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Preliminary report on relations between States and international organizations (second part of the topic), by Mr. Leonardo Díaz-González, Special Rapporteur

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

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RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS (SECOND PART OF THE TOPIC)

[Agenda item 7]

DOCUMENT A/CN.4/370*

Preliminary report on relations between States and international organizations (second part of the topic), by Mr. Leonardo Díaz González, Special Rapporteur

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Basis of the present report

1. The International Law Commission divided its work on the topic "Relations between States and international organizations" into two parts. The first part, relating to the status, privileges and immunities of representatives of States to international organizations, led to a set of draft articles which the Commission adopted at its twenty-third session, in 1971, and submitted to the General Assembly. The Assembly referred the draft articles to a Diplomatic Conference, which met at Vienna in 1975 and adopted the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character.¹

2. At its twenty-eighth session, in 1976, the Commission commenced consideration of the second part of the topic. It requested the Special Rapporteur on the topic, the late Mr. Abdullah El-Erian, to prepare a preliminary report to enable it to take the necessary decisions and to define its course of action on the second part of the topic, relating to the status, privileges and immunities of international organizations, their officials, experts and other persons engaged in their activities who were not representatives of States.²

3. In accordance with that decision, the Special Rapporteur submitted a preliminary report to the Commission at its twenty-ninth session, in 1977.³

4. Following its discussion of the preliminary report at its twenty-ninth session,⁴ the Commission decided to authorize the Special Rapporteur to continue his study

on the second part of the topic on the lines indicated in his report, having regard to the views expressed and the questions raised during the discussion. It also decided to authorize the Special Rapporteur to seek additional information and expressed the hope that he would carry out research in the usual way, namely by inquiring into the agreements concluded by international organizations and into the practices followed by those organizations, whether within or outside the United Nations system, as well as into the legislation and practice of States.⁵

5. In paragraph 6 of its resolution 32/151 of 19 December 1977, the General Assembly endorsed "the conclusions reached by the International Law Commission regarding the second part of the topic of relations between States and international organizations".

6. By a letter dated 13 March 1978 addressed to the legal counsels of the specialized agencies and IAEA, respectively, the Legal Counsel of the United Nations stated:

To assist the Special Rapporteur and the Commission, the United Nations Secretariat at Headquarters has undertaken to examine its own files and to collect materials on the practice of the Organization regarding its status, privileges and immunities during the period from 1 January 1966 to the present. Furthermore, you will find enclosed a questionnaire, largely identical to the relevant one sent in 1965, which is aimed at eliciting information concerning the practice of the specialized agencies and IAEA additional to that submitted previously, namely, information on the practice relating to the status, privileges and immunities of the specialized agencies and IAEA, their officials, experts and other persons engaged in their activities not being representatives of States.

7. The Legal Counsel also pointed out in that letter:

As in 1965, the questionnaire closely follows the structure of the Convention on the Privileges and Immunities of the Specialized Agencies. This format was chosen to make possible a uniform treatment of the material by all the specialized agencies, and to facilitate comparisons between their replies. It should be emphasized, however, that the additional information sought by the Special Rapporteur under his

* Incorporating document A/CN.4/370/Corr.1.

¹ United Nations, *Juridical Yearbook 1975* (Sales No. E.77.V.3), p. 87.

² *Yearbook ... 1976*, vol. II (Part Two), p. 164, para. 173.

³ *Yearbook ... 1977*, vol. II (Part One), p. 139, document A/CN.4/304.

⁴ *Yearbook ... 1977*, vol. I, pp. 201-215, 1452nd and 1453rd meetings, and 1454th meeting, paras. 1-10.

⁵ *Yearbook ... 1977*, vol. II (Part Two), p. 127, para. 95.

mandate from the Commission relates not only to the Specialized Agencies Convention—or, in the case of the IAEA, the Agreement on the Privileges and Immunities of the IAEA—but equally to the constituent treaties of the agencies, the agreements with host Governments regarding the headquarters of the agencies, and relevant experience of the agencies concerning the implementation in practice of these international instruments. Any relevant material derived from these sources should be analysed and described under the appropriate sections of the questionnaire.

The questionnaire attempts to indicate the principal problems which, so far as we know, have arisen in practice, but our information may not be complete and consequently the questions may not be exhaustive of the subject. If problems which are not covered by the questionnaire have arisen in your organization during the period under consideration and you think they should be brought to the attention of the Special Rapporteur, you are requested to be good enough to describe them in your replies. Also, the questionnaire was designed for all the specialized agencies, and its terminology may not be completely adapted to your organization; we would be obliged, however, if you would be kind enough to apply the questions to the special position of your organization in the light of their purpose of eliciting all information which will be useful to the International Law Commission.

It is hoped that the replies will not be limited to short answers to the questions, but that, so far as useful and possible, you will furnish materials in relation to your organization—including resolutions, diplomatic correspondence, judicial decisions, legal opinions, agreements, etc.—showing in detail the positions taken both in intergovernmental organizations and by States, and the solutions, if any, which have been arrived at, so that the Special Rapporteur may be afforded a clear view of international practice on points which have given difficulty during the period.

8. At the thirtieth session of the Commission, in 1978, the Special Rapporteur submitted a second report on the second part of the topic.⁶

9. The questions raised during the Commission's discussion on the second report, at its thirtieth session,⁷ included the following: definition of the order of work on the topic and advisability of conducting the work in different stages, beginning with the legal status, privileges and immunities of international organizations; special position and regulatory functions of operational international organizations established by Governments for the express purpose of engaging in operational—and sometimes even commercial—activities, and difficulty of applying to them the general rules of international immunities; relationship between the privileges and immunities of international organizations and their responsibilities; responsibility of States to ensure respect by their nationals of their obligations as international officials; need to study the case law of national courts in the sphere of international immunities; need to define the legal capacity of international organizations at the level of both internal and international law; need to study the proceedings of committees on host country relations, such as that functioning at the Headquarters of the United Nations in New York; need to analyse the relationship between the scope of the privileges and immunities of the organizations and their particular functions and objectives. The Commission approved the conclusions and recommen-

dations set out in the second report of the Special Rapporteur (chap. V).⁸

10. In his second report, the Special Rapporteur summarized the discussion in the Commission at its twenty-ninth session (chap. II), and in the Sixth Committee at the thirty-second session of the General Assembly (chap. III), and examined general questions in the light of those discussions (chap. IV).

11. The present Special Rapporteur does not consider it necessary here to repeat all that was said by the previous Special Rapporteur in his second report, to which reference may be made. He would simply point out that, from the conclusions reached in the report and endorsed by the Commission, it may be inferred:

(a) That general agreement exists in the Commission and in the Sixth Committee of the General Assembly on the desirability of the Commission taking up the study of the second part of the topic of relations between States and international organizations;

(b) That the Commission's work on the second part of the topic should proceed with great prudence;

(c) That, for the purposes of its initial work on the second part of the topic, the Commission adopted a broad outlook, inasmuch as the study would include regional organizations. The final decision whether to include such organizations in an eventual codification could be taken only when the study was completed;

(d) That the same broad outlook should be adopted in connection with the object of the study, inasmuch as the question of priority would have to be deferred until the study was completed.

12. The questionnaire addressed by the Legal Counsel of the United Nations in 1978 (see paras. 6-7 above) to the legal counsels of the specialized agencies and IAEA in connection with the status, privileges and immunities of those organizations, except in matters pertaining to representatives, complemented the questionnaire on the same topic sent on 5 January 1965. The replies to the latter questionnaire helped to form the basis of the study prepared by the Secretariat in 1967, entitled "The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities".⁹

13. The replies to the 1978 questionnaire update and supplement the replies to the 1965 questionnaire. The Special Rapporteur has examined the replies received and is of the view that the Commission might well consider it appropriate to request the Secretariat to revise the 1967 study in the light of the new material for the purpose of producing an updated version.

14. The Special Rapporteur has analysed the material in his possession and has embarked on the study assigned to him by the Commission, in other words, the second part of the topic, concerning the status, privi-

⁶ *Yearbook ... 1978*, vol. II (Part One), p. 263, document A/CN.4/311 and Add.1.

⁷ *Yearbook ... 1978*, vol. I, pp. 260-269, 1522nd meeting, paras. 22 *et seq.*, 1523rd meeting, paras. 6 *et seq.*, and 1524th meeting, para. 1.

⁸ *Yearbook ... 1978*, vol. II (Part Two), p. 147, para. 156.

⁹ *Yearbook ... 1967*, vol. II, p. 154, document A/CN.4/L.118 and Add.1 and 2.

leges and immunities of international organizations, their officials, experts and other persons engaged in their activities who are not representatives of States.

15. He intends, however, to comply with the wish expressed by the Commission that the work on the second part of the topic should proceed with great prudence.¹⁰

16. He therefore takes the view that, because the Commission has been enlarged and newly constituted since the previous Special Rapporteur submitted his second report, in 1978, it would be highly desirable for the present members of the Commission to have the opportunity to express their views, opinions and suggestions as to the lines to be followed by the Special Rapporteur on matters pertaining to each and every one of the more important aspects of the study assigned to him.

¹⁰ See the second report of the previous Special Rapporteur, document A/CN.4/311 and Add.1 (see footnote 6 above), para. 118.

17. Since the Commission now has a larger number of members, a fact that implies broader representation not only from a geographical standpoint but also in terms of the diversity of legal systems, any consensus emerging from a debate on this question will be the outcome of a broader range of opinions.

18. The Special Rapporteur will thus have an invaluable indication of the wishes of the Commission as it is now constituted, and this will greatly facilitate his present task of continuing the work on this topic.

19. In this way, the Special Rapporteur will be in a better position to submit for the Commission's consideration his second report, carried out in keeping with the guidelines established, and possibly containing the first draft articles, together with commentaries, on the status, privileges and immunities of international organizations.