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Summary record of the 718th meeting

Topic:
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of an organization was determined by its constitution. There were rules of general international law on the subject of the international personality of States, but none on the international personality of international organizations. There was therefore a great difference between States and international organizations in that respect. The rules on the personality of an international organization, which resulted from its constitution, were only binding on member States of the organization and on any States which freely accepted that international personality.

123. There were considerable differences in status between the various international organizations. That was true even of international organizations of a general character, such as the specialized agencies of the United Nations. It would therefore be necessary to examine the relationship between the draft articles to be prepared and the constitutions of the specialized agencies. In fact, that problem would arise in regard to the United Nations Charter itself.

124. In regard to privileges and immunities and the institution of legation, the discussion was on much firmer ground. There was the Convention on the Privileges and Immunities of the United Nations approved by the General Assembly on 13 February 1946, and the Convention on the Privileges and Immunities of the Specialized Agencies approved by the General Assembly on 21 November 1947. The relationship between those Conventions and the draft articles to be prepared by the Special Rapporteur would also have to be examined.

125. As to diplomatic conferences, the law of international conferences was in process of development and the question arose whether that subject should be considered together with relations between States and intergovernmental organizations or treated separately.

The meeting rose at 1 p.m.

718th MEETING

Wesdnesday, 10 July 1963, at 9.30 a.m.

Chairman: Mr. Eduardo JIMÉNEZ de ARÉCHAGA

Relations between States and intergovernmental organizations (A/CN.4/161)

[Item 6 of the agenda] (*continued*)

1. The CHAIRMAN invited the Commission to continue consideration of the first report by the Special Rapporteur on relations between States and intergovernmental organizations (A/CN.4/161).

2. He reminded the Commission that it was not attempting at its present session to reach a decision on the general directives to be given to the Special Rapporteur concerning the scope of the topic or those parts of it to which priority should be given. It had already decided, when approving the programme of work for 1964, that general directives would be given to the Special Rapporteur at the winter session in January 1964 (716th meeting, paras. 1-3). The sole purpose of the present discussion was to give members who already had a settled opinion on the matter an opportunity of stating their views. There would be a further opportunity of doing so at the winter session and the Special Rapporteur would then sum up the discussion. Any opinions expressed at the present session, however, would be useful to the Special Rapporteur for his work in the intervening months.

3. Mr. ROSENNE, after congratulating the Special Rapporteur on his report, said he would confine himself to a few general observations of a preliminary character.

4. The topic of relations between States and intergovernmental organizations had emerged from the discussion of the articles on diplomatic relations. In view of that fact, and of the title of the topic, he had been struck by the reference in paragraphs 11 and 82 of the report to " the external relations of international organizations ". International organizations were essentially part of the machinery by which States conducted their relations. The emphasis should therefore be on the relations of States with international organizations, rather than on the external relations of the organizations. The point was not a purely academic one. The report mentioned, for example, such matters as the espousal of claims by international organizations and the institution of legation in respect of international organizations. Unless the proper emphasis were placed on relations between States and international organizations, a study of those subjects could be misleading. Admittedly there had been instances of the espousal of claims by international organizations, but a question of equal if not greater importance was that of international organizations appearing as respondents in international claims. Similarly, the institution of legation was a matter for States between themselves and it would be misleading to suggest that an international organization had a right of legation.

5. With regard to international legal personality and treaty-making capacity, those notions were convenient academic expressions for conveying certain ideas; they should be regarded as points of arrival after a great deal of experience rather than as points of departure for the analysis of legal principles. In its advisory opinion of 11 April 1949 on Reparation for Injuries suffered in the Service of the United Nations, the International Court of Justice had referred to international personality as " a doctrinal expression, which has sometimes given rise to controversy ", and had arrived at the pragmatic conclusion that if the United Nations were recognized as having that personality, it was " an entity capable of availing itself of obligations incumbent upon its Members ".[1] In the light of that guarded approach, any attempt to formulate the notion of international personality could lead to difficulties.

6. On the general question of the privileges and immunities of international organizations, he had been interested by the plea for uniform standards in paragraph 170

[1] *I.C.J. Reports*, 1949, p. 178.

of the report, as well as by the warning, in paragraph 94, against any drive for absolute identity. Personally, he thought there was something to be said for a re-examination of the privileges and immunities of the major international organizations in the light of the experience gained since 1947. It would be useful, in particular, to examine how the development of the law in the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations needed to be reflected in the privileges and immunities and in the status of international organizations.

7. He wished, however, to draw attention to a difficulty concerning the competence of the International Law Commission. The Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies had been adopted by the General Assembly, in 1946 and 1947 respectively, in pursuance of Articles 104 and 105 of the Charter, as mentioned in the preambles to those Conventions. He was not at all certain that the Commission was empowered to take any action regarding the two Conventions unless it had some specific indication that the General Assembly would welcome such action. If his doubts were shared by other members, he would suggest that the Commission should draw the attention of the General Assembly to the matter in its report.

8. Mr. CASTRÉN associated himself with the congratulations conveyed by previous speakers to the Special Rapporteur on his first report. The subject was a new one and only a few of its aspects had been studied before; but the Special Rapporteur had nevertheless succeeded in basing his report on very full documentation taken from the official sources and the researches of other scholars. The report gave a clear account of the evolution of the concept of an international organization, of the attempts to codify the legal status of international organizations and of the present position; the definitions and classifications of international organizations seemed to be acceptable. He approved, in general, of the Special Rapporteur's proposals and accepted the two recommendations made at the end of the report.

9. It was difficult at that stage to specify all the problems which should be examined and define the scope of the study, particularly in the case of certain special questions such as the law of treaties in respect to international organizations, the responsibility of those organizations and diplomatic conferences. But the Commission had already stressed the need for close co-operation between the various Special Rapporteurs to avoid overlapping.

10. As Mr. Tunkin had said, the Special Rapporteur's task was difficult, because he had to deal with an extensive subject that was evolving fast. Mr. Tunkin had also expressed doubts concerning the study of the first group of questions — the legal capacity of the international organizations, their treaty-making capacity and their capacity to espouse international claims. Yet those were precisely the problems which ought to be studied, and, if possible, solved, and it was desirable that the Commission should contribute to that work.

11. It was also true that the existing rules relating to international organizations varied greatly according to the nature and functions of the body concerned, and he recognized that there were some international organizations, such as the United Nations, which had a place apart. There were also international organizations which, though similar in status, were governed by different rules. The Special Rapporteur's task was, first, to determine which those organizations were, and then to see how far it was possible to propose uniform or analogous rules.

12. With regard to the order of priorities, he shared the Special Rapporteur's view. As to the form of the draft, he thought it too early to take a decision at the moment. Perhaps the two methods, code and convention, could be combined, but a decision on that point could not be taken until later.

13. Mr. de LUNA congratulated the Special Rapporteur on the manner in which he had performed his by no means easy task. His report scarcely called for any particular comment for, as was stated in paragraph 10, it was " intended primarily as a preliminary study of the scope of the subject of relations between States and intergovernmental organizations, and the approach to it ".

14. The General Assembly, in resolution 1289 (XIII), had invited the Commission " to give further consideration to the question of relations between States and intergovernmental international organizations ". The use of the adjective " intergovernmental " created an initial difficulty, which the Special Rapporteur had very neatly overcome in his oral statement. The French delegation had first spoken of " permanent international organizations ", but had subsequently accepted a suggestion by the Greek representative that it should be made clear that the draft resolution referred to " intergovernmental " organizations, a designation that was both ambiguous and mistaken. The Government was only an organ of the State; hence the proper term was " international ", " inter-State " or even " supra-State " organizations.

15. As to the method, although international organizations were what the sociologists called " secondary societies " created by States, they had a functional aspect, a specific purpose, which was organized and institutionalized, and the treaty was their constitution. The example of the International Red Cross, whose constituent elements were the various national societies, was very much to the point.

16. With regard to the legal capacity of international organizations, as Mr. Gros had rightly observed, they must forget the distinction between public law and private law, which, it must be added, was not recognized in all legal systems.

17. He intended to state his views in writing in greater detail on the various problems raised by the topic.

18. Mr. YASSEEN said that the topic was difficult and complex and that he greatly appreciated the work done by the Special Rapporteur in preparing his report. In compliance with the Chairman's directions, he would not go into details, because the present discussion was merely a preliminary exchange of views.

19. He approved of the Special Rapporteur's two recommendations, of his list of subjects to be dealt with and of his views on the form which the Commission's draft should take. He wished, however, to make one general comment.

20. The problem to be studied was that of the relations between States and international organizations. Relations always involved two sides; in the particular case in point there was the international organization on one side and the State on the other. It was understandable that emphasis should be placed on the study of the topic with reference to the international organization, because that aspect was new; but it was also important, even essential, not to overlook the difficulties which might also arise in regard to States themselves. In other words, the relations in question should be studied from both points of view.

21. He fully shared the Special Rapporteur's opinion on the form to be given to the Commission's work on the juridical personality of organizations. It was well known that there was no uniformity among international organizations, and that they differed greatly in their rights, their obligations and their functions; it might be said that they differed greatly in their international juridical personality. It would therefore be wise not to decide forthwith that the work should take the form of a general convention. What could be said at that stage was that the capacity of each international organization was governed by its particular Statute; that was a rule which could be adopted, but before deciding whether it was possible to go further and lay down general rules, it would be better to await the completion of the Special Rapporteur's researches.

22. Mr. AGO said he would confine himself to a few general remarks, as the subject was too broad for thorough discussion in the short time available; the January session would afford an opportunity for more careful study.

23. The main value of the Special Rapporteur's report was that it clearly showed the scope and the various aspects of the problems of international law raised by the growth of international organizations. The Commission would have to choose between two alternatives: to continue on the course it had adopted, or to abandon it. Thanks to the Special Rapporteur's work the Commission was in a position to make its choice advisedly.

24. One possibility would be to codify every part of international law which concerned international organizations; that would mean drafting a convention covering all the problems of international law which arose where the subject was not a State, but an international organization. The other method, which the Commission had followed so far, was to identify, in each branch of international law it was attempting to codify, the special features encountered when the subject was an international organization. That would raise the question whether it might not be advisable to supplement the main codification in each case by a chapter or protocol dealing with the same problem as it affected international organizations.

25. The Commission had been moving towards the second alternative, and while the Special Rapporteur's report offered a choice between the two methods, he thought it tended to encourage the Commission to continue on the course it had chosen. It would be unwise to attempt a general codification of the international law relating to international organizations until several branches of classical international law had been codified. Only then should the Commission examine, in each branch, whether there were special rules relating to international organizations.

26. The title chosen — relations between States and intergovernmental organizations — was explicit, for in fact the Commission wished to complete the codification of diplomatic law; it had been cautious enough not even to mention relations between different organizations.

27. With regard to the main subject, which would supplement the codification of diplomatic law, although the Commission should give the Special Rapporteur some directions, they should not be too strict, for once he had gone into the problem thoroughly, the Special Rapporteur would himself be able to say what should be included or left aside. Nevertheless, it would be unwise to try to codify rules on the international personality of international organizations.

28. At the previous meeting, Mr. Tunkin had very rightly said that there were no rules concerning the personality of international organizations. It was the concrete exercise of certain rights and the fulfilment of certain obligations which made it possible to say that a particular international organization was an autonomous subject of international law distinct from the States which composed it. It was even possible to go further and say that there was no rule of law giving States international personality or making them subjects of international law, and that personality was more in the nature of a concept arrived at by scientific observation. Hence it was also unnecessary, *a fortiori*, to determine rules that would make it possible to say which international organizations possessed legal personality. Nor was there any need to examine the treaty-making capacity of international organizations or their competence to bring claims before an international court. The form in which those questions arose would differ from one organization to another.

29. In reality, there was only one form of capacity to be considered, and that was capacity under internal law — the capacity to make contracts, to hire premises and to institute legal proceedings — which international organizations must possess in the countries in which they operated, in order to perform their functions. As the Special Rapporteur had said, that capacity really came under diplomatic law, in the sphere of privileges and immunities, and, in general, was connected with the status which the organization should have within the legal system of the State with which it had relations. He thought the Commission should ask the Special Rapporteur to pay particular attention to that matter, which certainly came within the scope envisaged for the first attempt to be made at codification.

30. Caution also required that the problem of conferences should not be considered at that preliminary stage, but held over for a later phase of the work.

31. The Special Rapporteur had asked whether the Commission wished to confine itself to organizations of a universal character. Although the instructions should not be too precise, he (Mr. Ago) thought that, from the practical point of view, relations between States and organizations of a universal character might not differ appreciably from relations between States and smaller, regional organizations. He did not wish to express any definite opinion on that point, however.

32. With regard to the form that the work should take, if the Commission wished to supplement the codification of diplomatic law by examining the problem of relations between States and international organizations, it should work towards a convention, adding a new chapter or an additional protocol to what had already been done on diplomatic law.

33. Mr. LACHS said that the Special Rapporteur had been unduly modest in describing his first report as " a reconnaissance rather than a definitive study ". He warmly congratulated him on a scholarly, bold and interesting study, which traced the history of international organizations, attempted to define them and classified them in types and categories. The Special Rapporteur rightly expected some guidance from the Commission for his future work; in particular, having listed the problems involved, he wished to know which of them should be given priority.

34. Resolution 1289 (XIII) of 5 December 1948, by which the General Assembly had invited the International Law Commission to consider the question of relations between States and intergovernmental organizations, had had its origin in a French draft resolution. The French representative in the Sixth Committee had referred not only to the codification of what he had termed " special conventions ", but also to working out " general principles which would serve as a basis for the progressive development of international law on the subject ".[2] But by the resolution itself, the Commission was called upon the consider the topic " at the appropriate time, after study of diplomatic intercourse and immunities, consular intercourse and immunities and *ad hoc* diplomacy has been completed by the United Nations and in the light of the results of that study and of the discussions in the General Assembly ". That wording clearly showed what was expected of the Commission.

35. With regard to the Special Rapporteur's introductory remarks, he shared the doubts of other members as to the wisdom of starting with a study of the juridical personality of international organizations. That was a wide and complex subject and involved considerations of a very general nature. He would prefer those general considerations to be set aside in favour of more concrete points. The Commission was not engaged in working out a model treaty for an international organization. In view of the variety of purposes which such organizations served, it would be extremely difficult to make them all conform to a single pattern.

36. The study of the treaty-making capacity of international organizations should also be deferred. Some organizations had that capacity clearly established in their constitutions; some derived it from decisions of their organs and others from the interpretation of their constituent instruments.

37. It would be wiser, in his opinion, if the work began with the Special Rapporteur's second group of questions, namely, the international privileges and immunities of the organizations themselves and the related question of the institution of legation with respect to international organizations. The study of diplomatic conferences should be left aside for the time being.

38. It would be consistent with General Assembly resolution 1289 (XIII) for the Commission to confine its attention at that stage to the privileges and immunities of international organizations themselves, their officials and representatives and to the related question of the institution of legation. That approach would not preclude consideration of other subjects at a later stage.

39. Mr. LIANG, Secretary to the Commission, said that Mr. Rosenne had drawn his attention to certain aspects of the problem of the privileges and immunities of international organizations, in particular the very practical question whether a study of relations between States and intergovernmental organizations could, or should, lead to a general codification of the special conventions which at present governed the matter. In that connexion, the French representative on the Sixth Committee of the General Assembly had said on 28 October 1958, that

> " The development of permanent international organizations presented a number of legal questions, which were only partially solved by the special, bilateral conventions by which most of them were governed. It was necessary, therefore, not only to codify those special conventions, but also to work out general principles which would serve as a basis for the progressive development of international law on the subject ".[3]

40. A few days later he himself had addressed the Sixth Committee, pointing out " that the various conventions governing the relations of international organizations constituted an extremely complex and intricate body of rules which it might be dangerous to disturb ".[4] After giving an account of the various conventions adopted pursuant to Articles 104 and 105 of the Charter, he had cautiously concluded that:

> " Any attempt to codify those manifold rules in a single text might thus prove dangerous, as any new draft would have to take into account all divergencies in the existing instruments, and even a preliminary text prepared by the Commission might cause some misinterpretation of the existing positive law ".[5]

[2] *Official Records of the General Assembly*, thirteenth session, Sixth Committee, 569th meeting, para. 22.

[3] *Ibid.*

[4] *Ibid.*, 571st meeting, para. 13.

[5] *Ibid.*

41. In reply to the misgivings he had thus expressed, the representative of France had stressed that

> " his delegation had never envisaged the reconsideration of existing conventions on the immunities enjoyed by organizations. Those instruments should of course be maintained, although it might be of interest to see whether they did not contain certain common principles.
>
> " The matter contemplated in the French draft resolution was in fact entirely different. The study proposed therein was not of the immunities enjoyed by the organizations themselves, but of questions arising in the relations between those organizations and States." [6]

The substance of that statement had been included in the report of the Sixth Committee.[7]

42. Thus the Commission could see that the Secretariat was concerned at the possible consequences of any effort to universalize the modalities of relations between organizations and States in the matter of privileges and immunities. The different circumstances of each case had made it necessary for the United Nations, for example, to conclude bilateral agreements with many Member States and with a non-Member State — Switzerland. There were many practical reasons for that situation which were bound to subsist for a long time to come. From the theoretical standpoint, there could be no doubt about the truth of the view expressed by a writer, and quoted in the Special Rapporteur's report (para. 170):

> " From the standpoint of an international organization conducting operations all over the world there is a similar advantage in being entitled to uniform standards of treatment in different countries ".

But it was clear that it would not be possible to achieve that ideal state of affairs in the near future and that the present situation, which was one of diversity in universality, must endure for a considerable time.

43. While he subscribed to the ideal of universality, he was bound to counsel prudence. The codification of the various bilateral conventions governing the matter presented very serious problems, which would have to be settled on the basis not of the views of writers, but of those of governments. It was therefore important, if the Commission wished to undertake a study of the principles common to the various conventions, that the General Assembly should be consulted, as suggested by Mr. Rosenne.

44. The Commission could not consult the General Assembly at the present session and it should not act hastily. At that stage, he wished only to stress the need for consultation and to express the hope that, as the Commission advanced in its work, more time could be devoted to the matter of great practical importance to which he had referred.

45. Mr. VERDROSS said that the Special Rapporteur had submitted a noteworthy report and brilliantly developed his ideas in his oral statement.

46. He was able to associate himself with most of the comments made by previous speakers, but he wished to stress that States were at the origin of international law, whereas international organizations were creations of States; their existence rested on agreements concluded between States, and their legal status depended on the content of those agreements. There were accordingly no general rules, but only rules peculiar to each organization. The Special Rapporteur should therefore undertake a study of comparative law, from which it might be possible to derive certain general rules.

47. He shared Mr. Rosenne's opinion on the question of the privileges and immunities of international organizations. The rules adopted on that matter were the subject of conventions between States, and it was beyond the Commission's competence.

48. Mr. TABIBI said that the Special Rapporteur's treatment of a very difficult subject reflected both his academic distinction and his great practical experience of international organizations.

49. Some members had expressed doubts as to whether the topic was suitable for codification. In his view, the study should be conducted from the standpoint of the relations between international organizations and States; it would then involve an examination of the conventions on which those relations were based.

50. There had been some discussion about the legal capacity and treaty-making power of international organizations, which were clearly different and distinct from those of their member States. Resolution 1289 (XIII) showed that the General Assembly had had in mind mainly the practical aspects of daily relations between States and international organizations, which needed thorough study. The same was true of relations between international organizations themselves, which had given rise to complex problems of co-ordination. The differences between the statutes of different organizations were a constant source of difficulties for member States regarding the treatment to be accorded to representatives, international officials and the organizations themselves. There was therefore a strong feeling that an attempt should be made to arrive at uniform standards where possible.

51. There was no doubt that the different needs to be met and the different circumstances prevailing at the time the statutes of the various international organizations had been adopted had led to marked differences in their legal status. The result had been that similar operations were now conducted under totally different conditions in different countries and sometimes in a manner that was at variance with the basic needs of the institutions concerned.

52. One example was the OPEX programme, which provided for the supply of much-needed experts to serve as officials in developing countries. In flat contradiction with the terms of Article 100 of the United Nations Charter, the experts supplied were placed on the same footing as national officials, giving orders to some

[6] *Ibid.*, paras. 15 and 16.

[7] *Official Records of the General Assembly*, thirteenth session, Annexes, item 56, Document A/4007, para. 36.

national officials and receiving orders from others. In addition, there were marked differences between the status of OPEX experts in different countries; in some cases the responsible minister could dismiss an OPEX expert, while in others only the Secretary-General of the United Nations could do so.

53. Another example was provided by the Technical Assistance Resident Representatives which the United Nations maintained in no fewer than fifty-two countries. The agreements relating to privileges and immunities, local costs and housing differed from country to country; in at least one country the Resident Representative had a higher status than a diplomatic agent. There was clearly a need to study that situation with a view to securing a greater measure of uniformity.

54. Among the sources which would be useful to the Special Rapporteur were the international instruments establishing the various organizations. Another important source was the practical experience of the Secretariat in the application of those instruments — a matter on which the Secretariat could provide information. With regard to relations between the organizations themselves, the Special Rapporteur should consider the reports of the Administrative Committee on Co-ordination.

55. It was important that the study of the topic should not overlap with other work. The Special Rapporteur would no doubt keep in touch with his colleagues in order to guard against that eventuality.

56. As to the form of the draft articles, he strongly favoured a draft convention, as opposed to a code.

57. Mr. TSURUOKA, associating himself with the thanks and congratulations addressed to the Special Rapporteur by previous speakers, said that like Mr. Tabibi, he thought that, in the matter of relations between States and international organizations, the true needs of those organizations should be the main consideration.

58. The meaning of the term " international organization " was really still rather vague. A legal system for international organizations comparable with the commercial law which applied to companies in private law might be envisaged. The constitutions of the various international organizations would then be assimilated to the articles of association of commercial companies. But in view of the present development of international law he did not think that such assimilation was possible.

59. The practical importance of the question of the privileges and immunities to be granted, both by international organizations and by States, fully justified the request which the General Assembly had made to the Commission in resolution 1289 (XIII). By responding to that request, the Commission could certainly contribute to the development of international organizations and of their work for the benefit of mankind.

60. Mr. GROS associated himself with the Commission's unanimous tribute to the Special Rapporteur for his report, which he had too modestly described as a " reconnaissance ".

61. He was, however, rather surprised that the introduction gave such prominence to the successive stages of the draft resolution submitted to the General Assembly; what mattered was the text finally adopted. By its resolution, the General Assembly invited the Commission, after completion of the study of diplomatic and consular intercourse and immunities and of *ad hoc* diplomacy, to give further consideration, in the light of the results of that study, to the question of relations between States and intergovernmental organizations. That was certainly an important task, but it did not seem to correspond entirely to what Mr. Tabibi had described, which was more like a study of the law of international organizations in general; such a study would certainly be valuable, but it was not, perhaps, exactly what the General Assembly had asked for.

62. He did not see why the Commission should hesitate to examine the existing bilateral conventions which governed most of the problems relating to the international organizations it had to study and to make recommendations to the General Assembly if necessary.

63. On the basis of the Special Rapporteur's plan of work, he thought the questions to be considered first were those in the second group. As Mr. Yasseen had pointed out, relations between States and international organizations operated both ways, and it was the aggregate of diplomatic relations covered by group II in the Special Rapporteur's " broad outline " that the Commission should study.

64. With regard to the questions in the first group, he supported the view expressed at the previous meeting that there was no general rule governing international organizations, but that each international organization had rights and obligations deriving from its consituent instrument. He did not share Mr. Tabibi's view that international organizations were not subject to international law; they were, with certain qualifications. It therefore seemed difficult to deal with the questions in the first group otherwise than as a kind of general and fairly brief explanation of the actual substance of the topic.

65. As to the question of legal capacity, for which it hardly seemed possible to find an original and decisive solution, for the time being, its examination had better be deferred.

66. The same applied to the " special questions " in the third group.

67. The Special Rapporteur's report on relations between States and intergovernmental organizations would be valuable not only to the members of the Commission but also as documentation on international organizations.

68. Mr. BARTOŠ said that the Special Rapporteur had produced an outstanding piece of work.

69. He agreed with him about the formation of a general international law relating to international organizations. Most members of the Commission were perhaps inclined to take a traditionalist view which stressed the contractual character of international organizations because they were created by conventions between States. He himself was more concerned with practice than with the prevailing theory in international law. And practice

showed that international organizations were living entities with an influence of their own. For instance, the International Civil Aviation Organization had become so influential that even States which had opposed its establishment or had not been admitted to membership had had to adopt the rules of air navigation it had drawn up.

70. He did not share the view of some writers, in particular French writers such as Madame Bastid and Chaumont, that the United Nations was no more than a syndicate of States. In his opinion it was the personification of the international community and should assert itself. Looking at the matter from another point of view, if the United Nations caused an injury to a non-member State, he did not think it could be denied that it had international personality and international responsibility. Nor could it be said that States were divided into two groups, Member States and non-member States. It might happen, as it had in the case of the International Refugee Organization, that an international agency had more relations with States that were not members, but enlisted its services, than with States that were members, but in many cases had no need of its services.

71. The essential point was to determine the legal nature of international organizations and their general status and to establish a legal basis on which to build.

72. The Special Rapporteur's assignment was thus a difficult one, since he had to deal with vague notions on which opinions differed and, sometimes, even conflicted. He was all the more to be congratulated on having tackled the definition of those notions.

73. He (Mr. Bartoš) would revert to the question of the existence of an international law on inter-governmental organizations at the next session.

74. The CHAIRMAN, speaking as a member of the Commission, expressed his appreciation of the excellent and comprehensive report, in which the Special Rapporteur had explored the subject in a preliminary fashion and made certain suggestions as to how it should be handled. In accordance with what was becoming an established practice, the Commission should now provide him with general directives on the scope of the study to be made and the priorities to be given to certain items, especially as no sub-committee had been set up to consider the subject, as had been done in the case of State responsibility and of State succession.

75. The Special Rapporteur had adopted a very broad approach to the scope of his subject. However, since it was doubtful whether the Commission would be able to complete its work on that subject and on State responsibility and State succession within the term of office of its present members, it should not concern itself too much with the scope of the various topics on its agenda and the exact dividing lines between them. The Commission should lay down, within each topic, some order of priorities of a kind that would maintain the continuity and homogeneity of its programme as a whole, rather than attempt to define the scope of each study.

76. It was understandable and logical for the Special Rapporteur to propose that he first examine the general principles of the juridical personality of international organizations, since that was the initial question in the study of the topic. But it might also be understandable for the Commission to take a different view, because it should be more concerned with the overall continuity and homogeneity of its programme of work than with the logical sequence within each topic. Accordingly, if the Commission was to complete its work on the whole subject of diplomatic intercourse, perhaps at the outset the Special Rapporteur ought to concentrate on certain matters of direct relevance to that subject, though not at first sight of prime importance.

77. Thus he should first direct his attention to the privileges and immunities of representatives to international organizations, and other related questions. The first two subjects which he proposed might be dealt with in the second part of his study, namely, the privileges and immunities of international organizations as bodies corporate and those of their officials, could perhaps be left aside, since rules governing both of them had been codified in the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the the Specialized Agencies. It might perhaps be claimed that those Conventions also regulated the privileges and immunities of representatives to international organizations, but authoritative information had been published to the effect that, despite Article 105 of the Charter and the Convention on the Privileges and Immunities of the United Nations, in practice such representatives were usually accorded diplomatic and not functional privileges in the majority of countries where international organizations had their headquarters or where conferences took place.[8]

78. It was therefore necessary to examine how far rules governing diplomatic relations — for example, those concerning the *agrément*, the declaration of persons as *non grata* and the position of representatives of States which had not received recognition — were applicable by a State to representatives to international organizations established in its territory. Such an investigation was badly needed because the rules of diplomatic intercourse had been developed before international organizations had become established, and they might not prove adequate in all respects.

79. Mr. EL-ERIAN thanked the Commission for finding time to give some preliminary consideration to his report and for all its valuable comments and criticism. It would only be possible for him to make some general observations on the discussion.

80. In reflecting on the scope of his subject, he had been very conscious of the fact that certain aspects of it came within the province of other Special Rapporteurs. He appreciated the need to dovetail the work with other subjects on the Commission's agenda and not to view it solely in the context of the codification of rules on diplomatic intercourse.

[8] *Repertory of Practice of United Nations Organs*, Vol. V (United Nations publication, Sales No.: 1955.V.2, Vol. V), p. 350, para. 95.

81. He had sought to place the different issues in perspective in his report, so as to enable the Commission to select those that should be given priority. It was clear from the Sixth Committee's report to the General Assembly at its thirteenth session that the intention had been to give the Commission wide discretion in the handling of the subject.[9] In its report to the seventeenth session of the General Assembly, the Sixth Committee had stated that a number of representatives stressed the importance which relations between States and inter-governmental organizations had acquired and that some representatives thought a very valuable study could be made on such questions as the international personality of international organizations, their capacity to enter into treaties, their international responsibility and the privileges and immunities of their staffs.[10]

82. With regard to the point raised by Mr. Tunkin concerning the relationship between the proposed draft articles and the Charter, under Article 104 the United Nations enjoyed 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," so that it did seem necessary to examine the nature of that legal capacity in the light of practice.

83. In reply to the Secretary he pointed out that the Convention on the Privileges and Immunities of the Specialized Agencies had been ratified by only thirty-nine States, so that there was a real need to consider whether that Convention was fully adequate or whether supplementary protocols were necessary.

84. It would hardly be appropriate to seek the views of the General Assembly on the scope of the study at that stage, but perhaps some comments would be made, at its next session, on the section of the Commission's report devoted to the present discussion.

85. He welcomed Mr. Gros' helpful suggestion that some brief preliminary consideration of an introductory character might be given to the questions of the juridical personality and legal capacity of international organizations, because of the organic link between those questions and privileges and immunities.

86. He hoped it would be possible to reach agreement on the scope of the study at the Commission's winter session in January 1964, so that the homogeneous character of the programme could be preserved. The purpose of his first report had been to elicit the Commission's views, not to suggest any definitive lines of approach.

87. Mr. TABIBI said he had been misunderstood by Mr. Gros. He had never suggested that international organizations were not bound by rules of international law; he had merely pointed out that they were the creation of States and were governed by the rules of their own constituent instruments. He had not suggested that the Committee should study rules applicable to international organizations, but that it should concentrate on certain practical problems.

[9] *Official Records of the General Assembly*, thirteenth session, annexes, item 56, document A/4007, para. 36.

[10] *Official Records of the General Assembly*, seventeenth session, annexes, item 76, document A/5287, para. 51.

Law of Treaties (A/CN.4/156 and Addenda)

[Item 1 of the agenda] (*resumed from the previous meeting*)

88. The CHAIRMAN invited the Commission to resume consideration of the articles submitted by the Drafting Committee.

ARTICLE 2 *bis*: TREATIES TO WHICH THE PROVISIONS OF THIS PART DO NOT APPLY

89. Sir Humphrey WALDOCK, Special Rapporteur, said that the Drafting Committee had prepared an article concerning the constituent instruments of international organizations which read:

" ARTICLE 2 *bis*: TREATIES TO WHICH THE PROVISIONS OF THIS PART DO NOT APPLY

" Where a treaty is a constituent instrument of an international organization, or has been drawn up within an international organization, the application of the provisions of Section III of this Part shall be subject to the established rules of the organization concerned."

90. The Drafting Committee had come to the conclusion that it would be inappropriate to stipulate that none of the articles in the draft would apply to treaties of that kind. It proposed that the application of the provisions of section III should be subject to the established rules of the organization concerned. It had been agreed that treaties concluded at conferences held under the auspices of, but not within, international organizations would come under the application of the general rules being framed, but that those drawn up within international organizations, such as International Labour Conventions, or those adopted by a resolution of an international organization, such as the Genocide Convention, would come within the scope of the proposed article 2 *bis*. The Drafting Committee had decided that it was not necessary to add the qualification suggested when the matter had been discussed earlier, that the treaties in question were those whose execution was supervised by an international organization.

91. Mr. YASSEEN said he accepted the principle of article 2 *bis*, but the French expression, " *dans le cadre d'une organisation internationale* " seemed too broad. It might be thought that the Drafting Committee had wished to include all treaties adopted by international organizations or by a conference convened under the auspices of an international organization. He proposed the expression " *au sein d'une organisation internationale* ". The title of the article also seemed unsatisfactory.

92. Mr. GROS thought that the expression proposed by Mr. Yasseen would not be more restrictive; the point he wished to make should be dealt with in the commentary.

93. Mr. YASSEEN accepted that suggestion.

94. The CHAIRMAN proposed the title: " Treaties which are constituent instruments of an international

organization or were drawn up within an international organization ".

Article 2 bis, with the title proposed by the Chairman, was adopted by 15 votes to none with 1 abstention.

ARTICLE 27 (LEGAL CONSEQUENCES OF THE NULLITY OF A TREATY)

95. Sir Humphrey WALDOCK, Special Rapporteur, said that in the light of the discussion at the 714th meeting (paras. 75 - 84) and in order to safeguard the position of parties which had relied on a treaty in good faith to perform certain acts, the Drafting Committee had prepared a new text for article 27, which read:

" 1. (*a*) The nullity of a treaty shall not affect the legality of acts performed in good faith by a party in reliance on the void instrument before the nullity of that instrument was invoked.

" (*b*) The parties to that instrument may be required to establish as far as possible the position that would have existed if the acts had not been performed.

" 2. If the nullity results from fraud or coercion imputable to one party, that party may not invoke the provisions of paragraph 1.

" 3. The same principles shall apply with regard to the legal consequences of the nullity of a State's consent to a multilateral treaty."

96. Mr. CASTRÉN asked whether the question of responsibility would be dealt with in the commentary on article 27.

97. Sir Humphrey WALDOCK, Special Rapporteur, said he had drafted a passage for inclusion in the commentary explaining that the question of responsibility had not been covered in articles 27 and 28, because the Commission considered that it belonged to another branch of international law.

98. Mr. TUNKIN proposed the insertion of the words " as such " after the word " treaty " in paragraph 1 (*a*).

99. Sir Humphrey WALDOCK, Special Rapporteur, said that amendment was acceptable.

Article 27, thus amended, was adopted by 15 votes to none with 1 abstention.

Other business

[Item 9 of the agenda]

100. Mr. de LUNA said he wished to make a few remarks on the treatment accorded to the Spanish language. The improvement on the previous year in regard to the interval between the distribution of English texts and the Spanish translation must be acknowledged. It was, unfortunately, necessary, when there were three working languages, to choose a " key " language, which ought to be that used by the Special Rapporteur. But was there any reason why the summary records should not be issued in the language used by each speaker, and then translated into the language of the Special Rapporteur, which, in the case of the law of treaties, was English ?

101. Mr. ROSENNE proposed that the Commission include in Chapter V of its draft report a passage reading:

" *Delay in publication of the* Yearbook

" The Commission has noted with concern that publication of the volumes of the *Yearbook* is being subjected to an increasing delay. In making this observation the Commission expresses the hope that steps will be taken to ensure that in future the *Yearbook* will be published as soon as possible after the termination of each annual session."

102. His proposal was not made in any spirit of criticism, but it was obviously essential that both volumes of the *Yearbook*, in the three languages, should be available to governments when they were asked to prepare their comments on the Commission's drafts, and, if possible, to delegations on the Sixth Committee when they had to consider the Commission's reports.

103. Mr. BRIGGS supported Mr. Rosenne's proposal.

The proposal was adopted.

The meeting rose at 1 p.m.

719th MEETING

Thursday, 11 July 1963, at 9.30 a.m.

Chairman: Mr. Eduardo JIMÉNEZ de ARÉCHAGA

Draft report of the Commission on the work of its fifteenth session (A/CN.4/L.102 and Addenda) [1]

CHAPTER I: ORGANIZATION OF THE SESSION (A/CN.4/L.102)

Chapter I was adopted, with various drafting changes

CHAPTER IV: PROGRESS OF WORK ON OTHER QUESTIONS UNDER STUDY BY THE COMMISSION (A/CN.4/L.102/ADD.2)

Paragraph 3 (53 in final report)

1. Mr. TUNKIN proposed the deletion of the last two sentences, which read: " Some members stressed the codification of existing rules, others the progressive development of those rules. However, it was considered that the question whether, in this subject, more prominence should be given to codification or to progressive development could not be finally settled until the substance of the specific problems involved was studied ". The first of those sentences could give the misleading

[1] For final report see *Official Records of the General Assembly*, eighteenth session, Supplement No. 9.