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Summary record of the 1130th meeting

Topic:
Representation of States in their relations with international organizations

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50. The present discussion had also confirmed his belief that item 5 of the agenda was an entirely new topic, neither the scope nor the implications of which were as yet clearly discernible. The work to be done would not consist merely of adapting the provisions of the Vienna Convention on the Law of Treaties to other types of agreement. Much applied research would be necessary and many difficulties would have to be faced and surmounted. It would take a great deal of time and the rate of progress would depend on the availability of information, as was stressed in the penultimate sentence of paragraph 8 of the Sub-Committee's report, for what the Commission was now taking up was an independent topic, not a mere appendix to something else.

51. Having been a member of the Sub-Committee under the able guidance of Mr. Reuter, it gave him great pleasure to see his unanimous nomination for the office of special rapporteur—the second occasion in the history of the International Law Commission on which a prominent representative of French legal culture had been selected for such a post.

52. The CHAIRMAN suggested that the Commission approve the report of the Sub-Committee (A/CN.4/250).

The Sub-Committee's report was approved.

53. The CHAIRMAN suggested that the Commission appoint Mr. Reuter special rapporteur for the topic of treaties concluded between States and international organizations or between two or more international organizations.

Mr. Reuter was appointed by acclamation.

54. Mr. REUTER (Chairman of the Sub-Committee) said he assumed that approval of the Sub-Committee's report implied approval of the recommendations in paragraph 15, sub-paragraphs (ii) and (iii).

55. He willingly accepted the post of special rapporteur, provided always that he was re-elected to the Commission after the expiry of his present term. In any event, he wished to thank the members of the Commission for the friendship and esteem they had shown him.

56. He was quite willing to adopt an empirical approach to the question of the scope of the work. He thought it would be normal, however, for the special rapporteur to start with the United Nations and its specialized agencies, not only because the Commission was an organ of the United Nations, but also for a practical reason: it was on those organizations that the Secretariat could most quickly provide the necessary information.

57. Lastly, in accepting the post of special rapporteur, he was aware that, in the performance of his task, national and personal standpoints must often give way to those of the Commission. In that respect, he would try to follow the high example set by former special rapporteurs, notably Sir Humphrey Waldock for the Law of Treaties.

58. The CHAIRMAN confirmed that the Commission had indeed approved the recommendations in paragraph 15 of the report.

59. Mr. USHAKOV said that, although those recommendations had been approved in principle, they would have to be more precisely formulated in the Commission's report to the General Assembly.

60. The CHAIRMAN said that the General Rapporteur would bear that comment in mind.

The meeting rose at 5.45 p.m.

1130th MEETING

Tuesday, 6 July 1971, at 10.20 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 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)

[Item 1 of the agenda]

(resumed from the 1127th meeting)

FIRST AND SECOND REPORTS OF THE WORKING GROUP

1. The CHAIRMAN said the Commission would remember that on 25 May its officers had recommended that a working group be set up to prepare, on the basis of the texts already approved by the Commission, a set of consolidated draft articles on relations between States and international organizations. The officers of the Commission had also recommended that the group should consist of Mr. Kearney, as Chairman, Mr. Ago, Mr. Ushakov and Sir Humphrey Waldock. Those recommendations had been approved by the members of the Commission then present at Geneva.¹ The Working Group had now submitted its first and second reports to the Commission (A/CN.4/L.174 and Add.1 and 2) and he invited Mr. Kearney to introduce them.

2. Mr. KEARNEY (Chairman of the Working Group) said he would like to make a few comments on the Working Group's method of approach, partly as a supplement to the written introduction (A/CN.4/L.174 and

¹ See 1106th meeting, para. 85.

Add.1) and partly to explain how the Group had arrived at the structure of the consolidated draft of 81 articles now before the Commission (A/CN.4/L.174/Add.2).

3. The Working Group had decided at the outset that it was not possible to handle all the different parts of the draft at one time and that the only reasonable approach was to deal with the various problems as they arose. It had begun by considering the introductory articles; next, it had examined the question whether it was possible to combine the articles on permanent missions with those on permanent observer missions; and lastly, it had considered the possibility of consolidating the articles on delegations with those on permanent observer missions.

4. The Commission had found that it was possible to combine the articles on permanent missions with those on permanent observer missions, but that the differences between the articles on missions and those on delegations to organs and conferences were so wide that a consolidation of those groups was not practicable. The Working Group, however, had found a sufficient number of articles that applied generally to both missions and delegations and had therefore placed them in a separate part entitled "General Provisions". As a result, the articles as now submitted consisted of Part I: Introduction, containing articles 1 to 4; Part II: Missions to international organizations, containing articles 5 to 40; Part III: Delegations to organs and conferences, containing articles 41 to 70; and Part IV: General provisions, containing articles 71 to 81.

5. The Group had come early to the conclusion that by using an adequate set of definitions it could greatly facilitate the work of consolidation and it had therefore relied heavily on that device. The resulting set of 81 draft articles was probably as short and as reasonable an arrangement as could be achieved, though the question of a clause on the settlement of disputes was still outstanding. In connexion with the work of consolidation, he wished to reiterate the Working Group's tribute to the devoted service of its Secretary, Mr. Valencia-Ospina.

6. He would suggest that the Commission begin its consideration of the draft articles with article 1, because an examination of that article was a necessary prerequisite for an understanding of how the remainder of the draft functioned.

7. Mr. USHAKOV, Sir Humphrey WALDOCK and Mr. AGO associated themselves with the tribute paid to the Secretary of the Working Group for his contribution to the work.

8. Mr. EL-ERIAN (Special Rapporteur) said he was very grateful to the Working Group and its Chairman for the admirable work they had accomplished.

9. Mr. YASSEEN said he supported the suggestion that the Commission should begin immediately with article 1; it had reached a late stage in its work and members now had sufficiently precise ideas on the meanings to be given to the various terms.

10. Mr. BARTOŠ said that thanks to the successful efforts of the Working Group the Commission could now tackle the final stage of its work on the draft articles and thus complete its task of codification in four parts: diplomatic relations, consular relations, special missions and relations between States and international organizations.

11. The set of articles now before the Commission was the outcome of a joint endeavour in which the Special Rapporteur, despite his many other duties, the Drafting Committee, the Working Group and the Commission as a whole had all actively participated. Since the Working Group had collaborated with the Drafting Committee, there was no need for the Commission to reconsider certain articles which the Drafting Committee had revised without reference to it; the Commission could proceed directly to the adoption of the text article by article, on the understanding that the spokesman for the Working Group or the Chairman of the Drafting Committee, as appropriate, would give the Commission any explanations it needed concerning differences between the articles proposed by the Working Group and those the Commission had provisionally approved on the recommendation of the Drafting Committee. It would also be helpful for the Commission to know which texts had not been submitted to it by the Drafting Committee, so that it could give them additional attention. Where necessary, the Special Rapporteur could confirm that the ideas expressed in his report and the Commission's decisions concerning them had been duly respected, or ask that the reasons for any changes be explained.

CONSOLIDATED DRAFT ARTICLES PROPOSED BY THE WORKING GROUP

12. The CHAIRMAN invited the Commission to consider the consolidated draft articles proposed by the Working Group (A/CN.4/L.174/Add.2) article by article and to adopt each article finally, if approved.

PART I. *Introduction*

ARTICLE 1²

13.

Article 1

Use of terms

1. For the purposes of the present articles:

- (1) "international organization" means an inter-governmental organization;
- (2) "international organization of universal character" means an organization whose membership and responsibilities are on a world-wide scale;
- (3) "Organization" means the international organization in question;
- (4) "organ" means:
 - (i) any principal or subsidiary organ of an international organization, or
 - (ii) any commission, committee or sub-group of any such organ, in which States are members;

² Formerly articles 1, 51 and 78.

- (5) "conference" means a conference of States convened by or under the auspices of an international organization, other than a meeting of an organ;
- (6) "permanent mission" means a mission of permanent character, representing the State, sent by a State member of an international organization to the Organization;
- (7) "permanent observer mission" means a mission of permanent character, representing the State, sent to an international organization by a State not member of the Organization;
- (8) "mission" means, as the case may be, the permanent mission or the permanent observer mission;
- (9) "delegation to an organ" means the delegation sent by a State to represent it in the organ;
- (10) "delegation to a conference" means the delegation sent by a participating State to represent it at the conference;
- (11) "delegation" means, as the case may be, the delegation to an organ or the delegation to a conference;
- (12) "host State" means the State in whose territory:
- (i) the Organization has its seat or an office, or
 - (ii) a meeting of an organ or a conference is held;
- (13) "sending State" means the State which sends:
- (i) a mission to the Organization at its seat or to an office of the Organization, or
 - (ii) a delegation to an organ or a delegation to a conference;
- (14) "permanent representative" means the person charged by the sending State with the duty of acting as the head of the permanent mission;
- (15) "permanent observer" means the person charged by the sending State with the duty of acting as the head of the permanent observer mission;
- (16) "head of mission" means, as the case may be, the permanent representative or the permanent observer;
- (17) "members of the mission" means the head of mission and the members of the staff;
- (18) "head of delegation" means the delegate charged by the sending State with the duty of acting in that capacity;
- (19) "delegate" means any person designated by a State to participate as its representative in the proceedings of an organ or of a conference;
- (20) "members of the delegation" means the delegates and the members of the staff;
- (21) "members of the staff" means the members of the diplomatic staff, the administrative and technical staff and the service staff of the mission or the delegation;
- (22) "members of the diplomatic staff" means the members of the staff of the mission or the delegation who enjoy diplomatic status for the purpose of the mission or the delegation;
- (23) "members of the administrative and technical staff" means the members of the staff employed in the administrative and technical service of the mission or the delegation;
- (24) "members of the service staff" means the members of the staff employed by the mission or the delegation as household workers or for similar tasks;
- (25) "private staff" means persons employed exclusively in the private service of the members of the mission or the delegation;
- (26) "premises of the mission" means the building or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purpose of the mission, including the residence of the head of mission;

(27) "premises of the delegation" means the building or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purpose of the delegation, including the accommodation of the head of delegation.

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms in the Charter of the United Nations and other international organizations of universal character.

14. Mr. KEARNEY (Chairman of the Working Group), introducing article 1, said that the text now proposed reflected a number of changes and additions to the sub-paragraphs of article 1 (A/CN.4/241/Add.1) and of the other articles on the use of terms, namely, article 51 (A/CN.4/241/Add.4) and article 78 (A/CN.4/241/Add.5) which had been proposed to the Commission at various stages.

15. The first change was the introduction in paragraph 1, sub-paragraph (6) and (7) of the words "representing the State" to replace the previous reference to the "representative character" of the mission concerned; the order of the words had also been altered so that the reference to the permanent character of the mission now took first place. The purpose of those changes was to align the thought in sub-paragraphs (6) and (7) with the use of the form of words "representing the State" in other articles of the draft. They also served to clarify the meaning of representation in connexion with the provisions on the terms "permanent mission" and "permanent observer mission" in paragraph 1, sub-paragraphs (6) and (7).

16. Paragraph 1 (8) was a new provision, which dealt with the meaning of the term "mission"; it provided the basis of the Working Group's method of consolidating the articles on permanent missions with those on permanent observer missions. In the consolidated Part II, dealing with both types of mission, the term "mission" was used to refer to a permanent mission or to a permanent observer mission as the case might be.

17. Similarly, paragraph 1 (11), on the meaning of the term "delegation", had been introduced to make it possible to use that term in Part III to refer to a delegation to an organ or to a delegation to a conference, as the case might be.

18. The provision on the meaning of the term "host State", which now appeared in paragraph 1 (12), had been reworded so as to make clear the difference in meaning between that term as applied to a mission to an organization and as applied to a delegation to a meeting of an organ or to a conference.

19. Similarly, the provision on the meaning of "sending State", which now appeared in paragraph 1 (13), had been reworded so as to make it clear that there were two different situations: that of the sending State of a mission to an organization and that of the sending State of a delegation to an organ or to a conference.

20. Paragraph 1 (16), on the meaning of the term "head of mission", was a new provision which was necessary because many of the articles stated the obligations, or the rights or privileges, of a permanent representative or a permanent observer.

21. The provision in paragraph 1 (18), on the meaning of the term "head of delegation", had been introduced in order to indicate the manner in which the head of a delegation was designated.
22. The term "delegate", dealt with in paragraph 1 (19), was a new one, which had been introduced in order to avoid the difficulties involved in the use of the term "representative". It served among other things to avoid confusion between a permanent representative and a delegate who represented the sending State in the proceedings of an organ or of a conference.
23. Paragraph 1 (20), on the meaning of the term "members of the delegation", and the following six sub-paragraphs, which dealt with the terms "members of the staff", "members of the diplomatic staff", "members of the administrative and technical staff", "members of the service staff", "private staff" and "premises of the mission", simply consolidated the definitions given in earlier drafts.
24. Lastly, a new provision on the meaning of the term "premises of the delegation" had been introduced as paragraph 1 (27).
25. The fact that there were more than twenty-six sub-paragraphs in paragraph 1 had made it necessary to identify them by numbers instead of letters. Further sub-paragraphs might have to be added if it was decided to include in the draft a section on observer delegations, as a number of additional terms would then have to be dealt with.
26. Paragraph 2 of article 1 was a standard disclaimer clause commonly used in treaty provisions on the use of terms.
27. Mr. USHAKOV proposed that, in paragraph 1, sub-paragraphs (6) and (7) of the French version, the words "*d'une mission ayant un caractère permanent et représentatif de l'Etat*" be replaced by the words "*d'une mission permanente ayant un caractère représentatif de l'Etat*", which corresponded more closely to the original English wording.
28. In paragraph 1 (27), the word "*demeure*" might render the English term "*accommodation*" better than the word "*logement*".
29. Mr. ROSENNE said the Working Group was to be commended for having provided the Commission with an admirable basis for the final stage of its work.
30. With regard to the provision in paragraph 1 (3), he wished to draw attention to the important linguistic observations by the United Nations Secretariat in document A/CN.4/L.162/Rev.1, concerning the use of the term "Organization" with an initial capital letter. He assumed that those observations had been taken into account by the Drafting Committee.
31. There was perhaps some ambiguity in the provision in paragraph 1 (9), on the meaning of the term "delegation to an organ", and he would like to know whether the ambiguity was intentional.
32. The meaning of the term "delegation to a conference" was described in paragraph 1 (10) by reference to "a participating State", the term "participating" having the same meaning as in the Vienna Convention in the Law of Treaties. He noted that there was no corresponding qualification in paragraph 1 (9), which stated that the term "delegation to an organ" meant the delegation "sent by a State to represent it in the organ." If the intention was to limit the scope of that provision to States which were members of the organ in question, that should be stated expressly. If, on the other hand, it was intended to cover also the case of a delegation sent by a State member of the organization which was not a member of the organ, that fact should be clearly indicated.
33. With regard to paragraph 2, he had some doubts about the singling out of the United Nations Charter for specific mention. In addition, he thought that the wording of the paragraph did not state its intention clearly enough. As he saw it, the purpose of paragraph 2 was to make it clear that the provisions contained in paragraph 1, sub-paragraphs (1) to (27), on the use of certain terms, were without prejudice to the meaning given to those terms in the general usage of the organization in question. International organizations had developed their own uses of terms, especially with regard to delegations. In the case of the United Nations, for example, it was not only a question of the application of the Charter; there was also the wider question of the practice of the Organization.
34. The CHAIRMAN invited the Commission to consider article 1 paragraph by paragraph.
35. Mr. CASTRÉN said that he would like first to comment on the title of Part I, "Introduction", which had replaced the former title "General provisions", now given to Part IV. He proposed that the title "General provisions" be restored to Part I, whose four articles were not introductory. Part IV could then be entitled "Common provisions", since the articles it contained applied to permanent missions, permanent observer missions and the various kinds of delegations to organs and conferences. Furthermore, the article on non-discrimination, which had been transferred from Part III of the draft to Part IV, should be placed at the end of Part I as article 5.
36. Mr. EL-ERIAN (Special Rapporteur) said that in his sixth report (A/CN.4/241, para. 31), he himself had suggested the title "Introduction" for Part I of the draft, consisting of articles 1 to 5, so as to reserve the title "General provisions" for the concluding part, which would contain other articles of general applicability. If the title of Part I were now to be changed from "Introduction" to "General provisions", it would be extremely difficult to find a title for the concluding part of the draft.
37. Sir Humphrey WALDOCK said that exactly the same problem had arisen in connexion with the law of treaties. The Commission had formulated two sets of general provisions and had given the first of them the title "Introduction", which was now the title of Part I of the 1969 Vienna Convention on the Law of Treaties,

containing articles 1 to 5 of that Convention.³ The other set of general articles had been placed under the heading "General provisions", which was now the title of Part V, section 1 of the Vienna Convention, containing articles 42 to 45 of that Convention.⁴ The arrangement was a convenient one and was also suitable in the present instance. The separate question could of course still arise whether a particular article belonged in the introduction or in the general provisions.

38. Mr. EUSTATHIADES said that the title of Part I was not very appropriate, as Mr. Castrén had rightly observed, but it could not be called "General provisions" either, since that title was generally used for clauses carried over from one instrument to another. Part IV could be entitled "Common provisions".

39. Mr. AGO said that he did not agree with either Mr. Castrén or Mr. Eustathiades. The contents of Part I showed that it was properly entitled "Introduction", since it did not contain a single rule creating rights or duties, but only provisions relating to the use of terms, the scope of the articles, and the relationship between the articles and other instruments. Hence "Introduction" was the proper term to use there, and the title "General provisions" was certainly suitable for Part IV, which applied to the whole of the remainder of the draft.

40. Mr. CASTRÉN said if the majority of the Commission found the present title acceptable he would not press his proposal.

41. Mr. KEARNEY (Chairman of the Working Group) said that the Working Group had spent a considerable amount of time dealing with the problem raised by Mr. Castrén, but had been unable to find any better title than "Introduction".

42. The CHAIRMAN said that if there were no further comments he would take it that the Commission accepted the title "Introduction".

The title of Part I was adopted.

Paragraph 1 (1)

Paragraph 1 (1) was adopted.

Paragraph 1 (2)

Paragraph 1 (2) was adopted.

Paragraph 1 (3)

43. Mr. ROSENNE said he had already commented on the use of the term "Organization" with an initial capital letter. He hoped its use in that form, both in paragraph 1 (3) and throughout the text of the draft articles, would be given careful consideration.

44. Mr. YASSEEN asked whether the definition in paragraph 1 (3) might not introduce a new element by comparison with the definitions in paragraphs 1 (1) and 1 (2).

45. Mr. AGO, speaking as Chairman of the Drafting Committee, which had drafted the definition, said that

the purpose of paragraph 1 (3) was to indicate that when the word "Organization" appeared in any article with a capital "O", it designated the international organization referred to in that article. By the terms of article 2, which defined the scope of the articles, the organizations in question were always of a universal character.

46. Mr. USTOR suggested that that point be explained in the commentary.

47. Mr. EL-ERIAN (Special Rapporteur) said that the definition of the term "Organization" in paragraph 1 (3) was based on a similar provision to be found in a large number of treaties concluded between States and international organizations.

48. The CHAIRMAN said that if there were no further comment he would take it that the Commission accepted paragraph 1 (3) without change.

Paragraph 1 (3) was adopted.

Paragraph 1 (4)

49. Mr. ALCÍVAR suggested that sub-paragraph (ii) be amended to read: "any commission, sub-commission, committee, sub-committee, group or sub-group . . .".

50. In the Spanish version of the same sub-paragraph he found the wording "*en el que Estados sean miembros*" unsatisfactory.

51. Mr. SETTE CÂMARA supported the amendment suggested by Mr. Alcívar.

52. Mr. USTOR said he did not see any good reason for dividing the definition into two sub-paragraphs. To his way of thinking, the bodies referred to in sub-paragraph (ii) were covered by the term "subsidiary organ" in sub-paragraph (i).

53. Mr. KEARNEY (Chairman of the Working Group) said that the Working Group's main task had been to arrange paragraph 1 (4) in such a way as to make it clear that the phrase "in which States are members" modified both sub-paragraphs.

54. With regard to the amendment suggested by Mr. Alcívar, he thought the term "sub-group" was broad enough to include any other possible division, such as "sub-commission" or "sub-committee".

55. Mr. Ustor had criticized the division of paragraph 1 (4) into sub-paragraphs (i) and (ii), but he thought that distinction had a certain utility in view of the great diversity of international organizations. The real question was whether a temporary committee could be regarded as an organ of an organization, and he himself was not sure that the law was sufficiently developed for it to be possible to say definitely what was and what was not an organ of an organization.

56. Mr. ROSENNE suggested that sub-paragraphs (i) and (ii) might be combined in one sentence to read: "'organ' means any principal or subsidiary organ of an international organization, or any commission, committee or sub-group thereof, in which States are members".

57. Mr. REUTER said that, after a good deal of hesitation, he had concluded that the wording proposed

³ *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference*, pp. 289-290.

⁴ *Ibid.*, p. 295.

by the Working Group was a good definition of the term "organ". The conjunction "or" gave it the necessary flexibility.

58. Mr. EUSTATHIADES observed that there were commissions, committees and groups whose members were individuals and not States members of the organization in question. He was thinking of United Nations conciliation and mediation commissions and organs of organizations such as the International Labour Organisation (ILO). The phrase "in which States are members" would seem to exclude such organs from the definition.

59. Mr. TAMMES said it might perhaps be better to delete sub-paragraph (ii), since the bodies it referred to were already covered by the term "subsidiary organ" in sub-paragraph (i). The latter term was well established in United Nations practice, since it was used in Articles 22 and 29 of the Charter, and its meaning had been analysed by the International Court of Justice.

60. Mr. AGO said that it had not been easy to draft paragraph 1 (4). Taking everything into consideration, the wording eventually proposed seemed the safest, although the solution originally adopted had been the one advocated by Mr. Rosenne.

61. The reason why the definition had been divided into two sub-paragraphs was to make it quite clear that the words "in which States are members" applied to both sets of bodies.

62. In reply to Mr. Eustathiades, he pointed out that, even in an international organization like the ILO, the organs included representatives of States as well as non-governmental representatives.

63. He was not against adding to the enumeration in sub-paragraph (ii), though its scope seemed clear enough.

64. Mr. BARTOŠ said he was glad the Working Group had used the word "subsidiary" and not "auxiliary". A subsidiary organ was an organ which, by virtue of a particular instrument, replaced a major organ in the exercise of a specific competence, whereas an auxiliary organ confined itself to carrying out the instructions it received. The terminology employed corresponded to that used in Article 22 of the Charter.

65. Mr. ROSENNE said he could accept the limitation implicit in the words "in which States are members", but the Commission should be clearly aware of that limitation. As paragraph 1 (4) was worded at present, it seemed that it would not apply to the International Court of Justice itself, although it might apply to delegations representing the parties in cases before the Court. It should also be borne in mind that United Nations practice recognized conciliation commissions and investigatory bodies composed of individuals who were not, strictly speaking, representatives of States.

66. Mr. ALCÍVAR said that there were obviously different kinds of organs, not all of which were composed of representatives of States. The Judges of the International Court of Justice, for example, which was the principal legal organ of the United Nations, did not represent the States from which they came. Similarly,

the Commission itself, which was a subsidiary organ of the General Assembly, was composed of twenty-five members who served purely in their personal capacity.

67. He agreed with Mr. Ustor and Mr. Tammes that sub-paragraph (ii) was unnecessary. In particular, the words "in which States are members" should be deleted, since they applied exclusively to that sub-paragraph.

68. Mr. USHAKOV said he was not sure whether paragraph 1 (4), as drafted, could apply to organs other than those composed exclusively of States.

69. Mr. EUSTATHIADES said he recognized that the whole system of the draft excluded organs, commissions and committees whose members were not States, but he thought that at least some mention should be made, in the commentary, of organs of mixed membership and organs consisting solely of members that were not States, since they formed a category which was likely to expand very considerably.

70. Mr. REUTER said that the question raised by Mr. Eustathiades had already been answered: the draft articles were not to apply to organs consisting of independent persons. That being so, the words "in which States are members" were perfectly clear, at least in French. With regard to the example given by Mr. Rosenne, a delegation sent by a State to plead before the International Court of Justice was not a "delegation to an organ" within the meaning of paragraph 1 (9).

71. Mr. YASSEEN said he thought the whole system of the draft showed that it was not intended to apply to organs composed of experts. The proposed text should therefore be retained. The word "sub-group" should be taken to apply to any group of persons and not be given a precise technical meaning.

72. Mr. AGO confirmed that the draft articles related only to representatives of States; consequently, only organs comprising States could be taken into consideration. If such organs included persons other than States, the draft articles would not apply to those persons; they would not apply, for example, to workers, or employers' representatives on the Governing Body of the International Labour Office.

73. Mr. ROSENNE said that when the Commission had inserted the words "in which States are members" in paragraph 1 (4), it had been with a view to preventing the misconception that the draft articles would apply to members of an organ composed only of individuals who were serving in their personal capacity. However, in view of the proliferation, in the United Nations system, of organs which were not composed of representatives of States, the Drafting Committee or the Working Group should be asked to reflect further on the matter. He suggested, therefore, that the Commission adopt paragraph 1 (4) provisionally, subject to reconsideration at a later stage.

74. Mr. KEARNEY said that Mr. Reuter seemed to have implied that the English version of paragraph 1 (4) was possibly unclear as to the scope of the coverage intended. He wished to assure him, therefore, that in his opinion there could be no question but that the words

“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.