Document:-
A/CN.4/SR.1062

Summary record of the 1062nd meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1970, vol. I

82. Mr. EL-ERIAN (Special Rapporteur) said that the words "when required" reflected the difference between the representation of member States and that of non-member States.

83. Mr. ROSENNE said that if article 14 was retained, the introduction of the concept of negotiation in article 52 would require the introduction of a corresponding provision regarding permanent observers.

84. After a brief discussion, in which Sir Humphrey WALDOCK, the CHAIRMAN, Mr. ALCÍVAR and Mr. KEARNEY took part, it was decided to place the words "when required" after the word "Organization".

Article 52, as amended, was adopted.

The meeting rose at 1.5 p.m.

1062nd MEETING

Wednesday, 3 June 1970, at 10.25 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tammes, Mr. Thiam, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Welcome to Mr. Thiam

1. The CHAIRMAN welcomed Mr. Thiam, who had been elected a member of the Commission to fill one of the vacancies caused by the election of two former members as Judges of the International Court of Justice.

2. Mr. THIAM expressed his gratitude to the members for electing him.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/227 and Add.1 and 2)

[Item 2 of the agenda]
(resumed from the previous meeting)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE *(continued)*

3. The CHAIRMAN invited the Commission to consider the Drafting Committee's texts for articles 52 *bis* to 57 *bis*.

ARTICLE 52 *bis* (Accreditation [appointment] to two or more international organizations or assignment to two or more permanent observer missions)[1]

4. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 52 *bis*:

Article 52 bis

Accreditation [appointment] to two or more international organizations or assignment to two or more permanent observer missions

1. The sending State may accredit [appoint] the same person as permanent observer to two or more international organizations or assign a permanent observer as a member of another of its permanent observer missions.

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

5. In his note on assignment to two or more international organizations or to functions unrelated to permanent missions (A/CN.4/227) the Special Rapporteur had referred to two situations. The first was when the same person was accredited as a permanent observer to two or more international organizations, and the second, referred to in paragraph 3 of the note, was when a State accredited the same mission as a permanent mission to an international organization of which that State was a member and as a permanent observer mission to another international organization of which it was not a member. In article 52 *bis*, the Drafting Committee had considered only the first situation, since the second had seemed to it rather unlikely. The only question to be decided by the Commission, therefore, was whether to use the word "accredit" or the word "appoint".

6. Mr. ROSENNE said that he was not entirely happy about the way in which the matters mentioned in the Special Rapporteur's note had been disposed of. The question of diplomatic appointments could be disregarded for the time being and included in article 9[2] in due course, but the second situation, far from being unusual, was a very common one in Geneva. He suggested, therefore, that paragraph 1 should read: "The sending State may accredit [or appoint] the same person as permanent representative or permanent observer to two or more international organizations or to another international organization or assign a permanent observer as a member of one of its permanent missions or of another of its permanent observer missions".

7. He preferred the word "appoint" to the word "accredit", although he would not press the point.

8. Mr. USHAKOV said that he would prefer the word "accredit", which was consistent with the term used in article 8.[3] It should be stated in the commentary that the

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[1] For previous discussion, see 1049th meeting, paras. 50-67.

[2] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 202.

[3] *Ibid.*, p. 201.

Commission would consider at the second reading the possibility of ensuring that that term and other terms were used in a uniform manner throughout the draft articles. In substance, article 52 *bis* was the counterpart of article 8.

9. Mr. SETTE CÂMARA said that he preferred the word "appoint", since he thought that accreditation was a procedure which was not completed until the person in question had actually delivered his credentials.

10. The CHAIRMAN suggested that the Commission should adopt article 52 *bis*, subject to the deletion of the word "appoint," and that it should ask the Special Rapporteur to explain the distinction in the commentary.

Article 52 bis *was adopted on that understanding.*

ARTICLE 53 (Appointment of the members of the permanent observer mission)[4]

11. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee was submitting article 53 in the form proposed by the Special Rapporteur.

Article 53 was adopted.

ARTICLE 54 (Nationality of the members of the permanent observer mission)[4]

12. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 54, accompanied by a note:

Article 54

Nationality of the members of the permanent observer mission

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

NOTE

As regards the suggestion made by the Special Rapporteur in paragraph 3 of his "Note on assignment to two or more international organizations or to functions unrelated to permanent missions" (A/CN.4/227), the Committee decided to include in article 9, which dealt with accreditation, assignment or appointment of a member of a permanent mission to other functions, a reference to permanent observer missions.

13. Mr. USHAKOV said that if the Commission was not intending for the time being to draft for permanent observer missions an article identical with article 9, it should be explained in the commentary to article 52 *bis* that the reason for the omission, as implied in the note, was that the Commission had decided to include a clause concerning permanent observer missions in article 9 on second reading.

14. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Special Rapporteur would take the note into consideration in his commentary.

Article 54 and the note accompanying it were adopted.

ARTICLE 54 *bis* (Credentials of the permanent observer)[5]

15. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 54 *bis*:

Article 54 bis

Credentials of the permanent observer

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

2. A non-member State may specify in the credentials submitted in accordance with paragraph 1 of this article that its permanent observer shall represent it as an observer in one or more organs of the Organization when such representation is permitted.

16. Article 54 *bis* derived from the Special Rapporteur's note on the question of credentials in relation to permanent observers (A/CN.4/227). The main subject of discussion in the Drafting Committee had been the extent of the formalities required to establish the *bona fides* of the permanent observer and it had been generally agreed that he should be able to present credentials in substantially the same form as permanent representatives. The Committee thought that the commentary should contain some reference to its reasons for reaching that conclusion, since in some organizations credentials in simplified form were accepted.

17. Article 54 *bis* did not contain provisions similar to those of article 13, paragraph 2,[6] because there was no general rule in international practice that non-member States could be represented by permanent observers at meetings of organs of international organizations.

18. Mr. ROSENNE said that in his opinion article 54 *bis* was unnecessary and the point could be dealt with in the commentary. Great caution should be exercised before adopting a provision such as that contained in paragraph 2, even on first reading, since there were cases where non-member States might participate in the work of organs of international organizations with full voting rights; for instance, States which, though not Members of the United Nations, were Parties to the Statute of the International Court of Justice could participate in the United Nations General Assembly for the purpose of electing judges. Paragraph 2 should therefore either be redrafted or deleted.

19. Mr. USHAKOV said it would be better if in the French text the word "*permise*" at the end of paragraph 2 were replaced by the word "*admise*", used in

[4] For previous discussion of articles 53 and 54, see 1050th meeting, paras. 1-13.

[5] For previous discussion, see 1050th meeting, paras. 14-45.

[6] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 205.

paragraph 1. In the English text the word "allowed" should be used in both places.

20. Mr. REUTER said that in the French text of paragraph 2 it would be more correct to speak of an observer "*auprès d'un ou de plusieurs organes*" than of an observer "*dans un ou plusieurs organes*". At the beginning of the paragraph the verb "*préciser*" should be replaced by "*spécifier*", which was closer to the English.

21. Mr. EUSTATHIADES said that paragraph 2 might appear to be unnecessary because the situation it dealt with could be covered by paragraph 1; the credentials issued under paragraph 1 could specify that representation was confined to a particular organ.

22. Mr. USHAKOV said that article 54 *bis* had been drafted on his proposal. Paragraph 2 referred to the fact that in addition to observers of organizations whose representation in an organ was officially allowed, observers of non-member States might also be authorized to represent those States in an organ. But a permanent observer did not automatically represent the sending State in an organ unless he was specifically empowered to do so, any more than did a permanent representative. Article 54 *bis*, therefore, simply repeated what was in article 13. The sending State could always appoint an observer other than the permanent observer to represent it in a particular organ, but it was necessary to state clearly that a permanent observer could represent a non-member State as an observer in one or more organs when such representation was allowed.

23. With regard to Mr. Reuter's suggestion that the word "*préciser*" should be replaced by "*spécifier*", he would point out that the word "*préciser*" was used in article 13.

24. Mr. KEARNEY (Chairman of the Drafting Committee) said he noted that Mr. Rosenne did not think that paragraph 2 was sufficient to cover all circumstances, while Mr. Eustathiades thought it did not add enough to justify its inclusion. The Drafting Committee had considered the case of an observer who might change his status to that of a representative, but had decided to restrict paragraph 2 to the situation of an observer proper. After all, the occasions when an observer became a representative of his State to the organ of an international organization were extremely limited and, when they did exist, were governed by special rules or by the statute of the organization. It was possible that the paragraph was not really necessary, but in his opinion it provided a certain amount of clarification.

25. The CHAIRMAN suggested that the Commission should adopt article 54 *bis*, subject to certain amendments to the French text, where the words "*dans un ou plusieurs*" would be replaced by the words "*auprès d'un ou de plusieurs*". On second reading, the Commission would consider the question of replacing the word "*préciser*" in the French text by the word "*spécifier*" in articles 54 *bis* and 14.

Article 54 bis *was adopted on that understanding.*

ARTICLE 54 *ter* (Full powers to represent the State in the conclusion of treaties)

26. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 54 *ter*:

Article 54 ter

Full powers to represent the State in the conclusion of treaties

1. A permanent observer in virtue of his functions and without having to produce full powers is considered as representing his State for the purpose of adopting the text of a treaty between that State and the international organization to which he is accredited.

2. A permanent observer is not considered in virtue of his functions as representing his State for the purpose of signing a treaty (whether in full or *ad referendum*) between that State and the international organization to which he is accredited unless it appears from the circumstances that the intention of the parties was to dispense with full powers.

27. The article had been included because article 52 mentioned among the functions of a permanent observer mission that of "negotiating when required with the Organization"; the Commission might wish to consider whether there should be a provision on the lines of article 14, paragraph 1.[7] Since it was in fact highly unlikely that permanent observer missions would ever have to conclude treaties between the sending State and the organization, article 54 *ter* had been enclosed in square brackets.

28. Mr. SETTE CÂMARA asked why a distinction was made between adopting the text of a treaty and signing it.

29. Mr. KEARNEY (Chairman of the Drafting Committee) said that it was general practice to adopt the texts of bilateral treaties by initialling them, but that did not have the same effect as signature.

30. Mr. ALBÓNICO said he had doubts about the desirability of keeping article 54 *ter*, because the situation it contemplated, although conceivable in the case of a permanent representative—hence article 14—was a most unlikely one where observers were concerned, since in such circumstances a non-member State would appoint a plenipotentiary for the purpose. A permanent observer's function was to maintain liaison; in that capacity he sent in reports, but he did not conclude treaties, much less sign them. Moreover, the case was covered by articles 2 and 7 of the Vienna Convention[8] and in any case it was one which very rarely occurred.

31. Mr. ROSENNE said that since he had reservations on article 14, he would have to reserve his position with respect to article 54 *ter*, although that provision should remain in the present draft so long as article 14 remained. He did not know whether it was in fact unusual for permanent observer missions to conclude treaties, and

[7] *Ibid.*, p. 206.

[8] See *United Nations Conference on the Law of Treaties, Official Records*, Documents of the Conference, document A/CONF.39/27 (United Nations publication, Sales No.: E.70.V.5).

hoped that the Secretariat would enlighten the Commission on the point.

32. Mr. USTOR said that article 54 *ter* should be retained because the Commission already had article 14 concerning permanent missions and it would be impossible to make no reference to the same situation in the case of permanent observer missions. He agreed with Mr. Kearney that adoption usually took place by initialling, as was stated in article 10 (*b*) of the Convention on the Law of Treaties.

33. Mr. BARTOŠ said he was surprised to hear some members of the Commission who had criticized the Special Rapporteur for merely inserting references to the corresponding articles concerning permanent missions in cases where the rules were similar complaining that there was duplication when the rules were reproduced. In his view a cross-reference would have sufficed, but since it had been thought advisable to restate the provision in question, he had no objection, and would support article 54 *ter*.

34. Sir Humphrey WALDOCK said he agreed that, since the Commission had adopted article 14, it should also adopt article 54 *ter*. If reference were to be made to the Convention on the Law of Treaties, the true analogy was rather with article 7, paragraph 2 (*b*) of that Convention, which referred to heads of diplomatic missions; paragraph 2 (*c*) was concerned only with the full powers of representatives for the purpose of adopting the text of a treaty in an international conference, organization or organ. As to article 9 of the Convention, on the adoption of the text, that was in extremely general terms; no procedural requirements were laid down and there was nothing in that article to prevent adoption taking place in whatever manner might be agreed.

35. It seemed to him that, if the Commission wished to cover in Part III the matter dealt with in article 54 *ter*, the article was on the correct lines.

36. The adoption of article 54 *ter* would be unlikely to prejudice the future work of the Commission on the treaties of international organizations, because it approached the matter from the point of view of the State dealing with the organization, not from the point of view of the organization itself.

37. Mr. REUTER said that for all the reasons which had been stated, he was in favour of retaining article 54 *ter* if article 14 was retained. Although he did not wish to anticipate the information to be supplied by the Secretariat, he was quite sure that a large number of treaties were negotiated, and consequently adopted, between permanent missions and international organizations, notably in the vast field of technical assistance. Consequently, article 54 *ter* would be of great value, since permanent observers were a useful institution for States which, for one reason or another, were not members of the United Nations.

38. The CHAIRMAN said it appeared to be generally agreed that article 54 *ter* should be retained.

39. Mr. USTOR said that he was satisfied that article 54 *ter* was in harmony with the Convention on the Law of Treaties. Although the text of a treaty could be adopted orally, in practice there was generally some written agreement in bilateral diplomacy.

40. Mr. RUDA suggested that the words "in virtue of his functions" in paragraph 2 should be deleted.

41. The CHAIRMAN said that the Special Rapporteur would make a note of that suggestion.

Article 54 ter *was adopted.*

ARTICLE 55 (Composition of the permanent observer mission)[9]

42. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 55:

Article 55

Composition of the permanent observer mission

1. In addition to the permanent observer, a permanent observer mission may include members of the diplomatic staff, the administrative and technical staff and the service staff.

2. When members of a permanent diplomatic mission, a consular post or a permanent mission in the host State are included in a permanent observer mission, they shall retain their privileges and immunities as members of their diplomatic mission, consular post or permanent mission in addition to the privileges and immunities accorded by the present articles.

43. Paragraph 1 reproduced unchanged the text proposed by the Special Rapporteur for article 55, which was itself derived from article 15.[10]

44. Paragraph 2 had been added by the Drafting Committee. Its purpose was to make it clear that when a diplomatic or consular officer became a member of a permanent observer mission, he did not on that account lose any of the privileges and immunities he previously enjoyed. There was no similar provision in the corresponding article on permanent missions, and it would be indicated in the commentary that the Commission proposed to introduce such a provision in Part II.

45. The paragraph was based on existing practice. In New York, many permanent observers to the United Nations were on the diplomatic list in Washington; other members of permanent observer missions were frequently drawn from the staff of the consulate of the sending State in New York. The practice at Geneva was similar.

46. The only problem was whether paragraph 2 should continue to form part of article 55 or should be placed elsewhere in the draft.

47. When the time came for the second reading of article 55, the Commission should consider whether Part III should include a provision on the lines of paragraph 2 of article 8,[11] to the effect that the sending State could accredit a member of the staff of a permanent mis-

[9] For previous discussion of articles 55, 56 and 57, see 1050th meeting, paras. 46-55.

[10] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 207.

[11] *Ibid.*, p. 201.

sion as permanent observer to other international organizations.

48. Mr. SETTE CÂMARA said that "consular post" seemed to be an unsatisfactory expression to use in referring to what was usually described as a consular office or mission.

49. Mr. RAMANGASOAVINA proposed that paragraph 2 should be amended in order to obviate the impression created by the phrase "in addition to" that the privileges and immunities were duplicated, when in fact they were merely cumulative. The second phrase, after the words "permanent observer mission", should be replaced by the phrase "the privileges and immunities they enjoy in this capacity shall be compatible with the privileges and immunities accorded by the present articles".

50. Mr. EUSTATHIADES said that he too thought that the phrase "in addition to" was ill-conceived, since it suggested an expression of opinion as to the extent of the privileges and immunities of the persons referred to in paragraph 2, whereas the intention was to state that the two sets of privileges and immunities would exist simultaneously. In his view, the concluding part of the paragraph, beginning with the words "in addition to", might be deleted if the Commission decided, contrary to its usual practice, not to reproduce the precise terms of the provision upon which article 55 was based, namely article 9 of the Convention on Special Missions.[12]

51. Mr. USHAKOV proposed that in the French version of paragraph 2 the words "*ils conservent*" should be used rather than "*ils gardent*", as in article 9 of the Convention on Special Missions. The word "permanent" should be inserted before "diplomatic missions" the second time that that expression occurred; it was used in the first line and in article 9 of the Convention on Special Missions.

52. Mr. YASSEEN said that the same wording should be used as in article 9 of the Convention on Special Missions. The words "in addition to" were acceptable, since a person should not be deprived of the privileges and immunities he enjoyed in another capacity as a result of the fact that he was a member of an observer mission.

53. Mr. BARTOŠ said that the wording of article 55 was perfectly satisfactory. The privileges and immunities accorded to members of permanent diplomatic missions, consular posts, permanent missions and permanent observer missions were not the same, and it was only right that a person performing more than one function should enjoy the privileges and immunities attached to each.

54. Mr. REUTER said that the precedent of the Convention on Special Missions was not sufficient reason for retaining the text as it stood. The question was not so simple as that, since certain privileges and immunities were attached to the person, and consequently might be enjoyed simultaneously, while others were attached to the function, and were consequently alternatives. It would be more accurate, therefore, to put the sentence negatively and say that when members of a permanent diplomatic mission, a consular post or a permanent mission were included in a permanent observer mission they did not thereby lose the privileges and immunities which they enjoyed in those capacities.

55. Mr. RAMANGASOAVINA said he agreed with Mr. Yasseen and Mr. Reuter. It was true that article 55 reproduced the wording of article 9 of the Convention on Special Missions, but since that wording might cover persons of high rank, it was natural that it should accord them privileges and immunities not usually granted to ordinary diplomatic staff. That situation did not occur in the case of permanent observer missions.

56. Mr. BARTOŠ said he did not agree. Count Bernadotte, for example, had been both an observer and a mediator.

57. Mr. THIAM said that he too thought that some form of words must be found to render precisely what the Commission meant. He proposed that the phrase "in addition to" should be replaced by "without prejudice to".

58. Mr. ROSENNE said that he fully agreed with Mr. Yasseen, Mr. Reuter and Mr. Ramangasoavina. He found paragraph 2 difficult to understand in the present context. There was no analogy with special missions; observer missions had a permanent character. A provision of that kind could, however, be of some use in the case of delegates to conferences.

59. Article 55 was not the proper place for the provisions of paragraph 2. They had nothing to do with the composition of the observer mission and should be included in the section on privileges and immunities.

60. Mr. KEARNEY (Chairman of the Drafting Committee) explained that the term "consular post" had been taken from the Convention on Consular Relations.[13] The term "diplomatic mission" without the qualification "permanent" had been taken from the Convention on Diplomatic Relations.[14]

61. He was attracted by the suggestion that the expression "without prejudice to" should be used instead of "in addition to".

62. Paragraph 2 had been placed in article 55 simply because the question had arisen during the discussion of that article. There was much to be said for Mr. Rosenne's proposal that the provision should be placed in the section on privileges and immunities.

63. Mr. EUSTATHIADES suggested that the French text of paragraph 1 should be brought into line with the second sentence in paragraph 1 of article 9 of the Convention on Special Missions, which was better French and closer to the English.

64. The CHAIRMAN, speaking as a member of the Commission, suggested that, in paragraph 2, the words "they shall retain" should be replaced by "they shall not

[12] See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 100.

[13] United Nations, *Treaty Series*, vol. 596, p. 262.

[14] Op. cit., vol. 500, p. 96.

lose"; the concluding words "in addition to the privileges and immunities accorded by the present articles" would then be dropped.

65. Speaking as Chairman, he said that, if there were no objection, he would consider that the Commission agreed to adopt paragraph 1 of article 55, and to refer paragraph 2 back to the Drafting Committee for reconsideration in the light of the discussion.

It was so agreed.[15]

ARTICLE 56 (Size of the permanent observer mission)[16]

66. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 56:

Article 56

Size of the permanent observer mission

The size of the permanent observer mission shall not exceed what is reasonable and normal, having regard to the functions of the Organization, the needs of the particular mission and the circumstances and conditions in the host State.

67. The text was almost identical with that proposed by the Special Rapporteur, which itself derived from article 16.[17]

68. During the discussion in the Commission, concern had been expressed at the reference to "the functions of the Organization", but the Drafting Committee had come to the conclusion that those functions had some part in determining the proper size of a permanent observer mission.

Article 56 was adopted.

ARTICLE 57 (Notification)[18]

69. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee had made no change in the text proposed by the Special Rapporteur, which was based on article 17.[19]

70. Mr. ROSENNE, referring to the expression "host State" in paragraph 3, said that in article 10 of the Convention on Diplomatic Relations, article 24 of the Convention on Consular Relations and article 11 of the Convention on Special Missions, the language used was more specific: those provisions referred first to the Ministry of Foreign Affairs of the receiving State and then to such other ministry or organ as might be agreed.

71. His remark also applied to article 17, on permanent missions. Since it was not now possible to change both article 17 and article 57, a note should be made of the point for the second reading.

72. Mr. EL-ERIAN (Special Rapporteur) explained that when the Commission had drafted article 17 at the twentieth session, it had not followed the example of the instruments governing inter-State relations because of the difference in the two situations. Unlike diplomatic missions in bilateral diplomacy, permanent missions were not always situated in the capital city. He would comment further on the matter at the second reading.

73. Mr. BARTOŠ said that it would be preferable not to amend the text at the present stage, but to ask the Special Rapporteur to take note of Mr. Rosenne's comments and to mention in the commentary that some members of the Commission had made a suggestion to that effect.

Article 57 was adopted.

ARTICLE 57 *bis* (Chargé d'affaires *ad interim*)

74. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 57 *bis*:

Article 57 bis

Chargé d'affaires ad interim

If the post of permanent observer is vacant, or if the permanent observer is unable to perform his functions, a chargé d'affaires *ad interim* shall act as head of the permanent observer mission. The name of the chargé d'affaires *ad interim* shall be notified to the Organization either by the permanent observer or, in case he is unable to do so, by the sending State.

75. Article 57 *bis* represented an addition to the draft articles proposed by the Special Rapporteur. Its text followed that of article 18 (Chargé d'affaires *ad interim*) on permanent missions.[20]

76. Some doubt had been expressed in the Drafting Committee about the appropriateness of the term "chargé d'affaires *ad interim*" when used in connexion with permanent observer missions. The Committee had come to the conclusion, however, that it was reasonable to use the expression because of the representative functions performed by observers, albeit on a limited scale.

77. Mr. RUDA said that he had no objection to the substance of article 57 *bis*, but had some hesitation over the use of the expression "chargé d'affaires *ad interim*". As far as he knew, the expression normally used was "permanent observer *ad interim*". Perhaps the Secretariat would obtain some information about current practice from United Nations Headquarters.

78. Mr. BARTOŠ said that he too thought that the term "chargé d'affaires *ad interim*" was not used in the case of permanent observers.

79. He suggested that the words "in case he is unable to do so" towards the end of the article should be deleted to avoid situations such as had already occurred in which, as a result of a change of régime or government, permament observers who had become *persona non grata* to their governments refused to resign their functions and to notify the name of their successor.

[15] For resumption of the discussion, see 1065th meeting, para. 5.

[16] See footnote 9.

[17] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 208.

[18] See footnote 9.

[19] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 209.

[20] *Ibid.*, p. 211.

80. Mr. USHAKOV said he saw no reason for deleting the words. It was always open to a sending State to notify the fact that it no longer considered a certain person as its representative and that it was terminating his functions; but the situation dealt with in article 57 *bis* was different, and in any case there was a reference to it in other conventions.

81. Mr. CASTRÉN reminded the Commission that during its consideration of article 18, it had decided after much discussion to adopt the term "chargé d'affaires *ad interim*".[21] It was used by the United Nations Secretariat, as stated in paragraph (3) of the commentary to article 18.

82. Mr. EUSTATHIADES said that in his view it was not certain that the appointment of an observer *ad interim* was an obligation. It might therefore be preferable to say that an observer *ad interim* "could" act as head of the mission if the post was vacant. In some cases the observer mission's functions might have been temporarily suspended by the sending State itself; consequently, the appointment of an observer *ad interim* should not be an obligation.

83. The CHAIRMAN said that the Secretariat would ascertain what the practice was at United Nations Headquarters.

84. Mr. EL-ERIAN (Special Rapporteur) said that in practice a permanent observer mission usually had several members. It was therefore logical that if the head of the mission was absent, one of the other members should take his place, and it was important for the secretary-general to know to whom he should address himself in case of emergency.

85. The position was different in small technical international organizations in which the permanent observer mission might well consist of only one person. That case should be borne in mind.

86. Mr. YASSEEN said that the appointment of a chargé d'affaires *ad interim* was not an obligation, but a faculty. There was no rule of international law that a permanent mission must be continuous. It would be better to find some neutral wording to the effect that the sending State might appoint a chargé d'affaires *ad interim* and that the appointment was notified either by the permanent observer or by the sending State.

87. The CHAIRMAN suggested that the Commission should refer article 57 *bis* back to the Drafting Committee for reconsideration in the light of the discussion, with particular reference to Mr. Bartoš's suggestion that the words "in case he is unable to do so" should be deleted and to Mr. Yasseen's suggestion that the contents of the first sentence should be expressed as a faculty rather than as an obligation.

It was so agreed.[22]

The meeting rose at 1.5 p.m.

[21] See *Yearbook of the International Law Commission, 1968*, vol. I, 968th meeting, paras. 63-82, 969th meeting, paras. 1-53, and 985th meeting, paras. 47-54.

[22] For resumption of the discussion, see 1065th meeting, para. 12.

1063rd MEETING

Thursday, 4 June 1970, at 10.5 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tammes, Mr. Thiam, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/227 and Add.1 and 2)

[Item 2 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

1. The CHAIRMAN invited the Commission to consider the texts of articles 58 and 59 proposed by the Drafting Committee.

ARTICLE 58 (Offices of permanent observer missions)[1]

2. Mr. KEARNEY (Chairman of the Drafting Committee), said that the Drafting Committee proposed the following text for article 58:

Article 58

Offices of permanent observer missions

1. The sending State may not, without the prior consent of the host State, establish offices of the permanent observer mission in localities other than that in which the seat or an office of the Organization is established.

2. The sending State may not establish offices of the permanent observer mission in the territory of a State other than the host State, except with the prior consent of such a State.

3. The text was based on article 20,[2] the corresponding article in Part II. At the second reading, the Commission should consider whether the word "localities" should be replaced by "locality" in the English text.

Article 58 was adopted.

ARTICLE 59 (Use of [flag and] emblem)[3]

4. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 59:

[1] For previous discussion of articles 58 and 59, see 1050th meeting, paras. 58-63.

[2] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 212.

[3] See footnote 1.