

**United Nations Conference on the Representation of States
in Their Relations with International Organizations**

Vienna, Austria
4 February - 14 March 1975

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A/CONF.67/C.1/SR.2

2nd meeting of the Committee of the Whole

Extract from Volume I of the Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)

SUMMARY RECORDS OF MEETINGS OF THE COMMITTEE OF THE WHOLE

1st meeting

Wednesday, 5 February 1975, at 6 p.m.

Chairman: Mr. NETTEL (Austria).

Election of the Vice-Chairman of the Committee of the Whole

1. The CHAIRMAN called for nominations for the office of Vice-Chairman of the Committee of the Whole.
2. Mr. RITTER (Switzerland) nominated Mr. Wershof (Canada).
3. Mr. DO NASCIMENTO E SILVA (Brazil), Mr. JALICHANDRA (Thailand) and Mr. ELIAN (Romania) supported the nomination.

Mr. Wershof (Canada) was elected Vice-Chairman by acclamation.

Election of the Rapporteur of the Committee of the Whole

4. The CHAIRMAN called for nominations for the office of Rapporteur of the Committee of the Whole.
5. Mr. MEISSNER (German Democratic Republic) nominated Mr. Klafkowski (Poland).
6. Mr. MARESCA (Italy), Mr. CALLE Y CALLE (Peru) on behalf of the Latin American Group, and Mr. MUSEUX (France) supported the nomination.

Mr. Klafkowski (Poland) was elected Rapporteur by acclamation.

The meeting rose at 6.20 p.m.

2nd meeting

Thursday, 6 February 1975, at 10.55 a.m.

Chairman: Mr. NETTEL (Austria).

Organization of work

1. The CHAIRMAN said that consultations had been held on the question whether the Committee should begin its consideration of the draft articles proposed by the International Law Commission (ILC) (see A/CONF.67/4) with article 1. As that provision dealt with the use of terms in the draft, some delegations had deemed it preferable to leave consideration of it until the substantive provisions had been studied; they thought that the discussion on the substantive questions might give rise to amendments to the definitions contained in article 1. In the view of some other delegations, article 1 was basic and should be considered before the other articles of the draft.

2. As a compromise, he proposed that consideration of the draft should begin with article 2, on the understanding that delegations could comment on article 1 during consideration of the substantive provisions and that the title of the convention would be established when the whole draft had been considered.

It was so decided.

Consideration of the question of the representation of States in their relations with international organizations in accordance with resolutions 2966 (XXVII),

3072 (XXVIII) and 3247 (XXIX) adopted by the General Assembly on 14 December 1972, 30 November 1973 and 29 November 1974

Article 2 (Scope of the present articles) (A/CONF.67/4; A/CONF.67/C.1/L.1, L.2, L.7, L.8)

3. Mr. DE YTURRIAGA (Spain), introducing the amendment submitted by his delegation to article 2 (A/CONF.67/C.1/L.2), said it would be a pity if the scope of the future convention were limited to international organizations of universal character and if the regional organizations were excluded from it. Many regional organizations played an important role and should be able to benefit from the provisions of the future convention. Permanent missions were accredited to some of them, such as the Organization of American States, the Organization of African Unity, the Organization for Economic Co-operation and Development, the Council of Europe, the European Economic Community and the League of Arab States. The Spanish delegation therefore proposed that article 2, the effect of which was to limit the scope of the convention, should be deleted.

4. He pointed out that it would be necessary to determine how the convention would be made applicable to an international organization and that, in that con-

nexion, it would be desirable to specify whether the convention would be open for signature solely by States or whether it would also be open for signature by other international entities.

5. Mr. MUSEUX (France), introducing the amendment to article 2 submitted by the delegations of the Ivory Coast, Switzerland and France (A/CONF.67/C.1/L.7), said that the sponsors of that proposal hoped that the scope of the future convention would be clearly defined. According to the Charter, it was for the United Nations to codify and develop international law. The draft articles under consideration were not limited to codifying the rules of customary international law; they contributed to a great extent to the development of the said law. That was to be welcomed, but care should be taken not to give universal scope to the new rules thus elaborated. The expression "international organizations of universal character" used by the ILC was not very satisfactory. To enable an organization to be classified in that category, was it necessary for all States to be members of that organization, or was it sufficient for it to be open to participation by all States?

6. It was moreover not enough to define the meaning of that expression more accurately, since international organizations of universal character did not all play the same role in the international community, and it was precisely the role they played that dictated the desirability of granting them the benefit of privileges and immunities. For instance, the international organizations of universal character which had their headquarters in France were very heterogeneous. The same juridical treatment could not be accorded to the United Nations Educational, Scientific and Cultural Organization, the International Institute of Refrigeration, the International Organization of Legal Metrology or the International Office of Epizootics. Instead of elaborating a universal instrument which would be difficult to adapt to all situations, it would be better to draw up an instrument that suited the most important organizations for the development of relations between peoples, namely the organizations of the United Nations system. That was why the sponsors of the amendment in document A/CONF.67/C.1/L.7 were proposing that the scope of the future convention should be limited to the United Nations (namely not only Headquarters at New York and the Office at Geneva, but also the bodies established by resolutions of the United Nations, such as the United Nations Industrial Development Organization (UNIDO), the specialized agencies, all of which had an important role to play in the service of the international community, and the International Atomic Agency, which also played an important role.

7. With regard to paragraph 4, the sponsors provided for the possibility of concluding agreements making the provisions of the convention applicable to international organizations or conferences other than those to which the convention would automatically apply. That flexible provision would enable any international organization or conference called upon to play an important role in the international community to be covered by the convention.

8. It was essential, for the efficient working of the

organizations belonging to the United Nations system, that they should benefit from privileges and immunities, but the sponsors of the amendment considered that it was neither justified nor necessary, and in any case impossible, to grant special treatment to an indefinite number of international organizations.

9. The CHAIRMAN, referring to a remark made by the representative of Spain, said that it was for the Conference itself, when it came to consider the final clauses of the draft, to decide whether the convention would or would not be open for signature solely by States. He invited the Expert Consultant to give his opinion.

10. Mr. EL-ERIAN (Expert Consultant) said that the ILC had paid special attention to that question. It was fully aware that its draft placed obligations on the international organizations. Thus article 22 provided that "The Organization shall, where necessary, assist the sending State, the mission and the members of the mission in securing the enjoyment of the privileges and immunities . . .". The members of the ILC had pondered the question of how such an obligation could be placed on an international organization that would not be a party to the future convention. In one of his reports to the ILC, he had pointed out that, although the United Nations was not a party to the Convention on the Privileges and Immunities of the United Nations,¹ which was only open to accession by States, the Secretary-General had deemed that the United Nations could be reckoned as one of the "parties" to that Convention, in the sense in which that expression was used in section 30.

11. As the Chairman had pointed out, the question raised by the representative of Spain related to the final clauses of the draft. When the Committee considered those clauses, it would have to see whether it meant to keep to the practice followed during the preparation of the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies and decide to open the future convention for signature solely by States, or to deviate from that practice and open it for signature by international organizations.

12. Mr. MAAS GEESTERANUS (Netherlands), introducing the amendment which his delegation proposed should be made to article 2 (A/CONF.67/C.1/L.8.), pointed out that it constituted a middle course between the two other proposals relating to that provision. The Netherlands delegation, like others, considered that the expression "international organizations of universal character" was too vague to enable a host State to know exactly which organizations came within that category. It had been observed that international organizations were not all of the same character, and that different régimes should be applied to them. Presumably, that argument was valid even with regard to the specialized agencies. However, if the future convention was to apply solely to the organizations of the United Nations system, it would lose much of its value as a codifying instrument. The Netherlands delegation preferred that the convention could be made applicable to more, even to regional organizations.

¹ General Assembly resolution 22 A (I).

13. In any case, it would be desirable to specify, either in article 2 or in one of the final clauses, at what date an organization would come under the provisions of the convention. In the view of the Netherlands delegation, the date of entry into force of the convention could not be taken, since possibly only a small number of the member States of the Organization concerned would have ratified it. The date of ratification—by the majority of the member States—would not be suitable either, because the host State might not be one of the States that had ratified the convention.

14. Consequently, the Netherlands delegation was proposing that it should be stipulated in article 2 that the convention would apply to an organization if it so wished and if the host State gave its consent thereto. Even if the scope of the convention were to be limited to organizations connected with the United Nations, as was proposed in the amendment contained in document A/CONF.67/C.1/L.7, the date at which the convention would begin to apply to a given organization should be specified. However, in case the twofold condition proposed by the Netherlands delegation could be accepted, an extension to other international organizations, as apparently was also the spirit of the Spanish proposal, would not meet serious difficulties; the scope of the articles could be extended since there would necessarily be negotiations between the host State and the organization concerned. Those negotiations might lead, moreover, to partial applications of the convention, so as to take account of the special character of the organization in question.

15. Mr. PASZKOWSKI (Poland) observed that, in examining the provisions of the draft, article 1, in which expressions frequently used in the draft were defined, should be kept constantly in mind, although it was not necessary at the present stage to spend much time on consideration of that article.

16. With regard more particularly to article 2, the ILC had based itself on the assumption that the scope of the draft convention should be extended to include all organizations of universal character, a solution the Polish delegation considered entirely acceptable. Concerning the amendment proposed by France, the Ivory Coast and Switzerland (A/CONF.67/C.1/L.7), his delegation would have to study it in greater depth and consider all its implications before being able to come to a decision with regard to it. In any case, neither that amendment nor article 2 ruled out the possibility of extending the scope of the convention to include international organizations other than those provided for in the draft, and that possibility should be maintained.

17. Sir Vincent EVANS (United Kingdom) said that, in regard to the privileges and immunities of international organizations, his Government based itself on the principles set forth in Articles 104 and 105 of the Charter, and in regard to the privileges and immunities of representatives of States on the principle of functional need enunciated in paragraph 2 of Article 105. Those provisions referred to the United Nations, but the principle embodied in paragraph 2 of Article 105 applied to international organizations in general. Privileges and immunities were a derogation from the ordi-

nary law of the host State and those granted to representatives of States must therefore be justified in the case of each organization as necessary for the exercise of their functions.

18. International organizations differed widely from one another in their functions, character and membership, so that their functional requirements varied considerably; it was for that reason that his delegation supported the formula adopted by the ILC. The latter had based its draft on its conception of the functional requirements of international organizations of universal character, while taking account of existing international conventions on the subject.

19. His delegation could not agree that the provisions of the draft convention should automatically apply to the representatives of States to organizations with a limited membership and narrow responsibilities. The ILC had therefore been right in providing simply for the possibility of extending the scope of the draft convention to organizations not of a universal character by means of agreement between States and the organizations concerned.

20. Moreover, his delegation was of the opinion that the definition of the expression "international organization of universal character" given in paragraph 1 (2) of article 1 was imprecise. From paragraph (2) of the International Law Commission's commentary on article 2 (see A/CONF.67/4), it was apparent that that expression embraced not only the specialized agencies and similar organizations, such as the International Atomic Energy Agency, but might be interpreted to extend to a number of other organizations as well, some of which had in practice a much more limited membership and responsibilities. The amendment to paragraph 1 of article 2 (A/CONF.67/C.1/L.7) would allow of a clearer definition of the organizations covered by the draft and should be read in the light of the proposed amendment to paragraph 4 of the same article which recognized the possibility of applying the provisions of the draft convention by agreement to other international organizations and thereby introduced an element of flexibility in the scope of the draft convention.

21. With regard to the amendment contained in A/CONF.67/C.1/L.2, proposing the deletion of article 2, it seemed that the Spanish delegation wished to extend the application of the draft articles to certain organizations of regional character, and to other organizations to which permanent missions were accredited, without, however, seeking to make their provisions applicable to all the international organizations in general. But it had not proposed any specific provision to take the place of article 2. Simple deletion of the article without putting anything in its place was difficult to accept.

22. The Netherlands amendment (A/CONF.67/C.1/L.8), in providing solely for the consent of the host State and of the international organization concerned in order for the provisions of the draft articles to be binding, left out of account the position of sending States. The speaker suggested that the amendment in question might be combined with the one submitted by

France, the Ivory Coast and Switzerland (A/CONF.67/C.1/L.7).

23. Mr. ZEMANEK (Austria) said that, in reading article 2, account should be taken of the final clauses—which, moreover, were not yet known—and of article 4 (a), since all the organizations belonging to the United Nations system, as well as the regional organizations, had concluded agreements on privileges and immunities with the host State. If the scope of the draft articles were to be limited to organizations belonging to the United Nations system, the convention would be of concern only to conferences convened by those organizations or held under their auspices, which had hitherto been the subject of individual agreements between the organization and the host State. In practice, the convention should apply to host States, to sending States and to the organizations concerned. Since the scope of article 2 could only be determined in the light of article 4 and the final clauses, the Committee should consider how that situation could be taken into account in the conduct of its work.

24. Mr. WERSHOF (Canada) said that on the whole he supported the idea of taking the functional criterion as the basis for consideration of the draft articles. That was why his delegation was concerned about the lack of precision in article 2. Paragraphs 1 and 2 of article 1 were also liable to give rise to a good deal of controversy on the matter of which international organizations of universal character were covered by the terms of article 2.

25. With regard to the amendment contained in document A/CONF.67/C.1/L.2, he would suggest that it be studied in conjunction with the amendments to paragraphs 1 and 2 of article 1 (A/CONF.67/C.1/L.1), also proposed by Spain. Those amendments would have the effect of making the convention automatically applicable to a larger number of organizations. While understanding the arguments invoked by Spain in support of that course, his delegation did not think it desirable to broaden the scope of the draft and regretted that it was unable to support the Spanish amendments.

26. The amendments proposed by France, the Ivory Coast and Switzerland, on the one hand, and the Netherlands, on the other, though worded differently, had the same objective. The former (A/CONF.67/C.1/L.7) enumerated precisely the organizations of the United Nations family to which the draft convention would apply and, in revising paragraph 4 of article 2, provided for the possibility of the conclusion of an agreement between an organization of universal or non-universal character and a host State, to enable the organization in question to benefit from the provisions of the draft convention. The Netherlands amendment (A/CONF.67/C.1/L.8) also had the merit of clarifying the provisions under consideration. At the present stage, his delegation was unable to declare itself in favour of one or other of those amendments, as it considered them both satisfactory. It supported the suggestion made by the United Kingdom representative that the two amendments should be combined in a single amendment.

27. Mr. KUZNETSOV (Union of Soviet Socialist Republics) said he shared the views of the United Kingdom representative with regard to the Spanish amendment proposing the deletion of article 2 (A/CONF.67/C.1/L.2); he thought that the article should be maintained in the text of the convention. He understood the concern behind the amendment to article 2 proposed by France, the Ivory Coast and Switzerland (A/CONF.67/C.1/L.7), but he thought that that amendment would unduly restrict the scope of the convention. The notion of an international organization of universal character was of course vague and imprecise, and a better definition should be sought by supplementing article 2. For instance, in paragraph 1 of that article, examples might be given of international organizations of universal character, without however limiting too far the scope of the text. His delegation was willing to seek a compromise solution to that problem. It was opposed to the Spanish amendment and reserved its position on the amendment in document A/CONF.67/C.1/L.7, the implications of which it would first like to study.

28. Mr. DORON (Israel) said that, like some members of the ILC, he would have preferred to see the draft articles on the representation of States in their relations with international organizations combined with those on the representation of organizations to States which the ILC might prepare at a future stage. It seemed to him that, as stated in paragraph 51 of the report of the ILC on the work of its twenty-third session,² relations between States and international organizations had two aspects—"that of representation of States in their relations with international organizations and that of representation of international organizations to States; and that since the two aspects were closely related, it would be preferable to treat them in one instrument".

29. The definition of the expression "international organization" in paragraph 1 (1) of article 1 lacked precision, as it referred to another expression—"intergovernmental organization"—which itself would need to be defined. The Drafting Committee should therefore turn its attention to that point. Also, the criterion of "universal character" proposed in subparagraph 2 of paragraph 1 of article 1 to designate the international organizations to which the convention should apply, was inadequate. It would be preferable, in the speaker's view, to speak of an international organization "open to all States", since it was clear from the commentary of the ILC that that was the type of organization to which the draft convention related.

30. He also had some misgivings on the subject of article 3, which would subordinate the application of the convention to the constituent rules of international organizations or even to the relevant provisions of the rules of procedure of the conferences convened by those organizations.

31. Mr. MARESCA (Italy) pointed out that, unlike the other international instruments adopted in the process of codifying and developing diplomatic law, such as the Convention on Special Missions and the Vienna

² See *Official Record of the General Assembly, Twenty-sixth Session, Supplement No. 10.*

Conventions on Diplomatic Relations and Consular Relations, the draft convention on the representation of States in their relations with international organizations was not based on the customary rules established by a long-standing tradition. In preparing the draft, the ILC had therefore taken on an enormous task, for it had not confined itself to codifying already established rules, but had had to create a diplomatic law of international organizations.

32. Agreements on the status of international organizations and their relations with host countries derived from two main principles. On the one hand, the privileges and immunities granted by the host country were based on a functional criterion, for they depended on the needs of the organization concerned and on the functions it was required to perform. On the other, the granting of privileges and immunities was not automatic, and an international organization could acquire a particular status only with the consent of the host country. But the present draft departed from the strictly functional criterion which should govern the granting of privileges and immunities and made very few allusions to the consent of the host State.

33. The speaker thought, moreover, that the expression "international organizations of universal character" was much too vague; he was grateful to Spain and to France, the Ivory Coast and Switzerland for having tried to define that notion. The amendment to article 2 submitted by the last three (A/CONF.67/C.1/L.7) had, in his view, the great advantage of indicating which were the international organizations that deserved special status, by expressly mentioning the organizations of the United Nations system, while reserving the possibility of widening the scope of the convention by the conclusion of special agreements. He also welcomed with much satisfaction the Netherlands amendment (A/CONF.67/C.1/L.8), which introduced the idea of the consent of the host State; that amendment deserved to be studied with the greatest attention.

34. Mr. DO HUU LONG (Republic of Viet-Nam) said that the main thing was to make it clear to which international organizations the convention was to apply. The expression "international organization of universal character" seemed to him to be much too vague. He therefore supported the three-Power amendment to article 2 (A/CONF.67/C.1/L.7).

35. Mr. CALLE Y CALLE (Peru) said that, so far as he was concerned, article 2 of the present draft correctly delimited and defined the scope of the convention. When the ILC had begun its work on the draft articles it had pondered the question whether the draft should include international organizations of regional character or any other type of intergovernmental or-

ganization, and it had decided that the draft should apply primarily to international organizations of universal character. The speaker approved of that decision and could not endorse the Spanish amendments (A/CONF.67/C.1/L.1 and L.2) to delete article 2 and to amend, in article 1, the definition of the expression "international organization" to give it a more general character. Neither could he endorse the three-Power amendment to article 2 (A/CONF.67/C.1/L.7), as it seemed to him unnecessary to mention, in paragraph 1, the United Nations, its specialized agencies and the International Atomic Energy Agency. He hoped that article 2 as submitted by the ILC would be maintained as it stood, for it seemed to him to be well balanced and did not exclude the possibility of extending the scope of the convention by the conclusion of new agreements.

36. The question of the criteria to be applied in defining "international organizations of universal character" was important, but there was no need to mention it explicitly in article 2. It could be included in the final clauses, in the same way as the question of the consent of the host State. In that connexion, the speaker pointed out that the consent of the host State did not form the basis of relations between States and organizations; in fact, the rights and obligations of States were based on constituent instruments deriving from the association between the State and the organization.

37. Mr. SMITH (United States of America) said that the scope of the convention was badly defined from the juridical point of view, as the expression "international organizations of universal character" was much too vague. He welcomed with satisfaction the Netherlands proposal (A/CONF.67/C.1/L.8), which seemed to him to be very important, especially in the light of the Spanish amendment to article 1 (A/CONF.67/C.1/L.1), which would modify the definition of the expression "international organization". That constituted a simple procedure which would give the host State its proper role. He therefore hoped that the Committee would give the Netherlands proposal all the attention it deserved.

38. Mr. KABUAYE (United Republic of Tanzania) said that he, too, was of the opinion that the expression "international organizations of universal character" was much too general and that it allowed dangerous uncertainties to persist. He therefore supported the amendment submitted by France, the Ivory Coast and Switzerland (A/CONF.67/C.1/L.7) which seemed to offer the best means of solving the problem.

39. Mr. DUHR (Luxembourg) also strongly supported the three-Power amendment.

The meeting rose at 12.55 p.m.