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3rd meeting of the Committee of the Whole

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3rd meeting

Thursday, 6 February 1975, at 3.20 p.m.

Chairman: Mr. NETTEL (Austria).

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 (*continued*)

Article 2 (Scope of the present articles) (*continued*) (A/CONF.67/4, A/CONF.67/C.1/L.2, 7, 8, 15)

1. Mr. DO NASCIMENTO E SILVA (Brazil) said that the intention of the Spanish proposal (A/CONF.67/C.1/L.2) to delete article 2 was apparently to widen the scope of the draft convention and it must therefore be examined in conjunction with the use of terms set out in article 1. There was some danger, however, in eliminating article 2 altogether. The amendment to paragraph 1 of article 2 proposed by the delegations of France, Ivory Coast and Switzerland (A/CONF.67/C.1/L.7) had the merit of clarifying the expression "universal character" but it limited the scope of the draft convention and he could support it only if it was prefaced by the phrase "organization such as" as had been suggested by the USSR representative. The expression "universal character" had been criticized, but it was a comprehensive formula and should be maintained. The Netherlands amendment to article 2 (A/CONF.67/C.1/L.8) had received some support but, in his view, once a host State ratified the convention it had to apply it. Would it be possible for a host State, having ratified the convention, to refuse to notify an organization that the convention would apply? On the other hand, it was difficult to see how a host State which did not ratify the convention would apply it.

2. He believed that as it continued its examination of the draft articles, the Committee would come to the conclusion that the text proposed by the International Law Commission (ILC) (see A/CONF.67/4) was the best.

3. Mr. JELIC (Yugoslavia) said that in examining article 2, his delegation had started from the premise that the members of the organizations in question were States and that representatives of States should enjoy a certain measure of independence in order to express freely the views of their respective governments. The need was not less in the case of some inter-governmental organizations than in others; it was the same for both universal and regional organizations, of all degrees of competence.

4. In that regard, the Spanish amendment (A/CONF.67/C.1/L.2) would be acceptable, but it had to be admitted that in the case of regional organizations some modification in the methods of application of the basic principle might be required. The choice therefore lay between extending the scope of the draft convention to cover regional organizations with the latitude to vary it as necessary by virtue of article 1 or to leave regional organizations free to determine the question according to their needs and in conformity with the basic principle. The ILC had considered the latter as the better course and his delegation endorsed that view.

5. With regard to the joint amendment (A/CONF.67/C.1/L.7), he appreciated that the presence of a considerable number of heterogeneous organizations, together with their permanent representatives and delegations to organs and conferences might cause some inconvenience to a host State but that was considerably outweighed by the advantages. In future, such inconvenience could not be held to justify a down-grading of the status of the representatives of States to international organizations.

6. The Netherlands amendment (A/CONF.67/C.1/L.8) seemed to offer a practical solution to the problem but it had the drawback that it would tend to reduce the draft convention to a model convention, which was unacceptable.

7. Mr. LARSSON (Sweden) said that his Government was of the view that the categories of persons enjoying a privileged treatment in foreign countries should be restricted rather than increased and that the extent of those privileges and immunities should be limited to what was required by the functions of the organizations and individuals concerned. The present draft of article 2, paragraph 1, was lacking in precision and would be difficult to interpret in specific cases. It would be necessary to elaborate it by giving examples or to drop the definition and enumerate the international organizations falling under the convention.

8. He could not support the Spanish amendment to article 2 (A/CONF.67/C.1/L.2). He was inclined to support the joint amendment (A/CONF.67/C.1/L.7), in which paragraph 4 provided a valuable supplement to paragraph 1. The Netherlands amendment (A/CONF.67/C.1/L.8) also deserved consideration. He would favour a modification of article 2 along the lines of those two amendments. As his Government had stated in its written comments (A/CONF.67/WP.6, p.19) it was necessary to introduce safeguards.

9. Mr. MAAS GEESTERANUS (Netherlands) said that as to the question whether as a result of his amendment (A/CONF.67/C.3/L.8) the draft convention would become merely a model to be incorporated in agreements between host States and organizations, that would to some extent be the case, but the convention should nevertheless be ratified, since it was desirable to make it binding upon sending States as well. With regard to the point raised by the Brazilian representative, he observed that it would still be necessary for a host country which had ratified the convention to give its consent to a particular organization, since it had to be determined whether that organization fell within the scope of the convention's articles. The

French representative had referred to organizations of a universal character. The vagueness of the expression "universal character" had to be eliminated. The solution proposed by his delegation was to reach agreement between the organization and the host State.

10. Sir Vincent EVANS (United Kingdom) said that his delegation had been working on an amendment which sought to combine the merits of the amendments contained in documents A/CONF.67/C.1/L.7 and L.8. The text which would be circulated shortly (A/CONF.67/C.1/L.15) consisted of two parts. The Committee had recognized that article 2 and paragraph 1(2) of article 1 had to be read together. His delegation had therefore first directed its attention to the definition of an international organization of a universal character in article 1, paragraph 1(2) in the light of the proposal in document A/CONF.67/C.1/L.7 to specify by name the international organizations to which the Convention would apply, and of the discussion held by the Committee. Like a number of other delegations, the United Kingdom delegation favoured that proposal, but in view of the fact that other delegations had thought it would limit too much the scope of the draft convention, it might be desirable to allow more flexibility. Taking also into account the formula "such as", which had been suggested by the USSR representative, he suggested that paragraph 1(2) of article 1 should be reworded to read:

> " 'international organization of universal character' means the United Nations and its specialized agencies, the International Atomic Energy Agency and any similar organizations whose membership and responsibilities are on a world-wide scale;".

In that way, the basic principle of the International Law Commission's draft would be retained but the definition would be given greater precision by specifying some organizations by name.

11. The Netherlands amendment to article 2 (A/CONF.67/C.1/L.8) had some attractive features; it would also give greater precision to the application of the convention, but it was very difficult to accept the underlying idea that the convention was applicable to virtually all international organizations on the same footing. He would be prepared to accept the Netherlands amendment, provided it was limited to international organizations of a universal character as defined in the way he had just indicated, and it was in that sense that he was proposing the amendment to paragraph 1 of article 2 to be circulated in document A/CONF./67/C.1/L.15.

12. It was unrealistic to contemplate the application of the convention unless it had been accepted both by the organization and by the host State in respect of that organization; it was therefore desirable to make those essential conditions of the application of the convention explicit. A host State would then be taken to mean a State party to the convention; if it was thought desirable to make that explicit also, it could be added to the definition of "host State" contained in article 1, paragraph 1(12).

13. Mr. RITTER (Switzerland), speaking as one of the sponsors of the amendment contained in document A/CONF.67/C.1/L.7, said that the objections to the amendment which had been voiced could be summarized under two heads: there had been doubt whether the Conference would perform a useful task in confining itself to determining the status of missions to the United Nations and specialized agencies; it had been asked whether that task would be sufficient and whether it would not be necessary in any case to extend the scope of the convention beyond those bounds. With regard to the first objection, it might reasonably be supposed that the question had already been settled to a large extent by agreement but closer inspection proved that such was not the case.

14. A study of the agreements applicable to permanent missions and delegations in Geneva showed that they were incomplete and full of gaps. Furthermore, practice over twenty years had often gone beyond the text of those agreements. For example, only one headquarters agreement referred to permanent missions, for their institution had not been anticipated when the United Nations was established. In the remaining cases, the status of permanent missions was regulated by a decision of the Swiss Government in 1948. The status of delegations was defined in every headquarters agreement but in an incomplete fashion. There was no mention of observers either in any headquarters agreement or in the aforementioned decision of the Swiss Government. The latter made the necessary provisions as each case arose after a decision had been taken by the organization to accept observers. Switzerland, as a host country to many international organizations, wished to fill in such gaps.

15. The second objection related to the desirability of extending the scope of the convention. It was always tempting to embark upon a work of codification on a universal scale but in dealing with international organizations which had States as members, the Conference was entering a new legal field; the previous Vienna Conventions had all dealt with State to State relationships in which codification was easier. The Conference had the difficult task of building onto existing structures. It would be even more difficult to include organizations such as regional organizations about which it was imperfectly informed and which had their own institutional machinery for the elaboration of new rules. Furthermore, as soon as the scope of the convention was extended, new agreements would be required, for example between the host State and the sending State. The Netherlands amendment (A/CONF.67/C.1/L.8) proved that such was the logical consequence of going outside the limited circle of the United Nations family. It would make the draft convention a model text for reference. Its implementation would then require subsequent agreements from which the majority of States represented at the Conference would be excluded, since they were not host States. In that case, even if the convention was widely ratified, it might not be applied in practice, or conversely, it might be applied by means of special agreements, having been ratified by very few States.

16. He considered that the amendment which he had co-sponsored (A/CONF.67/C.1/L.7) was balanced:

it would apply compulsorily in a limited field but it might in future be applied in other cases since it was flexible enough to serve as a reference text.

17. Mrs. THAKORE (India) said that her delegation agreed with those who considered that the draft articles should apply only to international organizations of universal character, as defined in article 1, paragraph 1(2) and to representation at conferences convened by or under the auspices of such organizations. In that connexion, her delegation supported the flexible approach adopted by the ILC which enabled the provisions of the draft articles to be made applicable to organizations of other than universal character and their conferences. Her delegation also endorsed the International Law Commission's decision to concentrate first on the topic of the representation of States in their relations with international organizations and to defer consideration of the topic of representation of international organizations to States, which required a different approach.

18. Her delegation had given careful consideration to the amendments in documents A/CONF.67/C.1/L.7 and L.8, but was inclined to support the Commission's formulation of article 2.

19. Mr. WERSHOF (Canada) asked the Expert Consultant what the ILC had had in mind when drafting paragraph 4 of article 2. How were the agreements referred to in that paragraph to be made? Did the ILC contemplate that just the host State and a particular organization not covered by paragraph 1 of article 2 would agree that the convention should be applicable to that organization or had it had something else in mind?

20. Mr. EL-ERIAN (Expert Consultant) said that in drafting article 2 the ILC had been motivated by two considerations, namely, the need to give the convention maximum usefulness and the need for precision in identifying the international organizations to which the convention would apply. One way in which to secure such precision was to limit the convention to the organizations of the United Nations family. The ILC had noted, however, that there were organizations of a universal character outside the United Nations family. In that connexion, he wished to explain that in determining the meaning it had given to the phrase "international organizations of universal character" the ILC had been guided by the provisions of Article 57 of the United Nations Charter. The ILC had considered, however, that while the convention was designed basically to cover the organizations of the United Nations family, provision should also be made for its possible application to other organizations of universal character which were not, technically speaking, specialized agencies. The International Union of Official Travel Organizations was an example of such an organization. In his opinion, the discussion in the Conference had revealed that the general feeling was that the two considerations which had motivated the ILC—maximum usefulness of the convention and the need for precision in identifying the organizations to which it would apply—should be reconciled.

21. The specific question raised by the representative of Canada related to regional organizations. On that question, the ILC had been divided. Some of its members had been of the opinion that the articles should apply to regional organizations as did the articles on the law of treaties concluded between States and international organizations. The majority of its members, however, had been of the opinion that the articles should not apply to regional organizations which had their own codification bodies and which, from the practical point of view, benefited from universal conventions drafted within the framework of the United Nations. The Organization of African Unity and the Arab League, for instance, had drawn largely on the provisions of the Convention on the Privileges and Immunities of the United Nations when drawing up their own arrangements on privileges and immunities. The ILC had therefore worked out the compromise formula found in paragraph 3 of article 2. As the ILC had stated in the introduction to the articles, the draft articles constituted both codification and progressive development of international law. So, if the rules were merely codification they would be applicable, but the force of the obligation was general international law, not conventional law. Again, the ILC had provided, in paragraph 4, that States could also apply the articles to organizations other than those of universal character, thus obviating the need to prepare special conventions for such organizations. In the case of organizations of universal character, however, to which the convention would apply, there was no need for such a provision. The ILC had not prepared the convention as a code because it hoped that the draft articles would become a formal convention not merely a model or a code.

22. Mr. DE YTURRIAGA (Spain) explained that by proposing that the scope of the convention should be enlarged, his delegation had not intended to imply that the convention should apply to all organizations of universal character and to all regional organizations. Its intention had been that account should be taken of the functions, rules and practices of international organizations. In principle, his delegation believed that the convention should be open for signature not only to States but to international organizations as well. The establishment of permanent missions was already covered by the provisions of article 5. It must be remembered, however, that permanent missions had been established only for those organizations which needed them and that most international organizations did not have permanent missions.

23. In view of the lack of support for its proposal (A/CONF.67/C.1/L.2), his delegation was prepared to withdraw it.

24. Turning to the other amendments to article 2, he said that the difficulties with the article stemmed from the imprecise definition of the phrase "international organizations of universal character". The three-Power amendment (A/CONF.67/C.1/L.7) had the advantage of precision in that respect, but it restricted the scope of the draft to such an extent as to run counter to the work done by the ILC. If the scope of the articles was to be limited to the United Nations and the specialized agencies only, the General Assembly itself might be the best forum in which to prepare the con-

vention. Since, however, the Conference had been convened, it should be put to the best possible use, and organizations other than those of the United Nations family should be dealt with.

25. In its amendment (A/CONF.67/C.1/L.8), the delegation of the Netherlands had attempted to strike a balance between the Spanish delegation's position and those of other delegations. Nevertheless, in that amendment too much power was given to the host State. In practice, host States could not ignore the rights and obligations, under the agreements, of the sending States and the international organization concerned.

26. The first part of the United Kingdom amendment (A/CONF.67/C.1/L.15) took account of a comment made by the representative of the USSR at the previous meeting and improved the text of the ILC. The second part of the proposal, however, had all the disadvantages of the Netherlands proposal and none of its advantages.

27. His delegation favoured the text of the ILC but could accept the first part of the United Kingdom amendment, which approved the text of the ILC.

28. Mr. TODOROV (Bulgaria) said that he agreed with those speakers who had suggested that the International Law Commission's text of article 2 was the best of all those before the Conference. He could, however, support the USSR proposal, as reflected in the United Kingdom's amendment (A/CONF.67/C.1/L.15), which improved the International Law Commission's text.

29. His delegation could not, however, accept the Netherlands proposal (A/CONF.67/C.1/L.8). Presumably, the Conference's intention was that the convention should be binding on all States. In that case, how could the host State have the power to withhold its consent, as was implied in the Netherlands text?

30. Mr. RAOELINA (Madagascar) drew attention to his Government's comments on article 2, as reproduced on page 33 of document A/8753.[1] His delegation had examined carefully the amendments proposed to article 2 and was particularly interested in that submitted by the delegations of France, the Ivory Coast and Switzerland (A/CONF.67/C.1/L.7). He hoped, however, that the sponsors would be able to clarify their amendment to paragraph 4. In his opinion, that clarification should be related to the conclusion of agreements between a State and the organization concerned. Subject to such clarification, his delegation could support the three-Power amendment.

31. Mr. GOBBI (Argentina) said that the French delegation, as one of the sponsors of the amendment contained in document A/CONF.67/C.1/L.7, had rightly claimed for it the merit of introducing greater precision into the text of article 2. For his part, however, he felt that, if the scope of the convention were to be restricted in the manner proposed in that amendment, it would not represent any great progress over existing instruments.

32. The choice therefore lay between that approach and the element of uncertainty present in the International Law Commission's concept of "international organizations of universal character". It should be remembered that, as explained by the Expert Consultant, the meaning of that expression would necessarily have to be clarified by the interpretation given to it by host States in their practice. Each State would give a concrete meaning to the concept *in* question. In the last analysis, a State could always refuse to act as host to an organization whose claim to universality was unwarranted.

33. The Netherlands amendment (A/CONF.67/C.1/L.8) also introduced an element of precision, not by way of definition or enumeration but rather by bringing in the consensual element. Its adoption, however, would produce an element of complication in that the approval of the future convention would take place in two stages: first, the ratification of the Convention and, secondly, the notification by the host State envisaged in that amendment. The resulting instrument would thus become a sort of set of model rules.

34. The most serious problem which would result from the adoption of the Netherlands amendment would be its repercussions outside the limits of the host State. The question would arise of the conduct to be adopted by third States *vis-à-vis* an international organization accepted as of universal character by the host State but not recognized as such by those third States. Among other things, the introduction of the Netherlands amendment would make it necessary to define the scope of the obligations laid down in such articles as article 78 (Transit through the territory of a third State).

35. He stressed that his delegation, despite the objections made against the International Law Commission's draft of article 2, was prepared to accept it and believed that it constituted a satisfactory element of progressive development of international law. At the same time, his delegation would welcome any attempt to bridge the gap between the conflicting views expressed during the discussion; in particular, it would give the United Kingdom amendment the full consideration which it deserved.

36. Mr. SANGARET (Ivory Coast) said that his delegation had joined France and Switzerland in sponsoring amendment A/CONF.67/C.1/L.7 in order to meet the criticism that the expression "international organizations of universal character" was unduly vague and imprecise. While in some respects extensive, that expression would in another respect tend to restrict the application of the draft by eliminating from its scope organizations of a regional character, a matter to which his delegation attached particular importance. The rewording of paragraph 4 proposed in the joint amendment met that concern of his delegation by leaving States free to enter into host agreements with organizations other than those specified in the proposed rewording of paragraph 1 of the article.

37. Another reason which had led his delegation to sponsor the joint amendment was the need to avoid increasing unduly the number of organizations to which privileges and immunities were extended, and hence of persons actually benefiting from those privileges and immunities. His delegation felt that privileges and im-

[1] Mimeographed document.

munities should be recognized by the draft only to organizations of the United Nations family, leaving it open to a host State to grant similar facilities to organizations of another type if it considered them sufficiently important.

38. Mr. MUSEUX (France) said that he would consult with the other two sponsors of the joint amendment (A/CONF.67/C.1/L.7) with a view to replying to the question raised by the representative of Madagascar.

39. Mr. SHELDOV (Byelorussian Soviet Socialist Republic) said that the debate which had taken place showed the merit of the text which was the fruit of many years of work and great effort by the ILC and its Special Rapporteur. In its statement in the Sixth Committee during the discussion of the draft articles, his delegation had commended it as a good basis for the formulation of a convention.

40. Article 2 was an important provision. It was clearly not an easy task to define fully what constituted an "international organization of universal character". The formulation of article 2 was adequate, taking into account some interesting thoughts which had been put forward in critical analysis during the discussion and which could be used in order to improve the drafting without departing from the substance of the article.

41. As to the Netherlands amendment (A/CONF. 67/C.1/L.8), it was totally unacceptable to his delegation. That amendment purported to do away with the concept of "international organization of universal character". His delegation fully shared the view that its adoption would adversely affect the application of the future convention.

42. The CHAIRMAN said that, if there were no further comments on article 2, he would adjourn the discussion on that article until the following meeting, by which time the United Kingdom amendment would have been circulated.

Article 3 (Relationship between the present articles and the relevant rules of international organizations or conferences) (A/CONF.67/4)

43. The CHAIRMAN invited the Committee to consider article 3, to which no amendment had been proposed.

44. Mr. DO NASCIMENTO E SILVA (Brazil) said that his delegation had misgivings regarding the concluding phrase of the article "or to any relevant rules of procedure of the conference". The rule embodied in that phrase seemed far-fetched, in that it placed the provisions of the future convention lower in the hierarchy of norms than the rules of procedure of a conference. It should be remembered that it was comparatively easy for a conference to modify its own rules of procedure.

45. Unless some satisfactory explanation was forthcoming, his delegation would have to consider requesting a separate vote on the phrase in question.

46. Mr. MEISSNER (German Democratic Republic) said that, although it had not submitted any amendment, his delegation wished to place on record a clarification regarding the words "any relevant rules of the Organization". His delegation understood that provision in the manner explained in the commentary to the article, in particular paragraph 5 of that commentary: the expression "relevant rules of the Organization" covered all relevant rules whatever their nature, including any well-established practice prevailing in the organization. The practice of the organization, in its turn, had to be viewed within the framework of such generally binding principles as the principle of non-discrimination.

47. Mr. MUSEUX (France) said that his delegation had not submitted any amendment to article 3 but shared the misgivings of the Brazilian delegation regarding the bearing of the concluding part of the article. He would be inclined either to drop the part or to reword it in such a manner as to make its provisions applicable with due regard for the rules of international law; that purpose could perhaps be achieved by introducing in a suitable place the qualification *"le cas échéant"*.

48. His delegation was also uncertain of the exact implications, at least in its French version, of the expression *"sans prejudice des"* and suggested that the Drafting Committee should endeavour to improve the wording.

49. Mr. DE YTURRIAGA (Spain) said that his delegation shared the concern of the Brazilian and French delegations on the subject of the concluding phrase but had no formal proposal to make on the subject. He would welcome an explanation from the Expert Consultant on the advantage, if any, of retaining that phrase. For his part, he was not at all satisfied with its underlying idea of subordinating norms of treaties to mere rules of procedure of a conference.

50. Mr. CALLE Y CALLE (Peru) said that the short provision contained in article 3 originated in a rule which had been discussed at great length by the ILC in connexion with the topic of the law of treaties.

51. As he saw it, the "relevant rules of the Organization" included those contained in its constituent instrument or instruments and the decisions taken and practices established in the organization in accordance with such constituent instruments.

52. A safeguard clause of the type of article 3 had been included by the ILC in its draft on treaties concluded between States and international organizations or between international organizations, which it had adopted in 1974 at its twenty-sixth session; [2] that clause was included in order to ensure that the rules of the organization in question were not affected.

53. The intention of the ILC was stated clearly in paragraph 5 of the commentary: the expression "relevant rules of the Organization" should be construed broadly enough to cover constituent instruments, certain decisions and resolutions of the organization concerned as well as any well-established practices prevailing therein.

54. He expressed his delegation's support for article 3 as it stood.

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[2] See *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10*, chap. IV, sect. B.

55. Mr. MARESCA (Italy) said that article 3 offered a typical example of the necessary balance to be maintained between the system of diplomatic law relating to an international organization and the internal legal system of the organization as such. The problem was not a new one and arose in a similar fashion for States, which also had to reconcile diplomatic law with the domestic legal system.

56. The purpose of article 3 was to safeguard the autonomy of an international organization, so as not to prejudice its right to work out its own rules. As for conferences of States, the position was similar to that of international organizations; every conference had its own legal order which was reflected in its rules of procedure.

57. The rule embodied in article 3, however, had its limitations. If the rules of the organization or the rules of procedure of a conference contained a norm which was totally incompatible with the future convention, that convention should prevail.

58. Mr. KABUAYE (United Republic of Tanzania) drew attention to paragraph 3 of the commentary, which referred to the question of "associate membership" in certain specialized agencies. He would welcome an explanation from the Expert Consultant on how to reconcile that peculiarity of membership of some organizations with the provisions of articles 1 and 2.

59. Mr. ZEMANEK (Austria) said that, for his part, he could not understand the relevance of the examples of "associate membership" given in that paragraph of the commentary. The draft articles now under discussion made no reference whatsoever to the membership of organizations.

60. Moreover, all the articles referred to States and not to any other entities such as those mentioned in paragraph 3 of the commentary. The "entities which enjoy internal self-government but have not yet achieved full sovereignty", to which paragraph 3 of the commentary referred, were not yet States and were therefore totally outside the scope of the draft. The draft would therefore not apply to the delegations or missions of such entities in any case, by virtue of the limitation placed on the whole draft by the definitions in paragraph 1 of article 1. In the circumstances, he failed to see what "rules of the Organization" would be safeguarded by article 3.

61. Mr. EL-ERIAN (Expert Consultant) said that the representatives of the United Republic of Tanzania and Austria had raised an important question. He wished to clarify the intention of article 3: the Internation Law Commission's decision to include that article was based on its concern with the problem of the effect of the draft on the rules of customary law and on other rules.

62. While the ILC was fully aware of the usefulness of unification in the matter, it was equally concerned not to hamper in any way the development of their own rules by international organizations, bearing in mind that the law of international organizations was in constant evolution. The safeguard clause in article 3 appeared also in other drafts prepared by the ILC.

63. With regard to the example given in paragraph 3 of the commentary, he wished to explain that the great majority of organizations limited their membership to States; it was only some organizations of a technical character, like the Universal Postal Union (UPU), which accepted other entities as associate members.

64. Another example was that of the tripartite (governmental, worker and employer) system of representation in the International Labour Organisation (ILO). In such matters as appointment and credentials, the worker and employer members of the Governing Body of ILO, for example, were treated as government representatives although they were appointed by their respective associations and not by the governments of their countries.

65. The intention of the ILC was that such representatives should have the same protection as government representatives. Similarly, it had been intended that representatives of associate members of organizations such as UPU and the International Telecommunication Union should receive the treatment accorded them under the rules of such organizations. The ILC had wished to meet the concern, expressed in their comments on the subject by those organizations, that the draft should contain some provision to cover those exceptional cases.

66. Mr. UNGERER (Federal Republic of Germany), after offering his congratulations to the Chairman, Vice-Chairman and Rapporteur on their election, said that his delegation had been impressed by the logic of the Austrian statement concerning article 3. The proposed convention concerned the representation of States in their relations with international organizations, but not the representation of other entities. Thus, the examples mentioned by the Expert Consultant would not be covered by the proposed convention, which was expressly limited to the representation of States. His delegation was therefore of the opinion that article 3 could be deleted. A further reason for that opinion was that paragraph 5 of the commentary on article 3 made it clear that the words "relevant rules of the Organization" were broad enough to include all relevant rules whatever their nature. Because there was no convention on the question of the representation of States in their relations with international organizations, the rules and practices of various organizations currently differed greatly. The purpose of the proposed convention was to harmonize those rules and practices, and if the convention contained a safeguard clause such as article 3, that aim might be difficult to achieve.

67. Mr. DORON (Israel) recalled that his delegation had expressed serious doubts with regard to the need for article 3, or at least the need for the second phrase of the article.

68. The CHAIRMAN asked the Brazilian delegation whether it still wished to have a separate vote on the second phrase of article 3.

69. Mr. DO NASCIMENTO E SILVA (Brazil) said that, although the Expert Consultant had clarified quite a few points on which his delegation had expressed doubts, his explanation had related mainly to the words "relevant rules of the Organization". His delegation was still dubious with regard to the words "relevant rules of procedure of the conference" because a conference

could amend its rules of procedure without any particular formalities, as had been done at the current Conference. The Brazilian delegation therefore still requested that a separate vote be taken on those words.

70. Mr. ZEMANEK (Austria) said that the explanation given by the Expert Consultant had introduced a new idea into the discussion. Thus, article 3 might afford an organization the possibility, through its rules of procedure, of extending the application of the convention to delegations other than those sent by States, which were referred to specifically in the convention. He suggested that the Committee should defer its decision on article 3 in order to give delegations an opportunity to consider that new idea.

71. Mr. EL-ERIAN (Expert Consultant) said that the words "relevant rules of procedure" had not appeared in the text of the provisional draft. In the comments made by delegations in the Sixth Committee, attention had been drawn to the fact that certain relevant rules of organizations were not necessarily included in the constituent instruments of the organizations. The words "relevant rules of procedure" had therefore been included in the present draft in order to take account of such questions as credentials and the composition of delegations. In that connexion, he pointed out that the meaning of the words "relevant rules of procedure" had been explained in the second sentence of paragraph 6 of the commentary on article 3. If an effort had been made in the draft articles to safeguard the rules of procedures of conferences, that was solely in order to safeguard matters specifically referred to in those rules, which could not contradict the substantive rules contained in the convention.

72. He drew the attention of the representative of Austria to the fact that the question of membership was an exceptional one which was regulated within each organization. Thus, the proposed convention would not contain provisions stating how representatives of associate States should be treated by UPU or how employers' and workers' representatives should be treated by the ILO.

73. Mr. DO NASCIMENTO E SILVA (Brazil) said that his delegation supported the Austrian suggestion to defer the decision on article 3.

74. The CHAIRMAN suggested that the discussion of article 3 should be deferred until the following day. He invited the Committee to consider article 4, amendments to which had been submitted by Spain in document A/CONF.67/C.1/L.3 and by Pakistan in document A/CONF.67/C.1/L.13.

Article 4 (Relationship between the present articles and other international agreements) (A/CONF.67/C.1/L.3, A/CONF.67/C.1/L.13)

75. Mr. DE YTURRIAGA (Spain) said that, while the proposed convention was extremely important, the many conditions and safeguard clauses it contained might detract from its scope. His delegation considered that article 4 (*a*) was a safeguard clause sufficient for the existing agreements, since it would be difficult to apply the rules of the proposed convention to said agreements. That problem would not arise in the case of agreements to be concluded in the future. It would be necessary to include in the proposed convention a minimum rule so that any future agreements would not lag behind the rules of the proposed convention. His delegation therefore proposed that article 4 (*b*) should be replaced by the text contained in document A/CONF.67/C.1/L.3, which was similar to article 73, paragraph 2, of the 1963 Vienna Convention on Consular Relations.[3] Article 4 (*b*) would then contain a common denominator to be used as a basis for future agreements.

76. Mr. HAQ (Pakistan) said that the draft articles were based on the 1961 Vienna Convention on Diplomatic Relations [4] to which his country was a party. The proposed convention was intended to establish rules for the representation of States in their relations with international organizations of universal character and to establish a legal régime between sending States and host States.

77. His delegation was, however, of the opinion that, by establishing a concurrent régime between the proposed convention and other agreements, the proposed article 4 might give rise to enormous difficulties and complications. Moreover, the simultaneous application of the proposed convention and other agreements might not always be possible. His delegation therefore considered that article 4 might be deleted or that a new sub-paragraph (*c*), as proposed in document A/CONF.67/C.1/L.13, might be added to it, in order to provide for the possibility of resolving any conflict between the proposed convention and other agreements and in order to ensure that the convention should prevail as uniform law.

78. Mr. CALLE Y CALLE (Peru) said that the fact that he was again defending the text proposed by the ILC did not mean that he was committed to the defence of the draft articles as a whole.

79. Article 4, which was the subject of two important amendments, proposed by Spain (A/CONF.67/C.1/L.3) and by Pakistan (A/CONF.67/C.1/L.13), established the relationship between agreements currently in force in organizations of universal character and other international agreements. It was therefore based on the premise that organizations of universal character had already concluded headquarters agreements and agreements on privileges and immunities. Since those agreements were in force, they would not be affected by the proposed convention, which was not intended to replace such agreements or to detract from the rules they contained. Nor was the convention intended in any way to preclude the further development of rules regulating relations between States and international organizations. Consequently, article 4, as contained in the basic proposal of the ILC, was acceptable to his delegation.

80. Mr. GOBBI (Argentina) said that his delegation supported the proposal made by the Spanish delegation (A/CONF.67/C.1/L.3) since it represented the lowest

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[3] United Nations, *Treaty Series*, vol. 596, No. 8638, p. 261.
[4] *Ibid.*, vol. 500, No. 7310, p. 96.

common denominator for the solution of the problem. The text of article 4 (*b*) proposed by the ILC might preclude any further development of the law in that area, but the Spanish proposal was designed to ensure such development.

81. Mr. SMITH (United States of America) said that the representative of Peru had made a valid point with regard to the amendment proposed by the representative of Pakistan. His delegation was of the opinion that some confusion might arise when the amendment proposed by Pakistan was read in connexion with article 4 (*a*) of the draft, but such confusion could be avoided by leaving article 4 as it now stood.

82. Mr. WERSHOF (Canada) said that his delegation was in favour of the wording of article 4 proposed by the ILC. As explained in the Commission's commentary on that article, the provisions of the proposed convention were not intended to replace existing headquarters agreements. Moreover, paragraph 4 of the commentary stated that "certain governments expressed the view that the fact that existing agreements would remain in force might deprive the draft articles of much of their practical effect", but the ILC had made it abundantly clear that such would not be the case and that the convention would become an extremely valuable instrument. As the host country of an international organization, Canada could not agree that its headquarters agreement might be replaced by the new convention and could therefore not support the amendment proposed by Pakistan in document A/CONF.67/C.1/L.13.

83. The amendment proposed by Spain in document A/CONF.67/C.1/L.3 was a different matter because it was designed as an amendment to article 4 (*b*), which dealt with agreements to be concluded in the future. In paragraph 5 of its commentary on article 4, the ILC had provided convincing arguments showing that the proposed convention would not preclude the conclusion of other international agreements and that the draft articles were not intended in any way to preclude the further development of the law of the representation of States in their relations with international organizations. Moreover, his delegation considered that, when the convention had been in force for a time, it would reflect current practice and serve as a guideline for the conduct of States and international organizations. It would therefore not be wise to limit the freedom of host States and international organizations to negotiate future headquarters agreements. For that reason, his delegation could not support the Spanish amendment contained in document A/CONF.67/C.1/L.3.

84. Mr. RITTER (Switzerland), referring to the amendment to article 4 proposed by Pakistan, said that the explanations given by the representative of Peru had shown that the proposed convention would not have the effect of replacing existing agreements or of precluding any further development of the law of the representation of States in their relations with international organizations.

85. Although his country's headquarters agreements with international organizations contained some gaps and inadequacies, those agreements had to be defended because they were the result of lengthy negotiations and very careful consideration. His delegation could therefore not support the amendment proposed by Pakistan.

86. There were two types of rules to be defended and maintained in existing agreements, namely, positive rules governing the conduct of States and international organizations and the rule of silence concerning the agreement. In that connexion, he pointed out that silence on a particular point could be an effective rule guaranteeing the right to refuse certain privileges. On the other hand, in cases where the provisions of the headquarters agreements failed to cover a whole field of activity, the new convention could prevail and fill the gap. Finally, Switzerland defended the existing operation of headquarters agreements and considered that article 4, as proposed by the ILC, would make it possible to improve existing law while, at the same time, respecting the work already done, which was the result of lengthy and careful negotiations between host States and international organizations.

87. Mr. KUZNETSOV (Union of Soviet Socialist Republics) said that his delegation was of the opinion that article 4 as proposed by the ILC was well-balanced, and had no doubt that its wording should serve as a basis for article 4 of the proposed convention.

The meeting rose at 6.05 p.m.