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Summary record of the 1452nd meeting

Topic:
<multiple topics>

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60. Mr. USHAKOV said that the question of respect for the performance of treaties by international organizations was crucial and should be treated with the utmost caution. He therefore suggested that article 27 be placed between brackets in order to indicate to Governments that it was only a first draft and to invite their comments on the article.

61. Mr. ŠAHOVIĆ said that the explanations given by the Special Rapporteur would assist the Commission in arriving at a satisfactory solution to the problem posed by article 27, which, as Mr. Ushakov had said, was crucial. The Commission should reflect on the difficulties to which the article gave rise and proceed to consider the subsequent articles, as suggested by the Drafting Committee.

62. Mr. TSURUOKA said that he supported the procedural suggestion made by the Special Rapporteur.

63. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to the suggestion by the Special Rapporteur, which had been supported by Mr. Ushakov, Mr. Šahović and Mr. Tsuruoka, that in view of the crucial importance of article 27, the Commission should not take a decision on it until it had approved articles 28 to 34.

It was so agreed.

The meeting rose at 12.45 p.m.

1452nd MEETING

Monday, 4 July 1977, at 3.10 p.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Dadzie, Mr. El-Erian, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Verosta.

Long-term programme of work
[Item 8 of the agenda]

and

Organization of future work
[Item 9 of the agenda]

PRELIMINARY REPORT ON THE SECOND PART OF THE TOPIC OF RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS (A/CN.4/304)

1. The CHAIRMAN invited the Special Rapporteur to introduce his preliminary report on the second part of the topic of relations between States and international organizations (A/CN.4/304).

2. Mr. EL-ERIAN (Special Rapporteur) said that, at its twenty-eight session, the Commission had stated that, in considering the question of diplomatic law in its application to relations between States and international organizations, it had decided first to concentrate on the part relating to the status, privileges and immunities of representatives of States to international organizations and to defer to a later date the consideration of the second part of the topic. It had then requested him to prepare a preliminary report to enable it to take the necessary decisions and to define its course of action on the second part of the topic of relations between States and international organizations, namely, the status, privileges and immunities of international organizations, their officials, experts and other persons engaged in their activities not being representatives of States.[1]

3. In preparing the preliminary report, he had endeavoured to reply to five main questions. First, had the legal norms governing that branch of diplomatic law reached a state of evolution that made it ripe for codification? Second, was it necessary and useful to undertake such a task? Third, were the apprehensions which had been expressed in the past on the advisability of such an undertaking still justified? Fourth, was the codification of those norms likely to prejudice in any way existing agreements governing the same subject-matter or to have any adverse effects on the future evolution of those norms? Fifth, what lessons were to be drawn from the work of the Commission on the first part of the topic and from its work on the question of treaties between States and international organizations or between two or more international organizations, in determining the method of work and approach to be followed in the codification of the status, privileges and immunities of international organizations?

4. In attempting to reply to those questions, he had set the following objectives for the preliminary study: first, to trace the evolution of the diplomatic law of international organizations, whether treaty law or customary law, as supplemented by the decisions of courts and by doctrine; second, to analyse the Commission's work on the related subjects which had some bearing on the subject-matter of the preliminary study; and, third, to discuss a number of general questions of a preliminary character with a view to defining and identifying the course to be followed in the work.

5. The report before the Commission consisted of five chapters. Chapter I described the background of the study. Chapter II traced the evolution of the international law relating to the legal status and immunities of international organizations. In that connexion, he noted that, long before the appearance of such general international organizations as the League of Nations and the United Nations, constitutional instruments establishing international river commissions and administrative unions in the second half of the nineteenth century had contained treaty stipulations from which the origin of the privileges and immunities of international bodies could be traced. Examples were to be found in treaties establishing the

[1] *Yearbook ... 1976*, vol. II (Part Two), p. 164, document A/31/10, para. 173.

European Commission for the Control of the Danube, the International Commission for the Navigation of the Congo, as well as the Permanent Court of Arbitration, the proposed International Prize Court and the Judicial Arbitration Court provided for by the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes. However, as Dr. Wilfred Jenks had stated in his work entitled *International Immunities:*

> Historically, the present content of international immunities derives from the experience of the League of Nations as developed by the International Labour Organisation when submitted to the test of wartime conditions, reformulated in certain respects in the ILO-Canadian wartime arrangements, and subsequently reviewed by the General Assembly of the United Nations at its First Session in 1946.[2]

6. With regard to constitutional provisions, article 7, paragraph 4, of the Covenant of the League of Nations had provided that:

> Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

Article 7, paragraph 5, had provided that:

> The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

Similarly, article 19 of the Statute of the Permanent Court of International Justice had provided that:

> The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Moreover, detailed arrangements concerning the privileges and immunities of the League of Nations, to which he had referred in paragraph 14 of his report, had been worked out in agreements between the Secretary-General of the League and the Swiss Government.

7. When a nucleus of the staff of the ILO had been transferred from Geneva to Montreal in 1940, an arrangement defining the status of the Office and its staff in Canada had had to be worked out. That arrangement had been embodied in a Canadian Order in Council of 14 August 1941, the provisions of which he had described in paragraph 19 of his report.

8. Constitutional provisions relating to the privileges and immunities of the United Nations and the specialized agencies had been embodied in Article 105 of the Charter of the United Nations and in Article 19 of the Statute of the International Court of Justice. The constitutional instruments of the specialized agencies usually contained stipulations which provided in general terms that the organization in question would enjoy such privileges and immunities as were necessary for the fulfilment of its purposes. Moreover, the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946,[3] and the Convention on the Privileges and Immunities of the Specialized Agencies, adopted on 21 November 1947,[4] contained provisions relating to the immunity of the United Nations and the specialized agencies, and of their property and assets, from every form of legal process. Those conventions had been supplemented by headquarters agreements between the organizations concerned and the States in whose territory they had their headquarters. The *Repertory of Practice of United Nations Organs* contained a synoptic survey of special agreements on privileges and immunities of the United Nations, which were divided into three main categories, namely, agreements with non-member States, agreements with Member States and agreements concluded with Member or non-member States by United Nations principal or subsidiary organs within the framework of their competence.

9. The constitutional instruments of regional organizations usually contained provisions relating to the privileges and immunities of those organizations. Examples were to be found in article 40 of the Statute of the Council of Europe; article 76 of the Treaty instituting the European Coal and Steel Community; article 218 of the Treaty establishing the European Economic Community; article XIII of the Charter of the Council for Mutual Economic Assistance; article 35 of the Convention establishing the European Free Trade Association; and article XXXI of the Charter of the Organization of African Unity.[5]

10. Chapter III of his preliminary report described recent developments in the field of relations between States and international organizations. Since 1971, when the Commission had adopted the draft articles on the first part of the topic of relations between States and international organizations,[6] two important developments had occurred which had a bearing on the subject-matter of the study under consideration. First, the Commission had redefined a number of points concerning relations between States and international organizations in the course of its work on the question of treaties concluded between States and international organizations or between two or more international organizations; second, the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character [7] had been adopted in 1975.

11. In defining the scope of the draft articles on the question of treaties concluded between States and international organizations or between international organizations, the Commission had adopted a different approach from the one it had adopted in its draft articles on the representation of States in their relations with international organizations. The reasons for that difference had been explained in the commentary to article 2 of the draft articles on treaties concluded between States and international organizations or between international organizations.[8] Article 2, paragraph 1 (*i*), of those draft articles

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[2] C. W. Jenks, *International Immunities* (London, Stevens, 1961), p. 12.

[3] United Nations, *Treaty Series*, vol. I, p. 15.

[4] *Ibid.*, vol. 33, p. 261.

[5] See A/CN.4/304, para. 31.

[6] *Yearbook ... 1971*, vol. II (Part One), pp. 284 *et seq.*, document A/8410/Rev.1, chap. II, sect. D.

[7] For the text of the Convention, see the *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations*, vol. II, *Documents of the Conference* (United Nations publication, Sales No. E.75.V.12), p. 207. The Convention is hereafter referred to as the 1975 Vienna Convention.

[8] *Yearbook ... 1974*, vol. II (Part One), p. 296, document A/9610/Rev.1, chap. IV, sect. B, art. 2, paras. 10-13 of the commentary.

merely identified an international organization as an intergovernmental organization rather than giving a detailed definition of the meaning of the term "international organization". The Commission had adopted the same type of simplified and pragmatic approach in dealing with the capacity of international organizations to conclude treaties. Thus, article 6 of the same draft provided that:

> The capacity of an international organization to conclude treaties is governed by the relevant rules of that organization.

An explanation of the reasons why the Commission had decided in favour of such wording had been provided in paragraphs 2 and 3 of the commentary to article 6.[9]

12. In dealing with the question of the scope of the 1975 Vienna Convention, the United Nations Conference on the Representation of States in their Relations with International Organizations had introduced some refinements in the criteria proposed by the Commission for identifying an international organization of a universal character. The definition proposed by the Commission had provided that:

> "international organization of universal character" means an organization whose membership and responsibilities are on a world-wide scale,[10]

whereas the corresponding text of the 1975 Vienna Convention stated that:

> "international organization of a universal character" means the United Nations, its specialized agencies, the International Atomic Energy Agency and any similar organization whose membership and responsibilities are on a world-wide scale.

Thus, the Conference had limited the scope of the Convention to organizations of a universal character, but it had intimated that the Convention applied mainly to the United Nations and related organizations.

13. The 1975 Vienna Convention did not contain provisions relating to the representatives of entities other than States. The Conference had, however, adopted a resolution relating to the observer status of national liberation movements recognized by OAU or the League of Arab States, the text of which was reproduced in paragraph 56 of his preliminary report. Paragraph 2 of that resolution recommended that the delegations of such national liberation movements should be accorded "the facilities, privileges and immunities necessary for the performance of their tasks". Paragraph 1 requested the General Assembly to examine the question of the participation of those movements as observers in the work of international organizations at its thirtieth regular session, but the Assembly had not yet taken a decision on how such a study should be carried out. He therefore suggested that the Commission should wait and see what the General Assembly intended to do before considering the question of the observer status of national liberation movements.

14. Chapter IV of his report dealt with a number of questions general of a preliminary character. With regard to the place of custom in the law of international immunities, some writers had stated that, in contrast to the immunities of inter-State diplomatic agents, international immunities were almost exclusively created by treaty law, and that international custom had not yet made any appreciable contribution to that branch of law. Other writers, including Preuss, had however acknowledged that "A customary law appeared to be in the process of formation, by virtue of which certain organizations endowed with international personality may claim diplomatic standing for their agents as of right".[11] Another writer had summed up the position thus:

> "En voie de création est une règle coutumière qui assure aux organisations internationales et à leurs fonctionnaires supérieurs les mêmes privilèges et immunités diplomatiques qu'au personnel diplomatique. Les étapes de ce développement sont constituées par les arrangements conclus entre la Suisse et la Société des Nations en 1921 et en 1926, ainsi que par ceux qui sont intervenus entre la Suisse, d'une part, les Nations Unies et l'Organisation internationale du Travail d'autre part, en 1946."[12]
>
> [A customary rule giving international organizations and their senior officials the same diplomatic privileges and immunities as diplomatic staff is in process of formation. The stages of this process are constituted by the agreements concluded between Switzerland and the League of Nations in 1921 and 1926 and by the agreements concluded between Switzerland, on the one hand, and the United Nations and the International Labour Organisation, on the other, in 1946.] [Translation by the Secretariat.]

15. A parallel development of concepts was to be found, for example, in a diplomatic note by the United States Government dated 16 October 1933, in the British Diplomatic Privileges (Extension) Act, 1944, in a message dated 28 July 1955 from the Swiss Federal Council to the Federal Assembly, in a decision of 28 April 1954 of the Supreme Court of Mexico, relating to the immunities of the United Nations Economic Commission for Latin America, and in article III, section 3, of the Agreement between Egypt and the World Health Organization, to which he had referred in paragraphs 59 to 62 of his report.

16. Another general question dealt with in his preliminary report was the legal capacity of international organizations. In that connexion, it should be noted that Article 104 of the Charter of the United Nations required each Member to accord to the Organization within its territory "such legal capacity as may be necessary for the exercise of its functions". The constituent instruments and conventions on privileges and immunities of the specialized agencies and of a number of regional organizations contained provisions regarding the legal capacity of those organizations, which varied as to wording but were similar in meaning to Article 104 of the Charter of the United Nations and to the 1946 Convention on the Privileges and Immunities of the United Nations.

17. In addition to contractual capacity, the United Nations and the specialized agencies enjoyed certain privileges and immunities laid down in the general conventions, headquarters agreements and other supplementary instruments. Those privileges and immunities included immunity from legal process; inviolability of

[9] *Ibid.*, p. 299.

[10] *Yearbook ... 1971*, vol. II (Part One), p. 284, document A/8410/Rev.1, chap. II, sect. D, art. 1, para. 1 (2).

[11] L. Preuss, "Diplomatic privileges and immunities of agents invested with functions of an international interest", *American Journal of International Law* (Washington, D.C.), vol. 25, No. 4 (October 1931), p. 696.

[12] P. Guggenheim, *Traité de droit international public* (Geneva, Georg, 1953), vol. I, pp. 51-52.

their premises and the exercise of control by them over their premises; immunity of their property and assets from search and from any other form of interference; and privileges and immunities in respect of communications facilities. The privileges and immunities of officials of international organizations included immunity in respect of official acts; exemption from taxation of salaries and emoluments; immunity from national service obligations; immunity from immigration restrictions and alien registration; diplomatic privileges and immunities of executive and other senior officials; and repatriation facilities in times of international crisis. Moreover, experts on missions for, and persons having official business with, international organizations enjoyed privileges and immunities similar to those of officials of international organizations.

18. His report also dealt with the general question of the uniformity or adaptation of international immunities, the régime of which was at present based on a large number of instruments whose diversity caused practical difficulties to States as well as to international organizations. As Wilfred Jenks had pointed out in his work on *International Immunities*, "From the standpoint of an international organisation conducting operations all over the world there is a similar advantage in being entitled to uniform standards of treatment in different countries".[13] He (the Special Rapporteur) had had personal experience of the practical difficulties involved in the diversity of instruments relating to international immunities when, as legal adviser to the Egyptian Foreign Office, he had been asked to prepare a study on customs privileges for officials assigned to offices of the United Nations and of specialized agencies located in Egypt.

19. In matters of legal status and immunities of international organizations, he had come to the conclusion that there was a substantial body of legal norms. It consisted of an elaborate and varied network of treaty law which required concretization, as well as a wealth of practice which needed consolidation. Codification and development of that branch of diplomatic law would thus complete the *corpus juris* of diplomatic law achieved through the work of the Commission and embodied in the Vienna Convention on Diplomatic Relations of 18 April 1961,[14] the Vienna Convention on Consular Relations of 24 April 1963,[15] the Convention on Special Missions of 8 December 1969 [16] and the 1975 Vienna Convention.

20. He had also reached the conclusion that the Commission would be inclined to favour an empirical method and a pragmatic approach in its work on the question of the status, privileges and immunities of international organizations. The Commission had, however, made it clear that, in dealing with the practical aspects of the rules governing relations between States and international organizations, it wished to safeguard the position of internal law and the relevant rules of each organization and, in particular, the general conventions on privileges and immunities of the United Nations and of the specialized agencies and the headquarters agreements of those organizations. In that connexion, he noted that the implications of the seventh paragraph of the preamble to the 1975 Vienna Convention had been clearly defined in articles 3 and 4 of that Convention. Those articles were of great importance, first, because they were intended to reserve the position of existing international agreements regulating the same subject-matter and were thus without prejudice to different rules which might be laid down in such agreements; and second, because they took account of the fact that situations might arise in future in which States establishing a new international organization would find it necessary to adopt different rules which were more appropriate to that organization. The rules of the 1975 Vienna Convention were thus not intended to preclude any further development of the law in that area.

21. The final conclusion he had reached was that it would be for the Commission to decide whether the document resulting from the study of the second part of the topic of relations between States and international organizations should take the form of an additional protocol to the general conventions, of a code or restatement, or simply of a declaration.

22. He recommended that the United Nations and the specialized agencies should be requested to provide him with any additional information on the practice they had followed since the preparation of their replies to the questionnaire concerning the first part of the topic under consideration. Such information would be particularly helpful to him in his study of the category of experts on mission for, and persons having official business with, international organizations, and the category of resident representatives and observers who might represent an international organization or be sent by one international organization to another.

23. Mr. SETTE CÂMARA said that the preliminary report (A/CN.4/304) was the kind of work which could only have been produced by someone having the Special Rapporteur's deep knowledge and great experience of of the topic of relations between States and international organizations. The Special Rapporteur was thus particularly well qualified to study the question of the status, privileges and immunities of international organizations, their officials, experts and other persons engaged in their activities who were not representatives of States. The report which had just been introduced was much more than a preliminary report because it contained a substantial body of information, based on doctrine and practice, which showed that the subject-matter was ripe for the Commission's consideration and for immediate codification.

24. Although diplomatic activities were as old as society itself, the question of the status, privileges and immunities of international organizations, which came under the heading of multilateral diplomacy, was relatively new in the sense that it had become a matter of concern only in the past 50 or 60 years. Moreover, there had not yet been any attempt to codify the international law relating to the legal status and immunities of international organizations. In undertaking that task of codification, the Commission should not adopt the view that it was

[13] Jenks, *op. cit.*, p. 149.

[14] United Nations, *Treaty Series*, vol. 500, p. 95.

[15] *Ibid.*, vol. 596, p. 261.

[16] General Assembly resolution 2530 (XXIV), annex.

through the generosity of host Governments that officials of international organizations were entitled to certain privileges and immunities; it should take the view that officials of international organizations needed such privileges and immunities in order to carry out the tasks entrusted to them. Those privileges and immunities had, until now, been governed piecemeal, by agreements whose provisions varied considerably. It would be the Commission's task to organize those provisions in an additional protocol, a code or a declaration so that, although they might constitute residual rules, they would nevertheless be generally applicable to as many international organizations as possible. In attempting to formulate such rules, the Commission should pay particular attention to the provisions of Articles 104 and 105 of the Charter of the United Nations and the corresponding articles of the constituent instruments of the specialized agencies.

25. He had no doubt that the topic of the status, privileges and immunities of international organizations and their officials was ripe for codification. If it was codified, it would become the last in a series of codification instruments relating to diplomatic law, which included the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, the 1969 Convention on Special Missions and the 1975 Vienna Convention. The Commission should therefore request the Special Rapporteur to proceed with his study of the second part of the topic of relations between States and international organizations.

26. Mr. TABIBI congratulated the Special Rapporteur on his excellent and extremely useful report, which contained a wealth of historical and current information on the international law relating to the legal status and immunities of international organizations.

27. As the Special Rapporteur had pointed out, the Commission had decided to deal with the practical aspects of the second part of the topic of relations between States and international organizations because it had believed that its work would serve the interests of international peace and co-operation. The codification and harmonization of the rules relating to the status, privileges and immunities of international organizations were of vital importance, especially as international organizations now had offices throughout the world, which would greatly benefit from a set of rules applicable on a world-wide scale.

28. In its task of codifying the second part of the topic of relations between States and international organizations, the Commission would be able to benefit greatly from the experience it had gained in studying the first part of that topic and the question of treaties concluded between States and international organizations or between two or more international organizations. It would also be able to base its work on the experience gained over the years by the many Governments which were now hosts to international organizations. He believed that the rules to be formulated by the Commission, no matter what form they took, should protect both the interests of host Governments, for which security was of crucial importance, and the interests of international organizations, which should be able to continue their work of promoting international peace and co-operation.

29. He therefore agreed with Mr. Sette Câmara that the Commission should ask the Special Rapporteur to proceed with his study of the second part of the topic of relations between States and international organizations. He also agreed with the Special Rapporteur that the United Nations, specialized agencies and regional offices of international organizations should be requested to provide information on their practice. Since the work of gathering and classifying the information received and of identifying standard practices would be difficult, the United Nations Secretariat might be requested to assist the Special Rapporteur. In addition, it might be advisable to request host Governments, such as those of the United States, France, Italy, Switzerland and Austria, to provide information on the main questions of concern to them in connexion with the topic under consideration. The Policy and Programme Co-ordination Committee of the Economic and Social Council might be requested to suggest that host Governments should provide the Special Rapporteur with information.

30. The CHAIRMAN said that the questions the Special Rapporteur had endeavoured to answer in his preliminary report would certainly be very useful to the Commission as a basis for its discussions of the second part of the topic of relations between States and international organizations. He was not certain, however, whether the Special Rapporteur intended consideration of the second part of the topic to be confined to international organizations of a universal character. Clarification of that point would be useful to the international organizations, specialized agencies and host States which would be requested to provide information on their practice in regard to the status, privileges and immunities of international organizations and their officials.

31. Mr. ŠAHOVIĆ warmly congratulated the Special Rapporteur on his analytical study, which would enable members of the Commission to reflect on the course to be followed in taking up the second part of the topic of relations between States and international organizations. Personally, he agreed in principle with the Special Rapporteur's views.

32. As other members of the Commission had observed, the report under consideration was more than merely a preliminary report. Nevertheless, in his first report, the Special Rapporteur should also endeavour to propose solutions to the problems raised by the codification of legal rules relating to the status, privileges and immunities of international organizations. In his preliminary report, the Special Rapporteur had indicated the general evolution of law on the subject, but he should now proceed to a much more concrete analysis of the situation, taking account of new developments. His first task should be to make sure of the value of the existing conventional rules on which he intended to base his work. To that end, it was important to make a comprehensive study of practice. It was necessary to avoid drafting provisions which duplicated those already embodied in international conventions.

33. With regard to the point raised by the Chairman, he too was not sure to what organizations the rules to be drawn up by the Commission would apply. So far, the Special Rapporteur had relied largely on decisions

taken by the Commission when dealing with the first part of the topic and on the Commission's work on the question of treaties concluded between States and international organizations or between two or more international organizations.

34. While endorsing the broad outline of the preliminary report, he wished to emphasize the need to base future reports on a systematic analysis of existing practice and legal rules. Only thus would it be possible to prepare a draft that would arouse the interest of the international community. Of course, that was no easy task, and he was not unaware of the reasons for which the Commission had previously decided to defer consideration of the subject. In the opinion of the Special Rapporteur, however, most of those reasons no longer existed. He himself believed that there must still be factors which militated against such an undertaking or were, at least, calculated to make the task of the Special Rapporteur and of the Commission very difficult.

35. Mr. EL-ERIAN (Special Rapporteur) said he could assure Mr. Šahović that the future work on the topic would not consist simply of a compilation of existing rules but would also include an analysis of practice. That was why he wished to obtain further information on practice.

36. The Chairman had raised a most important question, which called for very careful consideration. During the Commission's work on the first part of the topic, one member had been opposed to a set of draft articles that dealt exclusively with international organizations of a universal character. Moreover, Mr. Reuter, the Special Rapporteur on the question of treaties concluded between States and international organizations or between two or more international organizations, had advanced good reasons why the draft articles on that subject should be more general in scope and should include all international organizations. Initially, he had been inclined to regard the present subject as an appendix to the first part of the topic and, consequently, to confine any draft articles to international organizations of a universal character. However, he would like to give much more consideration to the problem and would prefer to reply to the Chairman's question at a later stage, perhaps in the course of his summing-up.

37. It was customary in the United Nations to circulate the texts of draft conventions or questionnaires to Governments in the first instance, though the views of specialized agencies were sometimes requested on matters of concern to them. Nevertheless, information could always be sought from other sources, such as regional organizations. At the previous session, comments by EEC on the most-favoured-nation clause had been made available to the Commission, but had not been listed among its official documents. In his personal capacity, he could always contact the legal advisers of regional organizations and elicit information on their practice. In dealing with the first part of the present topic, he had obtained much information from the United Nations and the specialized agencies, some of it of a confidential nature.

38. The CHAIRMAN said that it was one thing for a questionnaire to be sent to, for example, the specialized agencies, but quite another for the Special Rapporteur to carry out his own research. Unless the Commission decided to limit the research of the Special Rapporteur—a decision that would be almost without precedent—there was nothing to prevent him from obtaining information from organizations outside the United Nations family.

39. Mr. CALLE Y CALLE warmly congratulated the Special Rapporteur on his truly excellent report on the rules governing relations between States and international organizations, in other words, relations between States and the bodies they set up to carry out functions which they could not perform themselves. The subject was unquestionably of great topical importance for, while it was true that, for certain matters, earlier historical precedents could be found, the true point of departure was the Charter signed at San Francisco in 1945. It had been followed, in 1946, by the Convention on the Privileges and Immunities of the United Nations and, in 1947, by the Convention on the Privileges and Immunities of the Specialized Agencies. As the Special Rapporteur had pointed out in his report (A/CN.4/304, para. 26), the 1946 Convention was now in force for 112 States. It could therefore be regarded as truly universal.

40. It might be claimed that it was premature to undertake codification of the rules relating to the status, privileges and immunities of international organizations, their officials, experts and other persons engaged in their activities who were not representatives of States. It could be asserted that the question was already regulated by treaties and, more particularly, by headquarters agreements. However, he believed that the sooner the subject was properly regulated, the greater the benefits would be to both States and international organizations. Thus, from a variety of different conventions, it was necessary to select general rules to fill any existing gaps.

41. As to the question raised by the Chairman, he was inclined to think that the Commission's work should cover all international organizations and not simply the United Nations organizations. The rules to be formulated would certainly be beneficial but it should also be remembered that the Commission's commentaries to sets of draft articles, the importance of which was not always fully understood by the General Assembly, had an enormous influence on foreign ministries, universities and law schools. Those commentaries refined legal thinking. Belief in a world governed by the rule of law called for propaganda in favour of law; in other words, international law had to be "sold" in the same way as a commercial product was sold.

42. Article 2 of the 1975 Vienna Convention specified that the Convention applied to the representation of States "in their relations with any international organization of a universal character" and included a number of safeguard clauses, one of which (paragraph 4) provided that:

> Nothing in the present Convention shall preclude the conclusion of agreements between States or between States and international organizations making the Convention applicable in whole or in part to international organizations or conferences other than those referred to in paragraph 1 of this article.

The work of the Special Rapporteur and of the Commission, if it was to take the form of an additional protocol, would complement the provisions of the 1975 Vienna

Convention and would therefore have to include a similar article. The Commission should take a broad view and should not let itself be bogged down by the problem of defining an international organization. It was now proceeding on the basis of the simplest possible definition, namely, that an international organization was an intergovernmental organization. Nor should the Commission go further into the problem of the legal capacity of international organizations, although both those matters were now becoming clearer as a result of decisions by the International Court of Justice and the very existence of international organizations.

43. The main task was to guide the development of the law pertaining to international organizations and to ensure that its development was orderly and harmonious. It was essential to prevent the emergence of strange or hybrid bodies claiming a special status. In short, the Commission should endeavour to channel, plan and organize what was a dynamic branch of present-day law.

44. Mr. DADZIE said that, in his masterly report and oral presentation, the Special Rapporteur had made the Commission fully aware of all the nuances of the present subject. He had been particularly interested to note the Special Rapporteur's comments on experts performing missions for international organizations. As someone who had been the representative of a State and, in recent years, the representative of an international organization to such important bodies as OAU, he fully endorsed the Special Rapporteur's comment that it was essential to study the question of the representation of one international organization in its relations with another.

45. The report clearly established that there was a sufficiently large corpus of rules for the Commission to undertake the work of codification.

46. As to the question raised by the Chairman, he considered that the task of the progressive development of international law demanded that the rules to be formulated by the Commission should apply to all international organizations and not exclusively to those of a universal character.

47. Lastly, he agreed with previous speakers that the Special Rapporteur should be authorized to proceed with the topic and thus enable the Commission to complete yet another aspect of its work on diplomatic or quasi-diplomatic law, which had earned it the greatest credit in the past.

48. Mr. VEROSTA said that, in his excellent report, the Special Rapporteur seemed, for good reason, to be somewhat less optimistic than Mr. Sette Câmara and Mr. Tabibi. At the present stage, the Commission could not be sure of the outcome of the work. It might take the form of a convention, an additional protocol to the 1975 Vienna Convention, or perhaps something of even lesser standing. Mr. Šahović had been right in saying that it was important to examine the actual norms mentioned in the report. Indeed, before proceeding further, the Commission should perhaps press for a decision by the Special Rapporteur on whether the draft articles would be confined to international organizations of a universal character or would also include regional organizations. A number of other regional organizations could be included in the list in paragraph 31 of the report, for example, the Organization of the Danube Commission or OPEC. The treaty between the OPEC States was short but the headquarters agreement between OPEC and Austria was quite elaborate.

49. The question arose whether the Commission should codify existing customary international law or formulate residuary rules, as in some of the articles of the 1963 Vienna Convention on Consular Relations. In his opinion, it would be wise, at least at the start, to confine the draft articles to international organizations of a universal character. Nevertheless, he was glad to hear that the Special Rapporteur would attempt to obtain information from the regional organizations, for without such material it would not be possible to enlarge the scope of the articles later, if that course was found advisable. In any event, it would be a mistake to undertake complete codification at the present time, for any rules laid down now or in the near future might well be counter-productive, especially in the case of regional organizations.

50. Mr. SUCHARITKUL said that he fully endorsed the tentative conclusions reached by the Special Rapporteur in his report, in which he had traced the historical development of the subject and analysed the opinions of writers, treaty practice and, to some extent, the internal legal practice of States. The topic was certainly one in studying which consideration must be given to the internal law which constituted State practice.

51. The legal basis for the status of international organizations and the privileges and immunities accorded to such organizations or their officials or to representatives of States attending international conferences was to be found in the various types of conventions of a general character—for instance, the 1946 Convention on the Privileges and Immunities of the United Nations and the 1947 Convention on the Privileges and Immunities of the Specialized Agencies—and also in various bilateral agreements, special agreements and headquarters agreements. In addition, a perusal of the *United Nations Juridical Yearbook*, for example, clearly showed some of the national legislation which gave effect to the various conventions and agreements. The status of an international organization was meaningful only if it was recognized at two levels: international and national. In other words, an international organization had to be given full legal capacity under public international law and it had to be recognized under the internal law of its member countries, especially that of the country in which it had its headquarters. An international organization usually entered into contracts and possessed movable and immovable property; recognition of its status under internal law was thus absolutely vital.

52. The privileges and immunities of an international organization, of whatever type, were necessarily qualified or limited by the functions of the organization and its officials. They were limited because the organization and its officials were not immune from substantive law but only from jurisdiction. He agreed with the Special Rapporteur that the topic was ripe for codification but State practice was not uniform, and it remained to be seen how well the Commission would be able to define

the precise nature and scope of the privileges and immunities of all or some international organizations.

53. He too was inclined to believe that the Commission should consider the privileges and immunities of all international organizations, and not only those of a universal character, even if it found many discrepancies in the practice of States and international organizations. A study of practice would reveal the existence of some rather strange rules. For example, in the case of EEC, the Community's immovable property could be subject to seizure or even a measure of execution.

The meeting rose at 6.05 p.m.

1453rd MEETING

Tuesday, 5 July 1977, at 10.10 a.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Dadzie, Mr. El-Erian, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Sucharitkul, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta.

Long-term programme of work

[Item 8 of the agenda]

and

Organization of future work (*continued*)

[Item 9 of the agenda]

PRELIMINARY REPORT ON THE SECOND PART OF THE TOPIC OF RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS (*continued*) [A/CN.4/304]

1. Mr. SUCHARITKUL, continuing his statement, said it was gratifying to note that the Special Rapporteur had raised the question of the place of custom in the law of international immunities. The Commission was entering a new phase in the progressive development of international law for, in considering custom, it would be examining not only the practice of States but also that of international organizations. In the case of EEC, the question of immunity from seizure, attachment and execution had long been controversial in Belgium. That country was also the host country for NATO, but the Special Rapporteur had rightly left aside the problem of the status of NATO forces and Warsaw Pact forces, for the Commission's task would be amply sufficient if it dealt with civil jurisdiction only.

2. The practice of States was most interesting but also extremely complicated. For instance, in a number of recent cases concerning employees of foreign Governments and of international organizations, the courts in Italy had distinguished between appointments and dismissals according to the terms of the employment contracts, so that *atti di gestione* were subject to the jurisdiction of the Italian courts but other acts of appointment or dismissal were considered as part of the official duties of international organizations. The mixed courts in Egypt, mentioned by the Special Rapporteur, could be said to be among the most advanced in their practice regarding immunities.

3. One of the leading countries in developing a theory that immunities could be restricted was France, which had applied the criterion of the *acte de commerce* as a result of cases in which the representative of a particular Soviet commercial agency in France had been held responsible not only for the commercial activities of the agency in question but also for the commercial activities of other Soviet trading organizations in France. He gave that example only by way of analogy, however. He did not believe that the French courts would hold UNESCO responsible for the activities of other specialized agencies of the United Nations.

4. The Government of Japan had granted certain privileges and immunities to the United Nations University, but the University was what might be termed a lesser organ and its head could not be compared with the Secretary-General of the United Nations; the scope of his immunities was restricted by the nature of his functions. Obviously, the practice of States was of great significance. National courts sometimes applied the principles relating to immunities as principles of international law, though the courts in the United Kingdom regarded those principles as being already incorporated into internal law. The difficult practice in the United States, resulting from the recent legislation concerning suits against foreign Governments, would probably have some effect on suits against international organizations.

5. The ASEAN group of States had come to adopt what the Special Rapporteur had aptly termed customary practice. ASEAN meetings at various levels had been granted the traditional or customary privileges and immunities accorded to "similar organizations", though exactly what was meant by that expression was doubtless open to different interpretations. His own country, Thailand, afforded an example of a particularly rich experience in State practice, as was shown by the arrangements made for ESCAP, the Southeast Asian Ministers of Education Secretariat and SEATO (an organization which had recently been dissolved but nonetheless, for the purpose of legal studies, gave a complete picture of the formation of headquarters agreements and bilateral arrangements).

6. At the present time, there were a number of conflicting tendencies. One was to expand the number of beneficiaries of privileges and immunities because of the proliferation of international organizations, while another was to restrict such privileges and immunities to the barest minimum. It should be possible to establish a uniform minimum standard necessary for the performance of the official functions of international organizations. Those organizations did not regard themselves as sovereign and their immunities were not based on sovereignty. However, a close examination of the problem would reveal two analogies: the immunities accorded to an organization and its officials might be compared to State or sovereign immunities, whereas the immunities granted