Document:-

A/CN.4/SR.1138

Summary record of the 1138th meeting

Topic:

Representation of States in their relations with international organizations

Extract from the Yearbook of the International Law Commission:-

1971, **vol. I**

69. The English version, "resolution of the dispute", of the phrase "*solution du différend*" which was used in the French version, was possibly a little ambiguous.

70. It was certainly psychological reasons which had led the Working Group to decide on the deletion of the last sentence of the paragraph. Obviously there could be no settlement without the agreement of the parties, but the parties themselves were perfectly aware of that and it was inappropriate to remind them of the fact in an express provision.

71. If the last sentence were to be kept, however, he would not be opposed to the addition, as suggested by Mr. Reuter, of a sentence to the effect that the parties should consider the commission's report in good faith.[28] That was a minimal condition to require of the parties. It was important that they should not go into a conciliation procedure with the fixed intention of disregarding the commission's recommendations. Conciliation sometimes came very near to arbitration, of course, and it was striking to note the variety of language employed in treaties in connexion with it. In any case, it was a constructive step to move towards a conciliation procedure which tended, however slightly, in the direction of arbitration.

72. Perhaps the article should even provide that the conciliation commission might recommend in its report that, if the dispute remained unsettled owing to the failure of the parties to agree on the commission's recommendations, it should be submitted to arbitration or to the jurisdiction of the International Court of Justice. The conciliation commission would naturally be free to make such a recommendation in any case, but it might be useful to say so.

73. Lastly, paragraph 7 was not as important as some members seemed to think. In view of the inevitable delays attaching to conciliation procedures, the time-limits stipulated were always too short and it was always necessary to ask for extensions; a conciliation procedure was therefore unlikely to succeed within the relatively short life of a conference. That might be regrettable, both for minor issues and for urgent problems such as questions of privileges and immunities. The Working Group had therefore decided to include the proviso which paragraph 7 represented.

74. Mr. ALCÍVAR said that he had serious reservations about the form of arbitral conciliation suggested by Mr. Ago. He would prefer to keep the text of article 82, paragraph 3, as it stood.

75. Mr. CASTRÉN said that in his view paragraph 6 did not confuse conciliation proper with arbitration. There was no ambiguity.

76. Although the word "decision" appeared in paragraph 5, it was clear from paragraph 6 that the commission made recommendations which were not binding upon the parties.

77. With regard to paragraph 7, Mr. Ago and Mr. Eustathiades had shown that the periods of time involved in the conciliation procedure were too long for a conference, and the usefulness of the provision was therefore undeniable.

78. Mr. TABIBI said that, after listening to Mr. Ago, he was prepared to accept the basic régime for consultations and conciliation provided for in articles 81 and 82. He himself would have preferred a compulsory procedure, such as arbitration or reference to the International Court of Justice, but he realized that the present text represented a compromise.

79. He agreed with Mr. Rosenne that there was no analogy between the present articles and article 66 of the Vienna Convention on the Law of Treaties and the Annex to that Convention.[29]

80. He was somewhat concerned about the suggestion that the General Assembly should authorize the conciliation commission to request an advisory opinion from the International Court of Justice; it would be much better if the General Assembly itself made that request directly to the Court.

81. Lastly, since paragraph 7 of article 82 was not part of the conciliation procedure set forth in the preceding paragraphs, it might be more appropriately embodied in a separate article 23.

82. The CHAIRMAN suggested that, if there were no objection, the Commission refer articles 81 and 82 back to the Working Group for reconsideration in the light of the discussion.

It was so agreed.

The meeting rose at 1.10 p.m.

[28] See para. 58 above.

[29] See para. 26 above.

1138th MEETING

Friday, 16 July 1971, at 10.10 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Ushakov, 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.171; A/CN.4/L.174/Add.2 and 3; A/CN.4/L.177/Add.2 and 3)

[Item 1 of the agenda]

(continued)

CONSOLIDATED DRAFT ARTICLES SUBMITTED BY THE WORKING GROUP ON SECOND READING

ARTICLE 38 *bis*

1. The CHAIRMAN invited the Commission to consider the text of articles 38 *bis* (A/CN.4/L.177/Add.2), 81 and 82 (A/CN.4/L.177/Add.3) submitted by the Working Group on second reading, commencing with article 38*bis*, the proposed text for which read:

2.

Article 38 bis[1]

Professional or commercial activity

The head of mission and members of the diplomatic staff of the mission shall not practice for personal profit any professional or commercial activity in the host State.

3. Mr. KEARNEY (Chairman of the Working Group) said that, following the discussion in the Commission[2] on article 75 (A/CN.4/L.117/Add.2), which had been drafted as a general article for Part IV, the Working Group had come to the conclusion that the problem of engaging in professional or commercial activity in the host State related essentially to the staff of permanent missions and permanent observer missions; the limitation with respect to the possible activities of members of delegations was of relatively small importance. Given the fact that there were quite large numbers of technical delegations, the services of whose members might not be undesirable to the host State, there were sound reasons for removing the limitation with respect to delegations. 4. The Working Group had accordingly redrafted article 75 in its original form before the scope had been broadened to include delegations, and had put it back in the part relating solely to missions as article 38 *bis*. That meant, of course, that the succeeding articles would have to be renumbered.

5. The CHAIRMAN put article 38 *bis* to the vote.

Article 38 bis was adopted by 14 votes to none.

6. Mr. ELIAS suggested that the spelling of the verb "practice" be altered to "practise", with an "s".

7. Mr. ROSENNE said that the spelling should be the same as in the corresponding article 48 of the 1969 Convention on Special Missions,[3] namely, "practise".

8. The CHAIRMAN said that the spelling would be amended.

ARTICLE 81 and ARTICLE 82

9.

Article 81

Consultations between the sending State, the host State and the Organization

If any dispute between one or more sending States and the host State arises out of the application or interpretation of the present articles, consultations between: (i) the host State, (ii) the sending State or States concerned, and (iii) the Organization or, as the case may be, the Organization and the conference, shall be held upon the request of any such State or of the Organization itself with a view to exploring the possibilities of an amicable disposition of the dispute.

10.

Article 82

Conciliation

1. If the dispute is not disposed of as a result of the consultations referred to in article 81 within three months from the date of their inception, it may be submitted by any State party to the dispute to such procedure applicable to the settlement of the dispute as may be established in the Organization. In the absence of any such procedure, any State party to the dispute may bring it before a conciliation commission to be constituted in accordance with the provisions of this article by giving written notice to the Organization and to the other States participating in the consultations.

2. A conciliation commission will be composed of three members, of whom one shall be appointed by the host State, and one by the sending State. Two or more sending States may agree to act together, in which case they shall jointly appoint the member of the conciliation commission. These two appointments shall be made within two months of the written notice referred to in paragraph 1. The third member, the Chairman, shall be chosen by the other two members.

3. If either side has failed to appoint its member within the time limit referred to in paragraph 2, the Chief administrative officer of the Organization shall appoint such member within a further period of one month. If no agreement is reached on the choice of the Chairman within four months of the written notice referred to in paragraph 1, either side may request the Chief administrative officer of the Organization to appoint the Chairman within a further period of one month. The Chief administrative officer of the Organization shall appoint as the Chairman a qualified jurist who is neither an official of the Organization nor a national of any State party to the dispute.

4. Any vacancy shall be filled in the same manner as the original appointment was made.

5. The Commission shall establish its own rules of procedure and shall reach its decisions and recommendations by a majority vote. If so authorized by or in accordance with the Charter of the United Nations the Commission may request an advisory opinion from the International Court of Justice regarding the interpretation or application of these articles.

6. If the Commission is unable to obtain an agreement among the States parties to the conciliation proceedings on a settlement of the dispute within six months of its initial meeting, it shall prepare as soon as possible a report of its proceedings and transmit it to the parties and to the Organization. The report shall include the Commission's conclusions upon the facts and questions of law and the recommendations it has submitted to the parties in order to facilitate a settlement of the dispute. The six months time limit may be extended by decision of the Commission.

[1] Formerly article 75.

[2] See 1135th meeting, paras. 49 to 63.

[3] See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 30*, p. 105.

7. Nothing in the preceding paragraphs shall preclude a conference from establishing any other appropriate procedure for the settlement of a dispute arising in connexion with the conference.

8. This article is without prejudice to provisions concerning settlement of disputes contained in international agreements in force between States or between States and international organizations.

11. Mr. KEARNEY (Chairman of the Working Group) said that he would introduce together the new texts for articles 81 and 82 as prepared by the Working Group in the light of the discussion at the previous meeting.

12. In article 81, the Working Group had not accepted the suggestion to delete the words "between one or more sending States and the host State", because those words had the advantage of stressing that it was not intended to deal with disputes that might arise between the Organization itself and a State, whether the host State or a sending State. The only disputes that were covered were those which might arise between one or more sending States and the host State.

13. Similarly, the Working Group had not accepted the suggestion to delete the words "or of the Organization itself" at the end of article 81. The Organization was under a duty to assist the sending State in solving the problems which might arise regarding the fulfilment of the obligations of the host State. It seemed only reasonable therefore that the Organization should be able to initiate consultations.

14. The only change which had been made in article 81 was the addition of a clause at the end indicating the purpose of the consultations. The addition was based on a proposal by Mr. Elias, though the language used was somewhat different, in order to make clear the informal nature of the consultations procedure.

15. With regard to article 82, a large number of suggestions had been made at the previous meeting. In the first sentence of paragraph 1, the Working Group had decided to maintain unchanged the words "it may be submitted by any State party to the dispute"; it had felt that the matter was not one in which a great degree of precision was possible or even desirable. The question should be left to be governed by the general rules of international law on the application of treaties, in particular the provisions of the 1969 Vienna Convention on the Law of Treaties which dealt with the subject of treaties and third States.

16. In that same paragraph, the Working Group had accepted the proposal made by Mr. Elias to reverse the order of the references to the Organization and to the other States respectively.[4]

17. With regard to paragraph 2, no proposals had been made during the discussion and the text had been left unchanged.

18. In paragraph 3, the Working Group had given careful consideration to the suggestion that, since the Organization was to some extent involved in the dispute as a result of the preliminary consultations, every effort should be made to avoid any possible accusation of bias. The Working Group had not accepted the suggestion that the chairman of the conciliation commission should be appointed by the President of the International Court of Justice. It had, however, inserted an additional sentence at the end of the paragraph, setting forth three requirements for the appointment; first, that the person selected should be a qualified jurist; secondly, that he should not be an official of the Organization, and, thirdly, that he should not be a national of any State party to the dispute. If those three requirements were satisfied, the basis for any allegation of bias in the choice would be substantially diminished.

19. With regard to paragraph 4, no proposals had been made during the discussion and the text remained unchanged.

20. In paragraph 5, the Working Group had adopted the proposal made by Mr. Rosenne at the previous meeting to replace in the first sentence the word "decisions" by the words "decisions and recommendations"[5] In the second sentence, taking into account the views expressed by several members, the Working Group had decided to use language taken from the last portion of Article 65(1) of the Statute of the International Court of Justice. It would now be for the specialized agency concerned, or the General Assembly of the United Nations, to decide how the request for an advisory opinion should be made.

21. In paragraph 6, the words "resolution of the dispute" had been replaced by the words "settlement of the dispute". In the second sentence, the words "findings upon the facts and the law and its recommendations" had been replaced by the words "conclusions upon the facts and questions of law and the recommendations it has submitted to the parties". It was thus made clear that the intention was to refer to recommendations by the conciliation commission to the parties for the purpose of facilitating a settlement of a dispute.

22. In the third sentence, the opening words "The time limit for the preparation of the report" had been replaced by the words "The six months time limit" so as to make it clear that the possibility of extension referred to the six months' limit for initiating the conciliation proceedings and not to any time-limit for the preparation of the report, since according to the first sentence of the paragraph, the report should be prepared "as soon as possible". Provision had to be made for a possible extension of the six months' time-limit, because a request might be made for an advisory opinion of the International Court of Justice and it would be necessary to await that opinion and its consideration by the parties before a decision could be made that agreement of the parties was not possible.

23. The Working Group had examined the suggestion for the re-introduction at the end of paragraph 6 of the

[4] See 1137th meeting, para. 21.

[5] *Ibid.*, para. 26.

sentence reading: "The report shall not be binding upon the participating States or upon the Organization," but had reached the conclusion that the sentence was completely redundant. Since the proceedings were purely for the purpose of conciliation, it was self-evident that what would emerge from such proceedings could not be binding on the parties.

24. The Working Group had also examined the suggestion to introduce into paragraph 6 the formula according to which the report had to be considered in good faith by the participating States and by the Organization, a formula derived from article XIX, paragraph 2 of the draft convention on international liability for damage caused by space objects.[6] The Working Group had come to the conclusion that, for present purposes, it was better to proceed on the assumption of good faith rather than to lay down a specific obligation that the report should be considered in good faith.

25. The Working Group had not accepted the proposal to delete paragraph 7 since it considered that provision necessary, but it had replaced the words "adopting any other appropriate procedure" by the words "establishing any other appropriate procedure", which had a slightly less legalistic connotation. It was hoped that that change would allay the concern of the opponents of paragraph 7.

26. Lastly, the Working Group had introduced a new paragraph 8, specifying that the provisions of article 81 were without prejudice to provisions concerning settlement of disputes in international agreements in force between States or between States and international organizations. It felt that that clarification was useful and would avoid any dispute regarding the nature and scope of article 4.

27. Mr. USHAKOV said he thought there was still room for improvement.

28. In article 82, paragraph 5, it was inappropriate to state that the Commission could be "authorized by ... the Charter of the United Nations" to request an advisory opinion from the International Court of Justice. Only the General Assembly and the Security Council were authorized by the Charter, under Article 96, to request an advisory opinion; other organs were required to obtain the prior authorization of the General Assembly to make a request. The beginning of the second sentence in paragraph 5 might therefore be amended to read: "If so authorized in accordance with the Charter of the United Nations, the commission may request an advisory opinion".

29. The second sentence in paragraph 3 was so drafted that it gave the impression that it was the request which should be made within a period of one month, whereas the intention was that it was the appointment which should be made within that period. A full-stop should be placed after the words "to appoint the Chairman". The paragraph would then continue: "This appointment shall be made within a further period of one month".

30. Lastly, in the English version of paragraph 7, the word "adopting" had been replaced by the word "establishing", but the word "*adopter*" had been left in the French version; it should be replaced by the verb "*instituer*".

31. Mr. REUTER said that although the Working Group had obviously done a great deal of work on article 82, he still could not support the procedure it laid down, and that for two reasons.

32. First, greater powers could not, in law, be conferred on a conference than on an organization. An organization could not, in the case of a dispute between States, take a step such as that provided for in paragraph 7. He therefore maintained his original position on that paragraph.

33. Secondly, with regard to paragraph 3, he was still in favour of wording which would enable the chief administrative officer of the Organization to leave it to the President of the International Court of Justice to appoint the third conciliator, for it was important not only that the decisions taken should be just, but that they should be seen to be just.

34. Mr. KEARNEY (Chairman of the Working Group), said that it was certainly not the purpose of paragraph 7 to empower a conference to do anything which it could not otherwise do. The power of a conference depended on the participating States and on the authority given by those States to their delegations at the conference. There had been no intention to prejudge the power of the conference, and if that intention had not been made sufficiently clear, the wording could be adjusted accordingly.

35. Mr. REUTER said that a solution which would make the position much clearer would be to say, in paragraph 7, that the conference might "recommend". If the dispute was between States and the whole system was based on that idea it would be for the States to accept the conference's recommendation or not, as it wished. But to say that the conference might "establish" a procedure for the settlement of a dispute was not much different from saying that it might "adopt" a procedure, for that would constitute a decision of the conference which was something he could not accept.

36. Mr. EUSTATHIADES said he wondered whether a different drafting might not overcome that difficulty. He suggested that the words "a conference from establishing " be replaced by the words "the establishment within a conference", which would give the provision a more general meaning.

37. The words "settlement of a dispute" led to an association of ideas with the case dealt with in article 81, which, however, was excluded by the phrase "nothing in the preceding paragraphs", since "paragraphs" could only refer to the remainder of article 82. He wondered whether it would not be preferable, as indeed had been suggested, to draft the paragraph to cover consultations as well.

38. Mr. THIAM said that the wording of the second sentence in article 82, paragraph 5, was defective. To

[6] A/AC.105/94.

say that the Commission "may" do what it was "authorized" to do was clumsy.

39. In paragraph 6 the words "on a settlement of the dispute" seemed unnecessary, since the whole article dealt precisely with that.

40. Mr. KEARNEY (Chairman of the Working Group) said that the same problems arose with the language of Article 65(1) of the Statute of the International Court of Justice, on which the provision in question was based. It was also necessary to bear in mind the provisions of Article 96(2) of the Charter of the United Nations, which governed the question of requests for advisory opinions; such a request could be made, with the authorization of the General Assembly, by a specialized agency or by an organ of the United Nations other than the General Assembly itself or the Security Council. No definition, however, was given in the Charter of what constituted an "organ of the United Nations". It was possible that the proposed conciliation commission might be considered as such an organ and therefore came within the ambit of Article 96(2) of the Charter and Article 65(1) of the Statute of the International Court of Justice.

41. Mr. RUDA said that he shared the views of Mr. Reuter but wished to add two comments of his own. The first concerned article 81; he firmly believed that the consultations envisaged in that article should take place exclusively between the host State and the sending State. It was only if no agreement had been reached between those two States that, at the next stage, it was appropriate that the Organization itself should join in the proceedings.

42. Also, a minor point, the formula which had been added at the end of the article struck him as rather too vague; it should be worded more precisely in order to make it clear that the purpose of the consultations was to arrive at an amicable settlement of the dispute.

43. His second comment concerned the first sentence of paragraph 5 of article 82, where a reference to "recommendations" had been introduced. He had misgivings regarding the retention of the reference to "decisions", since that word implied a binding force that was not in conformity with the character of consultation proceedings. He therefore suggested the deletion of the words "decisions and". Those words should only be retained if it were clearly understood that the reference was to interim decisions relating exclusively to procedural matters and which did not touch on the merits of the dispute.

44. Mr. KEARNEY (Chairman of the Working Group) said that Mr. Ruda's interpretation was correct; the term "decisions", as used in the first sentence of paragraph 5, did not refer to binding judicial decisions. The conciliation commission had to make such procedural decisions as those connected with the extension of time-limits or with the request for an advisory opinion of the International Court of Justice.

45. Mr. ROSENNE said that, at the previous meeting, he had not proposed the deletion of the word "decisions" but simply its replacement by the phrase "decisions and recommendations", as had been done by the Working Group.

46. Mr. AGO said that the word "decisions" was essential, since the Commission would certainly have to take decisions during the procedure, such as a decision to request an opinion from the International Court of Justice, and the recommendations themselves were the result of a decision.

47. Mr. RUDA said that Mr. Ago's explanation certainly showed that "decisions" could only mean interlocutory decisions which did not affect the substance of a dispute and related solely to procedural matters.

48. Mr. CASTRÉN said that the new draft of articles 81 and 82 was even better than the previous text (A/CN.4/L.174/Add.3) which he had found very good.

49. With regard to article 81, it was certainly necessary to explain the purpose of the consultations. The word "amicable" was not very satisfactory, because under the Charter and under general international law, States must settle all their disputes amicably; indeed, conciliation itself was an amicable procedure. He therefore proposed that the word "amicable" be deleted.

50. With regard to article 82, it might perhaps be better to state in paragraph 5 that the Commission "shall reach its recommendations and other decisions" instead of "shall reach its decisions and recommendations." On the other hand, the text of the second sentence ought not to be amended, even if what it contained might appear self-evident. The reminder was not out of place.

51. Paragraph 6 might be simplified as proposed by Mr. Thiam.[7]

52. Mr. Eustathiade's suggestion for paragraph 7 was very ingenious.[8] It should be noted, however, that a conciliation procedure was sometimes established even before a conference convened. An example was the Agreement of 15 February 1968 between the United Nations and the Iranian Government regarding arrangements for the International Conference on Human Rights to be held in Teheran in 1968.[9] That Agreement contained a section X on privileges and immunities which referred to the United Nations Covention on Privileges and Immunities,[10] and a section XVI which referred to the procedure laid down in section 30 of that convention for the settlement of disputes involving a question of principle concerning the Convention and establishing a procedure for dealing with other disputes.

53. He approved of the addition of paragraph 8 modelled as it was on paragraph 3 of the former article 50 (A/CN.4/L.171).

54. Mr. ELIAS requested that separate votes be taken on articles 81 and 82.

55. He said he would vote in favour of article 81 as it stood, although for the concluding formula he would have preferred the shorter and simpler language: "with a view to effecting a settlement of the dispute".

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[7] See para. 39 above.

[8] See para. 36 above.

[9] United Nations, *Treaty Series*, vol. 631, p. 104.

[10] *Ibid.*, vol. 1, p. 14.

56. With regard to article 82, he could agree with Mr. Thiam's suggestion to delete the words "to the conciliation proceedings on a settlement of the dispute", in the first sentence of paragraph 6.

57. Mr. AGO said he was not against the deletion of the word "amicable" in article 81.

58. On the other hand, he hoped that the phrase "exploring possibilities" would be retained because it showed clearly that consultations were not a procedure. Article 81 established something which went further than consultations between two States, which were a matter of course if those States maintained diplomatic relations. The justification for a special provision was precisely the possibility of tripartite consultations.

59. As to article 82, in paragraph 5 the word "decisions" should be retained before "recommendations", because it brought out the fact that the decisions were merely interlocutory. On the other hand, the second sentence in the paragraph might with advantage be amended in accordance with Mr. Ushakov's suggestion.[11]

60. If the words "States" and "to the conciliation proceedings" in the first sentence of paragraph 6 were deleted, that would simplify the text.

61. In paragraph 7 no reference should be made to article 81, because article 81 itself applied to conferences as well. Paragraph 7 should not therefore cover consultations.

62. Mr. Reuter's suggestion[12] to say "recommending" instead of "adopting" or "establishing" had its attractions, but some rules of procedure might provide that if a dispute arose—on privileges and immunities, for example,—a small committee should be set up to settle it; that went beyond a recommendation.

63. On the other hand, he would be glad to support Mr. Eustathiades' suggestion[13], if it made general agreement easier. The words "for the settlement of a dispute arising" might perhaps be replaced by the words "for the settlement of disputes arising", since they might give the impression that something was to be imposed on a State after a dispute had arisen.

64. Mr. ROSENNE said that he was prepared to accept articles 81 and 82 as a whole in the form in which they were now proposed.

65. For the concluding words of article 81, he would himself suggest the even shorter formula "with a view to settling the dispute". That language was more suitable in view of the element of formalization in the consultations envisaged, which was not usual for consultations in general. In the case under consideration, the two States concerned in the consultations might not have diplomatic relations between themselves or might not even recognize one another.

66. In paragraph 6 of article 82, he felt that it was essential to retain the reference to the inability to reach an agreement.

67. He could not support paragraph 7 as it stood, but could accept it if suitably amended.

68. In paragraph 8, the word "the" should be inserted between the words "concerning" and "settlement".

69. Mr. USHAKOV said that if it were merely a matter of improving the drafting of paragraph 7, he was prepared to support the wording proposed by Mr. Eustathiades.[14]

70. On the other hand, he was opposed to the deletion of the paragraph. If that were done, what would happen if a dispute arose in connexion with a conference convened at Sydney, say, by an organization with headquarters in New York? The parties would first have to hold consultations under article 81. If those failed, the parties would have to begin by resorting to any procedures which might have been established within the organization, and that would mean that they would have to go to New York. Only after that would they resort to the conciliation procedure laid down in article 82, with all the delay that involved. The conference would have been over long since. That was why a safeguard clause such as paragraph 7 was essential: it provided a speedier solution. Such long delays might be tolerable for permanent missions, but were impossible for a conference which met for only a brief period. Those members of the Commission who were against paragraph 7 should at least propose a specific solution to the difficulty.

71. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to the replacement of the words "with a view to exploring the possibilities of an amicable disposition of the dispute", at the end of article 81, by the words "with a view to disposing of the dispute".

It was so agreed.

72. The CHAIRMAN put article 81, as thus amended, to the vote.

Article 81, as thus amended, was adopted by 15 votes to none, with 1 abstention.

73. The CHAIRMAN said that, before putting article 82 to the vote, he wished to confirm that there was general agreement on a number of amendments.

74. First, at the end of the second sentence of paragraph 3, a full stop should be placed after the words "the Chairman" and the remainder of the sentence should be deleted and replaced by the words: "This appointment shall be made within a period of one month".

75. Secondly, in paragraph 5, the beginning of the second sentence should be amended to read: "If so authorized in accordance with the Charter of the United Nations, the Commission may . . .".

[11] See para. 28 above.

[12] See para. 35 above.

[13] See para. 36 above.

[14] *Ibid.*

76. Thirdly, in the second line of paragraph 6, the word "States" and the words "to the conciliation proceedings" should be deleted, so that the passage would now read "among the parties".

77. Fourthly, paragraph 7 should be amended to read: "Nothing in the preceding paragraphs shall preclude the establishment of another appropriate procedure for the settlement of disputes arising in connexion with the Conference."

78. If there were no objection, he would take it that the Commission accepted those amendments.

It was so agreed.

79. The CHAIRMAN said he would now put article 82, as thus amended, to the vote paragraph by paragraph.

Paragraph 1

Paragraph 1 was adopted by 16 votes to none.

Paragraph 2

Paragraph 2 was adopted by 16 votes to none.

Paragraph 3

80. Mr. EUSTATHIADES said he did not think the chairman of the conciliation commission need be a qualified jurist, as provided in the last sentence of paragraph 3, since the matters which would be the subject of a conciliation procedure would not necessarily be primarily of a legal nature. It would therefore be better to allow the chief administrative officer of the organization complete latitude to appoint the person best suited for the task. He accordingly proposed that the beginning of the last sentence of paragraph 3 be amended to read: "The chief administrative officer of the Organization shall appoint the Chairman, who shall be neither an official of the Organization nor a national . . .".

81. Mr. CASTRÉN said he endorsed the views of Mr. Eustathiades.

82. Mr. YASSEEN said he could not agree. Conciliation could not relate to anything but a purely legal dispute, since the dispute would have arisen "out of the application or interpretation of the articles". Consequently, only a jurist would be qualified to handle the dispute.

83. Mr. ROSENNE said that Mr. Eustathiades had been right to raise that point, since not every dispute was a legal dispute. The real difficulty was that there was no standard definition of the term "qualified jurist".

84. Mr. ELIAS said that the term "qualified jurist" should be retained, since the task required sound legal knowledge.

85. Mr. AGO said that the article would suffer if it were amended as proposed by Mr. Eustathiades, since the word "jurist" drew attention to the fact that the conciliation procedure was designed to settle points of law.

86. The CHAIRMAN put Mr. Eustathiades' amendment to the vote.

Mr. Eustathiades' amendment was rejected by 9 votes to 5, with 2 abstentions.

87. The CHAIRMAN put paragraph 3, as previously amended, to the vote.

Paragraph 3, as thus amended, was adopted by 14 votes to 1, with 1 abstention.

88. The CHAIRMAN put paragraph 4 to the vote.

Paragraph 4 was adopted by 15 votes to 1.

89. The CHAIRMAN put paragraph 5, as previously amended, to the vote.

Paragraph 5, as thus amended, was adopted by 16 votes to none.

90. The CHAIRMAN put paragraph 6, as previously amended, to the vote.

Paragraph 6, as thus amended, was adopted by 16 votes to none.

91. The CHAIRMAN put paragraph 7, as previously amended, to the vote.

Paragraph 7 was adopted by 16 votes to none.

92. The CHAIRMAN put paragraph 8 to the vote.

Paragraph 8 was adopted by 16 votes to none.

93. The CHAIRMAN put article 82 as a whole to the vote.

Article 82 as a whole was adopted by 15 votes to none, with 1 abstention.

94. Mr. REUTER, explaining his vote, said that he had abstained from voting on article 82 as a whole and had voted against paragraph 3 because the Commission, for a reason which he did not consider valid, had refused to allow the chief administrative officer of the organization the right, when he saw fit, to delegate to an eminent personality, namely, the President of the International Court of Justice his right to appoint a member of the conciliation commission. He himself did not think the Commission could really be suspicious of the President of the International Court of Justice, since it had approved the advisory opinion procedures as a means of guidance for the conciliation commission. His contention was that the chief administrative officers of international organizations—which were not participating in the preparation of a set of articles which concerned them—should have the right to commit themselves, if necessary, to the defence of a legal argument during a consultation procedure and the right to adopt a procedure

which could, in the eyes of third parties as well as of the parties to the dispute, invest the chairman of the conciliation commission with all the necessary authority. That was absolutely essential, since it was too often overlooked that the same person could not appear in a case both as judge and party.

95. Mr. RUDA, explaining his vote, said that he had abstained from voting on paragraph 3 for the reasons which he had stated at the previous meeting.[15]

96. Mr. ALCÍVAR, explaining his vote, said that he had voted in favour of paragraph 6, though he hoped the commentary would mention the final sentence in the original paragraph 6 (A/CN.4/L.174/Add.3) which read: "The report shall not be binding upon the participating States or upon the Organization", but which had been deleted.

The meeting rose at 1 p.m.

[15] See 1137th meeting, para. 48.

1139th MEETING

Monday, 19 July 1971, at 3.10 p.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Ushakov, Sir Humphrey Waldock.

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/Add.4 and 5)

[Item 1 of the agenda]

(continued)

FOURTH REPORT OF THE WORKING GROUP

Draft articles on observer delegations to organs and conferences and paragraphs 1(9) and 1(10) of article 1 (Use of Terms) of the consolidated draft articles

ARTICLE A and paragraphs 1(9) and 1(10) of article 1 (Use of Terms)

1. The CHAIRMAN invited the Commission to consider the Working Group's draft articles on observer delegations to organs and conferences, contained in its fourth report (A/CN.4/L.174/Add.4 and 5), commencing with article A.

2.

Article A

Use of terms

(*a*) "observer delegation to an organ" means the delegation sent by a State to observe on its behalf the proceedings of the organ;

(*b*) "observer delegation to a conference" means the delegation sent by a State to observe on its behalf the proceedings of the conference;

(*c*) "observer delegation" means, as the case may be, the observer delegation to an organ or the observer delegation to a conference;

(*d*) "sending State" means the State which sends:

...

(iii) an observer delegation to an organ or an observer delegation to a conference;

(*e*) "observer delegate" means any person designated by a State to attend as an observer the proceedings of an organ or of a conference (A/CN.4/L.174/Add.5).

3. Mr. KEARNEY (Chairman of the Working Group) said that the foreword (A/CN.4/L.174/Add.4) to the Working Group's fourth report explained the manner in which the Working Group had established the texts of twenty-three draft articles designated A to W on observer delegations. The fundamental assumption on which those articles were based was that an observer delegation would consist of one or two observers and that its functions would be strictly confined to observation.

4. The Working Group had decided to present those articles as a separate set, to be annexed to the consolidated draft articles, because governments and secretariats of international organizations had not yet had an opportunity to express their views on them. The articles had, however, been so drafted as to facilitate their integration into the consolidated draft if it were so decided either by the General Assembly or by a future conference of plenipotentiaries.

5. A small correction should be made to the title so that it read "Observer delegations to organs and to conferences"; that would bring it into line with the title of Part III.

6. The first article, dealing with the use of terms, was numbered article A; the provisions of sub-paragraphs (*a*) and (*b*) described the meaning of the terms "observer delegation to an organ" and "observer delegation to a conference" in such a manner as to stress that those delegations had simply the function of observation. Sub-paragraph (*c*) dealt with the term "observer delegation", which covered both observer delegations to organs and observer delegations to conferences. The purpose of sub-paragraph (*d*) was to insert in the definition of "sending State" an additional passage to cover the sending State of an observer delegation. Sub-paragraph (*e*) dealt with the meaning of "observer delegate", as being a person who was a member of an observer delegation.

7. Mr. ROSENNE said he noticed that, as explained in paragraph 4 of its foreword (A/CN.4/L.174/Add.4),