

Document:-
A/CN.4/SR.2232

Summary record of the 2232nd meeting

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

Extract from the Yearbook of the International Law Commission:-
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(<http://www.un.org/law/ilc/index.htm>)*

view to negotiating for the purpose of concluding a watercourse agreement.

70. The CHAIRMAN assured Mr. Díaz González that his request would receive favourable consideration in due course. He said that if he heard there was no objection, he would take it that the Commission agreed to adopt the amendments to the draft articles recommended by the Drafting Committee (A/CN.4/L.458/Add.1).

It was so agreed.

ADOPTION OF THE DRAFT ARTICLES ON FIRST READING

71. The CHAIRMAN said that the Commission had thus completed the consideration on first reading of the draft articles on the law of the non-navigational uses of international watercourses. If he heard no objection, he would take it that the Commission agreed to adopt the draft articles as a whole, as amended, on the understanding that the observations made by members in the course of the consideration of the Drafting Committee's report would be reflected in the summary records.

It was so agreed.

The draft articles on the law of the non-navigational uses of international watercourses, as a whole, as amended, were adopted on first reading.

TRIBUTE TO THE SPECIAL RAPPORTEUR

72. Mr. THIAM reminded members that the Commission traditionally adopted a resolution to congratulate and thank the author of a set of draft articles. He trusted that it would do likewise in order to express its gratitude to Mr. McCaffrey for the patience, modesty and tolerance which had enabled the Commission to reach agreement.

73. Mr. SEPÚLVEDA GUTIÉRREZ said that the spirit of cooperation Mr. McCaffrey had displayed throughout the consideration of the draft articles was beyond praise. Appreciation was likewise due to successive chairmen of the Drafting Committee, all of whom had carried out their task with great tact and efficiency, and to all members of the Committee who had worked with dedication and patience.

74. Mr. BEESLEY associated himself with the expressions of appreciation addressed to Mr. McCaffrey and his predecessors and also to the Drafting Committee, whose efforts had enabled the Commission to achieve such a welcome result. He supported Mr. Thiam's proposal that the Commission should adopt a resolution expressing its gratitude to the Special Rapporteur.

75. Mr. Sreenivasa RAO expressed his deep sense of appreciation to the Drafting Committee for its excellent work and his particular thanks to Mr. McCaffrey for his energy and also for the understanding, patience and tolerance he had shown in taking account of the views of all members of the Commission and enabling them to arrive at a consensus. The Special Rapporteur and the Chairman of the Drafting Committee, which had not forgotten the objective the Commission had set itself

throughout the years, were to be congratulated on that score.

76. Mr. McCAFFREY (Special Rapporteur), thanking members for their kind words, said that the efforts of his predecessors had certainly been of great value and had facilitated his task. It was thanks to them, too, that the Commission had adopted the draft and the way in which it had done so attested to the constructive and cooperative spirit shown by all its members, to whom he too wished to pay a tribute. He also thanked Mr. Pawlak and Mr. Hayes, who, during Mr. Pawlak's absence, had replaced him as Chairman of the Drafting Committee, for their competence and dedication, which had enabled the Commission to complete its first reading of the draft articles.

77. The CHAIRMAN thanked all members of the Commission and of the Drafting Committee and, in particular, the Committee Chairman, Mr. Pawlak, for their contribution to the work which had led to the adoption of the draft articles. He also expressed gratitude to all members of the secretariat for their dedicated cooperation. The Commission and the Drafting Committee could be proud of having thus achieved one of the goals they had set for themselves. That accomplishment was due in large measure to the efforts of the Special Rapporteurs who had successively dealt with the topic and, in particular, to Mr. McCaffrey, who had been responsible for the most decisive phase of the exercise. He therefore proposed that the Commission should adopt a draft resolution to read:

"The International Law Commission,

"Having adopted provisionally the draft articles on the law of the non-navigational uses of international watercourses,

"Expresses to the Special Rapporteur, Mr. Stephen McCaffrey, its deep appreciation for the outstanding contribution he has made to the treatment of the topic by his scholarly research and vast experience, thus enabling the Commission to bring to a successful conclusion its first reading of the draft articles relating to the law of the non-navigational uses of international watercourses."

The draft resolution was adopted.

The meeting rose at 12.10 p.m.

2232nd MEETING

Friday, 28 June 1991, at 10.10 a.m.

Chairman: Mr. Abdul G. KOROMA

Present: Mr. Al-Qaysi, Mr. Arangio-Ruiz, Mr. Barsegov, Mr. Beesley, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr.

Hayes, Mr. Mahiou, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.

Relations between States and international organizations (second part of the topic) (A/CN.4/438,¹ A/CN.4/439,² A/CN.4/L.456, sect. F, A/CN.4/L.466)

[Agenda item 7]

**FIFTH AND SIXTH REPORTS OF
THE SPECIAL RAPPORTEUR**

PART III OF THE DRAFT ARTICLES:

ARTICLE 12

PART IV OF THE DRAFT ARTICLES:

ARTICLES 13 TO 17 and

PART V OF THE DRAFT ARTICLES:

ARTICLES 18 TO 22

1. The CHAIRMAN invited the Special Rapporteur to introduce his fifth and sixth reports (A/CN.4/438 and A/CN.4/439 respectively). He recalled that chapters I and II and sections A, B and C of chapter III of the fifth report had been before the Commission at its forty-second session as document A/CN.4/432, but had not been discussed for lack of time. The report had been completed by the addition of section D to chapter III and reissued at the current session.

2. He drew attention to the texts of draft articles 12 to 22 proposed by the Special Rapporteur which read:

Article 12

1. The archives of international organizations and, in general, all documents belonging to or held by them, shall be inviolable wherever they are located.

2. Archives of international organizations shall be understood to mean all papers, documents, correspondence, books, film, tape recordings, files and registers of the international organization, together with ciphers, codes, and the filing cabinets and furniture intended to protect and conserve them.

PART IV

PUBLICATIONS AND COMMUNICATIONS FACILITIES

Article 13

International organizations shall enjoy in the territory of each State party (to this Convention)* the free circulation and distribution of their publications and public information material necessary for their activities, including films, photographs, printed matter and recordings prepared as part of the public information programme of an organization and exported or imported for dis-

play or re-transmission, as well as books, periodicals and other printed matter.

Article 14

International organizations shall enjoy, in the territory of each State party (to this Convention)* in respect of such organizations, for their official communications, treatment not less favourable than that accorded by the Government of such State to any other Government, including the latter's diplomatic missions, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone, telefax and other communications, and press rates for information to the press, cinema, radio and television. However, the international organization may install and use a wireless transmitter only with the consent of the host State.

Article 15

1. The official correspondence and other official communications of an international organization shall be inviolable.

2. Official correspondence and official communications mean all correspondence and communications relating to an organization and its functions.

Article 16

International organizations shall have the right to use codes and to dispatch and receive their official communications by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags under the provisions of the multilateral conventions in force governing matters relating to the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier.

Article 17

None of the above provisions shall affect the right of each State party (to this Convention)* to adopt the necessary precautions and appropriate measures in the interest of its security.

PART V

**FISCAL IMMUNITIES AND EXEMPTIONS
FROM CUSTOMS DUTIES**

Article 18

International organizations, their assets, income and other property intended for their official activities shall be exempt from all direct taxes; it is understood, however, that international organizations will not claim exemptions from taxes which are, in fact, no more than payment for public utility services.

Article 19

1. International organizations shall be exempt from all national, regional or municipal dues and taxes on the premises of the organization, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the host State by persons contracting with the international organization.

Article 20

International organizations, their assets, income and other property shall, in accordance with the laws and regulations promulgated by the host State, be exempt from:

(a) All kinds of customs duties, taxes and related charges, other than charges for storage, cartage and similar services, as well as from import and export prohibitions and restrictions with respect to articles imported or exported by international organizations for their official use; it is understood, however, that articles imported under such exemption may not be disposed of, whether or not in return for payment, in the country into which they have been imported, except under conditions agreed with the Government of that country;

¹ This document supersedes the partial report previously issued at the forty-second session of the Commission, in 1990, as document A/CN.4/432, which was not introduced or discussed at that session for lack of time, and is reproduced in *Yearbook... 1991*, vol. II (Part One).

² Reproduced in *Yearbook... 1991*, vol. II (Part One).

(b) Customs duties and prohibitions and restrictions with respect to the import and export of their publications intended for official use.

Article 21

1. International organizations shall not, in principle, claim exemption from consumer taxes or sales taxes on movable and immovable property that are incorporated in the price to be paid.

2. Notwithstanding the provisions of the foregoing paragraph, when international organizations make, for their official use, large purchases of goods on which such duties and taxes have been, or may be, imposed, States parties (to the present Convention)* shall, wherever possible, adopt the necessary administrative provisions for the remission or refund of the amount corresponding to such duties or taxes.

Article 22

For the purposes of the foregoing articles, the terms "official activity" or "official use" shall mean those relating to the accomplishment of the purposes of the international organization.

* References to the "Convention" have been placed in brackets in order not to prejudge the final form of the draft articles.

3. Mr. DÍAZ GONZÁLEZ (Special Rapporteur), introducing his fifth and sixth reports asked members to note three minor corrections to the Spanish version of the fifth report.

4. He recalled that the Commission had so far considered four reports on the topic. The preparation of those four reports had been guided by the schematic outline adopted by the Commission at its thirty-ninth session and approved by the General Assembly at its forty-second session in 1987, which established the general thrust and scope of the topic and its substance.³ Following the Commission's discussion of the four reports, the first 11 draft articles had been referred to the Drafting Committee. The Commission now had before it, in the fifth and sixth reports, draft articles 12 to 22, forming parts IV and V of the draft articles. The two reports completed the study of the first part of the draft, i.e. sections I A and I B of the outline.

5. The fifth report consisted of two parts, the first, supplementing part III of the draft, being concerned with the archives of international organizations, and the second, relating to part IV of the draft, with the publications and communications of international organizations. The sixth report was on the fiscal immunities of international organizations and their exemptions from customs duties. The draft articles being proposed, namely articles 18 to 22, formed part V of the draft.

6. Like States, international organizations were in permanent communication with member States and with each other. They maintained a steady correspondence with public and private institutions and private individuals. They kept files on their staff, on projects, on studies and on any other action in which they might be involved with a view to achieving the aims for which they were created. They also possessed a body of documentation which was the backbone of their operations. The protection and safe keeping of all such documentation was what constituted the archives of international organizations.

In order to preserve, protect and safeguard the confidentiality of those archives, and to protect not only their own safety and their right to privacy and private property, but also the safety and privacy of documentation addressed or entrusted to them, particularly by member States, international intergovernmental organizations must enjoy inviolability of their archives.

7. The inviolability of archives was based on two fundamental principles: a duty of non-interference and a duty of protection, as in diplomatic law. The issue was one of protecting not only secrecy, but also the place where the secret was kept. In the case of diplomatic and consular missions, the receiving State was under an obligation not only to refrain from trying to penetrate the secret, but also to protect it by respecting the place where it was kept, and even to prevent third parties from violating it. The right to privacy, in other words to secrecy, was recognized to be a basic element guaranteeing the freedom of action and functional efficiency of international organizations. Respect for privacy and the preservation of secrecy constituted the very basis of the independence of international organizations, to which they must be entitled if they were to fulfil properly the purposes for which they had been established. That question was examined in detail in the first part of the fifth report.

8. It was hardly necessary to prove that publications were the chief, and indeed it might be said the most basic, form of expression for international organizations. Consequently, the scope of the term "publications", as employed by international organizations both in the legal documents and in practice, was much broader than was usual in domestic law. The breadth of the term varied, of course, from one document to another, as the report showed. International organizations must therefore enjoy the fullest guarantees not only with regard to the inviolability of their publications, but also with regard to the free distribution and circulation of the information required for the conduct of their activities.

9. Naturally, the means of communication made available to international organizations had to be identical to those employed by States or diplomatic missions. In that respect likewise, international organizations were assimilated or equated to diplomatic missions so as to enable them to use the same means of communication. The European Committee on Legal Cooperation had issued an opinion on the question, which he had cited in his fifth report.

10. It should not be of major concern whether all international organizations invariably used all of the exceptional means of communication. What mattered was that the principle should be recognized and applied in appropriate cases. In cases where the functions of the organization did not warrant application of the principle, the organization should have the authority to waive it. In any event, with the increasingly sophisticated advances in communications technology, using means of radiotelephony and radiotelegraphy, such as telex and facsimile transmission, the issue would become less and less important. Indeed, in future the priority would simply be to have the appropriate equipment installed, and to be accorded preferential tariffs and rates for the applicable taxes and service charges.

³The text of the schematic outline is reproduced in *Yearbook* . . . 1989, vol. II (Part Two), p. 132, footnote 323.

11. Mention should be made in that connection of the diplomatic bag and the diplomatic courier. The Commission and the Sixth Committee had considered whether the draft articles elaborated on that topic should be restricted to States or should also be extended to international organizations. Opinions on the matter had been divided. The Special Rapporteur on the diplomatic bag and diplomatic courier had suggested the inclusion of a new paragraph 2 in draft article 1 on the diplomatic courier and the diplomatic bag, to cover the official communications of an international organization with a State or with other international organizations, which he had cited in his fifth report. After lengthy discussion, views being expressed both for and against, the Commission had decided not to include the paragraph. It had been pointed out that the repeated insistence by some Commission members on differentiating between States and international organizations was inopportune. International organizations, it had been said, were established by States, and they used diplomatic couriers and diplomatic bags without any serious objection ever being raised. Both the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies, as well as many international instruments such as headquarters agreements and technical assistance agreements, contained similar specific provisions on the subject. However, given the difference of opinions, the Commission had opted for confining the scope of the draft articles to couriers and bags of States in order not to jeopardize the acceptability of the draft articles. At the same time, it had believed it appropriate for States to be given the choice to extend, if they so wished, the applicability of the draft articles to couriers and bags of, at least, international organizations of a universal character. It had therefore prepared and approved a draft optional protocol two on the status of the courier and the bag of international organizations of a universal character⁴ which stated, in article I, that:

The articles also apply to a courier and a bag employed for the official communications of an international organization of a universal character:

- (a) With its missions and offices, wherever situated, and for the official communications of these missions and offices with each other;
- (b) With other international organizations of a universal character.

12. As to the question of fiscal immunities, the sixth report ended with part V of the draft, namely articles 18 to 22. The fiscal immunity which States granted each other in their mutual relations was, in fact, the counterpart of equality. Under the principle of sovereignty and equality between States, a State could not be viewed as being subject to the tax-levying authority of another State. The principle was established by both custom and practice; it had been confirmed in bilateral and multilateral agreements, or even by unilateral decisions of States, at least as regarded property intended for State purposes. The tax exemption granted to intergovernmental international organizations also appeared to be justified by the same principle of equality between member States. A State could not levy taxes on other States through an international organization, and the host State

must not derive unjustified fiscal benefit from the presence of an international organization on its territory. Moreover, in order to perform their official functions effectively, intergovernmental international organizations must enjoy the greatest possible independence in relation to the States of which they were composed. The principle of the free movement of the articles and capital of international organizations constituted one of the basic elements for preserving and guaranteeing their independence, and enabling them to fulfil the purposes for which they were established. However, States naturally had the right to protect themselves against any abuse or erroneous interpretation of the principle which might distort its true aim. The report therefore focused on two basic principles: the free movement of the articles of international organizations, and the protection of States against abuse or misinterpretation.

13. The CHAIRMAN thanked the Special Rapporteur for his presentation of the two reports.

The meeting rose at 10.40 a.m.

2233rd MEETING

Tuesday, 2 July 1991, at 10 a.m.

Chairman: Mr. Abdul G. KOROMA

Present: Mr. Al-Baharna, Mr. Al-Qaysi, Mr. Arangio-Ruiz, Mr. Barsegov, Mr. Beesley, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Graefrath, Mr. Hayes, Mr. Jacovides, Mr. Mahiou, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.

Cooperation with other bodies

[Agenda item 9]

STATEMENT BY THE OBSERVER FOR THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

1. The CHAIRMAN invited Mr. Njenga to address the Commission in his capacity as Secretary-General of the Asian-African Legal Consultative Committee.

2. Mr. NJENGA (Observer for the Asian-African Legal Consultative Committee) said that the Asian-African Legal Consultative Committee greatly valued its long-standing links with the International Law Commission. As Secretary-General of the Committee, he could speak with conviction of the commitment to strengthen those bonds in the mutual interests of the two bodies.

⁴ Adopted by the Commission at its forty-first session. See *Yearbook* . . . 1989, vol. I, 2132nd meeting, para. 56.