

Document:-
A/CN.4/SR.993

Summary record of the 993rd meeting

Topic:
Representation of States in their relations with international organizations

Extract from the Yearbook of the International Law Commission:-
1969, vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

the more frequent case of conferences convened by international organizations.

53. In conclusion, he recommended that the Commission should provisionally decide to complete its work on diplomatic law by taking up the subject of delegations to organs of international organizations and to conferences convened by such organizations. By submitting draft articles on that subject, the Commission would be able to obtain the views of the Sixth Committee and to elicit comments from governments.

54. Mr. STAVROPOULUS (Legal Counsel) said he agreed with the Special Rapporteur that the question of conferences convened by the United Nations came within the Commission's mandate. The Convention on the Privileges and Immunities of the United Nations specified, in section 11, that "Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations" enjoyed privileges and immunities "while exercising their functions and during their journey to and from the place of meeting". The Convention thus placed on the same footing delegations to organs of the United Nations and delegations to conferences convened by the United Nations. The position was different with regard to conferences convened by States otherwise than under the auspices of an international organization, and the United Kingdom amendment to the draft convention on special missions related exclusively to such conferences.

55. The CHAIRMAN said the general discussion had shown that the members of the Commission were agreed that the topic of relations between States and international organizations covered the legal position of permanent missions to international organizations, the legal position of permanent observers accredited to international organizations and the legal position of delegations from member States to organs of international organizations. There was, however, a difference of opinion on whether, in dealing with that topic, the Commission should also consider the legal position of representatives of States to conferences convened by international organizations, or whether that subject should constitute a separate part of international law or perhaps be included in the law of conferences.

56. He suggested that the Commission should postpone its decision on that point until it had concluded its work on permanent missions and permanent observers.

It was so agreed.

The meeting rose at 12.45 p.m.

993rd MEETING

Thursday, 5 June 1969, at 11.5 a.m.

Chairman: Mr. Nikolai USHAKOV

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

Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasovina, Mr. Reuter, Mr. Ruda, Mr. Tabibi, Mr. Tammes, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/218 and Add.1)

[Item 1 of the agenda]

(continued)

GENERAL DEBATE *(continued)*

1. The CHAIRMAN said it seemed that Mr. El-Erian might be hindered in his work if, as had been decided at the end of the previous meeting, the Commission deferred its decision on whether or not the draft should deal with representatives of States to conferences convened by international organizations. He therefore proposed that the Commission should now decide, provisionally, that the draft would deal with the status of such representatives.

2. Mr. TABIBI said that conferences constituted a separate subject which required thorough study. That study should cover the subject of representatives to conferences, whether convened by an international organization or not. It might be advisable not to burden the Special Rapporteur with that additional task; the Commission should concentrate for the present on permanent missions and permanent observers.

3. Mr. CASTAÑEDA supported the Chairman's suggestion. There were, no doubt, certain theoretical differences between representatives to an organ of an international organization and representatives to a conference convened by an international organization, but for practical purposes—and it was practical considerations which should prevail in the current study—it was hardly possible to draw a distinction between those two categories of representatives from the point of view of diplomatic law, especially in respect of the privileges and immunities which should be accorded them.

4. Several existing conventions contained provisions applying to both representatives to organs and representatives to conferences. For example, in the Convention on the Privileges and Immunities of the United Nations, article IV, section 11, specified the privileges and immunities to be enjoyed by "Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations".¹

5. Examples from the past and modern instances both showed that there was no fundamental difference between an organ of an international organization and a conference convened by such an organization. For instance, at the twenty-third session of the General Assembly, the Sixth Committee had turned itself into

¹ United Nations, *Treaty Series*, vol. 1, p. 20.

a conference of plenipotentiaries to consider the draft convention on special missions. The reverse also occurred: it was not unknown for an international conference to wish to become something more than the sum of its participants and to act like an organ or even an organization. At the first Hague Conference,² for example, when, in the absence of agreement on the text of a convention, some States had wished to adopt a declaration on compulsory arbitration, the question had arisen whether it would be a declaration by the States which had agreed to make it, or a declaration by the Conference.

6. A provisional decision along the lines recommended by the Chairman would make the discussion on the draft under consideration more fruitful and save the Commission from having to reopen the discussion later with the same arguments.

7. The CHAIRMAN emphasized that the provisional decision he had suggested concerned procedure rather than substance. It was merely a matter of authorizing the Special Rapporteur to prepare, and include in his draft, a chapter on representatives to conferences convened by international organizations. That provisional decision would not bind the Commission with regard to substance and would not prevent it from discussing the question separately, or asking the General Assembly for instructions.

8. Mr. BARTOŠ said he supported the Chairman's suggestion, without taking a position on the substance of the question. In his opinion, there was no difference between a conference convened by an international organization and a conference convened by States. Any conference was an *ad hoc* international organization.

9. In principle, he shared Mr. Castañeda's opinion. At the first Hague Conference, the participating States and the Conference itself had certainly formed a group constituting a provisional organization. At the twenty-third session of the General Assembly, the Sixth Committee had indeed turned itself into a conference, since a State which was not a Member of the United Nations and hence was not represented in the General Assembly, had been allowed to take part in the discussions on special missions.³

10. Mr. RAMANGASOAVINA said he would welcome the addition to the draft of a chapter on delegations to conferences convened by international organizations, after the chapters dealing with permanent representatives and permanent observers, whose functions were very similar and had the same purpose. Although delegations to such conferences were of a slightly different character, the draft could certainly not ignore them, for they were very common.

11. Mr. YASSEEN said he was still not convinced that it would be desirable to include conferences in the topic under consideration. The fact that a conference was convened by an international organization did not

alter its character. A conference was a sovereign body, whether convened by an international organization or by States, and the subject of international conferences in general was of sufficient importance to warrant separate study.

12. It was highly debatable whether the Sixth Committee of the General Assembly had turned itself into a conference the previous year. In his opinion, as a participant, it had not ceased to be the Sixth Committee of the General Assembly; it had merely been instructed to examine one particular matter among others.

13. He also found it difficult to separate the procedural aspect from the substance of the question. If, after asking the Special Rapporteur to prepare the chapter on representatives to conferences convened by international organizations, the Commission found the substance of it unacceptable, the Special Rapporteur would have wasted his efforts.

14. Mr. RUDA said that the issue under discussion had considerable practical importance for the future application of the draft articles. Without expressing any opinion on the substance, he thought that the Special Rapporteur should prepare draft articles on representatives to organs of international organizations and to conferences convened by international organizations. When the Commission had examined those articles, it could take a final decision. The work of the Special Rapporteur would be useful in any case, and would show that the Commission had studied the question thoroughly.

15. Mr. NAGENDRA SINGH said there were good reasons for including the subject of representatives to international conferences convened by international organizations. One reason was that if that subject was not dealt with at the present stage, when the Commission was working on the codification of diplomatic law, there was a danger that it would be completely neglected. It would not be advisable to postpone consideration of the matter until the whole subject of conferences was examined, because that might well involve a long delay. The Special Rapporteur, despite heavy commitments, had expressed his willingness to deal with it and the Commission should avail itself of that offer.

16. It might perhaps be true that conferences constituted a separate subject, quite distinct from relations between States and international organizations, but the diplomatic law aspects of that subject were very relevant to the topic now before the Commission; if those aspects were ignored at the present stage, a gap would remain in the codification of diplomatic law. It was important to note that concern had been expressed in the Sixth Committee on that point.⁴

17. The Legal Counsel had expressed the view that the position of representatives to conferences convened by international organizations was covered by the Commission's instructions on the topic of relations between States and international organizations.

² International Peace Conference, 1899.

³ See *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 85, document A/7375, para. 5.

⁴ See *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 84, document A/7370, para. 36.

18. Mr. USTOR said that, from the theoretical point of view, it would be perfectly feasible to undertake a separate study of the whole subject of international conferences, whether convened by an international organization or not.

19. In practice, the Commission should take it that the Special Rapporteur had prepared draft articles on the privileges and immunities of representatives to organs of international organizations and was willing to prepare a set of draft articles on representatives to conferences convened by international organizations. Those two types of representatives enjoyed practically the same status and it would be convenient for the Special Rapporteur to deal with them together.

20. Mr. IGNACIO-PINTO said that the conditions under which delegations acted on behalf of their States at international conferences, whether convened by States or by an international organization, unquestionably belonged to diplomatic law and fell within the topic which the Commission was now studying. He was in favour of including in the draft a chapter—or an addendum—on representation at international conferences, which would make it possible to take up that part of the topic again at a later stage and go into it more fully.

21. Mr. CASTRÉN confirmed his statement at the previous meeting, which coincided with the views of Mr. Yasseen. He was not, however, opposed to the Commission's asking the Special Rapporteur to prepare articles on representatives to conferences convened by international organizations. For although they were not identical, the rules applying to such representatives and those applying to representatives to organs of international organizations were nevertheless sufficiently similar for the work to be of some value.

22. Mr. KEARNEY said he had been impressed by Mr. Yasseen's comment concerning the difficulty of separating the substance of the matter from the procedural issue now under discussion. That difficulty was increased by the fact that there could well be a difference between the privileges and immunities enjoyed by representatives to conferences and those enjoyed by permanent representatives. Like all the members of the Commission, he had attended a large number of conferences and he was not at all sure what privileges he had enjoyed on those occasions; but they had certainly not been full diplomatic privileges and immunities. Nevertheless, for practical reasons, he was prepared to concur in a study of the subject being made by the Special Rapporteur.

23. Mr. REUTER said he supported the Chairman's proposal, which was perfectly clear and based on practical grounds; but he fully reserved his position on the questions of substance, some of which were important and could be finally decided only by governments.

24. Sir Humphrey WALDOCK said that at the previous meeting the Special Rapporteur had made a strong case for a preliminary examination of the privileges and immunities of representatives to conferences convened by international organizations. When a conference was

convened by the United Nations, arrangements were normally made by the Secretariat with the host country and the Convention on the Privileges and Immunities of the United Nations would apply. It was thus clear that there was a link between the case of representatives to such conferences and that of permanent representatives. For that reason, in addition to the practical one mentioned by Mr. Ustor, he urged that the Special Rapporteur should be invited to undertake the study in question. The work would still be useful, even if, on examination, the Commission ultimately decided that the question could not conveniently be codified as part of the topic of relations between States and international organizations.

25. Mr. TABIBI explained that he had had no intention of opposing the idea of a study by the Special Rapporteur, if the latter was prepared to undertake the task. The only point he had wished to make was that the Commission should, at an early stage, make a thorough study of the whole field of international conferences, which was a separate subject, more akin to special missions or *ad hoc* diplomacy than to the topic of relations between States and international organizations.

26. The CHAIRMAN proposed that the Commission should authorise the Special Rapporteur to draft a chapter on the legal status of delegations of States to international conferences convened by international organizations, on the understanding that the Commission would take no decision of substance on the matter until it had examined that chapter.

It was so decided.

ARTICLES 22 AND 23

27.

Article 22

General facilities

The organization and the host State shall accord to the permanent mission the facilities required for the performance of its functions, having regard to the nature and task of the permanent mission.

Article 23

Accommodation of the permanent mission and its members

1. The host State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its permanent mission or assist the latter in obtaining accommodation in some other way.

2. The host State and the organization shall also, where necessary, assist permanent missions in obtaining suitable accommodation for their members.

28. Mr. EL-ERIAN (Special Rapporteur), introducing articles 22 and 23, pointed out that those articles were preceded in his report by general comments intended to show the basis of the privileges and immunities accorded to permanent missions to international organizations. When the Commission had prepared its final text of the draft articles on diplomatic intercourse and immunities, the corresponding section had also been

preceded by general comments on the rationale of privileges and immunities, which referred to the "extritoriality" theory, the "representative character" theory and the "functional necessity" theory.⁵ Although the Commission had held at that time that the privileges and immunities of diplomatic agents were based mainly on their "representative character", it had recognized that they were also based on "functional necessity". He had therefore deemed it appropriate to refer, in paragraphs 5 and 6 of his general comments, to the particular characteristics of the privileges and immunities of permanent missions to international organizations.

29. Paragraph 7 explained that since the privileges and immunities of permanent missions to international organizations were analogous to, if not identical with, those of diplomatic bilateral missions, the articles thereon were modelled on the corresponding provisions of the Vienna Convention on Diplomatic Relations. As that point had been dealt with at the previous session in connexion with permanent missions in general, the paragraph seemed to call for no discussion. But although in his opinion it was unnecessary to provide an independent and detailed commentary on each article, he agreed with the Chairman that the final draft should include a commentary on each article which would serve to emphasize the differences between its text and that of the Vienna Convention.

30. Article 22 (General facilities) was based on article 25 of the Vienna Convention on Diplomatic Relations⁶ and article 22 of the draft articles on special missions. The reference to the "nature and task of the permanent mission" was not included in article 25 of the Vienna Convention, but a mission to the United Nations, for example, obviously had much broader functions than one sent to a more specialized international organ. On that point, questions had been raised by Mr. Tammes and Mr. Kearney; the former, in particular, had questioned the advisability of imposing an obligation on the organization, since in his opinion it was doubtful whether it could become a party to the convention on relations between States and international organizations. Nevertheless, while the United Nations and the specialized agencies had not formally acceded to the 1946 Convention on the Privileges and Immunities of the United Nations, the prevailing view was that the organizations concerned were "parties" to that Convention in the sense in which that term was used in section 30.⁷ He had not, therefore, considered it necessary to discuss the theoretical question whether the organization would accede to the convention or not; that question might be dealt with in the final clauses, or possibly in a resolution to be adopted by the General Assembly. But since section 30 of the 1946 Convention laid down that, if a difference arose between the United Nations and a Member regarding the rights of representatives, a request must be made for an advisory opinion, it should be made clear that there were

precedents for assigning an obligation direct to the organization.

31. With regard to article 23, the Legal Counsel had reiterated the doubts he had expressed at the last session concerning paragraph 2, in which the organization, as well as the host State, was called upon to assist permanent missions in obtaining suitable accommodation for their members. He agreed that that article should include a paragraph making it clear what the organization's obligations would be.

32. The Legal Counsel had also pointed out a discrepancy between article 22, which referred to "the organization and the host State", and article 23, paragraph 2, which referred to "the host State and the organization". He (the Special Rapporteur) had reversed the order in article 23, paragraph 2, because it was normally the host State which played the principal part in obtaining accommodation for missions, while the organization merely provided the necessary information, as was done, for example, by the Housing Service at United Nations Headquarters. Article 22, on the other hand, set out the general principles governing the facilities to be accorded to permanent missions, which in his opinion were primarily the responsibility of the organization. He agreed, however, that it would be an improvement if both articles referred to "the host State and the organization".

33. Mr. CASTAÑEDA said he thought the Special Rapporteur had been fully justified in supplementing the article of the Vienna Convention on Diplomatic Relations on which article 22 was modelled, by adding a phrase which made the extent of the obligations of the organization and the host State dependent on the nature and task of the permanent mission. There was no doubt that the organization had obligations to permanent missions, but since its obligations and those of the host State were not the same, it might perhaps be appropriate to use different terms to state their existence. The English words "shall accord", used in article 22, were appropriate in the case of the host State, but not in that of the organization, which might not be legally in a position to provide certain facilities. He therefore proposed that instead of one sentence there should be two, one referring to the obligations of the host State, using the words "shall accord", and the other to the obligations of the organization, couched in different terms to be chosen by the Drafting Committee.

34. He had no objection to the present wording of article 23, but thought it might perhaps be desirable to mention the locality in which the premises of the permanent mission must be situated if they were to enjoy the tax exemption provided for in article 25.

35. Mr. RUDA, after congratulating the Special Rapporteur on section II of his report, said he wished to make three points. First, section II had its theoretical basis in Article 105 of the United Nations Charter. Second, it was clear that the permanent missions in question were not accredited to the host State, but to the international organization, which was a separate entity having its own legal personality. Third, the Special Rapporteur had been correct in saying that the privileges

⁵ See *Yearbook of the International Law Commission, 1958*, vol. II, pp. 94 and 95.

⁶ United Nations, *Treaty Series*, vol. 500, p. 108.

⁷ *Op. cit.*, vol. 1, p. 30.

and immunities of permanent missions to international organizations were analogous to, if not identical with, those of diplomatic bilateral missions. The responsibility for providing general facilities therefore properly devolved on the international organization as well as on the sending State.

36. With regard to article 22, he agreed that the details of the facilities to be accorded by the organization to the permanent mission should be left to the final clauses of the convention. He had some doubts about the wording of the article, however. The Special Rapporteur had stated that it was based both on article 25 of the Vienna Convention on Diplomatic Relations and on article 22 of the draft on special missions; but a comparison of the three texts showed that it was based on article 22 of the draft on special missions and not on article 25 of the Vienna Convention. The latter article, which was much more concise and categorical, laid down that "The receiving State shall accord full facilities for the performance of the functions of the mission" and said no more, whereas article 22 of the draft on special missions took particular account of the temporary character of the mission by including the words "having regard to the nature and task of the special mission". Since missions to international organizations had the characteristic of permanence in common with bilateral diplomatic relations, he did not understand why the Special Rapporteur had followed the draft on special missions rather than the Convention on Diplomatic Relations.

37. The Special Rapporteur's article 23, on the other hand, followed the text of article 21 of the Vienna Convention as closely as possible, and he was in full agreement with it.

38. Mr. CASTRÉN said he approved of the ideas underlying the introductory paragraphs to section II of the draft articles. He also approved of draft articles 22 and 23 as a whole, but thought it would be well to make their present wording less categorical. The Special Rapporteur had already agreed to reverse the order of the words "host State" and "organization" in article 22, as proposed by the Legal Counsel at the previous meeting. Perhaps he could also accept some wording for the article to the effect that the organization assumed its obligations "subject to its relevant rules", or any other formula which the Drafting Committee saw fit to adopt.

39. He agreed with Mr. Ruda that article 22 should be more closely modelled on article 25 of the Vienna Convention on Diplomatic Relations and not on article 22 of the draft on special missions. There was full justification for adding a phrase making the extent of the obligations of the organization and the host State dependent on the nature and task of the permanent mission, but in the French text the words "*sont tenus d'accorder*" at the beginning of the sentence should be replaced by the word "*accordent*" as in article 25 of the Vienna Convention. A similar amendment should be made to article 23, paragraph 2, by replacing the words "*doivent . . . aider*" by "*aideront*".

40. Mr. KEARNEY said he could agree to the general

thesis and philosophy expounded by the Special Rapporteur in his introduction to articles 22 and 23.

41. At the previous meeting he had asked the Legal Counsel whether, in his opinion, it was necessary to include references to the organization, and the latter had expressed the view that such references were desirable. He (Mr. Kearney) thought it would be possible to draft the articles in such a way as to permit references to the obligations of the organization without raising the question whether it should or should not become a party to the convention. For example, a disclaimer might be added as a second paragraph to article 22, which might read: "Paragraph 1 shall not affect the obligation of the organization to assist a permanent mission in obtaining the facilities required for the performance of its functions". However, the same problem would arise in connexion with article 49 concerning consultations between the sending State, the host State and the organization. In that case the disclaimer method would not suffice, because it was essential to make provision for the right of the organization to participate in the consultations; the organization would be the party which, under the pertinent headquarters agreement, was in direct treaty relationship with the host State. In his view, the Commission should approach the problem on the assumption that the organization would necessarily be a party to the convention.

42. Article 22 was satisfactory, subject to a few minor drafting changes; for example, the first line might be revised to read: "The host State and, within the limits of its competence, the organization . . ." The final phrase, "having regard to the nature and task of the permanent mission", brought out the fact that a permanent mission was a more specialized operation than a full-scale diplomatic mission, which was not restricted to an international organization. He did not think that language raised any particular problems.

43. As to article 23, while aware that the language of paragraph 1 was to be found in the two Vienna Conventions, on diplomatic and consular relations, he wondered whether it would not be desirable to delete the words "by the sending State", since that would tend to facilitate the acquisition of property by the permanent mission.

44. Mr. RAMANGASOAVINA said he approved of the ideas expressed in draft articles 22 and 23, but could not accept wording which placed the obligations of the organization and those of the host State on an equal footing, since there was an essential difference between them. The host State had, in fact, the same obligations to permanent missions as it had to the organization, and it was bound to provide both of them with the necessary means for fulfilling their functions; but the obligations of the organization to permanent missions related to the results to be achieved by those missions. That difference in character should be made clear by dividing the paragraph into two separate sentences, one dealing with the obligations of the host State and the other with those of the organization.

The meeting rose at 12.55 p.m.