambassador's rank but were not members of a permanent mission.

51. Mr. USHAKOV said he wished first to point out certain weaknesses in the French translation of article 6. In sub-paragraph (d), the French version referred to "*les activités de l'organisation et les événements qui s'y produisent*", where the English was "activities and developments in the organization". The English preposition "in" should have been translated by "*au sein de*" instead of by "*de*" and "*y*". Similarly, in sub-paragraph (e) the English preposition "*within*" had been translated by "*avec*" instead of "*au sein de*". The Drafting Committee would have to correct those errors.

52. The wording of sub-paragraph (c) raised a question

of both drafting and substance. What did the words "with the organization" really mean? The permanent mission negotiated with the Secretary-General, not with the organization itself. Moreover, if the organization itself was to be authorized to negotiate, the competent organ, for example the General Assembly, had to authorize the Secretary-General to negotiate. If possible, the wording of that sub-paragraph should be made clearer, fuller and more precise.

53. Sub-paragraph (d) was also open to objection as to both drafting and substance, because a State could give full powers to special representatives to represent it in different organs of the organization. It was necessary to allow for that possibility and to prevent the separate powers of the permanent mission and the special delegation of the same State from cancelling each other out or conflicting.

54. With regard to sub-paragraph (b), it could be held that representation was the task of the head of the permanent mission, rather than of the mission itself. In principle, a member State of an international organization was represented by the head of its permanent mission, his assistant or some other person; they alone were entitled to represent the State in the organization or its organs.

55. Subject to those reservations, which called for redrafting of the text, he approved of the entirely correct idea on which the article was based.

56. Mr. ROSENNE said he thought it might be difficult to accept Mr. Ago's approach, because a permanent mission was accredited to an international organization as such and not to its secretariat. The last operative paragraph of General Assembly resolution 257 A (III) read as follows: "*Instructs* the Secretary-General to submit, at each regular session of the General Assembly, a report on the credentials of the permanent representatives accredited to the United Nations". There, the accreditation was clearly to the Organization. Similarly, the Agreement between the Italian Government and FAO referred to "resident representatives to FAO", while the Agreement between the French Government and UNESCO spoke of "permanent delegates accredited to the Organization". The Council of Europe, on the other hand, used the more elliptical expression "permanent representative at the seat of the Council of Europe".

57. He thought that care should be taken both not to exaggerate and not unduly to restrict the functions of permanent missions. Moreover, while agreeing that the Commission should not try to base all its articles on United Nations practice, he felt strongly that it should not reject the rich experience gained by the United Nations. In that connexion, he drew attention to the Secretary-General's report of 15 December 1967 on Permanent Missions to the United Nations.⁸ That report showed that all but two Member States had established permanent missions at Headquarters in New York. Eighty-one of the permanent representatives at Headquarters were authorized to represent their governments in all organs of the United Nations, while only six were restricted to representation in certain specific organs. One country, in fact,

had authorized both its permanent and its deputy representative to represent it in all organs. The diversity of practice in different international organizations was probably not really necessary, and he hoped that by its present work the Commission would be able to simplify the whole question of permanent missions and their accreditation.

58. He suggested that the difficulties which remained might be overcome by combining articles 5 and 6 in a single article.

59. Mr. REUTER said that in view of the explanations given by the Special Rapporteur and the comments made by members, the Commission would probably decide to retain a provision on the functions of permanent missions, either combined with article 5 or left as a separate article, and would refer that provision to the Drafting Committee. The task of the Drafting Committee would differ, however, according to the answers given to three questions.

60. First, was article 6 intended to state a legal rule or was it descriptive? He was not opposed to a descriptive article, but the terms used in it would have to be extremely flexible. For example, the article should not say that the functions "consist in" but that they "are generally connected with the following activities".

61. If it was decided that the article stated a legal rule, a second and third question had to be answered. The second question was whether the article laid down residuary legal rules with regard to organizations. If so, it should be worded much more narrowly and the terms used should be carefully weighed in order to restrict to a minimum the functions enumerated in the article.

62. The third question was whether the legal rules were intended to govern relations between the permanent mission and the host State. The functions enumerated in the text all concerned relations with the organization, not with the host State. But, because they concerned only relations with the organization, it followed *a contrario* that, with respect to the host State, a permanent mission could deal only with relations concerning the organization. Mr. Bartoš had referred to other tendencies in the functions of a special mission. If article 6 was to be given legal effect, the rule might be that with respect to host States, unless specially agreed, a permanent mission could deal only with questions concerning the relations of a member State with the organization.

63. Mr. YASSEEN said he thought an article stating the functions of permanent missions was indispensable. Like the draft article submitted, it should give a non-exhaustive enumeration, so as not to close the door to further development.

64. The most important point in the article was representation. He therefore considered that sub-paragraph (b) should come first. All the other activities of the permanent mission followed from the fact that it represented the member State in the organization. Although, as Mr. Ushakov had said, the function of representation was exercised by one member of the permanent mission only, for example, the head of the mission, that did not mean that representation was not a function of the permanent mission. It could be argued that it was a function of the

⁸ Document A/7000.

permanent mission, but that the function might be subject to other rules—either rules of the organization or rules laid down by the sending State. The position varied from one organization to another, and article 6 should not state a rule which took precedence over the particular rules of the various organizations.

65. In order to sit in the Security Council, the representative of a State had to have special credentials, but that did not prevent the permanent representative or the permanent mission from being representative. The question of who would represent a member State in a particular organ could be settled by reference to the internal law of the organization.

66. The drafting of article 6 could be improved. For instance, a permanent mission could negotiate not only with the organization, but also with representatives of other member States, and sub-paragraph (c) should be worded in more general terms to allow for that possibility.

67. The other activities mentioned were genuine functions of permanent missions. Sub-paragraph (e) stated a purpose for the State's participation in the activities of the international organization rather than a function of the permanent mission, but it was nevertheless useful to express that idea.

68. Mr. AMADO observed that the difficulties to which speakers had referred related to the drafting of the article. They only concerned the substance consequentially, which showed the merit of the Special Rapporteur's work.

69. He did not understand what was meant by saying that States were accredited to the Secretariat. Accreditation was to an "entity". A permanent diplomatic mission was accredited to the government of a State. But the United Nations had no government; its Secretariat was not a government. A permanent mission was accredited to the organization.

70. He noted that there was not a single line in the text of the report which was not based on the opinion and practice of the Legal Counsel of the United Nations. The Special Rapporteur had been careful not to venture any further.

71. He agreed with Mr. Reuter that it was necessary to say whether article 6 laid down a legal rule or whether it was descriptive.

72. Mr. USTOR said that the function of a permanent mission was not merely to maintain liaison between the sending State and the organization; in addition, it had to engage in multilateral diplomacy, representing the State vis-à-vis the representatives of other States. Hence, while he agreed that the promotion of co-operation within the organization, referred to in sub-paragraph (e), was an important function of a permanent mission, he thought that more stress should be placed on its function of maintaining liaison between the sending State and other States.

73. In general, however, he was inclined to think that article 6 could stand as it was, subject to certain drafting changes. The difference between temporary and permanent missions was a question of credentials, which could be dealt with later on in the draft articles. It was true that States sometimes had separate delegations to represent them in different organs of an organization, but it was

also customary for permanent missions to keep experts on their staff who could be made available to such organs when needed.

74. Mr. EUSTATHIADES said he thought that article 6 should give a general outline of the functions most frequently performed by a permanent mission, without implying that those functions would in fact be performed by every mission; conversely, it should be made clear that functions not expressly mentioned might be performed. He was in favour of retaining the words "*inter alia*".

75. As to the main question of representation, according to the report of the Secretary-General on Permanent Missions to the United Nations, States Members of the United Nations could be divided into three categories: those, twenty-seven in number, which had not authorized their permanent missions to represent them in United Nations organs; those which had authorized their permanent missions to represent them in all organs; and those which had authorized their permanent missions to represent them only in certain organs.

76. Article 6 should be considered in relation to article 4. Two approaches were then possible: either article 6 would enumerate precisely the minimum of functions which every permanent mission to every organization should have, or it would enumerate, but not exhaustively, all the functions which could be entrusted to a permanent mission. In the latter case, by application of the reservation stated in article 4, reference would be made to the particular rules of each organization to determine which of the functions enumerated in article 6 were entrusted to the permanent mission to the organization concerned. But the article should then be re-worded to read: "The functions with which a permanent mission may be entrusted are *inter alia*:". Those introductory words would be followed by a statement of the context in which the functions of permanent missions to a given organization would be defined. Article 11 (A/CN.4/203/Add.1) provided an example of how the basic problem of representation could be solved on those lines.

77. The CHAIRMAN,* speaking as a member of the Commission, said he was in favour of retaining article 6, which he considered necessary. He shared Mr. Ushakov's objections to the French version. The word "*notamment*", used to translate the words "*inter alia*" in the English version, gave too strong an impression that the functions enumerated were the principal functions.

78. He proposed that the expression "sending State", in sub-paragraphs (a), (b) and (d), be replaced by "member State", which was defined in article 1 of the draft.

79. He agreed with Mr. Reuter that article 6 would have to be formulated differently according to whether the intention was to state a legal rule or to make the article descriptive. He himself favoured a descriptive article, because its drafting would raise fewer problems. He therefore accepted the formulation before the Commission. There was no doubt that the principal functions of a permanent mission were those connected with relations between the member State and the organization. Some of the draft articles, however, dealt with questions con-

* Mr. Castrén.

cerning relations with the host State. The wording of article 6 could be extended to cover that function.

80. Several speakers had dwelt on the notion of representation, and different opinions had been expressed on the right of representation and the scope of that function. Some speakers regarded it as the most important function, and it had been suggested that it should be listed first. He himself thought it preferable for the article to be in general terms. The intention was not to exclude other forms of representation; but it could not be denied that the permanent mission had a certain representational function. Mr. Rosenne had drawn the Commission's attention to the fact that the official documents of the United Nations and the specialized agencies used the term "permanent representatives".

81. With regard to sub-paragraph (c), it was true that a permanent mission could negotiate, but not on all questions. For example, it could not conclude a treaty, as was clear from article 12 (A/CN.4/203/Add.2). The draft contained other articles restricting the right of representation as well as that of negotiation.

The meeting rose at 6 p.m.

951st MEETING

Tuesday, 11 June 1968, at 10 a.m.

Chairman: Mr. Erik CASTRÉN

Present: Mr. Ago, Mr. Abónico, Mr. Amado, Mr. Bartoš, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tammes, 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 6 (Functions of a permanent mission) (*continued*)¹

1. The CHAIRMAN invited the Commission to continue consideration of article 6.

2. Mr. KEARNEY said that to some extent he shared Mr. Ago's concern regarding the delicate problem of representation raised by sub-paragraph (b). The wording of that provision could be construed as having a bearing on the internal political arrangements of the sending State regarding representation in international organizations. It could be taken as prejudicing the question who was entitled to represent a particular State, and difficulties might then arise when the sending State wished to appoint some prominent person to act as its representative for a

particular purpose, instead of the permanent representative.

3. He supported the idea that article 6 should be cast in the form of a descriptive article, which would largely avoid those political difficulties.

4. Mr. USHAKOV said he wished to refer to the question, raised by Mr. Reuter, whether article 6 was descriptive or whether it stated residuary legal rules. In his opinion, the article was descriptive, like article 3 of the Vienna Convention on Diplomatic Relations,² which began similarly, with the words "The functions of a diplomatic mission consist, *inter alia*, in", and went on to enumerate various functions. It would be difficult to regard such a formula as stating a rule: the word "consist" suggested a description rather than a rule, and the words "*inter alia*" showed that the description was not exhaustive. At the most it might be said that there was a mixture of two elements in such articles, the content of which did represent residuary legal rules to some extent. The drafting of article 6 could probably be improved, but no formal statement of a residuary legal rule should be attempted in it.

5. Mr. ROSENNE suggested that, in order to overcome the difficulties that had been pointed out, the words "consist *inter alia* in", should be replaced by the words "comprise in particular", the formula used in article 72 of the 1966 draft on the law of treaties.³

6. Mr. EL-ERIAN (Special Rapporteur) said that apart from some drafting questions and certain discrepancies between the English and French texts, the main issues raised had related to the nature of the article and the two principal functions of representation and negotiation.

7. It had been argued that a permanent mission did not properly possess the function of representation, which belonged to *ad hoc* representatives at meetings of the organization concerned. But a distinction should be made between representatives of States to a meeting of an organ of the organization, who sometimes included the permanent representative, and the representation of States to the organization as an entity. The permanent representative's main duty was to provide liaison with the Secretary-General, who, in that context, acted on behalf of the organization.

8. Paragraph 2 of draft article 6 on the law of treaties, adopted by the Committee of the Whole at the first session of the Vienna Conference, specified that "representatives accredited by States to an international conference or to an international organization or one of its organs" were considered as representing their State "for the purpose of the adoption of the text of a treaty in that conference, organization or organ".⁴ The Vienna Conference had thus accepted the idea that the permanent representative was accredited to the organization itself.

9. Some doubts had been expressed regarding negotiation although, as stressed by several members, it was part of the daily work of a permanent representative,

¹ See previous meeting, para. 27.

² See United Nations, *Treaty Series*, vol. 500, p. 98.

³ See *Yearbook of the International Law Commission*, 1966, vol. II, p. 269.

⁴ A/CONF.39/C.1/L.370.