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4th meeting of the Committee of the Whole

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4th meeting

Friday, 7 February 1975, at 10.45 a.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.7, 8, 15, 19)

1. Mr. RAOELINA (Madagascar) proposed a subamendment [1] to the amendment submitted by France, Ivory Coast and Switzerland to paragraph 4 of article 2 (A/CONF.67/C.1/L.7). The subamendment, which consisted in inserting, after the words "the conclusion of agreements", the words "between the host State and the Organization", would clarify the three-Power amendment.

2. Mr. ELIAN (Romania) drew attention to the significance of the three-Power amendment (A/CONF. 67/C.1/L.7) and the Netherlands amendment (A/CONF.67/C.1/L.8) to article 2. The former limited the scope of the convention, by stating that it would apply essentially to the United Nations, its specialized agencies and the International Atomic Energy Agency (IAEA). In the speaker's view, that limitation was not desirable, since it was opposed to the spirit of universality which characterized the progressive development of international law. The Netherlands amendment, seeking the deletion of the phrase "of universal character", was likewise opposed to that spirit of universality.

3. The three-Power amendment tended to create several categories of international organizations: the organizations belonging to the United Nations system to which the convention expressly applied; international organizations of universal character which already had their headquarters in the territory of certain countries and which could request the host country to apply the rules of the convention by the conclusion of special agreements, and organizations of universal character which might subsequently ask to establish their headquarters in the territory of a State. In the second case, an agreement concluded between the host country and an organization which already had its headquarters in the territory of that country was liable to contain clauses which would modify not only the text but also the spirit of the convention. In the third case, the State concerned might refuse to allow an international organization to establish its headquarters in its territory, or limit the application of the convention with regard to that organization. Consequently, in the two last named cases, a sheer refusal or a limitation of the application of the convention were, in principle, possible.

4. The notion of the consent of the host State, introduced by the Netherlands amendment (A/CONF.67/C.1/L.8), could likewise limit the application of the convention and affect its coming into force. Even with regard to the organizations of the United Nations system, the applicablity of the convention could be contested later if the express consent of the host State were a prior condition for its coming into force.

5. The speaker considered that the proposal conducing to the abolition of the criterion of universality in the definition of the international organizations referred to by the convention was unacceptable, since the codification of the principles of international law was designed precisely to secure universal recognition of those principles. He was therefore opposed to the three-Power and the Netherlands amendments, and preferred the wording proposed by the International Law Commission (ILC) (A/CONF.67/4).

6. Mr. BAJA (Philippines) said that he, too, preferred the Commission's wording, provided that the definition of an international organization proposed by the United Kingdom in its amendment to paragraph 1 of article 1 (A/CONF.67/C.1/L.15) was adopted.

7. He recognized the merits of the Netherlands amendment to article 2 but, like the Brazilian representative (3rd meeting) he thought that the application of the convention should not depend on the consent of the international organization concerned. He also thought that the interests of the host State could be safeguarded by headquarters agreements and that, as the Argentine representative had pointed out (*ibid.*), a State could always refuse to allow an international organization to establish its headquarters in its territory. Moreover, as the Peruvian representative had observed (2nd meeting), being a host State entailed certain duties and responsibilities.

8. In his opinion, the United Kingdom amendment to paragraph 1 of article 2 served no purpose. He was therefore in favour of the wording proposed by the ILC.

9. Mr. TAKEUCHI (Japan) said that the convention should be based on two main principles: the principle of functional necessity, which was set forth in paragraph 2 of Article 105 of the Charter, and the principle of not departing from the existing rules. Japan was not a host State of any of the headquarters of the specialized agencies, but it would not try to expand unduly the privileges and immunities of sending States because that would be contrary to the spirit of paragraph 2 of Article 105 of the Charter. Furthermore, experience in the field of relations between States and international organizations was relatively limited, because the institution of international organizations was a far more

[1] Subsequently issued under the symbol A/CONF.67/C.1/L.19.

recent phenomenon than that of bilateral diplomatic relations. Practice in that field was limited, and only few rules have been established as customary international law, because the history of international organizations was not yet long enough. The Conference's task was therefore concerned more with the progressive development of international law than with the mere codification of the rules of customary law, and the greatest care should be exercised in formulating the provisions of the convention, so as to avoid prejudging the evolution of those rules within each international organization.

10. He also pointed out that in practice, countries have been dealing with that subject from two different angles: only a small number of countries have been approaching from the standpoint of host States, and the majority from that of sending States, namely grantees of privileges and immunities. His own country did not host international organizations with permanent missions in its territory, and consequently it did not have to face as a host State the legal problems arising from the privileges and immunities granted to the permanent missions to those organizations, although it acted as host to a number of important international conferences. It had thus gained a limited experience as a host State to permanent missions, which was the case with a good many of the countries represented at the Conference. Those countries should bear in mind that they are all potential candidates of host States and they might be called upon to assume the heavy, though honourable, responsibilities of a host State one day. It would therefore be dangerous to adopt a short-sighted approach by unduly expanding the scope of the application of the convention which is not a mere list of courtesy. That scope should be clearly defined. The amendment submitted by France, Ivory Coast and Switzerland (A/CONF.67/C.1/L.7) gave the committee a useful guide for its direction. At the same time, the United Kingdom amendment (A/CONF.67/C.1/L.15) not only defined the precise scope of application, but also, by introducing the notion of the acceptance of the host States in respect of a particular organization, safeguarded the interests of those countries which might decide to carry out the heavy responsibility as host States for the benefit of the international community. He therefore supported that amendment.

11. Mr. CHANG (Republic of Korea) said he supported the United Kingdom amendment (A/CONF.67/C.1/L.15), which clarified the definition of the expression "international organization of universal character" and which took the greatest possible account of the Commission's intentions and of the amendments submitted earlier (A/CONF.67/C.1/L.7 and L.8).

12. Mr. JOEWONO (Indonesia) thought that article 2 was not sufficiently precise and did not indicate clearly enough which international organizations came within the scope of the convention. In his view, the first United Kingdom amendment deserved to be taken into consideration, while the second seemed to be much more open to question. In fact, that amendment to paragraph 1 of article 2 took up the idea of the consent of the organization and of the host State contained in the Netherlands amendment, which was contrary to the tripartite spirit of the draft convention. He could not accept an amendment to article 2 which would make the applicability of the convention dependent on the consent of two parties only.

13. Mrs. DAHLERUP (Demark) said that article 2 was a key article, as it defined the scope of the privileges and immunities recognized by the convention. Like the United Kingdom and Japanese representatives, she considered that the extent of those privileges and immunities should be in keeping with the functions of the organization concerned. She therefore supported the three-Power amendment (A/CONF.67/C.1/L.7) and the United Kingdom amendment (A/CONF.67/C.1/L.15).

14. Mr. TANKOUA (United Republic of Cameroon) said that the three-Power amendment and the Malagasy subamendment (A/CONF.67/C.1/L.19) seemed to him to be acceptable. While the three-Power amendment to paragraph 1 of article 2 strictly confined the scope of the convention to organizations of the United Nations system, the amendment to paragraph 4 afforded States the possibility of extending the scope of the convention to other international organizations. For his part, he would propose another subamendment to the three-Power amendment, which would give States even more latitude and would consist in inserting, after the word "applicable", the words "in total or in part".

15. Mr. KUZNETSOV (Union of Soviet Socialist Republics) said that he considered article 2 satisfactory as it stood and that he could not accept the amendment submitted by France, Ivory Coast and Switzerland. That amendment amounted to deleting, in article 1, the words "of universal character" in the definition of the expression "international organization". As the Romanian representative had pointed out, it would therefore be contrary to the spirit of universality with which the progressive development of international law should be imbued.

16. The United Kingdom amendment to paragraph 1 of article 1 would likewise be at variance with that spirit of universality and would represent a retrograde step as compared with the Commission's text. The last part of the United Kingdom amendment to article 2, paragraph 1, introduced an element of confusion and he saw no need for it. The meaning of the words "accepted by the Organization" was not clear. Some States had suggested in their written observations that such an organization was directly party to the Convention, which was extremely debatable, and the Conference had not yet given any consideration to that question. He said that in his view it would be preferable to adhere to the text of article 2 proposed by the ILC.

17. Mr. PASZKOWSKI (Poland) pointed out that the draft prepared by the ILC was intended to serve as the basis for a multilateral convention, and not for a bilateral agreement between a host State and an organization. International conferences were not held solely at the headquarters of international organizations, and the capacity of host State was not the monopoly of certain States. Moreover, the position of the

host States themselves, was more often than not that of a sending State rather than of a host State. In any case, the interests of the host State were safeguarded by other provisions in the draft as well as by headquarters agreements. In the speaker's view it was therefore unnecessary to assign, from article 2, such an important place to the host State. The question of the entry into force of the convention would also be dealt with in other provisions of the draft. Consequently, he was unable to accept either the United Kingdom amendments of the three-Power amendment, or again the Malagasy subamendment. The present text of article 2 seemed to him to be as yet the best formula, provided that it was supplemented by a more precise definition of the expression "international organizations of universal character".

18. Mr. KABUAYE (United Republic of Tanzania) thought that only a functional criterion might allow of a solution of the problems raised by the granting of privileges and immunities to organizations and persons whose status was at present governed by different instruments. The application of that criterion should prevent the occurrence of abuses which were detrimental to the host State.

19. Care should also be taken to ensure that the future convention was as useful as possible. Like its predecessors, the conventions on diplomatic privileges and immunities, on consular privileges and immunities and on special missions, the present convention met a need. It was important to elaborate a simple text which would take account of the facts.

20. At the second meeting, his delegation had supported the amendment to article 2 contained in document A/CONF.67/C.1/L.7. For the time being, that amendment seemed to offer the only possible solution.

21. It would be interesting to speculate on what would happen if States ratified the future convention but the organization concerned did not, or if an organization ratified it without its being ratified by the host State.

22. Sir Vincent EVANS (United Kingdom), completing the introduction of the amendments to articles 1 and 2 proposed by his delegation (A/CONF.67/C.1/L.15), explained that the only object of those texts was to offer a generally acceptable solution. Generally speaking, the Committee seemed to share the views of the ILC, but it also had to take account of certain realities.

23. The new definition of the expression "international organization of universal character" proposed in the amendment to article 1, mentioned the different organizations of the United Nations system, for it was primarily to them that the future convention would apply. Nevertheless, the definition was wide enough to embrace other similar international organizations of universal character which might be set up in the future.

24. The amendment to article 2, proposing to add the phrase "when the present Convention has been accepted by the organization and by the host State in respect of that organization" was based, as to its substance, on article X, section 37 and article XI, section 43 of the Convention on the Privileges and Immunities of the Specialized Agencies.[2] It was necessary that the organization should accept the convention, since the application of that instrument called for its co-operation. It was not enough that a certain number of the States members of the organization in question should have accepted the convention; the competent organ of the organization should take a decision to that effect. In addition it was quite clear that the host State must accept the convention in order for it to be applied in its territory. Having regard to the precedent constituted by the Convention on the Privileges and Immunities of the Specialized Agencies, the amendment proposed by the United Kingdom delegation therefore also provided that the host State should accept the convention in respect of the organization in question. The new definition of the expression "international organization of universal character" proposed by that delegation was open-ended within limits and not restricted to named organizations like the one given in the amendment A/CONF.67/C.1/L.7. It was important, therefore, that the host State should specify in respect of which organizations it accepted the convention. That explained the wording of the last part of the sentence in the amendment to paragraph 1 of article 2.

25. The future convention was more likely to be accepted by the international community if it was possible to extend its application progressively to specified organizations. States hesitated to sign anything in the nature of a blank cheque. The Conference should not seek to impose the new régime on the international community; States must be encouraged to accept it by permitting them to do so step by step in respect to particular organizations.

26. The amendments proposed by his delegation would doubtless affect the final clauses and, if they were accepted, it would be as well if the Drafting Committee were authorized to modify the relevant final clauses accordingly.

27. The Malagasy subamendment (A/CONF.67/C.1/L.19) did not seem very satisfactory, as the agreements referred to in the paragraph 4 proposed in the three-Power amendment (A/CONF.67/C.1/L.7) were not necessarily bilateral agreements between the State and the organization. They might be multilateral agreements between States. On the other hand, the subamendment proposed orally by the Cameroon delegation, to add the words "in total or in part" in the said paragraph 4, was acceptable.

28. Mr. SANGARET (Ivory Coast) said that the sponsors of the amendment in document A/CONF.67/C1./L.7 had not provided for the deletion of the expression "international organization of universal character" in the list of terms given in article 1. In the view of the sponsors of that amendment there seemed *a priori* to be nothing against such deletion. In their opinion, the expression "of universal character" was not satisfactory, since for the host State the criterion that counted was not that, but the importance assumed by the organizations in question. It should not be sought

[2] General Assembly resolution 179 (II).

to make the convention applicable to the greatest possible number of organizations, for if privileges and immunities became too widespread, no-one would ultimately benefit from them. The best plan would thus be to enable the host State itself to determine to which organizations and to which agents it was advisable to grant privileges and immunities.

29. Mr. MAAS GEESTERANUS (Netherlands) withdrew his delegation's amendment to article 2 (A/CONF.67/C.1/L.8), which had not met with the expected approval, in favour of the United Kingdom amendment (A/CONF.67/C.1/L.15). That amendment took due account of the interests of the sending State, the organization and the host State.

30. Mr. CALLE Y CALLE (Peru) stressed the fact that draft article 2 aimed at determining the scope of the future convention by specifying to what subjects of international law that instrument would apply. The provision had nothing to do with the convention's entry into force, which was a question that would have to be dealt with later. The United Kingdom amendment to article 2, paragraph 1 (A/CONF.67/C.1/L15) was not acceptable, as it brought in a temporal element. It also raised the question of the form in which an organization could accept the convention: would a simple decision by the organization in question suffice, or would it have to become a party to the convention?

31. The Malagasy delegation's subamendment (A/CONF.67/C.1/L.19) to the amendment in document A/CONF.67/C.1/L.7 was somewhat restrictive, since it only envisaged bilateral agreements between the host State and an organization, whereas multilateral agreements might exist in that respect.

32. It might be wondered whether it was sufficient to provide that the convention would apply to international organizations of universal character or whether, in addition, the organizations coming under that category should be enumerated. On reflection, the speaker considered that a norm of that kind was necessarily somewhat abstract. It would be better, in the case in point, to keep to a general formula; the discussions would reveal that the Commission had had in mind not only the United Nations, the specialized agencies and the International Atomic Energy Agency, but also similar organizations which were international organizations of universal character.

33. Consequently, his delegation could not accept either the United Kingdom amendment (A/CONF.67/C.1/L15) or the three-Power amendment (A/CONF.67/C.1/L.7).

34. Mr. GOBBI (Argentina) said he welcomed the efforts made by the United Kingdom delegation to promote a compromise solution, but he thought that some explanations were required with regard to the amendment to article 2, paragraph 1 (A/CONF.67/C.1/L.15). His delegation was prepared to accept the amendment to article 1 so as to define the scope of the draft convention more accurately. On the other hand, it had doubts about the amendment proposed to article 2. The United Kingdom delegation had, in fact, put forward two principles with different bases: it made entry into force of the convention depend on its ratification, but reintroduced, through the host States, the element of consent and, in doing so, restricted the scope of the convention. Thus, once the convention had been ratified, it would be necessary for an organization and the host State to consent to its application, even in the case of the United Nations.

35. Since the amendment to article 1, paragraph 1, defined the scope of the convention, the amendment to article 2 did not seem absolutely necessary. The United Kingdom delegation was concerned about the situation of the host State, but the speaker thought the guarantees offered to a host State were adequate since, firstly, it could agree or refuse to accept an organization in its territory and, secondly, it could ratify or not ratify the convention. For that reason his delegation asked the United Kingdom delegation to revise the text of its amendment.

36. Mr. MARESCA (Italy) said that, after studying the different amendments, he thought that the United Kingdom amendment (A/CONF.67/C.1/L.15) constituted a remarkable attempt at consolidation and that it took up all the interesting elements of the amendments submitted previously. Compared with the International Law Commission's text, it testified to a concern for precision, and the enumeration given in it filled a gap in the original text. It was in fact necessary to specify that world-wide international organizations should not only aspire to be universal but should actually be universal.

37. In its amendment to article 2, paragraph 1, the United Kingdom delegation had rightly made provision for an organization to be required to accept the convention, since organizations could not be granted a special status if they did not consider it desirable. Moreover, considering that a host State was required to protect an organization and grant it privileges and immunities, only the host State was in a position to decide whether it could assume such obligations or not.

38. Mr. JALICHANDRA (Thailand) pointed out that his country was host to some international organizations and that it had concluded with the organizations in question agreements governing their status. Thailand therefore attached great importance to the draft convention under consideration, which would enable existing gaps in those agreements to be filled.

39. His delegation was not entirely satisfied with the definition of the scope of the convention as given in the International Law Commission's draft, and therefore welcomed the amendments to article 2 submitted by France, Ivory Coast and Switzerland (A/CONF.67/C.1/L.7) and by the United Kingdom (A/CONF.67/C.1/L.15). It understood the aim of the first of those amendments, but was unable to support the amendment because it seemed to limit the scope of the convention. On the other hand, the second amendment listed the organizations covered by the draft and, moreover, offered the advantage of being adaptable to circumstances. In that connexion, the speaker pointed out that a host State would not have to give its consent on the occasion of each conference, but that once the convention had been accepted in respect of an organization, it would apply to all the activities of that organiza-

tion. His delegation subscribed to the United Kingdom amendment because it took the needs of the three interested parties into account.

40. Mr. SMITH (United States of America) said that the United Kingdom amendment (A/CONF.67/C.1/L.15) made it possible to know with certainty what organizations came within the purview of the convention, without unduly limiting that instrument's scope. Moreover, it was useful to provide that the competent organ of an organization should take a formal decision to enable the latter to benefit from the convention's provisions, and that a host State should determine the international organizations to which it deemed it appropriate to grant the treatment provided for in the convention. His delegation did not consider that any of the other amendments submitted met those requirements.

41. Mr. DO NASCIMENTO E SILVA (Brazil) thought the ILC had shown excellent judgement when it had prepared the text being considered by the Committee, and he considered that wording better than the United Kingdom amendment. The latter gave too much importance to the host State; as the Argentine representative had pointed out, if the amendment were adopted, a host State would have to give its consent to the application of the convention even in the case of the United Nations. His delegation would therefore vote for the International Law Commission's text.

42. Mr. SOGBETUN (Nigeria) said he thought that the term "of universal character", which was being questioned by many representatives, was far too vague, and that it was impossible to say that this or that international organization was really universal in character. The term "international organization of universal character" had not been satisfactorily defined in article 1, paragraph 1, subparagraph 2. As to article 2, paragraph 4, it enabled the host State to decide to which organizations it would grant the treatment provided for in the convention. It was not possible, therefore, to retain those provisions, which only increased the confusion. He proposed adding to article 1, paragraph 1, subparagraph 2, the phrase "and accepted as such by the host State".

43. Mr. GANA (Tunisia) asked the Expert Consultant at what precise moment, in the opinion of the ILC, it was possible to consider that the convention became applicable in respect both of the host State and of the organization concerned.

44. Mr. EL-ERIAN (Expert Consultant) said that as a general rule the ILC did not draw up either the final clauses or the preamble of the drafts that it submitted to the General Assembly; it left that to the conferences of plenipotentiaries convened by the Assembly. Usually, questions of application, of entry into force, of settlement of disputes, were dealt with in the final clauses of international instruments. Thus, in the case of the Convention on the Privileges and Immunities of the Specialized Agencies, it had been by means of a General Assembly resolution, resolution 179 (II), that the Convention had been submitted for accession by the States Members of the United Nations and by any other State member of one or several of the specialized agencies. When the Committee took up the final clauses of the draft convention, it would then have to tackle that problem and choose either the course he had just mentioned or another one.

45. In another connexion, the ILC had not thought that the definition of the term "international organization of universal character" would give rise to such difficulties; it had based itself on article 57 of the Charter concerning the specialized agencies. In 1947, with regard to the United Nations, the International Court of Justice had stated in an advisary opinion, that the Organization, which then consisted only of some 50 States, constituting at that time the great majority of nations, was an organization of universal vocation.

46. He explained that it was the provisions in the internal law of each State that would determine the procedures by which a host State would be bound by the convention, and that the ILC had only drawn up substantive norms and had left it to the Conference to prepare the final clauses bearing, among other things, on the application of the convention.

47. Mr. MUSEUX (France) said that his delegation approved the subamendments of Madagascar and the United Republic of Cameroon to the amendment submitted by France, Ivory Coast and Switzerland (A/CONF.67/C.1/L.7).

48. The CHAIRMAN proposed that the Committee should vote on the amendments to article 2.

49. Mr. TODOROV (Bulgaria) asked whether the texts proposed by various delegations were to be considered as amendments or proposals. If they were proposals, according to the rules of procedure the text proposed by the ILC should be put to the vote first.

50. The CHAIRMAN read out rule 29 of the rules of procedure, according to which the draft articles constituted the basic proposal for discussion by the Conference, and the last sentence of rule 41, according to which a motion was considered an amendment to a proposal if it merely added to, deleted from or revised part of that proposal.

51. Mr. KUZNETSOV (Union of Soviet Socialist Republics) said that he could not vote on the amendments introduced at the current meeting because the time limit provided for in rule 31 of the rules of procedure was not being complied with and his delegation had not had time to study them.

The meeting rose at 1.05 p.m.