Document:-

A/CN.4/SR.1797

Summary record of the 1797th meeting

Topic:

Status, privileges and immunities of international organizations, their officials, experts, etc.

Extract from the Yearbook of the International Law Commission:-

1983, vol. I

1797th MEETING

Tuesday, 5 July 1983, at 10 a.m.

Chairman: Mr. Laurel B. FRANCIS

Present: Mr. Balanda, Mr. Barboza, Mr. Calero Rodrigues, Mr. Castañeda, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Flitan, Mr. Illueca, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Njenga, Mr. Pirzada, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

Relations between States and international organizations (second part of the topic) (*continued*) (A/CN.4/370[1])

[Agenda item 7]

PRELIMINARY REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

1. Sir IAN SINCLAIR congratulated the Special Rapporteur on his preliminary report (A/CN.4/370), which contained all the essential elements for the Commission's discussion. The great wealth of existing material on the subject of the privileges and immunities of international organizations and of officials and experts working for them made the topic under consideration a particularly delicate one. The difficulty of the task was increased by the enormous range and variety of intergovernmental international organizations, at both the universal and the regional level.

2. In that connection, he drew attention to the recent development of so-called "operational" international organizations. Some of those institutions were universal in scope, others regional; again, some of them were only partly operational in character and had other functions as well, as was the case with IBRD and IMF. It was interesting to note that the constituent instruments of both IBRD and IMF were entitled "Articles of Agreement", a term used in English to refer, among other things, to entities having commercial and financial functions.

3. Account must also be taken of international organizations of a quasi-universal character which had members from all regions of the world. A number of such organizations having their headquarters in London sprang to his mind: the International Maritime Satellite Organization (INMARSAT), the International Telecommunications Satellite Organization (INTELSAT), the International Tin Council, the International Wheat Council and the International Sugar Organization. Those bodies were undoubtedly international organizations but their needs and requirements differed from those of a universal organization with broader responsibilities. There were also important operational organizations at the regional level, such as the African Development Bank and the Asian Development Bank.

4. One member of the Commission had mentioned at the previous meeting that the lives of international organizations varied enormously. Such organizations were born, they lived and they died. For example, the European Space Vehicle Launcher Development Organization (ELDO) had been wound up in the mid-1970s. That being said, he stressed that the basic concept underlying the need for a certain scale of privileges and immunities was that of functional necessity. An organization, and those working for it, should have those privileges and immunities that were required for the effective performance of the organization's functions. Clearly, functional necessity could dictate a higher scale of privileges and immunities for one organization, and a lower one for another.

5. Another important point was the inevitable suspicion and jealousy felt by members of the general public when they saw the servants of international organizations enjoy privileges and immunities which were not given to the ordinary man in the street. It was essential to remember that quite natural human reaction and to bear in mind that, while an international organization might be popular, privileges and immunities never were.

6. Mr. Yankov had suggested (1796th meeting) that the Commission should direct its work on the present subject towards the preparation of a convention to supplement the diplomatic conventions already in existence. Admittedly, the temptation to take that course was very great, but he personally had considerable doubts on that score in view of the very wide variety of organizations which it was proposed to cover and the resultant difficulties in achieving adequate harmonization of rules. It would in any case be premature to try to reach a definite conclusion on that matter at the present stage.

7. He drew attention to two possible alternatives to the formula of a convention. Firstly, the Commission might draw upon the experience of the European Committee on Legal Co-operation, which in the late 1960s had prepared a useful study on the privileges and immunities of international organizations. That study had not resulted in the drawing up of any convention. It had been submitted to the Council of Ministers of the European Economic Community which, in turn, had recommended to Governments that they should be guided by it. A second possibility was for the Commission to draw up model rules and recommend them to Governments as suitable for inclusion in headquarters agreements, host country agreements and the like.

8. The starting-point for the Commission's work, in his opinion, should be the status and capacity of international organizations. Every constituent instrument of an organization which had come to his knowledge contained a basic provision stating that the organization concerned had the legal capacity of a body corporate. That capacity was of course essential to enable the organization to enter into contracts and to sue and be sued in its own name within the framework of domestic law. However, certain difficult questions arose which deserved further study.

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[1] Reproduced in *Yearbook . . . 1983*, vol. II (Part One).

One of them was whether an international organization functioning in a State which did not form part of its membership could enjoy in that State the capacity of a body corporate, in view of the theoretical difficulty that the organization's capacity derived from a constituent instrument to which the State concerned was not a party. Again, was there a law of recognition of international organizations, and was it necessary for a State to recognize an international organization?

9. Having dealt with the question of capacity, it was appropriate to proceed to the consideration of the immunities of an international organization as such, a question which was clearly linked with the topic of jurisdictional immunities of States and their property. In that connection, it was necessary to study the case-law which was beginning to develop with regard to the extent to which an international organization as such could invoke jurisdictional immunity.

10. Beyond that issue of jurisdictional immunity, the Commission would encounter major difficulties in seeking to determine the appropriate privileges and immunities for a great variety of international organizations. When it had discussed that question in 1978, the Commission had reached certain conclusions[2] with which, for his part, he fully agreed. The first was that it was necessary to proceed with great caution in seeking to rationalize and harmonize the rules in the matter, for such an attempt could easily lead to giving some international organizations more privileges and immunities than were necessary, and others less than they needed, to perform their functions. The result might well be to create friction between States and international organizations.

11. Lastly, he endorsed the Special Rapporteur's suggestion (A/CN.4/370, para. 13) that the Secretariat should be requested to revise its 1967 study[3] in the light of the new material which had emerged from the replies to the 1978 questionnaire (*ibid.*, paras. 6–7). An up-to-date study of that kind would be most helpful not only to the members of the Commission but also to scholars generally.

12. Mr. STAVROPOULOS, congratulating the Special Rapporteur on his report (A/CN.4/370), noted that in 1976, immediately after the completion of the first part of the topic with the adoption in 1975 of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, the Commission had taken up the second part of the topic, concerning the status, privileges and immunities of international organizations, their officials, experts and other persons engaged in their activities not being representatives of States. The first Special Rapporteur appointed by the Commission to deal with the topic, Mr. El-Erian, had prepared a preliminary report in 1977[4] and a second report in 1978.[5] The latter had been endorsed by the Commission which, together with the Sixth Committee of the General Assembly, had been in general agreement as to the desirability of taking up the study of the second part of the topic.

13. The present Special Rapporteur, endorsing the conclusions of his predecessor, now advocated the need for great prudence and for a broad outlook initially (*ibid.*, para. 11), since the study should include not only international bodies but also regional organizations, although a final decision on the inclusion of such organizations should be taken only when the study had been completed. The Special Rapporteur also advocated a broad outlook with regard to the subject-matter of the study and suggested that a decision on the priority to be given to the various issues should be deferred until the study was completed. He (Mr. Stavropoulos) endorsed that approach.

14. The preliminary report under consideration was, of course, designed mainly to allow the new members of the Commission to express their views so that the Special Rapporteur would be apprised of the wishes of the Commission as newly constituted, which would greatly facilitate his task. His own view was that the changes introduced since the inception of the United Nations made it necessary to have general agreement within the Commission on the desirability of taking up the study.

15. He likewise considered it essential for the Commission to request the Secretariat to revise the 1967 study in the light of the replies to the 1978 questionnaire, which updated and supplemented the replies to the 1965 questionnaire. The Special Rapporteur would then be in a better position to submit his second report, which should take account of established guidelines and could perhaps contain the first draft articles, together with commentaries, on the status, privileges and immunities of international organizations.

16. Mr. KOROMA congratulated the Special Rapporteur on his helpful preliminary report (A/CN.4/370) and thanked him for giving new members like himself an opportunity to express their views before the present topic took shape.

17. Like States, international organizations had come into existence without any generally applicable body of rules to regulate them. The number of international organizations had tended to increase and their privileges and immunities, as well as those of their officials and experts, had also developed. International organizations were here to stay and they had an increasingly important role to play in world affairs. The need for such a body of rules was therefore apparent.

18. That being so, the Commission had to decide how to proceed in examining the topic. His own suggestion

[2] The decisions taken by the Commission at its thirtieth session (*Yearbook . . . 1978*, vol. II (Part Two), p. 147, para. 156) were based on the conclusions and recommendations of the previous Special Rapporteur in his second report (*Yearbook . . . 1978*, vol. II (Part One), pp. 282–285, document A/CN.4/311 and Add.1, paras. 117–126).

[3] "The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities" (*Yearbook . . . 1967*, vol. II, p. 154, document A/CN.4/L.118 and Add.1 and 2).

[4] *Yearbook . . . 1977*, vol. II (Part One), p. 139, document A/CN.4/304.

[5] *Yearbook . . . 1978*, vol. II (Part One), p. 263, document A/CN.4/311 and Add.1.

would be to start by spelling out the legal status of international organizations, namely by defining their legal capacity. In that context, the Commission would examine the powers and responsibilities of international organizations and their ability to conclude treaties and to enter into agreements.

19. The next point to consider would be immunities from legal jurisdiction. In that connection, it had to be noted that international organizations varied greatly in character and in functions. For example, the Constitution of ILO differed considerably from the constituent instruments of other international organizations. With the ILO tripartite system of representation, not only Government representatives but also employer and employee representatives enjoyed privileges and immunities,[6] despite the fact that they were not accredited by a Government.

20. A comprehensive study of the United Nations, as the most universal organization currently in existence, would constitute a good starting-point for the Commission's work. In that connection, the important Articles 104 and 105 of the Charter of the United Nations tended to conform with the more traditional rule in the matter of privileges and immunities: they granted privileges in a more comprehensive fashion than was the case today, when such privileges were generally based on the concept of functional necessity.

21. The following Charter provisions were also relevant to the question of capacity: Articles 24 and 26 on the functions and powers of the Organization; Articles 42 and 43 on special agreements for the provision of armed forces and facilities necessary for the purpose of maintaining international peace and security; and Article 63 (1) on agreements with specialized agencies defining their relationship with the United Nations.

22. It was appropriate also to consider the position of agencies which had certain limited treaty-making powers. Thus the three European Communities possessed the right to enter into agreements with States not members of those communities. The European Economic Community, as a body, could become a party to a treaty. Thus the EEC as such had signed the recent United Nations Convention on the Law of the Sea,[7] on some of whose articles it had in fact negotiated as a body on behalf of its members during the Conference.

23. Provision would also have to be made for operational organizations or "international corporations" such as IMF and IBRD. Although those organizations did not have full legal personality of their own under international law, they nevertheless played a considerable role in world financial affairs. Another category in need of study was that of regional organizations, which played such a dynamic role in United Nations affairs.

24. International organizations, and the officials and experts working for them, should be given sufficient privileges and immunities to ensure the independent discharge of their functions. At the same time, it was essential to avoid giving unduly extensive privileges which would be anathema to host States. In that connection, a guideline was provided by the Advisory Opinion of the ICJ of 11 April 1949 in the case concerning *Reparation for injuries suffered in the service of the United Nations*, in which the Court had ruled that the protection afforded to agents of the United Nations was intended to ensure the "efficient and independent performance" of their duties.[8] On the basis of that ruling, it was clear that the privileges and immunities of international organizations and their officials and experts were based on the criterion of functional necessity.

25. Mr. CALERO RODRIGUES said that the question before the Commission was whether or not to confirm the guidelines it had given the previous Special Rapporteur in 1978, since which time the Commission's composition had changed. The debate so far had shown that those conclusions[9] should be confirmed and he, for one, was in full agreement with them.

26. It would be recalled that the Commission had decided that the topic should be approached with caution, bearing in mind the very great diversity of international organizations involved. There was the problem of regional as opposed to universal organizations and also that of organizations dealing with political questions and those engaged in practical or operational activities. At some point, the Commission would have to decide the exact range of organizations to be covered by its draft, but for the moment it should proceed in the manner decided in 1978, when it had requested the then Special Rapporteur to envisage the possibility that the rules to be framed would apply to regional organizations as well as universal ones. An effort should also be made to define privileges and immunities on a broad basis, leaving it until a later stage to determine the exact scope of application of the rules.

27. With regard to the subject-matter of the draft, he was not at all certain that it was advisable to begin by examining the question of the status of international organizations. In his view, it might be preferable not to take a decision on that point until a much later stage in the Commission's work.

28. In his preliminary report (A/CN.4/370, para. 11), the Special Rapporteur analysed the conclusions adopted by the Commission in 1978 following its discussion of the topic. The first conclusion was that the second part of the topic of relations between States and international organizations should be codified. The second was that the Commission should proceed with great prudence in that work. The third was the adoption, for the purposes of the Commission's initial work, of a broad outlook, so as to cover regional organizations. The fourth was the adoption of the same broad outlook in connection with

[6] Art. 40 of the Constitution of ILO (International Labour Office, *Constitution of the International Labour Organisation and Standing Orders of the International Labour Conference* (Geneva, December 1982), p. 22).

[7] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122.

[8] *I.C.J. Reports 1949*, p. 183

[9] See footnote 2 above.

the subject-matter. For his part, he agreed entirely with those four conclusions. He also felt that it was not advisable to raise any further questions at the present stage.

29. He suggested that the Special Rapporteur should start work on the basis of the 1978 guidelines and should be left to determine priorities. For his part, he would accept the Special Rapporteur's decision as to whether the work should begin with the status of international organizations or with immunities.

30. Mr. MAHIOU said that, in view of the quantitative and qualitative importance of international organizations, and in order to follow up the codification work which had resulted in the various conventions relating to diplomatic law, the Commission should now codify the second part of the topic of relations between States and international organizations. On the quantitative side, there had been an increase in the number of international organizations and their permanent offices, as well as in the numbers of their staff, experts and other persons engaged in their activities. On the qualitative side, international organizations dealt with almost all areas of international relations: be it in economic, social, cultural, technical or political matters, there was always a universal, quasi-universal, continental or regional organization to deal with them.

31. That diversity of situations had repercussions on the status, privileges and immunities of international organizations and persons engaged in their activities. It could almost be said that there were as many kinds of status as there were international organizations, and as many systems of privileges and immunities as host countries. Would it then be best to envisage a convention covering all situations, or on the contrary refrain from setting out rules that were too rigid and likely to be hard to apply to all organizations? It was still too early to decide whether the distinction between universal organizations and regional organizations should be taken into account. It might be preferable to distinguish between organizations engaged in political activities and organizations of an operational nature. The question could also be raised of whether, in the case of a single international organization, the situation in fact varied according to the acts which it performed. In that connection, he drew a parallel with the considerations which prevailed in the study on the topic of the jurisdictional immunities of States and their property. He wondered whether some acts of international organizations, in the commercial field for example, should not fall within the domestic jurisdiction of the host State. The Commission should shed light on questions of that kind in order to obtain a better idea of the status, privileges and immunities which should be granted to international organizations and persons engaged in their activities. Furthermore, it must establish a sound balance between the security needs of the host State and the need to encourage the activities of international organizations, particularly those promoting international co-operation and the maintenance of world peace and security.

32. With regard to the subject-matter of the study, the Commission could either confine itself strictly to relations between international organizations and host States, or else extend its work to relations between international organizations and non-member States or between international organizations themselves. In the case of privileges and immunities, it was necessary to begin at the beginning, in other words with those of international organizations themselves, before going on to those of their staff and deciding if a distinction should be drawn according to the status and functions of the persons working for such organizations. The privileges and immunities granted to international organizations were based on the criterion of function. That concept, implicitly contained in their statutes, had been made clearer by the jurisprudence of the ICJ. The Commission would doubtless encounter problems relating to the legal personality and capacity of international organizations, but it should avoid theoretical discussions and concentrate on the privileges and immunities which should be granted to such organizations. It would also have to specify the functional aspect of international organizations through the criterion of specialization: each organization was entrusted with a specific mandate, which was more or less precise depending on whether it was a general or a technical organization. The legal capacity of all organizations was probably not strictly the same, and it might be the case that a good part of the activities of operational organizations fell within the ordinary law of the host State.

33. With regard to form, the future codification instrument could take the form of a new convention, an additional protocol to the 1975 Vienna Convention or a set of standard rules. In his opinion, members of the Commission should keep those possibilities in mind, but it would be premature to take a final decision on the question. It should nevertheless be pointed out that the preparation of an additional protocol to the 1975 Vienna Convention would oblige the Commission to confine itself to universal international organizations, the only type covered by that Convention, to the exclusion of regional international organizations. He would therefore prefer the draft articles to lead to a convention.

34. Finally, it would be desirable for members of the Commission to be able to obtain the collection of texts which the Secretariat had prepared for the use of the Commission in 1960 and 1961, entitled *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations,*[10] which did not appear to be available at present. Furthermore, the Secretariat should update the study it had carried out in 1967.[11]

35. Mr CASTAÑEDA endorsed the work carried out by the Commission on the topic, as well as the Special Rapporteur's analysis of it and his proposed method of work. The conclusions which the Commission had reached in 1978[12] should now be confirmed. Broadly

[10] Published in the United Nations Legislative Series, in two volumes (Sales Nos. 60.V.2 and 61.V.3, respectively).

[11] See footnote 3 above.

[12] See footnote 2 above.

speaking, there seemed to be agreement on the need to codify and progressively develop the second part of the topic. The questions listed in the report under consideration (A/CN.4/370, para. 9) were indeed the matters with which the Commission should deal. As for the conclusions stated therein (*ibid.*, para. 11), they were perfectly correct.

36. However, the Commission should proceed not only with great prudence but also with great realism, in order to avoid falling into lengthy theoretical and sterile discussions, for example on the legal nature of international organizations. Above all, the Commission should adhere to the practice of international organizations in order to deduce useful rules from it, particularly with regard to privileges and immunities. Naturally it would have to tackle fundamental theoretical questions such as that of the legal status of international organizations, but it should refrain from analysing such questions too systematically. Only at the conclusion of its work should it perhaps put forward considerations on the status and legal capacity of international organizations or on the problems of the application of the rules it would draw up to regional organizations. The study prepared by the Secretariat in 1967[13] should be updated, and the Special Rapporteur's mandate confirmed.

37. Mr. USHAKOV said that he had no doubts as to the need to continue the work and prepare draft articles, but in his opinion it was preferable that they should be confined to international organizations of a universal character. The rules to be drawn up would then apply to organizations of which all States were members or which were open to all States. The situation of all other organizations was in principle the same. By definition, every organization had a legal personality distinct from its individual member States, even though it could only act in conformity with their collective will. It was therefore important to envisage rules ensuring the independence of international organizations on the territory of the host State. The difficulty lay in the fact that international organizations were hard to define. It was not enough to describe them as intergovernmental organizations, as opposed to non-governmental organizations. There were borderline cases, such as that of subsidiary bodies of the United Nations, and that of a body which drafted an agreement which would be binding on an organization to be set up and its future member States. In the circumstances, it was hard to conceive of rules applicable to all international organizations. It was nevertheless the case that the situation of a particular international organization, once its existence had been recognized, was not very different from that of other such organizations, as their common feature was their independence with regard to their various members.

38. With regard to the staff of international organizations, it was undeniable that the proper fulfilment of their functions must be ensured, but that principle became more complicated at a more detailed level. The Commission should begin by studying the legal status of organizations as such, and then the status of organizations on the territory of the host State—including the case of bodies convened elsewhere than at the headquarters of the organization—and should draft generally applicable rules. Only afterwards should it tackle questions concerning the staff and determine the privileges and immunities necessary for the proper fulfilment of their functions within a particular organization.

39. Mr. McCAFFREY, referring to the conclusions reached by the Commission in 1978, which were set out in paragraph 11 of the report under consideration (A/CN.4/370), said that he had no particular objection to the conclusion mentioned in subparagraph (*a*), namely that the Commission should take up the study of the second part of the topic, although he did wonder whether international organizations were in fact in need of such a study. In that connection, he fully endorsed the cautious note sounded in subparagraph (*b*), since international organizations were extremely diverse in both quantity and quality. He interpreted the conclusion set forth in subparagraph (*c*), advocating the adoption by the Commission of a broad outlook, to mean that more knowledge should be acquired about the needs of regional organizations and the extent to which the rules on privileges and immunities of international organizations could be adapted to fit the functional needs of regional organizations before any decision was taken as to whether to include the latter in the study; and, in that sense, he could agree with the conclusion.

40. The Special Rapporteur referred to a number of questions (*ibid.*, para. 9) considered by the Commission in 1978, the first of which related to the definition of the order of work on the topic. In that connection, it would be advisable to heed Mr Reuter's counsel[14] and start with perhaps the most basic question, namely the status and capacity of international organizations, in which connection Sir Ian Sinclair had raised some fairly fundamental questions. A second point raised in paragraph 9 related to the critical question of the special position and regulatory functions of operational international organizations. In his view, it was highly questionable whether such organizations should have a place in the draft and, once again, he would urge the need for prudence and caution. A third point concerned the need to study the case-law of national courts in the sphere of international immunities, which would shed light on current practice. It was, of course, necessary to consider the relationship between the topic before the Commission and the jurisdictional immunities of States, since the terms of Article 105, paragraph 2, of the Charter of the United Nations made it clear that the criterion was that both organizations and the individuals concerned should have only those immunities that were necessary for the performance of their functions. Moreover, in codifying privileges and immunities, and in particular those of the staff of international organizations, it was important not to forget the impression made on the population of the host State.

41. Reference had been made to the need for a balance between the interests of the host State and the functional

[13] See footnote 3 above.

[14] *Yearbook . . . 1977*, vol. I, p. 210, 1453rd meeting, para. 13.

needs of the organization, and in that connection he endorsed the Special Rapporteur's suggestion (*ibid.*, para. 13) that the Secretariat should revise the 1967 study[15] in the light of any new material. Such an updated version would be of great value to scholars and international organizations alike.

42. Finally, as to the form of the draft articles, he again considered that caution and prudence were required, since it was important to be constantly aware of the potential for conflict between such articles and existing rules and to bear in mind the risks inherent in fashioning rules that might not represent the codification of international law if they extended to regional organizations which it was not intended to cover. In his view, therefore, judgment on the question should be reserved.

43. Mr. ILLUECA said it was clear that the second part of the topic of "Relations between States and international organizations" was now ready for codification, and thus the Commission could complete the codification of diplomatic law. However, as Mr. Castañeda had said, the progressive development of law in that area should also be considered. In Latin America, major studies had been carried out on the question of the new law of international organizations, as the latter could not be governed by the traditional rules of the law of nations. The increasing number of international organizations and the variety of their activities and fields of competence called for specific rules which must be sought elsewhere than in the usual sources in order to solve the problems relating to the functioning of such organizations. The Special Rapporteur, as well as the Commission, should take account of the most recent work of Latin-American professors of international law such as Mr. César Sepúlveda. They began from the principle that the codification of diplomatic law was not enough because it was also necessary to establish new rules, specific rules which would contribute to the independence and efficiency of international organizations as well as to the harmony which should prevail in international life. It was therefore necessary to go beyond the confines of diplomatic law. Furthermore, a new independent branch of international law had grown up as a result of the dynamic change which had taken place in the traditional concepts of the law of nations.

44. Thus some authors referred to the law of international entities, which could not be governed solely either by public international law or by private international law. For the professors concerned, the concepts and rules established in systems of internal administrative law were likewise not applicable to the administrative problems of international organizations. The dealings and relations between international organizations themselves and between them and States were governed by public international law, but their relations with other entities or legal persons or with individuals should be governed by rules other than the usual and familiar ones. The law of international organizations could therefore not be viewed as a mere concretion grafted on to the traditional structure of the law of nations. That new legal system might be the means of bringing about major structural changes in the law of nations. For the time being, however, that new branch of international law was in its infancy, and a great effort would have to be made to respond to the challenge of establishing a set of rules which would contribute to the independence and efficiency of international organizations.

45. Some authors considered that the law of international entities could be broken down into four parts: constitutional law, relating to the constituent acts of international organizations, parliamentary law, administrative law and the law of mutual relations with other entities or organizations. Those authors also considered that one of the essential chapters of the law of international entities concerned the legal personality of such entities. The question then arose however, of whether the resulting legal personality stemmed from the constituent act or from the national law of the State in which the organization had its headquarters. In that connection, he recalled the Advisory Opinion of the ICJ of 11 April 1949 in the case concerning *Reparation for injuries suffered in the service of the United Nations*, according to which the United Nations was a subject of international law capable of possessing international rights and duties, and had the capacity to maintain its rights by bringing international claims.[16] No one questioned the fact that the granting of legal personality to international organizations endowed them with some powers, such as the power to conclude contracts with individuals, to engage in legal proceedings, to administer a territory or to maintain an international force. According to some authors, the capacity to conclude treaties did not depend strictly on the personality of the organization, because treaties concluded by international organizations had always been recognized without any need to introduce the concept of personality, and therefore fell within public international law. The question of personality could also be viewed from a functional standpoint, in other words in terms of the specific functions and capacities of the entity.

46. The problem also arose of determining the rule to be applied in the case of relations between international organizations and individuals or State bodies in purely administrative areas. Should concepts of public international law, or general legal principles, or the law stemming from the organization's constituent act, or the domestic law of the country concerned apply? Obviously there was no complete body of rules in that area. Consideration could also be given to the question of the relations of the United Nations, for example, with its employees. The existence of an administrative tribunal did not resolve all labour problems.

47. Finally, he wished to refer to the problem of the competent jurisdiction for settling disputes which could arise between international organizations and individuals or State bodies in connection with a particular transaction. Were such disputes public or private? The immunities granted to inter-State institutions meant that local courts could not hear such disputes. Who, then, could resolve them? While there were some principles on which practice could be based, it was nevertheless the case that

[15] See footnote 3 above.

[16] *I.C.J. Reports 1949*, p. 179.

genuine jurisprudence remained a long way off and that much remained to be done on that score. Finally, he suggested that the Secretariat should update the study carried out in 1967.[17]

The meeting rose at noon.

[17] See footnote 3 above.

1798th MEETING

Wednesday, 6 July 1983, at 10 a.m.

Chairman: Mr. Laurel B. FRANCIS

Present: Mr. Balanda, Mr. Barboza, Mr. Calero Rodrigues, Mr. Castañeda, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Flitan, Mr. Illueca, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Njenga, Mr. Pirzada, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

Relations between States and international organizations (second part of the topic) (*continued*) (A/CN.4/370[1])

[Agenda item 7]

PRELIMINARY REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

1. Mr. BALANDA thanked the Special Rapporteur for inviting the new members of the Commission to state their views. The increase in the number of international organizations was no surprise to observers of the international political scene, for it reflected the intensification of inter-State co-operation and the increasing interdependence of States. The need to co-operate led States to seek a variety of arrangements to enable the international organizations they established to meet their diverse obligations. That was especially true of new States, which mistrusted bilateral international co-operation because it was not always free from political influence.

2. The question arose as to what an international organization was. From all the definitions suggested, including those of Mrs. Bastid and Mr. Laurent, it could be concluded that an international organization was a legal entity having a personality independent of that of the States which had established it by intergovernmental agreement. But if two international entities created a third, was that also an international organization? The question might be theoretical, but it was worth asking. The Commission should not dwell on theoretical definitions, however, but should try to grasp the subject and study it as exhaustively as possible.

3. A whole series of questions came to mind. Was the independence of international organizations absolute or relative? Did the existence of international organizations compel recognition by the international community as a whole or did they have to be recognized as such? A wide variety of denominations was used. There were "organizations" proper, such as the United Nations, WHO and WMO; "unions", such as the Customs and Economic Union of Central Africa (UDEAC) and the African and Malagasy Postal and Telecommunications Union (AMPTU); "committees", such as ICRC; "councils", such as the Council of Europe and the International Tin Council; and "communities", such as the European Communities and the Economic Community of the Great Lakes Countries (CEPGL) which comprised Burundi, Rwanda and Zaire.

4. In establishing an international organization, States tried to represent a specific reality which differed according to the nature of the organization: it might be a mere association for co-operation in a particular field, or a more ambitious organization, such as the European Communities or CEPGL, in which case the States concerned surrendered some attributes of their sovereignty. The diversity of legal instruments used should also be noted. They ranged from charters (United Nations, OAU) and statutes (Council of Europe) to treaties (NATO) and constitutions (ILO); that diversity was due to the characteristics of each organization. Furthermore, such international entities could be universal, regional or subregional, and technical or of any other kind.

5. It was also necessary to consider the extent of the legal capacity of organizations in the performance of their functions. Some confined themselves to the activities specified in their constituent instrument; others, being more dynamic, went further. The Special Rapporteur should take account of that dynamism, which had increased in practice. Could an international organization act only in the territory of its member States or could it intervene in the territory of a third State? To what legal régime were its activities subject: to general international law, to the international law specific to the organization, or to the internal law of the host State—or to those three different régimes simultaneously?

6. The Special Rapporteur would have to devote special attention to the powers of the organs of international organizations. The question arose as to whether they had political or administrative powers. In an organization of an essentially political character such as the United Nations, did its organs exercise political powers only, or also administrative powers? Were those powers established in a legal instrument or were they implicit? At the time of Zaire's accession to independence, the question of the precise nature of the powers of the United Nations Secretary-General had arisen, and it had been asked whether he was merely the executive agent of the Security Council or whether he had administrative or political

[1] Reproduced in *Yearbook . . . 1983*, vol. II (Part One).