Document:-

A/CN.4/SR.1927

Summary record of the 1927th meeting

Topic:

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

Extract from the Yearbook of the International Law Commission:-

1985, vol. I

was not an international organization, since it had no organs which could express a will distinct from that of the member States.

44. In his second report (*ibid.*, para. 6), the Special Rapporteur mentioned the difficulty of applying the general rules of international immunities to international organizations set up for the purpose of engaging in commercial activities. In that connection, he pointed out that, whenever States established an international organization in order to engage in an activity at the international level, they did so in the general interest, which might of course be of a commercial nature. The fact that an international organization engaged in commercial activities did not, however, mean that it was not performing an international public service, and it was precisely because it performed such a service that it required protection.

45. The Special Rapporteur also referred (*ibid.*) to the "responsibility of States to ensure respect by their nationals for their obligations as international officials". Such wording could not, however, be interpreted to mean that States had an obligation to ensure that the conduct of their nationals met the standards of the international organizations by which they were employed. It should, rather, be interpreted in the light of Article 100, paragraph 2, of the Charter of the United Nations, according to which each Member of the United Nations undertook not to seek to influence international officials in the discharge of their responsibilities.

46. Several members of the Commission had said that it was questionable whether general rules on the legal status of international organizations could be codified, since there was such a wide variety of organizations. Some had called for caution, while others had even expressed doubts about the chances of success of such an undertaking. Since writers such as Flory had, as a result of extensive research, succeeded in identifying some of the common features of international organizations, however, it should be possible to codify the general rules that applied to international organizations, regardless of the purpose for which they had been established.

47. Legal personality was one common feature of every international organization. In his view, it would be going too far to say that any international organization whose constituent instrument did not expressly recognize that essential attribute lacked legal personality. When States established an international organization, they did so for the purpose of jointly carrying out a particular activity at the international level; without legal personality and capacity, an organization would be unable to carry out the activities for which it had been set up. If it was denied legal personality, it would be stillborn. The two alternatives for title I as submitted by the Special Rapporteur would provide a satisfactory solution to the problem.

48. In several parts of his second report, the Special Rapporteur referred to the "regulatory functions" of international organizations, but that term might not be generally acceptable because it had different meanings. In the law of the European Communities, for example, "regulatory functions" were not the same as "directives" and, according to some writers, "regulatory functions" were the general administrative functions performed by the organs of international organizations in carrying out their activities.

49. His own preference was for alternative B, according to which article 1 would deal with the legal personality of international organizations and article 2 would relate to their capacity to conclude treaties. It might, however, have to be specified that capacity to contract, acquire and dispose of movable an immovable property and institute legal proceedings was exercised "in accordance with internal law", since it could be exercised only in the territory of a State and States could not be required to amend their legislation to take account of the existence of international organizations. In Zaire, for example, the rule that land could belong only to the State would have to apply to international organizations as well.

50. Moreover, in order to afford international organizations greater protection, the draft should include a specific provision on the question of the types of donations which an organization would be allowed to receive. The sensitive and thorny problem of the international responsibility of organizations would also have to be discussed, and the Commission would have to choose between the régime of responsibility which applied to States, the régime provided for by the internal law of the State in whose territory an international organization engaged in its activities, or some other régime *sui generis*.

The meeting rose at 1.10 p.m.

1927th MEETING

Wednesday, 17 July 1985, at 10.05 a.m.

Chairman: Mr. Satya Pal JAGOTA

Present: Chief Akinjide, Mr. Arangio-Ruiz, Mr. Balanda, Mr. Calero Rodrigues, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Flitan, Mr. Francis, Mr. Illueca, Mr. Jacovides, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ogiso, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Mr. Roukounas, Sir Ian Sinclair, Mr. Sucharitkul, Mr. Thiam, Mr. Tomuschat, Mr. Ushakov, Mr. Yankov.

Relations between States and international organizations (second part of the topic) (*continued*) (A/CN.4/370,[1] A/CN.4/391 and Add.1,[2] A/CN.4/L.383 and Add.1-3[3]

[Agenda item 9]

[1] Reproduced in *Yearbook ... 1983*, vol. II (Part One).
[2] Reproduced in *Yearbook ... 1985*, vol. II (Part One).
[3] *Ibid.*

SECOND REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

TITLE I (Legal personality)[4] (*continued*)

1. Mr. USHAKOV said that he was opposed to the two draft articles submitted by the Special Rapporteur, which seemed to him to be not only unnecessary, but even harmful. The provision proposed as paragraph 2 of article 1 in alternative A, and as article 2 in alternative B, was identical with article 6 of the draft articles on the law of treaties between States and international organizations or between international organizations.[5] It should be noted, first of all, that that provision, which stated that "the capacity of an international organization to conclude treaties is governed by the relevant rules of that organization", could not be adopted in that form without the definition of "relevant rules" which also appeared in those draft articles. Secondly, it was obvious that such a provision added nothing to the draft articles in preparation and that the discussions to which it might now give rise could unnecessarily call in question draft articles which the Commission had adopted by consensus and which were to serve as the basis for the United Nations Conference to be held in 1986. Members of the Commission who now expressed different opinions on the provision reproduced from article 6 of that draft would really be speaking on a text that had already been adopted. Those who had not been members of the Commission when article 6 had been drafted could, if they wished, express their opinions on it at the Conference. In any case, it did not seem to be the intention of the Special Rapporteur to make a counter-proposal for the draft article already adopted.

2. It was quite wrong to affirm, as the Special Rapporteur did in the opening sentence of draft article 1, that international organizations enjoyed legal personality under the internal law of their member States. Every State was completely free to accept or not to accept, in its internal law, the legal capacity of other States or of international orgaizations. The recognition by a State of the legal capacity of international organizations, or of some of them, could depend on legislation enacted by that State or on commitments to other States to recognize that capacity in its internal law. International law did not impose any such recognition on States.

3. The Special Rapporteur maintained that the need to recognize the legal capacity of international organizations, particularly those carrying on operational or commercial activities, was supported by Article 104 of the Charter of the United Nations, according to which "The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes". It should be noted that the legal capacity to be granted to the Organization under that provision was limited to what was necessary for the exercise of its functions and the fulfilment of its purposes. In most Member States, the United Nations did not carry on activities which required recognition of its legal capacity by internal law. For instance, the Soviet Union, as a party to the Charter of the United Nations, would be required to recognize the legal capacity of the United Nations only in so far as that might be necessary to the Organization for the exercise of its functions and the fulfilment of its purposes under Soviet civil law, which was not the case in practice. In short, if the Commission focused its debate on the question whether international law required States to recognize the legal capacity of international organizations in their internal law and whether it was regularly necessary to grant that capacity to international organizations, it would be evading the real problems.

4. What remained of the opening sentence of draft article 1 was the provision that international organizations enjoyed legal personality under international law, a statement which was only a truism and did not advance the Commission's work in any way. For if international organizations did not enjoy legal personality under international law and if, consequently, they were not subjects of international law, the topic of relations between States and international organizations would not come under international law at all and the Commission's work on it would be meaningless. To reaffirm that international organizations enjoyed legal personality under international law and were subjects of international law, when that had been expressly stated in draft articles prepared by the Commission which had become international conventions, could only result in sterile discussions, in particular on the question whether all international organizations had that status.

5. Similarly, the Commission should be careful not to discuss questions that were foreign to the topic under study, such as the responsibility of international organizations. It should confine itself to the legal status of international organizations and their officials in the territory of host States. An international organization was not an abstraction; the question of its legal status arose as soon as it carried on activities in the territory of a "host State", within the meaning of that term as defined in article 1, paragraph 1 (15), of the 1975 Vienna Convention on the Representation of States. According to that definition, a "host State" meant the State in whose territory an organization had its seat or an office, or where a meeting of an organ or a conference was held. The discussion should not relate to the legal personality of international organizations under international law, but to the legal status of organizations in the territory of host States, in other words to their rights and obligations. In that regard, a certain number of questions, including the status of various missions and delegations, had already been settled in the draft articles on the first part of the topic, which had become the 1975 Vienna Convention.

6. Lastly, he warned the Commission against any attempt to define the expression "international organization". If it departed from the cautious attitude it had adopted so far, which had led it to define that expression as meaning an intergovernmental organization, it might end by giving a legal definition of a State.

[4] For the text, see 1925th meeting, para. 27.

[5] See 1925th meeting, footnote 17.

7. Mr. LACLETA MUÑOZ congratulated the Special Rapporteur on his second report (A/CN.4/391 and Add.1) and his excellent oral introduction (1925th meeting).

8. The rules which the Commission was now trying to formulate had mostly emerged after the Second World War, as a result of the multiplication of international organizations and the increasing importance of their international functions. As the Special Rapporteur had recommended, the approach to the subject should be prudent and pragmatic. For the time being, therefore, the expression "international organization" shoud not be defined. Although difficult to draft, such a definition would probably be of some value; and it would in any case be necessary to specify which international organizations were covered by the draft articles.

9. That question was clearly linked with the legal personality of international organizations and with the question whether some entities which described themselves as international organizations could really be so defined. Many international conferences set up permanent organs, which were sometimes just secretariats. That might apply to the Preparatory Commission for the International Sea-Bed Authority established by the United Nations Conference on the Law of the Sea.[6] The basic criterion for distinguishing an international organization from other entities should be the existence of an independent will of the organization and of permanent organs competent to express that will.

10. The problem of the legal personality of international organizations and the wider problem of the international organizations which should come within the scope of the draft raised many difficulties. Should the Commission confine its draft to international organizations of a universal character or should it extend the scope of the articles to include regional international organizations? If it limited the category of international organizations to be included, it might be easier to identify some common rules. Another difficult question to settle was that of the inclusion of operational international organizations, in particular those which carried on commercial activities. Moreover, the draft articles should not be confined to the legal status and the privileges and immunities of international organizations and their officials; they should settle questions such as the right of international organizations to active and passive representation, their responsibility and their headquarters agreements.

11. Of the two alternatives proposed by the Special Rapporteur he preferred alternative B, which provided for two articles dealing, respectively, with the legal personality of international organizations under international law and under the internal law of their member States, and with the capacity of international organizations to conclude treaties. Subparagraph (*b*) of article 1 appeared too general, since certain States did not recognize the capacity of foreigners or international organizations to acquire movable and immovable property, whatever their legal personality under international law and their capacity to act in other matters under internal law. Perhaps each of the subparagraphs (*a*), (*b*) and (*c*) of article 1 could be made into a separate article.

12. Lastly, he hoped that the Special Rapporteur would submit a general plan of the draft articles to the Commission.

13. Mr. REUTER observed that Mr. Ushakov had raised the very important question of the possible relationship between the draft articles under consideration and the draft articles on the law of treaties between States and international organizations or between international organizations already adopted by the Commission,[7] which were to be submitted for final consideration to the United Nations Conference to be held in 1986. He (Mr. Reuter) was to participate in that conference as an expert consultant, and it would then be his duty to give a faithful account of the reasons why the Commission had adopted the draft articles in their present form. It could be seen from the discussions in the Sixth Committee of the General Assembly that States interpreted the provisions of that draft in rather different ways. When he came to describe the position of the Commission to the conference he would try to state the views of all members of the Commission. If asked to do so, he would also explain his personal point of view; but he did not think that at the present stage he should discuss such delicate matters as the definition of an international organization or the capacity of international organizations to conclude treaties. His silence as a member of the Commission should not be interpreted as a lack of interest on his part.

14. Mr. FRANCIS congratulated the Special Rapporteur on his excellent report (A/CN.4/391 and Add.1) and his lucid oral introduction (1925th meeting). As he saw it, the topic was not in itself a difficult one; the difficulty lay in the great caution the Special Rapporteur would have to exercise in handling it.

15. So far as international organizations of a universal character were concerned, there was ample documentation to enable the world community to do without a codified set of rules. But because—particularly outside the United Nations system—there was such a great variety of other organizations, it had become urgently necessary to codify the law on the present topic. There was enough common ground in the constituent instruments of the United Nations and the specialized agencies and, despite the diversity of practice in regard to organizations outside the United Nations system, enough common elements to produce a harmonious draft for all purposes. In undertaking that task, the Commission should not shy away from the element of progressive development as part of the means of elaborating an acceptable final product.

16. He supported the excellent suggestion made by Mr. Yankov (1926th meeting) that the Special Rapporteur should submit an outline of the whole draft

[6] See Final Act of the Third United Nations Conference on the Law of the Sea, adopted on 10 December 1982, annex I, resolution I (*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), p. 145, document A/CONF.62/121).

[7] See 1925th meeting, footnote 17.

at the Commission's next session, in order to indicate the direction in which it would be working. An outline of that kind would be extremely useful to the Commission, and he felt sure that the Special Rapporteur would not fail to act on Mr. Yankov's constructive suggestion. He also supported the suggestion that provision should be made in the draft articles for the right of representation of international organizations.

17. Noting that the report emphasized the general limits of the topic (A/CN.4/391 and Add.1, para. 2), he expressed the hope that the Special Rapporteur would consider widening those limits. The Special Rapporteur listed (*ibid.*, para. 33) three categories of subjects of international law other than States, introducing them with the words: "These new subjects of international law are". That wording gave the impression that the enumeration was exhaustive, which was not the case. For instance, he had noticed that the Holy See, as distinct from the Vatican City State, did not fall into any of the three categories; it might therefore have been more appropriate to say: "Some of these new subjects of international law are".

18. Despite the forceful and persuasive arguments put forward by Mr. Ushakov, he could agree to discussion of the responsibility of international organizations as part of the topic under study. As a matter or progressive development, there was room to deal with the responsibility of international organizations in relation to States at least, and at some stage in the Commission's work it was bound to find that it could not ignore that issue. Moreover, the responsibility of organizations could not conveniently form the subject of a separate study and was therefore suitable for attachment to the present topic.

19. As to draft article 1 submitted by the Special Rapporteur, he shared the view that the opening statement that "International organizations shall enjoy legal personality ... under the internal law of their member States" would affect non-member States as well. On that point, he approved of the solution proposed by Sir Ian Sinclair (1926th meeting). He also supported the suggestion made by Mr. Balanda (*ibid.*) and Mr. Lacleta Muñoz that the substantive provisions should be made into separate articles.

20. It had been suggested during the discussion that the capacity of international organizations should be qualified by a reference to the internal law of the State concerned. The main problem was that of the ownership of immovable property, from which non-nationals, and hence international organizations, were excluded under the law of certain States, some of which were hosts to international organizations. Without making a formal proposal on that point, he would suggest that the reference to "movable and immovable property", in article 1 (alternative A), paragraph 1 (*b*), might conveniently be replaced by the more general term "property". Clearly, a formulation must be found which would avoid placing any international organization at a disadvantage, but which at the same time would not create difficulties for States whose national law—sometimes embodied in their constitution—debarred aliens from owning immovable property.

21. As to article 1 (alternative A), paragraph 2, which was equivalent to article 2 in alternative B, on the capacity of international organizations to conclude treaties, it was clearly well founded and should have a place in the draft articles. He found that article 1 of alternative A had all the essential elements which an article of that kind should contain.

22. Mr. TOMUSCHAT said that the Special Rapporteur's most valuable report (A/CN.4/391 and Add.1) went directly to the heart of the issues to be considered. He agreed with the Special Rapporteur that the Commission should avoid theoretical disputes, since its task was to provide answers, not to ponder the question whether answers were possible.

23. The first task was to determine the real needs, in other words the shortcomings of the present position under international law. It was not enough to state that the first part of the topic was covered by the 1975 Vienna Convention on the Representation of States and that, logically, the seccond part should now follow. As to the status of missions accredited to international organizations of a universal character—the main subject-matter of the 1975 Vienna Convention—there was a definite gap in the instruments governing their privileges and immunities. The same was not true, or at least not to the same extent, of the privileges and immunities of international organizations themselves.

24. Normally, the status of an international organization in relation to its member States and to the host State was clearly defined in its statutes. Great care was generally taken to set out the rules according to which the organization was to be granted special treatment. The question therefore arose who would be the beneficiaries of the rules to be embodied in the draft articles, and what would be their target area. Possibly there were still some gaps in the relevant constituent instruments. At the universal level, however, he believed that the Commission would almost inevitably create problems of conflict of laws.

25. Perhaps the conclusion to be reached was that the main beneficiaries would be those international organizations whose constituent instruments did not sufficiently cover the complex issues of status, privileges and immunities. The question would then arise at what level those privileges and immunities should be established. A typology could, of course, be worked out on an empirical basis. That task would be facilitated by the excellent study prepared by the Secretariat (A/CN.4/L.383 and Add.1-3). Reference could also be made to the work of Mr. Reuter and to the study by Flory mentioned by Mr. Balanda (1926th meeting). Nevertheless, discrepancies were bound to appear because the definition of privileges and immunities was a highly political matter. What was granted to one organization might be denied to another. International organizations were not all equally attractive to host States, especially in financial terms. For all those reasons, the only viable and useful course was to aim only at a minimum standard.

26. Referring to draft article 1, he noted, with regard to the international aspect of legal personality, the Special Rapporteur's suggestion to depart from the cautious language of the ICJ (A/CN.4/391 and Add.1, paras. 69-70). The Special Rapporteur believed that, in the present state of international law, legal personality was enjoyed by all international organizations. That proposition, however, might not be consistent with the basic rule of the law of treaties that no obligation could be imposed on third States. That was why the majority of present-day writers held that the legal personality of international organizations *vis-à-vis* non-member States depended on recognition. He was not sure that the formulation of a general principle on the objective legal personality of international organizations would not place a burden upon third States, and therefore supported the suggestion that, in the opening sentence of article 1, the words "International organizations shall enjoy ..." should be amended to read "International organizations may enjoy ...".

27. As far as private-law capacity was concerned, it was not perhaps correct to speak of legal personality "under the internal law" of member States. The view could, of course, be held that the legal personality of an international organization was established by virtue of the domestic law of each and every one of its member States. A better approach, however, would be to establish such legal personality under the draft articles themselves, laying down, at the same time, a minimum content for that personality and imposing on States the obligation to recognize an organization's specific capacity to act as a legal person within the framework of the national legal order. He therefore suggested that the words "under the internal law" should be replaced by the words "for the purposes of the internal law". That formulation would accord with the treaty provisions of EEC, which distinguished between international personality, on the one hand, and private-law capacity, on the other. A similar distinction should be made in the draft article under discussion.

28. In accordance with the Special Rapporteur's proposed alternative B, title I should comprise two articles. Article 2 would specify the content of international legal capacity, *inter alia* the capacity to conclude treaties. As to the "relevant rules" of the organization, they constituted a general limitation which applied to all activities; it was not advisable to specify that limitation only in connection with treaty-making power, since it would apply also to other acts, including unilateral acts.

29. As he saw it, the draft articles conferred legal personality on international organizations, but general recognition of that personality was invariably dependent on the internal rules and practices of the organization concerned. The draft articles could not purport to create a norm whereby an international organization could escape the limitations which its founders had placed upon it.

30. In conclusion, he supported the request by Mr. Yankov (1926th meeting) that the Special Rapporteur should submit, at the next session, a provisional outline of the entire set of draft articles.

31. Mr. THIAM congratulated the Special Rapporteur on his second report (A/CN.4/391 and Add.1) and encouraged him to proceed with the prudent and moderate approach he had chosen to adopt in his work on an extremely complex and difficult topic.

32. The Commission had already debated at length the problem of international organizations when it had considered the question of treaties concluded between States and international organizations or between international organizations, and it had always come up against the same difficulties. Africans were very much alive to that problem, for international organizations were a privileged instrument of co-operation in a continent where co-operation was imperative, because of underdevelopment and the small size of certain territories. There were many difficulties, but he would mention only a few of them.

33. The first difficulty was the diversity of international organizations. The Special Rapporteur would certainly have to indicate the limits he intended to set to his topic, since the complexity of the problems varied according to the nature of the organization, its object and the extent of its activities. The second difficulty related to the fact that the subject-matter was alive and changing, so that it was difficult to know what could already be codified and what should be left to develop further. There was a third difficulty which in fact reflected the title of the topic itself: "Relations between States and international organizations". Those relations had always been uneasy, being marked by reservations, suspicion and distrust, while at the same time being rendered necessary by international life itself and developments in it. Thus States were inclined to regard international organizations as a necessary evil: they must be accepted and kept under control; they must be grudgingly granted the powers and competence necessary for their functions. Thus the Commission would have to proceed neither too boldly nor too timidly, with much realism and a little idealism.

34. As to article 1 (alternative A) submitted by the Special Rapporteur, he noted that paragraph 1, which dealt with the legal personality of international organizations, had two aspects: international and internal. It was difficult to see how those two aspects could be distinguished, except in theory. The international aspect was simply what was stated in that paragraph. So far as internal law was concerned, he thought it was nevertheless extremely difficult not to grant an international organization an internal capacity even if it were restricted: for an international organization was supposed to act, to fulfil its obligations and to have the means to carry out its mission.

35. On the other hand, he understood that in some countries, as Mr. Ushakov had observed, internal law might be in conflict with the activities required of an international organization. For example, with regard to the capacity to contract and to acquire and dispose of movable and immovable property, there was no doubt that, if the legal system of a country did not permit a foreigner to own property or to enter into private-law contracts, a problem arose and it would be necessary to see how it had been settled. He was

uncertain about capacity to institute legal proceedings, since there were cases in which an international organization was required to appear in court, for instance in the event of a traffic accident involving one of its vehicles. If an international organization could not even apply for reparation for damage sustained, what could it do?

36. He wondered how an international organization could be deprived of all means of action under internal law once it had been granted the right to exist and to have a headquarters. In that respect he made no distinction between the headquarters of the general secretariat of an international organization and its branch offices. The problem should be studied further, but it was difficult to see how it could be stated right away that an international organization could not institute legal proceedings in a country if it had interests to protect there. He subscribed to the underlying principle of the paragraph, even if it would have to be restricted. In any case there was a necessary minimum which the Commission should try to preserve.

37. Paragraph 2 of article 1, or article 2 in alternative B, reproduced a provision which the Commission had already adopted. Unless that provision was called into question at another conference, the Commission need hardly discuss what was its own child.

38. The CHAIRMAN, speaking as a member of the Commission, said that the Special Rapporteur was to be commended for his excellent report (A/CN.4/391 and Add.1).

39. Although the Commission had completed its work on other aspects of the topic, it still had to deal with the question of the privileges and immunities of international organizations, on which progress was long overdue. Before taking up the substantive aspects of those privileges and immunities, it was necessary to consider the technical questions of legal personality and capacity, and to determine the precise scope of the topic. So far as the latter was concerned, it was important to bear in mind the wide variety of international organizations, which ranged from organizations of a universal character and regional organizations to organizations with restricted membership and consultative bodies having no established institutions.

40. One question which added to the complexity of the subject was whether the privileges and immunities of an organization were affected by its object and purpose, which might be political, cultural, economic, scientific or operational. The Special Rapporteur had therefore been wise to suggest that, for the time being, the scope of the topic should be restricted to international organizations of a universal character (*ibid.*, para. 27), as was the 1975 Vienna Convention on the Representation of States. If that suggestion were accepted, there would be no lack of material or practice from which certain broad principles concerning privileges and immunities could be derived.

41. As to the usefulness of the topic, although it was admittedly already partly covered by existing conventions, the draft articles would not be dealing with any specific organization, but would be laying down general principles in regard to the privileges and immunities of international organizations of a universal character: regional international organizations and other new bodies could consult those general principles for guidance. Given the increasing interdependence of the nations of the world, the pace of economic development and the inevitable increase in the number of international organizations, it was important to have a standard by which to be guided and he, for one, had no doubt about the usefulness of the study; nor did he think it was beyond the capacity of the Commission to handle it.

42. He had been impressed by the source material referred to in the report (*ibid.*, para. 54), and noted that the Special Rapporteur had also relied on replies to the questionnaires circulated by the Secretariat and on the study prepared in 1967 and updated in 1985 (A/CN.4/L.383 and Add.1-3). So far as institutions of a universal character were concerned, he drew attention to the 1982 United Nations Convention on the Law of the Sea,[8] in particular to Annex IX, articles 4 and 5. The history of that Convention was highly relevant to the topic under consideration, since the questions of privileges and immunities and legal capacity had been given detailed consideration at the Third United Nations Conference on the Law of the Sea, chiefly in connection with the question whether international organizations could become parties to the Convention. Annex IX had been drafted to deal specifically with the competence of international organizations to become parties to the Convention. Furthermore, an international organization of a universal character, the International Sea-Bed Authority, had been set up, which in turn had an organ called the Enterprise, whose functions were primarily economic. The privileges and immunities of the Authority and the Enterprise were referred to in articles 176 to 183 of the Convention and also in Annex IV, article 13.

43. There was no need, in his view, to be worried about the substantive scope of the draft articles, which should deal mainly with matters of general interest that concerned all international organizations. The questions of legal capacity to conclude treaties, of responsibility and of succession, for example, should be dealt with only in so far as they had a direct bearing on the privileges and immunities of international organizations, and there again it might be useful to refer to the United Nations Convention on the Law of the Sea.

44. The Special Rapporteur had made a good start, but it would be helpful if, as had been suggested, he could prepare an outline of the draft to show what it would cover.

45. The two alternatives proposed by the Special Rapporteur for title I of the draft articles were both acceptable, but for the sake of clarity he would prefer alternative B, which dealt with the legal personality of an international organization and with its capacity to conclude treaties in two separate articles. The proposed article 2 of alternative B simply recognized the capacity of an international organization to

[8] See 1926th meeting, footnote 8.

conclude treaties, without which there could be no headquarters agreement: the language used was identical with that of article 6 of the draft articles on the law of treaties between States and international organization or between international organizations.[9] He had no objection on that score, but considered that any modification of the article should await the outcome of the United Nations Conference on that topic to be held in 1986.

46. In regard to article 1 of alternative B, the main issues were the legal personality and capacity of international organizations, as opposed to the sources of such personality and capacity, and the question whether such sources should be specified in the draft. The international legal personality of an international organization, which was deemed to be separate from that of its member States, was generally provided for by Governments in the statutes of the organization or in a treaty. The legal capacity of an international organization, on the other hand, depended on its object and purpose. In his view, therefore, the point would be covered if, in line with the wording of Article 104 of the Charter of the United Nations, article 1 was reworded to read: "An international organization shall have international legal personality and shall enjoy such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes, and in particular the capacity to: ...". Subparagraph (*c*) could, if necessary, be amended to read "be a party to legal proceedings". It would not then be necessary to mention international law and internal law, since international law would be covered by the term "international legal personality" and the effect of internal law would depend on the extent to which it was relevant. It might, for instance, have indirect relevance as a means of regulating legal capacity, the source of which was a treaty or the constituent instrument of the international organization concerned. In such a case, member States would be under an obligation to apply those instruments and might adopt implementing legislation for the purpose. Alternatively, provision might be made for such rights to be exercised in conformity with local law, which would become relevant but would not be a direct source of the capacity or personality.

The meeting rose at 12.45 p.m.

[9] See 1925th meeting, footnote 17.

1928th MEETING

Wednesday, 17 July 1985, at 3.05 p.m.

Chairman: Mr. Satya Pal JAGOTA

Present: Chief Akinjide, Mr. Arangio-Ruiz, Mr. Balanda, Mr. Calero Rodrigues, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Francis, Mr. Illueca, Mr. Jacovides, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ogiso, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Mr. Roukounas, Sir Ian Sinclair, Mr. Sucharitkul, Mr. Yankov.

International Law Seminar

1. The CHAIRMAN invited Mr. Giblain, Director of the International Law Seminar, to address the Commission.

2. Mr. GIBLAIN (Director of the International Law Seminar) thanked the Chairman for giving him an opportunity to address the Commission on the International Law Seminar, which had held its twenty-first session at Geneva from 3 to 21 June 1985. During those three weeks, 24 participants, chosen by a selection committee from among some 60 candidates, had followed the deliberations of the Commission and attended a series of lectures given by members, which had been much appreciated.

3. A report on the activities of the twenty-first session of the Seminar had been deposited with the secretariat for the Commission's consideration, so he would confine himself to adding a few particulars. Of the 24 participants in the twenty-first session of the Seminar, 17 participants from developing countries far distant from Geneva had been awarded fellowships to cover their travel and subsistence expenses. Those fellowships had been financed from voluntary contributions by States, but since 1980 the amount of those contributions had been decreasing, as had also the number of contributing States. Contributions had fallen from $US 30,000 in 1981 to $10,000 in 1985. At the beginning of 1985, before the meeting of the selection committee, the Seminar had had in hand a total amount of $46,000, of which $35,000 had been allocated to the 1985 fellowships, so that only $11,000 remained for the 1986 session. Assuming that the contributions for 1986 would not fall below the level for 1985, the Seminar would have $21,000 for fellowships, whereas in 1985 it had spent $35,000 for 17 candidates. Consequently, it would no longer be able to award fellowships to candidate from developing countries distant from Geneva and the balanced representation of different nationalities would be impaired.

4. In order to enable the Seminar to continue its activities and to achieve the purpose for which it had been instituted, while maintaining a balance among the participating nationalities, he believed that a special appeal should be made for contributions from a larger number of States by 15 March 1986, the date of the next meeting of the selection committee.

5. The CHAIRMAN said that the matter raised by the Director of the International Law Seminar was naturally of concern to the Commission, one of whose regular activities was to assist the Seminar. Members would doubtless wish to reflect on the information provided by Mr. Giblain, so that ways and means of providing for the Seminar in future years might be considered when the Commission came to examine the relevant section of its draft report on the current session.

6. Sir Ian SINCLAIR said he agreed that discussion of the matter should be deferred until the consideration of the draft report, but he wished to put on record his alarm at the situation reported by Mr. Giblain, particularly in regard to candidates from developing countries. It would be helpful if a paragraph on the Seminar's financial position were