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OBSERVATIONS OF MEMBER STATES ON THE PROVISIONAL
DRAFT OF TWENTY-ONE ARTICLES ON REPRESENTATIVES
OF STATES TO INTERNATIONAL ORGANIZATIONS, ADOPTED
BY THE INTERNATIONAL LAW COMMISSION AT ITS
TWENTIETH SESSION

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The United States has reviewed the draft articles on representatives of States to international organizations contained in the report of the International Law Commission on the work of its twentieth session.^{1/} The United States considers that these twenty-one draft articles have been carefully and thoughtfully worked out by the International Law Commission and is, in general, in accord with the Commission's proposals.

There are a number of articles as to which explicit comment is considered desirable.

Article 1 (b), which defines an "international organization of universal character" as "an organization whose membership and responsibilities are on a world-wide scale", does not adequately dispose of all the problems raised by an attempt to distinguish between universal international organizations and all others. The phrase "on a world-wide scale" leaves open such questions as whether membership has to be substantially universal or merely representative of all the regions of the world. The same problem arises in connexion with the concept of responsibilities. While the existing international organizations to which permanent missions are accredited may not give rise to substantial difficulties regarding the application of article 1 (b), and the strictly regional organizations, such as the Organization of American States, would clearly be excluded, it is not difficult to find organizations which occupy a penumbral area. The parties to the Commodity Agreements, for example, may not meet a requirement of practically universal membership but, none the less, most of them have a sufficiently varied membership to meet the requirement of being "world-wide" if that phrase is construed liberally. The same conclusion could be reached regarding the responsibilities of the organizations established under those Agreements.

Another example is the Asian Development Bank. Although ostensibly a regional organization, the membership is very widely distributed and the responsibilities, if considered on a reciprocal basis, are the same.

^{1/} Official Records of the General Assembly, Twenty-third Session, Supplement No. 9 (A/7209/Rev.1).

It may be queried whether, in view of the ability of any international organization to limit the application of the articles through adoption of a "rule", the attempt to distinguish between organizations of universal and non-universal character is either necessary or desirable.

Article 2. In light of the comments regarding article 1 (b), it is suggested the Commission reconsider whether paragraph 1 of article 2 should not be revised.

Articles 3, 4 and 5. These articles are reasonable and necessary provisions. They recognize that the diversity of international organizations, the varying character of existing agreements with host States and the unforeseeable variances in headquarters agreements that may be necessary to accommodate future relationships of international organizations with host States require the maintenance of flexibility and the preservation of wide degrees of tolerance.

Article 7. It is doubted that clause (b) relating to liaison is necessary. It would appear to be subsumed under clauses (a) and (c).

Article 9. It is clearly the intention of the International Law Commission not to modify in any way the requirements of the Vienna Conventions on Diplomatic and Consular Relations as a result of the coming into force of the present articles. Accordingly, the proposal contained in paragraph (7) of the commentary to add a provision along the lines of paragraph 2 of article 17 of the Convention on Consular Relations appears essential.

Article 14. Article 14 will have to be reviewed in light of the text of article 7 of the Convention on the Law of Treaties as adopted in Vienna.

Article 16. Article 16 is a well-balanced solution of a difficult problem that takes into account all the competing requirements relating to the size of a permanent mission.

Article 19. It is doubtful that an alternative proposal for determining precedence is desirable. The purpose of the article is to lay down a residual rule if an organization does not have a rule relating to precedence. Consequently, affording a choice between two solutions in accordance with established practice does not offer a definite solution. The United States considers that it would be desirable to adopt the rule of alphabetical order since that procedure is generally followed in international organizations.

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Article 20. Paragraph 1 is a helpful clarification of the established rule but contains a slight ambiguity as a result of the word "localities". May the sending State establish an office of the permanent mission in another State without the consent of the State where the seat of the organization is established if there is an office of the organization in that other State? There would not appear to be any particular reason for such a restriction but under paragraph 1 as worded it could be argued that such permission was necessary.
