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Summary record of the 947th meeting

Topic:
Representation of States in their relations with international organizations

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organizations which were regarded by some States as preserving peace, but by others as threatening it. And the powers of inspection enjoyed by ILO inspectors in the territory of member States were much wider than those of United Nations investigators. The Commission must take those different attitudes and situations into account and not destroy what already existed.

60. He thought that a sole article, complemented by annexes in which States would indicate the international organizations to which they proposed to apply the rules of the convention, would have the advantage of providing the necessary flexibility.

61. Mr. NAGENDRA SINGH thought that the adoption of Mr. Bartoš's suggestion would have a restrictive effect and make the Commission's efforts at codification incomplete. No attempt had been made to annex such a list to the draft articles on special missions, although such missions were even more multifarious in nature than permanent missions. Most members seemed to feel strongly that the Commission should concentrate on organizations of world-wide scope and not deal with regional organizations. Since the position of particular organizations was covered by article 4, he agreed that articles 2 and 3 should be kept in reserve and discussed later if they appeared to be needed.

62. Mr. ALBÓNICO supported the suggestion that articles 2 and 3 should be kept in reserve and Mr. Rosenne's suggestion that article 4 should be placed at the beginning of the draft. Any discussion of what were regional and what were universal organizations was purely academic; it would be better, as Mr. Amado had said, to avoid questions of theory and to try to draft concrete rules.

63. Mr. ROSENNE said he found it difficult to understand by what criteria the Commission could be guided in drawing up the list of organizations suggested by Mr. Bartoš. He feared that the problem of defining international organizations was deflecting the Commission from its true purpose, which was to complete the law of diplomatic relations. After all, the Commission was concerned with representatives of States who were accredited to something other than a State, a situation in which, as Mr. Ago had said, the element of reciprocity was lacking. It should therefore try to codify the international law governing that situation and not lose itself in marginal problems involving delicate questions of definition.

64. Sir Humphrey WALDOCK, referring to article 4, suggested that the Special Rapporteur might consider whether it would be useful to introduce a provision similar to that of article X, Section 34, of the Convention on the Privileges and Immunities of the Specialized Agencies, which read: "The provisions of the Convention in relation to any specialized agency must be interpreted in the light of the functions with which that agency is entrusted by its constitutional instrument".

65. Mr. USTOR said that there were two kinds of international organizations: those belonging to the United Nations family and the others. The law governing the privileges and immunities of members of the United Nations family was fairly well developed, but the position of the organizations outside it was less clearly defined.

From a doctrinal point of view, the Commission might do well to adopt the system in use in the United Nations family, but it was questionable whether States would be prepared to grant the same privileges and immunities to representatives to organizations outside the United Nations family. He himself favoured a convention with uniform rules, but one which would be sufficiently flexible to allow States to accede to it without having to grant the same privileges and immunities to all organizations.

The meeting rose at 1.5 p.m.

947th MEETING

Wednesday, 5 June 1968, at 10 a.m.

Chairman: Mr. José Maria RUDA

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Jiménez de Aréchaga, 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 2 (Scope of the present articles) (continued) and

ARTICLE 3 (International organizations not within the scope of the present articles) (continued)¹

1. Mr. CASTRÉN, referring to the proposals made at the previous meeting, said he still thought that articles 2 and 3 were necessary, though he would have no objection to their discussion being postponed until the Commission had completed its study of the various substantive rules in the draft. As to the position of articles 2 and 3, if they were retained, he thought it should be at the beginning of the draft.

2. Mr. Ushakov had proposed that article 2 should refer, not to representatives of States, but to relations between States and international organizations.² But the Special Rapporteur, with the Commission's agreement, had confined his draft to the legal position of representatives of States to international organizations and conferences. Mr. Ushakov's formula was therefore too broad.

3. Mr. Ushakov had also proposed that in article 3 the words "international organizations of a regional charac-

¹ See previous meeting, para. 19.

² *Ibid.* para. 39.

ter" should be replaced by the words "all other international organizations".³ That change considerably improved the text of article 3, which, incidentally, might be combined with article 2 to form a single article. The change was justified by the fact that, as some members of the Commission had pointed out, there were other kinds of international organizations besides universal and regional organizations.

4. Mr. Bartoš had proposed that the field of application of the draft should be initially limited to universal organizations, but that States should be left free to extend its application, subject to reciprocity, to such other organizations as they might designate, by adopting an optional protocol.⁴ That would be a kind of agreement *inter se*. It was a very ingenious compromise formula which offered a practical solution and therefore deserved most careful consideration.

5. Mr. USHAKOV noted that several speakers had referred to article 4 in connexion with the discussion on articles 2 and 3. It had been said that article 4 was the key article of the draft and that articles 2 and 3 could be deleted. He himself had serious reservations regarding article 4, on which he would give his views later. At that stage he merely wished to point out that articles 2 and 3 concerned representatives of States, in general, to international organizations. Article 4 was more restricted in scope, since it dealt only with permanent missions to such organizations.

6. He also thought that the Commission should confine itself to general or world international organizations, since they were the only ones for which there were established rules that were observed and generally accepted, particularly with regard to the permanent missions of States to organizations. The study of the whole range of existing organizations, requested of the Secretariat by Mr. Ustor, might perhaps be difficult to carry out, but it would show that most of those organizations did not adopt the system of permanent missions. The Special Rapporteur had already mentioned the case of OAU, which included nearly all the African countries, and in which the member States were represented, not by permanent missions, but by their ambassadors at Addis Ababa.

7. The Commission's task was to codify existing rules with a view to the signature of a convention by States. To attempt to extend the existing rules to all organizations would be theoretical work. There was nothing to prevent the States concerned from extending the future convention to regional and other organizations. But to help States adopt such measures for the progressive development of international law, the Commission should offer them a model based on codification of the established rules relating to universal organizations.

8. Sir Humphrey WALDOCK said he was rather puzzled about the exact scope and purpose of the Commission's work. As he had said at the previous meeting, if the Commission intended the draft articles to apply only to worldwide organizations, it would be dealing primarily with

the specialized agencies and analogous institutions. The specialized agencies, of course, were already governed by the Convention on the Privileges and Immunities of the Specialized Agencies⁵ and its annexes, although that Convention did not, admittedly, touch the question of permanent missions. Equally, if the Commission tried to generalize the rules in the draft articles, it would not only be revising that Convention, but would also be extending the scope of the draft to some highly specialized organizations not at present covered by the Convention.

9. In his opinion, it would be a mistake to push too far the generalization of rules concerning organizations which were very different in character and which might require differential treatment on some points, so that it might not be enough to rely upon the safeguard clause in article 4. The Universal Postal Union, for example, was entirely different in character from the ILO.

10. In general, he hoped that at the present stage of the discussion the Commission would not set its sights too low and consider its work merely as a codification of the rules for the specialized agencies. Certainly, it could not justify such a restrictive view of its task on the ground that not all the necessary background material had been collected by the Secretariat, since much other material was available.

11. Mr. EL-ERIAN (Special Rapporteur) noted that in 1963 and 1964 only a few members of the Commission had supported the inclusion of regional organizations, but more now appeared to do so; nevertheless, the majority seemed to favour the principle underlying articles 2 and 3, though some had doubts about the drafting. He wished to make it clear that besides consulting the legal advisers of the specialized agencies, he had also consulted, though on a less formal basis, the legal advisers of four leading regional organizations, namely, the Organization of American States, the League of Arab States, the Council of Europe and the Organization of African Unity. Much material concerning those four organizations had been included in his commentary on permanent missions (A/CN.4/203, Chapter II, Part II) and in his commentary on article 8 (A/CN.4/203/Add. 1). There was, in fact, a wealth of material available on regional organizations which was already difficult to condense. Hence he did not consider it necessary to ask the Secretariat for additional material.

12. It had been suggested that articles 2 and 3 should be placed among the final clauses of the draft, but he could not agree to that suggestion. The corresponding articles on the Law of Treaties had been placed at the beginning.

13. He agreed with Mr. Ushakov that the term "representatives of States", in article 2, should be defined in article 1. The Commission could take a decision on that point later.

14. With regard to the difficulty of defining universal and regional organizations, he was grateful to Mr. Castrén for having pointed out the discrepancy between the English and French texts of article 2. The words "*qui sont ouvertes à l'adhésion universelle*" did not have the same meaning as the words "whose membership is

³ *Ibid.* para. 41.

⁴ *Ibid.* paras. 58-60.

⁵ See United Nations, *Treaty Series*, vol. 33, p. 262.

is of a universal character". In general, the distinction between universal and regional organizations was well established in legal doctrine; the basic criterion was the principle underlying the membership and the purpose of the membership of international organizations. The United Nations Charter, for example, was based on the principle of universal membership, as an ultimate goal if not as a present reality. The regional organizations, on the other hand, were clearly restricted to certain groups of States: the OAS to American states, the League of Arab States to Arab States, the OAU to African States, and so on.

15. As to the relationship between the Commission's work and the Convention on the Privileges and Immunities of the Specialized Agencies, the Commission was not concerned with the status of international organizations themselves, but with the status of representatives to those organizations. The Convention, after all, contained nothing concerning permanent missions or observers from non-member States.

16. He agreed with Mr. Ushakov that the expression "other organizations" might be less controversial than "regional organizations"; the word "other" had been used in the introduction to volume II of the United Nations Legislative Series (ST/LEG/SER.B/11). He had some difficulty, however, in accepting Mr. Yasseen's suggestion that the word "universal" should be replaced by "general", since the latter word would refer to organizations having a wide range of functions.

17. Some members feared that the value of the draft articles would be diminished if they were confined to universal organizations; he agreed with that view and hoped that the Commission would take it into consideration. Mr. Bartoš had suggested that the Commission should follow the method used in the Convention on the Privileges and Immunities of the Specialized Agencies and deal with particular organizations in annexes; but it was necessary to determine how far it was possible to establish uniform and analogous rules for all organizations despite the differences in their status and functions.

18. Summing up the Commission's attitude to articles 2 and 3, he noted that some members had suggested their deletion, while others thought they should be kept in reserve for the time being. He proposed that they should be referred to the Drafting Committee, which could decide whether they should be kept in reserve pending consideration of the other articles.

After a short procedural discussion, in which the CHAIRMAN, Sir Humphrey WALDOCK, Mr. YASSEEN, Mr. AMADO, Mr. USHAKOV, Mr. NAGENDRA SINGH, Mr. ROSENNE, Mr. CASTRÉN, Mr. EL-ERIAN, Mr. ALBÓNICO and Mr. REUTER took part, it was decided to refer articles 2 and 3 to the Drafting Committee in accordance with Mr. El-Erian's proposal.⁶

⁶ For resumption of the discussion on articles 2 and 3 (which were later combined in a single article), see 972nd meeting, paras. 40-89; 973rd meeting, paras. 1-65; 980th meeting, paras. 2-12.

ARTICLE 4

19.

Article 4

Nature of the present articles; relationship with the particular rules of international organizations

The application of the present articles to permanent missions of States to international organizations and other related subjects regulated in the present articles shall be subject to any particular rules which may be in force in the organization concerned.

23. The CHAIRMAN invited the Special Rapporteur to introduce article 4.

21. Mr. EL-ERIAN (Special Rapporteur) read out his commentary on article 4 (A/CN.4/203). He reminded the Commission that at the previous meeting Sir Humphrey Waldock had suggested the addition to article 4 of a provision on the lines of article X, section 34 of the Convention on the Privileges and Immunities of the Specialized Agencies, which read: "The provisions of the Convention in relation to any specialized agency must be interpreted in the light of the functions with which that agency is entrusted by its constitutional instrument." His first reaction was that the Commission should guard against taking the general reservations in article 4 any further, but he needed more time to reflect on that proposal.

22. Mr. EUSTATHIADES proposed that consideration of article 4, or at least the final decision on it, should be postponed until the other provisions of the draft had been discussed. It was true that members of the Commission already had the whole of the draft before them, but an informed judgment on article 4, as also on articles 2 and 3, would only be possible in the light of the debates on the other articles and of the amendments which the Commission might adopt on certain points.

After a short procedural discussion, in which Mr. USTOR, Mr. USHAKOV, Mr. ROSENNE, Mr. BARTOŠ, Sir Humphrey WALDOCK, Mr. EUSTATHIADES and the CHAIRMAN took part, it was decided to begin the discussion of article 4 immediately, but to reserve the final decision on that article until later.

23. Mr. EUSTATHIADES said he had two comments to make. First, article 4 embodied a sound and useful principle, namely, that cases subject to the particular rules of an international organization should be reserved. The Special Rapporteur had probably intended that reservation to cover not only permanent missions of States to organizations, but also delegations to organs and conferences, and observers. But if that was so, the expression "and other related subjects" might be open to misunderstanding. He therefore suggested that the wording of article 4 should be both more general and more specific; for instance, it might read: "The application of the present articles shall be subject to any particular rules..."

24. Secondly, the expression "particular rules which may be in force in the organization concerned" might give the impression that the reference was not only to rules laid down by the constituent instruments of organizations, but also to practices or precedents which were not binding and even to purely tentative measures. If the Commission wished to promote greater uniformity of usage, that expression should be replaced by the words

“particular rules established by the constituent instruments of organizations”, in order to show that the aim in view was to guide the practice or tentative measures towards unified rules, such as those to be stated in the present draft articles.

25. If his first suggestion was not adopted, he would like the wording proposed by the Special Rapporteur to be amended in such a way as to avoid the use of the term “States”, which raised the problem of the status of members of the organization: as was pointed out in paragraph 2 of the commentary, the membership of some organizations included territories which had not yet achieved full sovereignty. It would also be preferable not to exclude representatives of another international organization.

26. Mr. USHAKOV said that, as it stood, the article appeared to refer only to permanent missions of States to international organizations, whereas the Special Rapporteur had intended to propose a general reservation covering permanent missions to organizations, representatives to organs or conferences and other persons.

27. He saw no need for a general reservation to the effect that all the rules in the draft were subject to the particular rules of organizations. The Commission was proposing to lay down general rules in the draft; if those rules were to be subject, automatically and from the outset, to the particular rules of organizations, their scope would be extremely limited. The permanent representatives of States to international organizations in fact enjoyed diplomatic privileges and immunities; that rule could be codified and there was no need to refer to particular rules so far as those representatives were concerned. The same applied to representatives to international conferences and those sent to organs of an international organization.

28. He recognized, however, that on certain points and with respect to certain situations, it might be necessary to make the rules in the draft articles subject to the particular rules of organizations. But it was only by examining the substantive articles that the Commission would be able to see whether some of them called for a reservation relating to the particular rules of organizations.

29. Mr. ROSENNE said that article 4, as its title showed, contained two separate ideas. The first related to the “nature of the present articles”; the provision on the subject was not a reservation, but a positive statement, which had been correctly placed in that article. The second idea was that of the relationship of the draft articles to the particular rules of international organizations; the provision on that point constituted a reserving clause. The combination of those two ideas made article 4 a key provision of the draft; it contained several elements and was intended to serve a number of different purposes, as the Special Rapporteur had explained. As they stood, however, he thought the provisions of the article were insufficient and needed to be supplemented; but since the article should not be overcharged, consideration might perhaps be given to subdividing its provisions into two articles, or at least two paragraphs.

30. He agreed that there was some difficulty in discussing article 4, because some elements in it depended on other articles of the draft. For example, the expression “permanent missions of States” would be affected by whatever

provisions were later adopted on the subject. That was largely a matter of drafting, however, which could easily be adjusted at a later stage.

31. For the opening phrase of article 4, which dealt with the nature of the draft articles, he suggested some such wording as: “The present articles apply to...”. That might overcome the difficulty to which Mr. Eustathiades had drawn attention.

32. He had some misgivings about the words “and other related subjects”, but that too was a drafting problem.

33. In considering the relationship to the particular rules of international organizations, attention should be concentrated on the respective positions of the accrediting State and the host State. He thought that the reference to the rules “in force in the organization” was really intended as a reference to the rules existing in respect of the organization.

34. Consideration should be given to introducing into article 4 the formula adopted at the Vienna Conference for article 4 of the draft on the law of treaties: “without prejudice to any relevant rules of the organization”. Even that might not be enough, however, and he suggested that article 4 should also contain a specific reservation for the constituent instruments of international organizations, including the United Nations Charter, for the Conventions on the Privileges and Immunities of the United Nations and the Specialized Agencies and for the host agreements, which often filled gaps in the two Conventions, particularly in the matter of permanent missions.

35. Unlike the draft on special missions, the present draft required a formal provision on the relationship between it and other instruments, on the lines of the article 40 proposed by Mr. Bartoš in his second report.⁷ At least it should be made clear that the draft articles applied in the absence of any agreement to the contrary between the host State and the accrediting State.

36. Attention should be concentrated on the diplomatic law aspect rather than on the international organization aspect. The draft must take account of the host State and the accrediting State, as well as the international organization concerned. That tripartite division of interest showed the difference between the branch of diplomatic law under discussion and the more traditional bilateral relations in which the principle of reciprocity prevailed.

37. In view of the fundamental importance of article 4 as a guide article, he supported the Special Rapporteur’s decision to place it at the beginning of the draft. There was also considerable merit in the suggestion, made at the previous meeting by Sir Humphrey Waldock, that the Commission should draw on the provisions of article X, section 34 of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies. He himself would suggest that elements from section 39 of that article should be included either in article 4 or elsewhere in the draft. That section read: “The provisions of this Convention shall in no way limit or prejudice the privileges and

⁷ See *Yearbook of International Law Commission, 1965*, vol. II, p. 141.

immunities which have been, or may hereafter be, accorded by any State to any specialized agency by reason of the location in the territory of that State of its headquarters or regional offices. This Convention shall not be deemed to prevent the conclusion between any State party thereto and any specialized agency of supplemental agreements adjusting the provisions of this Convention or extending or curtailing the privileges and immunities thereby granted”.

38. Mr. BARTOŠ said that the Commission was on the horns of a dilemma: either it must lay down uniform rules and reject any idea of organizations being able to follow particular rules on the privileges and immunities of permanent missions, or it must accept the existing situation, in other words, the diversity of systems in force.

39. Article X, section 39 of the Convention on the Privileges and Immunities of the Specialized Agencies, to which Mr. Rosenne had referred, clearly showed that there was no uniform solution, even for the specialized agencies of the United Nations. In the case of the United Nations itself, under the Headquarters Agreement,⁸ full diplomatic privileges and immunities were enjoyed only by persons who were regarded as members of the diplomatic staff, a list of such persons being drawn up jointly by the United Nations Secretariat and the Department of State of the United States. In France, the Ministry of Foreign Affairs had adopted a similar system, each case being considered individually before the required status was granted. At one time, on account of the housing shortage, the Italian Government had tried to impose the requirement that permanent missions to the Food and Agriculture Organization should be composed exclusively of persons belonging to the member State's permanent diplomatic mission in Rome. In Switzerland, the Federal Council had decided that the status of permanent representatives to international organizations having their headquarters in the territory of the Confederation was analogous to that of members of the diplomatic corps, and in many cases the application of that decision had resulted in a limitation of privileges and immunities by comparison with those enjoyed by the diplomatic corps.

40. Some States, on the other hand, granted permanent representatives to international organizations established in their territory more extensive privileges and immunities than those accorded to members of the diplomatic corps. The question of precedence as between the head of a permanent mission to an international organization and the head of a permanent mission to the host State had also arisen. Where an organization had several headquarters, the system often varied greatly from one to another, depending on the agreement concluded with the host State. Those questions had given rise to discussions in all the international organizations and to disputes with host States.

41. Obviously, therefore, diplomatic privileges and immunities were not automatically accorded to all members of permanent missions to international organizations. The same problem arose with regard to the status of officials of organizations. In many instances, a distinction was made between a small number of senior officials,

who enjoyed full diplomatic privileges and immunities, and other officials, who were merely granted functional immunity. The meaning of the term “diplomatic privileges” was imprecise and needed to be defined in each case.

42. He well understood the two views put forward. The Special Rapporteur had wished to draw the Commission's attention to the variety of solutions adopted in practice and to the fact that such questions were very often settled by agreement between the host State and the States members of the organization. The particular rules mentioned in article 4 were rules laid down in the statute of the organization concerned, by agreement with the host State. Mr. Ushakov, on the other hand, wished the Commission to work for equalization of conditions, in other words, for unification, in order to contribute to the progressive development of international law. The Commission would be wrong to reject Mr. Ushakov's views completely. But it should not disregard practice either, since that might give rise to serious difficulties. If it decided to propose a general uniform system, that system would not, of course, necessarily become binding forthwith, but it might encourage certain claims and promote progress.

43. In any case, as Mr. Rosenne had suggested, a provision similar to article X, section 39 of the Convention on the Privileges and Immunities of the Specialized Agencies should be added, either to article 4 in the form of a second paragraph, or at the end of the draft in the form of an additional article. If the text of article 4 was left as it stood he would be able to vote for it, but he would still hope that a provision of the kind suggested would be included in the draft.

The meeting rose at 12.55 p.m.

948th MEETING

Thursday, 6 June 1968, at 10 a.m.

Chairman: Mr. José Maria RUDA

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, 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 4 (Nature of the present articles: relationship with the particular rules of international organizations)
(continued)¹

⁸ General Assembly resolution 169 (II).

¹ See previous meeting, para. 19.