

Document:-  
**A/CN.4/SR.973**

**Summary record of the 973rd meeting**

Topic:  
**Representation of States in their relations with international organizations**

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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)<sup>1</sup> (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

<sup>1</sup> See previous meeting, para. 40.

the lines of article 70, paragraph 4, of the Vienna Convention on Consular Relations.<sup>2</sup> For permanent missions which were part of an embassy, some rule would have to be inserted to cover the question of persons having dual functions.

10. There were two courses open to the Commission: either it could omit the words "of universal character" and paragraph 2, or it could drop article 2 entirely. He was in favour of referring the article back to the Drafting Committee with a much clearer directive than had been given to it at the first reading. The Commission would examine the new text when it had concluded its discussion of all the other articles.

11. The Commission would need more information on permanent missions in places other than New York and Geneva, and on how many of them were separate from embassies and consulates, performing substantive functions and not serving merely as channels of communication.

12. He had no wish to criticize the Drafting Committee, which had carried out its task in accordance with the Commission's Statute and rules of procedure as well as with the relevant General Assembly resolutions and established practice. He could not agree to any change in the established practice unless a specific proposal were put to the Commission.

13. Mr. AGO said he had already made the point that not enough account had been taken, in regard to permanent missions, of the great diversity of practice in the representation of States to organizations. Not only were permanent missions with multiple functions, such as those at Geneva, not to be found everywhere, but there were some organizations in which the institution of permanent missions was unknown.

14. But article 2 did not relate to permanent missions only. It concerned relations between States and international organizations in general, and that included the question of the representation of States to organs of international organizations, which in his view should have priority over the question of permanent missions.

15. Although he still considered that there was no valid reason for confining the draft to organizations of universal character, he was prepared to do everything possible to secure a unanimous decision on the subject. Sometimes, as Sir Humphrey Waldock had pointed out, there was a greater difference between two so-called universal organizations, one political and the other technical, than between two organizations of the same character, one universal and the other regional.

16. Consequently, while the Commission might decide at the start that the articles related primarily to so-called universal organizations, it should so draft them that they could also be adapted to relations between States and other international organizations. The Commission must avoid leaving a kind of gap and giving the impression that it was virtually impossible to apply the rules to organizations other than universal organizations.

17. It was with those considerations in mind that he had drafted his amendment. The sentence he had added to

paragraph 2 would be useful to organizations which were in an intermediate position and were anxious to be able to refer to a text of that kind in order to establish the status of the missions and representatives of member States.

18. Mr. BARTOŠ said he had only reluctantly agreed in the Drafting Committee to the use of the word "*vocation*", as he did not consider it acceptable in modern legal terminology. But Mr. Reuter had explained to the Committee that in French the word "*caractère*" had a meaning quite different from its meaning in English. It meant either the particular qualities of a living being or a fixed quality. The word "*vocation*", on the other hand, meant something in process of formation. To express that idea, he (Mr. Bartoš) had suggested the word "*tendance*", but the Drafting Committee had preferred "*vocation*".

19. In any event, the French word "*caractère*" would give rise to difficulties of interpretation, since very few organizations would be able to claim that they had achieved the universality to which they aspired. He was quite willing to consider any other suggestions.

20. The CHAIRMAN, speaking as a member of the Commission, said he agreed with Mr. Ago that no convincing argument had been put forward to prove that there was a substantial difference between organizations of a universal character and other organizations. The Commission was dealing with the juridical capacity, functions and composition of permanent missions, some of which had their seat in embassies.

21. He agreed with Mr. Yasseen that a final decision should be postponed until the Commission had considered all the draft articles. Its report to the General Assembly should set out the views expressed in the discussion.

22. Sir Humphrey WALDOCK said he agreed with the Chairman. He was not convinced that there was any real difference in meaning between the English word "*character*" and the French word "*caractère*" in the present connexion. He was not in favour of the term "*à vocation universelle*"; a better alternative should be sought. If Mr. Ago's proposal were accepted, the idea of a "right" or "liberty" should be substituted for the idea of a "possibility".

23. Mr. EUSTATHIADES said he thought he should give some explanation about the expression "*à vocation universelle*", which he had introduced into the discussion.<sup>3</sup>

24. The French text of the Special Rapporteur's article 2 (A/CN. 4/203) had referred to organizations "*qui sont ouvertes à l'adhésion universelle*", which was an inaccurate translation of the English expression "whose membership is of a universal character". It had therefore been necessary to harmonize the two versions by referring in both cases either to organizations "*de caractère universel*" or to organizations "*à vocation universelle*".

25. The expression "*à vocation universelle*" would embrace international organizations which aspired to universality, even if their constitution did not include a clause making membership open to all countries.

<sup>2</sup> See *United Nations Conference on Consular Relations, Official Records*, vol. II, p. 186.

<sup>3</sup> See 946th meeting, paras. 49-50.

26. It had also been rightly pointed out that the word "*vocation*" had a dynamic content, whereas the word "*caractère*" denoted something static. But he had not pressed for the adoption of the word "*vocation*", and would accept the words "*à caractère universel*", corresponding to "of universal character" in the English text.

27. Mr. Ago's amendment adding a second sentence to paragraph 2 was a real improvement. It reflected the need to take into account the many very different situations. The Commission could go still further and add a third element of flexibility to the two proposed by Mr. Ago, by introducing a clause stipulating that the present articles did not affect the possibility of member States adopting other provisions for a particular organization. It was quite clear that, even in the absence of such a clause, *de facto* arrangements would be made if member States so desired.

28. For the time being, therefore, he supported Mr. Ago's proposed amendment in principle. When the Commission had a clear idea of what the draft was to contain, particularly with regard to representation in the organs and conferences of international organizations, it could revert to that question.

29. Mr. YASSEEN said he could accept Mr. Ago's amendment, which improved the article and was quite correct as to substance. The Drafting Committee might revise the wording as to form.

30. Mr. AMADO said he did not quite understand how it could be determined which international organizations the draft applied to. Was the criterion the aspiration of the organization itself to become universal or, more objectively, the size of the organization, in other words, the number of its members?

31. Mr. USHAKOV said he could agree to permanent missions to all international organizations being governed by the same rules, but the problem that arose was which international organizations the articles would apply to immediately, when the convention was concluded by States. The Commission was attempting to codify existing rules, in other words, the practice. But the practice was that relating to permanent missions to so-called universal organizations. Perhaps in the future States would establish permanent missions to less important international organizations, but for the time being it was hardly likely that many States would be willing to sign a convention laying down rules applicable to any and every organization. And yet article 2 afforded every possibility for extending to other organizations the practice of permanent missions to so-called universal international organizations.

32. Mr. TSURUOKA said that he was willing to accept Mr. Ago's amendment, which the Drafting Committee could perhaps improve further.

33. With regard to the question of terminology that arose in connexion with paragraph 1, members seemed to be largely in agreement on which organizations the draft should apply to. If it proved too difficult to find a single term to express the idea they had in mind, the solution might be to break that idea down into its various components and say, for example, that the organizations

concerned were those which had "universal aims and membership".

34. He saw no objection to postponing a final decision on the article.

35. Mr. ALBÓNICO said that the discussion had not shaken his conviction that the draft must cover the whole range of international organizations. There was no valid ground for drawing a distinction between regional and universal organizations.

36. He therefore suggested that the Commission agree for the time being to delete the last three words of paragraph 1, "of universal character", and the whole of paragraph 2. If, at a later stage, the Commission found that any of the substantive rules were manifestly unsuitable for application to organizations of all types, it could consider restricting the scope of the draft.

37. Mr. BARTOŠ said he could accept the text proposed by Mr. Ago for paragraph 2.

38. With regard to paragraph 1, he agreed in substance with Mr. Ushakov, but for different reasons. In fact, there were many international organizations of a clearly regional character to which permanent missions were established. Examples were the Danube Commission and the European Economic Community. The Organization of American States also received permanent missions and applied some rules that were stricter than those the Commission intended to write into its draft; for instance, a permanent representative to the Organization of American States could not at the same time be ambassador to a member State. Some regional international organizations sometimes had special requirements regarding, for instance, the rank and qualifications of permanent representatives.

39. The Commission really knew quite well what it meant by "universal" organizations, so it could postpone its choice of the most suitable expression. He therefore proposed that it adopt article 2 provisionally—paragraph 1 in the Drafting Committee's version and paragraph 2 as proposed by Mr. Ago.

40. Mr. AGO said he thought agreement was being reached on the view that nothing would prevent the articles from applying to all organizations, but that whereas the rules they stated would apply automatically to universal international organizations, a special agreement would be needed to make them apply to other organizations.

41. As far as terminology was concerned, the essential point was that the Commission should know what it meant. The decisive criterion was not that the organization should have a large number of member States—some regional organizations such as the Organization of American States and the Organization of African Unity had many members—or that all States should be members; it was that membership of the organization should be open to all States. The Commission could use the expression "of universal character" and explain its meaning either in the definitions or in the commentary.

42. Mr. USTOR said that the term "international organizations of universal character" was vague. For example, would it cover such bodies as the International Wheat

Council which, though theoretically open to all States, was not universal because not all States grew wheat? Perhaps the best course would be for the Commission to accept the Drafting Committee's text, although it was not perfect, and to refer it back to the Drafting Committee for final consideration. It could then be submitted to Governments for comment.

43. Sir Humphrey WALDOCK said he realized the difficulties involved in attempting to define the concept of universality, behind which loomed the familiar problem of the "all States" formula.

44. The Commission should be careful to produce articles that could commend themselves to Governments, bearing in mind their nervousness about granting privileges and immunities. Even if the scope of the draft were limited to so-called "universal" organizations, it would cover a very wide range of organizations and some of the rules might not be suitable in the same degree for all kinds of organizations.

45. The Commission should also pay more attention to the point mentioned by Mr. Rosenne regarding the different types of permanent missions. In that connexion, it was worth noting that the question of permanent missions to the Council of Europe at Strasbourg was closer to the question of permanent missions at Geneva or New York than to the question of permanent missions in the context of the International Wheat Council or the Sugar Council.

46. On a provisional basis, however, he would be prepared to accept the formula proposed by Mr. Ago.

47. Mr. AMADO said that "universe" was an expanding concept and therefore extremely vague. Nevertheless, he accepted Mr. Ago's text for paragraph 2 and supported Mr. Bartoš's proposal.

48. Mr. TABIBI said the discussion had shown that there could be no agreed clear definition of universality. In view of the admitted diversity of organizations and of permanent missions, it would be difficult to frame rules to cover all situations.

49. The only practical solution at that stage was to adopt Mr. Ago's proposal on a provisional basis and refer it to the Drafting Committee for re-drafting only. The Commission could consider the whole question again in the light of Government comments.

50. Mr. ROSENNE said that the turn which the discussion had taken led him to doubt whether article 2 would serve any useful purpose. The intention appeared to be to state that the draft articles would apply automatically to some organizations, but that they could also apply to others by agreement. Since, for the vast majority of organizations, that point was already covered by the provisions of articles 4 and 4 *bis*, it would seem that article 2, as now proposed, could be dropped altogether without any harm to the text.

51. He suggested that the Commission refer article 2 back to the Drafting Committee without taking any decision. It would be preferable to wait until the Commission had dealt with the whole draft, and in particular until it had decided whether the draft articles should cover delegations to conferences and to organs of organizations.

52. Later, in the light of the complete draft, the Drafting Committee should consider the whole question of article 2, including the possibility of dropping it altogether. If it were ultimately retained, however, it should be worded as proposed by Mr. Ago, not as proposed by Mr. Albónico.

53. Mr. KEARNEY said he supported the suggestion that article 2 should be referred back to the Drafting Committee without any decision being taken at that stage. Since the article dealt with the scope of the draft, it was akin to the provisions on the use of terms, which had been left for consideration at the end of the Commission's work on item 2 of its agenda. Postponement of the decision would also give the Drafting Committee an opportunity to consider the various suggestions which had been made during the discussion.

54. Mr. EL-ERIAN (Special Rapporteur) said that the question of the scope of the draft articles was now being discussed for the fourth time. The Commission had dealt with it in 1963 and in 1964 in connexion with his first report (A/CN.4/161 and Add.1), and also at the beginning of the present session.

55. When he had first submitted the issue to the Commission he had suggested that the draft articles should be confined to international organizations of a universal character.<sup>4</sup> In so doing, he had not intended to suggest that the application of the draft articles to regional organizations was precluded or that regional organizations necessarily had rules that were different from those applicable to organizations of a universal character. He had merely urged the Commission to concentrate on organizations of a universal character belonging to the United Nations family. One important reason for taking that course was that the General Assembly, for which the Commission worked, legislated only for the United Nations family of organizations. In the light of the Commission's own terms of reference, therefore, it was appropriate to frame the draft with the organizations of the United Nations system in mind, and to consider at a later stage whether the rules thus framed could be applied as they stood to regional organizations, or whether they should be amended, or rather supplemented, for that purpose. It was not so much a matter of regional organizations needing different rules, as of their having particular problems which required additional rules.

56. Great stress had been laid during the discussion on the variety of permanent missions and it had even been suggested that, until all the different types of permanent mission had been studied, it was not possible to prepare the draft articles. His own feeling was that the Commission should prepare draft articles suitable for the larger permanent missions; in that way, the needs of the smaller missions would also be covered. There could be organizations which required no permanent missions at all; in their case, the member States would not avail themselves of the draft. Where a State found it convenient to accommodate its permanent mission in an existing diplomatic mission or consulate, it would only avail itself in part of the provisions of the draft articles.

<sup>4</sup> See *Yearbook of the International Law Commission, 1963*, vol. 1, p. 298, para. 109.

57. The draft articles would, by their very nature, be provisional, like all draft articles adopted on first reading. The Commission had to adopt a provisional text for submission to the General Assembly and to Member States. On the basis of the comments submitted by Governments, the Commission would then prepare a final draft in the usual way.

58. The question of the distinction between regional and universal organizations was another problem. There were some ten or fifteen organizations whose membership embraced virtually all the States of the world, only a handful of States remaining aloof or being excluded for political reasons. It was one of the facts of contemporary international society that there were organizations which were not restricted to a certain group of States. One possible criterion for identifying them was that provided by Article 57 (1) of the Charter, which spoke of the specialized agencies as "having wide international responsibilities". Another would be to use whatever formula was finally adopted by the Vienna Conference on the Law of Treaties to deal with the problem of "general multilateral treaties" and refer to organizations which were "based on general multilateral treaties" or "open to all States" or which "regulated questions of general interest to all States", as the case might be.

59. The proposal put forward by Mr. Ago offered a compromise solution of the problem and he urged the Commission to adopt it on a provisional basis, rather than postpone its decision on article 2; postponement could only lead to a reopening of the whole discussion at a later stage.

60. Mr. CASTRÉN (Chairman of the Drafting Committee) said he thought the discussion had been very useful. The Drafting Committee had dealt only with the form of article 2, leaving the Commission to decide questions of substance.

61. With regard to the expressions "*vocation universelle*" in French, and "universal character" in English, the Drafting Committee could still examine the various suggestions put forward, but it was difficult to speak of universal organizations, since there was not a single international organization of which all the States in the world were members.

62. Mr. Ago's amendment was constructive. In drafting paragraph 2, the Drafting Committee had followed the text of article 3 in the Special Rapporteur's report (A/CN.4/203), and sub-paragraph (b) of article 3 of the draft on the Law of Treaties as adopted by the Committee of the Whole of the Vienna Conference,<sup>5</sup> which was not yet definitive.

63. He could accept Mr. Ago's amendment, particularly the first sentence. The second sentence introduced a new idea, but one which was self-evident and which it was perhaps unnecessary to express. If it would help to bring agreement nearer, however, he would accept the second sentence, though he supported Sir Humphrey Waldock's suggestion that it was more appropriate to speak of a "right" than of a "possibility".

64. Mr. Bartoš's procedural proposal offered many advantages. If the article was adopted provisionally,

<sup>5</sup> A/CONF.39/C.1/L.370.

Governments could make their comments and that would facilitate the Commission's later work. Governments generally attached greater importance to what was said in an article than to what was said in the commentary.

65. He had no objection to referring article 2 back to the Drafting Committee, though it might mean loss of time.

66. The CHAIRMAN said that he interpreted the feeling of the majority in the Commission as being in favour of the basic idea of article 2. If there were no objection, he would take it that the Commission agreed to refer article 2 to the Drafting Committee, with Mr. Ago's amendment to paragraph 2, for redrafting only.

*It was so agreed.*<sup>6</sup>

The meeting rose at 1.10 p.m.

<sup>6</sup> For resumption of discussion, see 980th meeting, paras. 2-12.

## 974th MEETING

Friday, 12 July 1968, at 11 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 (continued)

ARTICLE 4 (Relationship with the relevant rules of international organizations)<sup>1</sup>

1. The CHAIRMAN invited the Commission to consider the text of article 4 proposed by the Drafting Committee.<sup>2</sup>

2. Mr. CASTRÉN (Chairman of the Drafting Committee) explained that the new text proposed for article 4 said the same thing as the original text (A/CN.4/203), but more precisely and more briefly. The Drafting Committee had decided not to refer to "permanent missions of States", since some organizations might have members which were not States. It had also deleted the reference

<sup>1</sup> For earlier discussion, see 947th meeting, paras. 19-42; 948th meeting, paras. 1-78, and 972nd meeting, paras. 40-89.

<sup>2</sup> For text, see 972nd meeting, para. 40.