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Summary record of the 974th meeting

Topic:
<multiple topics>

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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,⁵ 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,

⁵ 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.*⁶

The meeting rose at 1.10 p.m.

⁶ 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)¹

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

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

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

² For text, see 972nd meeting, para. 40.

to “other related subjects”, which might be a source of confusion.

3. Both in the title and in the body of the text, the word “particular” had been replaced by the word “relevant”, which was the term used in article 4 of the draft on the law of treaties and had the advantage of also covering the practice of organizations.

4. Two members of the Commission had requested that a provision based on article X, sections 34 and 39, of the Convention on the Privileges and Immunities of the Specialized Agencies³ should be added, but the Drafting Committee had been opposed to that addition. With regard to section 34, it had considered that the general reservation stated in the Drafting Committee’s proposed article 4 was sufficient. Furthermore, any question of interpretation would have to be settled by applying rules of general international law. The future convention on the law of treaties would include provisions on that subject. As to section 39, its purpose was partly covered by the new article 4 *bis* proposed by the Drafting Committee. Moreover, the Special Rapporteur had intimated that, in his opinion, there was no need to labour the point, since the draft would grant permanent missions sufficiently wide privileges and immunities.

5. Mr. TSURUOKA said he was prepared to support the text proposed by the Drafting Committee. In the French version, however, he would like the words “*est sans préjudice des règles pertinentes*” to be replaced by the words “*n’affecte pas les règles pertinentes*”.

6. Mr. AGO suggested that it might be better to add the words “in question” or “concerned” after the word “organization”. Otherwise, he agreed to the proposed wording.

7. Mr. EUSTATHIADES pointed out that in the Special Rapporteur’s text, the word “concerned” had appeared after the word “organization”.

8. The CHAIRMAN, speaking as a member of the Commission, said that he had some difficulties over the Spanish text. First, a more suitable expression would have to be found to replace the words “*será sin perjuicio*”. Secondly, the word “*normas*” should be replaced by the word “*reglas*”.

9. Mr. CASTAÑEDA said he supported the second suggestion.

10. Sir Humphrey WALDOCK said that, as far as the English text was concerned, article 4 merely reproduced the concluding proviso of article 4 of the draft convention on the law of treaties as approved at the first session of the Vienna Conference.⁴ That article, however, began with a passage referring to a treaty that was the constituent instrument of an international organization or had been adopted within an international organization, so that the concluding proviso was clear; but in the present instance, there was nothing to which to attach the words “the organization”.

11. Mr. ROSENNE said that the purpose of the present article 4 was different from that of article 4 of the draft convention on the law of treaties. The latter article 4

purported to establish that the codified law of treaties applied, as a matter of principle, to treaties which were constituent instruments of international organizations or had been adopted within international organizations. The article 4 under discussion was intended to state that the relevant rules of the organization concerned took precedence over the provisions of the draft articles.

12. Mr. USTOR said that the meaning of the words “the organization”, as used in article 4, was clarified by the provisions of sub-paragraph (q) of article 1 (Use of terms), which explained that “the organization” meant “the international organization in question”, so that if sub-paragraph (q) were retained, the words “the organization” could stand.

13. Mr. YASSEEN said that the Drafting Committee’s proposed wording was satisfactory and followed the wording adopted at the first session of the Vienna Conference on the Law of Treaties. The reservation was intended to emphasize that the draft did not lay down rules of *ius cogens*.

14. The addition of the word “concerned” after the word “organization” would be an improvement.

15. The CHAIRMAN, speaking as a member of the Commission, suggested that the beginning of the article be re-worded to read: “The present articles are without prejudice to . . .”.

16. Mr. CASTAÑEDA said that technically, the article was well drafted. The Drafting Committee had made the best possible synthesis of the ideas expressed in the original text and the suggestions put forward by members. The replacement of the word “particular” by the word “relevant” was judicious.

17. It did not seem essential to add the word “concerned” after the word “organization”, since the word “organization” was to be understood as defined in article 1; but the addition might be useful if it was considered an advantage for article 4 to be self-contained.

18. In the Spanish version, the beginning of the article might be re-drafted to read: “*La aplicación de los presentes artículos no perjudicará*”.

19. Mr. AMADO said he thought it would be better to say “The application of the present articles is without prejudice to . . .” than “The present articles are without prejudice to . . .”.

20. Mr. AGO said that the essential point was to include a reference to the application of the articles, no matter whether the noun “application” was used or the verb “apply”. The two forms of words “The application of the present articles” and “The present articles apply” meant exactly the same thing.

21. Mr. YASSEEN said he agreed with Mr. Ago. What was meant was that, when the present articles conflicted with relevant rules of the organization, they did not apply.

22. Mr. BARTOŠ said he approved of the substance of the proposed text, which kept the independence of the organization intact.

23. He was in favour of the proposed wording “is without prejudice to” because it stressed the fact that the articles would be applied so long as they did not

³ See United Nations, *Treaty Series*, vol. 33, pp. 282 and 284.

⁴ A/CONF.39/C.1/L.370.

affect the relevant rules of the organization, in other words, only if they did not conflict with those rules.

24. Mr. USHAKOV said that he, too, preferred the wording "The application of the present articles is" to "The present articles are", since only a few articles might be involved; the wording "The present articles apply" was less flexible.

25. Mr. EL-ERIAN (Special Rapporteur) said he wished to explain the purpose of the article, in order to be sure that he would reflect the Commission's understanding accurately in the commentary.

26. Article 4 was intended to deal not only with the question of conflict, but also with the question of the particular rules of an organization. It indicated that the draft articles laid down a general pattern, but could not go into details with regard to the rules of individual organizations.

27. Mr. CASTRÉN (Chairman of the Drafting Committee) said he noted that on the whole the Commission approved of the content and wording of article 4 as proposed by the Drafting Committee. Three points called for replies.

28. First, he saw no difference between the expressions "The application of the present articles" and "The present articles apply". He was prepared to accept either.

29. Secondly, he thought that the expression "is without prejudice to any relevant rules" should be retained because, as had been pointed out earlier, it was better to use the same form of words in the different languages whenever possible.

30. Thirdly, with regard to the word "organization", the definitions had not yet been adopted, and during the preliminary discussion, it had been suggested that the definition of "organization" should be deleted. In any case, the qualification "concerned" or "in question" could be added for greater precision.

31. Mr. EUSTATHIADES said he preferred the expression "organization concerned" to "organization in question". "Organization concerned" meant the organization for which the question arose.

32. Mr. YASSEEN formally proposed that the Commission adopt the Drafting Committee's text with the addition of the words "in question" after the word "organization".

33. The CHAIRMAN invited the Commission to vote on article 4 with the amendment proposed by Mr. Yasseen and subject to the replacement of the word "*norma*" by the word "*regla*" in the Spanish text.

*Article 4, as amended, was adopted unanimously.*⁵

ARTICLE 1 (Use of terms)⁶

34. The CHAIRMAN said that, before the Commission went on to consider the Drafting Committee's text of

⁵ For a later amendment to the title of article 4, see 989th meeting, para. 17.

⁶ For earlier discussion, see 945th meeting, paras. 45-81, and 946th meeting, paras. 1-18.

article 4 *bis*, the Special Rapporteur wished to make a proposal concerning article 1 (A/CN.4/203).

35. Mr. EL-ERIAN (Special Rapporteur) said he wished to propose that the Drafting Committee be entrusted with the examination of article 1. The Commission had completed its consideration of the first twenty articles of the draft, and most of the remaining articles dealt with privileges and immunities. The time had therefore come to adopt an article on the use of terms, so that it could be included in the draft to be submitted to the General Assembly and to Governments for comment.

36. Mr. USTOR said he supported the Special Rapporteur's proposal. An article on the use of terms was an essential element in any set of articles to be submitted to the General Assembly.

37. Mr. ALBÓNICO also supported the proposal.

38. Mr. CASTRÉN said that he had no fixed opinion on the question whether it was time to ask the Drafting Committee to consider article 1. The Commission had examined only one part of the draft, though admittedly perhaps the most important part, and it now had the text of the other articles. If the Special Rapporteur and the Commission thought that the Drafting Committee could begin to examine article 1 without any fresh discussion in the Commission, he would have no objection.

39. Mr. AMADO said he thought that was a matter for the Special Rapporteur to decide.

40. Mr. ROSENNE suggested that the Drafting Committee be invited to produce whatever definitions might be necessary for the expressions used in articles 2 to 20, in accordance with the Commission's usual practice. There had been occasions when difficult problems had been solved by the Drafting Committee proposing a provision on the use of an expression, together with the substantive rule in which the expression was employed.

41. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to invite the Drafting Committee to examine all the provisions of article 1 which it considered necessary at that stage.

*It was so agreed.*⁷

ARTICLE 4 *bis* (Relationship between the present articles and other international agreements)⁸

42. The CHAIRMAN invited the Commission to consider the Drafting Committee's text of article 4 *bis*.⁹

43. Mr. CASTRÉN (Chairman of the Drafting Committee) explained that the Drafting Committee's text of article 4 *bis* had been modelled on article 73, paragraph 1, of the Vienna Convention on Consular Relations,¹⁰ in order to take account of the wish expressed by several members of the Commission that the draft should contain a reservation concerning agreements between States and agreements between States and international organizations.

⁷ For resumption of discussion, see 986th meeting, paras. 10-60 and 62-87.

⁸ For earlier discussion, see 972nd meeting, paras. 40-89.

⁹ For text, see 972nd meeting, para. 40.

¹⁰ See *United Nations Conference on Consular Relations, Official Records*, vol. II, p. 187.

44. The word "other", before the words "international agreements" in the title and in the body of the article, would be needed when the words "the present articles" were later replaced by the words "the present Convention".

45. The Drafting Committee had considered the possibility of combining articles 4 and 4 *bis*, but had finally thought it better not to deal with too many different questions in the same article and had decided to submit article 4 *bis* separately.

46. Two members of the Drafting Committee had thought that the article was unnecessary, because its provisions were covered by those of article 4. Since different interpretations were possible on that point, the Drafting Committee had considered it preferable to state clearly the idea now expressed in article 4 *bis*, even if it was already implicit in article 4.

47. The position of article 4 *bis* in the draft could be decided later. It could be placed either after article 4 or in the final clauses; or it could even be incorporated in the preamble, but then it would not have the same force as a stipulation in an article.

48. Mr. CASTAÑEDA said he was not opposed to the adoption of article 4 *bis*, but he doubted whether it was useful. It might perhaps serve to emphasize a particular aspect of the problem, but technically it did not seem to add anything.

49. The intention was to refer to headquarters agreements concluded between host States and organizations, and to the conventions on the privileges and immunities of the United Nations and the specialized agencies. The rules deriving from those agreements came under the heading of relevant rules of the organization. Since the agreements were approved by a General Assembly resolution and signed on behalf of the organization by the Secretary-General, the rules they stated were part of the legal system of the organization.

50. The word "relevant" had been chosen precisely in order to take into account both treaty rules resulting from an agreement, such as those referred to in article 4 *bis*, and customary rules or rules which had their source in General Assembly resolutions. Those were the only rules to be considered.

51. Although it had been intended also to cover an agreement between two States, he could not quite see what the legal connexion between the present articles and such an agreement could be. If there were a link of any kind with the organization, however, the rules deriving from the agreement would be part of the relevant rules of the organization.

52. Mr. BARTOŠ said that at first he had been of the same opinion as Mr. Castañeda. But then Mr. Kearney had argued in the Drafting Committee that some States did not accept that interpretation, and after studying the question further, he (Mr. Bartoš) had found that some States had in fact considered decisions based on agreements such as those referred to in article 4 *bis* to be unconstitutional from the point of view of the organizations concerned.

53. It was only in order to allow States which took that view the possibility of considering those treaty sources

as constituting a special category of rules of the organization that he had accepted the idea of including article 4 *bis* in the draft. From the point of view of legal technique, however, he still thought that the relevant rules of the organization should also include such treaty rules.

54. Mr. ROSENNE said that, on balance, he thought the Drafting Committee had been right to submit a separate article 4 *bis*; the expression "relevant rules of the organization" might not necessarily cover international agreements. The rules of an organization were normally of an internal character, whether they formed part of its constituent instrument or not, whereas the international agreements in question might well be concluded outside the organization.

55. As far as the wording of the article was concerned, however, the concluding words "as between States or between States and international organizations" were not necessary. In any case, they did not cover all the treaties that might be relevant; for example, treaties between international organizations were not mentioned.

56. Moreover, the wording of the article did not state clearly what it was intended to convey. The purpose was to state that, if there was a treaty which was relevant to the matter, that treaty would prevail over the draft articles. That intention would be better expressed by a provision reflecting the rule in article 26, paragraph 2, of the draft articles on the law of treaties, which read: "When a treaty specifies that it is subject to, or that it is not to be considered as inconsistent with, an earlier or later treaty, the provisions of that other treaty prevail".¹¹ That provision had not yet been approved by the Vienna Conference on the Law of Treaties, but the idea it expressed would be suitable for the present purposes. He suggested that the Drafting Committee examine the possibility of using it.

57. Mr. ALBÓNICO said that in the Drafting Committee he had had the same doubts as Mr. Castañeda about the usefulness of article 4 *bis*, but it had been explained that the relevant rules of the organization were those which were contained in its constituent instrument or which regulated the matter of the representation of States to the organization; the purpose of article 4 *bis* was to deal with such agreements as headquarters agreements. In the light of those explanations, he had accepted article 4 *bis*.

58. Mr. KEARNEY said he would like to give an example to show that the "relevant rules of the organization" mentioned in article 4 could not be relied on to protect headquarters agreements, to which article 4 *bis* was intended to apply. In its headquarters agreement with the ILO, Switzerland extended to representatives to that organization greater privileges than those extended in similar agreements to representatives to other organizations.

59. If the draft articles incorporated a régime of privileges and immunities similar to that granted by Switzerland to representatives to the ILO, and Switzerland became a party to the future convention, a difficult situation would arise if article 4 *bis* were not included. It

¹¹ See *Yearbook of the International Law Commission, 1966, vol. II, p. 214.*

would be possible for an organization other than the ILO to modify its rules in accordance with its own system and thereby in effect amend its headquarters agreement with Switzerland. The provisions of article 4 *bis* were necessary if it was intended that the draft articles should not affect existing headquarters agreements.

60. Mr. EUSTATHIADES said that he did not understand why article 4 used the expression "is without prejudice to", whereas article 4 *bis* used the words "shall not affect". Those two expressions might appear not to correspond to the same idea. The Drafting Committee should study the differences in wording between the two articles, unless article 4 was intended to refer to the application in principle of the present articles, whereas article 4 *bis* provided that the present articles did not prevail over international agreements concluded between States or between States and international organizations.

61. If it was accepted that the relevant rules of the organization could be regarded as also covering the treaty rules referred to in article 4 *bis*, and if that article was to be deleted, the expression "relevant rules of the organization" should be replaced by the words "relevant rules followed by the organization" or "relevant rules binding on the organization in question"; for if the expression "relevant rules of the organization" was kept, it might be asked whether they were not the organization's own rules, irrespective of the scope and meaning given to them by the international agreements.

62. The difficulty of article 4 *bis* lay in the problem of international agreements between States and he wondered whether there really were any such agreements which concerned the question under discussion. It was not impossible that certain States might subsequently conclude special agreements on that question. Some articles of the draft, for instance article 48,¹² might permit the conclusion of agreements between States relating to the question under discussion, and if article 4 *bis* were deleted, such agreements would not be covered.

63. He was inclined to think the words "international agreements in force" referred to agreements already in force; it was necessary to avoid all ambiguity on the question whether article 4 *bis* also related to future agreements.

64. Mr. AGO said he thought that article 4 *bis* was necessary. In his opinion, "relevant rules of the organization" meant the rules in force in the international organization, including the usages and practices followed within the organization itself. The conventions on the privileges and immunities of the United Nations and of the specialized agencies were inter-State conventions, and only on a very broad interpretation could they be regarded as relevant rules of the organization. It was difficult to accept that headquarters agreements or, for example, the agreement between an international organization and the Swiss Confederation, which was not a member of that organization, were relevant rules of the organization.

65. The article should not be restricted to agreements in force, but should extend to future agreements. He was therefore in favour of deleting the words "in force". In addition, the words "shall not affect" should be re-

placed by the words "are without prejudice to", so as to bring the wording into line with that of article 4.

66. The fact that article 4 used the words "the present articles", whereas article 4 *bis* spoke of "the provisions of the present articles" was perhaps justified if it was remembered that the relevant rules of international organizations included only a very few rules relating to the subject of the draft. It was therefore logical to say that those rules applied so long as they did not derogate from the present articles. On the other hand, another international agreement might relate to a large part of the draft under consideration. It would therefore be preferable to say that, in that case, particular agreements took precedence over "the present articles", which would later become "the present Convention".

67. To sum up, articles 4 and 4 *bis* should not be combined; the expression "The provisions of the present articles" in article 4 *bis* should be retained; and the words "in force as" should be replaced by the word "concluded".

68. Mr. AMADO said it must be remembered that the draft articles would become a convention, and that one international agreement could only be modified by another.

69. Mr. CASTAÑEDA said he thought that rules deriving from treaties—even inter-State treaties—could be regarded as relevant rules of the organization. The Convention on the Privileges and Immunities of the United Nations¹³ was an inter-State convention relating to the rules of the organization which, before being signed, had been approved by the General Assembly and embodied in what was known as United Nations law; it had therefore become a set of relevant rules of the organization. Headquarters agreements were conventions signed by the United Nations and approved by the General Assembly which could also be regarded as relevant rules of the organization. It was only the question of international agreements concluded between States that might raise difficulties.

70. Mr. EL-ERIAN (Special Rapporteur) said that article 4 *bis* was intended to refer primarily to headquarters agreements, and a headquarters agreement was an agreement between a State and an organization. The article was also intended to cover such agreements as the Convention on the Privileges and Immunities of the United Nations, which was a treaty between States, but to which the United Nations itself was considered to be a party. It was therefore useful to state the nature of the international agreements in question explicitly, as in the concluding words of article 4 *bis*.

71. The purpose of the words "in force" was to distinguish between agreements which were already in existence and future agreements. As far as the latter were concerned, it was clear that a special agreement would prevail over the draft articles.

72. Mr. USHAKOV said he shared the Special Rapporteur's opinion concerning the words "in force".

73. He would be inclined to favour the deletion of article 4 *bis*, so that the future convention might be a

¹² A/CN.4/203/Add.5.

¹³ See United Nations, *Treaty Series*, vol. 1, p. 16.

general and stable one, but there were some international agreements which host States might not, for the moment, be prepared to modify on the strength of the rules and provisions which the Commission was in the process of drafting. To facilitate general acceptance of the draft, therefore, article 4 *bis* could be retained.

74. The article should, however, relate to international agreements in force, not to agreements concluded in the future; for the future convention would have to be observed by all States which acceded to it.

75. Mr. AGO said he did not see why States and international organizations could not, in the future, conclude headquarters agreements regulating differently some part of the matters which the Commission was codifying.

76. Mr. USHAKOV said that the possibility of States regulating those matters was always implicit, since States could always conclude agreements if they wished. Article 4 *bis* need only state that the present articles did not affect agreements in force.

77. Mr. EUSTATHIADES said that the Commission should take a decision on that point. If article 4 *bis* related only to international agreements in force, how could States be prevented from subsequently making other rules than those set out in the future convention? The question was whether the words "in force" covered agreements concluded in the future or not. Even if future agreements were not mentioned, States would always be free to derogate from the convention, but they should not be encouraged to do so. Hence the words "in force" should be retained.

Review of the Commission's programme and methods of work

[Item 4 of the agenda]

78. The CHAIRMAN said that, at an earlier meeting,¹⁴ the Commission had decided to mention in its report that a preliminary discussion had taken place on the question raised by Mr. Ago concerning the ratification of codification conventions and to place that question on its agenda as a new item, the precise wording of which would be decided later in consultation with Mr. Ago.

79. He understood that Mr. Ago now proposed that the item be entitled, in English, "Ways to speed up final acceptance by States of codification conventions", and in French "*Moyens pour accélérer l'acceptation définitive par les Etats des conventions de codification de droit international*".

80. Mr. ROSENNE said that he had no difficulty in accepting as an item on the Commission's agenda the general question of the ratification of codification conventions, but it might prejudice the matter rather if the Commission used the expression "speed up" or "accelerate", or anything like that.

81. Mr. USHAKOV said that the Commission should confine itself to a preliminary discussion of the question, since the agreement of the General Assembly would be required before it could be placed on the agenda.

82. Mr. EUSTATHIADES said that some more neutral wording should be found for the title, such as "Discussion of questions relating to the acceptance of codification conventions".

83. Mr. BARTOŠ said that Mr. Ago's proposal was intended to draw the General Assembly's attention to the difficulties raised by the legal machinery for drawing up treaties in the United Nations. Admittedly that topic had not been expressly mentioned in the Commission's Statute as a subject for codification or the progressive development of international law. But there was nothing to prevent the International Law Commission from holding a preliminary discussion on the matter and submitting its opinion to the General Assembly. The General Assembly was quite free to accept or reject any suggestions made to it by the Commission; it might, perhaps, authorize the Commission to place the question on its agenda.

84. In his opinion, the conclusions reached during the discussion could usefully be included in the Commission's report.

85. Mr. AGO said he could agree to replace the words "speed up" by the word "promote". In his view, it was the Commission's duty to draw attention to the fact that a number of codifying conventions had not been ratified. It was entitled to discuss the question without previous instructions from the General Assembly.

86. Mr. ROSENNE said he quite agreed that a discussion on the question of the ratification of conventions was within the Commission's competence, and he welcomed Mr. Ago's proposal. His own remark had been intended merely to suggest a more neutral title on the lines indicated by Mr. Eustathiades; but perhaps the Commission might wish to deal with the matter under item 8, "Other business".

87. Mr. USHAKOV said that even the General Assembly could not settle the question. It could discuss it and pass a resolution requesting Member States to note that a convention had not been ratified, but it could not take a decision, because that would constitute interference in the domestic affairs of States. The question should be discussed under item 4, "Review of the Commission's programme and methods of work"; it could not be placed on the agenda as a topic for study by the Commission without the prior agreement of the General Assembly.

88. Mr. ALBÓNICO said that Mr. Ago's proposal related to a matter of the utmost urgency. All the Commission's efforts would be wasted unless a study was made of ways to promote the speedy entry into force of codification conventions. The General Assembly and Member States would ultimately decide what action to take in the matter, but meanwhile the Commission should study the question and make a recommendation.

89. Mr. AGO said he proposed that the document he had drafted be given the title "Questions concerning the ratification and acceptance of conventions codifying international law".

90. The CHAIRMAN said that, if there were no objection, he would assume that the Commission accepted provisionally the title proposed by Mr. Ago for the

¹⁴ See 959th meeting, para. 88.

document to be submitted by him. At a later meeting the Commission would consider whether the whole question should be dealt with as a separate item of the agenda in accordance with its previous decision, or whether that decision should be modified, perhaps by dealing with the question under "Other business".

It was so agreed.

The meeting rose at 1.30 p.m.

975th MEETING

Monday, 15 July 1968, at 3 p.m.

Chairman: Mr. José María RUDA

Later: Mr Erik CASTRÉN

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castañeda, Mr. El-Erian, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Ramangasoavina, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, 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)

[item 2 of the agenda]

(resumed from the previous meeting)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE *(continued)*

ARTICLE 4 *bis* (Relationship between the present articles and other international agreements) *(continued)*

1. The CHAIRMAN invited the Commission to continue consideration of article 4 *bis*.¹
2. Mr. AMADO said he approved of the present wording.
3. Mr. CASTRÉN said it had emerged from the discussion that all the members of the Commission, except one, agreed that article 4 *bis* was useful and necessary. Mr. Rosenne had proposed that it should be referred back to the Drafting Committee; personally, however, he thought that the Commission should settle the matter forthwith, as the Drafting Committee still had many articles to examine.
4. He was opposed to Mr. Eustathiades' suggestion that the wording of articles 4 and 4 *bis* should be brought into line by using the words "the present articles" in article 4 *bis* instead of "the provisions of the present articles". On the other hand, he thought the Commission should adopt Mr. Ago's suggestion and replace the words

"shall not affect" by "are without prejudice to" in article 4 *bis*. It appeared that Mr. Amado had dropped his suggestion that the word "other" should be deleted, since he had just expressed his approval of the present wording of the article.

5. Mr. Ago and Mr. Eustathiades had advocated the deletion of the words "in force", while Mr. Ushakov had opposed it. In his own view, the text of the Vienna Convention on Consular Relations should be followed² and the words "in force" be retained. Some members had claimed that those words were ambiguous, as it was not clear whether they referred to agreements already in force or to agreements concluded in the future. But the commentary on article 71 of the Draft Articles on Consular Relations³ stated that "the multilateral convention will apply solely to questions which are not governed by pre-existing conventions or agreements concluded between the parties".

6. Before the Vienna Conference on Consular Relations, two Governments—the Netherlands and Austria—had proposed that the scope of article 71 be extended to cover agreements which might be concluded in the future. During the Conference, Canada had supported that proposal, but before it could be voted on six other countries had suggested that a second paragraph be added to article 71, modelled on section 39 of article X of the Convention on Privileges and Immunities of Specialized Agencies.⁴ The additional paragraph (article 73, paragraph 2, of the final text) provided that "Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof". The Netherlands, Canada and Austria had not pressed their proposal, because the new paragraph partly met their point.

7. He was against the deletion of the words "in force" because he believed that the agreements referred to in article 4 *bis* were those already in force on the date of entry into force of the convention, and not agreements which might be concluded in the future. Moreover, in preparing the text of article 71 of the draft on consular relations, the International Law Commission had interpreted that provision as relating to agreements already concluded, not to agreements which might be concluded in the future.

8. A possibility which the Commission might take into consideration was that of adding a provision modelled on article 73, paragraph 2, of the Vienna Convention on Consular Relations, though he did not think such an addition was necessary.

9. He was opposed to Mr. Rosenne's suggestion that the words "in force as between States or between States and international organizations" should be deleted, as it would make the terms of article 4 *bis* too general and imprecise.

10. Sir Humphrey WALDOOCK said it was important to be absolutely clear as to whether it was the Commis-

¹ For earlier discussion, see 972nd meeting, paras. 40-89, and 974th meeting, paras. 42-77.

² See *United Nations Conference on Consular Relations, Official Records*, vol. II, p. 187, article 73.

³ *Ibid.*, p. 41.

⁴ See United Nations, *Treaty Series*, vol. 33, p. 284.