Document:-

A/CN.4/SR.948

Summary record of the 948th meeting

Topic:

Representation of States in their relations with international organizations

Extract from the Yearbook of the International Law Commission:-

1968, vol. I

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.

[8] General Assembly resolution 169 (II).

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]

[1] See previous meeting, para. 19.

1. The CHAIRMAN, speaking on behalf of the Commission, welcomed Mr. Sen, the Observer for the Asian-African Legal Consultative Committee. He then invited the Commission to continue consideration of article 4 (A/CN.4/203).

2. Mr. CASTRÉN said that the content and form of article 4 would depend on the decisions taken by the Commission on the remainder of the draft articles. Nevertheless a preliminary discussion would be useful.

3. While he recognized the force of Mr. Ushakov's arguments, he thought the Commission should not attempt to draw up hard and fast rules, but should leave organizations free to depart from the general system if they saw fit. International organizations were, indeed, very diverse in character, and that diversity was reflected in differences in the positions of permanent missions to such organizations and of delegations and observers attending meetings of their organs or conferences convened by them. Those differences were already reflected in several of the articles submitted by the Special Rapporteur. A reservation on the lines of article 4 was therefore essential.

4. The title of the article, which had been criticized by Mr. Rosenne, could be confined to the relationship of the articles to the particular rules of international organizations. But he saw no need for the draft to deal specifically with the relationship of the rules it enunciated to rules laid down in other conventions on the same subject; the reservation in article 4 seemed sufficient.

5. Similarly, there seemed to be no need for article 4 to define the field of application of the articles more precisely, since that point was already covered by article 2; the latter article could perhaps be amplified, as some members of the Commission had suggested.

6. The new wording suggested by Mr. Eustathiades [2] would not involve any major change of substance and would improve the text by making it more concise. It would also have the advantage of not restricting the reservation to permanent missions and would take account of the fact that the membership of some organizations included entities other than States. The definition of a "permanent mission" in article 1, sub-paragraph (*b*) should perhaps also be amended to allow for that fact.

7. Some members of the Commission had criticized the expression "particular rules" used in article 4. The suggestions they had made could be considered later by the Drafting Committee.

8. He thought it would be premature to take any decision at that stage on the suggestion made by Sir Humphrey Waldock regarding the addition to article 4 of a new paragraph on the lines of article X, section 34 of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies;[3] the same applied to Mr. Rosenne's proposal concerning section 39 of that article.

9. Mr. ROSENNE said he had not intended to criticize the title of article 4, which he found appropriate. But the text of the article did not fulfil the promise of the title to deal with two separate questions: first, the "nature of the present articles" and second, the "relationship with the particular rules of international organizations".

10. The CHAIRMAN, speaking as a member of the Commission, pointed out that, as stated in paragraph 1 of the commentary, the purpose of the Special Rapporteur's draft articles was "the unification as far as possible" of the "diplomatic law of relations between States and international organizations".

11. There were two main obstacles to such unification: first, the heterogeneity of the existing international organizations; and second, the attitude which States might adopt regarding the granting of privileges and immunities to representatives to international organizations.

12. The provisions of article 4 were intended as a safeguard with respect to those two points and he therefore supported the retention of the article as a useful, and perhaps indispensable, element of the draft.

13. He supported the suggestion made by Mr. Eustathiades for shortening the text of the article. He had some doubts about the term "rules", since he understood that the Special Rapporteur intended also to cover the practices of international organizations.

14. Sir Humphrey WALDOCK said that the Drafting Committee should consider those suggestions regarding the wording of article 4; it should also take into account the formula adopted by the Vienna Conference in article 4 of the draft on the law of treaties: "without prejudice to any relevant rules of the organization".

15. The provisions of the article under discussion raised the much more fundamental problem of safeguarding the position of the rules of an organization, which might be embodied in its constituent instrument, or result from its practice, or proceed from some other source.

16. Serious consideration must also be given to the scope and purpose of the present draft in relation to existing conventions dealing with the same subject. In particular, the position of host State agreements must be preserved.

17. The problem was rather similar to that which had arisen in the codification of the law on consular relations, regarding which there had already existed a wide network of bilateral consular agreements. It had been necessary to consider the relationship between the codification of consular law and those bilateral treaties. Similarly, there was much treaty material on the present topic, and whatever provisions were incorporated in the draft articles would ultimately have some effect on the existing situation.

18. In his statement at the previous meeting, he had not actually suggested that the provisions of article X, section 34, of the 1947 Convention on the Privileges and Immunities of Specialized Agencies should be incorporated in the present draft. He had merely requested the Special Rapporteur to consider the possibility of a provision on the lines of that section, to the effect that the provisions of the draft articles must, in relation to any specialized agency, "be interpreted in the light of the functions with which that agency is entrusted by its constitutional instrument".

19. In conclusion, he explained that his views were not yet fully formed; when the Commission had made more

[2] *Ibid.* paras. 23-24.

[3] See United Nations, *Treaty Series*, vol. 33, p. 282.

progress on the draft articles, both he and other members would probably be able to take a more definite stand on article 4.

20. Mr. USHAKOV reiterated that it would be difficult for the Commission to take a final decision on article 4 at that stage. The draft was to consist of a number of parts, dealing with different subjects: permanent missions, delegations to organs and conferences, observers and so on. The Commission would not be able to see whether a reservation concerning particular rules of organizations was necessary for each of the subjects covered until the content of the various parts had been decided.

21. Mr. YASSEEN thought that the article presented a real problem. The Commission was drafting articles concerning the status of representatives to international organizations. It was, however, an indisputable fact that those organizations had drawn up their own rules on the matter. It was therefore necessary to determine whether the general rule enunciated in the draft would prevail over the particular rule of the organization or *vice versa*. The Commission had to decide whether it wished to adopt the same position as in its draft on the law of treaties, in which it had given precedence to the rules established by international organizations.

22. He himself had no firm opinion on the point, but since the rules adopted by international organizations were the outcome of long practice and valuable experience, he was inclined to think that they should prevail over the general rules formulated in the draft.

23. Mr. AGO said he shared Sir Humphrey Waldock's doubts about article 4. An article safeguarding special law was admittedly necessary, but its wording was open to much misunderstanding and raised many problems. Furthermore, as Mr. Ushakov had pointed out, it was difficult to formulate that article without knowing exactly what the draft was to contain.

24. Some phrases, such as "other related subjects" and "shall be subject", raised drafting problems which could be settled later. But the most serious difficulty related to the phrase "particular rules which may be in force in the organization concerned". A special rule could not prevail over a general rule unless the two rules had the same status. The particular rules in question could not include a rule which the organization had decided to lay down for itself, but which had not been accepted by the host State. The idea which had to be conveyed in the article was that, where a particular convention existed between the organization and the host State, that convention prevailed over the general rules stated in the draft.

25. Members of the Commission were probably in agreement on the substance, but it would not be possible to find satisfactory and unambiguous wording until later.

26. Mr. YASSEEN agreed with Mr. Ago that the particular rules in question could not be rules arbitrarily laid down by an international organization. He would hesitate, however, to accept the idea that such particular rules existed only in conventions with the host State. They might have another source—for example, custom—and nonetheless be recognized international rules.

27. Mr. AGO explained that in speaking of conventions, he had not been referring only to formal agreements; the convention might be, and often was, a practice, which always reflected a concordance of views between the organization and the host State. The particular rules referred to in article 4 could not be rules adopted unilaterally or wishes expressed unilaterally by the organization.

28. Mr. ALBÓNICO said that the "particular rules" of an organization were not necessarily contained in the agreement which might be concluded with the host State. When a number of States signed and ratified a treaty which was the constituent instrument of an organization, and the organization began to function at its chosen seat, it followed *ipso jure* that the representatives of States to the organization had a certain status in each of the States which had ratified the constituent instrument.

29. The status of those representatives, in the particular case of the United Nations, was regulated by host agreements between the United Nations and the Governments of the United States and Switzerland, by virtue of Article 105, paragraph 3 of the Charter: but the position was not necessarily the same for other organizations. Representatives of governments attending meetings for consultation, for example, under the system of the Organization of American States, enjoyed the privileges and immunities recognized under that system in all member States, without any need for a special or particular convention.

30. Mr. EL-ERIAN (Special Rapporteur) explained that his purpose in drafting article 4 had been to safeguard the particular rules of international organizations; he had not sought to safeguard the position of agreements such as host agreements.

31. He welcomed the suggestions for improving the wording of article 4. In particular, he recognized that the words "and other related subjects" were ambiguous; they had been intended to refer to the question of representatives to organs of organizations and to conferences. In due course, the Drafting Committee would consider whether to adopt the shorter wording suggested by Mr. Eustathiades; or alternatively, it might amend the text of the article in the light of any decision the Commission might take on the inclusion of provisions concerning representatives of States to conferences.

32. In using the expression "particular rules", his intention had been to refer to the rules governing the external relations of the organization, that was to say its relations with States. Those States might well not be members of the organization concerned: observers for non-member States frequently participated in the work of an organization. That was the case when States which were not Members of the United Nations, but were parties to the Statute of the International Court of Justice, took part in the election of judges to the Court in the manner laid down by the General Assembly pursuant to Article 4, paragraph 3 of the Statute of the Court.

33. The "particular rules" referred to were thus distinct from the so-called "internal law" of an international organization, which governed the relations between States as constituent elements of the organization rather than as independent entities; that part of the internal law of an organization could be described as its constitutional law and included its rules of procedure. Another part of the internal law was the administrative law of the organization

governing such matters as the relations between its executive head and its staff.

34. It was his aim not only to codify the "particular rules", but also to develop them so as to lay down a general pattern for the legal position of permanent missions. In that undertaking, he did not foresee any great difficulties arising from the treaties already in force. There would have been considerable difficulties if the subject-matter had been the status of the organizations themselves, on which there were extensive provisions in the 1946 and 1947 Conventions on privileges and immunities. As far as permanent missions were concerned, however, there were few existing treaty provisions.

35. In his attempt to formulate uniform rules, he had sought to deal with the generality of cases, leaving aside peculiar or exceptional situations. Hence the need for article 4, which was intended to safeguard the position of the particular rules that might be applicable to one or more international organizations.

36. In paragraph 2 of the commentary on article 4, he had given the example of "associate membership" of UPU and WHO, which were exceptions to the general rule that the membership of an international organization was limited to States. Another example was that of the employer and worker representatives to the International Labour Organisation, referred to in paragraph 3 of the commentary. Yet another was that of the particular rules applicable to members of the Boards of Governors of the International Monetary Fund and of the International Bank and its associates the IFC and IDA, which were described in the annex to the Secretariat Study on the Practice of the United Nations family (A/CN.4/L.118). A further example was that of accreditation; paragraph 1 of article 10 (A/CN.4/203/Add.1) stated that the credentials of a permanent representative would be issued either by the Head of the State or by the Head of Government or by the Minister for Foreign Affairs, as was laid down in the General Assembly rules of procedure. But there were exceptions to that general rule: the credentials of representatives to ICAO were often signed by the Minister for Communications or Transport.

37. In all those cases, the safeguard clause in article 4 made it unnecessary to include in the substantive article concerned the proviso "unless otherwise provided in the relevant rules of the organization".

38. It must be remembered that the two Conventions of 1946 and 1947 on privileges and immunities, and the host agreements of the United Nations, were now twenty years old. As the Legal Counsel of the United Nations had pointed out in a statement made at the 1016th meeting of the Sixth Committee,[4] the privileges and immunities defined in those instruments represented the minimum considered necessary to be accorded by all Member States. In the present work of codification, an effort should therefore be made to go further and thereby assist international organizations. He foresaw no immediate difficulty in doing so; when the draft articles became a convention, any State which ratified the convention would do so in the knowledge that its provisions would supersede, and go beyond, those of the 1946 and 1947 Conventions.

39. With regard to terminology he would welcome efforts by the Drafting Committee to find a more suitable expression than "particular rules".

40. He would hesitate to accept the suggestion that a provision similar to article X, section 34 of the 1947 Convention on privileges and immunities be inserted in article 4; when preparing the draft articles on special missions the Commission had not found it desirable to make any distinction between specialized agencies based on the political or technical nature of their functions. Nor did he favour the inclusion of a provision based on article X, section 39 of the 1947 Convention. The analogy with that Convention was not valid; the 1947 Convention represented a minimum and it was therefore appropriate for it to make provision for supplemental agreements which might extend the privileges and immunities it granted.

41. Mr. USTOR thanked the Special Rapporteur for his explanations. The rule in article 4 was clearly a conflict rule, but the intention of the Special Rapporteur was to deal only with the conflict between the internal rules of an organization and the draft articles themselves.

42. There were, however, other possible conflicts, such as that between the draft articles and the provisions of existing treaties, and he urged that an effort should be made to draft rules to deal with them. The example of the codification of consular law was relevant. Theoretically, it was desirable that a general codification should supersede all existing rules. In practice, however, States were unwilling to alter existing arrangements; that was a fact which had to be faced.

43. It was appropriate to take account of the time element in such conflicts, to which the words "in force" referred, by indicating the intention to deal only with existing rules.

44. In that connexion he thought that in adopting rules to deal with various kinds of conflict, it would probably be necessary to allow some freedom to make future agreements varying the rules in the draft articles in certain cases.

45. Mr. REUTER said he was certain of only one thing, which was that the draft must include a reservation of the type contained in article 4, safeguarding particular rules resulting either from real and objective differences in situation or from the subjective fact that an agreement or set of rules existed.

46. On all the other points he was still uncertain. The main uncertainty related to the form the Commission would give to the result of its work. All the members who had taken part in the discussion on that point had expressed a preference for a convention, which he himself shared. But the Commission might ultimately find it necessary to give the draft some other form: for instance, that of a model guide. In considering which were the particular rules that should prevail over the rules in the draft, the Commission had to recognize that such rules might either have the character of treaty law possessed by the constituent instruments of organizations or headquarters agreements, or have a unilateral and internal

[4] *Official Records of the General Assembly, Twenty-second Session, Annexes*, Agenda item 98, document A/C.6/385.

character, because they had originated in a decision by an organization. Several articles of the draft, in particular, article 17, referred to the "rule applicable in the organization concerned". Those articles presented a basic and extremely difficult problem from both the political and the legal point of view.

47. From the political point of view, the Commission could not disregard the fact that all the questions it was discussing in connexion with the present draft were the source of innumerable difficulties between organizations and member States acting in their capacity as governments. The conduct of a State differed considerably according to whether its views were expressed through a representative, whether permanent or temporary, who usually had an inside knowledge of the organization, understood its aims and might be inclined to defend it, or by the ministry of finance or the office of the head of government. Difficulties between organizations and host States were perennial.

48. From the legal standpoint, the problem was to decide which prevailed: the organization's own law, drawn up unilaterally by itself, or treaty law, which States were willing to discuss with the organization. The Special Rapporteur had wished to formulate a reservation with respect to the organization's own law, contained in its rules, decisions and interpretations. But that law might be in permanent conflict with the treaty law represented by constituent instruments and headquarters agreements.

49. When the Commission considered the articles one by one, it would have to decide whether it wished to reserve each organization's own law or to encourage greater uniformity, in particular, by requesting host States to supplement headquarters agreements by uniform provisions. Article 17, for example, specified that the order of precedence of heads of permanent missions was established "in accordance with the rule applicable in the organization concerned". Was that the order of precedence to be followed within the organization or in relations with the host State? He was prepared to admit that the order of precedence of the organization was binding on the host State. But in taking such a position, the Commission was settling an issue of capital importance. The problem would therefore have to be considered case by case.

50. The discussion in progress was useful and necessary, and it would facilitate the rest of the work. But the Commission should defer its decision on article 4 until it had examined the whole draft. He himself hoped that it could go beyond the preparation of a mere model guide, but even if it produced only that, it would be doing useful work.

51. Mr. AMADO said he feared the Commission was marking time rather than advancing. Despite the explanations given by the Special Rapporteur and the arguments he had used in support of his text, the problems remained unsolved. Article 4 was not one of those articles which could be discussed phrase by phrase and word by word with a view to evolving the most satisfactory text. It should be set aside and not taken up again until the Commission had clarified its intentions.

52. Mr. AGO thought the Special Rapporteur had been right to emphasize the distinction between the internal rules of an organization and its external relations with States. In his view, the internal rules of organizations did not come within the scope of the topic under discussion. A general convention concluded between States concerning the status of their representatives to international organizations must be primarily concerned with relations between organizations and States, and only secondarily with matters relating to the internal functioning of organizations.

53. He shared the views expressed by Mr. Reuter, particularly with regard to the difference in the conduct of States according to whether they were acting as members of an organization taking part in the drafting of its internal rules, or as States apart from the organization and, in particular, as host States. A State which had agreed to a particular status for the representatives of a particular international organization established in its territory was not necessarily prepared to accord the same status to the representatives of other organizations. There might thus be a law peculiar to one organization, which was not the general law.

54. He considered it essential to include an article such as article 4 in the draft. He supported those members of the Commission who wished to postpone a decision on the article, but thought it important that in examining the other articles the Commission should bear in mind the question of the relationship to be established between the articles of the draft and the agreements concluded by particular organizations.

55. Mr. USHAKOV said that, in the light of the explanations given by the Special Rapporteur, he approved of article 4 in principle; but the drafting should be revised, because in fact the article should apply even more to representatives of States to organs of organizations than to permanent missions.

56. Other questions had been raised in connexion with the article, in particular that of the relationship between the draft articles and existing conventions, including headquarters agreements. Those questions could only be solved after the substantive articles had been dealt with; hence it would be better to close the discussion on article 4 for the time being and resume it later. Meanwhile the Drafting Committee would have been able to express the idea of the article more precisely.

57. Mr. BARTOŠ said that the derogations made from the general rules laid down in the Convention on the specialized agencies were agreed derogations, the purpose of which was to increase or restrict privileges and immunities; they produced their effects *inter se*, that was to say, between the parties to the agreement which provided for them. Furthermore, there were annexes to the Convention on the specialized agencies which determined the scope of the obligations assumed by States with respect to the organizations concerned.

58. To those two classes of reservations article 4 added one drawn from the resolutions and other internal acts, so to speak, of the organization. It was in that connexion that the most difficult problems arose in case of conflict. The China question, which had brought the French

Government into conflict with UNESCO, was a question of that kind; for it had been in its capacity as permanent mission to UNESCO that the Taiwan delegation had refused to leave the Chinese Embassy premises it occupied in Paris, which the French Government wished to hand over to the representatives of the People's Republic of China after it had established normal diplomatic relations with the Peking Government.

59. Another question that arose was to what extent transit States were bound by the internal rules of an organization of which they were not members and which perhaps they did not even recognize, in regard to mail, cipher or transport, for example.

60. He agreed that, owing to the complexity of the problems involved, the article was an obstacle to the Commission's work. Rather than merely ignore it, however, it would be better to ask the Special Rapporteur to study all its implications and to submit new proposals, either to the Commission or to the Drafting Committee, when the article was taken up again, without confining himself to agreed derogations from the general rules. It was necessary to consider the applicability of the general rules on the one hand, and of the particular rules of international organizations on the other, and the extent to which third-party States were bound by those particular rules.

61. Mr. EUSTATHIADES said he had suggested from the beginning that the Commission should not discuss article 4 until it had considered the whole draft. There were two ways of dealing with an article that had been described as a key article. One could begin by making the key, or by making the door and the lock. Article 4, however, raised questions of principle which, once they had been broached by the Commission, should be discussed until a general position had taken shape, even if the final decision were left till later. Mr. Bartoš had suggested that the Special Rapporteur should be asked to study the implications of article 4 for each of the points mentioned, but such a study could not be made until the underlying general ideas had been clarified.

62. He could not follow the Special Rapporteur in his explanations regarding the internal and administrative rules of an organization, which he proposed should be distinguished from the rules governing relations between the organization and States; for he did not see what criterion such a distinction could be based on. One could try to go back to the source and start from the idea that the internal rules were those resulting, not from a convention, but from a unilateral act. But the text of a convention could lay down internal rules, and a unilateral act could affect external relations. Nor did the nature of the rule provide any criterion, since the same rule could have both internal and external aspects: it could have significance both for the internal administration of the organization and for relations with States.

63. The fact was that article 4 should say to what extent general law was to apply and to what extent the application of particular rules was to be reserved. That raised the question of the form the Commission's text was to take. If it was to be a convention, the tendency to uniformity would be more pronounced than if it was to be only a model. That question must therefore be answered before any progress could be made.

64. But even if the text was to become a convention, each organization was so different that uniformity could not be carried beyond a certain point; it would therefore be necessary to specify that the text did not abrogate the rules relating to existing organizations, and to say to what extent it would be necessary to conform to that text in regard to future organizations.

65. He would confine himself, for the moment, to expressing the hope that the draft would in any case be considered as a set of residuary rules intended to promote greater uniformity. The choice of the final form of the draft would not, in principle, have any great effect on the content of the articles. But in any case, even if no decision were taken immediately, the question of the final form of the text must not be lost sight of, and on that point he would be inclined to favour a set of model rules.

66. Mr. EL-ERIAN (Special Rapporteur) said that Mr. Eustathiades had pointed out the difficulty of distinguishing between the internal law of international organizations and the law governing their external relations. It was that difficulty which had induced him (Mr. El-Erian) to use the expression "the particular rules of international organizations" in the title of article 4, rather than "the internal law of international organizations".

67. As to whether the draft articles should take the form of a convention, a code or a set of model rules, he noted that Mr. Reuter now had some doubts about the advisability of trying to draft a convention, while Mr. Eustathiades had just expressed himself positively in favour of a set of model rules. He himself, while realizing that governments might fear that a draft convention would have an adverse effect on the customary international law of the subject, had proceeded on the assumption that the Commission had a draft convention in mind.

68. Some members had pointed out to him that the proposed Parts III and IV of the draft articles [5] did not contain any provisions on privileges and immunities. The reason was that since he had not considered it possible to draft concrete articles on privileges and immunities before he knew the Commission's intentions, he had confined himself to appending notes on the subject to articles 52 and 56. The Commission would have to decide whether it wished to codify the existing law with respect to functional immunities only, or whether it wished to deal with full diplomatic immunities. It would then, of course, have to await the replies of governments.

69. There seemed to be general agreement that the purpose of article 4 should be limited to the particular rules of international organizations. Some members thought it necessary to determine the relationship between the draft articles and special agreements; that point might be dealt with either in a number of articles or by adding a paragraph to article 4. Sir Humphrey Waldock, for example, had suggested the addition to article 4 of a paragraph on the lines of article X, section 34, of the specialized agencies Convention.

70. Lastly, it was not clear to him whether the Commission wished to refer article 4 to the Drafting Committee or to defer action on it altogether.

[5] A/CN.4/203/Add.5.

71. Mr. AMADO said he did not think that, in today's tortured world, States had time to call professors together to draw up models by which they might perhaps be guided. What States wanted was that the problems should really be tackled, and the Commission must tackle them in accordance with the General Assembly's recommendations. It must clear the ground; it must ascertain what rules were in force. Certainly, there were difficulties, but difficulties were inherent in everything that had life.

72. Mr. YASSEEN said he was most interested in the proposal by Mr. Bartoš that the Special Rapporteur should be asked to reconsider article 4 in the light of the other articles and make new proposals later. The scope of the reservation was a matter of great concern to him. A single reservation relating to the internal law of organizations was not enough. Other cases of conflict must be considered, including conflicts with headquarters agreements. The Special Rapporteur might study the possibility of including in a single article all reservations to the application of the rules laid down in the draft articles.

73. Mr. EL-ERIAN (Special Rapporteur) said he had thought it necessary for the Commission to clarify its position, first, on the basic principle underlying article 4 and, secondly, on whether it wished to add a rule concerning the relationship between the draft articles and the rules of the specialized agencies. He would reflect on the matter and try to introduce a new article 4 at the appropriate time.

74. Mr. BARTOŠ maintained his proposal that the Special Rapporteur should be asked to make a fresh study of article 4, since the objections raised by different members of the Commission showed that the present text might not meet the practical requirements. At that stage in the submission of the draft the Commission had not enough information to continue the discussion usefully or to take a final decision.

75. Mr. USHAKOV said that the idea advanced by the Special Rapporteur should be taken into consideration. The article could be referred to the Drafting Committee, and at the same time the Special Rapporteur could be asked to study the other aspects of the question, in particular the relationship between the future convention and existing agreements.

76. Mr. EL-ERIAN (Special Rapporteur) said that Mr. Ushakov's proposal was a useful and practical one.

77. Mr. AMADO stressed that the Commission worked for States. Governments would give their opinions, which were of great importance. It was only when those opinions were known that the Commission would be able to proceed to the second stage of its work.

78. The CHAIRMAN said there appeared to be general agreement that article 4 should be referred to the Drafting Committee and discussed in a plenary meeting at a later stage in the Commission's work.

It was so agreed.[6]

The meeting rose at 1 p.m.

[6] For resumption of discussion, see 972nd meeting, paras. 40-89, and 974th meeting, paras. 2-33.

949th MEETING

Friday, 7 June 1968, at 10.10 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, 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 5

1. *Article 5*

Establishment of Permanent Missions

Member States may establish permanent missions at the seat of the organization for the performance of the functions defined in article 6 of the present articles.

2. The CHAIRMAN invited the Special Rapporteur to introduce article 5.

3. Mr. EL-ERIAN (Special Rapporteur) said he had devoted Part III of his second report (A/CN.4/195) to the evolution of the institution of permanent missions to international organizations. General Assembly resolution 257 A (III), of 3 December 1948, continued to be the basis for the development of that institution and had already served as a prototype for the practice of other international organizations. He had summarized the debate on that resolution in paragraphs 58-61 of his second report, which dealt with the legal status of permanent missions, the character of the institution of permanent missions, the use of the term "credentials" and the competence of the Credentials Committee.

4. In Chapter II, Part II of his third report (A/CN.4/203), he had summarized the practice with respect to permanent missions to the League of Nations, the United Nations, the United Nations Office at Geneva, the specialized agencies and the four principal regional organizations: the Organization of American States, the Council of Europe, the League of Arab States and the Organization of African Unity.

5. The primary purpose of article 5 was to state the general principle that the institution of permanent missions was of a non-obligatory character. When that question had been discussed at the third session of the General Assembly, some representatives had expressed doubts about the advisability of including the last paragraph of the preamble of resolution 257 A (III) and had pointed out that a number of Member States might be deterred from maintaining permanent missions at the seat of the Organization by "special budgetary or administrative expenses".