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Summary record of the 972nd meeting

Topic:
Representation of States in their relations with international organizations

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to sum up the discussion on articles 18 and 19 (A/CN.4/203/Add.2).

35. Mr. EL-ERIAN (Special Rapporteur) said that at the previous meeting he had been asked if he could quote instances of permanent missions to an organization being established elsewhere than in the city where the organization was situated. The normal practice was, of course, for a sending State to establish the premises of its permanent mission in the same city as the organization. But there were a number of exceptions. For instance, the permanent missions accredited to the United Nations Office at Geneva were all at Geneva, except two, which were at Berne, and one, which was in Paris. In addition, the International Atomic Energy Agency had stated that "the premises of some permanent missions accredited to IAEA are not in Austria, but in other European countries".

36. With regard to terminology, the Drafting Committee should consider the proper use of the terms "premises", "seat" and "offices". It should be noted that both the title and the text of article 17 of the 1967 draft on special missions referred to the "seat" of the mission. Admittedly, the 1961 Vienna Convention on Diplomatic Relations did not use the term "seat", but in the Commission's 1958 draft on diplomatic intercourse and immunities, article 11 had been entitled "Offices away from the seat of the mission".⁵ The 1961 Vienna Conference had, of course, decided to drop the titles from the final text of the Convention on Diplomatic Relations. The main point was that a mission must have a principal office where communications should be addressed to it; it could also have additional offices elsewhere.

37. To sum up, there seemed to be general agreement on the presumption that the seat of the permanent mission would be in the locality where the organization was established; it was also agreed that an element of flexibility should be introduced so as to allow permanent missions to establish offices elsewhere and even to allow a sending State to have premises in a country other than the host State.

38. Mr. Castrén's proposal to combine articles 18 and 19 would be a useful drafting improvement.

39. He therefore suggested that articles 18 and 19 be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*⁶

The meeting rose at 12.50 p.m.

⁵ See *Yearbook of the International Law Commission, 1958*, vol. II, p. 92.

⁶ For resumption of discussion, see 986th meeting, paras. 1-5.

972nd MEETING

Wednesday, 10 July, 1968, at 10 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Ignacio-Pinto,

Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, 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.1-3; A/CN.4/L.118 and Add.1-2; A/CN.4/L.129)

[Item 2 of the agenda]
(continued)

ARTICLE 20

1.

Article 20

Use of flag and emblem

The permanent mission and the permanent representative shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the permanent representative, and on his means of transport.

2. The CHAIRMAN invited the Special Rapporteur to introduce article 20 of his draft (A/CN.4/203/Add.2).

3. Mr. EL-ERIAN (Special Rapporteur) said that article 20 was modelled on article 20 of the 1961 Vienna Convention on Diplomatic Relations.¹

4. Paragraphs 2 and 3 of the commentary gave particulars of the practice of the United Nations and the specialized agencies. The fact that many permanent representatives were members of diplomatic missions and that many premises of permanent missions were also used as embassies or consulates appeared to have prevented any clear or uniform practice from emerging. The article would thus serve the useful purpose of stating a uniform rule on a point on which practice varied.

5. Mr. CASTRÉN said that there was a gap in article 20 of the Vienna Convention on Diplomatic Relations, on which article 20 of the present draft was based, for it mentioned only the means of transport of the heads of diplomatic missions and did not make allowance for the fact that the mission itself might have means of transport registered in the name of the sending State, which should also be entitled to use the national flag. Article 19 of the draft on special missions² empowered those missions, under certain conditions, to use the flag and emblem of the sending State on the special mission's means of transport, but did not refer to the case of the head of the special mission.

6. Mr. USTOR said that, since article 20 was not placed in section II, on facilities, privileges and immunities, but in section I, on permanent missions in general, it must presumably be read together with article 42, on the obligation to respect the laws and regulations of the host State,³ which opened with the words "Without prejudice

¹ See United Nations, *Treaty Series*, vol. 500, p. 106.

² See *Official Records of the General Assembly, Twenty-second Session, Supplement No. 9*, p. 13.

³ A/CN.4/203/Add.5.

to their privileges and immunities". The effect of that proviso was that, where a sending State had a right under any of the provisions of section II, that right would prevail over any laws or regulations which the host State might enact. On the other hand, a right under an article not included in section II, and in particular the right to use the national flag and emblem set out in article 20, would not prevail over the laws and regulations of the host State.

7. That being the position, he suggested the insertion in article 20 of a second paragraph on the lines of article 19, paragraph 2, of the 1967 draft on special missions, reading: "In the exercise of the right accorded by this article, regard shall be had to the laws, regulations and usages of the host State".

8. Mr. ALBÓNICO said he supported Mr. Ustor's suggestion.

9. Mr. RAMANGASOAVINA said that article 20 established a right for the permanent mission and the permanent representative. But use of the flag and emblem of the sending State on the premises of the mission, including the residence of the permanent representative, and on his means of transport was not regular practice. At the United Nations Office at Geneva, permanent representatives used the national flag only for official ceremonies.

10. In order to take that practice into account, a second paragraph should be added to the effect that "In the exercise of that right, the permanent mission or the permanent representative shall conform to local practice".

11. Mr. USHAKOV said he did not think the addition of a second paragraph to article 20 would be helpful. But if the majority of the Commission were in favour of such an addition, it might be advisable to amend the first paragraph by substituting the words "on the mission's means of transport" for the words "on his means of transport", since the possibility of displaying the national flag would be subject to the host State's rules, which might allow all members of the permanent mission to do so.

12. Mr. BARTOŠ said that the members of special missions might have one particular duty to discharge on behalf of the mission, without being head of mission.

13. The situation was quite different for permanent missions to an international organization. In that case, his argument regarding special missions did not apply, and the national flag should only be flown on vehicles used for the transport of the permanent representative or the chargé d'affaires *ad interim*. Where a mission was accredited to several international organizations, however, a member of the mission who was not its head but was permanent representative to one of the international organizations should be entitled to fly the national flag on the vehicles he used as means of transport in his capacity of permanent representative of his State to that organization.

14. Mr. AGO said he was not convinced of the desirability of adding a second paragraph modelled on the draft on special missions. There was no relation between permanent missions to an international organization and special missions. Such a paragraph might be justified in

the case of special missions, in particular because of their non-permanent character, but it was difficult to see why a distinction should be made in that respect between diplomatic missions and permanent missions to international organizations; it was the model of the Vienna Convention on Diplomatic Relations that should be followed. There was no difference of rank between permanent missions sent by a State to another State and permanent missions to international organizations.

15. He supported the text of article 20 as it stood.

16. Mr. AMADO said that he, too, approved of article 20 in its present form, but he stressed that the flag was a mark of distinction which should not be used too much.

17. Mr. TSURUOKA said he agreed that article 20 should be retained in its present form, since permanent representatives to international organizations conformed to usage in the host State regarding the display of the national flag by courtesy, not by reason of an obligation.

18. The question of usage in the matter should be mentioned only in the commentary.

19. Mr. ROSENNE said that national practices regarding the display of flags were very varied and affected the position in the different cities where international organizations were established.

20. He was not at all convinced of the need to introduce a uniform rule in the matter, but if the majority of the Commission wished to retain article 20, it was essential to add a second paragraph, as proposed by Mr. Ustor. A mere reference to article 42 would not be sufficient because that article only stated the obligation to observe the laws and regulations of the host State. It was necessary also to safeguard the observance of usages, which were important; in countries with a very decentralized administration, usage regarding the display of flags varied even from town to town.

21. He saw no reason to retain the words "including the residence of the permanent representative". Only in extremely rare cases, and then only for very special reasons, was the national flag of the sending State flown on the residence of a permanent representative.

22. Mr. KEARNEY said he supported Mr. Ustor's suggestion for the insertion of a second paragraph.

23. He was concerned at the tendency to equate a permanent mission to an international organization with a diplomatic mission to a State. Some organizations, such as the United Nations, were more important than others and it might be justified to place them on the same footing as a State for such purposes as those of article 20; but in the case of other organizations, such as those of a technical character, there seemed to be no reason for doing so.

24. The whole problem should be approached from the functional angle; the Commission should ascertain what was necessary for permanent missions. It would be a mistake to assume that a permanent mission to any organization was entitled to all the rights that were accorded to a diplomatic mission.

25. Mr. USTOR said that in the Commission's 1958 draft on diplomatic intercourse and immunities, article 18

(Use of flag and emblem)⁴ was in section I, entitled "Diplomatic intercourse in general", not in section II, entitled "Diplomatic privileges and immunities". The decision of the 1961 Vienna Conference to eliminate all the titles had rendered the position rather obscure so far as the Vienna Convention on Diplomatic Relations was concerned. In the 1963 Vienna Convention on Consular Relations, however, article 29 (Use of national flag and coat of arms)⁵ had been placed in a section entitled "Facilities, privileges and immunities relating to a consular post". Paragraph 3 of that article read: "In the exercise of the right accorded by this article, regard shall be had to the laws, regulations and usages of the receiving State".

26. Article 19 of the draft on special missions had been modelled in that respect on article 29 of the Vienna Convention on Consular Relations.

27. The Commission should decide the question whether the sending State would have an unrestricted right or whether the host State would be allowed to impose limitations on the use of flags and emblems. Personally, he was not in favour of an unrestricted right.

28. Sir Humphrey WALDOCK said he agreed that the point raised by Mr. Ustor should be clarified and possibly the best solution would be to include a second paragraph, as Mr. Ustor had suggested. Even if the Commission were to adopt the Drafting Committee's suggestion that the scope of the draft should be restricted to organizations of a so-called "universal" character, the articles would apply to permanent missions accredited to a wide range of organizations and thus to many different situations.

29. Mr. REUTER said he doubted whether it was advisable to retain article 20, since the practice of host States had so far always been open and well-intentioned. That being so, there was no need to establish a right, even one subject to certain restrictions. Moreover, assimilation of permanent missions to special missions, and particularly to diplomatic missions, might lead to dangerous complications.

30. The CHAIRMAN, speaking as a member of the Commission, said he was in favour of keeping article 20, because of the parallel between permanent missions on the one hand and diplomatic and special missions, on the other, in the matter under discussion.

31. The point raised by Mr. Ustor could be settled by moving article 20 to the section on facilities, privileges and immunities; article 20 would then be governed by article 42, in particular by its opening proviso.

32. The words "including the residence of the permanent representative" should be deleted.

33. A distinction should be drawn between the display of the national flag and the use of the national emblem. He failed to see how a host State could possibly place any restriction on the right of the sending State to display its coat of arms or emblem at the entrance to the premises of the permanent mission to show their use. Where the national flag was concerned, practice varied, but it would

⁴ See *Yearbook of the International Law Commission, 1958*, vol. II, p. 94.

⁵ See *United Nations Conference on Consular Relations, Official Records*, vol. II, p. 180.

be useful to introduce a uniform rule and article 20 should therefore be retained.

34. Mr. EL-ERIAN (Special Rapporteur), summing up the discussion, said that Mr. Kearney and Mr. Reuter had raised an important point. It was necessary to strike a balance between two considerations. The first was that permanent missions performed functions on the whole similar to diplomatic missions, and that State practice accorded to permanent representatives privileges and immunities similar to those of diplomatic agents. The second was that there were certain fundamental differences between diplomatic missions and permanent missions, so that it was not possible to adopt identical rules for both.

35. With two exceptions, members were in favour of retaining article 20. A majority also wished to introduce a second paragraph on the lines of article 19, paragraph 2, of the draft on special missions. He could not, however, agree with the interpretation placed by Mr. Ustor on the 1958 draft on diplomatic intercourse and immunities; it was not borne out by the Commission's commentary on article 40 of that draft, which dealt with the "conduct of the mission and of its members towards the receiving State". The purpose of that article was to make it clear beyond all doubt that the privileges and immunities of diplomatic agents continued, even if they violated the laws of the receiving State.

36. He agreed with the Chairman's distinction between the emblem and the flag and accepted his suggestion that the words "including the residence of the permanent representative" should be deleted.

37. Mr. USHAKOV said that he doubted whether the proposed second paragraph could be added. The rules of the host State might, for example, provide for the possibility of flying the national flag only on the national day, but there were other United Nations holidays, such as the anniversaries of the signing of the Charter and of the Universal Declaration on Human Rights.

38. The CHAIRMAN said that, if there were no objection, he would assume that the Commission agreed to refer article 20 to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*⁶

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

39. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the texts it had prepared for the title of the draft and for articles 2,⁷ 4⁸ and 4 *bis*.

40. Mr. CASTRÉN said that the Drafting Committee proposed the following title and texts:

DRAFT ARTICLES ON REPRESENTATIVES OF STATES TO INTERNATIONAL ORGANIZATIONS

Article 2

Scope of the present articles

1. The present articles apply to representatives of States to international organizations of universal character.

⁶ For resumption of discussion, see 986th meeting, paras. 6-9.

⁷ For earlier discussion of article 2, see 946th meeting, paras. 19-65, and 947th meeting, paras. 1-18.

⁸ For earlier discussion of article 4, see 947th meeting, paras. 19-42, and 948th meeting, paras. 1-78.

2. The fact that the present articles do not apply to other international organizations shall not affect the application to them of any of the rules set forth in the present articles to which they would be subject independently of these articles.

Article 4

*Relationship with the relevant rules
of international organizations*

The application of the present articles is without prejudice to any relevant rules of the organization.

Article 4 bis

*Relationship between the present articles
and other international agreements*

The provisions of the present articles shall not affect other international agreements in force as between States or between States and international organizations.

41. The Drafting Committee had substituted the expression "international organizations" for the expression "inter-governmental organizations" used in item 2 of the agenda. The Committee recommended the Commission to state in its report, and in the article to be devoted to the terms used in the draft, that the expression "international organization" meant an "inter-governmental organization".

42. The title of the draft articles had been adopted by the Drafting Committee provisionally. If the Commission subsequently decided that the draft articles should deal only with permanent missions, the title would have to be amended accordingly.

43. The provisions of the original draft article 3 had been incorporated in article 2, paragraph 2.

44. Some members of the Drafting Committee had thought that article 4 *bis* was unnecessary, as its provisions were covered by those of article 4. The majority, however, had considered that article 4 *bis* added a useful qualification. The Committee had decided to leave open the question of the article's position in the draft.

45. It should now be possible to decide whether the draft should deal only with universal international organizations or should also cover so-called regional or restricted organizations. To broaden the scope of the draft would raise a great many difficulties. Article 5 for example, on the establishment of permanent missions, was designed to relate essentially to universal organizations.

46. The Drafting Committee had made certain changes of form in articles 2 and 3, which had been combined in a single article 2, dealing solely with the scope of the draft. In paragraph 1, the Drafting Committee had decided to replace the words "relate to" by the words "apply to", since that expression had been used by the Vienna Conference on the Law of Treaties. At the end of paragraph 1, it had replaced the expression "international organizations whose membership is of a universal character" by the words "international organizations of universal character". It had also made some changes in paragraph 2. Owing to the amalgamation of articles 2 and 3, there was no longer any need to define the international organizations to which the draft did not apply; the reference to "international organizations of a regional character" had therefore been dropped.

47. In paragraph 2 of the French text, the word "*soumise*" had been replaced by the word "*subordonnées*", as Mr. Ago had requested. As was clear from articles 4 and 4 *bis*, the draft articles stated residuary rules, and international organizations were therefore free to apply other rules. A decision should now be taken on whether the draft was to apply only to universal organizations or to all other international organizations as well.

48. Mr. AGO said he was glad that the expression "inter-governmental organizations" had been replaced by "international organizations", for the organizations in question were inter-State, not inter-governmental. It would create quite a disturbance in the ILO if that organization were described as "inter-governmental".

49. With regard to the wording of article 2, paragraph 1 raised a question of substance. The reasons for dealing with the representatives of States to organizations such as the United Nations, the World Health Organization and the International Monetary Fund, but not with the representatives of States to organizations such as the Organization of American States, the Organization of African Unity and the Council of Europe remained an unfathomable mystery, and a regrettable gap was left in the draft. A new instrument would prove necessary and States would finally tire of having so many drafts submitted to them.

50. If the majority of the Commission nevertheless maintained the position adopted, it would be advisable to re-word paragraph 2 to read:

"The fact that the present articles do not refer to representatives of States to other international organizations is without prejudice to the application to the latter of any of the rules set forth in the present articles which would be applicable to them independently of these articles."

51. The text proposed by the Drafting Committee implied that it was impossible to apply the present articles to other organizations, whereas in reality the other organizations could perfectly well decide to apply the same rules. To bring the text of paragraph 2 into line with that of paragraph 1, it would be necessary to say that the present articles "do not apply to the representatives of States to other international organizations", not that they "do not apply to other international organizations". Moreover, it was not a question of rules to which international organizations were subject, but of rules concerning representatives to the organizations.

52. Sir Humphrey WALDOCK said he shared Mr. Ago's view that it would be a mistake to limit the present work to organizations of a so-called "universal" character. Incidentally, he had never suggested employing the expression "world-wide" in the text. He had used it in his statement for convenience, but his own proposal was simply that there should be no limitation on the scope of the draft articles.

53. The article as proposed by the Drafting Committee would unduly limit the significance of the whole draft and the possibility of covering other parts of the subject in the future might not easily recur.

54. Moreover, he believed that it would be inherently false to try to establish a distinction, for the purposes of

the present draft, based on the so-called "universal" character of certain organizations. There was in fact a much greater difference between, for example, the Universal Postal Union and other world-wide organizations than between certain organizations of a so-called "universal" character and such regional organizations as the Organization of American States and the Council of Europe. If the Commission were to adopt the approach proposed by the Drafting Committee, it would be narrowing the scope of the draft for no valid reason.

55. Mr. ROSENNE said that he fully shared the views expressed by Mr. Ago and Sir Humphrey Waldock. The change made by the Drafting Committee in the wording of paragraph 1, by replacing the words "whose membership is of a universal character" by the words "of universal character", made it all the more necessary for the Commission to take a clear decision on the point.

56. There was a danger that the Commission might become a slave to its own precedents. The article now under discussion was based on articles 1 and 3 of the Commission's 1966 draft on the law of treaties.⁹ But those articles had emerged in 1965, during the second reading of the draft, when the Commission had already adopted the whole text and had the comments of Governments before it. The Commission could not usefully discuss article 2 until it had a reasonably complete text of draft articles adopted on first reading.

57. As to the wording of paragraph 2, he fully agreed with Mr. Ago's remarks. He also wished to draw attention to a linguistic discrepancy. In the French version of article 2, the words "shall not affect" were rendered by "*est sans préjudice*", which was the expression used in the French version of article 4 for the English "is without prejudice". In article 4 *bis*, the expression "shall not affect" was again used but the French version was now "*ne portent pas atteinte*".

58. Mr. BARTOŠ said that the expression "international organizations" had no precise legal meaning. The Charter of the United Nations drew a distinction between inter-governmental organizations and non-governmental organizations, and that distinction appeared in practice. Even the ILO, despite its tripartite composition, was classed as an inter-governmental organization. The expression "inter-governmental organizations" was certainly not elegant and if it was desired to replace it by "international organizations", all that was necessary was to include an explanatory note in the report and wherever the expression was used.

59. There seemed to be a misunderstanding about the expression "of universal character" ("*à vocation universelle*"). The Drafting Committee had been under the impression that it met the wishes of Mr. Ago and Sir Humphrey Waldock, but apparently that was not the case. Perhaps the Commission should restate its views on that point.

60. Paragraph 2 of article 2 raised both a question of form and a question of substance. Mr. Ago appeared to think that the articles applied only to representatives, but in the view of the Drafting Committee, they also applied

to international organizations in their relations with permanent representatives. In fact, they created rights for the organizations and imposed certain obligations on them. It was only necessary to refer to the text of articles 4 and 4 *bis* to be convinced of that fact.

61. If Mr. Ago's version proved more acceptable, however, the paragraph would have to be entirely recast, and it would then have to be referred back to the Drafting Committee.

62. With regard to form, Mr. Ago's proposed wording of paragraph 2 was more elegant and its formulation was more precise from a legal standpoint. It could be accepted independently of the question of substance he had just raised.

63. Mr. AGO said it had not been his idea that the articles applied to representatives of States; that was actually stated in paragraph 1 of article 2. What was important was that the texts of the two paragraphs should be brought into line with each other.

64. Mr. AMADO said that even Littré himself, if he were to rise from the dead, could never persuade him to accept the expression "*à vocation universelle*". That was not legal language. The word "*vocation*" could be used in a newspaper article, but certainly not in a convention. The text of article 2 should be referred back to the Drafting Committee, which should adopt Mr. Ago's proposed text for paragraph 2 without change.

65. Mr. YASSEEN reminded the Commission of his position on the application of the articles to the representatives of States to regional organizations. The approach could be different from that adopted for universal organizations. The case of regional organizations lent itself to settlement by special agreements.

66. However, it was necessary to await the completion of the Commission's work on the question before taking a decision. Meanwhile, a start should be made with universal organizations. It was only after completing its study of the subject with reference to universal organizations that the Commission would be able to see whether the rules drawn up could be applied to regional organizations, with or without amendment.

67. With regard to the wording of article 2, some other expression should be found to replace "*à vocation universelle*". Everyone knew what was meant, so there was no problem of substance; it was simply a matter of drafting.

68. Mr. Ago's proposal for paragraph 2 was excellent, for it harmonized the wording of the two paragraphs of the article. When paragraph 1 stated that the present articles applied to representatives of States to international organizations, that meant that they concerned international organizations as much as representatives of States. Moreover, the last part of Mr. Ago's amendment was better than the Drafting Committee's proposed text, for it avoided all mention of subordination or subjection to rules.

69. Mr. KEARNEY said he still thought the article should not be confined to organizations possessing some kind of universal character and he agreed with Sir Humphrey Waldock that there would be a certain falseness

⁹ See *Yearbook of the International Law Commission, 1966*, vol. II, pp. 187 and 190.

about basing the rule on an alleged principle of universality. The convention which might eventually emerge would deal mostly with privileges and immunities, and he questioned whether universality would be a complete and accurate test for granting them. There was no reason for making a distinction between such organizations as the Organization of American States and the Universal Postal Union from the standpoint of the representative capacity of a permanent mission. A mission to the Organization of American States would certainly be representative in the fullest sense of the term as used with reference to diplomatic missions. Clearly, permanent missions to organizations of a purely technical kind would not need the far-reaching privileges and immunities required by a mission representing a State.

70. Perhaps a test based on function would be more realistic than a test of universality. If the test of universality were retained, however, it should be a test of universal character rather than universal membership, as the former was broader and more precise.

71. Mr. ALBÓNICO said there seemed to be some confusion about the character and functions of the Drafting Committee. He himself thought its task was only to draft texts expressing the basic ideas adopted by the Commission, and as the Commission had not decided whether the draft referred to all kinds of organizations or only to those of a universal character, the Drafting Committee had not known what to do. But if the Drafting Committee had other duties, of which he was unaware, and was performing a conciliation function, it could even introduce new ideas, which the Commission could accept or reject.

72. He had always been of the opinion that the articles should apply to universal organizations, but the words "of universal character" could be dropped from the article and relegated to the commentary.

73. He was not in favour of retaining paragraph 2 and could not accept Mr. Ago's amendment.

74. Article 4 ought to be re-drafted to stipulate that the rules of the present convention were without prejudice to the relevant rules of each organization.

75. Article 4 *bis* was acceptable as it stood.

76. The CHAIRMAN said that perhaps Mr. Albónico had overlooked the fact that the Commission had decided to refer articles 2 and 3 to the Drafting Committee in accordance with Mr. El-Erian's proposal that it should decide whether they ought to be kept in reserve pending consideration of the other articles.¹⁰

77. Mr. ALBÓNICO said that he had not wished to criticize the work of the Chairman or that of the Drafting Committee, which was very difficult, particularly in cases where the Commission was evenly divided, as it had been on the question of retaining paragraph 2 of article 20.

78. The CHAIRMAN said that the Drafting Committee, in addition to dealing with the wording of articles, also had to find compromises between differing points of view.

79. Mr. BARTOŠ said that the practice of widening the Drafting Committee's competence went back to the

Commission's tenth session. Before that, all controversies between members of the Commission had been settled by a vote before the texts were referred to the Drafting Committee. Since that session, however, the Commission had never considered whether it should revert to its former practice. The Drafting Committee had even become a kind of conciliation committee for reconciling conflicting ideas expressed by members in the Commission. Thus the Commission had extended its competence on several occasions when differences of substance had arisen, in order to shorten the discussions in plenary. That practice had sometimes proved very convenient.

80. Mr. ALBÓNICO said he was prepared to accept the wide competence of the Drafting Committee which would, of course, greatly facilitate the Commission's work. But he must repeat that he did not know whether that competence was in conformity with the Commission's Statute and practice.

81. Mr. ROSENNE said that the practice described by Mr. Bartoš had been laid down in the Commission's report on its tenth session¹¹ and noted by the General Assembly; it should be adhered to, since it had been sanctioned by the Commission's parent body.

82. Mr. YASSEEN said that he too thought the method followed for so long by the Commission was an extremely useful one and offered practical possibilities for the solution of many problems. In any event, the Drafting Committee always confined itself to making proposals which the Commission could accept or reject.

83. Mr. AGO said that without the work of the Drafting Committee, as it had developed in practice, there would be no Vienna Convention on the Law of Treaties. The practice in question had overcome many difficulties; without stating a formal opinion, he did not think it could be in conflict with the Commission's Statute. In any case, it had proved its worth.

84. Another point to be remembered was that members of the Drafting Committee did not lose their status as independent members of the Commission. They retained the right to disagree with the Drafting Committee's proposals, and even if they had supported a particular proposal in the Committee, they could always, after further reflexion, take a different position in the Commission.

85. Mr. CASTRÉN pointed out that the Commission's agenda included, as item 4, a review of the Commission's programme and methods of work. If any member had any proposals to make regarding the Commission's methods of work he could submit them when item 4 was discussed; meanwhile, he proposed that further discussion of the subject be suspended.

It was so agreed.

86. Mr. RAMANGASOAVINA said he noted Mr. Ago's misgivings over the exclusion of regional organizations and Mr. Amado's objections to the expression "*à vocation universelle*". First of all, he wished to assure the Commission that that expression had been selected

¹⁰ See 947th meeting, para. 18.

¹¹ See *Yearbook of the International Law Commission, 1958*, vol. II, p. 108, para. 65.

only after careful research, and that Mr. Reuter had agreed to its use. The word "*vocation*" had a precise meaning in French law, which used the expression "*vocation successorale*".

87. Although it was sometimes a mistake to borrow from private law, it might be worth considering the notion of the "universal legatee", an expression used to denote a person who inherited a share of the whole of an inheritable estate. In any case, organizations which were not of universal character could, by the expression of their will, adhere to the rules laid down for organizations of universal character, in particular by including those rules in their statutes.

88. Admittedly the English and French texts did not concur absolutely, but each language had its peculiarities; what was important was to say the same thing, even if there was a slight difference of form.

89. As to paragraph 2, Mr. Ago's proposed text was an improvement on the Drafting Committee's version.

The meeting rose at 1.05 p.m.

973rd MEETING

Thursday, 11 July 1968, at 10 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Ramangasoavina, Mr. Rosenne, Mr. Tabibi, Mr. Tsuruoka, 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.1-3; A/CN.4/L.118 and Add.1-2)

[Item 2 of the agenda]
(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

ARTICLE 2 (Scope of the present articles)¹ (continued)

1. The CHAIRMAN said that Mr. Ago had submitted a revised version of his proposed text for article 2, paragraph 2, which read:

"2. The fact that the present articles do not refer to representatives of States to other international organizations is without prejudice to the application to the latter of any of the rules set forth in the present articles which would be applicable to them independently of these articles. This fact is also without prejudice to the possibility of member States of such other organizations

agreeing that the present articles shall apply to their representatives to the said organizations."

2. Mr. USHAKOV said that although the provision now contained in paragraph 1 of the Drafting Committee's text might have raised difficulties when it was a separate article, once the idea that there was nothing to prevent States from applying the rules in the draft to any international organization was expressed in a second paragraph of the same article, the result was a completely flexible formula. He did not understand why some members advocated a rigid provision laying down that every organization must be subject to the rules in the draft.

3. Any attempt to apply the articles to organizations other than those of universal character would come up against a number of difficulties. To extend the application of the articles to regional organizations would mean giving a definition of a regional organization, which was much more difficult than defining an organization of universal character. And there would be no reason to stop at regional organizations. But then, if restricted organizations were also included, the question would arise what was the minimum number of States needed to constitute an international organization. Furthermore, many articles which were acceptable when applied only to organizations of universal character would raise insuperable difficulties if they were extended to all organizations because there were so many different types.

4. The wording of article 2 as adopted by the Drafting Committee could still be improved. He supported the new version submitted by Mr. Ago; the second sentence that had been added made it more precise and at the same time more flexible.

5. Further thought should be given to the expression "*à vocation universelle*"; perhaps something more appropriate could be found.

6. As to the substance, at any rate, the ideas contained in the new version of article 2 should satisfy not only all the members of the Commission, but also all States invited to sign the future convention.

7. Mr. ROSENNE said that there was a discrepancy between the English and French texts: the expression "of universal character" was not equivalent to "*à vocation universelle*" and that point would have to be considered by the Drafting Committee.

8. The discussion on the Drafting Committee's text of article 2 had increased his doubts as to whether the Commission knew exactly what was the object of its deliberations and what kind of permanent missions it was discussing. He agreed with Mr. Kearney that a more functional approach was desirable.

9. There were many different kinds of permanent mission. Those in New York and Geneva, which were not identical but formed a separate category, were regulated fairly extensively by existing agreements and practice, and practical problems concerning them could be solved within the existing legal framework. There were also permanent missions in Addis Ababa, Brussels, Cairo, Paris, Rome, Strasbourg, Vienna and Washington, and in some cases they were separate from the embassy or consulate, but not always. Sometimes they formed little more than a department. The draft should contain something on

¹ See previous meeting, para. 40.