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Summary record of the 945th meeting

Topic:
Representation of States in their relations with international organizations

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945th MEETING

Friday, 31 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. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

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**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. Mr. AGO said that, like Mr. Ushakov, he thought the only distinction that might possibly be made with regard to organizations was between the universal organizations and the others, though as Mr. Bartoš had pointed out, the criterion for that distinction raised difficulties. But in studying the problems with which the Commission had to deal, there was no reason to distinguish between organizations according to the number of their members, since the problems of privileges and immunities were alike for all inter-State organizations.

2. He did not understand the force of the practical reason advanced by Mr. Ushakov for confining the draft articles to universal organizations. Either a State was a member of the organization concerned or it was not. If it was a member, it would hardly be less willing to grant privileges and immunities because the organization's membership was restricted. It must not be forgotten that the rules to be prepared by the Commission would be residuary rules. If, in a particular case, States were unwilling to accept the régime provided for, they could say so when the treaty establishing the organization was drawn up. Moreover, a State was never compelled to have the headquarters of an organization in its territory. On the other hand, to take only universal organizations into account would leave a serious gap in the draft convention.

3. As to what might be called the counterpart of the representation of a State to an organization, Mr. Ushakov had been right in saying that while the representation of a State was a problem of relations between the sending State and the host State, the representation of an international organization to a State involved only relations between that organization and the State concerned. It was precisely those relations, however, that formed the subject the Commission was studying. In the last analysis, it was a matter of knowing in all cases what privileges and immunities the host State should grant.

4. There was no need to decide immediately whether those two aspects of the question should be dealt with

in a single convention or in separate conventions. Like Sir Humphrey Waldock, however, he thought that a plurality of conventions was a dangerous method which might ultimately be troublesome to the States called upon by the conventions to grant privileges and immunities.

5. Mr. ROSENNE said that, in principle, he still supported the Special Rapporteur's suggestion that the Commission should deal first with international organizations of a universal character. The debate had shown, however, that too dogmatic an approach might lead to difficulties. It would be better, therefore, to frame the articles in broad terms, but to include a carefully drafted general reservation to cover the case of "restricted" international organizations, which he thought was what was meant by the expression "regional international organizations".

2. In that connexion, he endorsed the last sentence of paragraph 4 of the Special Rapporteur's commentary on articles 2 and 3, which read: "The purpose of this reservation is to give adequate expression to the view stated by some members of the Commission, when the first report of the Special Rapporteur was discussed, to the effect that relations with States were apt to follow a very similar pattern whether the organization in question was of a universal or a regional character" (A/CN.4/203). Articles 2, 3 and 4 taken together seemed to reflect that idea and he thought they could be adjusted to resolve the difference of opinion which had become manifest in the Commission. Such an adjustment would also make it easier to solve the problem of the relationship between those articles and existing treaties and practices.

7. He agreed with Mr. Ago that if international organizations were subject to international law and if they had international personality, they belonged to an order of ideas quite different from States. He did not think the Commission should go too far with that idea at the present stage, however, since all international organizations were always and exclusively the creation of States and they were created by States for the furtherance of their own joint and several diplomatic purposes. He did not think that any broadening of the topic would be appropriate at the present stage.

8. Mr. KEARNEY, referring to the question whether the draft articles should apply only to "universal" organizations, said that Mr. Bartoš had raised a fundamental issue when he had inquired how universality was to be defined. Was there any pragmatic reason for drawing a line between regional and universal organizations? If a regional organization was of such a size and constitution as to require the presence of permanent representatives, was there anything in the nature of their activities that required privileges and immunities different from those accorded to representatives to a so-called universal organization? For example, there was no reason to believe that representatives to the Organization of American States required fewer privileges and immunities than representatives to world-wide organizations.

9. With regard to the question whether the draft articles should apply to delegations to organs of international organizations and to international conferences, it was necessary to determine what was meant by an international conference. Such conferences might take any one of five

forms. First, the regularly recurrent meetings of an organ of an international organization, such as IMCO; second, the regularly recurrent meetings of delegations to an organ of such an organization as the Antarctica organization; third, conferences regularly held by an international organization within its own organizational framework, such as the quadrennial meetings of delegates to the Hague Conference on Private International Law; fourth, conferences convened by an international organization to deal with the results of its own work, such as the diplomatic conferences convened to deal with the subjects codified by the Commission; fifth, conferences convened by States to deal with matters processed by an international organization, such as the 1964 Diplomatic Conference on the Unification of Law governing the International Sale of Goods at The Hague, which had dealt with private law matters worked out by the Rome Institute.

10. Lastly, while sympathizing with Mr. Ago's desire to include representatives of international organizations as well as representatives of States, he asked whether questions of a different character from those relating solely to privileges and immunities were not involved. It was difficult to decide what the privileges and immunities of representatives of international organizations should be without deciding what was the basic nature and legal status of the international organizations themselves.

11. Mr. USHAKOV said he was not opposed to consideration of the questions raised by Mr. Ago, namely, the representation of an international organization to a State and the representation of an international organization to another international organization. But he doubted whether those questions and the questions chosen by the Special Rapporteur should be dealt with in the same convention. In any event, if all those questions were to be dealt with, the Special Rapporteur's task would become too heavy. It would be better for the time being to consider only the status of representatives of States to international organizations.

12. Attention had been drawn to the difficulty of finding an exact criterion for defining a universal organization. But the notion of a regional organization existed, and a universal organization could be defined on that basis. True, there were difficulties, but the Commission had also encountered difficulties in defining special missions. A solution could be found.

13. States were not prepared to grant a special status in advance to any and every organization. There were great differences between organizations, which could be of a technical, economic or political character. As the Commission was preparing a draft convention which would be put forward for signature by States, it should bear that practical aspect of the problem in mind and confine its attention, for the time being, to universal organizations.

14. Sir Humphrey WALDOCK said that the questions before the Commission were whether article 2 should be drafted as it was, whether article 3 was necessary at all, and whether it would not be enough to include the reservation in article 4, which reserved in every case the particular rules of the international organization concerned.

15. He agreed with Mr. Ago that there should not be

any real distinction between universal and non-universal organizations. The question with which the Commission was concerned was that of relations between States and inter-governmental organizations; the character of the organizations might have some bearing on the question, but he thought that it would be better to speak of "restricted" organizations, as Mr. Rosenne had suggested, rather than of regional organizations. He himself was inclined to think there was no need to confine article 2 to organizations of a universal character, that article 3 was therefore unnecessary, and that there should be a well-drafted article 4 reserving the position in regard to each individual organization. He fully understood that the Special Rapporteur might have found it convenient to concentrate on organizations of world-wide scope, but it was evident that he had also drawn inspiration from certain regional organizations, such as the Council of Europe and the Organization of American States. He himself, incidentally, preferred studiously to avoid the use of the word "universal" in international law, since in his experience it inevitably led to difficulties.

16. With regard to delegations to international conferences, he thought that a question might arise as to whether the Commission should deal with all conferences or should confine the articles to conferences which were part of the activity of an international organization. In that connexion, he referred to Part One A, Chapter II, Section 7 (d) of the Secretariat study on practice concerning status, privileges and immunities (A/CN.4/L.118) which dealt with conferences held under United Nations auspices. With regard to the Vienna Conference on Diplomatic Intercourse and Immunities, for example, paragraph 73 of that Section stated that the Agreement between the United Nations and Austria provided, in article VI, that "The Convention on the Privileges and Immunities of the United Nations, to which the Republic of Austria is a party, shall be applicable with respect to the Conference". There was obviously an important overlap between representatives to conferences and representatives to organizations and he hoped that the Special Rapporteur would complete his study, so that the Commission could take a decision on the matter.

17. He was rather doubtful about the question raised by Mr. Ago concerning the inclusion of the privileges and immunities of international organizations vis-à-vis States because that would involve a study of the law of international organizations, rather than diplomatic law proper. If the Commission decided to study international organizations themselves, that question might also be included, but he would first like to hear the Special Rapporteur's views on the question of including relations between international organizations and States.

18. Mr. ALBÓNICO, after briefly reviewing the main problems before the Commission, formally proposed that it should begin consideration of the Special Rapporteur's draft articles themselves.

19. The CHAIRMAN said that the Commission would begin consideration of the draft articles on the conclusion of the general debate.

20. Speaking as a member of the Commission, he thanked the Special Rapporteur for his clear and methodical

report on a new and difficult topic which the Commission had to tackle for the first time. With regard to the title of the present group of draft articles, he noted that the Special Rapporteur had expressed the opinion that from a technical point of view the term "legal position" might not have a meaning different from that of "legal status" (A/CN.4/195/Add.1, para. 66). Though he would prefer some other expression, he would not object to that term provided it was understood to include not only legal capacity, privileges and immunities, but also rules such as those relating to the functions, establishment and composition of permanent missions to international organizations. He fully agreed with the Special Rapporteur's suggestion that the word "inter-governmental" should be replaced by "international". In any case, the title was not important at the present stage of the discussion and the Commission could revert to it later.

21. As to the form of the draft articles, he agreed that they should be intended to serve as a basis for a convention. With regard to their scope, while agreeing in principle that attention should be concentrated on international organizations of a universal character, he did not think that regional organizations should be excluded *a priori*. The Special Rapporteur had suggested (A/CN.4/195/Add.1, para. 71) that regional organizations did not have the measure of homogeneity which made it possible to propose uniform or analogous rules. That was true, but universal organizations did not have such homogeneity either. He hoped, therefore, that the Special Rapporteur would see fit to broaden his approach and, in the course of his study, determine whether regional organizations were not subject to the same rules as universal organizations.

22. With regard to delegations to international conferences, he thought that the question of their privileges and immunities should be treated in the same way whether the conference was convened by an international organization or not, since in either case it was a conference of States. Such delegations should enjoy the same privileges and immunities as permanent missions, since even in the case of technical missions, they were representatives of States.

23. Mr. USTOR pointed out that in 1966 the Special Rapporteur had proposed that he should give priority to the question of the status, privileges and immunities of representatives of States to international organizations¹ and that the Commission had tacitly accepted that proposal. Mr. Ago's suggestion therefore came rather late.

24. As to international organizations of a universal and of a restricted character, he agreed with Sir Humphrey Waldock that that point might well be covered by articles 2 and 4. In the case of some organizations of a highly technical character, States might be unwilling to grant the persons participating in their activities wide privileges and immunities, although they appeared as representatives of other States. One example was the Organisation internationale de métrologie légale in Paris, which dealt with weights and measures. He doubted whether the French Government would be willing to grant the participants

in the annual or semi-annual meetings of that organization the same privileges and immunities as the representatives of States to other—political—organizations. For the time being, however, the Commission should consider the problem of such organizations within the framework of articles 2 and 4 and take a decision on the merits of the question when the whole set of draft articles was before it. What it had to do was to draft residual rules which would apply only to cases not governed by other provisions.

25. The title of the group of articles could be discussed at a later stage.

26. Mr. BARTOŠ said that, as Mr. Yasseen had pointed out at the previous meeting, only conferences of States convened by international organizations were within the Commission's terms of reference. That having been made clear, he maintained his view that such conferences should not be left aside.

27. It was very difficult to say whether the activities of an international organization were political or, on the contrary, purely technical. For instance, the definition of the ton for shipping purposes was perhaps a technical question, but it also had political implications and there were disputes between States about the maximum tonnage of vessels entitled to enter territorial waters or ports. It was not easy to say where political representation ended and technical representation began. Delegations of States comprised both elements, and often the political element was predominant. He agreed with Mr. Ustor that in principle some organizations should be excluded from the application of the rules on privileges and immunities, but he did not think that restriction should apply to the Organisation internationale de métrologie légale.

28. As to the organizations which might be called quasi-regional, they could be regarded either as truly regional organizations, or as offices which must be assimilated to the universal international organization to which they belonged. Both solutions were possible.

29. Mr. AMADO thought that the word "universal" should perhaps be replaced by another adjective to qualify the big organizations. But the distinction between those organizations and the others did exist in fact. There were comprehensive organizations, whether they were called universal, general or something else, and there were typically regional organizations.

30. He did not see how regional organizations could be excluded. They were international organizations, and they held meetings in which the representatives of States took part. Those representatives must certainly be able to claim immunities.

31. Rules must be drawn up for the principal organizations which had a general role to play and held an important place in the international community; but organizations with more limited purposes should not be excluded.

32. He had some doubts concerning representatives of an international organization to another international organization. Like Mr. Ushakov, he was concerned about the role of the host State. If representatives had privileges and immunities, it must be asked who guaranteed them and what were the sanctions for their breach.

¹ See *Yearbook of the International Law Commission, 1966*, vol. I, part II, p. 279, para. 9.

33. Mr. EL-ERIAN (Special Rapporteur), summing up the general debate, said it had been asked whether the articles on conferences should deal with conferences in general or only with the privileges and immunities of delegations to conferences. He had tried to clarify his position in his second report, where he had expressed the view that the general question of the organization and procedure of international conferences should not be considered (A/CN.4/195/Add.1 para. 85). He therefore proposed to deal only with the privileges and immunities of delegations to international conferences and to organs of international organizations. He expected to have the text of the relevant articles ready in a few days.

34. He had also been asked how he would define the term "regional organization". The term "regional", of course, meant regional in regard to membership, not in regard to the sphere of activities. In his first report he had said that: "It is to be noted that the regional subsidiary organs of universal organizations, such as the regional economic commissions of the Economic and Social Council and the regional offices of the World Health Organization, are not regional organizations in the above sense. As sub-divisions of universal organizations with a regional sphere of activities, they do not have the independent character as international which is possessed by regional organizations".² While appreciating Sir Humphrey Waldock's distrust of the word "universal", he nevertheless maintained that the distinction between universal and regional organizations was well established in legal doctrine. The criterion was primarily that of membership. Article 57 of the Charter referred to "The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities..." There, the criterion was that of "wide international responsibilities", which was close to, but not identical with, that of membership.

35. As to the title of the group of articles, he noted that certain members did not like the term "legal position", but since the final articles on permanent missions dealt with the composition, accreditation and functioning, as well as with the privileges and immunities of such missions, he had thought that a title of general scope was needed. He had possibly been influenced by the fact that Professor Manley Hudson had chosen that title for the Harvard Research draft Convention on the Legal Position and Functions of Consuls.³

36. With regard to the form of the draft articles, he thought that they should serve as a basis for a convention and should be referred to the same international conference of plenipotentiaries as might be convened to consider the draft articles on special missions, thus completing the diplomatic law concerning representatives of States. He agreed with Mr. Kearney that it was impossible to define the status of representatives of international organizations until the status of the organizations themselves had been defined. He had deliberately stressed that permanent missions were a new development in the activity

of international organizations and had pointed out in his third report (A/CN.4/203, Chapter II, Part II, Section I) that the Secretary-General of the United Nations had observed that "the permanent representation at Headquarters of all Member nations, and the growing diplomatic contribution of the permanent delegations outside the public meetings... may well come to be regarded as the most important 'common law' development which has taken place... within the constitutional framework of the Charter".

37. Article 4, as he had explained, was intended to cover questions of practice and safeguard the position of particular rules. It was not intended to give the whole set of draft articles the character of residual rules, but rather to establish a common denominator which would be without prejudice to the particular rules that might be applicable to certain organizations.

38. On the question of regional organizations, in his first report he had suggested that they should not be excluded, but a majority of the Commission had been opposed to that suggestion. One of the problems which arose in that connexion was that of observers. While there might be cases in which non-members of some regional group wished to send observers to its meetings, he did not think that members of another geographical group would be likely to do so. On the other hand, all States which were not members of some universal organization would be interested in following its work. He suggested that the Commission should leave that question in abeyance for the time being and take it up later in connexion with articles 2 and 3.

39. He noted that the majority of the Commission would prefer some other title than "Legal position of representatives of States to international organizations", though there was general agreement concerning the substance of the title. He therefore suggested that the Commission should first decide exactly what the title was meant to cover and then leave the definition to the Drafting Committee. He was confident that all members could accept the replacement of the expression "inter-governmental" by "international", since the latter term was frequently used, especially in the law of treaties. Lastly, he would reflect further on the scope of the draft articles and would include articles on conferences convened outside the United Nations. The organizations covered by the draft would be dealt with in articles 2 and 3.

40. Mr. USTOR said he still had misgivings about the title, because the draft articles did not deal simply with representatives of States to international organizations; they really dealt with permanent missions and temporary missions to international organizations, which comprised both representatives and other staff. When dealing with special missions, the Commission had used the title "Draft articles on special missions", not "Draft articles on special representatives of States".

41. A further problem was that the draft articles would also cover the question of observers, who might not be regarded in all cases as representatives.

42. The question of the title could, however, safely be deferred for the time being; ultimately, it would be a matter for the Drafting Committee to decide.

² See *Yearbook of the International Law Commission, 1963*, vol. II, p. 168, para. 67.

³ See *the American Journal of International Law, 1932*, vol. 26, supplement 1-2, p. 189.

43. Mr. EL-ERIAN (Special Rapporteur), replying to a question by Mr. CASTRÉN, said that, if the Commission were later to decide that the draft should cover representatives to conferences, he would accept the idea of referring in the title to representatives to international organizations "and conferences". Such an amended title would also cover *ad hoc* representatives to organs of international organizations and observers, who were in a sense representatives of States accredited to organizations, though they worked at a different level from representatives proper.

44. The CHAIRMAN announced that the general debate was concluded. He then invited the Special Rapporteur to introduce article 1 in his third report (A/CN.4/203)

ARTICLE 1

45. Article 1

Use of terms

For the purposes of the present articles:

(a) An "international organization" is an association of States established by treaty, possessing a constitution and common organs, and having a legal personality distinct from that of the member States;

(b) A "permanent mission" is a mission of representative and permanent character sent by one State member of an international organization to that organization;

(c) The "permanent representative" is the person charged by the sending State with the duty of acting as the head of a permanent mission;

(d) The "members of the permanent mission" are the permanent representative and the members of the staff of the permanent mission;

(e) The "members of the staff of the permanent mission" are the members of the diplomatic staff, the administrative and technical staff and the service staff of the permanent mission;

(f) The "members of the diplomatic staff" are the members of the staff of the permanent mission who have diplomatic status;

(g) The "members of the administrative and technical staff" are the members of the staff of the permanent mission employed in the administrative and technical service of the permanent mission;

(h) The "members of the service staff" are the members of the staff of the permanent mission employed by it as household workers or for similar tasks;

(i) The "private staff" are persons employed exclusively in the private service of the members of the permanent mission;

(j) The "host State" is the State in whose territory the seat of an international organization is established, or the meeting of an organ of an international organization or a conference is held;

(k) The "Secretary-General" is the principal executive official of the international organization in question whether designated "Secretary-General", "Director General" or otherwise;

(l) A "member State" means a State which is a member of the international organization in question;

(m) A "non-member State" means a State which is not a member of the international organization in question;

(n) An "organ of an international organization" means a principal or subsidiary organ, and any commission, committee or subgroup of any of those bodies;

(o) A "conference" is a meeting of representatives of States for negotiating and/or concluding a treaty on matters concerning the relations between the States;

(p) A "delegation" is the person or body of persons charged with the duty of representing a State at a meeting of an organ of an international organization or at a conference;

(q) The "Organization" means the international Organization in question.

46. Mr. EL-ERIAN (Special Rapporteur) said he had included an opening article on the use of terms, following the example of other drafts of the Commission. An article of that kind was particularly necessary for the present topic, because the term "international organization" had not been defined by the International Law Commission before. In the draft articles on the law of treaties, an "international organization" had been defined in broad terms, in paragraph 1 (i) of article 2, as meaning an "intergovernmental organization".⁴

47. The main provision of article 1 was therefore subparagraph (a), which stated that, for the purposes of the draft articles, an "international organization" was "an association of States established by treaty, possessing a constitution and common organs, and having a legal personality distinct from that of the member States".

48. Many of the provisions of article 1 should present no difficulty: in particular, those of subparagraphs (d) to (i), which had been taken from the corresponding articles of the 1961 Vienna Convention on Diplomatic Relations⁵ or of the draft on special missions.⁶

49. He had included in subparagraph (j) a definition of the term "host State", which was a very important concept where international organizations were concerned.

50. In view of the different titles of the executive heads of different organizations, he had included subparagraph (k).

51. He had also thought it useful to define the term "conference" for the purposes of the draft articles, and had done so in subparagraph (o).

52. Mr. ROSENNE said that the Special Rapporteur had rendered a valuable service to the Commission by providing it at the outset with a comprehensive list of terms and their uses. At a later stage in the proceedings it might perhaps be possible to shorten that list, if it were decided that some of the provisions were self-evident or could be dispensed with by means of suitable cross-references to articles of existing treaties. For such cross-references, the Commission could consider the very appropriate formula suggested by Sir Humphrey Waldock in draft article 1 (Use of terms) in his first report on succession of States and Governments in respect of treaties (A/CN.4/202, Section II).

53. Referring to subparagraph (a) of the article under discussion, he stressed that it was extremely difficult to define an international organization. He was not at all certain that every international organization was "an association of States"; and it was not altogether appropriate to say that all international organizations had been "established by treaty". There might already be some international organizations which had been established in some other way and there would very

⁴ See *Yearbook of the International Law Commission, 1966*, vol. II, p. 188.

⁵ See United Nations, *Treaty Series*, vol. 500, p. 96.

⁶ See *Official Records of the General Assembly, Twenty-second Session, Supplement No. 9*, p. 4.

likely be such organizations in the future. Furthermore, the attribute of "possessing common organs" was not altogether clear.

54. The greatest difficulty, however, was that involved in the phrase "having a legal personality distinct from that of the member States". In that connexion, he referred to his remarks at the 718th meeting of the Commission in 1963,⁷ which had been faithfully reflected by the Special Rapporteur in paragraph 19 of his second report (A/CN.4/195) where he said:

"One member among this group described the notions of international legal capacity and treaty-making capacity of international organizations as convenient academic expressions for conveying certain ideas which should be regarded as points of arrival after a great deal of experience, rather than as points of departure for the analysis of legal principles".

That interpretation of the legal position was based on the ruling given by the International Court of Justice on the question of international personality in its advisory opinion of 11 April 1949 on *Reparation for Injuries suffered in the Service of the United Nations*.⁸

55. For those reasons, he thought it would be rather dangerous to include a provision of the kind contained in sub-paragraph (a). It would be preferable to use the description of an "international organization", which was admittedly not a definition, contained in article 2 of the draft on the law of treaties, subject to revising its wording in the light of any decision that might be taken at the second session of the Vienna Conference on the Law of Treaties in 1969.

56. With regard to the definition of the "host State" in sub-paragraph (j), it was perhaps not appropriate to speak of "the seat" in the singular: some of the major organizations, including the United Nations itself, had not only more than one office, but what might be called more than one head office, and hence more than one host State. For similar reasons, it was difficult to determine the exact meaning of the word "seat".

57. As to sub-paragraph (k), he had some doubts about the need for a provision on the use of the term "Secretary-General". The point could best be dealt with by using the language of the relevant provisions of the United Nations Charter, and referring to the other aspects in the commentary.

58. As to sub-paragraph (n), he thought it would be safer to avoid going too far in defining an "organ of an international organization"; the practice in the matter was extremely varied and, as the Special Rapporteur had pointed out, at times extremely confusing. The confusion was usually the result of a political situation and the practices evolved frequently had a political explanation. Perhaps the provisions of sub-paragraph (n) could be dispensed with by careful drafting of the relevant articles.

59. The provisions of sub-paragraph (o) might well prove too narrow, since a conference was often convened for a purpose other than that of negotiating or concluding

a treaty. One example was the International Technical Conference on the Conservation of the Living Resources of the Sea held at Rome in 1955—a major conference convened by General Assembly resolution 900 (IX) to assist the International Law Commission in its work on the law of the sea. The report of that Conference had in fact been used by the International Law Commission in preparing its 1955 draft articles relating to the conservation of the living resources of the sea. He also would prefer to avoid the expression "and/or" in a legal text.

60. Lastly, the provisions of sub-paragraph (p) were perhaps not essential. The expression "body of persons" could give rise to unexpected difficulties: it could be misconstrued as suggesting that a delegation was in some way a body corporate or legal person. That difficulty was particularly likely to arise in countries where, through the process of ratification, the provisions of the draft would become a part of internal law.

61. Mr. ALBÓNICO said he had some doubts about the scope of the provisions of sub-paragraph (a), which seemed unduly broad. As they stood, they would cover institutions such as the Inter-American Development Bank, but he did not believe there was any intention to deal with representatives to an institution of that type. He therefore suggested that the wording should be adjusted so as to confine the application of the provision to organizations with world-wide interests.

62. As to sub-paragraph (o), it was his understanding that the draft could only deal with conferences convened by international organizations. A conference convened by one or more States was outside the scope of the topic under discussion and therefore outside the Commission's terms of reference. He agreed with Mr. Rosenne on the need to eliminate the restrictive wording "negotiating and/or concluding a treaty". A conference could be convened for a variety of other purposes, such as considering questions of common interest to the participating States.

63. Mr. USTOR said that the provisions of sub-paragraph (c) could cause some difficulty for small States, whose permanent mission often consisted of only one person, namely, the permanent representative.

64. With regard to sub-paragraph (p), he pointed out that a delegation was in fact a temporary mission to an international organization. Like a permanent mission, a delegation could consist of a head of mission and members of various categories of staff, which were listed in sub-paragraphs (c) to (i). Those sub-paragraphs, however, had all been framed in terms suited to permanent missions, so that parallel provisions were necessary for temporary missions. Separate provisions would be needed, because the privileges and immunities of the staff of delegations were not identical with those of the staff of permanent missions.

65. Mr. AMADO, referring to sub-paragraph (o), said that a conference might deal with matters other than those concerning relations between the States taking part. The 1958 Conference on the Law of the Sea had not been a conference on relations between States; it had dealt with such specific questions as contiguous zones and the limits of the territorial sea. It would be desirable to clarify

⁷ See *Yearbook of the International Law Commission, 1963*, vol. 1, p. 300, para. 5.

⁸ See *I.C.J. Reports 1949*, p. 178-179.

the expression "matters concerning the relations between the States".

66. Sir Humphrey WALDOCK said he would not go into details, though he shared many of the doubts expressed regarding individual sub-paragraphs. He fully agreed with Mr. Rosenne about some of the points in the definition of an international organization; it might perhaps be wiser to leave sub-paragraph (a) aside for the time being. The problem had arisen in connection with the draft on the law of treaties and the provision dealing with the use of the term "international organization" in that draft had not been examined in detail by the Vienna Conference; the decision which that Conference would take on the matter at its second session in 1969 might yet give the Commission some guidance. Meanwhile, he suggested that the problem of defining "an international organization" should not be discussed at length at that stage.

67. In accordance with the Commission's usual practice, the article on the use of terms should be settled at a later stage, when the Commission had discussed all the various substantive articles to which the definitions related. There was no need to bring the provisions of the various sub-paragraphs of article 1 into sharp focus until the contents of the substantive articles were known, unless, in a particular case, that was found to be necessary in connexion with the Commission's discussion of any article.

68. Mr. RAMANGASOAVINA said he thought the use of the word "constitution" in sub-paragraph (a) was incorrect, because the word ordinarily referred to the text establishing a State or a federation of States. It was true that in sub-paragraph (a) the word was applied to an association of States established by treaty, but the status of such an association was very often defined in the treaty itself. Moreover, the treaty might be supplemented by more detailed rules governing relations between the association's different organs. It would be preferable to use the word "statute". He also thought that the words "legal position" in the title should be replaced by the word "status".

69. Sub-paragraph (o) raised difficulties, because conferences were not held solely for "negotiating and/or concluding a treaty"; they were also held to discuss problems concerning relations between States. The definition of a "conference" should be supplemented and widened: for example, by stating that it meant "a meeting of representatives of States for negotiating and/or concluding a treaty or for discussing and preparing matters concerning relations between the States".

70. Mr. REUTER said he agreed with Sir Humphrey Waldock's comments. Article 1 was satisfactory, at that stage of the discussion, for grasping the facts dealt with in the draft. But it could not bind the members of the Commission, because every term in the article would be called in question in connexion with rules to be studied later. He had already pointed out that the draft articles would have no chance of coming into force unless they were restricted to a number of clearly-defined elements, and he doubted whether governments in general would accept rules whose scope was indefinite. One of the Commission's tasks would be to consider, in regard to each article, to what extent it intended to restrict the terms

used to the purposes of the draft articles. There was at present, in international practice, a deliberate confusion in the use of terms. The words "international organization", which had had a fairly clear meaning, had been diverted from their purpose, and in some cases the term "international conference" had become equivalent to "international organization".

71. He had reservations on the wording of article 1, especially in the French version, in which there were some inelegances.

72. Mr. CASTRÉN said he thought the definitions prepared by the Special Rapporteur provided a good working basis for the Commission. Some of them were useful as they stood, but others might perhaps need to be improved, particularly those in sub-paragraphs (a), (b), (j) and (o). It seemed to him that the definition in sub-paragraph (o) was both too narrow and too broad. A formula had been proposed which widened the expression "for negotiating and/or concluding a treaty", but it might also be necessary to limit the expression "relations between the States" by referring to "official relations". He thought that sub-paragraph (q) was unnecessary.

73. Mr. YASSEEN said that, from the practical point of view, the article containing the definitions should be studied after the Commission had finished its work on the other articles. That was the method that had been followed in dealing with other sets of draft articles. He therefore supported Sir Humphrey Waldock's suggestion that the decision on article 1 should be deferred.

74. The CHAIRMAN, speaking as a member of the Commission, said he agreed with Mr. Yasseen that the Commission should proceed in the same manner as it had with earlier drafts and take a decision on article 1 when the content of the concepts defined in the various sub-paragraphs became clearer.

75. Mr. BARTOŠ said he agreed with Mr. Yasseen, but he was not in favour of the method of beginning a set of draft articles by an article containing definitions. It was, of course, customary in English and North American legislation to place the definitions in the introductory article. It was also the practice followed in the Commission's codification work. But to give definitions at the beginning of a draft considerably restricted the freedom of those preparing it. The drafting of the article containing definitions should be left till the end, after it was known what terms had been used in the text. It might be necessary to include other notions in the introductory article, and the Special Rapporteur should be asked to consider whether the list of definitions was complete and whether it was correct having regard to the terms used in the text. He pointed out by way of example that, in French, the expression "*acte constitutif*", not "*constitution*", was normally used by international organizations. The "*acte constitutif*" was the instrument itself and the amendments thereto; the word "statute" covered a much wider field.

76. Mr. EL-ERIAN (Special Rapporteur) said he willingly agreed to the discussion on article 1 being treated as provisional at that stage; but he was not in favour of deferring discussion on the article altogether, because it would be helpful to him to have the reaction of members to the various sub-paragraphs. He welcomed, in particular

the suggestion by Mr. Ustor: sub-paragraphs (c) to (i) had indeed been formulated with a permanent mission in mind and he would consider introducing suitable provisions for temporary missions.

77. The provisions of sub-paragraph (a) had been framed to cover the generality of cases; it was not possible to cover every individual case. For instance, although an international organization was primarily an association of States, the membership of such organizations as the UPU included territories which were not States; and there were provisions, such as article 238 of the Rome Treaty of 1957 establishing the European Economic Community, under which an international organization could become a member of another international organization.⁹ It was not possible to formulate a definition covering all those exceptional cases, but in general it was correct to say that an international organization was primarily an association of States. Those remarks were without prejudice to the particular rules of any individual organization.

78. Sir Humphrey WALDOCK said that the usual practice of the Commission was not to discuss the article on the use of terms at any length at the outset; if the discussion of an individual substantive article subsequently raised problems relating to the definition of a concept for the purposes of the draft articles, it was the Commission's practice to discuss that definition then.

79. The complex problems raised by provisions on international organizations had been well illustrated by the impressive array of representatives of such organizations who had just attended the first session of the United Nations Conference on the Law of Treaties at Vienna. Much anxiety had been expressed concerning the provisions of the draft articles on the law of treaties relating to international organizations, and particular anxiety had been expressed by the representative of GATT as to whether his organization was covered by the Commission's definition of an "international organization". Neither the Drafting Committee of the Vienna Conference nor the Committee of the Whole had yet reached any conclusion on the question.

80. Mr. AMADO said he agreed with Mr. Yasseen's remarks, but if a definition clearly emerged at any stage in the discussion, the Commission should retain it.

81. The CHAIRMAN said the general opinion appeared to be that the Commission should follow the course recommended by Sir Humphrey Waldoock and Mr. Amado.
It was so agreed.

The meeting rose at 1.5 p.m.

⁹ See United Nations, *Treaty Series*, vol. 298, p. 92.

946th MEETING

Tuesday, 4 June 1968, at 10 a.m.
Chairman: M. José Maria RUDA

Present: Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, 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)

ARTICLE 1 (Use of terms) (continued)¹

1. The CHAIRMAN invited the Commission to continue consideration of article 1 (A/CN.4/203).

2. Mr. NAGENDRA SINGH said it would be wise to wait until some progress had been made with the substantive articles before taking any decision on the provisions of article 1; but the Commission should, at the present stage, have some idea of the main features of the more important definitions, and in particular of the basic elements of the key expression "international organization".

3. Some of those elements were fairly obvious. First, there was no intention to deal with non-governmental organizations: the draft would be concerned with organizations of States. Secondly, the organization must have its origin in some instrument in written form, usually a constituent instrument in the form of a treaty, although it might also be possible to create an international organization by means of a General Assembly resolution. Thirdly, although an international organization did not have the same kind of personality as a sovereign State, it must have an existence separate from that of its member States. Fourthly, a permanent staff was an essential feature of an international organization: all universal organizations had a secretariat which ensured continuity when the main organs were not in session.

4. In codifying a topic which lent itself to diversity, it was best to lay down general rules covering the majority of cases, and not attempt to deal with every peculiar or exceptional case that might arise. It was that approach which had made Lord Macaulay's Indian Penal Code such a successful piece of codification.

5. He agreed that attention should be concentrated on universal organizations, but urged that regional organizations should not be excluded from the draft altogether. At the recent New Delhi Conference (second session of UNCTAD), the developing countries had stressed the importance they attached to such institutions as the regional economic commissions of the United Nations. Another example of a regional body that should not be excluded from the scope of the draft articles was the Asian-African Legal Consultative Committee, which had a written constitution and consisted of representatives of States. He hoped that the provisions of articles 2 and 3 would not be so drafted as to suggest that representatives

¹ See previous meeting, para. 45.