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Summary record of the 943rd meeting

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943rd MEETING

Wednesday, 29 May 1968, at 10.5 a.m.

Chairman: Mr. José Maria RUDA

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Ignacio-Pinto, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Adoption of the Agenda

(A/CN.4/201)

1. The CHAIRMAN suggested that item 2 of the provisional agenda, "Relations between States and inter-governmental organizations", should be discussed before item 1, "Succession of States and Governments".

It was so agreed.

The provisional agenda was adopted.

**Relations between States
and inter-governmental organizations**

(A/CN.4/195 and Add.1; A/CN.4/203; A/CN.4/L.118 and Add.1-2)

(Item 2 of the agenda)

2. The CHAIRMAN invited Mr. El-Erian, the Special Rapporteur, to introduce his second and third reports on relations between States and inter-governmental organizations.

3. Mr. EL-ERIAN (Special Rapporteur), reviewing the contents of his reports, pointed out that the draft articles in Part II of his second report (A/CN.4/195/Add.1) had been superseded by those in Chapter II of his third report (A/CN.4/203). He suggested that the Commission should devote two or three meetings to a general discussion of the two reports and decide whether he had correctly interpreted the mandate given him after the submission of his first report in 1963. In particular, he would like to know whether the Commission approved of his suggestion (A/CN.4/195/Add.1, para. 66) that priority be given to the legal position of representatives of States to international organizations. After discussing the preliminary questions dealt with in Part I of document A/CN.4/195/Add.1, the Commission could take up the draft articles one by one.

4. The CHAIRMAN thanked the Special Rapporteur and invited members of the Commission to comment.

5. Mr. YASSEEN said he found the Special Rapporteur's proposal a sensible one: it would be difficult to study the draft articles unless there was agreement that the Special Rapporteur had rightly understood the scope of his task. He therefore supported the proposal and took that opportunity of congratulating the Special Rapporteur on the remarkable work he had done in a field of study which was not entirely free from uncertainty and obscurity.

6. Mr. AMADO said that in taking up the present item the Commission was setting about one of its most important tasks. But its members were experts at codifying

positive law in the form of texts which States could accept, either in the United Nations or at international conferences.

7. The Special Rapporteur was to be congratulated on the intellectual integrity he had brought to the task of clearing the ground that the Commission was now to tread, and on having clearly shown the way it should go. He had the merit of leaving nothing obscure. A case in point was the first sentence of paragraph 39 of his second report (A/CN.4/195), which read as follows:

"The fact that representatives to international organizations are not accredited to the host State renders inapplicable the remedy of declaring a representative *persona non grata*."

That was an amusing example of the snags to be met with in practice where the present subject of study was concerned.

8. Mr. BARTOŠ said that the Commission had begun by codifying the law of bilateral diplomacy, dealing in turn with diplomatic missions, consular missions and special missions. The subject of study then had been traditional diplomacy, although the Commission had introduced into it some changes based on the progressive development of international law. In a sense, the Commission was now beginning a second phase of its work by taking up collective diplomacy, which was the business of international organizations and international conferences.

9. The Special Rapporteur's task had been a difficult one. In the first place, when the institutions of collective diplomacy were compared with those of bilateral diplomacy they were found to possess both similarities and differences. Mr. Amado had mentioned one example—among many—of such differences. In the second place, there were many international organizations and the rules were apt to vary from one organization to another. The Special Rapporteur had made a detailed study of the institutions, in order to identify such rules as the organizations had in common and to bring out the differences. But that had raised the problem of the relative importance to be attached to the various organizations. For example, the International Civil Aviation Organization might be considered a front-rank organization, since some of its decisions concerning air traffic were more important to States than some of the Security Council's decisions. It would be well to consider what was the significance of cessation of civil air traffic between States.

10. Another difficulty had been that individual international organizations had not always been founded on general principles such as those of the Charter. For instance, in order to attract the capital required for the operations of the International Bank for Reconstruction and Development and the International Monetary Fund, the principle of the equality of States had been somewhat changed in the process of establishing those two agencies. Inequality of sovereign States had been introduced through plurality of votes, which were allotted according to the participation of each State in the capital of the organization. It might perhaps be true to say that there was a tendency to make international organizations subject to the principles of the Charter, but that the tendency was not carried to its logical conclusion.

11. It should be noted that there were differences not only in the constituent instruments, but also in the practice of international organizations. The problems presented by the tripartite composition of delegations to the ILO, for example, were clearly of no concern to other organizations.

12. The Special Rapporteur had sought to identify the relevant customary sources, and to determine how far those customs were applicable to international organizations. But it was necessary to take into account the changes made in customs, not only by practice but also by the interpretation placed on the customs by the international organizations themselves. Doctrine also played an important part and exerted a great influence. The wealth of explanations, theories and interpretations put forward had produced many setbacks in various branches of the subject. It was open to question whether too many sources were better than too few. Some of the sources were too new or lacked co-ordination, and general principles had been derived from them with varying degrees of success.

13. It must be remembered that international organizations were not merely bodies set up to perform a particular function; they also co-ordinated the actions of States and co-operated with them in certain matters, by procedures different from those of bilateral diplomacy. Hence the Commission was faced with a traditional international law which had been distorted in some cases and developed in others. It must endeavour to think on lines that might be unfamiliar to it, and perhaps to approach the problems from a different angle from that adopted in the study of bilateral diplomacy.

14. By reaching decisions on certain questions in principle and in general terms, as proposed by the Special Rapporteur, the Commission would help not only the Special Rapporteur, but also its own members to reflect on the problems involved.

15. He approved of the order of discussion proposed by the Special Rapporteur.

16. Mr. REUTER said he thought the Special Rapporteur had very well understood the task entrusted to him by the Commission. He fully approved of the presentation of the preliminary questions in paragraphs 63 to 90 of the second report (A/CN.4/195/Add.1).

17. On reading and listening to the Special Rapporteur, one could appreciate the working of a mind which sought always to maintain a balance between theory and practice. The reports before the Commission provided a good illustration of its method of work, which was to start from a general topic—often a very extensive one—and then gradually choose particular applications, with a view to achieving a specific result in the form of draft articles enunciating general rules. He welcomed the fact that the draft articles dealt with the question of permanent delegations of States to international organizations. That was certainly a field in which general rules could be put forward. But the task was a difficult one because inter-governmental organizations, being established to perform particular functions, were not equal to one another.

18. The Special Rapporteur had been right to confine his study to universal organizations. He was not sure that the Commission could deal with all such organiza-

tions, for some of them, already quite old, were vestiges of a period of experimentation. He believed, however, that there was a nucleus of organizations consisting of the United Nations, the specialized agencies and the International Atomic Energy Agency, for which general rules could well be formulated. In spite of the difficulties already encountered in connexion with privileges and immunities, governments would probably be willing to agree that at least the position of their permanent representatives should be clarified. Furthermore, while the creation of specialized agencies by treaties was an established procedure, a surprising phenomenon now to be observed was the creation of entities purporting to be international organizations which were based, not on treaties, but merely on resolutions of the General Assembly. The Special Rapporteur's report was therefore focused on a very specific problem for which a solution could be found provided the Commission was not over-ambitious.

19. In his opinion, it would be preferable to leave aside the question of the position of delegations to organs and conferences. The Commission should take something firm and concrete as a starting point and see later whether it should venture further.

20. In concentrating on permanent delegations of States, the Special Rapporteur had reverted to one of the Commission's principal topics: the study of diplomatic questions. The Commission proceeded rather like life itself: having put out shoots in different directions, it sought to advance in areas where its previous efforts converged.

21. The CHAIRMAN said that a telegram had just been received from Mr. Tabibi thanking the Commission for his election as Rapporteur and saying that he hoped to be able to attend its meetings soon.

22. Sir Humphrey WALDOCK said he supported the Special Rapporteur's proposal that the Commission should begin with a general debate and then examine the draft article by article. A general debate would be useful, since it would show the Special Rapporteur whether he was working on the lines intended by the Commission. For his part, he found the Special Rapporteur's reports in very close accord with the Commission's intentions. He hoped that the general debate would be brief; his own experience as Special Rapporteur had shown him that the Commission was at its best when discussing specific articles. The Commission had already before it a number of articles on the topic under discussion, and further articles were in preparation.

23. It would be particularly useful to make some progress at the present session on the draft articles on relations between States and inter-governmental organizations, because the related topic of special missions was due for consideration by the Sixth Committee of the General Assembly at its forthcoming session; there were, in fact, a number of questions in regard to which useful comparisons could be made between the position of special missions and that of representatives to international organizations.

24. The draft articles which the Special Rapporteur was preparing on representatives to international conferences would no doubt form a separate part of his report. The Commission should encourage the Special Rapporteur

to proceed with that part of his work, which had some connexion with the topic of special missions.

25. He commended the Special Rapporteur for his clear and scholarly reports, which constituted an excellent basis for the Commission's work.

26. The CHAIRMAN noted that there was general agreement to begin consideration of the topic with a general debate taking up two or three meetings. He invited members to express their views on the two questions put to them by the Special Rapporteur.

GENERAL DEBATE

27. Mr. USTOR congratulated the Special Rapporteur on his very lucid reports, which gave a clear account of the problems involved.

28. With regard to the scope of the work, he thought the Special Rapporteur had acted within the Commission's instructions. It had been a wise decision to restrict the work, at first, to the question of representatives of States to international organizations, leaving aside for the time being the question of the status and immunities of the organizations themselves. When the Commission adopted a set of draft articles dealing with those representatives, it would have rounded off its work on diplomatic and consular relations and special missions.

29. As to the title of the first group of draft articles (A/CN.4/195/Add.1, paras. 63-67), he agreed with the Special Rapporteur's idea, but thought that the words "The legal position of" were redundant. Moreover, since the draft covered not only representatives of States to international organizations, but also representatives to conferences convened under the auspices of such organizations, he suggested that the title should be: "Draft articles on representatives of States to international organizations and conferences."

30. While he agreed with the Special Rapporteur that only universal organizations should be covered initially, he did not think it should be decided forthwith to restrict the whole draft to those organizations. He noted that article 1 (Use of terms) in the third report (A/CN.4/203), defined an "international organization" in sub-paragraph (a) without any indication whether the organization was of a universal, regional or special character. He therefore suggested that the Commission should proceed on the assumption that the draft articles would in due course cover all inter-governmental organizations.

31. Mr. NAGENDRA SINGH said that the Special Rapporteur's excellent reports contained a wealth of background material which would be particularly useful in studying what was an intricate subject with many pitfalls.

32. He believed that the Special Rapporteur had interpreted his terms of reference correctly, particularly with regard to priorities. He was inclined to agree that it would be advisable to deal first with representatives of States to international organizations and leave the position of the organizations themselves till later. That approach was suitable for purposes of codification and took into account the importance of the question of the status of representatives.

33. With regard to the scope of the topic, he supported the view that the articles should deal initially with organizations of a universal character. It was not necessary to change the approach adopted by the Special Rapporteur at that stage, but he agreed with Mr. Ustor that in due course the rules embodied in the draft articles should also apply to regional organizations and to other organizations not of a universal character.

34. He approved of the general scheme for division of the topic into four parts set out in the introduction to the third report (A/CN.4/203, para. 3). If the Commission adopted draft articles making up those four parts, it would have produced a very comprehensive body of legal rules on the whole topic.

35. He had no special comments on the preliminary questions put by the Special Rapporteur. The general principles put forward were very sound and basically acceptable. For example, the Special Rapporteur had been right to point out that reciprocity was a feature of bilateral diplomacy and must not be allowed to interfere with the processes of multilateral diplomacy, in which the main emphasis should be on the principle of non-discrimination.

36. Mr. ROSENNE associated himself with the tributes paid to the Special Rapporteur for his reports, which provided an admirable basis for the Commission's work.

37. He understood the Commission to have decided on a general debate confined to the preliminary questions in Chapter IV, Part I of the second report (A/CN.4/195/Add.1). He was not altogether clear, however, as to what the consequences of the general debate would be from the practical point of view and in relation to the Commission's immediate work. The Special Rapporteur had prepared a complete set of draft articles and it would seem impracticable for him to revise their text in the light of a general debate.

38. In the light of the earlier discussions of the Commission, he fully accepted the Special Rapporteur's interpretation of his mandate.

39. Turning to the question of the title, he pointed out that it was the Commission's practice, and indeed a practice generally adopted elsewhere, not to decide on the title until work on the whole draft had been completed. Hence, there would seem to be little point in discussing the title at present.

40. It would probably be useful for the Sixth Committee, when it came to consider the draft articles on special missions, if the Commission's work on relations between States and inter-governmental organizations had made some progress.

41. He accepted the general outline of the draft articles set out in the introduction to the third report (A/CN.4/203, para. 3), which provided for a draft in four parts. He would like to know how many articles the Special Rapporteur proposed to submit and the approximate dates of their submission. The Commission might perhaps wish to complete the first reading of all the draft articles at the present session, so that it could submit them to governments for their comments.

42. Mr. AMADO considered it essential for the Commission to study the question of the privileges and immu-

nities of representatives of States to inter-governmental organizations. That question constituted a source of disagreement among States and could therefore be regarded as urgent. If the Commission could examine all the draft articles without sacrificing any of the other items on its agenda, it should do so.

43. Mr. EL-ERIAN (Special Rapporteur) said that his first reaction to Mr. Ustor's suggestion regarding the title was favourable, but he thought the matter would ultimately be decided by the Drafting Committee. The question of the title was less simple than it had been for such earlier topics as the law of the sea, diplomatic relations and the law of treaties, which already had titles well-established in legal literature. The title "Relations between States and inter-governmental organizations" was somewhat ambiguous, and it had occurred to him that if the first group of articles was entitled "The legal position of representatives of States to international organizations", that would show that the draft covered the status of those representatives, their privileges and immunities, the composition and functions of permanent missions to international organizations and the appointment of their members.

44. He was also inclined to favour the suggestion that a reference to conferences should be included in the title, though the matter was already covered by the reference to international organizations, since a conference convened by an organization constituted an extension of its work. Technically, however, it was true to say that such a conference was not an organ of the organization, but rather a conference of States held under its auspices. A final decision on that question could be left until the Commission decided whether it would adopt Mr. Reuter's suggestion that the draft articles should be confined to permanent missions, leaving aside the question of delegations to organs of organizations and conferences convened by organizations.

45. He regretted that he could not agree to the suggestion made by Mr. Ustor, and supported by Mr. Nagendra Singh, that the draft articles should deal with international organizations in general. It was true that in article 1 (Use of terms) in his third report (A/CN.4/203) the term "international organization" was defined without any reference to universality; but article 2, which dealt with the scope of the draft articles, specified that they related "to representatives of States to international organizations whose membership is of a universal character". He had adopted that approach in the light of the Commission's previous discussions and the view expressed by several members that it was not possible to legislate for regional organizations. Naturally, whatever rules were adopted in the draft articles were likely to serve as a prototype for rules governing organizations that were not of a universal character.

46. Since experience had shown that regional organizations were generally guided by the practices of universal organizations, it would be appropriate to deal with universal organizations first. There was, moreover, a practical reason for confining the draft articles to those organizations: the Secretariat questionnaires had been sent only to organizations of the United Nations family, so that he had received little material on regional bodies. The Com-

mission would perhaps wish to discuss that question when it considered article 2 rather than in the general debate.

47. The question had been raised whether it would be useful to discuss, in a general debate, the preliminary questions in Chapter IV, Part I, of his second report, since the draft articles had already been prepared. In fact, a number of those preliminary questions were independent of the discussion of the draft articles themselves. Apart from the title, there was the question whether the draft articles should take the form of a code or of a draft convention; in addition, there was the question whether the draft should deal with representatives to organs of international organizations and to conferences convened by such organizations, or whether it should be confined to permanent missions, as suggested by Mr. Reuter.

48. As to the number of articles he proposed to submit, he had given the Secretariat the texts of some twenty articles dealing with the competence and functions of permanent missions and the appointment of members of such missions; in addition, he was preparing about ten articles on privileges and immunities. If the Commission decided in favour of covering representatives to organs of international organizations and to conferences, he would submit draft articles on that subject. There was also the question of observers for non-member States, which was at present not regulated; those observers were granted facilities, but not immunities. The Commission would have to decide whether observers should also be covered by the draft articles.

49. Mr. BARTOŠ endorsed all Mr. Reuter's comments. He asked the Special Rapporteur to endeavour to define in the draft articles, if he had not already done so, the position of the host State—that was to say, the State providing the seat of an organization or the site for a conference. There was not always prior agreement on that question, so that it could give rise to serious disputes. It could also happen that the agreement concluded was too vague and that its implementation gave rise to difficulties, such as those which had sometimes arisen between the League of Nations and the Swiss Confederation. He agreed with Sir Humphrey Waldock and Mr. Amado that it was urgently necessary to settle the question of the privileges and immunities of representatives of States to international organizations. The host State's obligations in that regard should be defined.

50. Mr. CASTRÉN said he wished to make only two suggestions, but reserved the right to make general comments later. First, if the Special Rapporteur could submit, orally or in writing, a list of the titles of the articles, members of the Commission could already form some idea of the draft as a whole. Secondly, if some time was to elapse before the text of all the draft articles could be issued, it might be useful for the Special Rapporteur to publish the texts of the articles separately, if that was possible. Members of the Commission could then begin to study the articles; there would be no objection to the commentary being circulated a little later.

51. Mr. EL-ERIAN (Special Rapporteur) said he would gladly comply with Mr. Castrén's request and produce a list of titles of the remaining draft articles; he would also do his best to submit the texts of the articles without commentaries at an early stage.

52. The question whether the Commission would be able to submit a complete set of draft articles to the Sixth Committee would naturally depend on the time it devoted to the topic and to the other items on its agenda. It was still too early to make any forecast on that point.

53. Mr. USTOR said that from his experience of the Sixth Committee, he did not expect it to finish its work on special missions before 1969; he therefore saw no urgent need to produce the whole draft during the present session.

54. Sir Humphrey WALDOCK said it was desirable to proceed with the draft articles on relations between States and inter-governmental organizations, so that as much of the draft as possible would be available to the Sixth Committee—not because the Committee would work on the draft, but because it would be useful to be able to compare its provisions with those of the draft articles on special missions.

55. Mr. AMADO emphasized that the Commission should carry out its task to serve the international community; what ultimately happened to its work was of no concern to it.

56. Mr. BARTOŠ said it would be difficult for the Commission to discuss general questions—even preliminary ones—until the text of the articles was available.

57. The CHAIRMAN said that the Commission should press on with its examination of the draft articles on relations between States and inter-governmental organizations, aiming to complete the work during the present session if possible. If Mr. Bedjaoui arrived on 20 June as expected, the Commission could consider devoting some time to item 1 of the agenda. The Special Rapporteur on item 2 could submit, later in the session, draft articles revised in the light of the discussion.

The meeting rose at 1 p.m.

944th MEETING

Thursday, 30 May 1968, at 10 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldoock, Mr. Yasseen.

Relations between States and inter-governmental organizations

(A/CN.4/195 and Add.1; A/CN.4/203 and Add.1-2; A/CN.4/L.118 and Add.1-2)

[Item 2 of the agenda] (continued)

GENERAL DEBATE (continued)

1. The CHAIRMAN invited the Commission to continue its general debate on item 2 of the agenda.

2. Sir Humphrey WALDOCK said that the form of the draft articles should not be a matter of controversy. It had become the established practice of the Commission to prepare its drafts in the form of articles suitable for adoption as a convention and it would naturally adhere to that practice.

3. As to the title of the first group of draft articles, he was not quite satisfied with the expression “legal position” and hoped that a more suitable one would be found. He agreed with Mr. Rosenne, however, that it would be better to deal with that point at a more advanced stage of the work.

4. With regard to the scope of the draft, if the work on relations between States and inter-governmental organizations was to be regarded as a first step in a series of codifications of the law of international organizations in general, it would not necessarily be appropriate to include provisions on the privileges and immunities of representatives to conferences. It would, however, be logical in the context to cover conferences convened by international organizations as part of their activities.

5. It was necessary to bear in mind that the law of diplomatic and consular relations had already been codified, and that the codification of the law of special missions was imminent. Since the question of representatives to conferences, although it had some bearing on special missions, had not been covered in the draft on that topic, there was a danger that it might not be codified at all if it was also excluded from the present work.

6. By the time that States had disposed of the two further topics of special missions and relations between States and inter-governmental organizations, they would have dealt with no less than four separate categories of privileges and immunities; both States and the International Law Commission itself might, at that stage, feel little enthusiasm for dealing with yet a fifth category, namely, the privileges and immunities of representatives to conferences.

7. The Special Rapporteur should therefore be encouraged to go ahead with the work he had already begun of preparing draft articles on representatives to conferences. His own final position on the question of including those articles, or alternatively, only provisions on conferences convened by international organizations as part of their work, would largely depend on the view which the Special Rapporteur would ultimately take on the matter.

8. Mr. YASSEEN, referring to the title of the draft, said that the expression “*situation juridique*” used in the French translation was more satisfactory than the English expression “legal position”. If it was desired to use a more precise term, “status” might be suitable. Although that word had a rather restricted meaning in some international instruments, it still had a general meaning which embraced privileges and immunities. The status of a body determined not only its membership, but also its relations with other bodies. The draft might be entitled: “Permanent representatives of States to international organizations”.

9. The Special Rapporteur had rightly proposed that the study should be restricted to diplomatic law, which was a particular aspect of the relations between States and